KidsCounsel®
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a newsletter for attorneys representing children in Connecticut

TRUANCY

CCA Releases New Report

Andrea M. Spencer, Ph.D, Educational Consultant

CCA's Truancy Court Prevention Project (TCPP) works to reduce Hartford's high dropout rate by providing truant students with case management, legal and educational advocacy, and weekly monitoring of attendance and academic progress during informal court sessions. These court sessions are held at school and presided over by a judge.

The TCPP believes a thorough analysis of students' academic histories is a first step in understanding patterns of absenteeism and creating support systems to help re-engage students in school. As a result, a central part of the TCPP is the individual review and analysis of each participant's educational records by an educational consultant.

Findings from the TCPP's first two years of operation suggest that truancy programs must take a closer look at the academic needs and educational histories of a truant youth as a first step in understanding the causes of the youth's truancy and creating solutions to it.

Background

Most studies have focused on the personal or family characteristics of truants and a relative few have addressed the role of the schooling process as a factor in truancy and subsequent rates of dropout. There is a growing recognition that the most immediate causes of dropping out are educational – in particular, poor academic performance and disengagement from school (Jerald, 2006). Other school factors contributing to truancy have been cited by the National Center for School Engagement (NCSE, 2006). These include an unsafe or unwelcoming school climate, push-out policies such as suspension for truancy and automatic "F's" for poor attendance. Research at NCSE emphasizes that lack of affective support for students within a school is particularly important: neglect for diverse student needs has surfaced as an important element leading to increased truancy. In addition, inadequate identification of students with special needs often leads to students becoming so failure-bound and frustrated that school avoidance becomes a pattern (Southwell, 2006).

However, despite the urgency of concerns about school engagement, examination of the developmental course of patterns of attendance leading to high rates of absenteeism and truancy has been relatively rare. Understanding patterns of attendance leading to truancy, academic failure and high rates of dropping

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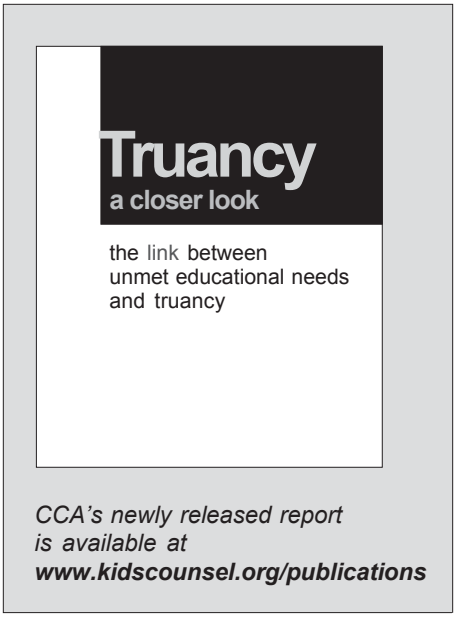

CCA's newly released report is available at ***www.kidscounsel.org/publications***

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CCA in the News

The Village for Families and Children, at their annual meeting entitled, "Committed to Our Community," presented **Martha Stone**, Executive Director of the Center for Children's Advocacy, with the *2006 Champion of Children* Award. This annual award is given to an individual whose work has had a profound impact on the lives of families and children in Connecticut.

Bank of America recognized **Martha Stone** with a "Local Hero Award" at its third annual *Neighborhood Excellence Initiative* awards in Hartford. This award is given to individuals and organizations dedicated to rebuilding, revitalizing, and improving the Hartford Community.

Left to right: Gladys Idelis Nieves, Esq., Senior Staff Attorney, Medical-Legal Partnership Project, Center for Children's Advocacy; Martha Stone, Esq., Executive Director, Center for Children's Advocacy; Susan Rottner, President, Bank of America - CT; Sarah Healy Eagan, Esq., Staff Attorney, Child Abuse Project, Center for Children's Advocacy.

Jay Sicklick was recently named Deputy Director of the Center for Children's Advocacy. In addition to his responsibilities as Director of the Center's Medical-Legal Partnership Project (MLPP), Jay assumes responsibility for many of the day-to-day challenges of the Center's operation.

Jay has been Director of the MLPP since 2000. Prior to his work with the Center, he served on the faculty of the University of Connecticut School of Law, worked as senior staff attorney at the Legal Aid Society's Bronx Neighborhood Office, and was a private practitioner in Boston.

Jay is currently Adjunct Professor of Law at the University of Connecticut School of Law, where he teaches courses in legal ethics and professional responsibility, and is a Clinical Instructor at the University of Connecticut School of Medicine, Department of Pediatrics.

Truancy Report Released by CCA

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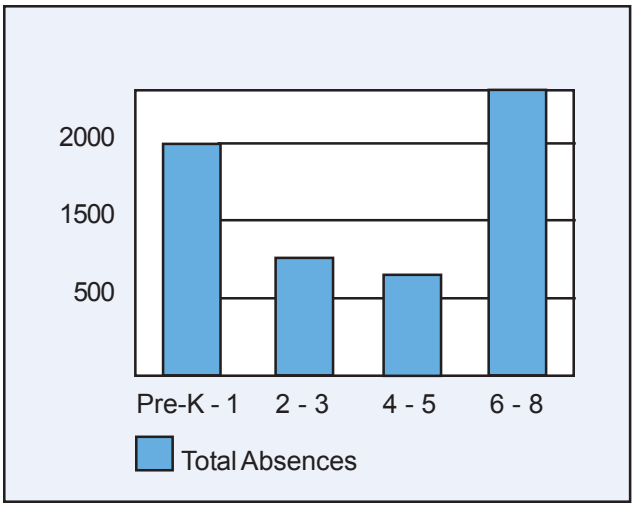
out of school is an essential step in designing preventive strategies that will maintain school engagement, prevent frustration and failure, and decrease the alarming numbers of school dropouts. (Recent data from the Hartford Board of Education indicate that Hartford Public Schools' graduation rates are as low as 29 %.)

Findings

As more data on students referred to TCPP in 8th or 9th grade has begun to accumulate, patterns have begun to emerge. Of the 79 students whose educational records have been reviewed in detail, 39 include attendance information from pre-school or kindergarten through eighth grade. Of these, 31 (80%) showed elevated rates of absenteeism (above the state regulated level of 10 days annually) in pre-school through Grade 1, averaging 27 days out of school within a given school year.

These 31 children, between the time of school entry and eighth grade, each missed an average of 154 days – nearly a full school year. These students collectively were retained in the same grade or socially promoted 48 times. Eight students had multiple retentions and social promotions, one student had as many as five.

Total Absences for Sample by Grade



Yet despite these consistent, ongoing records of academic disengagement and failure for these children, only half were even reviewed by Student Support Teams (SSTs) or Planning and Placement Teams (PPTs), and of that number, only five received special education services as students with learning disabilities.

Implications of Early Attendance Problems

What are the implications of such a pattern of early, unresolved attendance problems? The first is that these students experienced difficulties during their first, critical days in school. For most, these were academic problems. Most of the children in this early absenteeism group were Hispanic girls. While evidence is not conclusive, further examination of the ways in which these girls are introduced to and supported in making the transition from home to school in terms of linguistic, academic and affective support, would expand understanding and allow development of early intervention and ongoing monitoring to prevent the later acceleration of absenteeism in middle school years.

The intervening years for most of these children were characterized by retentions and social promotions. Neither appears to have been particularly effective in engaging the children in successful learning experiences, as evidenced by the academic and social outcomes prior to transition to high school – a high risk period for dropping out. Policy and practice are both implicated in terms of a need for continued analysis of results and the development of creative strategies for engaging children as learners.

Recommendations for Systemic Interventions

Recommendations include early multidisciplinary review, appropriate referral for comprehensive special education evaluations and close monitoring of children who are frequently absent in kindergarten. In addition, a systemic review of the means by which teachers are provided with professional development and support related to assessment and instruction of diverse learners would likely enhance learning outcomes for all learners – not least these struggling students. Promising instructional options for prevention and intervention include knowledge and skill in differentiated instruction techniques, in the application of principles of Universal Design and understanding of neurodevelopmental constructs (attention, memory, language, etc.) that shape the learning process for individual children.

Teacher preparation for the challenging task of teaching diverse learners is another area for consideration. Teachers

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Truancy Report

typically put a great deal of effort into design of learning experience for their students, but over time, the diversity of public school classrooms in terms of learning profiles, cultural backgrounds, and ethnicity has continued to diversify. Professional development often focuses on particular strategies or programs, whereas increased emphasis on observation and understanding of language and learning differences might play an important role in fostering educational progress, especially among English Language Learners and students with a range of learning styles and disabilities.

The roots of absenteeism become established very early for some children. Likewise, recognition of the problem and focused, consistent prevention and intervention initiatives are essential if children and their families are to be spared the pain of repeated failure and offered a real chance to experience the immediate and long-range benefits of successful engagement and education.

Resources:

Dougherty, J.W. (1999) *Attending to Attendance*. Phi Delta Kappa Fastbacks, 450, 7-49.

Jerald, C.G. (2006) *Dropping Out is Hard to Do.* The Center for Comprehensive School Reform and Improvement. Issue Brief: June 1, 2006. Retrieved January 10, 2007 from http://ccsr.uchicago.edu/news_citations/060106_learningpoint.html.

National Center for School Engagement (2006) *Truancy Fact Sheet.* Retrieved January 10, 2007 from *www.schoolengagement.org/TruancypreventionRegistry/Admin/Resources/Resources/40.pdf.*

Southwell, N. (2006) *Truants on Truancy – a Badness or a Valuable Indicator of Unmet Special Educational Needs?* British Journal of Special Education, 33(2), 91-97.

Truancy Court Prevention Project: Emily's Story

CCA's Truancy Court Prevention Project (TCPP) works to reduce Hartford's high dropout rate by providing truant students with case management, legal and educational advocacy, and weekly monitoring of attendance and academic progress.

Emily, a 14 year old high school student, was absent 21 times last year, mostly because of constant fighting with other girls and terrible grief over the death of a very close family member.

When the TCPP met with Emily at the beginning of this school year, she and her mother talked about Emily's need for a mentor and her difficulty with math. The TCPP was able to match a volunteer tutor/mentor, a student at the University of Connecticut School of Law, to work with Emily on a weekly basis. They review the math that Emily is working on in class, and the law student serves as a role model and mentor.

Emily's absences have decreased to only four so far this year, and she earned A's and B's during the first marking period.

A highlight of the year has been that Emily was invited to apply to a summer program at UConn in Storrs, a 6 week program for high school students to live on campus and participate in classes. Emily's parents never went to college, and this program will expose her to higher education.

The TCPP's intervention with Emily has helped to place her on the right track during a crucial time in her life and has encouraged her to think about her future.

Workplace Campaign Contributions to CCA Up 40% this Year!

Thank you to our loyal donors who contributed to the Center through these workplace campaigns this year:

United Way Community Campaign

Connecticut State Employees Campaign

Greater Hartford Combined Federal Campaign

Campaign giving increased by 40% this year, enabling us to reach out to more children who depend on us for legal representation. We could not accomplish so much without your support. Thank you for remembering the Center for Children's Advocacy in your annual giving!

Legislative Update: CCA Advocacy

Sarah Healy Eagan, Esq.

CCA Proposed Bills Place Important Issues on Connecticut's Legislative Agenda

The Center for Children's Advocacy has put several issues related to children's health and welfare on Connecticut's legislative agenda this session. CCA's proposed bills seek to reduce the number of days DCF-involved youth live in emergency placements or shelters, increase public oversight of child welfare court proceedings, improve educational stability for youth in foster care, and help families access medically necessary out-of-home therapeutic services. The Center's proposed bills are described below.

Draft language can be accessed at www.kidscounsel.org/legislative_state_SigPending.htm.

Raised Bill 7119: An Act Reducing the Length of Stay in Emergency Placements for Children and Youth Under the Supervision of the Commissioner of Child and Families

In the state of Connecticut, there is currently no enforceable limit on the length of time a DCF-involved youth can reside in an emergency placement, including DCF-licensed homeless shelters. This means that youth do not have a legal voice to enforce their right to an appropriate, permanent home.

Over the last three years, the number of youth "overstaying" in emergency placements has steadily gone up. In 2006, over 58 percent of youth placed in emergency shelters stayed longer than the *recommended* maximum stay of 45 days. It is not unheard of for youth to stay in an emergency placement for 6 months, 9 months or even a year, with no viable discharge plan to a permanent home. This lack of permanency can cause these vulnerable and needy youth irreparable harm, as their emotional needs for security and family go unmet.

This bill mandates that if a youth remains in an emergency placement for more than thirty days, a judicial hearing must be held within two weeks, and a hearing must be held every 15 days thereafter until the youth is successfully discharged. If Connecticut adopts this bill it would follow the example of other states, such as Colorado, Maine, Maryland, Montana, and Wisconsin, that have all passed similar legislation.

Raised Bill 7039: An Act Concerning Public Access To Proceedings In Certain Juvenile Matters

This bill would ensure that child protection proceedings in Juvenile Court are presumptively open to the public while still allowing courts to exclude individuals for good cause, including protecting the best interest of the child.

Currently, even relatives are often not allowed in the court. As a result, they have no way of knowing what is being done to ensure the safety of the children they care about, what services are being offered to the family, or whether the parents are making progress.

Unfortunately, closed courtrooms conceal our community's most vulnerable children in a shadow that hides the painful problems they and their families grapple with every day, allowing children to fall through the cracks of our justice and welfare systems. The public does not hear about the children who move from one emergency foster home to another, or who languish in shelters or out-of-state residential treatment centers, or who desperately need mental health treatment but can't get it because there is a 6-month waiting list.

The juvenile court system—charged with protecting children from physical harm and neglect—confronts the most serious issues affecting our community. The public and the families served in the juvenile court have a right to know whether this system is working the way children deserve. Given the gravity of these children's needs, there is no place where the system's accountability to the public is more important. Nineteen other states have already adopted "open courts" measures. Minnesota, for example, opened all of its child welfare proceedings after the National Center for State Courts performed a multi-year independent evaluation and concluded that children were not harmed by opening child protection proceedings to the public.

Open courts itself is not a magic answer to what ails the child protection system, but it provides a window through which the voices of families and children can be heard, and the challenges facing them can be understood.

Please see the Hartford Courant Editorial on page 7 of this publication.

Raised Bill 7172: An Act Reducing Educational Disruptions for Children and Youth in the Care or Custody of the Department of Children and Families

The purpose of this bill is to ensure that children in foster care have the right to remain in their school of origin at least for the duration of the school year even if they are moved to a placement in another school district.

Children and youth in foster care already suffer trauma from being removed from their homes and forced to live in the care of DCF. These children—who often move from one foster placement to another, and therefore frequently change schools—suffer academically, psychologically, and socially. Research indicates that it takes a child four to six months to recover academically from each school transfer.[1] These young people often find it difficult to make new friends and are more likely to experience alienation, withdrawal or discipline problems.[2] A 2004 study of the educational performance of abused and neglected

children placed in out-of-home care revealed that almost half of the third to eighth grade students in the care of the Illinois Department of Children and Family Services scored in the bottom quartile of the state's standardized test and that for many, school mobility arising from changes in their out-of-home placement contributed to their academic failure.[3]

Experts around the country agree that improving educational outcomes for foster youth must be one of the child welfare system's highest priorities. Like other students, foster youth are more likely to succeed if they learn to read well, take college preparatory courses, and graduate from high school. But school success depends on prompt enrollment and school stability.[4]

This bill would create school stability for foster children by allowing them to remain in their school of origin at least for the duration of the school year if it is in their best interest. In adopting this bill, Connecticut would be following the lead of several other states, including California, Delaware, New Hampshire, Florida, Arkansas, Washington and Oregon, that have passed new laws and regulations to promote educational stability for youth in foster care.

Medicaid Transportation of Minors for Emergency and Non-Emergency Services

This proposed bill seeks to expand transportation services for families that have trouble attending medical appointments because they have minor children who cannot be left alone should a parent or guardian require transportation to a medical appointment on behalf of another minor child.

Under current law, transportation will not be provided for additional minor children who must go with the parent to the medical appointment.[5] Unfortunately, many of the families serviced via Medical Transportation Services do not have the means to arrange for childcare. The rigid transportation service rules greatly impede an eligible child's ability to access medically necessary care. Because federal regulations require the state to ensure all *necessary* transportation for Medicaid recipients, Connecticut must expand its service system so that parents can provide for the transportation of minor siblings.

An Act Concerning Health Care Access for Children With Special Health Care

This proposed bill would amend P.A.06-188 to expand reimbursement for therapeutic services to all children with special health care needs who are insured through Medicaid.

Currently, reimbursement is provided only for children enrolled in the state's *HUSKY Plan, Part A*. The current reimbursement scheme leaves out vulnerable children. The proposed amendment would allow hundreds of children with special health care needs to receive physical, occupational, and speech and language services outside of the home, where these services have been demonstrated to be significantly more efficacious.

Changes to FWSN Laws

Martha Stone, Esq.

New Reforms Forthcoming in the Processing and Treatment of Status Offenders

Pursuant to Public Act 05-250, as of October 1, 2007 status offenders who are non-compliant with their court orders will no longer face incarceration. Instead, they will be treated as their other non-delinquent peers and be given appropriate treatment alternatives. A Legislative Advisory Board, co-chaired by the Center for Children's Advocacy Executive Director Martha Stone and University of Connecticut Professor Preston Britner, has voted in favor of two bills to implement this Public Act, and passed them on for favorable consideration to the appropriate legislative committees.

Proposed House Bill 5576 calls for the creation of Family Support Centers which would divert status offenders from court involvement by providing community-based services including screening and assessment, crisis intervention, family mediation, educational assessments and advocacy, mental health treatment including gender specific trauma treatment, resiliency skills building, access to positive social activities, short-term respite care.

It is important to note that the Governor included in her budget a significant amount of funding to implement these Centers.

Proposed House Bill 5676 outlines a new process for status offenders. No longer will such petitions automatically go through the court system. Instead, a probation officer will triage the requests and divert the low end cases to community based supports. The higher end cases will be diverted to the Family Support Centers outlined above. Only after a youth fails in such community diversions will a petition be accepted by the Juvenile Court. Once the case is processed in court, the judge will have a number of options including ordering community alternatives, committing the child to the Court Support Services Division for placement in a staff secure 6 bed facility for up to 45 days, or committing the child to the Department of Children and Families.

In addition, the Advisory Board has created a Truancy Subcommittee to develop truancy initiatives to propose to the legislature. This Subcommittee consists of representatives from many municipalities with truancy diversion programs, as well as an Evaluation Subcommittee to develop accountability measures for the Family Support Centers.

Additional information on the Advisory Board and Proposed House Bills 5576 and 5676 is available at *www.cga.ct.gov/kid/FWSN/FSWN.asp*

Raise the Age: Update from the Juvenile Jurisdiction Planning and Implementation Committee

Nina Aasen, JD

Committee Plans for Implementation of Changes Needed to Raise the Age of Jurisdiction in Juvenile Matters

Pursuant to *Public Act 06-187*, section 16, effective July 5, 2006, the Juvenile Jurisdiction Planning and Implementation Committee (JJPIC) was charged with planning for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include sixteen-year-old and seventeen-year-old children within the Superior Court for Juvenile Matters.

In November 2006, the Committee divided into three work groups. One group explored the ways youth enter the system, another group explored what changes to court processes are necessary, and the third group explored existing services for youth and correlating gaps in available services. A main focus of the work groups was to ensure that proposed changes in the current juvenile justice system would operate to enhance the entire system for all youth and ensure that services and programs for youth currently involved in the juvenile justice system are not compromised by the entry into the system of 16 and 17 year old youth. The three work groups reported recommendations back to the full committee at the end of December 2006. The findings of the work groups were combined with reports compiled by the *National Center for State Courts* and *Hornby, Zeller & Associates*.

In January 2007, the JJPIC recommended an implementation date of July 1, 2009 for returning 16 and 17 year olds to Superior Court Juvenile Matters. The Judicial Branch has proposed a system of eight regional youth courts housed in existing or under-construction buildings to serve this population.

Two proposed bills deal with these issues:

Proposed H.B. 6290: An Act Implementing the Plan of the Juvenile Jurisdiction Planning and Implementation Committee

Proposed H.B. 6285: An Act Raising the Age of Juvenile Court Jurisdiction to Eighteen

The JJPIC expects to see a bill raised this session calling for the age of jurisdiction to change as of July 1, 2009, and for an oversight and advisory board to be created with the charge of ensuring that necessary preparations for the change are met according to pre-set benchmarks. The Court Support Services Division (CSSD) and Department of Children and Families (DCF) have offered plans for increasing services to 16 and 17 year olds between the present time and July 1, 2009 in order that the juvenile justice system is prepared for the returning population.

The final report and recommendations of the Committee were presented to the legislature in early February. For more information, go to *www.cga.ct.gov/hdo/jjpic.*

Hartford Courant Editorial Supports CCA's Initiative to Open the Juvenile Courts

Let Light Into Juvenile Courts

January 26, 2007

Child welfare advocates are right that the public needs to hear some of the painful stories of abuse and neglect that children suffer in unsuitable care. For the children's sake, legislators should consider opening juvenile court hearings that are now held behind closed doors.

So far, 19 states have opened juvenile court proceedings to the public and press, including New York and New Hampshire. Many of those states have found that openness has increased accountability by exposing flaws in the child protection system. It has also fostered public awareness of the plight of displaced children and in some cases induced greater involvement from extended family members.

As it stands, Connecticut children taken from their homes for various reasons have no voice when things go wrong. Horror stories cited by their advocates include children stuck in shelters for extended periods, bounced from foster home to foster home and lost in bureaucratic limbo.

The state Department of Children and Families and the juvenile court system have cautioned lawmakers in the past not to open juvenile court proceedings, fearing that revealing testimony about gross mistreatment may harm the children.

But safeguards can be written into the law allowing judges the discretion to close hearings under certain conditions. It is important that the public know when agencies fail in their responsibility to protect children.

How else to hold them accountable?

Changes in DCF Adolescent Policies

Stacey Violante Cote, Esq.

The following are *selected* policy changes affecting youth in the care of the Department of Children and Families (DCF) (effective August 2006 and November 2006).

All of the adolescent policies can be accessed on the DCF website, at *www.dir.ct.gov/dcf/Policy/Adoles42/42-1.htm.*

Community Housing Assistance Program
(DCF Policy Manual 42-5-3)

To be eligible for admission to the Community Housing Assistance Program (CHAP) youth shall be DCF committed (abuse, neglected, uncared for), at the time of placement into the program or at the youth's eighteenth (18th) birthday, have obtained a high school diploma or a Graduate Equivalency Diploma (GED), have exhibited adequate social, behavioral and life skills, per Adolescent Specialist assessment and case record, have successfully completed a DCF approved Life Skills Program, and be enrolled, in good standing (per the standards of the institution), in a full-time educational or vocational-education program, including Job Corps and/or Americorps.

The current revisions:

- *add a requirement that a youth have a high school diploma or a GED to be eligible for CHAP,*
- *increase the monthly rent allotment, and*
- *add a transition period from DCF.*

Re-Entry to Adolescent Services
(DCF Policy Manual 42-20-50)

A youth who is between the ages of eighteen (18) and twenty-one (21), and who has left the care of the Department may be eligible to re-enter the Department's Adolescent Services Program.

Formerly, youth were allowed to re-enter on a one time basis only.

The current revisions:

- *remove the application time period (previously 30 days), and*
- *add language allowing a youth to reapply upon completion of treatment for mental health issues.*

Decision to Decline Services
(DCF Policy Manual 42-10-4)

The Department shall not accept a decision to decline services by committed youth who are younger than eighteen (18) years of age, unless a discharge from Department care has been sanctioned by a court order such as a revocation of commitment or emancipation.

This policy standardizes the Department's practice re youth who no longer wish to receive DCF services.

The current revisions:

- *require informing a youth who declines services after turning 18 that s/he may be eligible for continued medical benefits, and*
- *add an Area Office Investigations Adolescent Services Specialist to inform youth not committed to DCF of the Adolescent Services opportunities.*

Supportive Work, Education, and Transition Program (SWETP) (formerly PALS) ***(DCF Policy Manual 42-5-2)***

The target population is DCF committed (abused, neglected, uncared for) youth age sixteen (16) and over whose treatment plan goal is independent living. Youth who are currently in residential care, group home, or foster care, and are prepared for involvement in a less restrictive setting, but are not yet ready for living independently in the community, are eligible for consideration.

The current revisions:

- *add to the target population youth whose treatment plan goal is other than Reunification or Transfer of Guardianship,*
- *add an Educational/Vocational Specialist who is responsible for coordinating the educational and vocational experiences for those youth not involved in TLAP, and*
- *add a requirement that the SWETP make a mentor match/permanent connection for adolescents who are in the program 90 days or longer.*

High School Senior Year Expenses
(DCF Policy Manual 42-20-19)

The Department shall provide financial assistance to a committed youth for his/her high school senior year expenses, up to a maximum of $500.00.

Changes in DCF Adolescent Policies

The current revisions:

- *raise the maximum from $440 to $500,*
- *add additional allowable expenses (including junior class dues), and*
- *allow youth to pursue an administrative hearing if funds are denied.*

Aftercare ***(DCF Policy Manual 42-5-5)***

As a logical conclusion to the independent living continuum, there shall be a time limited, six (6) month, aftercare component for youth who are no longer under DCF care. Any youth who has been discharged from DCF care and has not reached his/her twenty-fourth (24) birthday, shall be eligible for the Aftercare program. The Aftercare program will provide the youth with continued contact with a helping network, an additional safety net as he/she continues to develop his/her independence, and an opportunity to experience separation from the child welfare system in a supportive and non-threatening manner.

The current revisions:

- *change the admission criteria to specify youth who have been discharged from DCF care, and*
- *change the age from one who has not reached his/her 25th birthday to one who has not reached his/her 24th birthday.*

Adolescent Planning Conference
(DCF Policy Manual 42-10-2)

The Area Office shall identify all DCF youth fourteen (14) years of age or older who are placed in out of home care, including those receiving Voluntary Services, with the purpose of holding a case conference for each youth. This conference will be held yearly until the youth's eighteenth (18th) birthday. The conference shall be held separately from, and prior to, the Administrative Case Review (ACR) scheduled before the youth's fourteenth (14th) birthday.

The current revisions:

- *identify DCF youth 14 years or older (previously 13 years or older).*

Passing From Care ***(DCF Policy Manual 42-20-30)***

In general, a youth committed to the Department will pass from care at the age of eighteen (18). Health Planning: All youth who are in placement with the Department at the time of their eighteenth (18) birthday will be eligible for continued medical benefits provided by the State of Connecticut until their twenty-first (21) birthday. These benefits are available to youth who were either committed or not committed to the Department.

The current revisions:

- *add language reflecting youths' eligibility for health insurance. Further information regarding health care eligibility is written into the revised policy.*

[NEW] Special Study Foster Homes
(DCF Policy Manual 42-4-1)

The Department may place a youth who is fourteen (14) years of age or older with a special study foster parent for a period up to ninety (90) days when such placement is in the best interests of the child, provided that: a satisfactory home visit is conducted; a basic assessment of the family is completed; the special study foster parent and any adult living within the household have not been convicted of a crime or been arrested for a felony against a person, injury or risk of injury to or impairing the morals of a child, or the possession, use or sale of a controlled substance. The special study foster parent shall be subject to licensure by the Department if the placement of the youth exceeds ninety (90) days.

[NEW] Household Allowance
(DCF Policy Manual 42-20-22)

The Department shall allocate funds for a youth under its care, age sixteen (16) or older, who has been admitted to the Community Housing Assistance Program (CHAP), the Supportive Work, Education and Transition Program (SWETP), or a college where the youth will live in a dormitory to assist him or her with common household needs, as the youth establishes him or herself independently for the first time. Youth shall have access to funds earmarked for the household allowance on a one-time basis. The allowance shall not exceed two hundred ($200.00) dollars. This allowance is supplemented by the CHAP, SWETP, or college stipend, which is provided for the youth on a monthly basis. The allowance shall only be used for household needs, such as bedding, kitchen equipment, cleaning products, alarm clock, and/or telephone. It shall not be used for food or clothing needs.

Changes in DCF Adolescent Policies

[NEW] Community Housing Assistance Program, Employment ***(DCF Policy Manual 42-5-4)***
The Department shall offer a Community Housing Assistance Employment Program which will provide financial assistance to youth eighteen (18) years of age or older who have: graduated from high school or obtained a General Equivalency Diploma (GED); completed the Community Life Skills Program, and; demonstrated an interest in pursuing post-high school services, by signing the DCF-779, Notice at Age of Majority, and committing forty (40) productive hours to pursue an identified career goal per week.

[NEW] Post High School Education
(DCF Policy Manual 42-20-20)
The Department shall provide financial assistance to youth committed through their eighteenth (18th) birthday who demonstrate an interest in pursuing post high school education. In order to qualify for post high school financial assistance from the Department, youth shall demonstrate the desire to pursue post high school education; if age eighteen (18) and over, voluntarily agree to remain under the guardianship of the Department and understand that services and funding from the Department may terminate upon reaching twenty-one (21) years of age; apply/ compete for appropriate grants and scholarships to offset costs; contribute five hundred dollars ($500.00) of educational costs per year (unless grants and scholarships are obtained for the full amount of educational costs); enroll in a full-time, accredited or licensed course and remain in good academic standing as defined by the federal financial aid standards; provide documentation to the worker of enrollment/registration, application for financial aid, and grades/report cards.

[NEW] CHAP Payments
(DCF Policy Manual 42-5-3.2)
The Department shall provide stipends for committed youth to assist in their transition into the Community Housing Assistance Program (CHAP). CHAP participants must be approved by Adolescent Services Bureau as eligible to participate. The Department may assist in the purchasing of food, furniture, house wares, cleaning supplies, a vacuum, and moving expenses to prepare youth for an independent living situation.

[NEW] Pilot program to support foster parents caring for adolescents who are planning to go into DCF's Independent Living Program.
This pilot program can provide training to foster parents in life skills and financial literacy education. Foster parents can also get a financial subsidy for conducting specific case management activities and training sessions with the adolescent in their home. This reimbursement would be in addition to any money already paid to the foster parent for caring for the youth. For more information contact Frank Martin at (860)550-6592.

Center for Children's Advocacy Opportunities for Law Students

Summer Internships

Summer internships are available each summer to three law students attending *any* law school.

Interested students should send a resume to:
ebreon@kidscounsel.org or
seagan@kidscounsel.org

Externships

CCA's Medical-Legal Partnership Project offers an externship available each semester to two law students attending any law school.

Interested students should send a resume to:
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New Changes in the Rules of Professional Conduct

Jay Sicklick, Esq.

Five Important Tips for Attorneys

As most attorneys who are licensed to practice in Connecticut probably know by now, the Connecticut Rules of Professional Conduct underwent considerable revision *as of January 1, 2007.* While the spirit of the rules remains the same, there are several critical changes that attorneys who practice on behalf of children and families at risk should note. We have identified five important changes in the Rules of Professional Conduct (Rules) that should impact the practice areas involving children, low-income families, and child welfare/ juvenile justice.[1] These changes involve representation of children or others defined as having a "diminished capacity," the allocation of authority between the client and lawyer, confidentiality, conflict of interest, and reporting attorney misconduct. Please note that the entire text of the revised rules, as well as the Law Journal text providing the revisions and deletions is available on-line at the state Judicial Branch website at *www.jud.state.ct.us/PB.htm.*

1. Representing Children

While the basic ethical tenets of representing a minor still remain the same, the commentary to Rule 1.14 now expands on the new language that allows the attorney to "take reasonably protective action … to protect the client…" The commentary indicates that the attorney now has greater discretion and authority in an area than in the past where the client is unable to effectively convey a course of action to the attorney. In addition, whether the lawyer "should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor."

2. Scope of Representation

In a change that has engendered some controversy amongst local pundits, Rule 1.2 now provides guidance toward the allocation of authority between the client and lawyer. Specifically, the change references the language of Rule 1.4 requiring greater lawyer-client communication and adds the requirement that the lawyer obtain the client's "informed consent" if the attorney should choose to limit the scope of representation. Basically, the rule change invokes a greater duty upon the lawyer to communicate not only the objectives of the representation (as formerly required under the rule) but also the means by which those objectives are realized.

3. Confidentiality

Under Rule 1.6(b)(1), attorneys are now mandated to report confidential information about their client to reveal information about a crime *or fraud* that the attorney believes is likely to result in death or substantial bodily harm. Previously, the attorney's mandate only applied to future *criminal* activities. In addition, the scope of events under which disclosure is permissible per 1.6(c)(2) has been expanded from rectifying a client's criminal or fraudulent conduct to *preventing or mitigating* such conduct. It is important to note that if the attorney is retained to represent the client in connection with the crime or fraud, there is no duty to disclose the conduct.

4. Conflict of Interest

There are significant changes to Rules 1.7 – 1.10, collectively the "conflict of interest" rules. Rule 1.7 has now been re-labeled to reflect concurrent conflict of interest, while Rule 1.9 covers "Duties to Former Clients." Most importantly, the commentary to Rule 1.9 now specifically defines the previously nebulous "substantially related matter," which is often the key to determining whether a lawyer may represent a new client against a former client in a similar matter. The guiding principle appears to be whether the matters involve the "same transaction or legal dispute," or whether there is a danger that confidentially obtained information from the former client obtained during a prior representation will "materially advance" the new clients representation in the matter at hand.

5. Attorney Discipline

A subtle change in Rule 8.3 involves the question of when a lawyer must report professional misconduct by another lawyer to the appropriate disciplinary authority. Previously, a lawyer "having knowledge" of misconduct was required to report the infraction; now, the standard is a lawyer "who knows" of the misconduct. The rules define "know" and "knowingly" as "actual knowledge of the fact in question," which "may be inferred from the circumstances." In addition, the commentary provides that it is a violation of Rule 8.4 for a lawyer, who in the course of representing a client, engages in words or conduct that "constitutes bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation …" when that conduct is prejudicial to the administration of justice. There is, however, a safe harbor provision that protects lawyers who are engaged in "legitimate advocacy" with respect to the foregoing factors.

(Footnotes)

[1] Much of the substance of this article derives from an unpublished article authored by Mark A. Dubois, Chief Disciplinary Counsel, State of Connecticut Judicial Branch.

The Center for Children's Advocacy would like to thank Mr. Dubois for providing and disseminating this information to child welfare attorneys.

Suspending Elementary School Students

What Every Child Advocate Needs to Know

Jay Sicklick, Esq.

The Center for Children's Advocacy's Medical Legal Partnership Project (MLPP) has recently received a spate of referrals from clinical providers whose elementary school patients, some as young as five years old, were suspended due to conduct issues at school. Many of the children were identified as special education students, but a number of the children were not. There are legal and educational implications of suspending small children for behavioral actions in the elementary school setting.

Here are six questions that we've fielded in recent months regarding this issue:

1. Can an elementary school suspend a child as young as five or six for behavioral actions?

Technically, the local school district, or local educational authority (LEA) has the legal right to suspend any enrolled student who violated the LEA's code of conduct. Districts must inform students and their parents on an annual basis of any changes in student disciplinary policies, and the LEA must inform a student's parents of any disciplinary action taken within twenty-four hours of any disciplinary action taken against the child. The LEA is free to suspend students, including students identified as special education students, for up to and including ten days, as long as the suspension does not exceed ten days, or the aggregate number of individual suspensions for similar conduct do not exceed ten days.

2. Should the school be suspending a child as young as five or six for behavioral issues?

The answer is unequivocally NO! We firmly believe that under no circumstances should an elementary school be suspending kindergarteners or first graders for behavioral infractions. The use of suspensions as a punitive tool serves no purpose whatsoever in dealing with the situation at hand. Children as young as five, six or seven should be evaluated, assessed and treated in an appropriate manner to determine how best they can be educated in the school setting. Suspending these young children acts as a crutch for the LEA that is unable to provide appropriate services to children at risk, and it further serves to disrupt households that can ill afford to take time off to care for suspended youngsters.

3. What can I do, as an advocate, if a young school aged student is repeatedly being suspended at school for behavioral conduct?

First, ask the parent if the child has been identified as a special education student. If s/he has not been identified, discuss the importance of school intervention with the parent and determine whether the school has taken the necessary steps to identify the child as a potential special education student. Remember – not all children with behavioral issues are eligible for special education services under the Individuals with Disabilities Education Act (IDEA). In order for the child to be determined eligible under IDEA, the child must be diagnosed with a specific disability, and that disability must affect educational performance, resulting in the need for special education and related services. If the child has not been identified, and you, as the practitioner, believe that the child meets the criteria for disability as defined under IDEA (e.g. ADD/ADHD, Intellectual Disability, Learning Disability, Serious Emotional Disturbance, etc.), advise the parent to request an evaluation by the school, including a behavioral assessment.

4. What are functional behavioral assessments and behavioral intervention plans?

Identified special education students who present with behavioral difficulties should be formally assessed through a functional behavioral assessment (FBA) performed by the school district, at the district's expense. School personnel trained in behavioral management techniques should conduct the FBA in order to develop a comprehensive behavioral intervention plan (BIP) that should serve to address the student's behavioral issues. A valid and appropriate BIP is a necessary part of an IEP, and should be implemented for every student where the LEA is utilizing suspension as a remedy for behavioral outbursts.

5. Can school personnel call a parent to "pick up" a child at school for behavioral reasons?

NO! Under no circumstances should a parent be the first line of defense for schools to utilize when a child acts out or behaves in a manner that is inappropriate. Calling a parent is an indication that the school and IEP team have not thoroughly engaged their resources to implement a BIP to address the student's behavioral needs. Calling a parent of a kindergartner or first grader serves no purpose other than disrupting a child's educational experience, and placing an enormous burden on a parent or guardian. In addition, should the parent be called to pick a child up from school for behavioral concerns, the school must indicate that this unscheduled "pick up" constitutes

Suspending Elementary School Students

a suspension pursuant to state law, and advise the parent in writing of such a suspension.

6. What can you do, as a child advocate, to stop this practice of young student suspensions and parent "pick ups?"

Inform the parent or legal guardian that they should immediately request a planning and placement team meeting (PPT) to address the school's failure to abide by the special education laws. In the meantime, the practitioner can ask the parent to supply a copy of any paperwork issued by the school to determine if a valid behavioral intervention plan has been implemented. In extreme cases, the family should be referred to a competent legal advocate for further instructions and/or representation.

Where can I learn more about elementary school suspensions?

A Parent's Guide to Special Education
Connecticut State Department of Education, Bureau of Special Education. Find this Guide at: www.kidscounsel.orgCT%20Parents_Guide_SE.pdf

Connecticut Parent Advocacy Center
www.cpacinc.org

Connecticut State Department of Education Special Education
www.state.ct.us/sde/deps/special/index.htm

Special Education Resource Center
www.ctserc.org

United States Office of Special Education
www.ed.gov/about/offices/list/osers/osep/index.html

Wrightslaw *www.wrightslaw.com*

Recent Developments in Child Law: Important Case Summaries

Jay Sicklick, Esq., and Sarah Healy Eagan, Esq.

Termination of Parental Rights

In re Brianna C.
98 Conn. App. 797 (2006)
December 26, 2006

The Appellate Court affirmed an adjudication of neglect in the interesting case of *Brianna C.,* where the main reason for removal and foster care placement was the father's paranoid schizophrenia resulting in psychotic episodes. The child was born in September 2004, and DCF removed her in early October 2004, *after* the respondent mother voluntarily went to a domestic violence shelter with her infant, leaving the psychotic father and her home behind. At the shelter, the mother informed DCF's social worker that she was afraid of the child's father (with whom she resided) because of the father's psychiatric condition, for which he stopped taking his medication. Despite the mother's voluntary action, DCF filed its neglect petition and removed Brianna pursuant to an ex parte order of temporary custody in late December 2004.

At the commitment trial, the court agreed with DCF that although the child was not at anytime in immediate physical danger, the child was neglected and therefore should be committed to DCF. The gravamen of the petition stemmed from the DCF's concerns for the baby's well-being, emanating from the father's failure to adequately treat his psychiatric condition, coupled with the mother's failure to recognize that the father's behavior could be hazardous to the child, and her inability to protect the child adequately from the father's actions. It was apparently the *potential* for harm to the child due to the father's un-medicated condition – not any harm actually realized, that convinced the court to order the commitment.

The first issue presented on appeal was whether the court abused its discretion in finding that it was in the child's best interest to commit her to DCF. Both the mother and the child's attorney argued that even after an adjudication of neglect, the trial court should have allowed the mother to retain custody of Brianna with protective supervision. The appellate court would not substitute its discretion for the trial court – choosing to avoid answering the question of whether a constant twenty-four hour per day, year-round relationship with the mother, with the potential possibility that she would be unable to prevent injury at the father's hands, outweighed the eight hours of daily unsupervised visits that the mother was granted. Choosing the "better" solution, the court found that the father's previous unpredictability, and the severity of his psychiatric condition, allowed it to affirm the difficult decision rendered by the trial court.

The court also agreed that DCF had made reasonable efforts to keep the child with the respondent mother before seeking custody. Despite noting that the trial court found that DCF "didn't do everything that it reasonably could have done to prevent removal from the home," the court cited a litany of programs and services offered to the mother by DCF, the sum total of which equated to a "reasonable effort" in this case.

This case may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP98/98ap87.pdf*

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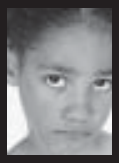

Recent Developments in Child Law: Important Case Summaries

In re Christian P.
98 Conn. App. 264
October 24, 2006

Christian P. tackles the issue of whether parental rights may be terminated on a ground that is not pleaded in the petition for termination. The answer, not surprisingly, is no – the state child welfare agency must plead the specific grounds for termination in order for a court to consider those grounds seeking termination of parental rights.

DCF removed the respondent mother's three children pursuant to a 96 hour hold in May 2001when the mother was arrested for larceny and the children were left unattended. The trial court adjudicated the children neglected and uncared for in April 2002, and DCF filed for termination of parental rights. In all three petitions, DCF alleged that the children had been abandoned and the respondent had failed to achieve a sufficient degree of rehabilitation pursuant to 17a-112(j)(3)(E); and, with respect to children C & K, DCF alleged that there was no ongoing parent-child relationship pursuant to Conn. Gen. Stat. § 17a-112(J)(3)(D). The petition concerning J **did not** allege the lack of an ongoing parent-child relationship as a ground for termination. The trial court's November 2005 memorandum of decision indicated that the mother's parental rights to all three children were terminated on the grounds that she had no ongoing parental relationship with her children, and that reunification would not be in the children's best interests.

On appeal, the court addressed two issues. First, the court tackled and agreed with the respondent's assertion that J's rights had been improperly terminated for lack of an ongoing parent-child relationship because the termination petition failed to assert this ground. In a classic *due process* analysis, the court found that lack of notice of this claim in the petition precluded the court from terminating parental rights based on the claim at trial. As a result, the court reversed the termination and remanded the case for further proceedings.

Second, the court disagreed with the respondent's contention that the finding of no ongoing parent-child relationship regarding children C and K was clearly erroneous and disagreed with the notion that allowing the mother time to establish or reestablish the parent child relationship would be in the children's best interest. Citing *Jonathan G*, 63 Conn. App. 516 (2001), the court undertook a two-pronged analysis to determine, a) whether a relationship exists, and b) whether it would be detrimental to the child's best interest to allow time for such a relationship to develop. In this case, the children had been separated from their mother for over four years. Her supervised visitation consisted of no more than two hours per week, and the children, all of whom have special needs, exhibited neither a reasonable amount of affection for their mother nor a desire to see her. In fact, by the time the trial court issued its decision, C and K had not visited with her in almost three years due to their election to terminate supervised visits. The children's therapist concluded that it was unlikely that a healthy parent-child relationship could be established within a reasonable time – and effectuating a reestablishment of the parent-child relationship would be detrimental to the children.

This case may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP98/98AP9.pdf*

In re Nasia B.
98 Conn. App. 319
October 10, 2006

In *Nasia B.,* the Appellate Court reversed the trial court's decision dismissing the state's termination of parental rights petition for failure to establish a prima facie case. The Court also reversed the trial court's *sua sponte* decision to revoke DCF's custody of the minor child and place the child at home under protective supervision.

Based on the Appellate Court's recounting, the parents suffered a history of substance abuse, mental health breakdowns and incarceration. Until the termination petitions were filed, the parents had made sporadic efforts to comply with the court ordered specific steps. The state sought to terminate the parents' rights on the grounds that the father abandoned the child and the mother failed to sufficiently rehabilitate. The parents' compliance with services and visits subsequently increased.

The termination petition went to trial. At the conclusion of the state's case-in-chief, the respondent parents orally moved to dismiss. The court granted the motion and also rejected the state's permanency plan on the ground that the plan was not in the child's best interest. The court ordered the parties to return in one day to explain the plan for reunification. The following day, after conversing with counsel and questioning the DCF case supervisor, the court ordered that the child's commitment to DCF be opened and that DCF return the child to her parents under protective supervision.

The Appellate Court held that the dismissal was inappropriate because the trial court did not apply the correct standard in ruling on the parents' oral motion. Rather than consider whether the state put forth sufficient evidence that, if believed, would establish a prima facie case, the trial court weighed the credibility of the state's evidence and ruled accordingly. When a motion to dismiss is filed, the evidence must be accepted as true and all inferences must be drawn in favor of the non-moving party. Here, the trial court stated that it issued its findings after "having reviewed the evidence presented and assessed the credibility of the witnesses." The Appellate Court held that the state had indeed presented a prima facie case that grounds existed for termination of parental rights.

Secondly, the Court held that it was improper for the trial court to sua sponte revoke the child's commitment to DCF. Pursuant to the plain language of Conn. Gen. Stat. § 46b-129 (m) and (o), as well as the requirements of due process, commitment may only be revoked after written motions are filed.

The Appellate Court did not decide whether evidence supported revocation of commitment or termination of parental rights.

The case may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP98/98AP12.pdf*

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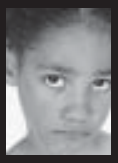

In re Rachel J.
97 Conn. App. 748
October 3, 2006

In a sad case that involved significant physical trauma and sexual exploitation, the Appellate Court affirmed the termination of a mother's parental rights in *In re Rachel J.* As is often the case in scenarios of abuse and neglect, the respondent mother in *Rachel J.* was herself involved with DCFdating back to her childhood, when at the age of nine, she was placed in DCFs care due to substance abuse and mental health problems of *her* mother. The respondent's two children, R, born in 1993, and N, a special needs child born in 2002, resided with the respondent until January 2004, when DCF removed the children due to several incidents, events, and reports of abuse and neglect.

Interestingly, DCF had taken several steps prior to January 2004 in order to ensure the children's safety after several reports of domestic violence perpetrated by the mother's boyfriend, who allegedly made sexually explicit advances at R when she was eight, and who then physically assaulted the respondent in the presence of her two children. Despite these occurrences, DCF did not remove the children until January 2004, when the respondent pulled R out of bed by her hair, essentially throwing her into the middle of the room, and dropped her to the floor, causing a severe fracture of her elbow. Though the respondent attempted to hide R's injuries by keeping her out of school after the incident, DCF pursued the case and eventually removed the children via a ninety-six hour hold on January 8, 2004. On January 12, 2004, DCF filed co-terminous petitions to terminate the mother's parental rights. The trial court terminated those rights after a contested trial in June 2005 – upholding the sole ground stated in the petition – that the respondent, as a result of sexual molestation and severe physical abuse, denied R the care, guidance or control necessary for her well being under Conn. Gen. Stat. § 17a-112(j)(3)(C). The court also terminated the mother's rights as to N on the sole ground that she "committed an assault through [a] deliberate non-accidental act that resulted in serious bodily injury of another child … of the parent," pursuant to Conn. Gen. Stat. § 17a-112(j)(3)(F).

On appeal, the Respondent unsuccessfully argued that the physical abuse (fractured elbow and hair pulling) did not rise to the level of serious bodily injury. The court dismissed this point rather summarily by noting that the testimony of several witnesses, as well as statements given by R, indicated that the event actually occurred. In addition, the court refused to import the definition of "serious bodily injury" from the criminal code merely because the legislature did not define the term in 17a-112(j)(3). As with other statutory scenarios, the court choose to adopt the "commonly approved usage" doctrine – and proceeded to define the word through a quick peek into Webster's Dictionary. With that as background, R's injuries met the definition of "serious," which the dictionary indicated as "such as to cause considerable distress, anxiety or inconvenience."

Finally, the final claim that it was not in R's best interests to terminate parental rights fell short of the mark as well. Invoking the standard whereby it would only overturn a trial court decision which was "clearly erroneous," the court indicated that merely professing that a bond existed between the respondent and R was not enough to demonstrate that the "best interests" standard had not been achieved. The trial court record was "replete with evidence" that the respondent exposed R to repeated physical and sexual abuse, and that R herself expressed significant negative feelings about her mother. In that light, the court had little difficulty affirming the termination.

This case may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/ap97/97AP474.pdf*

In re Nelmarie O.
97 Conn. App. 624
September 19, 2006

In *Nelmarie O.,* the Appellate Court affirmed the trial court's decision to terminate a mother's parental rights on the grounds that the mother failed to provide her children with a safe home environment free of violence and therefore she denied them the "care, guidance or control necessary for [the children's] well-being." See Conn. Gen. Stat. § 17a-112(j)(3)(C). The state sought to terminate the mother's parental rights to her two children after her step-child died from apparent physical abuse perpetrated by the child's father and encouraged by the appellant-mother. There was no evidence that the appellant physically abused her biological children.

The Appellate Court rejected the mother's argument that the trial court wrongfully relied on evidence gathered after the filing of the petition for its adjudication. The Court noted that the plain language of Practice Book § 35a-7 limits the consideration of evidence of events that post-date the petition. The Practice Book does not bar judges from considering evidence that post-dates the petition so long as the evidence properly relates to events that preceded the filing of the petition.

The Court also denied the mother's claim that there was insufficient evidence that she failed to provide for the emotional well-being of her biological children. The Court held that Conn. Gen. Stat. § 17a-112 does not require that "the children who are the subjects of the termination petition be abused physically." Quoting *In re Sean H.,* 24 Conn. App. 135, 144 (1991). The trial court could reasonably have found that termination was warranted given the atmosphere of violence in the home and the mother's complicity with the violence perpetrated against her step-son.

This case may be found at *www.jud.ct.gov/external/supapp/Cases/AROap/ap97/97AP470.pdf*

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