KidsCounsel®

a newsletter for attorneys representing children in Connecticut

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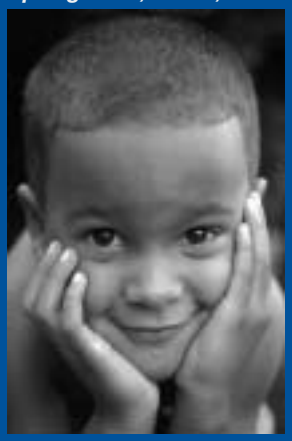

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Effective Advocacy

Protecting Your Client's Interests

Honorable Lois Tanzer
Juvenile Court, New Britain, Connecticut

The following talk was delivered by Honorable Lois Tanzer at a recent Center for Children's Advocacy Training Seminar held at University of Connecticut School of Law:

When CCA contacted me and asked me to present my perspectives on ways that attorneys can improve their representation of children and parents, I began to review the materials available - and there are an unbelievable number of resources detailing the nuts and bolts of effective advocacy, not the least of which are Attorney Art Webster's contributions. So you need to know that my talk is not nuts and bolts. A few nuggets, perhaps, and a few hopefully thought-provoking reflections.

The nuggets and the reflections that I offer are informed by my own experience since September 2000 in the Juvenile Session in New Britain. That is when I first encountered juvenile law. Thus, my experience does not encompass the period when "informality and flexibility"[1] was the norm, but rather as I came to see and experience it: juvenile practice, whether in delinquency or child protection, is adversarial.

Let me start with the nuggets, that is, some ideas briefly stated about opportunities or tools that could be used more aggressively or frequently to protect your client's interests. Then I will move on to reflections about two topics, competency of juveniles and confidentiality of juvenile proceedings, which I hope will provoke your thoughts, discussions, and investigations.

Tools to Protect Your Client's Interests

Subpoenas to eliminate roadblocks You are all familiar with the scenario of the child who has been in detention, a child for whom the professional recommendations are clear and for whom there is a plan consistent with the recommendations with which everyone agrees. Finally there is a spot for her in a residential facility or a partial hospitalization program; everyone is ready to go to disposition but a glitch occurs: *insurance won't cover the expenses.* Use your subpoena power. Whether you are the agency's attorney, the child's attorney, or the parent's attorney, get the supervisor from the insurance company and the claims person into court, i.e., get the decision-makers into court with the documents, including the insurance policy, to explain why the company won't cover this particular program. This does not mean that the actual coverage question will be decided by the judicial authority, but the judge may not have to. When the claims people look at the matter again, you may get a different result.

Similarly, when a case involves special education needs, if there is a conflict between what the Board of Education requires and what the residential facility offers, subpoena the persons with authority from both institutions. They might decide to talk to each other and resolve their differences before they have to come to court.

Motions to Compel In the child protection area, you are all familiar with the steps your respective clients have signed. They contain orders directed at DCF as well as the caregivers. If things are not getting done, or not getting done to your liking, get a specific order so that you can position yourself for the motion for contempt. See Practice Book § 34a-22, which requires motions for contempt to state the date and specific language of the order of the judicial authority on which the motion is based; see also *In re Jeffrey C.*, 261 Conn 189 (2002), in which the Court upheld the finding of civil contempt against the parent, citing General Statutes § 46b-121, which provides that "[i]n connection with any juvenile matter, the court may issue process for the arrest of any person, compel attendance of witnesses and punish for contempt by a fine not exceeding one hundred dollars or imprisonment not exceeding six months." Remember, the tools are there for *everyone*.

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Honorable Lois Tanzer:
Effective Advocacy: Protecting your Client's Interests

Interstate Compacts If you are representing a parent, don't forget to inquire about potential family caregivers from other states. Become familiar with interstate compact regulations, and the timelines, and try to keep things on schedule. This is admittedly hard to do when you have to depend on out-of-state personnel, but you might try to establish contact with the out-of-state investigator so that your child becomes more than a name. If a study is interminably delayed, bring the matter to the court's attention and get an order for an expedited study; seek fees to visit the potential placement yourself and find out first hand what kind of a situation the child is being sent to; consider having the child sent to the relative for an extended visit, or have the potential caregiver brought to Connecticut for visits.

Protective Supervision Practice Book § 35a-12 provides that "[a] protective supervision order shall be reviewed by the judicial authority at least 30 days prior to its expiration." DCF is required to provide an updated social study at the review. The department may not be seeking an extension of protective supervision. Give this a very hard look. All parties, even the parent who usually wants to be free of DCF involvement, need to give the expiration of protective supervision a hard look. It may be contrary to the interest of the child *and* the parent to have protective supervision expire, as it may jeopardize reunification. In your role either as attorney for the child or as attorney for the parent you need to counsel your client to ensure that services are in place and have been in place long enough.

Subsidies Subsidies are particularly important in connection with transfer of guardianship. Ask the proposed guardian if a subsidy has been offered. If available, it may be in the child's best interest to supplement the household income, though often the proposed guardian simply does not want a subsidy because of the strings attached. The point is, the topic should be explored and considered so that the proposed guardian is informed.

I'd also like to offer some reflections about two topics, competency of juveniles and confidentiality of juvenile proceedings, which I hope will provoke your thoughts, discussions, and investigations.

Competency

The Commentary to Practice Book § 31a-14 regarding physical and mental examinations states that there is no procedure for establishing competency in juvenile court. The rule states that

> No physical and/or mental examination or examinations by any physician, psychologist, psychiatrist or social worker shall be ordered by the judicial authority of any child denying delinquent behavior or status as a child from a family with service needs or youth in crisis prior to adjudication except . . . (3) when the judicial authority finds that there is a question of the child's competence to understand the nature of the proceedings or to participate in the defense, or a question of the child having been mentally capable of unlawful intent at the time of the commission of the alleged act.

When a juvenile's competency to stand trial is at issue, we can turn to the statutory procedure for adults found in General Statutes § 54-56d. This section tells us that "[a] defendant shall not be tried, convicted or sentenced while he is not competent." Under the statute, a defendant is not competent if he is unable to understand the proceedings against him or to assist in his own defense. It is important to note that there is a statutory presumption of competency. "A defendant is presumed to be competent. The burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the party raising the issue. The burden of going forward with the evidence shall be on the state if the court raises the issue. The court may call its own witnesses and conduct its own inquiry." General Statutes § 54-56d (b).

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In Connecticut, pursuant to General Statutes §§ 46b-126 and 46b-127, transfers to the adult court are automatic if a child over 14 years of age is charged with a capital felony, or a class A or B felony. For class C, D and unclassified felonies, cases are transferred only with court approval and the adult court must accept it.

I bring the transfer and competency statutes to your attention because a significant proportion of children 15 years of age or younger charged with a crime are not competent to stand trial, according to a study funded by the John D. and Catherine T. MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice.[2] Noting that the United States Supreme Court has ruled, in cases involving people with mental retardation and mental illness, that defendants must be able to understand the charges against them, participate in their defense and make basic decisions at trial and about whether to accept plea agreements, the study found that a third of children aged 11 through 13 and a fifth of those aged 14 or 15 understood legal matters at a level similar to that of mentally ill adults who have been found incompetent to stand trial. Older adolescents, 16 and 17 years of age, did not perform significantly different from young adults.

Aside from age, the other significant predictor of competence identified by the study was intelligence, as measured by I.Q. tests. Sex, ethnic background, economic class, or experience in the legal system and mental health system did not significantly affect the results. Juveniles of below-average intelligence, those with an IQ below 85, were more likely to be significantly impaired in abilities relevant for competence to stand trial than juveniles of average intelligence, who have IQ scores of 85 and higher. The study asserts that "states should consider implementing policies and practices designed to ensure that young defendants' rights to a fair trial are protected. In some jurisdictions, this may mean requiring competence evaluations for juveniles below a certain age before they can be transferred to criminal court."[3] Something to reflect on.

Additionally, as we saw, the Connecticut competency statute discussed earlier creates a presumption of competence which arguably does not and should not pertain to a child under 15 in light of the MacArthur Foundation findings.

The question of competence needs to be considered not only in the context of trial but as to a juvenile's knowing and voluntary waiver of Miranda rights.

General Statutes § 46b-137 (a) provides that "[a]ny admission, confession or statement, written or oral, made by a child to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement unless made by such child in the presence of his parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements and (3) that any statements he makes may be introduced into evidence against him." The current literature grapples with the problem of fashioning a test or process to ensure that there has been a valid waiver. See, e.g., Raymond T. Chao, *Mirandizing Kids: Not As Simple As A-B-C*, 21 WHITTIER L. REV. 521 (2000); David T. Huang, *'Less Unequal Footing': State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation*, 86 CORNELL L. REV. 437 (2001); Robert E. McGuire, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355 (2000); Cecilia Jaisle, *Miranda Means What It Says: Protection Against Self-Incriminations for the Juvenile Custodial Interogee*, 26 WM. MITCHELL L. REV. 267 (2000); Trey Meyer, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. KAN. L. REV. 1035 (1999).

In determining whether a child's confession is admissible in a delinquency hearing, courts focus on the totality of the circumstances that existed at the time the child made the confession. "The totality approach permits – indeed, it mandates – inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. . . . [C]riteria to be considered are: experience with the police and familiarity with warnings; intelligence, including I.Q.; age; education; vocabulary and ability to read and write in the language in which the warnings were given; intoxication; emotional state; mental disease, disorder or retardation. . . . ." (Citations omitted; internal quotation marks omitted.) State v. Whitaker, 215 Conn. 739, 754, 578 A.2d 1031 (1990). "There is nothing in our law which disqualifies a minor simply because of age from effectively waiving his rights and confessing . . . . It is the totality of the circumstances of the waiver and confession rather than only the age of the defendant which determines whether a waiver of Miranda specified rights is valid and effective." (Internal quotation marks omitted.) State v. Turcio, 178 Conn. 116, 144, 422 A.2d 749 (1979), cert. denied, 444 U.S. 1013, 100 S. Ct. 661, 62 L. Ed. 2d 642 (1980). The MacArthur findings suggest otherwise: "Age and intelligence were the only significant predictors of performance on the evaluation of abilities relevant to competence to stand trial."[4]

Closure and Confidentiality of Juvenile Proceedings

I would like to refer to two recent Connecticut cases concerned with the due process rights of juveniles.

First is In re Jason C. and In re Greily L., 255 Conn. 565 (2001). In these companion cases, the court upheld the dismissal of DCF's motions to extend the juveniles' commitments for an additional period of time beyond the 18 months for which they were initially committed. The court held that the failure of the juvenile court to advise the juveniles, at the time their nolo contendere pleas were accepted, that the commitments could be extended beyond the time period stated in the plea agreement prevented the juveniles from entering a knowing and voluntary plea. Since a nolo plea involves the waiver of several fundamental rights, if it is not entered voluntarily and knowingly, it is a violation of the youth's due process rights. The Court discusses at length the extent to which due process safeguards are applicable in juvenile court. Id., 575-80.

In In re Carlos Q., 62 Conn. App. 681 (2001), Carlos Q., a juvenile, was convicted as delinquent, following his pleas of guilty to sexual assault charges. The Superior Court remanded him into the custody of DCF for a period not to exceed eighteen months. Nine days before the commitment was to expire, DCF filed a petition to extend the commitment without providing notice to either the juvenile or his parents. DCF is required by statute to provide notice no more than sixty and not less than thirty days prior to the end of the commitment if they choose to seek extension of the commitment. The Appellate Court concluded that failure to do so created an unacceptable due process violation.

You may wonder what these cases concerning due process in juvenile court have to do with confidentiality. The willingness of the Connecticut

(continued on following page)

Supreme and Appellate Courts to assess due process violations in juvenile proceedings leads me to a Note published in the Vanderbilt Law Review in May 2001, which relies on due process rights rather than First Amendment rights to argue against closure of juvenile proceedings.[5]

According to this comprehensive piece, there are nineteen closure jurisdictions – Connecticut, of course is one of them. Connecticut's statute, § 46b-122, provides that "[a]ny judge hearing a juvenile matter shall, during such hearing, exclude from the room in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings any victim of the delinquent act, the parents or guardian of such victim and any victim advocate . . . shall not be excluded unless the judge specifically orders otherwise."

The Note points out that critics of open juvenile proceedings charge that the move to open juvenile proceedings is part of a trend to subvert the goal of rehabilitation. "The presumptive closure statutes were enacted on the assumption that open proceedings and disclosure of the juvenile's identity would inhibit his rehabilitation. Public humiliation and criminal stigma were perceived as harmful to the juvenile's self-image and to his motivation to engage in socially accepted behavior."[6] Proponents argue either that closure does not foster rehabilitation or that juveniles need to be held accountable for increasingly violent crimes.

The Vanderbilt Law Review Note presents a third view: that "public scrutiny is the only 'tolerably efficient check' against potential abuse or malfunction of the adjudicative process"[7] and that statutes such as Connecticut's are "fundamentally unfair."[8] It argues that the foundational ideals of reformers of the juvenile justice system in 1899 are no longer operative, that the court system in light of today's realities has fallen short of the idyllic "supermarket of social services" and has moved away, in fact if not in word, from a rehabilitative to a more punitive approach.[9] Rejecting the First and Sixth Amendment arguments raised against presumptive closure, the Note premises its argument on the "fundamental fairness" framework of the Due Process Clause of the Fourteenth Amendment and concludes that presumptively closed proceedings cannot withstand constitutional scrutiny.

It is not my intention to do more than raise the question and bring it to your attention. What really and ultimately is in the best interest of the juvenile whose "liberty" is at stake, whether in a detention facility, a residential facility, or a juvenile training school? Is it a system that is subject to public scrutiny for the very appropriate policy goal of a check against potential abuse or malfunction of the adjudicative process or is it a system that maintains confidentiality for the very appropriate policy goal of allowing a child or youth to enter adulthood with a clean slate and fresh start? And where do the arguments regarding punishment and protection fit in? These issues are addressed in a policy statement on confidentiality of juvenile court proceedings and records from *The National Association of Counsel for Children* adopted in 1998.[10]

I would go beyond the argument of the Vanderbilt Note and ask whether public exposure and scrutiny might be more appropriate than closed proceedings in the child protection context as well. Although a child's liberty interest is not at stake in the same sense as it is in the delinquency context, a child protection system, judicial and administrative, responsible for a child's removal from home, separation from parents, and institutional and/or out-of-state placement arguably deserves the same kind of public scrutiny. In both juvenile contexts, opening the proceedings to public scrutiny might also serve the function of broadly exposing the dire and unmet needs of the children and eliciting a broader educated public and legislative response to those needs.

In "Troubled Kids, Troubled Courts: A Call to New England's Juvenile Court Judges and State Policymakers," a 2003 report of the New England Juvenile Defender Center,[11] the Connecticut system is described as follows: "Of all the states in the region, Connecticut's juvenile statutes most explicitly emphasize punishment and accountability as the primary goal of the juvenile justice system. The statutes require the courts to hold juveniles accountable first and only secondarily to consider therapeutic confinement and supervision and treatment. The language of the Connecticut statutes [General Statutes § 46b-121h] focuses on authority and enforcement of orders to punish and deter."[12] Whether we agree with that perception or not, it is something to think about.

I would like to make two more suggestions for your consideration and perhaps edification. There is a very short but compelling story by Willa Cather called "Paul's Case: A Study in Temperament."[13] It is a beautifully written personality study of a non-conforming, perhaps bipolar youth. It is remarkable because it was published in 1905 and confirms that aphorism, at least for me, that "the more things change, the more things stay the same." The story begins, "It was Paul's afternoon to appear before the faculty of the Pittsburgh High school to account for his various misdemeanors."

And if you take only one thing away, take this: I urge you to read the book by Anne Fadiman called The Spirit Catches You and You Fall Down.[14] It will surely affect the way you think about your case and your client.

Conclusion

In conclusion, a few more personal comments. It has been a privilege to be a juvenile matters judge during the past three years. All of you who work in that most difficult and demanding area of the law, whether you represent the interests of the child, the parent or the state, have my admiration and respect. I loved the work, but admit that I am happy to take a sabbatical so that I can return to a juvenile assignment with the best interest of the child in sharp focus.

Citation List

Cases

In re Jeffrey C., 261 Conn 189, 802 A.2d 772 (2002) (upholding civil contempt of parent for failure to comply with order enforcing steps).

In re Jason C. and In re Greily L., 255 Conn. 565, 767 A.2d 710 (2001) (discussing extent of due process applicable to delinquent proceedings).

State v. Whitaker, 215 Conn. 739, 578 A.2d 1031 (1990) (applying a "totality of circumstances" analysis to juveniles' waiver of constitutional rights).

State v. Turcio, 178 Conn. 116, 422 A.2d 749 (1979), cert. denied, 444 U.S. 1013, 100 S. Ct. 661, 62 L. Ed. 2d 642 (1980) (rejecting a per se rule that minors cannot effectively waive constitutional rights without parental advice).

In re Carlos Q., 62 Conn. App. 681, 772 A.2d 668 (2001) (holding that extension of commitment without notice violates due process).

Honorable Lois Tanzer
Effective Advocacy: Protecting Your Client's Interests

Books and Articles

Competency

Raymond T. Chao, *Mirandizing Kids: Not As Simple As A-B-C*, 21 WHITTIER L. REV. 521 (2000).

David T. Huang, *'Less Unequal Footing': State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation*, 86 CORNELL L. REV. 437 (2001).

Cecilia Jaisle, *Miranda Means What It Says: Protection Against Self-Incriminations for the Juvenile Custodial Interogee*, 26 WM. MITCHELL L. REV. 267 (2000).

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Juvenile's Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* (2003). Available at www.mac-adoldev-juvjustice.org/page25.html.

Robert E. McGuire, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355 (2000).

Trey Meyer, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. KAN. L. REV. 1035 (1999).

Closure and Confidentiality of Juvenile Records

The National Association of Counsel for Children, *Confidentiality of Juvenile Court Proceedings and Records*. Adopted by NACC Board of Directors April 25, 1998. Available at www.naccchildlaw.org/policy/policy_papers.html.

New England Juvenile Defender Center, *Troubled Kids, Troubled Courts: A Call to New England's Juvenile Court Judges and State Policymakers* (2003). Available at www.nejdc.org/publications/default.asp.

Stephen E. Oestreicher, Jr., *Toward Fundamental Fairness in the Kangaroo Courtroom: the Due Process Case Against Statutes Presumptively Closing Juvenile Proceedings*, 54 VAND. L. REV. 1751 (2001).

In General

Willa Cather, "Paul's Case: A Study in Temperament." First published in 1905. Available at www.classicreader.com/read.php/sid.61/bookid.999.

Anne Fadiman, The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures (New York: Farrar, Straus and Giroux) 1997.

Footnotes

[1]See Schall v. Martin, 467 U.S. 253, 263, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) ("We have tried . . . to strike a balance – to respect the 'informality' and 'flexibility' that characterize juvenile proceedings . . . and yet to ensure that such proceedings comport with the 'fundamental fairness' demanded by the Due Process clause.").

[2]MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Juvenile's Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* (2003) Available at www.mac-adoldev-juvjustice.org/page25.html.

[3]Id., 3.

[4]Id.

[5]Stephen E. Oestreicher, Jr., *Toward Fundamental Fairness in the Kangaroo Courtroom: the Due Process Case Against Statutes Presumptively Closing Juvenile Proceedings*, 54 VAND. L. REV. 1751 (2001).

[6]Id., 1767.

[7]Id., 1754-55.

[8]Id., 1756.

[9]Id., 1757.

[10]The National Association of Counsel for Children,*Confidentiality of Juvenile Court Proceedings and Records*. Adopted by NACC Board of Directors April 25, 1998. Available at www.naccchildlaw.org/policy/policy_papers.html.

[11]New England Juvenile Defender Center, *Troubled Kids, Troubled Courts: A Call to New England's Juvenile Court Judges and State Policymakers* (2003). Available at www.nejdc.org/publications/default.asp.

[12]Id., 6.

[13]Willa Cather, "Paul's Case: A Study in Temperament." First published in 1905. Available at www.classicreader.com/read.php/sid.

[14]Anne Fadiman, The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures (New York: Farrar, Straus and Giroux) 1997.

Recent Developments in Child Law: Important Case Summaries

Termination of Parental Rights

In re Travis R.
80 Conn. App. 777 (2004)

Released: January 6, 2004

The Appellate Court tackled the issue of whether a respondent mother's claim that she was coerced into consenting to the termination of her parental rights in respect to her two minor children constituted grounds for opening the termination judgments. In a brief, but thoughtfully crafted opinion, the court concluded that based on the overwhelming factual evidence presented in *Travis R.*, the respondent could not meet the legally sufficient burden of demonstrating "duress" for purposes of negating the termination consent.

After several years of Department of Children and Families ("Department") involvement with the respondent mother and her two children, the Department filed termination petitions against the respondent in September 2000. On the second day of trial on the termination proceedings one year later, the respondent consented to the termination of her parental rights pursuant to Conn. Gen. Stat. § 17a-112(b), now (i). The court thoroughly canvassed both the respondent and her attorney, after which it concluded that the respondent had provided her consent in a knowing and voluntary manner. In January 2002, the respondent filed a motion, *pro se*, to open the judgments terminating her parental rights. After a two day hearing in August 2002, the court denied the motion to open on the grounds that the respondent failed to demonstrate duress, and that opening the judgments would not be in the best interest of the children.

On appeal, the court analyzed whether the respondent had met the four part test to demonstrate duress, which constitutes: (1) a wrongful act, or threat (2) that left the victim no reasonable alternative, and (3) to which the victim in fact acceded, and that (4) the resulting transaction was unfair to the victim. It debunked the respondent's claim that a Department social worker had threatened her that failure to consent to termination would prevent her from seeing her children and that the department would initiate termination proceedings against her newborn child. Fully crediting the social worker's testimony, the court found no actual threat – noting that witness credibility provided the necessary support for its conclusions. While the court did not dismiss the stress and emotional nature of a termination proceeding for a respondent parent, the question of whether the "victim" felt coerced was not at issue – what mattered was whether the actual act of threat underlying the coercion was wrongful.

The court also indicated that the evidence clearly supported the placement of the children with the respondent's aunt and uncle, their placement for almost three years preceding the termination. The children's emotional and behavioral stability indicated that their best interests were clearly served by not opening the termination judgment.

Abuse and Neglect, Wrongful Death

Ward v. Greene
267 Conn. 539 (2004)

Released: February 3, 2004

The plaintiff, Patrice Ward, brought this action on behalf of Raegan McBride against the defendant, The Village for Families and Children, Inc ["Village"]. The Village is a private, nonprofit organization that contracts with individuals to provide foster care services and daycare services to children in state custody. In 1995, the Village had been contracting with Kathy Greene to provide foster and day care.

In 1996, the plaintiff sought the assistance of a day care provider for McBride. After learning of Greene's services, the plaintiff, by contacting a public health hotline, confirmed that Greene did not have any complaints filed against her. In fact, Greene had only one complaint filed against her and was a "qualified" day care provider at the time. In 1997, Greene began providing full-time day care services to McBride. While under Greene's care, McBride suffered a head injury and was pronounced dead upon arrival at the hospital. The medical examiner ruled the death a homicide. Greene was subsequently convicted of manslaughter in the first degree.

The plaintiff then brought an action against the Village, claiming that the Village was liable for damages arising out of McBride's death under Connecticut's wrongful death statute. In order to support a claim for

wrongful death, the plaintiff had to prove that Greene owed a duty of care to McBride. The plaintiff claimed that Village did owe McBride a duty of care under the statute requiring mandatory reporting of suspected child abuse. The legal issue of first impression that subsequently arose concerned the scope of the class of persons that was protected by the mandatory reporting statute.

The Supreme Court concluded that the statutory language of Conn. Gen. Stat. §17a-101 *et. seq.* was directed at a child or children placed at risk in a singular incident. The Court held that the statutory language suggested that the legislature intended to focus only on those children who had *already* been exposed to conduct that amounted to a reportable event. A mandated reporter did not owe a legally enforceable duty to children unknown to the reporter who might stand in the remote chance of benefiting from a report of abuse. Therefore, the court dismissed the plaintiff's claim that the statute creates a duty of care to *every* child who had been in the care of the defendant.

In her dissent, Justice Katz stated that Village's failure to report allegations of abuse by Greene constituted negligence per se. Katz opined that Village unreasonably failed to report allegations of child abuse and did owe a duty of care to both the abused child and to other children who came into the care of the alleged abuser.
- *Kate McGinnes, legal intern*

Abuse and Neglect, Custodial Rights

In re Haley B.
81 Conn. App. 62 (2004)

Released: January 13, 2004

Appeal after remand (see Haley B., 262 Conn. 406 (2003)) where maternal grandmother of a child in Department of Children and Families ("Department") seeks custody of her grandchild, Haley B.. The grandmother asserted two claims in the appeal – both of which were rebuffed by the Appellate Court.

First, the grandmother claimed that the superior court decision had neither an appropriate basis in fact nor was it based a reasonable interpretation of the evidence presented to the trial court. The appellate court echoed the findings of the trial court in concluding that the grandmother had repeatedly failed to disclose or misrepresented facts to the Department – including failing to seek prior approval of arranging visits between Haley and her mother (despite court ordered limitations). These findings were clearly supported by the record.

Second, though the petitioner had framed, or entitled an erroneous legal argument – the court considered the merits of her claim that the trial court did not act in Haley's best interests when denying her custody. The court noted that the legal standard for an appellate reversal of such an order mandated a finding that the trial court clearly abused its discretion, and such a finding did not transpire here. The court declined to address the grandmother's claim of introduction of inadmissible hearsay evidence because issue was inadequately briefed.

MLPP Expands to Community-Based Locations

Medical-Legal Partnership Project joins forces with Charter Oak Health Center and Community Health Services in Hartford

The Medical-Legal Partnership Project, a multidisciplinary project developed by the Center for Children's Advocacy, has expanded the scope of its legal services to include two community-based health centers located in Hartford. The Center is joining forces with the Charter Oak Health Center, Inc. (Charter Oak) and Community Health Services, Inc. (CHS) two federally qualified health centers that serve the city's neediest children and families.

Charter Oak, located on the corner of Grand and Hungerford Streets in Hartford, is a freestanding, private, not-for-profit ambulatory health care facility. It was formed in 1978 in response to the unmet health care needs of the residents of two public housing projects. Charter Oak's staff provides comprehensive preventive and primary health care services in a private model through three major patient care departments-Medical, Dental, and Clinical Family Services. Services at Charter Oak are available on a sliding fee scale basis for persons who are un-or under-insured.

CHS is located on Albany Avenue, at the intersection of Garden Street, in Hartford. Its mission is "to improve healthcare access and eliminate health disparities within the community, by providing quality, comprehensive, culturally-proficient, primary and preventive healthcare services with respect and dignity, regardless of socio-economic status, with emphasis on the underserved and unserved." CHS treats its patient base regardless of ability to pay for services. It currently serves over 14,000 people, generating over 55,000 visits annually.

CHS serves the Clay Arsenal, Upper Albany, Blue Hills and Northeast and North Meadows neighborhoods.The geographically isolated section of Hartford's North End houses 50% of the City's residents. The racial/ethnic composition of the CHS service area is 2% Caucasian, 62% African-American and 36% Latino. Approximately 70% of patients served by CHS are on Medicaid. Languages offered within CHS are; English, Spanish, Romanian, Haitian Creole, Bosnian, Russian, Albanian, German, and French.

The MLPP will begin to provide on-site services by establishing walk-in medical-legal clinics at both sites, while providing multidisciplinary training and educational opportunities to the staff at both sites. Inquiries may be made to the MLPP Project Director, Jay Sicklick, at 570-5327, or by sending an e-mail to *jsickli@ccmckids.org*.

Physicians and Lawyers: A New Spirit of Collaboration

Medical-Legal Partnership Project Fosters New Spirit of Collaboration

A startling forty-one percent of Hartford's children live in poverty. Such children face "double jeopardy" both more likely to be exposed to serious health risks and to suffer more severe consequences when ill or injured. All children are entitled to receive the health care and educational services mandated by law. Sadly that's not always the reality – especially if a child happens to be poor.

Now imagine a scenario in which disadvantaged, underserved children and families seek medical assistance from physicians who possess an inherent understanding of their basic legal rights to care. And further imagine that litigation-wary physicians actually seek the assistance of attorneys to help provide immediate intervention for the social and legal ills that imperil these children.

For the past three years such a program has been remarkably effective in addressing the increasing ills that befall poor children. The Medical-Legal Partnership Project, a collaborative venture that combines the resources of the Connecticut Children's Medical Center and the Center for Children's Advocacy at the University of Connecticut School

Physicians and Lawyers: A New Spirit of Collaboration

of Law, recently began its fourth year of operation at Connecticut Children's. The project is the only organized community effort providing readily accessible medical-legal advocacy to individual families, physicians, attorneys, social workers, and community service providers in Connecticut.

With the state and national focus on the relationship between physicians and attorneys encumbered by consideration of tort reform and liability caps, physicians and attorneys involved in the Medical-Legal Partnership Project recognized the benefits of collaboration. Traditionally, physicians are not trained in the legal aspects of advocating for patients, nor do they have time to address the complex interagency relationships and issues that impact on child health. Likewise, attorneys are not trained to be sensitive to broad family issues affecting a child's health, nor are they familiar with the decision-making environment in a medical setting – the complex aspects of delivering care to children. The MLPP is designed to bridge this gap with the ultimate goal of improving access to care and improving child health outcomes.

The MLPP teaches families, physicians, attorneys, social workers, and community service providers to directly address poor children's health outcomes through collaborative, multidisciplinary advocacy, such as contesting insurance coverage denials of medically necessary care and treatment, or providing collaborative assistance in working with a family to ensure that a school district provides an appropriate special education program. It also provides comprehensive training to pediatric providers and attorney and social workers that advocate on behalf of children-at-risk, such as presenting forums on adolescent health and confidentiality and children's disability rights. This type of collaboration results in a coordinated response to the complex health needs of underserved children, including children with chronic special health care needs.

Take, for example, the family whose egregiously substandard housing results in exacerbated asthma attacks and frequent emergency room visits. The family's complaints to the health inspector have resulted in retaliatory action by the landlord, who now seeks to evict the "problem" tenant. Traditionally, the medical practitioner refers families to outside agencies for their outside interventions. With the implementation of a medical-legal collaborative, the medical, legal and social work professionals coordinate their efforts to provide immediate medical evidence, social support and legal advocacy to assist the pediatric patient. The result is a team approach to intervention, with the medical and legal professionals working together to formulate evidence, remedies and if necessary, legal action to effectuate an improved health outcome for the ill child.

This type of collaborative program also serves as a resource to educate the next generation of physicians who are training in an urban pediatric setting. By inculcating the process of clinical investigation of poverty-based health initiatives, medical-legal collaboratives such as the MLPP successfully provide physician-trainees with the tools to identify and address educational, housing, public benefit, disability and insurance coverage issues that perpetuate the vicious cycle of poverty related illness.

So while physicians and attorneys battle for control of the courtroom on the state and national stage, the two traditional antagonists are slowly forming partnerships throughout the country to more effectively address the true villains of child health … poverty and apathy.

Jay Sicklick, Esq., Director, Medical-Legal Partnership Project, Center for Children's Advocacy

TeamChild Evaluation Shows Positive Outcomes for Youth in Juvenile Justice System

TeamChild Evaluation Proves that TeamChild Increases Positive Outcomes for Youth in the Juvenile Justice System

The Center for Children's Advocacy's TeamChild Project is a program designed to help children and youth involved in the juvenile justice system access education and mental health services in the community. The TeamChild Project is collaboration between the Center for Children's Advocacy and the Office of the Public Defender within Superior Court Juvenile Matters. This program, one of only a few TeamChild projects in the country, is in its third year. The program addresses the needs of children who become involved in the FWSN and delinquency process because their unaddressed education and/or mental health needs cause them to behave in a manner that results in a referral to Superior Court-Juvenile Matters. TeamChild advocates for the provision of the necessary services in a community setting to meet the child's needs.

In a move unusual in the legal community, the Center for Children's Advocacy decided to have an independent agency evaluate the TeamChild Project to ensure that it was meeting its goals. With the generous support of the Tow Foundation, the Center for Children's Advocacy was able to hire the Consultation Center to conduct the evaluation. The Consultation Center is a multidisciplinary service, research, and training site that is a cooperative endeavor of the Connecticut Mental Health Center, the Department of Psychiatry at the Yale University School of Medicine, and the Community Consultation Board, Inc., a private, nonprofit community organization.

The evaluation measured the Project's effectiveness in meeting its goals of 1) having a higher rate of successful re-entry of students into school; 2) increasing the numbers of children and youth receiving necessary mental health services; 3) increasing the number of community based dispositions for the children and youth in the program; decreasing recidivism and 5) increasing the numbers of children and youth that successfully complete their probation. Their evaluation consisted of two parts, community perspectives on TeamChild and a qualitative assessment of the outcomes for children and youth involved in the TeamChild Project.

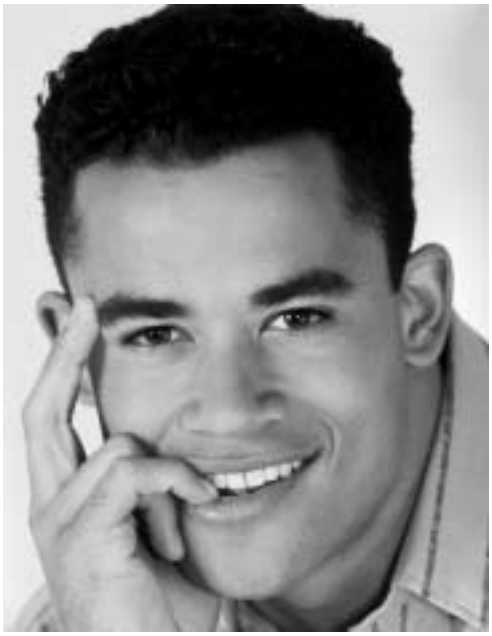
The assessment of community perspectives was completed by collecting information from focus groups comprised of key stakeholders in Hartford's juvenile justice system including: court personnel, social workers, educators, and community based advocacy groups. The Consultation Center conducted highly structured interviews with two focus groups - one education, the other juvenile justice. The education group included which included a program director, staff developer, administrator, school psychologist, attorney for the school system, and executive director of a parent's advocacy group. The juvenile justice group included a public defender, probation officer, and contract attorney at the Hartford Juvenile Court.

The quantitative assessment was completed through an in depth review of the data contained in TeamChild case records by students and staff at the Center for Children's Advocacy. They placed the information in a database created by the Center's technology manager and analyzed by the Consultation Center.

The evaluation showed that the TeamChild program yields positive outcomes for children. The involvement and advocacy of TeamChild leads to less punitive dispositions within Connecticut's juvenile justice system. The quantitative data found that The TeamChild Project successfully identifies needs and obtains services for children and youth in the juvenile justice program. TeamChild has also led to a higher rate of successful school re-entry. Finally, while TeamChild is involved, recidivism is greatly decreased. These conclusions, which are based upon a review of actual cases, support the focus groups' perceptions of the Project's positive impact on children and youth involved in the juvenile justice system.

-Ann Marie DeGraffenreidt, Director TeamChild Project,

Center for Children's Advocacy



Homelessness: 5 Legal Tips for Representing your Child/Youth Client

Representing Your Child/Youth Client under the McKinney-Vento Act:
An Excellent Legal Tool to Use in Advocating for Educational Stability for Your Client

Legal Definition of Homeless Child/Youth:
Become familiar with the legal definition of homelessness under federal McKinney-Vento Act.

The federal definition of homelessness is quite broad. Sec. 725 of Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) defines the term "homeless children and youth" as (A) … individuals who lack a fixed, regular, and adequate nighttime residence …; and (B) includes (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or *are awaiting foster care placement*; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings … (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii). Therefore, under the language "awaiting a foster care placement," children/youth in emergency foster homes, shelters, and Safe Homes are legally homeless and entitled to McKinney-Vento protection.

School Option & Transportation:
Discuss with your client her option to attend her school of origin or the school in which her temporary placement is located. Do this as soon as possible after she is removed from her home or has disrupted from a placement.

Your client, and her DCF worker, may not know that she has *a right to stay in her school of origin* (the school she went to before becoming homeless or the school she was enrolled in last) *or to attend the school where her temporary placement is located*. Inform your client, and her DCF worker, right away of the right to choose which school she attends, and help her to make this decision.

Your client can keep going to that same school for as long as she is homeless. When she is permanently placed, your client can continue going to that same school for the rest of that school year. The school district must provide or arrange transportation for her to get to and from that school, even if other students do not get transportation.

The only time she may not be able to keep going to that same school is if it is not "feasible." This means that it wouldn't be safe or good for your client to stay at that same school. It does not mean whether it is "feasible" for the school. Some things to think about are:

- Student's safety
- Student's special needs
- Student's age
- How the commute to school will affect the student
- Where brothers and sisters go to school
- How much time is left in the school year
- Where she may be permanently placed

Immediate Enrollment:
Once your client has decided where she will go to school, you can help to enforce her right to be enrolled immediately, even if she doesn't have papers or documents requested by the school.

This can be a particular problem if your client chooses to go to the new school in the district where she is placed. Often, children/youth will wait weeks before they are enrolled in a new school due to lack of records.

The McKinney-Vento Act provides that:

- Your client can start school right away, even if she doesn't have any papers or documents.
- Your client should not be required to attend school in any shelter, Safe Home, or be kept out of school while she is at an emergency foster home.
- If she doesn't have school records, the school has to call the last school to get the records.
- Schools can't refuse to release records because she hasn't paid some fees.
- If she doesn't have immunization records, the school district McKinney-Vento liaison has to help her get the records.
- If your client needs immunizations, the school district McKinney-Vento liaison has to help her find a place to get the immunizations.

(continued on page 12)

Homelessness: 5 Legal Tips

Participate fully in all school services:
Advocate for your client to get all needed school services.

• Any student covered by the McKinney-Vento Act can get free school meals without filling out an application. Contact the school district's McKinney-Vento liaison to find out how to sign up.

• The school must make sure that students who need special education, gifted and talented programs, English language programs, or other services get those services.

• Any student covered by the McKinney-Vento Act can get extra services from "Title I."Contact the school district's McKinney-Vento liaison to find out how to get those services.

Utilize the school district's McKinney-Vento liaison.

Every school district is required to have a McKinney-Vento liaison, sometimes called a Homeless Coordinator. This person is required to assist with many of the issues mentioned above.

If you or your client disagree with the school on any of these issues, your client must be allowed to enroll in the school she chooses immediately. Then, the school has to explain its opinion to your client, in writing, and put her in touch with the district's McKinney-Vento liaison. The liaison has to solve the disagreement. Your client must be allowed to stay in school until the disagreement is solved.

To find out who the liaison is for a particular district, contact the local Board of Education. You can also contact the McKinney-Vento State Coordinator, Luis Tallarita at (860) 807-2058 or e-mail *Louis.Tallarita@po.state.ct.us.*

Another helpful resource is the National Law Center on Homelessness & Poverty, *http://www.nlchp.org/*, which can be linked through our website, *www.kidscounsel.org*, by clicking Useful Web Links, National, General Legal Websites. For any further questions, call the Teen Legal Advocacy Clinic at the Center for Children's Advocacy at (860)570-5327.

- Stacey Violante Cote, Esq.
Director, Teen Legal Advoacy Clinic
Center for Children's Advocacy

For a copy of our booklet on Homelessness for teens, please call the Center for Children's Advocacy at (860)570-5327 or use the order form on page 15 of this newsletter. The order form may also be downloaded from our website, *www.kidscounsel.org*.

Legal Rights Materials Distributed to all Children in Foster Care

Center for Children's Advocacy recently introduced a new package of legal rights materials for children in Connecticut foster care. Entitled ***I Will Speak Up for Myself***, the package includes a video or DVD that encourages foster care children to speak up and ask for what they need; a question-and-answer book on the legal rights of children in foster care, which includes footnotes and citations for the information provided, and a comprehensive list of administrative contact information; an "Important Contacts" card, which each child can complete with the names and telephone numbers of important contacts, such as his/her attorney, social worker, doctor, and counselor; and, a backpack that holds all these materials and provides an easy-to-use place for the children to keep all related materials about their foster care placements and other important written documentation such as medical histories or school placement information.

The 11-minute video features children in Connecticut's foster care system who speak out about their experiences and their legal rights. The children discuss the importance of speaking up and asking for what they want and need, and cover a variety of topics familiar to foster care children, such as rules within the foster home; contact with your social worker; what to do if your social worker doesn't return your calls; communication with your attorney; visits for medical care; and other important topics.

Commissioner Dunbar and DCF have supported the Center's production of these important materials, and DCF is distributing the packages through agency personnel to all children in foster care over the age of ten. DCF's committment to providing this information to foster care children is the most important part of the introduction of this package. DCF's committment will assure that all children who can use this information to better their individual situations will have specific answers at hand, enabling them to ask directly for the help that will better each foster care placement.

These new materials are available from the Center for Children's Advocacy. To order this package, please use the order form at the back of this newsletter, or call the Center at 860-570-5327, or email atremont@law.uconn.edu.

Office of the Child Advocate Charges DCF with Negligence and Violation of Constitutional and Statutory Rights

Office of Child Advocate Files § 1983 Action Against DCF

In an unusual move, the Office of Child Advocate recently filed a § 1983 action, on behalf of Boy Doe, against the Department of Children and Families (DCF) for its failure to provide appropriate medical and mental health care to Boy Doe.

Prior to entering DCF care, Boy Doe was the victim of severe ritualized sexual, physical and emotional abuse between the ages of five and seven. The abuse included being locked in a basement with a sheet over his head and being shackled while being sexually abused. Following his own abuse, Boy Doe, at age 8, sexually abused three of his younger male siblings. Boy Doe was diagnosed with trauma-based mental illness, suffered from febrile seizures, and had a history of head injuries.

After Boy Doe entered DCF care, he was in Brightside for Children and Families, a residential treatment facility, where he received treatment as a sex offender. Boy Doe was not provided with treatment to address his own trauma and abuse issues. Indeed, after 18 months in Brightside, Boy Doe was transferred to Stetson School, a staff-secure residential facility offering sex offender treatment for adolescent male sex offenders. After approximately two and one-half years, Stetson School notified DCF that Boy Doe essentially completed the sex offender program. Shortly thereafter, Stetson School recommended that Boy Doe be transitioned to a staff-secure facility, with a step-down unit, that would support trauma work on issues of loss, abuse, and grief. Rather than providing such a placement, DCF asked Stetson to extend Boy Doe's stay.

Boy Doe remained at Stetson School, receiving repetitive sex offender treatment until September 11, 2002, more than 4 years after entering the School. He was then transferred to Lake Grove-Wendell School, where he received additional sex offender treatment. Like his prior placements, Lake-Grove Wendell School did not have the capacity to provide the significant trauma therapy that Boy Doe needed. Boy Doe remained at Lake Grove-Wendell School for approximately 10 months before being placed in the care of a relative.

Boy Doe, Plaintiffs claim, should have received treatment for the traumatic physical, sexual, and emotional abuse he suffered. DCF's failure to ensure adequate psychiatric, psychological, and social services was not only negligent; it violated Boy Doe's constitutional and statutory rights. Specifically, plaintiffs allege that DCF violated:

•Conn. Gen. Stat.§ 17a-6, by failing to ensure adequate psychiatric, psychological, and social services;

•Conn. Gen. Stat.§ 17a-15, by failing to formulate a treatment plan; and

•Conn. Gen. Stat.§ 17a-542 by failing to ensure that Boy Doe was treated in accordance with a specialized treatment plan suited to his disorder.

The complaint seeks injunctive relief to ensure training of DCF agents and employees and adequate psychiatric care of children in DCF custody, and damages.

In a press release on December 17, 2003, Jeanne Milstein, Child Advocate of the State of Connecticut, described the lawsuit as "an unfortunate action of last resort" and expressed her concern that "many other children are suffering from the same callous and reckless indifference to their safety and rights that DCF has shown Boy Doe." The Plaintiffs are represented by Ira B. Grudgberg and Alinor C. Sterling of Jacobs, Grudberg, Belt & Dow, P.C in New Haven.

- *Christina Ghio, Staff Attorney, Center for Children's Advocacy*

Court Says "No" to Reconsideration of DCF Exit Plan

Federal Court Judge Denies State's Attempt to Get Out of Obligations Under the DCF Exit Plan

With the ink barely dry, DCF and the Governor filed a Motion for Reconsideration of the Exit Plan which had just been entered by Federal Court Judge Alan Nevas some 90 days earlier. Calling some of the defendants' arguments "frivolous," the Court wasted no time in its 7-page ruling issued from the bench in summarily denying the Motion.

The Consent Decree in Juan F. was entered into in December 1991. Because of repeated non-compliance, in February, 2002, the parties had agreed to an 18 month experiment that attempted a new strategy aimed at improving outcomes for children in the Juan F. class and their families. Under the so-ordered Performance and Outcome Measures, Transition, and Exit Plan, the monitoring focused upon a set of "outcome measures" and minimum resource requirements that provided Defendants greatly increased management discretion.

Unfortunately, in July, 2003, the Court was forced to find that defendants' non-compliance with caseload and staffing requirements of the Plan was "significant." Several weeks later, the Court Monitor issued a report on compliance with adoption related requirements finding that the "multiple traumas associated with long lengths of stay in DCF custody…worsened [the children's] emotional and mental health." In August, 2003, the Court Monitor released his exhaustive report, finding that Defendants had failed to meet 28 of 37 outcomes.

As a result of these failures, plaintiffs asserted Defendants' non-compliance and sought as a remedy, contempt, and the placement of DCF into receivership. Again, under the direction of the Court Monitor, and with the personal involvement of the Governor and his counsel, the parties undertook negotiations that resulted in an Order which gave the "express management authority" of DCF to the Monitor. A Transition Task Force was created, consisting of the Monitor, the DCF Commissioner, and the Secretary of the Office of Policy and Management. The Order also gave the Monitor the authority to develop outcome measures and a final exit plan.

The Exit Plan with the outcome measures was shared for comment with the parties and others. It was approved by the Court on January 7, 2004. The Plan contains 22 outcome measures covering such topics as:

- Completion of investigations
- Treatment Plans
- Repeat Maltreatment of in-home children
- Reunification
- Adoption
- Sibling Placement
- Re-entry into DCF Custody
- Multiple Placements
- Placement within licensed capacity
- Children's Needs met
- Worker-child visitation
- Caseload standards
- Reduction in number of children placed in residential care
- Discharge measures
- Muli-disciplinary exams

Defendants had sought a reconsideration of this Order, claiming that they had not been given advance notice of the provision requiring funding nor had they agreed that this Plan would become a Court Order. The Court, on February l0, 2004 issued its ruling dismissing, with short shrift, both of defendants' arguments.

For a copy of the full Exit Plan and the Court's Ruling, see the Center for Children's Advocacy website: *www.kidscounsel.org*

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