

The Juvenile Law Reader

CONGRESS REAUTHORIZES IDEA!



To the surprise of observers, Congress's House-Senate Conference Committee agreed at the last possible moment to a comprehensive updating of The Individuals with Disabilities Education Act (IDEA). Advocates have worked to get the reauthorization through Congress for two years and feared that it would not pass before the end of the 2004 session, thus sending it back to the beginning of the process next session. IDEA governs educational services that must be provided to students with identified learning, physical, developmental, mental, and emotional disabilities. Twenty-eight percent of children in foster care have a disabling condition that limits their activities and requires special educational services. Youth in foster care with unmet educational needs are at higher risk for homelessness, poverty, public assistance and juvenile or adult court involvement.²

The legislation authorizes significant additional federal spending for costs of special education, which, if appropriated, would bring the federal share of funding for those costs to 40%. Funding would increase from \$12.4 billion in 2005 to \$26.1 billion in 2011. The new legislation also makes changes in many significant aspects of special education, from discipline to assessment and teacher qualifications.

Discipline

Under the new law, teachers and schools will be able to discipline special education students more easily, but they will still have to demonstrate that

the behavior leading to the discipline was not caused by the disability.

No Child Left Behind (NCLB)

IDEA will now be better aligned with the No Child Left Behind Act, with NCLB definitions of highly-qualified teachers applying to special educators. It will allow these teachers, who teach multiple subjects additional time to meet the standard. Special education teachers will still have to be highly-qualified in at least one of the subjects they teach by 2006-2007. Special education students will also now be allowed to comply with NCLB assessment requirements by having their progress monitored by alternate means if they cannot take the statewide achievement tests given to regular education students.

Over-Identification of Minorities

Under the revised IDEA each state will have to come up with policies and procedures to prevent the disproportionate representation by race or ethnicity of students in special education. States will face a loss of IDEA funding if the problem persists.

Highly-Mobile Students

Two other groups that are disproportionately represented in special education are homeless children and foster children. Because these children change schools often and miss school due to their instability, they are less likely than most students to actually receive the services they need or have up-to-date

education plans. Under the revised IDEA, schools will be required to recognize and follow the recommendations of a student's existing Individual Education Plan (IEP) from the time the student begins attending the school.

Discipline

Discipline protections for children on an IEP are reduced under the revised law. When the school seeks to change a student's placement for longer than 10 days due to a disciplinary infraction, a Manifestation Determination Review (MDR) must still occur to determine

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Monkey Study Shows Young Need a Mother

A recent study done at the Oregon National Primate Center tested the effects on young rhesus monkeys when the mother is taken away. While it is well known that negative effects result when a mother is removed from a young monkey, this study assessed effects when the mother was removed at different stages of development. The test followed a group of monkeys, removing the mothers at 1 week from birth, 1 month, 3 months, and 6 months.

The study found that the young monkeys whose mother was removed at one week did not at first appear affected by the loss; they continued to interact with the others in the social group. As time went on, however, they became withdrawn, spending more time alone, and became less socially capable. The young monkeys whose mothers were removed at 1 month, were more visibly upset at the beginning, but quickly attached to other animals and showed greater social dominance.

A similar study addressing the effects of adoption found that young monkeys whose mothers had been removed at one week were able to function and cope at a normal level where a new mother was introduced by age 1 month. When the mother arrived later, in month two, the monkey was able to return to normal behavior, but it occurred much more slowly. When the mother was introduced at month three or later, the young monkey was not able to return to normal behavior and maintained unusual stress behaviors.

This parallels studies of children's reactions to losing their parents, or who have parents who are physically or emotionally unavailable to them. This study suggests that the timing of that loss and the speed in replacing that lost figure may have a lot to do

with how well children are able to cope.

To see the study go to:

<http://onprc.ohsu.edu/>

"Scare Tactics" Do Not Prevent Juvenile Violence

Programs that rely on "scare tactics" to prevent juveniles from engaging in violent behavior are not only ineffective, but actually make the problem worse, according to an independent state-of-the-science panel convened by the National Institutes of Health (NIH). The panel found that "get tough" programs like militaristic boot camps often are ineffective and even exacerbate problems by grouping together youth with delinquent tendencies, where more sophisticated youth instruct less knowledgeable youth about criminal acts. More effective programs focus on a diversity of approaches and services, including developing social competency skills and family involvement. View the panel's statement at:

<http://www.consensus.nih.gov>

Study Supports Trend Away from Residential toward Supported Foster Care

An Illinois study examining trends in residential care utilization by the child welfare department found utilization had declined sharply between 1995 and 2003 with residential care now being used as the placement of last resort - only after youth had experienced multiple failed placements. The study also found that almost 60% of youth who entered residential care had negative discharge outcomes and many youth who left residential care for foster care or potentially permanent family settings eventually returned to high levels of care. The findings highlighted the need to improve supportive and therapeutic services when children first enter foster care, during residential care and after discharge from residential care. Access the study at: http://www.chapinhal.org/article_abstract_new.asp?ar=1367&:2=66&:3=124

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Use of Expert Medical Opinion in Establishing Consent in Sex Offenses

PUBLICATIONS

For a discussion from a prosecutor's perspective of the evolving controversy around the limits of medical expert testimony in cases where there is a consent defense, see *Limits and Lessons: The Expert Medical Opinion in Adolescent Sexual Abuse Cases* at: www.ndaa.org/publications/newsletters/update_volume_17_number_3_2004.html

Expert medical opinion testimony about physical conditions and injuries resulting from sexual abuse or sexual activity is often accepted without objection, but, as this article points out, challenges are now being raised to

this type of testimony. Challenges include the actual significance of the evidence, the medical reliability of the testimony, the qualifications of experts offering the testimony and as to whether such evidence may be intruding on the fact finder's role. The testimony can be critical because the fact finding body may conclude there was no consent and that a more serious crime has been committed if an expert testifies to finding a greater degree of physical injury. See also, *Commonwealth v. Johnston*, 2000WL 33177221 (November 1, 2000) and *Velasquez v. Commonwealth*, 263 Va. 95, 557 SE 2d 213 (2002).

Improving Outcomes for Older Youth: What Judges and Attorneys Need to Know, is a judge's and practitioner's guide to federal programs for youth aging out of foster care, published by the National Resource Center on Youth Development (NRCYD) and is available on their website. The guide is designed to be a basic outline of those federal programs that address well-being issues for these youth, covering education, health, employment, housing, and the needs of disabled youth. <http://www.nrcys.ou.edu/nrcyd/publications.htm>

Learning Curves: Education Advocacy for Children in Foster Care by Kathleen M. McNaught, ABA Center on Children and the Law. This book is an excellent tool for attorneys and advocates for children in foster care, who want to help children get the solid education they need to transcend their circumstances and succeed in life. Available from: <http://www.abanet.org/child> .

The **Criminal Law Formbook**, available from the Oregon Criminal Defense Lawyer's Association, includes the form *Motion to Determine Juvenile Competency to Proceed*, (form 2110) among many others. The formbook and CD are available at: <http://www.ocdla.org> .

CASELAW UPDATES

Multiple child witnesses of single incident of domestic violence do not lead to multiple charges under ORS

163.160(3)(c) . In *State v. Glaspey*, OR Sup Ct Filed November 18, 2004, the state contended that because two children witnessed the single incident of domestic violence, two counts of fourth degree assault under ORS 163.160 (3)(c) were properly charged. The court determined that the child witnesses were not the victims described by ORS 163.160 (3)(c) . "The fact that two or more children may witness an assault may be grounds for felony treatment under ORS 163.160 (3)(c), but it does not support entry of a separate judgment of conviction for each child."

Ineffective Assistance - *Gonzalez v. State of Oregon*, 191 Or App 587 (2004). Attorney's advice that a guilty plea to an aggravated drug felony 'may' subject the client to deportation constituted ineffective assistance of counsel. Order

granting post-conviction relief affirmed.

Juvenile Court order compelling sex offender evaluation of violates Fifth Amendment

- In *State of Washington v. Juan Diaz-Cardona*, Court of Appeals Division I, 09/27/2004, the juvenile, Juan Diaz-Cardona appealed a juvenile court's order compelling his participation in a sex offender evaluation. He argued that he properly invoked his Fifth Amendment privilege against self-incrimination and that cooperating with the evaluation might lead to a longer confinement. The Court agreed and concluded that a juvenile may invoke his privilege against self-incrimination and refuse to participate in such evaluations.

Washington v. Crawford prohibits caseworker's testimony about 3-year old child's statements

- Applying *Crawford* in *State v Mack*, ___ OR ___, issued November 26, 2004, the Court found that the federal Confrontation Clause prohibits a department of human services caseworker from testifying about statement a three-year old

child made to her during a police-directed interview. Mach was charged with murdering the three year-old's two year-old siblings. The police taped the interview conducted by the caseworker. The Court found that the statements were elicited for the criminal proceeding and were testimonial in nature, thus, they were inadmissible for the truth of the matter asserted under the Sixth Amendment.

Caselaw Updates Con't on p. 5

Immigration Consequences of Juvenile Delinquency Adjudications

By Meyer Goldstein, Americorps Member Attorney

Delinquency adjudications can have serious effects on a youth's immigration status and his or her ability to enter into or remain in the country. For this reason, an attorney representing a juvenile facing delinquency adjudication must know with certainty the client's immigration status in order to adequately advise their client. See "Qualification Standards for Court-Appointed Counsel to Represent Indigent Persons at State Expense," Exhibit C, Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases, Standard 2.10 Implementation 1 (r): "Counsel should be fully aware and make sure the client is fully aware of: r. collateral consequences of conviction, e.g. **deportation**, civil disabilities, sex offender registration, DNA and AIDS testing, and enhanced sentences for future convictions." This article is intended to provide a very brief overview of the impact of delinquency adjudications on immigration status.

A delinquency attorney should first determine whether a juvenile is "undocumented", meaning that he or she cannot establish that they are present in the country legally. An undocumented person may be deported on these grounds alone. The general rule, however, with many exceptions, is that juvenile adjudications do not affect immigration status because they do not constitute "convictions", which are ordinarily required to trigger immigration consequences. E.g., *Matter of Ramirez-Rivero*, 18 I&N 135 (BIA 1981); *Matter of C.M.*, 5 I&N 327 (BIA 1953) A juvenile offense for immigration purposes is one which was committed before the person reached the age of eighteen.

The conviction of a juvenile as an adult in a criminal court does meet the law's requirement and may result

in deportation. E.g., *Morasch v. INS*, 363 F2d 30 (9th Cir. 1966). Generally, this is the case only where the juvenile could have been transferred to adult court under the Federal Juvenile Delinquency Act (FJDA), even if the person was tried as an adult under State law.

The FJDA sets different rules for different crimes and differently aged offenders. One distinction is whether the juvenile committed the crime after their thirteenth or fifteenth birthday. A thirteen-year old who commits an act which would be a felony crime of violence if committed by an adult, may be tried as an adult. As to juveniles fifteen years old, under the FDJA there is a specific list of offenses (such as narcotics and firearms offenses) which, if treated as a felony, and which constitute a crime of violence or involve firearms, allow discretionary transfer to adult court. Juvenile adjudication of these offenses therefore could constitute "convictions" for immigration purposes.

While juvenile adjudications may not have formal immigration consequences, adjudication for certain crimes, and even simple bad acts which do not lead to conviction or adjudication, can affect the outcome of immigration proceedings. For these reasons it is essential that attorneys ascertain the immigration status of their juvenile clients and examine carefully the potential significance of a juvenile adjudication in the immigration context.

However, some delinquency adjudications can constitute grounds for inadmissibility, which can bar a person from entering the country or from having their status converted to a lawful immigrant status. Some juvenile criminal activity can also be a ground for deportation from the country. The rules and the relevant offenses are different for inadmissibility and deportability. In addition there

are many discretionary stages in the immigration process which may be affected by a delinquency adjudication or other bad acts which do not constitute a conviction. In some instances, a person may obtain a waiver which eliminates the negative effects of criminal activity.

Deportability grounds include convictions for general crimes of moral turpitude, crimes for which a sentence of more than one year can be imposed, multiple convictions, any aggravated felony, high speed flight, controlled substance violations, and possession of more than a small amount of marijuana. Firearms offenses, crimes related to domestic violence, stalking and violation of protective orders and a few other miscellaneous offenses can also have an effect in this area.

For deportability purposes, as a general rule, juvenile adjudications do not impact immigration status because they are not considered convictions. However, there is a specific provision that provides for deporting anyone, including a juvenile, who violates a domestic violence restraining order.

The criminal grounds for inadmissibility are slightly different. In general the crimes which affect admissibility are crimes of moral turpitude (although this does not include petty offenses), controlled substances violations, multiple convictions leading to an aggregate prison sentence of five years or more, prostitution and commercialized vice, or involvement in a serious crime followed by asserting immunity from prosecution.

In the admissibility arena, the law specifically provides that some crimes are not a bar. This exception applies where a juvenile was adjudicated before the age of 18 and committed the crime or was released from supervision more than five years before the application for admission. Crimes

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OCDLA SEMINAR TRAINS ON *TALKING TO TEENS*

Oregon Criminal Defense Lawyer's Association presented a well attended seminar based on the American Bar Association's Juvenile Court Training Curriculum: *Talking to Teens*, at their Fall Conference December 3, 2004. The seminar speaker, Elizabeth Colvin, an ABA Trainer and Director of the Northwest Juvenile Defender Center focused on strategies for interviewing teenage clients and forming better relationships with them.

A panel of teens who are involved in juvenile delinquency proceedings fielded questions about how well attorneys do in representing them, and were the highlight of the morning. Their reactions to practices like sending another attorney to cover a hearing highlighted the developmental

differences between adolescent and adult clients that Ms. Colvin had instructed the participants on. The teenage panelists viewed sending the substitute as a major violation of trust and felt they had been abandoned by their attorney when that occurred.

As Dr. David E. Arredondo, M.D. commented in his law review article, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision Making*, Stanford Law & Policy Review, Vol. 14.1 2003 p. 13:

"Unfortunately, judges and attorneys can serve in delinquency court with essentially no training in principles of normal - let alone abnormal - childhood development. These principles are essential if one is to understand

the requirements of normal neurobiological, psychological, social and moral development. . . . [p]ublic defenders are routinely faced with offenders of both sexes who are psychologically very different than their adult counterparts."

The ABA Juvenile Court Training Curriculum, upon which Ms. Colvin's presentation was based, illustrates developmentally appropriate interviewing techniques, with contrasting "good" and "bad" interview scripts. To view the scripts and other information on Talking to Teens, see Module, Appendix A at: http://www.abanet.org/crimjust/juvjus/macarthur_index.html .

IMMIGRATION - Con't from p. 4

committed by a juvenile for which the maximum penalty does not exceed one year and for which the person was not confined for more than six months also do not bar admission.

There are a number of offenses which can result in inadmissibility because the law does not require a conviction, only that the person performed the prohibited bad act. These include trafficking in controlled substances, or being the spouse or child of someone who does, as well as prostitution and commercialized vice.

There are also some crimes for which people will suffer immigration consequences even if adjudicated as a juvenile. If a juvenile commits a crime which, if committed by an adult, would constitute a felony crime of violence, the juvenile may be excluded from the Family Unity Program. This is the program which allows people to immigrate to the United States based on their relationship to a

legal permanent resident or United States Citizen

In addition, many forms of immigration relief are discretionary so that juvenile adjudications may affect a deciding body's decision in those cases.

For further resources on juvenile immigration issues contact:

The Immigrant Legal Resource Center
<http://www.ilrc.org>

National Immigration Project of the National Lawyers Guild, Inc.

<http://www.nlg.org/nip/>

American Bar Association, Center for Immigration Law and Representation

<http://www.abanet.org>

National Immigration Law Center

<http://www.nilc.org>

American Immigration Lawyers Association

<http://www.aila.org>

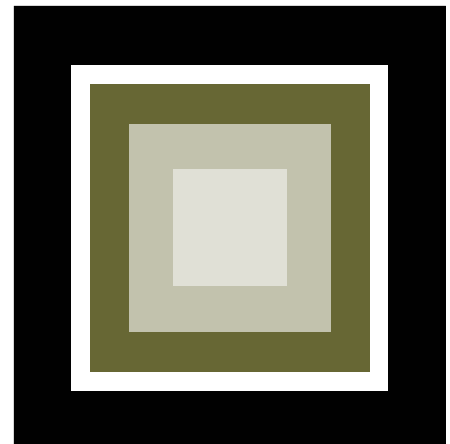
Immigration & Naturalization Service

<http://www.inc.usdoj.gov> .

CASELAW UPDATES

- Cont't from p. 3

CPS Removal of fiancé's children states First Amendment claim. - In *Wittman, III v Saenz*, 2004 WL 1987357 (9th Cir.), the boyfriend of the children's mother brought suit against the state and child protective services staff, challenging the removal of children from the home. His claim that his girlfriend was his fiancé met the intimate relationship requirement to state claim for violation of his First Amendment associational rights.



OHP Mental Health Services -- Grievances and Appeals

By Mark S. McKechnie, MSW

Over 20% of Oregon children are covered for medical, dental and mental health services by the Oregon Health Plan (OHP). Three groups of children are eligible: children in households under 185% of the federal poverty level, disabled children and children in foster care. For mental health care, the vast majority of children and adult OHP members are enrolled in one of the county or regional managed mental health care organizations (MHOs).

It is especially important for those who represent children in foster care to be aware of the rights foster children have as OHP members. The consequences when a child in foster care does not receive needed mental health services can be very considerable. A lack of adequate services can lead to foster home disruptions, school disruptions, hospitalization or placement in other more restrictive settings or penetration into the juvenile justice system, just to name a few.

Oregon is required by the federal government to have clearly defined complaint and appeals processes for members of the Oregon Health Plan and their representatives. Not only do these procedures help protect members' due process rights, but they are also an important part of the quality assurance system for the State offices who administer the plan. These procedures are in place, but they are not used as often as they could be.

MHOs are required to report the grievances they've received, and their resolution, to OMHAS on a quarterly basis. This review of grievances is one of the most important and most underutilized aspects of the quality assurance process in mental health. The State typically does site reviews of the MHOs, counties and private providers only once every three years.

Outside of these reviews, complaints and grievances are one of the few sources of feedback the State gets about the performance of OHP mental health providers, county mental health programs and managed mental health organizations.

Informal Problem Solving It is often useful, desirable and effective to attempt to resolve problems by talking to the parties involved informally first. Talk to the provider involved about any concerns first, then go to a supervisor or manager if necessary. If there is no resolution with the provider, talking to the Mental Health Organization's member services representative can often be helpful. The MHO may need to clarify with providers what is expected of them in order to resolve the problem.

Formal Complaints If these informal steps do not work to resolve a problem, however, the formal complaint and appeal processes are available. MHOs are required through their contract with the Office of Mental Health and Addictions Services (OMHAS) to have grievance procedures that are well advertised and accessible (See MHO Contract, Exhibit G). These are usually posted in county and provider offices, and many MHOs and providers make sure that consumers get a copy of the complaint procedures when a new client attends his or her first appointment. Grievances can be filed for any type of complaint for which the OHP member feels a problem needs to be resolved. Unfortunately, the grievance process is under-utilized, particularly for children. Parents (including foster and adoptive parents) may forget this information or be intimidated or overwhelmed. Case workers may be overworked or try to access different services outside of the managed care system (such as residential treatment).

Grievances should be accepted by mental health providers or MHOs orally or in writing, but experience

shows that verbal complaints aren't documented as often as they should be. Recognizing that OHP members may be vulnerable or have special needs that impair their abilities to file complaints, OMHAS places the burden for collecting and investigating complaints on the MHOs.

MHOs are required to give the member a written notice if it will take longer than 20 days to address the complaint. They are also required to issue a written Notice of Action and to offer the member a Request for Hearing form should the member be dissatisfied with the MHOs response. (Members must request a hearing within 45 days of the date of the Notice of Action.)

Due Process OHP members also have a specific due process right when services are denied or terminated by the MHO. MHOs are required by OMHAS to issue a written notice to the OHP member "for termination, suspension, or reduction of previously authorized Services, at least ten (10) days before the date of action." A written denial notice must also be issued "for Service authorization requests, when a decision is made to deny the Service authorization request, or to authorize an *amount*, *duration*, or *scope* that is less than requested [emphasis added]." The denial notice must be issued "as expeditiously as the OHP Member's mental health condition requires but not to exceed 14 calendar days following receipt of the request."

Again, the process and notice requirements for denial and appeal notices reflect the vulnerable status of OHP members. The contract requires: "Notice of Action

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shall be in an OMHAS approved format, written using easily understood language, translated into the non-English language spoken by the OHP Member, and in an appropriate manner that takes into consideration those OHP Members with special needs." The notice will explain the service(s) being denied, the reasons for the denial, the right to file an appeal and the process for filing an appeal.

Members who are already receiving covered and previously authorized services have the right for those services to continue until the appeal is resolved if they follow the appeals process. This process requires the OHP member or representative to file the Appeal with the MHO before the effective date of the denial or within ten calendar days after the date of the Notice of Action was mailed or given to the OHP member or representative.

Requests for hearings to appeal services being denied or discontinued are forwarded to the OMHAS Representative and the Office of Administrative Hearings. If the OHP member continues to receive services during the appeal process and loses the appeal, however, the MHO can seek to recover costs of the services incurred after the denial was issued. Ultimately, OHP members are entitled to covered, medically appropriate mental health services provided in a timely manner, and it is the hearings officer's role to help ensure that those services are not being inappropriately denied to OHP members.

More information on Oregon's Mental Health Organizations can be found at:

<http://www.dhs.state.or.us/mentalhealth/mho/mho-contacts.pdf> . Other information about Oregon's Medicaid and Community Mental Health systems can be found at: <http://www.dhs.state.or.us/mentalhealth/> .

Federal Legislation - Juvenile Mental Health Courts

The Mentally Ill Offender Treatment and Crime Reduction Act was signed into law on October 30, 2004. This new law is expected to have big ramifications for youth in the juvenile and criminal justice systems. The bill authorizes \$50 million in federal funding for grants to states to support pre- and post- booking interventions and transition services for mentally ill youth. These will include programs that will divert youth with serious mental illness from jail or detention to community-based treatment and support services.

Training for law enforcement will also be available so that police officers will know what options are available for mentally ill youth whose behaviors bring them into contact with police. Mental Health courts will also qualify for funding. Like Drug Courts, these courts will divert mentally ill youth from incarceration to community-based treatment.

Advocates hope the legislation will address the problem of youth with mental and emotional disorders, who fall through the cracks of the mental health system and end up in the juvenile justice system. Laurel Stine, Director of Federal Relations with the Bazelon Center for Mental Health Law, states: "We need to have appropriate avenues to assist these kids as well. We see this bill as not only fostering collaborations, but also linking these individuals up with treatment so the cycle doesn't continue." (in "Kids, Mental Health, and Justice" by Robert Capriccioso - CONNECT FOR KIDS at http://www.connectforkids.org/resource_s3139/resources_show.htm?attrib_id=6276&doc_id=247138&parent=82330 .) For more information on Juvenile Mental Health Courts see: "Juvenile Mental Health Courts: Rationale and Protocols" by Arredondo, MD, et al., www.childrensprogram.org/media/pdf/arredondo_article.pdf .

CHILDREN FIRST FOR OREGON CALLS FOR LEGISLATIVE RESPONSE

Oregon earned a "D+" grade in child well being—its lowest statewide grade ever—in Children First's annual Report Card released in September. The child advocacy organization attributed this decline to the compound effects of a poor economy and cuts in proven state-funded programs during the past three years.

As Children First reported in its December 2004 *First Voice* publication: "With the health and safety of Oregon's children and families in need of serious attention, elected leaders and advocates are busily preparing for the 2005 legislative session. Revenue predictions will likely leave the state at least \$1 billion short of what it needs to continue the current level of services in education, human services and public safety.

Deeper cuts to vital programs are inevitable unless lawmakers find additional revenue." It is expected that debates about revenue reform and spending caps will probably dominate the session.

Children First's legislative agenda includes: affordable child care; access to health care; child abuse/neglect prevention and intervention services and public investments in proven programs for children and families.

You can stay informed about Children First's legislative activities by joining their Children's Action Network e-mail list at <http://www.cffo.org>.

NEWS BRIEFS

OREGON MIDDLE SCHOOLERS MORE LIKELY TO BE SUSPENDED THAN HIGH SCHOOLERS

As reported in the *Oregonian* on November 23, 2004, Oregon Department of Education data from the 2003-04 year shows that, across the state, middle school students are more likely to be suspended than high school students. In Portland, this means that 1,611 middle school students were suspended, at a rate that was 2.5 times greater for middle schools than high schools. Middle schools suspended overall 9.5% of their students as compared to 3.8% of high school students. Three Portland middle

schools had suspension rates of nearly 25%.

In one Portland high school, teachers have been concerned about the disproportionate share of disciplinary referrals of minority students. Training is planned to promote "understanding students who grow up in poverty in the hope that it will help teachers see why some students are discouraged by discipline and others are inspired to do better."

Through a grant from the Oregon Criminal Justice Commission, Juvenile Rights Project has spent the last year researching disproportionate minority suspension and exclusion in schools from a local and national perspective. Like the rest of the country, Oregon

schools exclude African-American, Latino and Native American students, in particular, at disproportionately higher rates. The monograph, "Eliminating the Achievement Gap: Reducing Minority Overrepresentation in School Discipline, A Collaborative Approach," looks at the research findings on the causes of disproportionate discipline and proposes strategies for closing the discipline gap. Proposed strategies include classroom management and instruction approaches, building culture and management, staff training and hiring practices aimed at cultural competence and staff diversity, and school and district policy, as well as public policy, changes. The monograph will be released soon and will be available at <http://www.jrplaw.org>

MINORITY DETENTION DOWN IN MULTNOMAH COUNTY

According to **Brevity**, the E-Letter of the National Council of Juvenile and Family Court Judges, Multnomah County has dramatically reduced the number of minority youths in detention, making it a state and national model. But the county and the State of Oregon have a long way to go. In 2002, 38% of minorities were detained, compared to 36% of white offenders. Minorities make up 25% of the county's youth population, but account for 42% of the youth handled by juvenile justice last year. African Americans, just 9% of the population, made up 27% of the cases. State-wide, minorities made up 20% of the youth population, but 32% of youth corrections population. For more information look for "Disproportionate Confinement" on the Subject Library page at: <http://www.ncjfcj.org/dept/training/brevity/>

"State slips put teens on street"

This *Oregonian* Metro Section headline on October 31, 2004, reported on the Citizens Crime Commission report on homeless teens living in downtown

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Upcoming Conferences, CLE's and Trainings

Child Welfare League of America—2005 Juvenile Justice National Symposium, "Joining Forces for Better Outcomes," will focus on integration and coordination of Juvenile Justice and Child Welfare as an important aspect of working to better serve our nation's children. The symposium will be held June 1—3, 2005, at the Renaissance Eden Roc Hotel, Miami, Florida. For more information or to submit a presentation proposal contact CWLA at: www.conferences/2005jjsymposiu/mrfp.htm

32nd National Conference on Juvenile Justice - Sponsored by the National Council of Juvenile and Family Court Judges and the National District Attorneys Association. March 20 -23, 2005 Orlando, Florida. Topics will include: Preventing juvenile violence; school-based probation, mental health and juvenile justice; effective juvenile

drug courts; open hearings in child protection cases; ethics in problem-solving courts; supervised visitation in domestic violence cases; juvenile detention reform in rural areas; human trafficking; "They're all the same kids" - dependency to delinquency; gangs - a call to action; where have all the juveniles gone - waiver to adult court; the dark side of the internet - sex crimes and bullying; case law and its effect on crime investigation; on our watch - youth suicide in detention facilities; and disproportionate minority confinement.

SAVE THE DATE:

****OCDLA**— Spring Juvenile Law Conference, April 15 -16, 2005, at the Hallmark Inn.

****Juvenile Law Section** Spring Seminar March 11, 2005, at the Western Forestry Center.



WHY UA DRUG LEVELS SHOULD NOT BE USED TO GIVE PROBATION/PAROLE SANCTIONS

Some substance abuse counselors and programs rely on changing levels in urinalysis (UA) test results as a measure of a client's progress or compliance. For several reasons these numerical levels alone do not constitute an accurate or useful method for determining a client's participation in a treatment program. Serious consequences may therefore be based on test numbers that are not scientifically reliable or accurate. UA tests can be used by juvenile probation or parole in enforcing program compliance, but are only valid as a positive/negative evaluation.

Due to problems inherent in the testing process, changing chemical levels are not an accurate reflection of recentness of use or of abstinence. In addition, certain drug levels are often arbitrarily assigned terms such as "high" or "low." Test results are also often interpreted and applied by people who are not experts in either the tests themselves or in the related biochemistry.

The manufacturers describe their tests as indicating only the presence or absence of the tested substances. The manufacturers state that the tests cannot accurately describe the actual level of a substance in the urine. One set of problems is with the tests themselves. They do not react consistently to different levels of the tested substance. Thus, the values provided do not always accurately describe the actual amount of the tested substance which has been detected.

The tests also reflect the biological after products of the actual drugs, distorting the numerical results. The tests do not always differentiate between the amount of an actual drug that is present and the subse-

quent metabolic products of the drug's earlier presence.

Biological factors also affect test results. The dilution level of the urine affects the concentration of a drug in relation to the total amount of liquid present. Urine output varies tremendously under different circumstances and between individuals. Therefore tested drug levels may vary a great deal for reasons unrelated to drug ingestion.

The different byproducts of drug metabolism are also excreted at different rates, based on their water solubility. The ratio of compounds in the urine that react to the test is therefore constantly changing. Measures of total drug concentration are therefore not reliable indicators of the quantity or recency of drug use.

It is also not useful to compare blood alcohol tests to UA tests. Blood alcohol testing is easier and more accurate. Alcohol is a simpler molecule, blood is more of an actual receptor of the alcohol than is urine, and there are many more years of study of blood alcohol levels and their effects. Abused drugs differ in that they are more chemically complex. Urine is not a site where the drug actually acts but is only a waste byproduct, and there is little research on the effects of different drug urine levels.

Another significant aspect of these tests is what they do not show. UA levels are not proof of the strength or recentness of drug use. UA levels alone do not distinguish between recent drug use and the mere remnants of prior use.

Urinalysis drug tests are useful. A positive test indicates that there has been drug use within some measurable period. The best use of such tests is repeated testing. Regardless of the numerical level detected, the absolute presence of the drug will or

will not be detected over time. A continued presence of the drug in the urine cannot be explained by the remaining excretion of previously used drugs, as they will ultimately be eliminated if there is no new use. Testing only for the presence or absence of the drug, therefore, is valuable in ensuring program compliance.

The value of these tests is in determining whether there is continued drug use over time. Programs that look at these tests as simply positive or negative will be able to make better use of the tests themselves. The results are more accurate and reliable when used in this way, and, when used in this manner, the tests provide useful information.

(Our thanks to Benjamin Chambers, Systems Change Manager, Reclaiming Futures, Multnomah County Dept of Community Justice, for disseminating this information. Adapted from the National Drug Court Institute Drug Court Practitioner Fact Sheet on Urine Drug Concentrations:

<http://www.ndci.org/publications/drugtestingfactsheet.pdf> .)

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Portland. The story reported on CCC data showing that, of the nearly 1,000 teens who receive services from city homeless youth agencies each year, at least 300 either left or were abandoned by the state foster care system without jobs, stable homes or people they could count on.

"We believe the state of Oregon is abdicating it's responsibility by not providing needed services that would help adolescents . . . Transition to a more productive and stable future. . ."

-Citizens Crime Commission Report

Mandatory Referral to Early Intervention Program

By Julie Goss, Americorps Member Attorney

The Child Abuse Prevention & Treatment Act (CAPTA) requires DHS to refer every child under age 3 who is involved in a founded allegation of abuse or neglect to Early Intervention (EI).¹ EI is a federal entitlement program that provides services for children birth to age 3 who have a developmental delay or a condition that places them at risk of developing a delay.²

It is well established that experiences during a child's first years have a dramatic impact on his or her brain development. Foster care and events leading to foster care placement are serious and traumatic. **Over half** of infants in foster care experience developmental delays or have a disability, which is approximately four to five times the rate found in children in the general population. Because of this high rate of developmental delays or disabilities, the American Academy of Pediatrics and the Child Welfare League of America recommend that, for every child entering foster care, a comprehensive developmental evaluation be done within one month of placement.³

IDEA

The Individuals with Disabilities Education Act ("IDEA") was passed by Congress in 1979. Congress made findings that the education needs of children with disabilities were not being met and that many children were not succeeding in school because their disabilities were unidentified. Congress also examined early intervention for infants and toddlers who showed signs of developmental delays or disabilities. Congress determined that early intervention could effectively reduce the public's education costs by stimulating development in infants and toddlers. Congress

also found that providing services directly to the infant's or toddler's caregiver could decrease the amount of developmental disabilities in school age children.⁴

Early Intervention (EI)

EI, or part C of the IDEA, addresses the need to enhance the development of infants and toddlers with disabilities to minimize potential developmental delays. Studies have shown that the first several months to the first couple of years are a critical time in an infant's development. An infant's brain at birth has the largest number of neurons that it will ever have.⁵

The infant's immediate environment is especially important because verbal and physical stimuli are critical to that development. Additionally, attachment to significant persons in the infant's life occurs in these early months and years. Studies show that early attachment is a major contributor to healthy brain development. Children who do not form significant attachments before age 5 are at serious risk for reactive attachment disorder, which results in poor social relationships and poor personal boundaries.⁶

EI entitles eligible children to a multidisciplinary evaluation and an Individualized Family Service Plan (IFSP). The IFSP can include services provided to the child such as speech, physical and occupational therapies, psychological and social work interventions, as well as services provided to the child's parent or caretaker such as parent training or supportive services to enhance the parents' ability to meet the special needs of their child.⁷

Who is Eligible?

Oregon's EI program is codified in Oregon Revised Statutes Chapter 343. Oregon Department of Education administrative rules dictate eligibility requirements. To be eligible, infants and toddlers, must (1) have a disability in a proscribed category, (2) have a demonstrated and substantial

developmental delay or a physical or mental condition that has a high probability of resulting in a developmental delay.⁸

The IDEA has another category of eligibility that Oregon can include, but does not. At their discretion, states can find at-risk infants and toddlers eligible for EI services based on their at-risk status. Some states that include this category find all abused and neglected infants and toddlers eligible for EI services. In Oregon, abused and neglected children have to wait until they have a demonstrated and substantial delay in their development before they are eligible of EI services.

Congress created EI to enhance the development of infants and toddlers with disabilities and to minimize their potential for delay. The goals of EI are only achieved through early identification of developmental difficulties and timely provision of needed services. With disability rates four to five times higher in foster care children than in the general population of children, advocates must question Oregon's decision to not find eligible as a class abused and neglected infants and toddlers.

Using the Resources

Advocates for Oregon's foster infants and toddlers should ensure that every infant and toddler receives a developmental evaluation within one month of foster placement and should ensure that DHS makes the mandatory referral to EI. For more information, please see: *Ensuring the Healthy Development of Infants in Foster Care: A guide for Judges, Advocates, and Child Welfare Professionals and Questions Every Judge and Lawyer Should ask About Infants and Toddlers in the Child Welfare System*, from the National Council of Juvenile and Family Court Judges. Available at:

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<http://www.betterbabycare.org/doc/judgeslawyerssta.pdf> .

Endnotes

1. Keeping Children and Families Safe Act (PL 108-36)(2003).
2. IDEA, 20 USC sec 33 (1979).
3. Dicker & Gordon, ENSURING THE HEALTHY DEVELOPMENT OF INFANTS IN FOSTER CARE, (2004).
4. IDEA 29 USC sec 33, ss631.
5. Acredolo & Goodwyn, BABY MINDS (2000).
6. American Psychiatric Association, DSM-IV-TR (4th ed. 2000).
7. Dicker & Gordon, "Opening the Door to Early Intervention for Abused and Neglected Children, CHILD LAW PRACTICE, May 2004.
8. OAR 581-015-0946.

Online Tutorial – Substance Abuse and Child Welfare

The National Center on Substance Abuse and Child Welfare (NCSACW) has recently made available the first of four free on-line tutorials on substance abuse and child welfare. It is an interactive site which provides comprehensive information on child welfare for professionals who work with substance abuse clients who have children. Each tutorial is designed to take about 4 hours to complete. For more information please go to the NCSACW website at <http://ncsacw.samhsa.gov/tutorials/index.asp>.

Teen Fathers

The Prevention Researcher Online has focused one of its November

2004 issues on the subject of Teen Fathers. There are several articles addressing the neglect of teen fathers as resources for children, the issues of risk factors related to teen fatherhood, and look at teen parenting programs for fathers. For more information please see *The Prevention Researcher Online* at <http://www.tpronline.org>.

The Future of Children

The David and Lucille Packard Foundation's publication *The Future of Children* is now available on-line at no-cost at www.futureofchildren.org . The Summer 2004 issue focuses on children of immigrant families. Other recent issues include: "Children, Families and Foster Care" and "Health Insurance for Children".

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whether the behavior is a manifestation of the disability. A MDR would frequently end attempts at expulsion of IEP students. The burden of proof in a MDR will now be on the parent and a determination of whether the IEP and placement were appropriate will no longer be required. The entire IEP team is no longer required to be present at the MDR, only "relevant members". And in order for a manifestation to be found the conduct must be a "direct result of the school's failure to implement the IEP or it must be "caused by" or have a "direct or substantial relationship to the disability.

The discipline protections for students not yet determined to be eligible for an IEP are also reduced. For example, the teacher must have expressed "specific concerns about a pattern of behavior" in order to trigger the protections. Under current law the teacher need only express "concern about the behavior or performance of the child".

Transition Services

Transition services requirements for students leaving high school

are considerably strengthened. Transition plans must now be designed to prepare students for further education, including vocational education, in addition to employment and independent living. Schools will be required to provide eligible students leaving school a summary of academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals.

The new law also requires that the IEP shall include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and independent living skills. Plans should be developed no later than the first IEP to be in effect when the child is 16, and annually thereafter.

Miscellaneous Provisions

- Schools are now barred from requiring children to take medications. as a condition of attendance.

- To speed up initial evaluations for wards of the state who do not reside with a parent, an individual appointed by the judge (e.g., attorney or CASA) may give consent for evaluation.

- Schools are not required to use the "severe discrepancy" standard to determine eligibility under the category of specific learning disability, but may use a process that determines whether the child responds to scientific, research-based intervention as part of the evaluation procedures.

- Surrogates must be assigned not more than 30 days after the agency determines that one is needed. Also, the judge overseeing the case of a ward of the state may appoint a surrogate.

For more information see:

Wrightslaw at: <http://www.wrightslaw.com/law/idea/index.htm> , and "Key Provisions on Transition" at <http://ncset.org/publications/related/ideatransition.asp>

ALAN E. BAILY

1947 - 2004

Advocates for the poor, underrepresented and youth, as well as music lovers, lost a great friend and fellow traveler on October 26, 2004, when Alan Baily lost his courageous battle with progressive multiple sclerosis. Alan was one of the original attorneys of the Juvenile Law Center of Multnomah Legal Aid, and when the Center lost its contract because of having filed a conditions of confinement lawsuit against MacLaren Training School, Alan sought and obtained funding and with other JLC attorneys founded the Juvenile Rights Project. As JRP's first director, Alan established a lofty vision for JRP as a child and youth advocacy agency that would go beyond providing excellent representation for children and youth in individual court hearings to being an agency that is the voice for justice for children and youth in the community, in the legislature and through class action litigation. In his years at JRP, Alan fought for the rights of youth incarcerated at MacLaren Training School, teens locked in adult jails and children lost and abused in the foster care system.

Before JRP, Alan worked as a Vista Volunteer and for Prisoner's Legal Services. After leaving JRP, Alan took his love of music and his organizing skills to community radio as the Station Manager for KBOO radio station. At the celebration of Alan's life held on November 2, 2004, Alan's huge collection of videos about music, politics and a wide variety of other subjects, were bequeathed to the large crowd who came to honor him and support his daughter Sarah Baily and his former partner and long-time friend Diana Stuart. The Program for the event contained an excerpt from the letter Alan wrote resigning from Vista in 1970, that reminds us of the vision and courage that Alan brought to all he did: "We must create an alternative vision, a new way of relating to the world and to ourselves. We must free men's minds, free them of the insanity that allows us to destroy a country in the name of freedom, build missiles when what people need are houses, and deny the humanity of those different than us. We must reorder our dangerously backward priorities from death and destruction to life and creation. We must develop new institutions and new ways of living. We must create, finally, something that has never existed before: a new man in a new society. That is what we will be working for, but not in Vista."



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Juvenile Rights Project, Inc. (JRP) is a public interest law firm and advocacy organization promoting the rights and interests of our community's most vulnerable children – those involved in the child welfare and juvenile justice systems. JRP has a 29 year history of representing children individually in the Multnomah County Juvenile Court and through class action litigation. JRP also advocates for Oregon's children in the legislature and with public agencies, and offers training and technical assistance to families and to social service and legal professionals around the state who care for and work on behalf of some of Oregon's most disadvantaged children.