JUVENILE RIGHTS PROJECT

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Protections Weakened for Students with Disabilities under IDEA 2004 Reauthorization

by Gloria Trainor, Law Clerk

Federal law provides certain protections to students with disabilities facing disciplinary action at school. Many attorneys and educational advocates, however, have concerns that the 2004 reauthorization of this law has substantially eroded these protections.

Specifically, the current IDEA (20 U.S.C. § 1400 (2004)) gives school personnel increased authority to change a student's placement without the permission of the student's parents. This increased leeway directly impacts the "stay put" rule. This rule allows a student with a disability to remain in his or her current classroom setting pending a due process hearing unless parents and school personnel agree otherwise. 20 U.S.C. § 1415(j).

IDEA 2004, however, gives school districts the additional authority to decide whether or not a student's placement should be changed if the student has violated the school's student conduct code. 20 U.S.C. § 1415(k)(1)(A).

While meant to protect the school population from potentially dangerous students, the change allows for inconsistency and disruption of the accused student's learning environment. This is especially problematic for high functioning students with learning disabilities or ADHD because regular education teachers may not fully understand the ramifications of these disabilities and may repeatedly penalize students for behaviors that the students need assistance in managing.

The potential result is that students with behaviors related to their disabilities may be displaced from their current educational setting for repeated infractions instead of receiving the support they need.

Another change implemented by IDEA 2004 affects the manifestation determination. When school administrators wish to change the placement of students with disabilities for more than 10 days (e.g., an expulsion) due (continued, page 9)

Oregon Law Review Publishes Juvenile Delinquency System Critique

by Mary Skjelset, Law Clerk

The April edition of the Oregon Law Review published a survey and critique of juvenile delinquency systems throughout the United States by Douglas Abrams, Associate Professor at the University of Missouri Law School. DOUGLAS ABRAMS, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 Or L Rev 1001 (2006).

The article consists of three parts. Part I surveys the extant systems erected to deal with juvenile delinquency in eleven states: Florida, California, Louisiana, Kentucky, Puerto Rico, Georgia, Arkansas, South Dakota, Mississippi, Arizona and Maryland.

Investigations of these systems uncovered widespread abuses

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DHS Status of Children Report, 2005

The Oregon Department of Human Services released their annual "Status of Children" report for 2005 in late May. The report states that DHS received 55,114 reports of suspected abuse and neglect, which represents an 18.5% increase over 2004.

According to the report, 11,255 Oregon children were found to have suffered from abuse and/or neglect in 2005.

In addition, the number of children who entered care in 2005 was greater than the number of children exiting. This was the third year in a row that foster care entries outnumbered exits.

Perhaps most disturbingly, the report included 18 Oregon child fatalities due to abuse and neglect. The families of three of those children were already involved in the child welfare system.

Children First for Oregon issued a press release in response to the report highlighting the fact that the rate of child fatalities due to abuse and neglect represents a 125% increase over the previous year.

Children First was also critical of the agency's focus on methamphetamine abuse as the primary cause for the significant increase in foster care rates, abuse and neglect rates and other negative trends.

CFFO Director Robin Christian said: "While meth is a serious problem, it doesn't explain why the state won't invest in more caseworkers, better supports for foster parents or effective substance abuse treatment for parents.

The 1998-2005 DHS reports are available on-line at: http://www.oregon.gov/DHS/abuse/publications/children/index.shtml .

BAR APPROVES REVISED ATTORNEY STANDARDS

At its May meeting the OSB Board of Governors accepted the Juvenile Law Task Force's report on revision of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases and adopted the revised Standards.

BAR NEWS on the Oregon State Bar Association Website contains links to the contents of the Revised Principles and Standards which includes: the Forward to Standards; General Standards; Specific Standards for Representation in Criminal and Juvenile Delinquency Cases and Specific Standards for Representation in Juvenile Dependency Cases.

http://www.osbar.org/barnews/juveniletaskforce.html

Case Law Updates

State ex rel Juv. Dept. of Multnomah County v. Smith, 205 Or App 152 (2006).

DHS was the legal guardian of a severely disabled child. DHS supported a "do not resuscitate" order, and petitioned the court to appoint an attorney as health care guardian. The court granted the petition. The mother appealed because she wanted the decision to be made at the time of a crisis, and for it to be consistent with her religious beliefs. The court of appeals found, first, that the court lawfully exercised its statutory authority pursuant to ORS 125.305 in granting the lawyer the authority to make health decisions, including the decision to withdraw life support, and second, that the exercised authority did not violate the mother's rights under *Troxel*.

Fast v. Moore, 205 Or App 630 (2006). Although the adoptive parents and biological mother made a Post Adoption Communication Agreement (PACA), it did not appear in the adoption proceedings or judgment. When the mother sued to enforce the PACA, the trial court ruled that the PACA was unenforceable, and modified it to make it enforceable. The court of appeals found both the original and modified PACA unenforceable because it had not been approved as part of the adoption proceedings and thus violated the meaning of ORS 109.305. (Continued, p. 9)

Placement Changes and Problem Behaviors

By Erin White, Law Clerk

Previous research reflects both that many children entering foster care have behavioral or mental health problems, and that many children in foster care experience multiple placements. There is also evidence that there is a relationship between placement disruption and behavior issues.

Most studies focus on the effect behavioral problems has on changes in placement. Children and Youth in Foster Care: Disentangling the Relationship between Problem Behaviors and Number of Placements, by Rae R. Newton, Alan J. Litrownik, and John A. Landsverk, Volume 24 Number 10 Child Abuse and Neglect, 2000, is a report of a study of these relationships.

This study examined the impact of placement change on problem behavior in foster children. The study was conducted over a twelve month period. It was made up of 415 children over the age of two who entered foster care in San Diego between May 1990 and October 1991 and remained in placement for at least five months.

Two interviews were conducted about each child with parents or parent substitutes; the first occurred during the first five months and the second occurred at between six and eighteen months after entry into foster care. The study utilized the Child Behavior Check List (CBCL) to measure behavioral problems.

The number of placement changes the children in this study experienced ranged from one to fifteen with a mean of 4.23 and a median of four. At the time of the first interview, forty-two percent (173) of the children did not demonstrate behavioral issues, while fifty-eight percent (242) demonstrated at least one behavioral issue.

Children who exhibited behavioral problems at the time of the first interview experienced more placement changes with a mean of 4.6 as opposed to 3.9 for the children who demonstrated no behavioral problems at the outset. The study found that not only may a child's exhibited behavioral problems predict a higher number of placement changes, but also that a high number of placement changes may predict a variability in CBCL scores.

The children were divided in two groups based on placement changes using the median of four. Among the 173 children who did not demonstrate behavioral problems, high placement change was a predictor of increased behavioral issues in the second assessment. Furthermore, among all the children in the study, placement change could also be used to predict an increase in behavior problems.

The number of changes was able to predict 9.7% of the variance in internalizing and 6.7% of externalizing behaviors in children who experienced over four placement changes. The study found that the number of placement changes was a stronger predictor of internalized behavior problems in the second interview than the results of the first interview. The study also found that age, gender, and race played no statistically significant role in predicting the second CBCL scores.

Temporary Rule Filed to Enroll More Foster Children in Managed Care Plans

By Mark McKechnie, MSW

On May 4, 2006, the Department of Human Services, Office of Medical Assistance Programs, filed an emergency rule regarding "Mental Health enrollment procedure for Children" with the Oregon Attorney General. The temporary rule, amending OAR 410-141-0060, will be in effect through October 27, 2006.

The rule change specifically addresses the enrollment in managed mental health care plans of children and youth in the custody of DHS Children Adults and Families (CAF, also referred to commonly as "child welfare") and the Oregon Youth Authority.

The Office of Mental Health and Addictions Services, another part of DHS, has sought changes in the enrollment process after finding that a disproportionate number of children in the child welfare system, who are covered by the Oregon Health Plan, were not enrolled in Mental Health Organizations (MHOs). Typically, all OHP members are automatically enrolled in MHOs unless they qualify for an exception.

Children in foster care may be on an "open card" (i.e., not enrolled in managed care) because CAF sought an exception (for example, because the child is Native American and receiving Indian Health Services) or because they have moved from one MHO region to another and have not yet been enrolled in the new MHO.

Since children in DHS custody tend to move more frequently than other OHP-eligible children, they have not been enrolled in MHOs as frequently or consistently as other children. In order to address this issue, OMAP will begin doing automatic enrollments weekly around July 1, 2006. Automatic assignments to MHOs have previously occurred only on a monthly basis.

When a child moves into a psychiatric residential treatment program or hospital, the child's enrollment (MHO or open card) will remain the same until discharge. This means that a child who has experienced multiple placement changes before entering a residential program is more likely to be on an open OHP card.

MHOs are managed care organizations that cover single or multiple counties. MHOs are contracted with the state to provide medically appropriate mental health services to their enrolled members, including children, adults and seniors.

Starting October 1, 2005, the state added day treatment, psychiatric residential treatment and "Intensive Community-Based Treatment Services" (ICTS) to the MHO's responsibilities for children's mental health. Prior to October, MHOs covered assessments, acute hospital care and outpatient and intensive outpatient services.

The intent of these changes, in part, was to limit the use of the most restrictive children's mental health services, such as day and residential treatment services, and create increased financial incentives to develop more home and community-based treatment options for children and their families.

When children are enrolled in MHOs, it is in the MHO's interest to find alternatives to facility-based care when it is practical to do so. For children in residential and day treatment facilities, it is in the MHO's interest to provide active care coordination so that the child can transition to less restrictive (and, typically, less expensive) treatment programs as soon as it is clinically indicated.

There are some other advantages for children enrolled in MHOs, as well. The MHOs are responsible for facilitating care for their members. This means that parents or case workers do not have to find providers who will accept OHP clients on their own. The MHOs are responsible for referring members to contracted providers.

MHOs also cover a broader range of child mental health services than children on open OHP cards can obtain. When a child is on an open OHP card, the provider of mental health services bills OMAP on a fee-for-service basis. In terms of outpatient and community-based services, more traditional service types, such as psychotherapies, medication management, skills training and case management can be delivered on a fee-for-service basis.

MHOs have greater flexibility to cover additional services, such as crisis intervention, community-based wraparound services and respite care, which are not available for children who are on open OHP cards. MHOs also have greater flexibility to offer bundled packages of traditional and innovative services for children based upon their individualized needs.

In addition, MHOs also have the discretion to pay for overlapping services. For example, MHOs can pay for transition services from community-based providers to start before a child is discharged from a residential or day treatment program. Additional services cannot be billed on the same date for

(continued, p. 13)

Detention Alternatives: Zealous Advocacy from Referral through Detention Hearing

By Mary Skjelset, Certified Law Clerk

Prerequisite Legal Knowledge: An effective juvenile defense attorney or advocate must know whether the juvenile department or police have held the youth for an unlawful period of time before the detention hearing (commonly referred to in some counties as the preliminary hearing). Oregon law limits the length of time a juvenile may be held in a detention facility before being provided the due process right of a hearing to thirty-six hours, not including weekends and holidays. ORS 419C.139. Evidence of unlawful detention should be presented when the court is deciding whether to continue to hold the youth.

Detention: The advocate must know which charges can result in lawful pretrial detention of the youth. The list of "holdable" charges is finite. A judge may order that a youth be held in detention pretrial only if the court finds: interstate fugitive status, person-to-person or felony charges, a prior failure to appear to a court proceeding, probation violation, violation of conditions of release and firearm possession in a public building or on public transit. ORS 419C.145(1)(a)-(f).

Therefore, a youth facing truancy, minor misdemeanor or in-state runaway allegations cannot be held in detention beyond the time needed to process and release.

Least Restrictive: The juvenile judicial officer has an obligation to place the youth in the *least restrictive* environment possible to effectuate the goals of juvenile court, ie. to process cases and promote community safety and personal welfare. ORS 419C.145(2)(a),(b). This requirement flows from the basic principle that a state may restrict a person's liberty interest only to the degree necessary to achieve the purpose of custody. *Shelton v. Tucker*, 364 US 479, 488, 81 S Ct 247, 5 L Ed2d 231 (1960). Therefore, if the youth's advocate can present a viable alternative to detention that protects society and the individual, the court should not hold the youth in detention at the preliminary hearing.

Knowledge of the limits and imperatives of the law provides the youth's advocate with tools for gathering helpful information from the youth and making effective arguments to the court. Nearly every youth subject to detention would rather stay in a family-like environment. The advocate has the duty to do everything in her power to make that happen.

Youth interview: Best practices in juvenile cases dictate that counsel be alerted to and provided access to clients prior to being appointed at a detention hearing so that they are able to adequately prepare in advance of the hearing. *Standard 2.5, Obligations of a Lawyer Regarding Shelter Hearings and Pretrial Placement*, of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases (2005) (hereinafter "Standard") provides generally that: "When a client is in custody, a lawyer should explore with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release, and those conditions and services the client desires."

Awareness of the basic needs and resources of the youth form the basis of quality representation at the preliminary hearing. An interview with the youth performed before the detention hearing serves many invaluable functions.

Establishing Trust: Youth are often scared, but can be reassured that someone is on their side. Second, the face-to-face contact with the representative fosters the attorney-client relationship of trust. Third, the interview provides the advocate with an opportunity to instruct the youth about the hearing process and field any questions the youth may have about the initial stages of a case. Finally, the information provided by the youth may serve to identify probable cause issues, rebut accusations and identify alternatives to more restrictive placements.

While it is preferred that this initial interview with the client be performed by the assigned attorney, a non-attorney, such as a law clerk, legal assistant, social worker or detention alternatives worker can be trained to conduct such interviews. It is useful to provide such training to non-attorney staff when the attorney caseload is such as to make it virtually impossible to see a detained youth within the short number of hours before the detention hearing.

In order to ensure that the interview with the youth is fruitful, the youth advocate must first establish trust. Trust flows from the very nature of the role. Many detained youth have often had previous negative experiences with other adults in their lives.

They often appreciate, however, that an attorney (next page)

must keep the information they reveal confidential unless given approval to disclose, that they have a professional person of their own to voice their opinions and work exclusively on their behalf, and that the advocate has taken the time to see them at their most vulnerable moment. All of these professional responsibilities that create the trusted relationship—confidentiality, expressed wishes representation and personal contact—should be explained and exemplified through the interview process.

Assessment: *Standard 2.5, Implementation 1,* suggests that the "lawyer should obtain information regarding the client's ties to family and the community, immigration status, educational history, including about whether the client is receiving or in need of special education services, in need of appointment of an educational surrogate, employment history, physical and mental health history, participation in community programs, past criminal, delinquency and dependency history, and the ability of the client, relatives, or third parties to meet any financial conditions of release, and the names of individuals or other sources that counsel can contact to verify the information provided by the client".

Finding an alternative placement for the youth often proves the most effective way of securing release.

Advise regarding self-incrimination: Youth should also be advised about their rights to remain silent and to have an attorney present during questioning by a police officer or a Juvenile Court Counselor, as either may be called to testify against them as to any incriminating statements. An attorney also may consider advising the youth to remain silent to friends and family members about the facts of the case.

Once the client understands the role of the attorney, the next step in the interview process is to gather information that might increase the likelihood of release at the preliminary hearing. This information comes in two forms: (1) names and contact information for people who may serve as alternative placements for the youth, and (2) positive information about the youth's activities and ties to the communities that may rebut negative information gathered by police and prosecutors.

Finding Alternative Placements: Finding an alternative placement for the youth often proves the most effective way of securing release. The first question the advocate should ask is where the youth wants to stay. The court may investigate the safety of that home by conducting a background check on the persons living there, so a follow-up query about past criminal conduct might save the advocate—and the family—a great deal of embarrassment in court.

Finding a viable placement in the community does not guarantee placement there. The best practice is for the youth and detention alternatives advocate to create a hierarchy of preferred placements with the restrictiveness of the placements increasing the further down the list.

Evaluating options: The advocate should contact each of these possible placements to inquire about their willingness and ability to house the youth. If a viable community placement passes the "no criminal background" and "willingness" tests, it is imperative that the child's counsel gets these people to preliminary hearing whenever possible.

The presence of potential alternative placements demonstrates to the judge their responsibility in getting to court, desire to provide placement, and dedication to the youth—and may make the difference between a hold and a release.

Standard 2.5, Implementation 3, suggests that a lawyer should seek to have the persons the client wishes to have present at the detention hearing. Such persons could include a parent, relative or friend who is willing to take custody of the youth if released or provide positive activities during release, a spiritual advisor or teacher. This Standard also suggests that a lawyer should be aware of the alternatives to secure detention or incarceration, including group homes, residential treatment facilities, drug and alcohol treatment facilities, house arrest, or other non-secure community-based alternatives.

Other Factors Supporting Release: The second way to achieve a release in a contentious preliminary hearing involves rebutting incriminating information gathered by the police, intake or Juvenile Court Counselor. Generally, the more involved and responsible the youth appears to the court, the more likely the judge will release the youth pretrial to continue these activities. Although many factors may support release, the juvenile court tends to focus on education and employment, community and familial ties, past offenses and probation status.

(continued, next page)

Detention Alternatives, Continued

Education and employment: Courts value education. The youth's advocate should inquire about school performance before the preliminary hearing. If the youth reports good grades and attendance, the advocate may want to verify that information with a counselor. (next page)

Reporting incorrect information to the court undermines the reliability of the youth. If the youth reports poor performance and attendance in school, the advocate may want to discuss additional educational supports for the youth, such as setting an IEP (Individualized Education Program) meeting with the school.

The court may be more willing to release if there is a possibility the youth will be getting back into school and will be involved in positive activities during the school day. Participation in GED coursework or steady employment, though not a perfect substitute for regular school attendance, may help convince the court that the youth is invested in society and his/her future.

Community ties: A youth's participation in the community need not be limited to school or employment. Mentoring programs, sports teams, family support, volunteering, and church groups all may satisfy the judge's need to see involvement and stability in the youth's life. Though not as convincing as excelling in school, participation in these kinds of community activities give depth and humanity to the youth in court.

Referral record: Probably the most damning factor for a youth facing detention is a long list of referrals to juvenile court. Obviously, the more frequent and severe the criminal activity that the youth has engaged in, the more likely that the youth will be held in detention, since a pattern of criminal behavior increases the likelihood that the youth is a danger to self or community.

Probation status is crucial, as violation of probation can be grounds for detention even if the charge does not satisfy the statutory requirements for detention. Often, courts will hold a youth pending a probation violation hearing, which they schedule at the time of the preliminary hearing.

Also important: Warrants. Judges do not look fondly on a history of warrants, especially Failure to Appear warrants. Judicial officers want the youth to return to court and complete the adjudication process; incidents of runaway and warrants may demonstrate an inability to maintain in placement and to appear in court when required.

Risk Assessment Instruments: In Multnomah County, the juvenile department has implemented a system for quantifying core concerns at the preliminary hearing through the development of a Risk Assessment Instrument (RAI). Designed to reduce disproportional representation of minorities in detention, the RAI assigns a point value to the youth's behaviors that represent flight risk, danger to self and/or danger to community.

A number of factors—school attendance, severity of crime, run history, probation status, prior adjudications and family support—receive either a positive or negative value. Once the number is generated, it serves as a guide for the level of supervision recommended by the Juvenile Court Counselor: unconditional release, release with conditions, release with electronic monitoring, staff-secure shelter or hold in detention.

In Multnomah County, the Juvenile Department has implemented a community detention program that monitors youth placed in the community through telephone calls and unexpected "tracker" visits. Not only does this instrument serve as an outline for the interview of the youth, it also attempts to make the assessment of risk more objective and more systematic. Without such a system, recommendations and decisions regarding detention are more likely to reflect the biases of the decision-makers.

Preliminary Hearing Arguments: Conditions of Release and Probable Cause: The youth's attorney may be the sole advocate for release from detention in many instances. Information derived from the initial interview will assist counsel with making arguments to refute the negative assumptions about prior history and to propose alternative placements for the youth. This information also comes in handy when crafting creative release plans.

Standard 2.5, Implementation 2 suggests that: "A lawyer should present to the appropriate judicial officer information about the client's circumstances and legal criteria supporting release. When appropriate, the lawyer should make a proposal concerning conditions of release that are least restrictive with regard to the client. A lawyer should arrange for contact with or the appearance of parents, spouse, and relatives or other persons who may take custody of the client or provide third-party surety. If the client is under 21 years of age, and the client agrees, request appointment of an educational surrogate to obtain appropriate school placement and services."

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Detention Alternatives, Continued

If the attorney knows that a youth, for example, participates in a bowling league as his only source of social contact, that attorney can suggest that any curfew accommodate that positive interest. If the attorney knows that a youth is facing sexual abuse accusations, that (next page)

attorney can ensure that the parents have contemplated a safety plan with 24 hour supervision or separation from potential victims before the court makes its ultimate decision.

Legal standard: The youth's attorney must know the law. At a preliminary hearing the standard of law for detention is probable cause by a preponderance of the evidence that the youth has committed a "holdable" offense. *Application of Roberts*, 290 Or. 441, 622 P.2d 1094 (1981). The *Roberts* case held that detention of youth beyond the brief period necessary to achieve administrative steps, requires a prompt judicial determination of probable cause to pass constitutional muster. *Id.*

Probable cause: A youth's attorney must know the elements of each offense alleged in the petition and prepare to argue lack of probable cause based on the police reports. If the police reports do not indicate that a victim sustained injury, the judge cannot hold the youth on an assault charge. If the police reports fail to detect whether an alleged victim experienced fear, the judicial officer cannot hold the youth on a menacing charge.

Taking all of these steps before setting foot in the courtroom takes time, but preparation and precaution can mean the difference between an extensive restriction on a youth's liberty and placement with a caring relative.

Understanding the youth's goals: The attorney may be thinking of resolution of the case as a whole, but often the youth can only think of getting out of detention. Attorneys for youth should align their priorities with their clients' by advocating for release through creation of release plans and probable cause arguments. The most effective zealous advocacy begins immediately.

Advocating for Client Needs: Beyond what is presented to the court, the juvenile attorney has the responsibility to ensure that the youth's needs are met if held in detention. In the interview, the advocate should inquire about issues not necessary for the preliminary hearing but relevant to the youth's health and welfare, such as medical, mental health, emotional and physical needs.

Questions to ask about client's health and other special needs: Does the youth need to take medication that has not reached juvenile court? Does the youth have a physical impairment that requires accommodation? Does the youth have certain dietary restrictions or religious practices that detention staff has ignored?

The youth's attorney may be the only person in a position to advocate for these needs. Standard 2.5, Implementation 7 suggests that if the client agrees, the lawyer should advise the court and the detention facility of medical, psychiatric, security needs of the client and advocate for placement or treatment services that meet the client's need for safety, health and mental health care and education.

Standard 2.5, Implementation 4 suggests that when a juvenile client is released a lawyer should consult with the client concerning the client's needs for safety and right to receive treatment and advocate for those needs as agreed to by the client. Standard 2.5, Implementation advises the lawyer to explain conditions of release to the client and potential consequences of violating those conditions.

10 Day Reviews: Standard 2.5, Implementation 8 recommends that lawyers advise clients who are detained or placed in shelter care of their right to have their detention or placement reviewed at least every 10 judicial days. Lawyers should continue to advocate for release or placement change if requested by the client.

Protections Weakened, cont'd from p. 1

to a violation of the student conduct code, a manifestation determination meeting must be held to determine whether or not the behavior was a manifestation of the child's disability. *See* 20 U.S.C. § 1415(k)(1)(E).

The original version of IDEA required the IEP team to review the student's IEP as part of the manifestation determination in order to find out whether or not it was appropriate in meeting the student's individualized needs. IDEA 2004, however, requires only that an IEP was being implemented at the time of the incident.

The potential result is that students with behaviors related to their disabilities may be displaced from their current educational setting for repeated infractions instead of receiving the support they need.

Again, the result is that students with disabilities may go without the additional instruction, support and individualized educational goals needed to manage behaviors that are related to their disabilities. In light of these changes, now it is of utmost importance for parents, educational surrogates and advocates to carefully evaluate the content of a student's IEP for adequate services and supports when there is any possibility that the student may have significant behavioral problems that could result in serious disciplinary actions.

There are special circumstances that allow school administrators to remove students with disabilities from their current educational settings (for no more than 45 days) *without* assessing whether or not the behavior is related to the disability. These circumstances may exist when a student is at school, on school premises, or at a school function and is caught carrying a weapon, is involved in certain types of illegal drug activity, or inflicts "serious bodily injury" upon another person. 20 U.S.C. § 1415(k)(1)(A)(ii), 20 U.S.C. § 615(k)(1)(G).

If the school district chooses to remove the student in these circumstances, it is still obligated to follow the student's IEP in the interim alternative placement, in addition to allowing the student to access the general education curriculum.

In light of these new changes to the law, educational advocates and attorneys should encourage school districts to use their authority to consider each case individually in order to ensure the best outcome for students with disabilities. Each student is entitled to the tools and assistance he or she needs in order to be productive and successful at school.

Case Law, Continued

State ex rel Dept. of Human Services v. Keeton, 205 Or App 570 (2006). Although mother had a history of sexual conduct with a minor, she was willing to participate in services and was not shown to be a danger to her children. Therefore, the court of appeals overruled a judgment terminating her parental rights because the state did not prove by clear and convincing evidence that she was unfit or that removal was in the best interest of her children.

Case Law, Continued

E.C. v. Sherman, WL 1307641 (Western Dist. of Mo. 8th Dist., May 9, 2006). A Missouri law that would have cut adoption assistant subsidies was found to violate the federal rights of foster children with specialized needs. The federal judge ordered the law to be permanently banned. This case is viewed by many as a national test case because many states are considering similar cuts to adoption subsidies.

Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006). The court considered a limited injunctive relief during nighttime hours from a city of Los Angeles ordinance which prohibited homeless individuals from sitting, lying, or sleeping in the streets. The law was found to be unconstitutional because it criminalized behavior that was unavoidable given the fact that there was not enough shelter space for every homeless individual in L.A.

Florida Class Action Lawsuit Filed Against Department of Children and Family Services: Florida attorneys filed a class action lawsuit April 4, 2006 against the Florida Department of Children and Family Services (DCF) and their subcontractor foster care provider, Big Bend Community Based Services.

The two were sued in a class action lawsuit for failing to find foster placements for children. Furthermore, DCF and Big Bend were accused of forcing special needs children who had not been placed in foster care to sleep in a conference room located in the DCF office building. The judge issued a temporary injunction banning the practice.

Identifying and Addressing Self-Injurious Behavior

by Erin White, Law Clerk

Juvenile clients in both delinquency and dependency cases may commonly practice self-injurious behavior (SIB), such as cutting on their arms or legs, taking an overdose of medication or tying ropes around their necks. Responses to such activities vary from viewing them as suicidal behavior, which calls for a trip to the emergency room or crisis intervention, to viewing them as manipulation. In some settings punishment or isolation is imposed for SIB.

Experts in self-injurious behavior point out the need to distinguish when SIB is an attempt at ending one's life as opposed to a self-soothing action or a cry for attention and help. Some individuals who practice SIB report that they feel a sense of emotional relief when they injure themselves. But some of these efforts at self-soothing or attention seeking accidentally result in death or serious injury, so it is important that all SIB be responded to appropriately.

A recent study conducted at Cornell and Princeton Universities found that one in five students practice SIB. Seventy percent of these students had done SIB numerous times. Approximately half of those who hurt themselves had experienced some type of abuse.

While SIB is not considered suicidal behavior, those who practice it are more likely to have suicidal tendencies. They are also more likely to be female and to have eating disorders. SIB is growing at the high school and middle school level as well. It is unclear whether the growth is due to increased awareness of the issue or to a rise in the behavior. (Health study: 1 in 5 students practice self-injury, www.cnn.com June 5, 2006.)

Cutting and other SIB is also a growing concern among correctional facilities, including juvenile institutions. This rise is due in part to increased incarceration of mentally ill people. While many of these injuries can lead to suicide, not all SIB is undertaken for the purpose of causing death. A deeper understanding of SIB might help those who work with youth and adult inmates to better understand and treat the behavior.

There are four different functions of SIB. First, some people who practice SIB are suicidal, and SIB is a way for them to punish themselves. Second, some are mentally ill and have delusions that tell them to hurt themselves. Third, others have borderline personality disorder and use cutting as a way to disassociate and soothe themselves. Finally, there are some who use cutting to manipulate and to have control over their environment.

Experts in self-injurious behavior point out the need to distinguish when SIB is an attempt at ending one's life as opposed to a self-soothing action or a cry for attention and help.

It is essential that individuals involved in SIB are provided a diagnostic assessment, a good suicide assessment, an in-depth review of their psychological history and an interview to identify triggers in order to reveal what is behind the SIB.

There are a variety of ways in which SIB may be effectively managed including medication, a change in placement and education on the tools for individuals to help themselves manage their behaviors.

One therapy that is being used successfully in correctional settings is Dialectical Behavioral Therapy (DBT) which works with people with SIB to accept themselves as they are while working with them to change their behavior. As part of their treatment, each patient learns mindfulness, emotional regulation and interpersonal effectiveness skills. In the community at large, DBT has resulted in a thirty percent reduction in SIB.

A sixteen-week trial in which DBT was adapted for inmates was well received by correctional staff in Connecticut prisons. The adaptations included the addition of graphics to the reading materials which were re-written at a fifth grade reading level and utilized examples relevant to the correctional environment. Inmate treatment also used alternatives to the practice of following the initial program with individualized treatment. Trials in Washington State have also proven successful.

Challenges to establishing DBT programs in the correctional setting include the need for support and staffing. Furthermore, the program stressed it should be followed as designed or important elements will be missing which will render the application of the program ineffective. Despite the challenges, those who have used the program say it is worth the effort in order to address SIB in correctional facilities. Cutting, Banging, and Self-Injurious Behavior Among Inmates, by Michelle Gaseau, November 21, 2005. (http://www.corrections.com/news/archives/results2.asp?ID=14367)

Save the Date:
16th National Conference on Child Abuse and Neglect
April 16 - 21, 2007
In Portland, OR

Call for Abstracts

The Conference theme is Protecting Children, Promoting Healthy Families, and Preserving Communities. Plan to join the Office on Child Abuse and Neglect and more than 40 National Co-Sponsors in Portland to forge new partnerships, exchange cutting-edge information on research, review model programs, and learn innovative techniques that hold promise for mobilizing communities on behalf of children and families.

Abstracts can be submitted electronically at:
www.pal-tech.com/web/callforpapers/
Any questions, please email 16conf@pal-tech.com or by phone at 703-528-0435. Remember - you can create your abstract in WORD and cut and paste it into the application.

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JUVENILE LAW ATTORNEYS:

SAVE THE DATE!

ADVANCED SEMINAR ON PERMANENCY HEARINGS AND TERMINATION OF PARENTAL RIGHTS CASES

WHEN: Monday and Tuesday, October 16 and 17, 2006 (during the annual judicial conference)

WHERE: Red Lion Hotel Conference Center, Coburg Rd., Eugene, Oregon

WHAT: This will be a two-day conference covering the substantive, procedural and evidentiary law applicable to permanency hearings in juvenile dependency cases and to termination of parental rights cases. It will be designed for experienced lawyers but open to other lawyers as well. National and local presenters will discuss case presentation and evidentiary issues. Experts will talk about some of the conditions that give rise to parental unfitness and their significance. Other presenters will discuss: extreme conduct cases, the role of the lawyer for the child, ICWA cases, representing incarcerated parents, and other issues. Comprehensive materials will be provided.

COST: Contributions from the sponsors of this event – the Juvenile Court Improvement Project, the Oregon State Bar (Juvenile Law Section), the Juvenile Rights Project, the Oregon Criminal Defense Lawyers Association, the University of Oregon Law School, and the Office of Public Defense Services – will help to keep the cost of this CLE low.

REGISTRATION: Registration for the conference will begin in the late summer.

AG Crime Victims' Advisory Committee

Many Oregon laws, both in the state Constitution and in statutes, address crime victims' rights. However, victims' rights advocates have been concerned because even those familiar with victims' rights advocacy experienced difficulty locating and understanding some of these rights.

In 2002 Portland State University conducted a Crime Victims Needs Assessment in which fifty-nine percent of victims indicated that they believed crime victims' rights were not enforced in their situations. While there has been some progress indicated in follow-up interviews, most agreed there was room for improvement.

In response to awareness and enforcement concerns, Oregon Attorney General Hardy Myers appointed a three-year Crime Victims' Rights Advisory Committee, which is funded by the U.S. Department of Justice, Office for Victims of Crime. The committee is responsible for developing a plan to ensure that crime victims are aware of and able to exercise the rights afforded to them.

Doug Beloof chairs the committee which is made up of twenty-four representatives from various fields
(Continued, p. 14)

Briefing Paper: Redirecting Youth from the School to Prison Pipeline

By Gloria Trainor, Law Clerk

The Youth Transition Funders Group (YTFG) issued a briefing paper in November 2005 titled "Redirecting Youth from the School-to-Prison Pipeline; Addressing Cross-Cutting Issues in Youth Services". The following contains selected information from the article by Miller, Ross and Sturgis.

The term "school-to-prison pipeline" refers to a dynamic where, rather than preparing youth for college and successful careers, educational systems are actually turning out unprepared teenagers who move much too easily from school to juvenile detention centers, and sometimes to the adult prison system. The YTFG has identified two common practices that require systemic change in order to put an end to this phenomenon.

The first is the overuse of exclusionary discipline (i.e., suspension and expulsion) and "zero tolerance" policies. The YTFG points out that research has proven these strategies to be ineffective in correcting behavioral issues for adolescents transitioning to adulthood. Developmentally appropriate policies, with a focus on academic success and early intervention, are needed to replace the popular use of unproductive and exclusionary practices. Keeping youth connected to their home school and the learning environment is a crucial step in correcting the school-to-prison problem.

"The most direct route by which school youth enter the justice system follows from schools' reliance on criminal justice responses as a method of disciplinary control. For overworked school administrators there is a strong incentive to allow or encourage the use of arrest—it often relieves school staff of responsibility for addressing the problem behavior, may remove the need to follow up with the youth's family, and should the juvenile justice system detain or place the youth, the school no longer has to monitor the youth's future behavior. In addition, relying on arrest also removes a youth who is likely to score poorly on standardized tests."

—Joel Miller, Tim Ross, and Christine Sturgis

"…[T]he link between poor educational experiences and the justice system is not automatic, nor does it follow one single pattern. It may include the male youth who graduates from school with poor grades and struggles to find work, and who finds himself spending more time on the street with friends and getting in trouble with the police. It may include the young woman who is arrested in school for a fight, finds her school attendance disrupted by court appearances that lead her to drop out of school, and who later goes to jail for a series of shoplifting offenses. It may include the young man who cannot find a place at school after being released from a juvenile training school for a drug offense and who finds himself out of school, selling drugs and ultimately incarcerated for a drug felony offense. Many young people within the United States have stories similar to these."

—Joel Miller, Tim Ross, and Christine Sturgis

The second issue targeted by YTFG for reform is the existence of biases based on race and ethnicity that funnel youth of color into the school-to-prison pipeline at alarmingly higher rates than white students. The YTFG suggests system accountability for the disproportionate number of minority youth in juvenile detention centers through the use of extensive research and data review.

These two practices have impacts on the nation's economy, local communities, and teenagers themselves that continue long beyond school-aged years. Young adults with criminal records are disadvantaged when it comes to admission to college and employment, and they may even lose their right to vote or to receive student financial aid. Again, these disadvantages disproportionately effect youth of color in comparison to their white peers, furthering the problem of systematic racial and ethnic disparities.

Legislative accountability practices for school districts may actually compound the problem. The No Child Left Behind Act increases school district responsibility for the academic success of its students, but a shortage in resources and funding sometimes results in pressure on the district to retain low-performing students or to encourage them to obtain a General Equivalency Diploma (GED) rather than a standard high school diploma. The YTFG is concerned with the possibility that these dynamics "pave the way" for students to drop out of high school and/or become involved with the juvenile justice system. (continued, page 14)

Juvenile Defender Delinquency Notebook Available Online

The National Juvenile Defender Center has announced the availability of the 2nd Edition of the *Juvenile Defender Delinquency Notebook*.

This guide, updated and improved for 2006, describes in detail and with practical explanations how to zealously and effectively represent youth in delinquency cases. The *Delinquency Notebook* is an invaluable tool for new juvenile defenders or attorneys looking to improve their advocacy in many areas of juvenile defense. The 526 page guide is divided into eleven chapters including:

- An overview of the Role of the Juvenile Defender
- Initiating the Attorney-Client Relationship
- Mental Health & Competency
- Arrest & Processing
- Discovery & Investigation
- Developing a Defense
- Pre-adjudication Proceedings
- Transfer to Criminal Court
- Plea Bargaining
- Adjudication
- Disposition
- Appeals and Related Proceedings.

Appendices include sample documents, principles and standards and contacts and resources.

To download an electronic version of this advocacy and training guide, please go to: http://www.njdc.info/pdf/delinquency_notebook.pdf

Mental Health Organization Enrollment, continued from p. 4

children on open OHP cards who are receiving residential or day treatment services, because OMAP treats them as "all-inclusive" mental health services.

The bulletin announcing the temporary rule change can be found at: http://arcweb.sos.state.or.us/rules/0606_Bulletin/0606_ch410_bulletin.html

Other Resources: The 2005-2006 contract between the DHS Office of Mental Health and Addictions Services can be found at:

http://www.oregon.gov/DHS/mentalhealth/mho/mho-agreements/05-06/main.shtml

Information on the Children's Mental Health System Change can be found at:

http://www.oregon.gov/DHS/mentalhealth/child-mh-soc-in-plan-grp/main.shtml

City of Portland Looks at Extending 'Sit-Lie' Ordinance

The Oregonian reported on May 24, 2006, that Mayor Tom Potter and the City of Portland will consider extending the so-called 'sit-lie' ordinance for six months past its scheduled expiration in June.

The ordinance forbids people from sitting on public downtown sidewalks or creating a "trip hazard."

The 9th U.S. Circuit Court of Appeals had ruled this spring that municipalities in which the number of homeless people outnumber the city's shelter bed capacity cannot enforce laws prohibiting lying, sleeping or sitting on streets and sidewalks, according to the *Oregonian* article.

Kathy Oliver, director of a program serving homeless youth, Outside In, criticizes the city's approach. She states in the article that it doesn't do any good to move homeless people off of sidewalks when they have nowhere else to go.

Neither Mayor Potter nor the Portland Police Bureau see the ordinance as particularly effective, and the Mayor has also called for a committee to study and recommend ways to obtain new services for homeless people, as well.

ONLINE RESOURCES

Moving on: Analysis of Federal Programs Funding Services to Assist Transition-Age Youth with Serious Mental Health Conditions reviews fifty-seven federally funded programs which can help youth with serious mental health conditions transition into adulthood. The programs vary in purpose and target population. A few are aimed at economically disadvantaged people, some target youth generally, a number of programs focus on transition, and some are specifically for youth with disabilities. The paper identifies barriers with certain programs, including age limits, financial eligibility requirements, and funding availability, but emphasizes that there are many programs to help each youth transition smoothly. Sections of the review are available online at http://www.bazelon.org/publications/movingon/.

Fostering Hope: Preventing Teen Pregnancy among Youth in Foster Care was a collaboration between The National Campaign to Prevent Teen Pregnancy (www.teenpregnancy.org) and Uhlich Children's Advantage Network (www.ucanchicago.org.) The report examined many studies which show that foster care youth experience higher rates of sexual activity and teen pregnancy. Foster youth also generally have sex at a younger age, engage in a higher risk of sexual activity, and are more likely to carry a pregnancy to term compared to non-foster care youth. Through a qualitative study utilizing focus groups with foster youth (including teen parents) and their foster parents, the study was able to highlight patterns, some of which are common among all youth and some of which are unique to foster youth. Some of the patterns the study identified include: foster youth are pressured to have sex, they often lack (but want) strong relationships with adults, and they see benefits in having children. The foster care youth say they have access to information, services and contraception to prevent pregnancy but view it as too little too late or say they are not motivated to utilize the resources. Additionally, the study found that foster youth are thinking about the future, but act on impulse. The study also found that there is a lack of trust between the genders, for example some boys think girls get pregnant on purpose and some girls think boys get them pregnant on purpose. Finally, the foster youth said they thought it would be important to hear from teen parents about the consequences of early teen pregnancy. The article is available online at http://www.teenpregnancy.org/resources/reading/pdf/Fostering_Hope.pdf.

Pipeline, continued from p. 11

There are several promising practices that may ameliorate these systemic problems. Partnerships between public systems will undoubtedly raise students' academic accomplishments and lessen discipline problems, a positive alternative to excluding these students and feeding the school-to-prison pipeline. In addition, information sharing and joint responsibility for children's education and welfare between school districts and the juvenile justice system can serve to prevent children from "falling through the cracks."

Specific practices, such as placing social workers in schools can facilitate the early identification of students with low academic achievement or behaviors that interfere with the learning environment. These professionals can assist identified children in accessing the extra help and services they need to help them achieve success.

The report also cites examples of police bureaus that have changed their practices in responding to student behavior in school. The Baltimore, MD, police, for example, strove to reduce the incidence of student arrests and focus instead on diversion to teen court, community conferencing and community mediation.

Crime Victims, Continued from Page 11

of expertise. Twenty-two additional members serve on the six subcommittees. At the end of the first year, the committee was reviewing a Compliance Implementation Draft that is intended to address many of the problems facing crime victims.

The Compliance implementation Project was undertaken to increase awareness of and compliance with victims' rights laws, implement training and a system for reporting and resolving noncompliance, assess the effectiveness of the efforts, and assess any additional resources that are needed to ensure effective implementation, even after the end of the three year program.

From The Oregon Crime Victims' Rights Compliance Implementation Project, by Carol Schrader, Volume 47 MDT Quarterly, April 2006.

Delinquency System Critique, Continued from p. 1

against incarcerated children in the form of overcrowding, understaffing, neglect of medical and mental health needs, failure to provide educational services, beatings, sexual violence, chemical exposure and death.

The Department of Justice body charged with inspecting these facilities under the Civil Rights of Institutionalized Persons Act (CRIPA) described the conditions in many of these facilities as "barbaric."

The article, however, notes that one state had been successful in the treatment and rehabilitation of delinquent youth. Part II explains how Missouri avoided these tragic pitfalls in institutions by implementing a creative, reformative program for youth offenders.

The Missouri model employed a treatment-oriented solution to its juvenile crime problem: consistent therapy and supervision in small, community-based facilities near the child's home and community ties.

The Missouri juvenile justice system ensures the least restrictive placement possible, in-depth assessment of youth, separation of violent offenders from more vulnerable youth and an emphasis on community service. By shifting its goal from retribution to rehabilitation, Missouri managed to reduce recidivism, and consequently public expense, to the lowest in the nation.

Drawing from the Missouri model, Part III of the article suggests an eight-step blueprint for a successful juvenile reformation program:

1. *Political will.* Decision-makers must show willingness and commitment to "recalibrate the delicate balance between rehabilitation and incarceration." *Id.* at 1071. The pendulum of public opinion has swung from the retribution hungry attitudes of the mid-1990's to a society in favor of effective treatment of youth. Abrams explains that the powers-that-be can tap into shifting opinion by rephrasing a focus on treatment from "soft" and "coddling" to common-sense and smart.

2. *Prevention programs.* Though unpopular due to upfront expenditures, prevention programs (or "accelerated diversion") have proved an effective alternative to approaches aimed at reaction and punishment. By mitigating the underlying causes of juvenile violence through recreation, education, job training, mentoring, tutoring, positive supports and ties to committed adults, a state avoids youth contact with the juvenile system and up to $270/day in confinement costs.

3. *Small, regional facilities.* The Missouri juvenile system has devolved its youth confinement to small facilities near the youth's family and community ties. Since personal attention fosters rehabilitation, this model lowers recidivism and state expenditures.

4. *Therapeutic attitudes.* Small facilities alone do not immediately result in rehabilitation. They must be staffed by personnel committed to an emphasis on treatment and reform.

5. *Education and Vocational Training.* Many states surveyed failed to meet the general, special and vocational needs of the youth mandated by IDEA, the Rehabilitation Act and state constitutional guarantees of free public education—setting up the youth for failure upon release. An ideal system offers education provided by qualified instructors with adequate supplies and time to devote individual attention to the needs of the youth.

6. *Classification.* Some of the violence and abhorrent conditions found in juvenile incarceration systems resulted from poor classifications—dangerous youth placed with vulnerable youth without thought to consequences. In fact, most incarcerated youth are low-level offenders with low public safety risk, or youth with behavioral, mental health or substance abuse issues. An effective juvenile justice system performs a risk assessment on each youth using age, size, background and temperament as key factors, so that appropriate and safe placements may be assigned.

7. *Mental health treatment.* Recent studies have shown that youth with mental illness, mental health disorders, substance problems and serious emotional disturbance represent an alarming percentage of incarcerated youth. Prison-like environments worsen these conditions, as they sit warehoused in a facility indefinitely. These children would benefit from a less restrictive environment and access to adequate mental health care.

8. *Aftercare (Reintegration and Reentry).* To facilitate transition back into society and lessen recidivism, the article recommends a system of aftercare that parallels probation but actually provides services necessary to reintegrate: life-skills and employment training. This transition should start long before the youth's release from custody.

The Oregon Law Review article is available on-line at: http://www.law.uoregon.edu/org/olr/archives/84/844abrams.pdf

Children enrolled in the Oregon Health Plan are entitled to medically appropriate mental health services.

Oregon Advocacy Center
and Juvenile Rights Project, Inc.

Children's Mental Health Access Project

The Oregon Advocacy Center and Juvenile Rights Project, Inc. are pleased to announce the Children's Mental Health Access Project. JRP and OAC advocates are available to assist enrolled children and their parents or guardians access Oregon Health Plan-covered services, such as:

- **Intensive Community-Based Treatment Services (e.g., home/community supports)**
- **Respite Care**
- **Intensive Treatment Services (residential or day treatment services)**
- **Outpatient Care**
- **Care Coordination**

OAC and JRP advocates can provide assistance when OHP-enrolled children are denied medically appropriate mental health services, when covered services are not delivered with reasonable promptness, or when the agreed-upon services are not properly delivered.

JRP and OAC can advocate with Mental Health Organizations and/or providers to ensure that OHP members receive the services to which they are entitled, and, if necessary, help children and families file grievances and requests for Medicaid fair hearings (appeals), including representation in cases that go to a hearing.

Children's Mental Health Access Project services are provided free of charge.

Oregon Advocacy Center
and Juvenile Rights Project, Inc.

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