

Back to School Issue

Children involved in juvenile court dependency and delinquency systems face exceptional challenges related to school participation and success.

Ample research has shown that foster children experience very poor educational outcomes related to school stability, academic achievement, high school completion and matriculation to higher education. For example, a study done by the Casey Family Foundation on young adults who spent time in foster care in Oregon and Washington found that:

- 65% of former foster youth changed schools seven or more times.
- 30.2% experienced 10 or more school changes.
- 28.5% of youth in the Casey study who completed high school did so with a GED (compared to 5% of all youth).
- Only 2.7% of former foster youth aged 25 or older had completed a bachelor's or higher degree (compared to 27.5% of the general population).

(See: "Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study,

["http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm"](http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm))

National studies have estimated that the incidence of education related disabilities may be as high as 70% among juvenile justice populations and 50% among foster care populations. Rates of disabilities among the student population overall are roughly 12%.

A 2000 article published by the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) notes that "youth with learning disabilities or an emotional disturbance are arrested at higher rates than their non-disabled peers." ("Special Education and the Juvenile Justice System," http://www.ncjrs.gov/html/ojjdp/2000_6_5/contents.html)

This issue of the Juvenile Law Reader provides information and tools for attorneys and advocates who serve juvenile court-involved children.

American Academy of Pediatrics Policy Statement on Suspension and Expulsion

By Mark S. McKechnie, MSW

In November 2003 the American Academy of Pediatrics (AAP) issued a policy statement on "Out-of-School Suspension and Expulsion." It states: "Suspension and expulsion may exacerbate academic deterioration, and when students are provided with no immediate educational alternative, student alienation, delinquency, crime, and substance abuse may ensue." (*Pediatrics*, November 2003)

The AAP Committee on School Health recommended: "Out-of-school placement for suspension or expulsion should be limited to the most egregious circumstances. For in-home suspension or expulsion, the school must be able to demonstrate how attendance at a school site, even in an alternative setting with a low ratio of highly trained staff to students, would be inadequate to prevent a

(continued on page 16)

Inside this issue:

Attorney Standards: Children's Educational Needs	2
Special Education; Educational Advocacy Toolbox	3
Preventing School Disruptions; Physical Restraint	4
FAQs on School Registration and Attendance	5
Homeless Students	7
Trainings and CLEs; In the News: Fostering Success	11
Consequences of Abuse and Neglect; Parenting in Prison	12
Early Bx. Predicts Subst. Abuse; Working with Fathers	14

Attorney Standards: Educational Advocacy

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Dear Readers –

It's time for children to head back to school. Our child and youth clients (and the children of our parent clients) are heading back to school, too, and their needs often require special attention.

We are pleased to bring

you this special edition of the Juvenile Law Reader focused on education law. The importance of a successful educational experience for these children cannot be exaggerated. School is not only the major activity in their lives, but success or failure in school can determine or influence success or failure in placement and treatment, as well as achievement of future educational and employment goals. An attorney who fails to recognize the important role of education in the life of a child misses opportunities for advocacy that could alter the course of that child's life!

As the data in articles on page 1 indicate, children and

youth in foster care and the juvenile justice system are at high risk for extremely poor outcomes. The risk factors that bring the court system into their lives also threaten their school success. This lack of success, in turn, leads to very poor outcomes in school and later in life.

When children are placed in foster care, their lives are turned upside down through no fault of their own. How would any of us deal with having to live in a stranger's home with foreign rules, customs, sounds and smells? Moving into foster care often means missing school or having to change schools. Considering all of these factors, the reason that such children experience high rates of school failure and discipline become apparent.

Attorneys for parents should discuss the advantages of being actively involved in the child's school issues, even if the parent(s) does not agree with the child being in foster care. Supporting the child's educational needs:

- Shows the parent's concern for their child's education;
- Ensures foster parents have full knowledge of the child's educational history;
- Ensures continuity of educational planning, and
- Aids reunification.

It can be very rewarding to advocate for a child or youth's educational needs and to know that getting them on the right track educationally may be the most positive thing you can do.
(continued, p. 8)

Correction

The article entitled, "Protections Weakened for Students with Disabilities under IDEA 2004 Reauthorization," in the June/July issue of the Juvenile Law Reader was based largely on an article by Linda Boyd in Volume 8, Issue 2 of Children's Rights entitled "Discipline of Students in Special Education: Part II." This citation

Special Education ABCs

Children with disabilities

Individuals with Disabilities Education Act (IDEA): The IDEA, amended in 1997 and reauthorized in 2004, states that all children with disabilities which impact their ability to make educational progress have a right to a free appropriate public education (FAPE) in the least restrictive environment possible (LRE). LRE ensures children with disabilities receive the same instruc-

tion in the same setting as their non-disabled peers to the maximum extent possible. An appropriate education is a program designed to meet the child's unique education needs and prepare them for further education, employment, and independent living. IDEA 20 USC §1400(d)(1)(A)

In order to qualify for IDEA services, the school and child's parent must identify the child as having a

qualifying disability that impacts the child's ability to make educational progress. 20 USC §1401(23) and 34 CFR §300.7

Section 504 of the Rehabilitation Act: Section 504 prohibits discrimination against students with disabilities in federally-funded schools and requires the schools to be proactive to ensure the students receive an

(continued, p. 7)

Educational Advocacy Toolbox, by Amy Miller, J.D.

Quality education

No Child Left Behind Act of 2001(NCLB): The purpose of NCLB is "to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments." Under the Act, children attending schools "in need of improvement" for two consecutive years must be given the opportunity to attend higher-performing schools. Schools that fail to meet state standards for three of four sequential years must provide supplemental services, such as tutoring and academic support, to low-income students.

In addition, the IDEA's 2004 amendments are specifically coordinated with NCLB. This means that special education advocates may be able to use a school's failure to meet NCLB requirements as evidence that a child did not receive an appropriate education. (For information on the interplay of NCLB and IDEA, see: "10 Tips: How to use IDEA 2004 to Improve your Child's Special Education" at www.wrightslaw.com.)

Records

Family Educational Rights and Privacy Act of 1974 (FERPA): FERPA requires states to protect the privacy interests of parents and students regarding education records. Most notably, it provides the right not to have education records released to third parties without parental consent. However, there are numerous exceptions within the child welfare context which allow disclosure without consent, including: to other school officials with the legitimate educational interest of the child in mind, appropriate persons in the case of emergency when necessary to protect the student or others, officials when the student is transferring schools, and to comply with a subpoena or judicial order. Oregon's juvenile code allows juvenile attorneys to receive the school records of clients without a release. ORS 419B.195(2) and 419C.200(2).

School stability

House Bill 3075 (2005 amendments to ORS 339.133): This bill allows foster children, or those entering foster care, to remain in their previous school even if the change

in placement results in a move to a new school district. For details on HB 3075, see *Law Reduces School Disruptions for Foster Children* in this edition of the Reader.

McKinney-Vento Homeless Assistance Act: Amended in 2001, this Act provides federal funding to ensure homeless children and youth receive a free, appropriate public education. For details on McKinney-Vento, see *School Supplies: The Rights of Homeless Students* in this edition of the Reader.

Teenagers

House Bill 1034 (2005 amendments to ORS 418.625 & 419B.337): This bill extends the amount of time youth may spend in foster care, so that commitment to DHS may continue until a youth becomes 21 years of age. ORS 419B.337(5) In addition, the bill imposes requirements upon DHS before the court may dismiss the commitment including: case planning for a successful transition to independent living, appropriate provision of services for the youth, and safe and stable housing so that the youth is unlikely to become

(Continued, p. 15)

Law Reduces School Disruptions for Foster Children

By Jennifer McGowan, Staff Attorney

With the new school year fast approaching, it is important to remember that there is a tool available to help foster children remain in the schools they know when they move into foster care or between foster homes. HB 3075 was signed into law in July 2005, and it went into effect in time for the 2005-06 school year. The law, introduced at the request of the Juvenile Rights Project, Inc., seeks to reduce the school mobility many foster children experience.

The Oregon Department of Human Services estimates that roughly 30% of school-age foster children move within a given school year. Experts estimate that each

school move can cause a loss of educational achievement of up to 6 months, not to mention the loss of positive community connections and supports a child may have developed in their former school placement. Given the loss and trauma that most foster children have experienced, school disruptions can have particularly significant impacts on their lives.

HB 3075 amended ORS 339.133 to allow children who move from one school district into another when they change placements or enter the foster care system to remain in their previous school. They can remain in their school through the highest grade

level of that school. The law requires that a juvenile court make a best interest finding to allow the child to remain in their current school. ORS 339.133(5)(a)

The law impacts the way in which school districts receive funds for these children, ensuring that the funding stays with the child when they change school districts. This ensures that the district educating the child receives the appropriate funding to do so.

To facilitate this school stability, the law directs DHS to pay for the transportation costs to and from school. ORS 339.133(5)(b).

(Continued, p. 14)

Physical Intervention: A Slippery Slope

By Mark McKechnie

Clarence Sundram, the president of Mental Disability Rights International published an opinion piece in the *Albany Times Union* on July 16, 2006. In it, Mr. Sundram criticizes the reported practice in New York of placing approximately 170 children with autism, developmental disabilities and emotional problems each year in out-of-state facilities which use "aversive therapy" methods.

These methods include: electric shocks, withholding food, hitting, slapping, pinching, kicking, hurling, strangling, shoving, deep muscle squeezes and the like, according to Sundram. The State Board of Regents in New York has recently placed tighter restrictions on the use of aversive methods by New York educational programs.

Mr. Sundram attributes the use of these aversive methods, which are typically not used in Oregon, as well as physical restraint, which is more commonly used in Oregon hospitals, residential facilities, other treatment

programs and correctional settings, to a program's philosophical beliefs about behavior and treatment.

Sundram expresses particular concern about the justification that physical intervention and aversive therapies are necessary to address dangerous behaviors. He argues that: "The license to shock, hit and hurt becomes a self-fulfilling prophecy... They invite an abuse of authority and power struggles between children and staff in which children invariably risk being tortured or tormented into submission."

He goes on to say: "This means of trying to change behavior can become a contagious coping mechanism for over-stressed staff. Once staff are authorized to hit or shock residents, initially in response to behaviors that are characterized as dangerous, there is a continual tendency to broaden that authorization to other conduct, including so-called 'precursor behaviors,' until the entire focus of the program becomes the use of pain to

achieve control."

In Oregon, psychiatric residential treatment facilities voluntarily report data on restraint and seclusion to the Office of Mental Health and Addictions Services on a quarterly basis. Psychiatric day treatment programs in Oregon do not report data on their use of seclusion and restraint.

Residential programs as a whole reported that roughly 35% to 44% of clients were physically restrained at least one time during a given quarter between 2003 and the first three months of 2006. The range for individual programs varied widely and changed over time.

One Oregon program reported that over half of the children housed there were restrained in every quarter over three years, including the first quarter of 2005, where it reported that 100% of children residing there were restrained at least once during that time. Their rate of physical restraint (cont'd, p. 13)

Frequently Asked Questions about School Enrollment and Attendance

Q: Who has to go to school?

A: State law requires children between the ages of 7 and 18 years of age who have not completed the 12th grade to "attend regularly a full-time school of the school district in which the child resides." ORS 339.010

Q: Obviously, there are exceptions. What are they?

A: Exceptions to ORS 339.010 are listed in ORS 339.030. They include:

- Children who are attending private or parochial schools with courses of study that are equivalent to public school curricula.
- Children who can prove to the local school board that they have acquired knowledge equivalent to a 12th grade education, e.g., students who have completed a General Equivalency Diploma (GED).
- Children receiving home schooling or taught by a private teacher.
- Children excluded due to disciplinary actions or other provisions of state law.

Q: I thought that teenagers who are 16 or 17 years-old can drop out of school. Isn't that true?

A: Not exactly. The parent or guardian of a 16 or 17 year-old child can request an exemption to compulsory attendance according to procedures set by the State Board of Education. Exemptions may be granted if the child is:

- Employed full time.
- Employed part time and enrolled in a school, community col-

lege or alternative school program.

Exemptions can also be granted to children who have been legally emancipated or who have initiated the process to be emancipated under ORS 419B.550 to ORS 419B.558. [ORS 339.030(2)]

Q: Sometimes schools will say they cannot enroll a student. Are they allowed to do that?

A: There are many factors that may impact where a child enrolls in school, but ORS 339.115 requires that the child's school district of residence admit free of charge all persons between the ages of 5 and 19 who reside in that school district. A 19 year-old is entitled to enroll in a public school and receive a "free and appropriate public education" for the remainder of that school year.

Q: I have been told that schools will not enroll high school students who do not have enough credits to be able to graduate "on time". Can they do that?

A: ORS 339.115 does not appear to allow school districts to refuse admission to persons under the age of 19 on the basis of the number of high school credits they have obtained (or failed to obtain). In fact, such students may be entitled to attend a public school program until the age of 21 (see next question).

Q: Some students can go to school until the age of 21. How does that work?

A: Districts must admit students up to the age of 21 if the student is receiving special education services

and has not yet received a regular high school diploma. ORS 339.115(2)(a) School districts are also required to admit persons up to the age of 21 if they are "in need of additional education in order to receive a diploma." ORS 339.115(2)(b)

Q: Some districts question whether a child really lives in their district or not. What happens in those cases?

A: ORS 339.115(7) requires school districts to admit a child located in the district even if the child does not have a fixed place of residence or the child is not under the supervision of a parent or legal guardian in their current location. (See articles in this issue regarding federal and state statutes concerning school enrollment for homeless children and foster children on pages 4 & 7.)



"Education makes a people easy to lead, but difficult to drive; easy to govern but impossible to enslave."

Baron Henry Peter Brougham

Behind Desks or Behind Bars: Studies Show We Can Choose to Educate or Incarcerate by Mark McKechnie

The Alliance for Excellent Education published a policy brief in August 2006 entitled, "Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings."

The report states that the U.S. spent nearly \$50 billion on incarceration costs in 2004, at an average of \$22,600 per inmate. We spent an average of \$9,644 per student on education.

The report states that about 75% of state prison inmates, 59% of federal prison inmates and 69% of jail inmates in the United States did not complete high school.

The Alliance calls for an effort to improve high schools nationwide in order to improve high school graduation rates.

The report makes a compelling case for an investment in increasing the number of young people who earn high school diplomas:

"Using methods outlined by

economists Lance Lochner of the University of Western Ontario and Enrico Moretti of the University of California, Berkeley (2004), the Alliance for Excellent education conservatively estimates that, if the male graduation rate were increased by just five percent, *annual crime related savings* to the nation would be approximately \$5 billion...

"Beyond the savings related directly to crime reduction, almost \$2.8 billion in *additional annual earnings* would enter the economy if more students graduated from high school."

The report includes a chart with the estimated impact of a five percent increase in male high school graduation rates by state.

For Oregon, a five percent increase in the male graduation rate would yield an estimated \$21.05 million in crime related savings. The additional estimated annual earnings for those high school graduates would be \$30 million.

Thus, the net economic benefit to the state would be approximately \$50.1 million.

The report cites a 2003 survey in which: "Over a third of jail inmates said the main reason they quit school was because of academic problems, behavior problems, or lost interest."

Out of four million students who entered the 9th grade four years ago, an estimated 1.2 million of them did not earn a regular diploma this year.

The Alliance argues for school reform that includes interventions that bring struggling students up to grade level, real world experiences in the classroom and school environments that support excellence in learning and teaching.

The report can be found on-line at:
<http://www.all4ed.org/publications/SavingFutures.pdf>

"Our progress as a nation can be no swifter than our progress in education. The human mind is our fundamental resource."

"Let us think of education as the means of developing our greatest abilities, because in each of us there is a private hope and dream which, fulfilled, can be translated into benefit for everyone and greater strength for our nation."

John F. Kennedy (1917 - 1963)

The Rights of Homeless Students

By Brian V. Baker, Staff Attorney

**Special Ed., continued
from p. 3**

The intent of the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 (McKinney-Vento), 42 USC 11431 et seq. is to ensure that children and youth who are homeless have equal access to a free and appropriate education as provided to other children and youth.

"Homeless" is broadly defined to include children and youth who: lack a fixed, regular, and adequate nighttime residence; are sharing housing due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate housing; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

The Act covers children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation; children and youths living in cars, parks, public spaces, abandoned buildings, substandard housing, bus stations, or similar settings. The Act also covers migratory children living in the aforementioned circumstances. (Sec. 725 (2) (B)).

McKinney-Vento requires public schools to immediately enroll homeless students, even in the absence of records (school, medical or immunization records), or absent a parent or legal guardian; to promptly provide services, such as transportation, educational services (including special education, and ESL services); vocational and technical education; and school nutrition. The Act requires that school districts do not segregate homeless children and youth in a separate school. (Sec. 722 (e) (C)).

The Act permits homeless students, when it is in their best interest, to continue to attend the last school attended prior to becoming homeless, for the remainder of the academic year. This provision continues even if the child or youth becomes housed during the academic year, and requires the public school districts (where the child is temporarily housed and the district with the school of origin) to share transportation costs. If disputes arise as to attendance at the school of origin, the child shall be admitted to the school of origin pending resolution of the dispute. (Sec. 722(g)(3)).

Finally, the Act requires state education agencies to appoint a "Coordinator for Education of Homeless Children and Youth." Oregon's McKinney liaison is Dona Bolt, at the Oregon Department of Education. The Act also requires local school districts to identify a McKinney liaison, who has the responsibility to assist families with access to school and supportive services. (Sec. 722 (f) and (g) (6)).

appropriate education. Under Section 504, schools must meet with parents to determine eligibility and available accommodations. Accommodations available under Section 504 include additional time on tests, use of computer for assignments and additional tutoring. 34 CFR 104(3)(j)(2)(ii)

All students who qualify for IDEA are eligible for 504 services, but many children ineligible for IDEA may still be eligible for Section 504 accommodations. To qualify for IDEA, the student must require "specially designed" instruction to address a disability affecting academic progress, while under Section 504 the disability must affect a major life activity.

Oregon IEP resources:

Oregon Standard Individualized Education Program (IEP) forms and instructions:

<http://www.ode.state.or.us/pubs/forms/iep/>

Includes forms in English, Spanish, Chinese, Russian and Vietnamese.

Information on specific disabilities covered by the Individuals with Disabilities Education Act (IDEA):
<http://www.ode.state.or.us/policy/federal/idea/specifdisabil/specdis.aspx>

Disabilities covered by the IDEA include:

Mental Retardation, Hearing Impairment, Visual Impairment, Deaf-blindness, Communication Disorder, Emotional Disturbance, Orthopedic Impairment, Traumatic Brain Injury, Other Health Impairment, Autism Spectrum Disorder and Specific Learning Disability.

*"Next in importance to
freedom and justice is
popular education,
without which neither
freedom nor justice can
be permanently
maintained."*

—James A. Garfield

(1831 - 1881)

Educational Advocacy, continued from p. 2

While much educational advocacy can be done outside of school – meeting with the caseworker or appearing in court – attorneys can be particularly effective when they advocate for their client directly with school teachers and administrators.

You may say: “But I don’t know anything about education law!” That was roughly my reaction, when for the first time, as a young attorney, a caseworker asked me to come to a school meeting on behalf of a client she thought was getting a bum deal from the school. Luckily, it was not a complicated legal matter, and just being there seemed to result in a much better outcome for my client. There are a number of good resources now available to help you get familiar with education issues, some of which are listed in this issue on pages 15-16.

A CHILD’S EDUCATIONAL NEEDS AND THE ATTORNEY STANDARDS

Just as with younger children, for whom it is important for attorneys and the court to understand and track their achievement of developmental milestones, counsel should also be aware of the academic achievement and social goals for school-age children. Attorney advocacy and the power of the court can help bring to bear resources to assure that foster children are academically and socially on track.

The standards that guide us as attorneys in fulfilling our ethical obligations to our clients emphasize the importance of understanding child development and obtaining information and records from schools. See, e.g., Oregon State

Bar Association, Specific Standards for Representation in Criminal and Juvenile Delinquency Cases (2005), Standard 2.1, Implementation 2(b),(c) & 4; Standard 2.5, Implementation 1; Standard 2.10, Implementation 1 (b), 3 (c), (d) & (e), and Specific Standards for Representation in Juvenile Dependency Cases (2005), Standard 3.1, Implementation 2(b), 5 & 7; Standard 3.7, Implementation 3, 6 & 8; and Standard 3.12.

Federal statutes and national standards of representation for children’s attorneys also emphasize the need for training about educational issues and educational advocacy for clients. Under the 2003 Reauthorization of the federal Child Abuse Prevention Training Act (CAPTA), states are required to assure that prior to appointment, attorneys who represent children in dependency cases receive training on a number of issues, including education.

The American Bar Association’s Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases include several standards relating to education:

- The child’s attorney should identify education services for which the child will qualify and teachers with whom the child feels it is important to maintain contact (Standard B-1 and Commentary);
- The child’s attorney should meet with the child when the child has received a school suspension or other similar changes (Standard C-1 Commentary);
- The child’s attorney should conduct thorough, continuing and independent investigations, which may include:

- (1) Reviewing school records;
- (5) Obtaining necessary authorizations for the release of information;
- (6) Interviewing individuals involved with the child, including school personnel;
- (8) Attending . . . school case conferences or staffings concerning the child. . . to present the child’s perspective . . . even if courts will not compensate the attorney for these collateral meetings. (Standard C-2)

- The child’s attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child’s interests and to implement a service plan, including educational services (Standard C-4);
- The child’s attorney should assure that a child with special needs receives appropriate services to address the physical, mental or developmental disabilities, which may include special education and related services (Standard C-5).

8 THINGS ATTORNEYS CAN DO TO PROMOTE EDUCATIONAL SUCCESS FOR CHILDREN AND YOUTH

1. ASK THE CLIENT – Attorneys should obtain detailed information about the child or youth’s attitudes toward school, educational status and any educational issues as part of the intake interview. Questions should include whether: the child is at grade level in all subjects; the child has regular attendance or has missed significant amounts of school; the child is/was in special education; the child has

(continued, next page)

Educational Advocacy, continued from p. 8

an Individualized Education Program (IEP) or 504 Plan; the child has a behavioral intervention or support plan (BIP/BSP); English is a second language for the child; the child has experienced school moves and the schools the child has attended, and whether the child has been suspended, expelled or otherwise disciplined or excluded from attending school.

2. GET THE RECORDS –

School records can be very useful in preparing a case in chief or a disposition, in addition to providing information for attorney advocacy in educational issues. Attorneys for children and youth are entitled to obtain all types of educational records pursuant to ORS 419B.195 (2) and ORS 419C.200 (2). Records are generally obtained by providing a copy of the attorney's appointment order and a copy of the relevant statute with the request.

Parents are also entitled to obtain school records under Family Educational Rights Privacy Act (for information on FERPA, see: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>).

Attorneys should update school records periodically, getting copies of attendance records, grades, progress and teacher reports and disciplinary referrals.

3. TALK TO SCHOOL PERSONNEL AND OTHERS –

Attorneys should talk to teachers, case managers, caseworkers and foster parents to determine whether the child is on track educationally or has unmet educational needs. Schools are often unaware that a child is in foster care. It can be helpful to the child to sensitize school personnel to the problems faced by foster children.

Foster parents have often been appointed "educational surrogates" for foster children who are eligible or potentially eligible for special education. The 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) includes a presumption that a foster parent will act in the role of the parent when it comes to special education decisions.

Attorneys should help assure that the foster parent has the support and expertise to be the advocate for the child's educational needs. Both the Department of Human Services and the local school district bear responsibility to ensure that foster parents have the information they need to be effective in their roles as educational surrogates. In Oregon attorneys can request that the juvenile court appoint an educational surrogate if it ever becomes necessary. ORS 419B.220 - .223 and ORS 419C.220 - .223. Caseworkers may not serve as surrogates, but sometimes the CASA, the parent or another relative can be appointed.

4. FIND OUT IF THE CHILD IS ON, OR NEEDS AN IEP OR 504 PLAN –

Attorneys should ensure that children can access the free and appropriate public education (FAPE) to which they are entitled. IEP and 504 Plans make special provisions for students with disabilities to ensure that they have the services and placement they need to succeed in school. When education needs are identified, attorneys can be the catalyst to get evaluations and services that can help the child. The list of disability categories which qualify students for special education services can be found on page 7. Section 504 includes protections for all students who qualify for special education as

well as students who have disabilities that are not specifically covered by special education but who may nonetheless need accommodations to assist them in obtaining an appropriate education.

ORS 343.193 requires that public or private officials who are mandatory child abuse reporters under 419B.005 "shall report to the Superintendent of Public Instruction the child's name and the facts leading the official to the belief" that "any child with whom the official comes in contact officially is a disabled child who is eligible for but not enrolled in a special education program."

5. CONTINUE PRIOR PLACEMENT WHEN FEASIBLE –

For many children entering foster care, their school and the supportive relationships they experience there may have been the one positive thing in the child's life. Attorneys can help assure stability and success for these children when appropriate by requesting a HB 3075 motion. (See article on p. 4.) Parents may also be more likely to remain involved in the child's education if they continue to attend the same school.

6. GET EARLY INTERVENTION FOR YOUNGER CHILDREN –

Attorneys should ensure that children three years of age and under have been assessed for Early Intervention services so that any delays can be addressed. See the article on Early Intervention in the *Juvenile Law Reader*, Volume I, Issue 3 (2004) at www.jrplaw.org. Consider whether a younger child should attend Early Head Start, Head Start, pre-school or kindergarten, all of which can be invaluable in bringing a child up to age level for cognitive, language and social development. (next page)

Educational Advocacy, cont'd from p. 9

7. KEEP OLDER CHILDREN AND YOUTH IN SCHOOL – Attorneys should encourage and facilitate older children and youth to remain in school, graduate and pursue post-secondary education. In some cases, this may mean advocating for the child to remain in foster care past their eighteenth birthday in order to complete high school.

There are now a number of sources of financial and other assistance for former foster youth to go to college or obtain other types of postsecondary education or training. (See: <http://www.osac.state.or.us/chafeeetv.html>.)

Unfortunately, too few of our youth are taking advantage of these resources. Too often these children and youth are not adequately encouraged or motivated to pursue higher education.

They also are frequently steered into GED and alternative school programs that do not give them the basic skills they need to score high enough on college aptitude and placement tests without completing remedial courses, which do not qualify for financial aid. Older children and youth need mentors to help them with exploring post-secondary options and financial assistance.

8. ENSURE THAT CHILDREN AND YOUTH ARE FAIRLY DISCIPLINED – Children in foster care and youth in the juvenile justice system are more likely to experience school discipline, including suspension and expulsion. Some behavior leading to discipline results from the child or youth's history of abuse or neglect. These children and youth need strong advocates to ensure that their circumstances are considered before pun-

ishments are imposed.

A student who qualifies for special education may not be able to be expelled if the behavior was a manifestation of the disabling condition. IDEA 2004 includes changes to the manifestation process. See the article in the last issue of the Reader (Vol. III, No. 3, pp. 1 and 9) for information on changes to the manifestation process.

Julie H. McFarlane, Co-Editor,
The Juvenile Law Reader



"Jails and prisons are the complement of schools; so many less as you have of the latter, so many more must you have of the former."

—Horace Mann
(1796 - 1859)



The foster care system yields discouraging results (Research cited in *The Oregonian* on 8/28/06):

A national 1992 Westat study of former foster youths found:

- More than half didn't complete high school or a GED
- 50% were unemployed
- 40% received public assistance or were incarcerated
- 25% had been homeless for at least one night

The University of Chicago's Chapin Hall found in 2002 that:

- Youth transitioning out of foster care have very low levels of employment with less than 55% of youth receiving any earnings during the study
- These youth earned less than any other comparison group
- Many earned wages below the poverty level

A 2005 Chapin Hall study of Midwest former foster youth showed:

- Over 33% received neither a diploma nor GED (as compared with less than 10% of same-age peers)
- 25% were considered "food insecure"
- By age 19 nearly half of the women had been pregnant (as compared with 20% of non-foster women)



In the News: Fostering Success

Tabitha Jenner was featured in *The Oregonian* on August 28th, the day she started college at George Fox University. She earned a 4.0 GPA in her senior year of high school and received several substantial college scholarships. What makes Tabitha's story unique is that she is in foster care. In contrast to most children in foster care, Tabitha not only graduated from high school, but is starting college.

Like many youth in foster care, Tabitha's short life has been filled with chaos. Tabitha has been in the custody of DHS for 9 years. She and her oldest brother Timothy lived in six foster homes before finally being taken in by her current foster parents, Lorrie and Donald Davis. Her three younger brothers were adopted by another family who moved outside the state of

Oregon. Every time Tabitha changed foster homes, she switched schools. As a result of the constant uncertainty, she had no friends, little family support and missed her three younger brothers terribly. She struggled with depression and lived through a lifetime of heartache as she witnessed her biological mother struggle with drugs and crime.

The odds of success for foster children are grim: they are far less likely to complete high school than their peers, and they are more likely than other students to get a GED instead of a high school diploma. The result is that many end up unemployed and homeless.

Tabitha, however, has risen above the odds because of the support from her foster parents, extended family, employers, teachers,

friends and community. The Davis family provided a stable and caring foster home which enabled Tabitha to attend one high school for all four years. This consistency allowed Tabitha to develop relationships with compassionate adults and caring friends who encouraged Tabitha to pursue a college degree. Tabitha's success is a reminder that courage and determination plus a healthy, stable home and a good dose of community support equals a bright future.

(Read the original story: Wozniacka, Gosia, "Foster daughter defies a sad past", *The Oregonian*, August 28, 2006, <http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1156737303129670.xml&coll=7>.)

"The school of hard knocks is an accelerated curriculum."—Menander (342 BC - 292 BC)

Trainings, Conferences and CLEs

SAVE THE DATE!

The Juvenile Law Training Academy

"Essentials of Termination of Parental Rights Cases"

October 16 -17, 2006

Eugene, Oregon

◆◆◆◆◆

Save the Date!

2007 Child Advocacy Project Conference:

Nurturing Teens Aging Out of State Programs

April 6 and 7, 2007
at the University of Oregon
Law School

◆◆◆◆

To be published in

September 2006:

The Rights of Children and Adolescents is a new publication from the Oregon State Bar written by University of Oregon law professor **Leslie J. Harris**. This booklet is an indispensable resource for anyone who needs a quick reference regarding where children and adolescents stand

under the law. This compact booklet covers a broad spectrum of issues: custody, visitation, and child support; ownership, management, and taxation of children's property; parents' and children's liability in tort and contract; and children's access to government benefits. It also contains in-depth information about children's rights in school, and it covers the law that applies specifically to adolescents on issues such as employment, driving, curfew, marriage, sexual activity and family planning, medical treatment, and emancipation. This booklet is a must-have for all Oregon lawyers who have clients with children.

Consequences of Abuse and Neglect

By Robb Wolfson

The Child Welfare Information Gateway has published a Fact sheet on the [Long-Term Consequences of Child Abuse and Neglect](http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm). It is available on the Gateway website at: http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm

According to the Fact Sheet, the effects of child abuse and neglect on individual victims vary depending upon: 1) the *circumstances* of the maltreatment (i.e., the child's age; the type of abuse; its frequency, duration, and severity; the abuser's relationship), and 2) the victim's *resiliency*. Resiliency is defined by two protective factors: i) the child's personal characteristics (i.e., self-esteem, intelligence, independence) and ii) the child's environment (i.e., the child's access to a caring adult and health care). All of these factors interact to determine whether a particular child will emerge from abuse and neglect on a scale ranging from unscathed to having severe long-term consequences.

The consequences of abuse and neglect can be classified into three individual effect categories (physical, psychological, and behavioral) as well as societal consequences. While these categories obviously overlap, it is important to recognize the elements making up each one.

Physical effects may vary in terms of their severity (i.e., bruising

all the way to death), visibility, and duration. Today more awareness is also being paid to less noticeable, long-term physical outcomes, such as shaken baby syndrome, impaired brain development (i.e., hyperarousal responses), and generally poor physical health.

Psychological consequences can manifest with immediate emotional effects (i.e., isolation, fear, inability to trust) that later transform into long-term effects (i.e., low self-esteem, depression, relationship difficulties). Links have been shown between child abuse and poor mental and emotional health, social difficulties, and cognitive weakness. One long-term study found approximately 80% of abused young adults suffered from at least one psychiatric disorder (i.e., depression, eating disorders, anxiety, and suicide attempts).

Research has shown that child abuse and neglect tends to promote certain behavioral consequences including alcohol and drug abuse, adolescent difficulties (i.e., low academic achievement, teen pregnancy), and juvenile delinquency and adult criminality. For example, two different studies found that being abused or neglected as a child increased the probability of juvenile arrest by 59% and the likelihood of adult violent behavior by 30%. Additionally, estimates suggest that at least 1/3 of abusive parents were

abused themselves as children.

Societal consequences of child abuse and neglect come in the form of both direct and indirect costs. Direct costs (estimated at \$24 billion in 2001) include maintaining the child welfare system and expenditures made by the judicial, law enforcement, health and mental health systems in response to abuse. Indirect costs are long-term economic consequences (i.e., juvenile and adult criminal activity, substance abuse, loss of productivity from unemployment and underemployment, increased health care use). One study estimated these costs at more than \$69 billion in 2001.

For more information about the causes and long-term consequences of child abuse and neglect consider visiting two websites supported by federal grants:

- **LONGSCAN**—consortium of longitudinal research studies on the causes and impact of child abuse and neglect. At www.iprc.unc.edu/longscan/.
- **NSCAW**—seeks to describe the child welfare system and the experiences of children and families who come in contact with it. At www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/index.html. ◇



ducing recidivism by nearly 50%.

To see the full article, visit: <http://www.jointogether.org/news/headlines/communitystories/2006/incarcerated-moms-can-soon.html> and <http://www.indyweek.com/gyrobase/Content?oid=oid%3A32459>.

Parenting in Prison by Mary Skjelset, Law Clerk

A creative new criminal justice program has come out of Butner, N.C. Supported by taxpayer money, Our Children's Place is a prison facility designed to allow incarcerated mothers to care for their children while serving sentences for non-violent offenses. Expected to open in early 2008, the facility will hold 20 mothers with up to two young

children (six or under), and will be equipped with a nursery and classrooms. Services will include alcohol and drug treatment, health care, parenting classes, education and vocational training, and mentoring. Modeled after a California program, Our Children's Place hopes to replicate previous results by saving taxpayers \$1 million annually and re-

Physical Intervention, Continued from p. 4

has been decreasing since that time to 42% in the first quarter of this year.

On the other end of the spectrum, another residential program in Oregon reported that the number of children physically restrained in their programs ranged from 1.5% to 16.7% on a quarterly basis between the first quarter of 2003 and the first quarter of 2006.

In his commentary on New York's programs, Sundram said that he has found a wide variety of approaches in managing the behavior of individuals with disabilities. He said that some hospitals, for example, assert that

manual restraints are necessary in managing patients with serious psychiatric disorders, while other facilities who serve the same types of clients have found that they can serve them using manual restraints very rarely.

He also points out that, while some facilities routinely use seclusion rooms to manage student or patient behavior, others who serve the same types of children manage without having any seclusion room in their facilities. The facilities which do not believe that physical intervention is necessary or appropriate tend to find effective clinical methods to manage client behavior effectively without

physical intervention.

Mr. Sundram sees an appropriate role for the state in regulating the use of physical intervention because he said that parents of children who are expelled or discharged from lower-level school or treatment settings are often forced to consent to the use of physical or aversive methods of behavior management by programs in order to obtain services for their children.

The article is available in its entirety on-line at:

<http://www.timesunion.com/AspStories/story.asp?storyID=499894&category=OPINION&newsdate=7/16/2006&TextPage=1>

“My education was dismal. I went to a series of schools for mentally disturbed teachers.”
—Woody Allen (1935 -)

On-Line Resource: Effects of Prenatal Substance Exposure

Kim, J., and Krall, J. (2006). *Literature Review: Effects of Prenatal Substance Exposure on Infant and Early Childhood Outcomes*. Berkeley, CA: National Abandoned Infants Assistance Resource Center: http://aia.berkeley.edu/media/pdf/prenatal_substance_exposure_review.pdf

This review of more than 45 studies and academic articles dating back to 1991 finds that, while in-utero exposure to substances (e.g., illicit drug use, alcohol use and/or cigarette use in the last month) leaves children vulnerable to potential developmental problems, the media coverage of this issue has tended to exaggerate its effects.

The body of research generally suggests that potential developmental problems can manifest from prenatal substance use including impacts on physical growth, motor skills, cognition, language skills, school performance, and behavior.

However, research is inconclusive in terms of the amount of impact; the degree to which the problems can be effectively treated through various interventions and the overlapping roles that the home environment (ie, poverty, health, education, literacy, employment) and utilization of prenatal care influence these problems as compared to direct biological effects.

“Some researchers take issue with the study methods and substance measurement techniques employed in recent studies. For instance, small sample size, high attrition rates, and lack of longitudinal studies may contribute to the scarcity of definitive findings for this population... Inconsistent research findings may also be due to variations in the methods for measuring substance use....” (p. 2)

Much of the research concludes that the home environment where children are raised actually has a

stronger influence than any biological effects or the amount of prenatal care.

These overlapping factors have made the topic difficult to study as well as to develop consistent intervention strategies and policies that will be most effective to tackling it. However, the research reviewed by the authors tends to emphasize early intervention strategies which target services to mothers during pregnancy as particularly useful. For example, one evaluation found that drug use dropped from 45% to 28% when mothers received prenatal services).

Additionally, the studies tended to concur that environmental impacts have some impact on development of children. They have also indicated that children from equally disadvantaged backgrounds overall had poor developmental outcomes regardless of prenatal drug use.

News Brief: Early Behavior Predicts Early Substance Use

Medical News Today reported on findings on the link between early childhood behavior and early onset alcohol use in the July/August 2006 issue of *Child Development*.

The longitudinal study, conducted by Idaho and Michigan State University and University of Michigan researchers, tracked 514 children of alcoholics and a control group. The study followed the children from the ages of 3 to 5 years to when they reached the ages of 12 to 14 years.

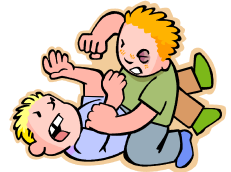
The *Medical News Today* article described the results. Among the children studied "behavioral control

and resiliency predicted the onset of alcohol and illicit drug use in adolescence. Children who have lower levels of behavioral control at ages 3 to 5 and those whose levels of behavioral control increased slower over time were more likely to drink at an early age (i.e., age 14), to report having been drunk, to have more alcohol-related problems and to have used drugs other than alcohol."

The children who had greater levels of behavioral control at a young age were significantly less likely to drink or experience drunkenness in early adolescence.

"Additionally, adolescents with higher resiliency in early childhood were less likely to start drinking and experience drunkenness at an early age. They were also less likely to show signs of sadness, anxiety, aggressiveness or delinquent behavior," according to the article.

A summary of the study results is available on-line at:
<http://www.medicalnewstoday.com/medical-news.php?newsid=47304&nfid=rssfeeds#top>.



On-Line Resource: Working with Fathers in Child Abuse Cases

The U.S. Department of Health and Human Services has issued a new manual entitled The Importance of Fathers in the Healthy Development of Children. The manual aims to increase effective involvement of fathers during management and planning of cases in the Child Protective Services (CPS) system. Traditionally, involvement of fathers has been low compared to mothers in child protective services

cases.

The manual seeks to change this by educating caseworkers about the vital role that fathers play in child development (based upon research over the last decade) and by highlighting examples of fatherhood programs around the country. To view the manual online visit:
[http://www.childwelfare.gov/pubs/usermanu-](http://www.childwelfare.gov/pubs/usermanu-als/fatherhood/fatherhood.pdf)

[als/fatherhood/fatherhood.pdf](http://www.childwelfare.gov/pubs/usermanu-als/fatherhood/fatherhood.pdf)

The co-authors of the report are: Jeffrey Rosenberg, a public relations consultant for the National Fatherhood Initiative, and W. Bradford Wilcox, Ph.D., assistant professor of sociology at the University of Virginia and author of *Soft Patriarchs, New Men: How Christianity Shapes Fathers and Husbands*.

School Stability, continued from p. 4

DHS has earmarked \$700,000 of the "System of Care" flexible funds in the 2005-2007 biennium just for this purpose.

Finally, the law speeds up the time for transferring school records for foster children specifically. Schools are now required to request education records within 5 days when a new foster child enrolls in school and the responding

school must send them within 5 school days.

For more information please go to www.jrplaw.org and click on the link to "Educational Stability for Children in Foster Care (HB 3075-A)."



"The strength of the United States is not the gold at Fort Knox or the weapons of mass destruction that we have, but the sum total of the education and the character of our people."

Claiborne Pell (1918 -)

Educational Advocacy Toolbox, continued from p. 3

homeless upon dismissal of wardship. ORS 419B.337(6)

Senate Bill 808 (2003 amendments to ORS 419B.476): SB 808 requires DHS to develop a Comprehensive Transition Plan for youth who are receiving services as a result of dependency, and to report the plan to the court. The plan must include planning for the needs of the youth regarding housing, health, education, employment, community connections and supportive relationships. The court must make findings as to the adequacy of the plan to ensure a successful transition to adulthood.

Foster Care Independence Act of 1999 (FICA): This Act doubled the amount of Chafee funds given to states to assist youth transitioning out of foster care to continue their education, find employment and learn the life skills necessary for successful adulthood. Chafee funds may be used in a variety of ways to aid education goals including tuition, education planning, room and board, and other education-related expenses. Pub. L. 106-169, codified under Title IV-E of the Social Security Act.

Education and Training Vouchers (ETVs): ETVs, passed in 2002 as part of the Promoting Safe and Stable Families Act, provide scholarships of up to \$5000/yr. for former foster youth for post-secondary and vocational education. The scholarships cover a variety of educational and training related costs. Eligible youth are those who have been in foster care for at least 180 days after age 14 and apply for funds prior to age 21. (See p. 10)

The majority of this article (unless otherwise cited) is based on the book Learning Curves by Kathleen M. McNaught. Citation and additional resources on next page.

Additional Resources for Practitioners:

Books and articles:

McNaught, Kathleen M., *Learning Curves: Education Advocacy for Children in Foster Care*, American Bar Association (2004).

Levin, Villegas, and Wrigley, *Special Education: A Guide for Parents and Advocates 4th Ed.*, Oregon Advocacy Center (1999).

http://www.oradvocacy.org/pubs/SpecialEducationGuide/se_guide.htm

Wrigley, Jim, *Section 504 and Students with Disabilities: An Overview*, Oregon Advocacy Center: <http://www.oradvocacy.org/pubs/sec504overview.htm>.

Legal:

Federal Statutes and Regulations:

US Code,

<http://uscode.house.gov/search/criteria.shtml>

Federal Regulations,

<http://www.gpoaccess.gov/fr/index.html>

Organizations which contain information as well as additional links to special education resources:

Bazelon Center for Mental Health Law, www.bazelon.org

Center for Effective Collaboration and Practice (CECP), cecp.air.org

The Council of Parent Attorneys and Advocates (COPAA), www.copaa.org

National Association for the Education of Homeless Children and Youth (NAEH CY), www.naehcy.org.

National Information Center for Children and Youth with Disabilities (NICH CY), www.nichcy.org

Oregon Advocacy Center (OAC), www.oradvocacy.org

Oregon Department of Education (ODE), www.ode.state.or.us

Wrightslaw provides "accurate, reliable information about special education law, education law, and advocacy for children with disabilities", www.wrightslaw.org

Quote, Unquote

"I have never let my schooling interfere with my education."

—Mark Twain (1835 - 1910)

"I find television very educational. The minute somebody turns it on, I go to the library and read a good book."

—Groucho Marx (1890 - 1977)

Pediatricians on Suspension, Expulsion, continued from p. 1

student from causing harm to himself or herself or to others.”

The vast majority of schools in the U.S. (as many as 90%) utilize “zero tolerance” discipline policies to address violent or potentially violent student behavior. The Gun-Free Schools Act of 1994 mandates that schools expel students who bring dangerous weapons to school for no less than one year. Yet the article in *Pediatrics* points out that only about 10% of the 3.1 million students suspended or expelled in 1997 were disciplined for possessing a weapon.

Educators have cited numerous reasons to justify exclusion from school as a common disciplinary method. These include: punishing the offending student; deterring other students from misbehavior; providing a “cooling-off period” for misbehaving students, as well as school staff; sending a message to parents to take their child’s misbehavior more seriously; or simply removing troublesome students from the school building.

The article in *Pediatrics* also describes many of the problems inherent in the use of suspension and exclusion. Nationally, African-American students are twice as likely to face suspension and expulsion. The pediatricians also note that children “who use illicit substances, commit crimes, disobey rules, and threaten violence often are victims of abuse, are depressed, or are mentally ill. As such, children most likely to be suspended or expelled are those most in need of adult supervision and professional help.”

They also note, for example, that children living in single-parent homes are two to four times more

likely to be expelled or suspended than children in two-parent homes, “even when controlling for other social or demographic factors.” This means that students who may already lack supervision are sent back to homes where they are less likely to receive supervision.

The article also notes that students in small towns “in states such as Oregon and South Carolina are expelled at 5 to 6 times the rates of students in cities such as Chicago and San Francisco.” However, “it is unlikely that crime rates in small towns are 5 times the rates in these large metropolitan areas.”

The AAP cites the protections for students with disabilities under the Individuals with Disabilities Education Act as a model for addressing all students who display behavioral problems at school. Specifically, the AAP highlights IDEA requirements, including requirements that: students continue to receive educational services; a pre-expulsion assessment is conducted to determine whether the school implemented strategies to prevent or ameliorate the behaviors; and schools work to modify curricula or the educational environment in order to better meet their needs and address factors contributing to the behavior.

The AAP also calls for better communication and collaboration between pediatricians, mental health and other health care and social service providers and schools in order to better understand and address the unmet needs which are often present for students who act out in school.

The American Academy of Pediatrics Policy statement can be found at:

<http://aappolicy.aappublications.org/cgi/reprint/pediatrics;112/5/1206.pdf>



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