Juvenile Rights Project

JUVENILE LAW READER

Volume 7, Issue 4 August/September 2010

THE EDUCATIONAL RIGHTS OF JUVENILE COURT INVOLVED STUDENTS

How to Ensure Your Clients Are Enrolled, Enrolled in the Right School, and Have the Right Educational Program

by Brian Baker, Lynn Haxton, and Whitney Hill, attorneys and Rachel Roberts, law clerk

Enrollment of Foster Children

Typically a foster parent or caseworker will enroll the child at the neighborhood school and the child should be able to attend immediately. ORS 339.115. The new school will request records from the former school. If the child is in substitute care, the new school must request records within five days of enrollment and the former school must transfer those records within five days. ORS 326.575 (3) For children not in substitute care those times for records are ten days respectively.

In many cases, however, it is not in the foster child's best interests to attend the new neighborhood school but rather to attend the school she attended before being placed in a (or moved to a new) foster home. Both federal and state laws promote and protect school stability for foster children. The Fostering Connections Act, 42 USC 629 et seq., 42 USC 670 et seq. ensures that foster children are enrolled in school fulltime and remain in the school they attended at the time of placement, unless it is against the child's best interest, in which case the agency will provide immediate enrollment and the "cost of…reasonable travel" to a new school.

A state statute, enacted in 2005, provides stability by allowing foster children to remain at the same school while moving in foster care and makes provision for transportation. HB 3075, codified as ORS 339.133(5). Because research shows that every time a child changes schools she loses 3-4 months of academic progress, this law is critical

EDUCATION

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to the educational success of many children in foster care. It also enables them to maintain critically important relationships with adults and children at the former school.

The October 2010 issue of the reader will address how to keep your client in school, including special and alternative education options.

HB 3075 Tips

To whom does 3075 apply? It applies to foster children when they first enter foster care and when they move foster homes. It does not apply to a child when he or she returns to a parent.

When does it apply? When a foster child moves to a new foster home in a different school district but not when she moves to a new foster home within the same school district.

What does it do? It makes the child a resident of the school district he was in prior to the move in foster care and entitles him to continue at the same school through the highest grade of that school.

What is needed to take advantage of this statute? The statute requires a juvenile court determination that it is in the child's best interest to continue at her current school (preferably from the reviewing officer or at the first shelter hearing). An affidavit or oral presentation about best interests could include consideration of many factors; i.e. length of time in that school, distance to foster home, siblings' school of attendance, whether the child has an IEP and supports in the current school. A sample form is available at http://www.jrplaw.org/documents/BrownhillEdChecklist.pdf.

Who must provide the transportation? The statute states that the agency placing the child is responsible for transporting the child if there are funds designated for the specific purpose of providing transportation to and from school under this section. Every session since the law was enacted, the legislature has designated DHS funds for this

The **Juvenile Law Reader** is published six times a year by the

Juvenile Rights Project
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Portland, OR 97232
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The **Juvenile Rights Project** is dedicated to improving the lives of vulnerable children and families through legal representation and advocacy in the courts, legislature, schools and community. Initially a 1975 program of Multnomah County Legal Aid, JRP became an independent 501 (c) (3) nonprofit children's law firm in 1985.

The Juvenile Law Reader is distributed electronically free of charge.

It is partially funded by the Office of Public Defense Services. Tax deductible donations are welcome and can be sent to the JRP offices.

Queries regarding contributed articles can be addressed to the editorial board.

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purpose.

What situations are not covered by the statute? HB 3075 does not apply when a foster child moves during the summer and a natural school change occurs, as would occur between 8th and 9th grade for example; when an IEP team makes a placement change that necessitates a new school within the same district; or when the new foster home is in the same school district as the former foster home (sometimes the school district will allow a child to finish the school year in the old school but since HB 3075 does not apply, DHS is not responsible for transportation). Also, because HB 3075 only applies when a child is in substitute care, it is not applicable when a child is returned to a parent who lives in a different school district.

What other mechanisms might prevent a school move for a foster child? An inter district transfer is an application first to the school of residence to request release from that district and then a request to the district of choice for admittance. Districts are reluctant to grant these requests because every lost student is lost revenue, but a letter detailing a compelling reason can often persuade the districts to grant the request. Most districts will allow high school students to finish the semester (or quarter) to protect their credits.

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What about students in special education or day treatment programs? Transportation is a "related service" for many children on IEPs. Foster children who are in day treatment are covered under a mental health statute, ORS 343.961 (2) which requires the resident school district provide transportation to and from day treatment. Day treatment programs are mental health placements and not school placements (which are often called special schools or therapeutic schools). The school component of a day treatment program is provided by the school district where the day treatment is located.

Enrollment for Homeless Students, including those "Awaiting Foster Care Placement"

The McKinney-Vento Homeless Assistance Act , 42 USC 11301 et seq. helps remove barriers to education caused by homelessness, and ensures each homeless child receives equal access to education. A homeless child is an individual who: lacks a fixed, regular, and adequate nighttime residence; is sharing the housing of other persons; is living in emergency or transition shelters or similar settings; is migratory; or is awaiting foster care placement.

Under the McKinney-Vento Act:

- Homeless children are to be "immediately enrolled" in their school of origin, even if immunization or other records are not available or there is a dispute about enrollment.
- Children and youth must be provided full access to classes, be afforded transportation by the district if needed, and cannot be discriminated against, or placed in a segregated school based on their status.
- School districts are required to make special accommodations to ensure access to school

McKinney-Vento Tips

In Oregon, the applicable statutes for McKinney-Vento are ORS 339.133, 326.575, 419B.192, and ORS 339.133 (5).

If you have any questions regarding your client's eligibility or services, contact the school's administration office and ask for the McKinney-Vento liaison, or contact the McKinney-Vento State Coordinator. A list of State Coordinators is available at http://www.serve.org/nche/downloads/sccontact.pdf. Additionally, the National Center for Homeless Education offers information regarding the Act at www.serve.org/nche.

Enrollment and Appropriate Placement for Special Education Students

If the child is on an IEP, the new school district needs to determine where it will serve the child based on the placement level determination on the IEP. It is the IEP team's responsibility to determine the type of placement, for example "self contained classroom", but not the location of the classroom. It is important to contact the school district's special education department to advise them of the new student and placement needs. Providing a copy of the child's current IEP will also expedite placement.

The IDEA states that a child with a disability who changes schools must be provided a free and appropriate public education and comparable services listed in the existing IEP when they enroll in the new school (in consultation with the parents) *until* the new school either adopts the current IEP or develops a new IEP that meets IDEA requirements. 34 CFR 300.323. Schools are not permitted to delay educational services in order to hold a meeting or to get transportation in place.

Special education law imposes a duty on educa-

tional agencies to engage in "child find" in order to locate, identify and evaluate every child with a disability, even if they are homeless or in juvenile detention. In Oregon, all mandatory child abuse reporters are also child find reporters. ORS 343.193; OAR 581-015-2080.

Of the eleven categories of disability eligibility, the school must evaluate in *every* potential category of suspected disability (i.e. Learning Disability and Emotional Disturbance). This decision is made at the evaluation planning meeting. Evaluating requires informed consent, from either the parent, foster, or educational surrogate. The school district has 60 school days to perform the evaluations from the date the consents are signed.

Special Education Tips:

There are often delays associated with getting a child evaluated and qualified for special education services. Because documentation is key to this process, make a request in writing and request both an evaluation planning meeting for special education in suspected areas of disability (include a list of the areas of suspected disability and some reasons why you believe the child has a disability); and a 504 Plan eligibility determination as a back-up measure. For more information on 504's, see the U.S. Department of Education website: http://www2.ed.gov/about/offices/list/ocr/504faq.html

When possible and ethical to do so, provide the team with outside documentation (such as redacted psychological evaluations or medical statements) indicating the child's history, disability, functioning and school struggles. The parent or school may invite any individual with knowledge or special expertise regarding the child to the meeting. Parties to the juvenile court case often possess such knowledge and can greatly assist the evaluation process. OAR

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581-015-2105 to 2180

Oregon's Special Education Administrative Rules are found at chapter 581, Division 15: http://www.sos.state.or.us/archives/rules/OARS_500/OAR_581/581_015.html).

Educational Needs of Children in Foster Care

Children in foster care experience higher rates of school mobility and poor academic and social outcomes. The Casey Family Foundation and other child welfare experts have recommended that states act to minimize the number of school changes experienced by foster children.

Foster Children are Highly Mobile: Among foster care alumni in Oregon and Washington:[1]

- **32.3%** had eight or more foster placements.
- **65%** experienced seven or more school changes, including 30.2% who experienced ten or more school changes, from elementary through high school.

Foster Children have Unique Educational Needs:

- The trauma of abuse and neglect may be compounded by changing schools.
- Changes in schools often mean students have to adapt to new curricula. School moves hamper reading and math skills, in particular.[2]
- California found that 30% of its foster children performed below grade level and 50% had been held back in school.3
- Foster children generally experience worse educational outcomes relative to their peers in the general population in the areas of: grades; high school drop out; graduation rates; obtaining GEDs; accessing higher education and earning college degrees.

[1]The mean length of time in foster care was 6.1 years. The mean placement change rate was 1.4 placements per year. Source: Casey Family Programs, Research Services, "Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study," March 2005 http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf

[2]Betsy Hammond & Kimberly Melton, The Oregonian, February 27, 2005, pp. B1 and B7.

[3]Vera Institute for Justice. (2004). Foster children and education: How you can create a positive educational experience for the foster child. "Enrollment/Transfers," p. 1. http://www.vera.org/publication_pdf/241_452.pdf

VIEW FROM THE BENCH

Juvenile Rights PROJECT

EDUCATION FOR FOSTER CHILDREN

by Judge Paula Brownhill, Clatsop County Circuit Court

We know that children who age out of foster care are at higher risk for homelessness, poverty, and unemployment than are children raised by their parents. I believe that if courts focus on the educational needs of children in care, we can improve school performance, lower drop-out rates, and see better outcomes for these children.

From the bench, it is easy to see the benefits of focusing on education for foster children. Children who do well in school often have higher self-esteem, are better behaved, and are better connected than those children who fail in school. They are more likely to graduate from high school and even go on to college. It makes sense to do all we can to improve a foster child's educational experience.

Moreover, the law requires it. The Adoption and Safe Families Act emphasizes that education of children in foster care is essential to their well-being and the opportunities for permanency. DHS is required to obtain school records for foster children and include those records as part of case plans. The Individuals with Disabilities Education Act (IDEA) applies to many foster children. ORS 419B.192 requires the court to consider the ability of a potential foster parent to meet the child's educational needs, including the child's need to continue in the same school or educational placement. ORS 419B.449(2)(d) requires the court to make findings regarding the child's progress toward graduation from high school and, if not progressing adequately, to inquire about the efforts the agency has made to help the child to graduate.

In Clatsop County's dependency system, we look at each foster child's educational needs and do our best to ensure that these needs are met. The court, DHS caseworkers, CASAs, children's attorneys, educational surrogates, and foster parents work together to help children succeed in school. The Clatsop Dependency Team has developed a checklist for use in judicial review and permanency hearings: http://www.jrplaw.org/documents/BrownhillEdChecklist.pdf. We work through answers to each question to determine what is needed and to identify services that will help the most.

I want to know up front what school the child attends and the child's grade level. DHS must obtain each child's educational records and attach the records to the case plan so the court and parties may review them before hearings. I want to review school records in every case involving a school-aged child, and I will sign an Order for DHS Access to Education Records whenever DHS requests it.

I also want to know what efforts were made to allow the child to stay at his or her school when placed in substitute care. School may be the only stable environment the child has known. A sudden move to foster care is disruptive enough; the agency should not change a child's school unless absolutely necessary. The Clatsop branch of DHS tries to continue children in their same schools, and they look for creative ways to ensure this happens.

It is important to identify the child's

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medical, emotional and developmental needs that impact school performance. I ask questions to help identify such behaviors and enter orders to address those behaviors. Sometimes foster children are disciplined at school for behaviors related to their abuse. They may act out in the classroom or become too aggressive on the playground because of trauma they've suffered at home. It is important to make sure the school understands the child's situation to the extent necessary so that discipline is administered fairly and appropriately and sanctions do not have a harmful effect on education. The court also can request that a child's behaviors are addressed in therapy.

I want to know if a child is on an Individualized Education Program (IEP) or Section 504 Accommodation Plan. If not, the CASA or child's attorney often will ask that the child be evaluated for special education services. Children who are not eligible for special education services may qualify for general education support services such as guidance counseling, occupational therapy, study skill support, or remedial academic instruction.

Clatsop County has a group of trained educational surrogates, and, if the child is on an IEP and an educational surrogate has not been appointed, I appoint at the disposition hearing. Educational surrogates often appear in court and report on the child's school progress and let us know what, if anything, we can do to help a child be successful in school.

For older foster children, I review comprehensive transition plans in advance to learn the child's educational goals. I want to know if the child is on track to graduate with his or her class. I

encourage older youth to graduate from high school; too many former foster children have told me they regret not getting a high school diploma. When necessary, DHS will help the child meet graduation requirements.

I attend our foster children's high school graduations whenever possible. I like to be there to cheer for our kids. Many of these graduates have overcome tremendous obstacles to receive that diploma, and I'm as proud as a parent to see them in cap and gown. I hope that our focus on education in foster care helps move these children closer to independence, opportunity, and a better future.

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[1]Editor's note: Since the 2004 re-authorization of IDEA, a foster parent is now included in the definition of parent and thus does not need to be appointed as surrogate to fulfill that role.

Questions to Help Meet the Educational Needs of Children in Foster Care

by Judge Paula Brownhill

1 What is the child's age and grade level?

2 What school does the child attend?

3 When the child was placed in substitute care, what efforts were made to allow the child to remain in his or her school?

4 How well is the child faring academically?

5 What are the child's medical, emotional and developmental needs that impact the child's educational performance?

6 If the child's behavior impacts his or her educational performance, how can we address the behavior issues?

7 Are the child's school records attached to the case plan?

8 Is the child on an IEP or Section 504 Plan or does the child need to be evaluated for special education services?

9 Does the child have an Educational Surrogate? If not, does the child need one?

10 Does DHS need an order for access to the child's educational records?

11 Are there education support services that will help the child be successful in school?

12 What assistance, if any, does the child need to graduate from high school?

13 If the child will not graduate from high school, has he or she obtained a GED? If not, what assistance does the child need to obtain a GED? What is the timeline?

14 Does the child want to go to college? If so, what assistance does the child need to enroll and pay for school?

15 What else does this child need to achieve his or her educational and/or vocational goals?

THE 9TH CIRCUIT WEIGHS IN ON THE RIGHTS OF PARENTS

by Erin Cass, Law Clerk

I. Overview

A string of recent decisions in the Ninth Circuit has altered the landscape of rights held by parents and children involved in the child welfare system. In 2009, the court limited the circumstances under which a child could be interviewed at her school without parental consent, and it established the right of parents to be present at the child's forensic medical examinations conducted at the direction of child welfare, with few exceptions.[1] Simultaneously, the court held that non-custodial parents have a liberty interest in the custody and management of their children, and therefore are entitled to some level of due process of law before being separated from their children by the state, except in an emergency.[2] More recently, the Court affirmed the right of parents to be informed about their child's detention and placement in protective custody when public officials encouraged and facilitated

the transfer.[3] For families in the child welfare system, these decisions embody a significant expansion of children's rights under the Fourth Amendment and parents' rights under the Fourteenth Amendment.[4] Attorneys representing parents in the Ninth Circuit should familiarize themselves with these important changes in order to provide their clients with effective assistance in dependency cases.

II. Case Law

Greene v. Camreta extended the Fourth Amendment rights of children to prohibit direct involvement by law enforcement in at-school interviews of suspected child abuse victims absent parental consent, exigent circumstances, or a warrant and probable cause.[5] In *Greene*, a CPS caseworker and an armed county sheriff did not notify the mother before they interviewed her child at school regarding allegations of sexual abuse committed by the child's stepfather.[6] The two-hour interview of the child constituted a seizure, thus triggering the Fourth Amendment.[7] The court declined to find the investigation of child abuse to be a special exception permitting a relaxed application of Fourth Amendment protections.[8] Thus, to proceed with the interview, parental consent, probable cause and a warrant (or its equivalent), or the existence of exigent circumstances was necessary.[9] The consent of school employees was not deemed an adequate substitute for parental consent, despite the doctrine of *in loco parentis*.[10] Furthermore, this child was not in imminent danger of serious bodily harm at the time of the interview, so the exigent circumstances exception was inapplicable.[11] Because the defendants in *Greene* also lacked probable cause and a warrant, the court found that they violated the child's constitutional right under the Fourth Amendment to be free from unreasonable seizures.[12] Despite a finding of wrongdoing by the defendants, the Ninth Circuit upheld the District Court's grant of summary judgment for the defendants on the basis of qualified immunity.[13] The defendants were entitled to qualified immunity because this constitutional protection had not been clearly established prior to the incident in this case.[14]

Additionally, *Greene* extended the Fourteenth Amendment rights of parents by holding that parents cannot be excluded from a forensic medical examination of a child without parental consent, a legitimate basis for the exclusion, or an emergency.[15] If one of these exceptions exists, a parent may be kept out of the examination room, but retains the right to be in the facility during the examination.[16]

Decided on the

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The Juvenile Law Resource Center (JLRC) assists attorneys representing parents in child welfare dependency proceedings throughout Oregon. It provides written resources including case law updates, sample motions, practice guides and issue briefs. The JLRC offers trainings for parents' lawyers. Additionally, JRP attorneys are available to consult with attorneys on individual cases. More information is available at http://www.jrplaw.org/juvresocent.aspx. Check periodically for updates.

same day as *Greene*, *Burke v. County of Alameda* held that parental interests in the custody and management of their children, including the medical examination rights established in *Greene*, extend to parents who have legal custody of their children, regardless of whether or not they also have physical custody.[17] The Fourteenth Amendment guarantees that "parents and children will not be separated by the state without due process of law except in an emergency."[18] In an emergency (where the state has reasonable cause to fear imminent bodily injury to the child), a child may be taken into protective custody without a warrant.[19] In *Burke*, a suspected child abuse victim was taken into protective custody without a warrant following an investigative interview by a police officer.[20] The child's father, who had only legal custody and posed no threat to the child, was not contacted before the child was taken into protective custody.[21] The court held that parents with legal, but not physical, custody of their children are "not without *any* interest in the custody and management" of their children, though it did not define the extent of this interest.[22] Therefore, the father's Fourteenth Amendment rights may have been violated by the state's actions.[23]

Continuing this trend, the Ninth Circuit recently handed down a decision in *James v. Rowlands*, a case out of the Eastern District of California, regarding parents' right to notification of actions public officials take involving their children.[24] In *James*, a father with legal, but not physical, custody of his daughter, C.J., brought a claim against two CPS caseworkers and a deputy sheriff for failing to inform him of an investigation into the alleged molestation of his daughter and subsequent attempts to change her testimony. The court declined to rule on these claims.[26] The petitioner also claimed that the defendants violated his Fourteenth Amendment rights by failing to inform him of the decision to "detain C.J. temporarily and take her into protective custody and . . . a voluntary agreement with C.J.'s mother . . . to place C.J. with her maternal grandmother for the duration of the trial."[27] The court held that parents have the right to be informed about their child's detention and placement in custody when the officials have encouraged and facilitated the transfer.[28] In so finding, the court applied *Burke* to extend this right not only to parents with physical custody, but also to those possessing only legal custody.[29] This right of notification may only be abrogated in instances where public officials have "reasonable cause to believe that such notification would put the child in imminent danger of serious bodily injury."[30]

III. Conclusion

The recent holdings of *Greene*, *Burke*, and *James* provide additional protections under the Fourth and Fourteenth Amendments for children and parents in the investigation phase of the child protective services system. Although these are civil rights cases and not juvenile court cases, attorneys representing parents and children in dependency proceedings in the Ninth Circuit should be familiar with them.

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[1]*See Greene v. Camretta*, 588 F.3d 1011, 1030 (9th Cir. 2009); National Center on Substance Abuse and Child Welfare, *Research, Fact Sheets, and Statistics*, http://www.ncsacw.samhsa.gov/resources/resources-research.aspx (stating 3.4 million children nationwide were examined and/or interviewed as to allegations of sexual abuse in 2004).

[2]*See Burke v. County of Alameda*, 586 F.3d 725 (9th Cir. 2009).

[3]*See James v. Rowlands*, No. 08-16642, 2010 U.S. App. LEXIS 10723, *24 (9th Cir. May 26, 2010).

[4]*See generally Greene*, 588 F.3d 1011; *James*, 2010 U.S. App. LEXIS

10723.

[5]*Greene*, 588 F.3d at 1030.

[6]*Id*. at 1017.

[7]*Id*. at 1022.

[8]*Id*. at 1027.

[9]*Id*. at 1030.

[10]*Id*.

[11]*Id*.

[12]*Id*.

[13]*Id*. at 1016.

[14]*Id*.

[15]*Id*. at 1037 (citing *Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 2000)).

[16]*Id*.

[17]*Burke*, 586 F.3d 725, 733 (9th Cir. 2009) ("[T[he Fourteenth Amendment's protection of parental rights prohibits the state from separating parents from their children 'without due process of law except in an emergency.'") (italics removed) (citing *Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 2000)).

[18]*Wallis*, 202 F.3d at 1136.

[19]*Id*. at 1138.

[20]*Id*. at 730.

[21]*Id*. at 733.

[22]*Burke*, 586 F.3d at 733. (italics in the original).

[23]*Id*. ("The reasonableness of the scope of [the state's] intrusion upon [the father's] rights is for the jury to decide.")

[24]*James*, 2010 U.S. App. LEXIS 10723.

[25]*Id*. at *2.

[26]*Id*. at *13, *16.

[27]*Id*. at *2.

[28]*Id*. at *23.

[29]*Id*. at 19.

[30]*Id*. at *24.

RECENT CASE LAW

_J.G. v. N.D.G._, _ Or _ (July 15,2010) (DeMuniz, C.J.) (Multnomah Co.) rev'd and remanded

http://www.publications.ojd.state.or.us/S058285.htm

This case involves Mother's motion to vacate the adoption of her son by her mother (child's maternal grandmother). Mother's motion claimed that grandmother obtained an order permitting service by publication by misrepresenting the facts to the court and that mother had no notice of the adoption proceeding. After the motion was filed the parties entered mediation and approximately ten months passed before Mother attempted to get her motion heard. Grandmother then responded by filing a motion to dismiss the motion to vacate, raising a supplemental

rule of court that motions not settled or reset within five months are automatically dismissed and laches as her basis. At a contested hearing it was established that grandmother did misrepresent her knowledge of Mother's whereabouts in support of her motion for service by publication. The trial court, albeit somewhat reluctantly, dismissed Mother's motion, finding both the rule and laches applied and held that the equities weighed in favor of stability for the child over the mother's rights. The Court of Appeals affirmed without opinion.

While the Supreme Court agreed that Mother raised substantial constitutional and jurisdictional objections to the adoption, the narrow question before the court was the propriety of the dismissal of the motion. After holding that neither the supplemental court rule nor laches provided a basis to justify the dismissal of Mother's motion, the court remanded the case to the trial court to consider the merits of Mother's motion.

***Dep't of Human Servs. v. M.J.*, _ Or App_ (July 28, 2010) (Ortega, J.) (Washington Co.) rev'd and remanded**
http://www.publications.ojd.state.or.us/A144127.htm

Father's appeal in this case involves the proper construction of the Refugee Child Welfare Act and whether his daughter, A, is a "refugee child" such that the Act, which has heightened standards, applies to the case. The trial court held that it did not because Father and Mother's subsequent US citizenship and the likelihood that A, too, could become a US citizen meant that A was not a refugee child. Applying the method of statutory interpretation set out in *State v. Gaines*, 346 Or. 160 (2009), the Court of Appeals reviewed the definition of a refugee child. It is: "a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group or political opinion." OR. REV. STAT. 418.925.

The court held that the text of the statute does not refer to immigration status, and that the term "their country" means the parents' country of origin, not the United States. The statutory context supports the view that immigration status has no bearing on the definition of a refugee child. The

court also rejected the state's argument that because father testified "I can go anywhere" when questioned about whether he could return to Somalia, the Act did not apply because father is not presently "unable" to go to Somalia. The statute, however, is written in the disjunctive. A child is a "refugee child" if her parents (1) are *or* were (2) unwilling *or* unable to return to their country. No one argued that the parents previously were willing or able to return to their country of origin. Lastly, the court declined to address that state's argument that there was no evidence that the parents suffered persecution or a well-founded fear of persecution because that argument was not made to the trial court.

***Dep't of Human Servs. v. C.Z.*, _Or App _ (July 28, 2010) (Sercombe, J.) (Marion Co.) reversed**

http://www.publications.ojd.state.or.us/A144712.htm

In this dependency case, the Court of Appeals reversed the trial court's assertion of jurisdiction over Mother's two children, holding that the state failed to meet its burden of showing a reasonable likelihood of harm to the children. The state pled only a single allegation against Mother: her children's conditions or circumstances endangered their welfare because of her "chemical abuse problem involving marijuana that left untreated disrupts her ability and availability to parent, compromises her mental health and endangers her ability to appropriately parent." Mother had a single positive UA for marijuana at the beginning of the case, a second negative one and a missed one. Mother admitted to smoking at a party a week or two before the positive UA but said she did not use frequently and never around the children. On appeal, Mother argued that the state had failed to show the required nexus between Mother's behavior and the particular risk to the child, citing *State ex rel Dep't of Human Servs. v. N.S.*, 229 Or. App. 151, 157-58 (2009). The Court of Appeals held that the record lacked evidence that mother's marijuana use was a condition or circumstance that posed a risk to her children and reversed.

ATTORNEY'S DUTY

Child's Potential Tort Claim

by Professor Leslie J. Harris and Child Advocacy Fellows Colin Love-Geiger and Alyssa Knudsen of The Oregon Child Advocacy Project

Summary

An attorney who represents a child in a dependency proceeding does not have an ethical duty to act to protect the child's interests in legal matters collateral to the dependency case, including a potential tort claim against DHS because the terms of the attorney's appointment limit his or her duties to the dependency case. However, the child's attorney may have a duty to take limited steps to protect the child's rights, ordinarily by notifying the child's legal custodian about the possible claim unless the alleged tortfeasor is the legal custodian. In the latter case, ordinarily the lawyer adequately protects the child by notifying the court about the potential claim. Even if the lawyer does not have this duty, best practices standards encourage the lawyer to take this step.

Attorneys representing children in dependency cases sometimes learn that their child clients have been injured and therefore may have tort claims for those injuries. In such a case, if the child is in the legal custody of the parents or some third party, the lawyer can simply bring the matter to the custodian's attention, allowing the custodian to decide whether and how to pursue the claim. If the child is in the legal custody of the Department of Human Services and the alleged tortfeasor is a third party, the child's attorney again can simply notify DHS, which will have a duty to handle the matter. What, though, if the child is in the custody of DHS and the potential tort claim is against DHS alone or along with others, such as foster parents? This memo addresses the ethical duties of the child's attorney in this situation, as well as the potential tort liability of the attorney who acts to protect the child's interest.

I. The attorney has no duty to pursue the tort claim on the child's behalf

Oregon Rule of Professional Conduct 1.2(b) governs the scope of a lawyer's representation; in relevant part it provides that an attorney may limit representation to specific matters "if the limitation is reasonable and the client gives informed consent." When the client is a child, however, the client may not have the capacity to consent to limited representation. This does not mean that a child's attorney is obligated to protect the child's legal interests in all realms. The commentary to ABA Model Rule 1.2, upon which the Oregon rule is based, says that an attorney's obligations may also by limited "by the terms under which the lawyer's services are made available to the client." In the great majority of dependency cases in Oregon, a lawyer for a child is appointed by the judge under ORS 419B.195(1)[1] and is paid pursuant to a contract between the lawyer and the state Public Defense Services Commission. The model contract between the Commission and attorneys appointed in dependency cases says that an attorney appointed under ORS 419B.195(1) will be paid for "all matters related to the appointment, except DMV license suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings." Letter of Ingrid Swenson to Mark Taleff, Feb. 29, 2008, quoting the model contract. A child's attorney who represented a child on matters outside this language would not be paid from state funds. *Id*.

Relying on the commentary to Model Rule 1.2, ORS 419B.195(1) and the model contract, the general counsel of the Oregon State bar has issued

an informal opinion indicating that the child's attorney who has been appointed by the court to represent a child in a juvenile dependency case does not have an ethical duty to represent the child in "unrelated civil claims." Letter of Sylvia E. Stevens to Mark Taleff, Mar. 13, 2008.[2] The informal opinion also concludes that an attorney privately retained to represent a child in a juvenile court case could also attempt "to expressly limit the scope of the representation to the `case' arising under ORS Chapter 419B in the letter notifying the court of the attorney's appearance.

The Oregon bar counsel's view is consistent with a formal opinion of the District of Columbia Bar, interpreting the same scope of representation language in its code of professional conduct. D.C. Bar Opinion No. 252, Obligations of Lawyer Appointed Guardian ad Litem in a Child Abuse and Neglect Proceedings with Respect to Potential Tort Claims of the Child (1994).[3]

II. Does the child's attorney have a duty to notify the court about a potential tort claim?

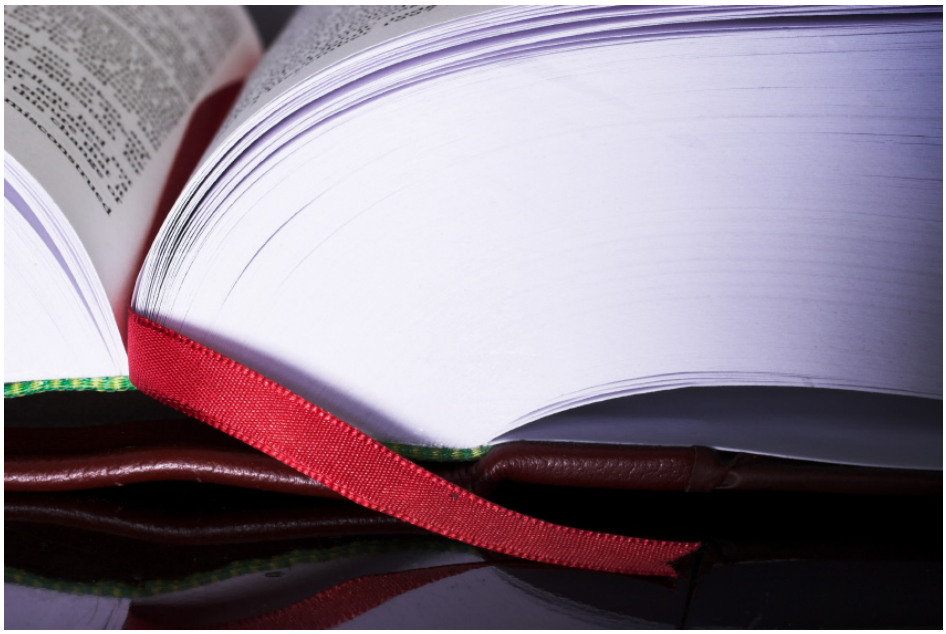
The next question that an attorney for a child who knows the child may have a claim against DHS faces is whether he or she has a duty to do *something* to protect the child's interests, since it is entirely possible that the attorney is the only one who will recognize the child's potential claim. Certainly the attorney may choose to take steps to protect the child (provided that the child of considered judgment agrees; see discussion below). Indeed, Standard 3.3(9) of the Oregon State Bar Performance Standards for Representation in Juvenile Dependency Cases encourages the attorney to take such steps. This Standard, which is aspirational rather than mandatory, provides:

> If a lawyer, in the course of representation of a client under the age of 18, becomes aware that the client has a possible claim for damages that the client cannot pursue because of his or her civil disability, the lawyer should consider asking the court that has jurisdiction over the child to either appoint a guardian ad litem for the child to investigate and take action on the possible claim or issue an order permitting access to juvenile court records by a practitioner who can advise the court whether to seek appointment of a guardian ad litem to pursue a possible claim.

See also ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, Standard D-12 (1996);[4] New York State Bar Assn., Standards for Attorneys Representing Children in New York Child Protective, Foster Care, and Termination

of Parental Rights Proceedings, Standard D-12 (June 2007).[5]

The D.C. ethics opinion cited above goes further, concluding that the child's attorney who "identifies significant potential claims of the child against third parties… [must] notify the child or those responsible for the child's care (and in appropriate cases, the court) of the potential claims and, when necessary to preserve them, [to] take reasonable steps to file notices required by statute." D.C. Bar Opinion No. 252, *supra*. Under D.C. law, the attorney for a child in a dependency case represents the child's best interests and is called a guardian ad litem. The D.C. ethics opinion explains its conclusion that the attorney must bring the possible tort claim to the attention of the court in the following way:



…The guardian ad litem is responsible for monitoring many aspects of the child's life under circumstances where others have been alleged to fail in that responsibility; because of the child's youth and isolation from the family, the guardian ad litem is likely to be the only possible source of legal advice available to the child concerning potential claims; and the duration of the appointment puts the guardian ad litem in a good position to make reasonable judgments about potential claims. The lawyer, accordingly, should exercise judgment whether investigation or action may be warranted and, if so, what steps should be taken.

This limited duty finds support as well from Rule 2.1, describing the lawyer's role as adviser, Rule 1.3, requiring diligent representation, and Rule 1.4, mandating communication with clients. Rule 2.1 provides that when representing a client, "a lawyer shall exercise independent professional judgment and render candid advice." As indicated above, this duty is generally limited to the matter in which representation is provided, but where there is no other likely source of advice, a narrow reading of the duty does nothing more than guarantee that rights will be lost….

Comment [8] to Rule 1.3 is also relevant. That Comment addresses the situation where, as here, the lawyer serves a client "over a substantial period in a variety of matters." In such circumstances, the Comment advises, "the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal."

…..

Finally, Comment [3] to Rule 1.4 states: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with (1) the duty to act in the client's best interests, and (2) the client's overall requirements and objectives as to the character of the representation."

These comments, read together, suggest that the lawyer has an obligation at least to assure that colorable claims for compensation do not simply drift away because no one else is aware of them, especially in a situation where the child is unlikely to turn elsewhere for help. The guardian ad litem is responsible for understanding and reporting on the client's well-being during the pendency of the neglect proceeding and may be the only person who has knowledge of the potential claim or is in a position to take steps to protect the client's interests regarding the claim. The child can reasonably expect the lawyer not to allow strong claims to be abandoned. Accordingly, we believe the Rules impose an obligation to inform the [court] or responsible adult of potential claims for injuries the lawyer is aware of, and, where statutory notice requirements exist, to preserve potential claims the lawyer reasonably believes warrants preservation.

We stress the narrowness of this obligation to advise and to preserve. It is not a duty to investigate potential claims. Nor is it a duty to take steps to preserve all potential claims, but only those that come to the lawyer's attention and which the lawyer reasonably believes may be colorable. Nor, finally, is there any duty to provide representation in these matters. In all cases the lawyer is expected to exercise reasonable judgment whether the potential claims should be the subject of advice and preservation.

While the D.C. opinion clearly relies in part on the lawyer's role to act in the child client's best interests, many of the points that the opinion makes, including the practical reality that the child is unlikely to have other sources of legal assistance, would support the conclusion that a lawyer representing the expressed wishes of a child capable of considered judgment should have the same duty. The informal ethics opinion from Oregon bar counsel does not address the issue of whether the child's attorney must notify anyone about a potential tort claim belonging to a child.

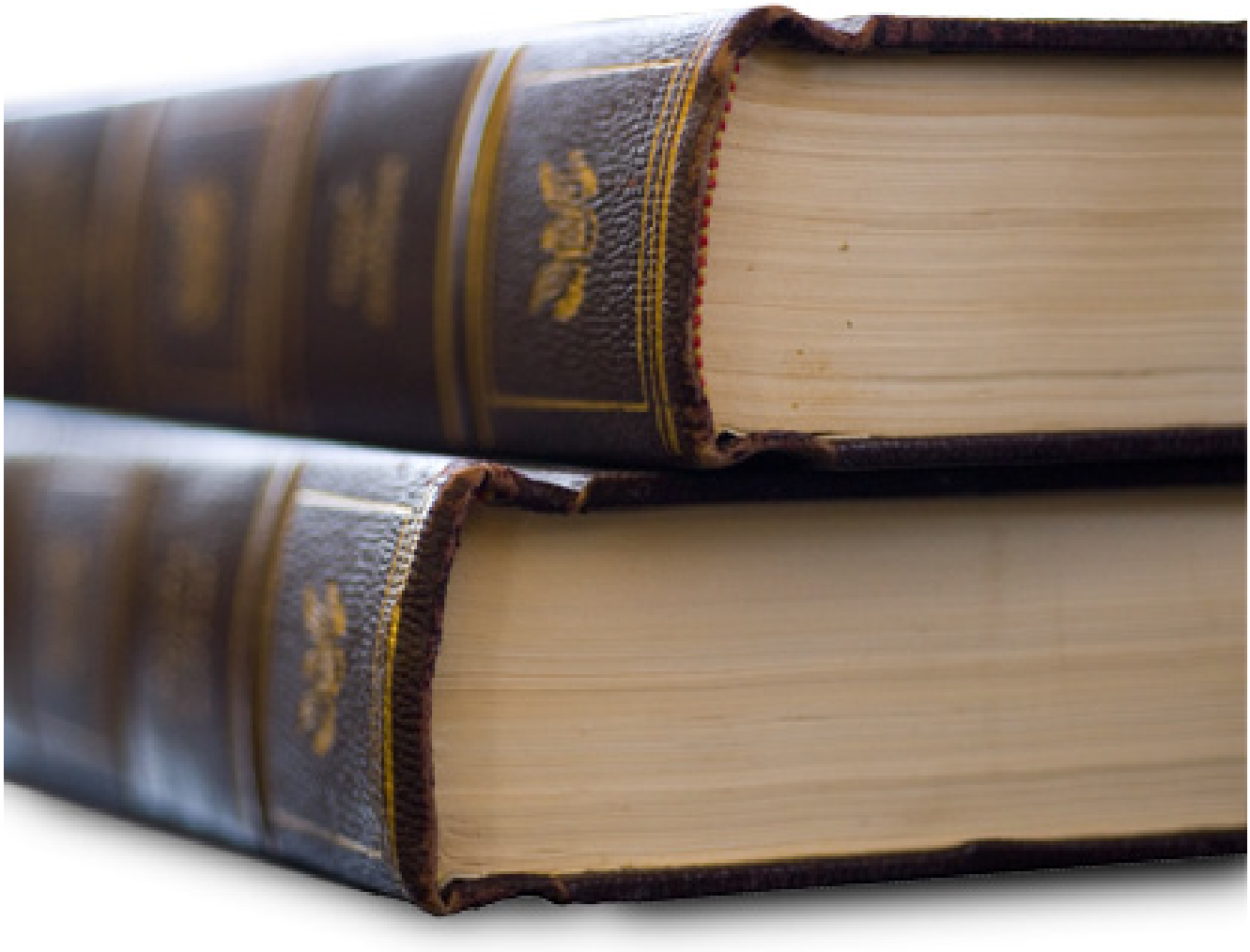
III. If an attorney opts to notify the court, must the attorney consult with the child client first?

Under Oregon law, an attorney who represents a child who is capable of considered judgment must consult with the child about matters within the scope of the attorney's representation of the child.[6] Since pursing a tort claim is an unrelated civil matter is outside the scope of the duties of a court-appointed attorney in a dependency case, the informal Oregon bar counsel opinion discussed above says that the wishes of the child about whether to take protective action are "not relevant." Letter of Sylvia E. Stevens, above. While this analysis is technically correct, it is possible that bringing to light a possible tort claim would have a significant impact on the child's dependency case. For example, if the possible tort claim were based on acts of the child's foster parents, merely bringing up the matter might well result in the child being moved from the foster home. In such a situation, it seems that whether to report the claim is intrinsically tied into the dependency case and, therefore, the child's attorney should explain the matter to the child in language that the child can understand, counsel the child about preserving the claim, and

abide by the child's decision regarding the claim. The formal D.C. opinion cited above agrees with this analysis.

attorney bring the possible claim to the attention of the court. The Performance Standards contemplate that the attorney will ask the court to appoint a guardian ad litem to pursue the matter or at least appoint an attorney to determine whether it should be pursued.[7]

Whether this solution will work depends on whether an attorney capable of assessing the



III. Discharging the duty to preserve the child's claim – and avoiding mal-practice liability

If a child's attorney believes the child has a colorable tort claim, the informal Oregon ethics opinion, the Oregon Performance Standards and the D.C. formal ethics opinion all recommend that the child's

potential tort claim is available to be appointed by the court. In Multnomah County, at the request of the juvenile court judges, the Oregon Trial Lawyers Association has created a panel that accepts referrals under these circumstances. Letter of Ingrid Swenson, above. In other counties, as a practical matter, a juvenile court judge might well expect the child's attorney to recommend someone

to whom the case could be referred. The danger is that the referred attorney will not adequately pursue the claim, leaving the referring attorney with exposure to liability for malpractice, either for negligence in making the referral or jointly with the attorney who mishandled the claim. However, the child's attorney can take steps that can eliminate much of this risk.

Some states recognize the tort of negligent referral, which imposes liability on an attorney who does not take reasonable care in choosing an attorney to whom a client is referred. *See, e.g., Tormo v. Yormark*, 398 F. Supp. 1159 (D. N.J. 1975). Other states have rejected the tort. *E.g., Bourke v. Kazaras*, 746 A.2d 642 (Pa. Super. Ct. 2000). No appellate court has addressed whether this tort would be recognized under Oregon law. To avoid potential liability, the child's attorney should research the attorney's reputation and communicate clearly to the court and to the child that he or she is turning the work over to the receiving attorney and is not vouching for the receiving attorney's work or monitoring his progress in pursuing the claim. This would ensure no one has a reasonable belief that the lawyer is representing the child with regard to the claim. *See* Tim McNeil, Liability for Referrals to Other Lawyers, 25(4) Oregon Estate Planning and Administration Section Newsletter 1 (2008),

Under Oregon law it is also highly unlikely that a juvenile court attorney who simply referred a case to another attorney, without becoming actively involved or monitoring the case and without a fee-splitting arrangement, would be held jointly liable if the other attorney mishandled the case. *See* Tim McNeil, above, discussing *Scott v. Francis*, 314 Or. 329, 838 P.2d 596 (1992).

IV. Discharging the duty to protect the child's claim – time limitations

Tort claims against private, nongovernmental entities are subject to a two-year statute of limitations, but if the victim is a minor, the statute is tolled until one year after the victim attains the age of majority. ORS 12.160. If the child alleges that he or she is a victim of abuse, a more generous statute of limitations applies. An action based on abuse must be brought within six years after the victim attains the age of majority, or three years from the date the injuries were or reasonably should have been discovered. ORS 12.117.

Tort claims against a state agency are subject to the Oregon Tort Claims Act, which requires that actual or written notice of a potential claim be given to the agency within 180 days of the injury. ORS 30.275(2). However, wards of DHS who are harmed by actions of DHS are not subject to the Tort Claims Act's notice requirements. ORS 30.275(9). When notice is required, children and others who are disabled have an additional 90 days, or a total of 270 days, in which to give notice. ORS 30.275(2). The time period begins to run when the victim knows or a reasonable person would have known of the injury. *Stephens v. Bohlman*, 314 Or 344, 838 P2d 600 (1992). This time period is not tolled for minors. *Cooksey v. Portland Public School Dist. No. 1*, 143 Or App 527, 923 P2d 1328 (1996).

As discussed at the beginning of this memo, if the child's potential tort claim is against anyone except the child's legal custodian, the child's attorney adequately protects the child simply by telling the custodian about it. If the claim is against a state agency other than DHS, the attorney should also consider telling the custodian about the 180-day rule. In contrast, if the potential claim is against DHS and the child is in the custody of DHS, under ORS 30.275(9), the attorney does not have to worry about the

180 day rule.

[1] ORS 419B.195(1) provides, "If the child, ward, parent or guardian requests counsel for the child or ward but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the child or ward at state expense...".

[2] Although reliance on an advisory opinion is not a defense to a complaint of attorney misconduct, the Oregon State Bar Disciplinary Board and the Oregon Supreme Court may consider a lawyer's good faith effort to comply with a written advisory ethics opinion of the bar as (1) evidence of the lawyer's good faith effort to comply with the Oregon Rules of Professional Conduct and (2) a basis for mitigation of any sanction that may be imposed if the lawyer is found to be in violation of the Rules. *See* Oregon Rules of Professional Conduct 8.6.

[3] The opinion is available at http://www.dcbar.org/for_lawyers/ethics/legal_ethics/opinions/opinion252.cfm.

[4] The standard is available at http://www.abanet.org/child/repstandwhole.pdf. It reads:

Expanded Scope of Representation. The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

(1) Child support;
(2) Delinquency or status offender matters;
(3) SSI and other public benefits;
(4) Custody;
(5) Guardianship;
(6) Paternity;
(7) Personal injury;
(8) School/education issues, especially for a child with disabilities;
(9) Mental health proceedings;
(10) Termination of parental rights; and
(11) Adoption.

[5] The standard is available at http://nycourts.gov/ad3/lg/June2007CoverandStandards.pdf.

[6] Under ORPC 1.2(a), a lawyer must abide by the client's decisions concerning the objectives of the representation, and under Rule 1.4, must consult with the client about how to pursue those objectives. Although minors are under a legal disability, under Rule 1.14, if a minor actually has the capacity to direct the attorney, the attorney-client relationship should function as it would with an adult client. If the minor's capacity to make these decisions is diminished, the lawyer must still "as far as reasonably possible, maintain a normal client-lawyer relationship with the client." ORPC1.2(a).

[7] Under the Oregon Rules of Civil Procedure, a guardian ad litem must be appointed to represent a child if a tort claim is pursued. *See* ORCP 27(A).

RECENT CASE LAW

***State ex rel Juv. Dep't v M.A.D.*, 348 Or. 381** (June 10, 2010) (Balmer, J.) (Clackamas Co.) reversed

http://www.publications.ojd.state.or.us/S057403.htm

This was the state's appeal from a divided Court of Appeals' decision that Article I, section 9 of the Oregon Constitution requires probable cause, not the more relaxed "reasonable suspicion" required by the Fourth Amendment, to justify a search of a student by a school official, in the absence of a warrant. The Supreme Court held that the unique circumstances of the school setting are sufficiently different from the ordinary police-citizen interactions to justify an exception to the warrant requirement. In framing the exception, the court first referred to the closest analogy- the well-defined officer safety exception. Writing for the Court, Justice Balmer concluded that "...the concerns underlying the officer safety exception also apply to some searches conducted by school officials." The court held that the "reasonable suspicion" standard should apply to a search by school officials acting in their official capacity where there are "immediate threats of serious harm to students and staff, such as the presence of illegal drugs on school ground." However, the court noted "important limits" to the kind of searches that its holding permits and "specifically

reject[ed]

the state's request that we adopt, in this case, a general rule that *all* school searches should be subject to a "reasonable suspicion" standard. The state's argument that we should follow

T.L.O. and sanction warrantless searches whenever a school official has reasonable suspicion that a student possesses evidence of a violation of a school rule or policy goes further than necessary to decide this case. This case involves a present threat to student safety and a search by a school official acting in his official capacity and in furtherance of his responsibility to protect students and staff; our holding is based on those circumstances. The permissibility of other kinds of searches by school officials is not before us." (Slip Op. at 8)

***State v. Godines*, ___ Or App ___** (7/28/10),

http://www.publications.ojd.state.or.us/A138290.htm

Defendant appealed convictions for sodomy and sexual abuse for which he was charged at age 20, but which the trial court determined had been committed on or about the day after the defendant had turned 12 years of age. On appeal, defendant argued that because the crimes had been committed while he was under the age of 15, the trial court did not have the authority to impose "Measure 11"

minimum sentences. The Court found that the defendant had failed to preserve the issue in the trial court, citing *State v. Wyatt*, 331 Or 335, 343 (2000) for the requirement that to preserve a claim of error, "a party must provide the trial court with an explanation of his or her objection that is specific enough to ensure that the court can identify its alleged error with enough clarity to permit it to consider and correct the error immediately, if correction is warranted." The Court rejected defendant's argument that because the trial court itself had raised the question of the applicability of "Measure 11" mandatory minimum sentences, due to the defendant's age at the time of the crimes, the issue was preserved for appeal. The Court found that there was nothing in the record to demonstrate that the defendant made "*any* objection to the imposition of Measure 11 sentences, let alone an explanation of that objection". The Court also rejected defendant's argument that the error was a legal error, apparent on the face of the record under ORAP 5.45 (1) and that the Court should exercise its discretion to reach the error and correct it. The Court analyzed "Measure 11" and related juvenile code provisions, concluding that the legal error asserted by defendant was in reasonable dispute and thus not subject to being reviewed as plain error. The Court goes on to state: "Indeed, at first blush, there are good arguments that there is no error to be found. However, because the contextual contention raised by defendant under ORS 137.707 is not completely implausible given that statute's text and history, we offer no opinion resolving the merits of the issue in dispute."

SAVE THE DATE

October 11, 12

Oregon Juvenile Justice System Symposium
Hilton, Eugene, OR

Coming Together to Make Oregon Safer

Info: http://www.oregon.gov/OYA/jjs/jjsummit_home.htm

October 18, 19

Juvenile Law Training Academy's Annual CLE for Lawyers
Hilton, Eugene, OR

This year's seminar will focus on some of the changes taking place at DHS and what lawyers can do to challenge practices, policies and procedures of the agency. In addition, there will be information on immigration law, caselaw updates, and more. The reasonable conference fees and rich content make this a must-attend conference for public defenders practicing juvenile law.

October 20-23

NACC 33rd Child Welfare, Juvenile & Family Law Conference
Hilton, Austin, TX

Info: http://www.naccchildlaw.org/?page=National_Conference

October 21, 22

OCDLA's Annual Public Defense Management Conference
Agate Beach Inn, Newport, OR

Info: http://www.ocdla.org/seminars/shop-seminar-index.shtml

REPORTS

Modern Slavery in Our Midst: A Human Rights Report on Ending Human Trafficking in Oregon

The International Human Rights Clinic at Willamette University

An examination of Oregon's efforts to reduce human trafficking and the state's legal obligations to address this significant issue.

http://www.willamette.edu/wucl/clp/clinics/international_clinic.php

Options for Relatives Report

DHS: Children, Adults & Families Division

Importance of relatives, options for relative engagement, assisting in managing a child's safety, communication and visitation with a child, notice of court hearings, assessment as a temporary placement resource, preference as a permanent placement resource.

http://dhsforms.hr.state.or.us/Forms/Served/DE9360.pdf

ABC'S OF SCHOOL LAW

ADA – Americans with Disabilities Act (42 USC § 12101 et seq.)

ADHD (ADD) – Attention Deficit Hyperactivity Disorder (DSM-IV §

314.9)

ALJ – Administrative Law Judge (OAR 137-003-0501)

ASD – Autism Spectrum Disorder* (OAR 581-015-2130)

AYP – Adequate Yearly Progress (OAR 581-015-2200)

BIP – Behavior Intervention Plan = a plan incorporated into an IEP, designed to curb undesirable behaviors and direct school personnel's responses to the child (OAR 581-015-2400(1))

BSP – Behavior Support Plan, see BIP

CD – Communication Disorder* (OAR 581-015-2135)

CPS – Collaborative Problem Solving = a process by which adults and children find resolutions to their problems together

DIBELS – Dynamic Indicators of Basic Early Literacy Skills (Available at https://dibels.uoregon.edu/)

ED – Emotional Disturbance* (OAR 581-015-2145)

ESY – Extended School Year = summer instruction for special education children meeting certain criteria (OAR 581-015-2065)

FAPE – Free Appropriate Public Education (OAR 581-015-2040)

FBA – Functional Behavior Assessment = a data

and observation driven process to determine how to design and Behavior Intervention Plan (OAR 581-015-2400(4); 581-015-0550(4))

GED – General Education Development a.k.a. General Equivalency Diploma = a battery of five tests, the passing of which signify high-school level academic skill attainment (OAR 581-045-0012(3)(b))

HI – Hearing Impairment* (OAR 581-015-2150)

HQT – Highly Qualified Teacher (20 USC § 7801(23))

IAES – Interim Alternative Education Setting = a school where a child is educated outside of their regular education placement as part of a discipline plan (OAR 581-015-2435; OAR 581-015-2425)

IDEA – Individuals with Disabilities Education Act = a federal law states may choose to follow in order to receive funding for the of education of children with special needs (20 USC § 1400 et seq.)

IEE – Independent Educational Evaluation = an evaluation requested by a parent that is completed by qualified persons not affiliated with the school district (OAR 581-015-2305)

IEP – Individualized Education Plan = the detailed plan for assisting the child to reach reasonable learning goals and how progress will be tracked (OAR 581-015-2000(15)

ISS – In School Suspension (OAR 581-015-2400(3)(c)

LD – Learning Disability* (OAR 581-015-2170)

LEA – Local Education Agency, i.e. a school district

LRE – Least Restrictive Environment = requirement encouraging education of children with disabilities alongside children without disabilities (OAR 581-015-2240)

MESD – Multnomah Education Service District = a public agency supporting multiple school districts in the county, providing services such as Early Childhood Education, children's education at hospitals, and alternative high school programs

MR – Mental Retardation* (OAR 581-015-2155)

NCLB – No Child Left Behind Act, Pub.L. No.107-110, §1, 115 Stat. 1425 (codified at 20 USC § 6301 et seq. (2002)).

OHI – Other Health Impaired* (OAR 581-015-2165)

PBS – Positive Behavior Supports = methods used to prevent negative behaviors by modeling and guiding replacement positive behaviors

PDD – Pervasive Developmental Disorder (DSM-IV §§ 299.00-299.80)

PLAAFP – Present Levels of Academic Achievement and Functional Performance = a required part of an IEP (OAR 581-015-2200(1)(a))

RTI – Response To Intervention = use of evidence-based practices to help students improve learning and behavior that is monitored and adjusted accordingly

SLD – Specific Learning Disability* (OAR 581-015-2000(4)(i); OAR 581-015-2170)

SDI – Specially Designed Instruction = the type and quantity of the individualized education a child receives based on his or her disability (OAR 581-015-2000(34))

SEA – State Education Agency, i.e. Oregon Department of Education

TAG – Talented and Gifted program (OAR 581-015-0805)

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TBI – Traumatic Brain Injury* (OAR 581-015-2175)

TOSA – Teacher On Special Assignment = special education administrators who assists the Program Administrators in the Portland Public School system

UA – Urine analysis test for illicit substances

VI – Visual Impairment* (OAR 581-015-0005(4))

YTS – Youth Transition Services = the plan to assist a student who is in special education but is leaving high school (OAR 581-015-2200(2); OAR 581-015-2000(38))

* One of the 11 categories of special education eligibility.

October issue: FOSTER CARE

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