

MAY 2009 LEGISLATIVE AND CASE LAW UPDATE

FEDERAL LEGISLATION

Fostering Connections to Success and Increasing Adoptions Act Information Update

Child Welfare League of America has been collecting information from all 50 states and the District of Columbia about their policies for youth in foster care over 18 years old. So far, information for 21 states has been completed. The list includes information such as the maximum age a youth can remain in care, the legal arrangements for youth older than 18, whether reentry into the system is allowed, and the various living arrangement options. CWLA also took a special interest in higher education and how states are financially supporting foster care youth. Details about state tuition waivers and other state specific financial aid are listed. Additionally, information about how each state support youth in college over breaks is included.

Source: Children's Monitor Online, April 27, 2009

FEDERAL BUDGET

On Monday, May 11 the Administration completed the details of its FY 2010 budget. This is President Obama's first proposed budget for his new Administration. The budget is based on work of the previous Administration, but also indicates the new President's priorities. The Obama FY 2010 budget has numerous initiatives and hopeful signs for children, youth, and families and those who serve them. While there were not dramatic increases overall, the FY 2010 budget raises child welfare as an important issue, as indicated by several new initiatives and new directions. One major new initiative is that the President's budget proposes \$8.6 billion over ten years for a new mandatory program that provides funds to States for evidence-based home visitation programs for low-income families. This proposal is crafted in a comprehensive fashion, supports evidence-based programs, and is not limited

to one particular model. In addition, the Administration proposes a new \$20 million child welfare innovative fund that is designed to support demonstration projects to improve the outcomes for children and families. The Obama budget also eliminates the abstinence-only approach to preventing teen pregnancies which some research has shown to be ineffective and instead proposes a new \$110 million teen pregnancy prevention fund that would support evidence-based and promising teen pregnancy prevention programs.

Source: Child Welfare League of America, May 12, 2009

ADOPTION

Federal Legislation

Parental Leave

The House of Representatives' Oversight and Government Reform Committee approved a bill that would provide federal employees with up to four weeks of paid time off after the birth or adoption of a child. Currently, federal employees can take up to 12 weeks of unpaid leave. While the bill has many supporters, some members of the committee believe that, in this tough economy, it is not the right time to approve the new measure.

Source: Stephen Losey, Federal Times, May 6, 2009

Sexual Orientation

Florida

The Florida Court of Appeals reversed a lower court's ruling and held that Florida must give full faith and credit to adoptions granted to same-sex couples in other states. Unless the case is appealed to the Florida Supreme Court, the order will be in effect in roughly 30 days. While Florida bans same-sex couples from adopting jointly, approximately one half of all states will allow such adoptions.

Source: Neal Broverman, The Advocate, May 13, 2009

ADOPTION

Virginia

A man from Virginia is suing Catholic Charities USA claiming that the organization denied his application to adopt a child because he is HIV positive, despite being cleared to adopt and determined to be in good health. According to a church official, Catholic Charities does not discriminate against persons with HIV. The organization plans to settle the lawsuit. The Executive Director of the National Center for Adoption Law and Policy stated that a blanket policy barring people with HIV from adopting would be unlikely to withstand a legal challenge, noting that adoption cases are very complex and many factors may be considered when deciding if an adoption would be in the child's best interests.

Source: Cathy Doheny, The Washington Times, May 1, 2009

CHILD ABUSE

The American Academy of Pediatrics has released a policy statement regarding the use of diagnostic imaging in identifying child abuse. The policy includes advice on the tests that can help provide documentation of the abuse to be used later in the investigation: The role of imaging in cases of child abuse is to identify the extent of physical injury when abuse is present and to elucidate all imaging findings that point to alternative diagnoses. Effective diagnostic imaging of child abuse rests on high-quality technology as well as a full appreciation of the clinical and pathologic alterations occurring in abused children. The diagnostic imaging of suspected inflicted injury in infancy and childhood should be performed with at least the same rigor used in the imaging evaluation of accidental trauma and naturally occurring disease. To be confident that the imaging studies are acquired and interpreted in a thorough and informed manner, clinicians charged with reporting and providing evidence in cases of

suspected abuse should work in close collaboration with radiologists experienced in pediatric imaging. This approach will help ensure that child abuse is accurately identified and reliably differentiated from conditions that may simulate abuse

Source: American Academy of Pediatrics, May 1, 2009

CHILD DISCIPLINE

Many parents struggle with the question of whether or not they should utilize corporal punishment when disciplining their children. If parents are spanking to relieve their own anger and frustration, that can be a problem. Discipline must be done in the best interest of the child. When disciplining one must think how the child will interpret what is being done. Yelling and screaming in place of spanking may bring more harm than spanking. The core issue is, as a parent, does one have the kind of relationship with one's children so that when discipline occurs, parents and children are thinking about what the child is learning---how will this discipline help shape and manage behavior so that the child will grow up to become good citizens and responsible adults.

Some children have a hard time interpreting why they are being spanked. They also have a much harder time healing from the physical or emotional hurt from spanking. There are other alternatives to spanking. Building a solid emotional relationship with the child is the best thing a parent can do. Understand the child's needs, fears, concerns, frustrations, and their ability or inability to express their feelings. Once a strong bond is made, parents can often motivate that child into staying within the limits and boundaries of the household because that relationship has a lot of power and influence. Take two hours out of a week and engage in a real meaningful conversation with your child.

Source: Sydnie Holt, New Pittsburgh Courier, April29-may 5, 2009 (Walter Smith, Family Resources)

CHILDREN'S JOB OPPORTUNITIES

Summer Youth Job Program Begins

The City of Pittsburgh and Allegheny County offer more than 1,000 jobs. Allegheny County expects to hire as many as 600 young people this summer in a jobs program funded by a \$1.87 million grant through the federal Workforce Investment Act. The job program, which is designed to provide a workforce for the county's ongoing "green initiatives," is open to people between 14 and 24 years of age. It is intended for disadvantaged youths who live in Allegheny County, but outside the city of Pittsburgh's limits.

The city also announced its own summer jobs program for youths in low-income families this week. City officials overseeing the jobs program through the Pittsburgh Partnership started accepting applications for 554 summer jobs early this week.

County officials said the job program will mostly focus on employing youths who are trying to better themselves, such as high school dropouts and juvenile offenders, or those from low-income communities. Young adults who grew up in the foster care system will also be given special consideration.

The programs will range from four to 10 weeks, and the specific age of eligibility varies with each program. For the most part, the jobs will involve landscaping, gardening, conservation and similar projects. Other aspects of the employment program are geared toward providing training and work experience in child care, health education, first aid and money management. However, county officials said all of the programs will serve to build good work habits, as well as problem-solving and social skills for future employment.

Pre-applications are available at Career Link offices and Summer Youth Program sites. The Career Link office in Forest Hills will serve as the hub for information, referral and processing of the applications. Enrollment is limited to 600 youths.

For more information and specific eligibility requirements about the program, contact The Forest Hills Career Link Youth Hotline at 412-436-2321 or visit the Allegheny County Department of Human Services Web site at www.alleghenycounty.us/dhs/wiayouth.aspx.

Source: Karamagi Rujumba, Pittsburgh Post-Gazette, Saturday, May 30, 2009

DISPROPORTIONALITY

Colorado

American Humane, in conjunction with the Colorado Department of Human Services, was recently awarded approximately \$250,000 in federal Temporary Assistance for Needy Families funds to launch the Colorado Disparities Resource Center (CRDC). The CRDC will help balance inequities for families and children of color by monitoring the development of state and county plans and by obtaining and using data from Colorado Trails, an automated system that tracks all child protection cases in the state. The CDRC will then be able to provide an accurate account of the disproportion of families and children of color in the state's welfare system. From this information, the CDRC will develop and implement strategies to achieve systemic change at both local and state levels.

Source: Business Wire, May 6, 2009

FOSTER CARE

Rhode Island

A federal judge dismissed a lawsuit brought by Rhode Island's child advocate on behalf of the 3,000 children in foster care in that state, alleging the children were being abused and neglected in foster care due to the state's mismanagement of the child welfare system. The case was dismissed because the judge found that the "next friends" who were representing the minor children's interests in the case were not close enough to act on their behalf.

Source: Eric Tucker, The Day, May 1, 2009

FOSTER CARE

Oklahoma

A federal judge designated as a class action suit a lawsuit brought on behalf of nine foster children by Children's Rights, a New York child advocacy group, against the Oklahoma Department of Human Services. Due to the new designation, the interests of all 10,000 children in Oklahoma's foster care system will now be represented in the suit, which asks for lower case loads for social workers and increased monitoring of foster children's safety.

Source: The Joplin Globe, May 5, 2009

Federal Legislation

Louisiana Senator Mary Landrieu, with the support of celebrity foster mother Rosie O'Donnell, introduced new legislation which would promote the mentoring of foster care children. The bill would authorize \$15 million to begin statewide foster care mentoring programs and \$4 million to start a national public awareness campaign to recruit mentors. States would be eligible for up to \$600,000 to establish or expand foster care mentoring programs. Mentors who participate in the program would be eligible to receive \$2,000 in federal student loan forgiveness for every 200 hours they serve with a maximum of \$20,000.

Source: Gerard Shields, The Advocate, May 13, 2009

Washington

The Washington Department of Social and Health Services will pay \$2 million to settle a lawsuit brought by two women who claimed they suffered years of physical and sexual abuse as children in a foster home. The settlement did not include admission of wrongdoing by DSHS, agency spokesman, Steve Williams, states the

women's claims were never proven. The attorneys for the women state they discovered evidence in DSHS files that the agency had received multiple warnings of possible abuse over years, yet failed to act.

Source: Jim Brunner, The Seattle Times, May 8, 2009

Washington

May 7th, Washington Gov. Christine Gregoire signed House Bill 1782, Senate Bill 5431 and Senate Bill 5803 into law, giving foster parents additional rights. The bills state that a parent's absence will be considered when the court is deciding how much visitation the parent should have with his or her child, children reentering the system should be placed with foster parents they already know and the state must inform prospective adoptive parents that the state will not pay for the child's placement in a mental health institution.

Source: Adam Wilson, The Olympian, May 15, 2009

COURT CASES AFFECTING CHILDREN AND FAMILIES

PENNSYLVANIA CASES

FOSTER CARE

Pennsylvania: Bryan v. Erie County Office of Children & Youth

The United States District Court for the Western District of Pennsylvania denied defendant's motion to dismiss a § 1983 claim and a claim for intentional infliction of emotional distress, finding that plaintiffs had stated a cause upon which relief could be granted. Plaintiffs, former foster parents, alleged that defendants, Erie County Office of Children & Youth and other state actors, violated plaintiffs' substantive due rights and intentionally inflicted emotional distress on them by placing a foster child with a known sexual abuse history in plaintiffs' home and failing to tell plaintiffs of the child's problems. The foster child later sexually abused plaintiffs' biological child. The court found that plaintiffs adequately stated a cause of action, both under § 1983 and in relation to the second claim of intentional infliction of emotional distress. The court noted that both parties could pursue their positions through discovery and that a motion for summary judgment would have been more appropriate than a motion to dismiss.

Cite: No. 03-259 Erie; 2009 U.S. Dist. LEXIS 40591 (W.D. PA May 14, 2009)

ADOPTION

Financial Issues

Pennsylvania: Laird v. Dep't. of Public Welfare

The Commonwealth Court of Pennsylvania reversed the order of the Secretary of the Department of Public Welfare, finding that the secretary erred when she found that the petitioner children were not eligible for adoption subsidies because they were not certified by the department and did not apply for the

subsidies prior to the finalization of the adoption. The court found that the children met the adoption subsidy eligibility requirements under 55 Pa. Code §3140.202 and the petitioners' failure to apply for the subsidy prior to or at the time of the adoption was justified due to the adoption agency's failure to inform petitioners of the subsidy.

Cite: No. 1219 C.D. 2008; No. 1220 C.D. 2008; 2009 Pa. Commw. LEXIS 180 (Pa. Commw. Ct. May 1, 2009)

OTHER STATES' CASES

ADOPTION

New York: In re Adoption of Sebastian

In a case of first impression, the Surrogate's Court of New York, New York County, granted petitioner's petition to adopt her genetic son who was born through in vitro fertilization after petitioner's ovum was implanted into her lesbian partner's uterus, finding that adoption was the only way to ensure that petitioner would be accorded all "rights and responsibilities appurtenant to the relationship of parent to her son." The court found that though there were other, less expensive, ways of establishing a legal relationship with the child -- for example, becoming listed on the child's birth certificate, signing an acknowledgement of paternity or obtaining a judicial order of filiation -- adoption was "the only remedy available [that would] accord the parties full and unassailable protection..." In arriving at this conclusion, the court found that New York paternity law allowing fathers to establish parental rights while not allowing a genetic mother to do the same is a "constitutionally prohibited gender-based classification."

Cite: No. 38-08; 2009 NY Slip Op. 29182; 2009 N.Y. Misc. LEXIS 990 (N.Y. Sur. Ct. April 9, 2009)

ADOPTION

Missouri: Young v. Children's Division

The Supreme Court of Missouri reversed the circuit court's judgment affirming the department of social services' denial of adoptive foster parent's application for a behavioral foster care adoption subsidy. The application for behavioral foster care adoption subsidies for two children was denied based on criteria laid out in the department's Child Welfare Manual; the court found that the decision was void because the criteria used was not in rule format as required and therefore, remanded the case back to the division ordering it to implement the necessary rules and reevaluate the appellants' application.

Cite: No. SC89190; 2009 Mo. LEXIS 48 (Mo. May 5, 2009)

Sexual Orientation

Florida: Embry v. Ryan

Adoptive parent, Lara Embry's petition for declaratory relief and petition to determine parental responsibility for her adopted daughter was granted. The Appeal Court held that the trial court was required to give adoptive parent's Washington state adoption judgment full faith and credit. Appellant, a homosexual, had adopted her partner's biological child in Washington through a second parent adoption. She and her partner relocated to Florida and later split up; adoptive parent then sought custody and/or visitation with the child. The trial court dismissed the petitions, finding that the adoption judgment, entered in Washington, was against Florida's public policy, and therefore, need not be recognized. The appellate court reversed, holding that Florida law specifically provides that adoption decrees from other states must be recognized in the state. In reaching its decision, the court found that Embry must be given the same rights as any other adoptive parent in Florida regardless of whether the trial court believed that the Washington adoption violated a clearly established public policy in Florida

prohibiting adoption by a homosexual. An alternate ground for dismissal, which distinguished between "recognition" and "enforcement" of a judgment was addressed in a concurring opinion. Rejecting the distinction, the concurrence noted that Florida law not only mandates recognition of adoption judgments issued by another state but further states that "the rights and obligations of the parties on matters within the jurisdiction of this state shall be determined as though the judgment were issued by a court of this state."

Cite: No. 2D08-1323; 2009 Fla. App. LEXIS 4633 (Fl. Ct. App. May 13, 2009)

CUSTODY

Artificial Insemination

Arizona: Egan v. Fridlund-Horne

In a special action addressing questions of first impression, the Arizona Court of Appeals, Division One, Department A, vacated the order of the Superior Court in Coconino County holding that the lower court erred by failing to utilize procedural and evidentiary safeguards in order to protect the overarching interests of the legal parent by awarding the nonparent partner in a same-sex relationship equal visitation rights and not taking into account the fundamental rights of a fit legal parent to determine what is in the best interest of the child. Here, the child was born via artificial insemination of one partner by donor sperm and raised jointly for seven years until the termination of the relationship, upon which the couple entered into a visitation agreement. The court noted that while the Arizona legislature has stated that a superior court may grant visitation rights to a person who stands in loco parentis to a child, it intended that those rights be granted on a finding that the visitation is in the child's best interests. The court determined that permitting the superior court's order to stand would allow a nonparent the ability to circumvent the requirements of in loco parentis custody, which imposes a higher standard of proof than in loco parentis visitation and that the birth mother's

constitutional right to parent would be breached.

Cite: No. 1 CA-SA 08-0240; 2009 ARIZ. APP. LEXIS 56 (AZ Ct. App. April 14, 2009)

FOSTER CARE

Indiana: In re T.S.

The Supreme Court of Indiana affirmed the juvenile court's order allowing a child, who had been removed from his mother's care to remain with the child's foster parents until the end of the school year, ruling that the order was not clearly erroneous. The court held that Indiana law allows an expedited appeal process for modifying dispositional decrees regarding child placement where the juvenile court does not follow DCS's recommendation - in this case to return the child to his mother's custody-- noting that where the juvenile court finds that a recommendation was unreasonable or contrary to the best interest of the child, the court need not accept the recommendation, and the appellate standard of review of the juvenile court's decision is for clear error.

Cite: No. 46S04-0904-JV-160, 2009 Ind. Lexis 359 (Ind. April 17, 2009)

California: In re Holly B.

The Court of Appeal of California, Third Appellate District dismissed father's claim that the juvenile court abused its discretion in granting the Mono County Department of Health and Human Services' petition to rescind its earlier petition for psychological evaluation of the father's child holding that father lacked standing to challenge the order. The court held that a parent may not appeal an order that does not affect the parent's own rights. Here, the psychological evaluation was requested so the department could assess the appropriate foster home placement for the child, which would have no affect on the father's efforts towards reunification with the child.

Cite: No. C058116; 172 Cal. App. 4th 1261; 2009 Cal. App. LEXIS 492(Cal. Ct. App. April 8, 2009)

KINSHIP FOSTER CARE

California: In re E.B.

The Court of Appeal of California, Second Appellate District, affirmed the superior court's order removing the children from the custody of maternal great aunt, holding that the aunt, as a mere relative and short term caretaker, did not have standing to appeal the order as she had no legally recognized interest in the children and was not harmed as a result of the order. Under California law, in order to have standing to appeal a decision, a party must show that he or she has a legally recognized interest in the appeal and is injuriously affected by the lower court's action. Here, the court found that appellant, who was not the child's legal guardian or de facto parent, had no legal right to custody of the child; therefore, the order removing the children did not "aggrieve" aunt's rights. Because R.F. lacked standing to bring an appeal from the trial court's decision, the appeal was dismissed.

Cite: No. B206537; 2009 Cal. App. Unpub. LEXIS 3911 (Cal. Ct. App. May 18, 2009)

PATERNITY

New Jersey: C.L. v. W.S.

The New Jersey Supreme Court affirmed the lower court's ruling that the New Jersey court had personal jurisdiction over defendant in a paternity case because defendant engaged in sexual intercourse with plaintiff mother in New Jersey, creating substantial contact with the forum state and he "should reasonably have anticipated being hailed into court in New Jersey." The court found that under The Parentage Act and The Uniform Interstate Family Support Act, a state may exercise personal jurisdiction over a defendant in a paternity action if the defendant engaged in sexual conduct in the state and as a result of the sexual conduct is alleged to be the father of the child. In addition, the court found that the

defendant had substantial contact with the state of New Jersey so as not to offend the traditional notions of fair play and substantial justice. Finally, the court reversed the order appointing plaintiff mother as the guardian ad litem for the child because the child was not minor at the time of the proceeding, she was not a named party and the parent may not act as a guardian ad litem on the child's behalf.

Cite: No. A-5782-06T2; 2009 N.J. Super. LEXIS 80 (N.J. Super. Ct. App. Div. April 17, 2009)

TERMINATION OF PARENTAL RIGHTS

North Carolina: In re N.B.B. & J.R.B.

In an unpublished opinion, the North Carolina Court of Appeals vacated the order of the Robeson County District Court terminating the parental rights of father and remanded the case for additional findings of fact and conclusions of law, holding that the trial court had failed to specify the statutory grounds on which termination was based. The court noted that in order to terminate parental rights, the trial court must support its adjudication with clear, cogent and convincing evidence. The appeals court opined that the lower court's finding of facts confused the elements of the statutory grounds for termination of parental rights and thus determined that without a clear identified basis for the lower courts adjudication it could not effectively review the termination order.

Cite: No. COA08-1232; 2009 N.C. APP. LEXIS 393 (N.C. Ct. App. April 21, 2009)

Texas: In the Interest of D.M.F.

The Court of Appeals of Texas for the Second District reversed the trial court's order terminating the father Jerry F.'s parental rights and remanded to the trial court for transfer of custody to the father. The court held that the trial court improperly applied Texas law, which sets forth abandonment as a ground for termination. The court found there was no clear and convincing evidence which proved that Jerry

F. had the requisite knowledge the mother was carrying the child, and the law requires "a court order, a judicial admission, or an unequivocal acknowledgement of paternity" in order for an enforceable support obligation to exist.

Cite: No. 02-08-212-CV, 2009 Tex. App. LEXIC 2691 (Ct. App. Tex. April 16, 2009)

Alabama: T.G. v. Houston Cty. Dept. of Human Res

The Court of Civil Appeals of Alabama affirmed the Houston Juvenile Court's termination of mother's parental rights to each of her three children, holding that the lower court did not err by failing to dismiss the department's petition to terminate the mother's rights. The court found that, contrary to the mother's contentions, Alabama law does not establish a statute of limitations for filing a termination petition. Specifically, the court held that the department may file a petition to terminate parental rights whenever it is in the best interests of the child. In addition, the court affirmed the juvenile court's determination that the mother's children were dependent and that foster care was not a viable alternative to terminating the mother's rights.

Cite: No. 2070841; 2009 Ala. Civ. App. LEXIS 112 (Ala. Civ. App. April 24, 2009)

Florida: In re T.F. v. Dep't. of Children's & Family Servs.

The Court of Appeal of Florida, Second District, reversed the circuit court's order adjudicating mother's child dependent, finding that the lower court erred by changing sua sponte the case plan and dependency order goal from reunification to adoption without holding a new arraignment or adjudication hearing. The court held that under Florida law, adoption can only be a permanency goal if a petition for termination of parental rights has been or will be filed. Here, the department had not and did not plan to file a petition to terminate as the mother's current incarceration was not for a time significant enough to warrant that request. In addition, the court noted "serious

due process issues” in relation to the court’s change in the case plan, which invalidated the mother’s previous consent to the dependency adjudication, which was based on a goal of reunification, as it was no longer knowingly made.

Cite: No. 2D08-1291; 2009 Fla. App. LEXIS 3827 (Fla. Dist. Ct. App. April 29, 2009)

TERMINATION OF PARENTAL RIGHTS

Massachusetts: Adoption of Rico

The Supreme Judicial Court of Massachusetts held that the juvenile court erred when it approved post-adoption contact between a child in the custody of the department of social services, and his siblings and parents, but failed to enter any specific orders for post-termination or post-adoption visitation between the child and his father. The court stated that the lower court abused its discretion when it left visitation to the discretion of the department and prospective adoptive family because “when the parental rights of the biological parents are terminated, ‘the court has the authority and responsibility to intervene in [the child’s] best interests.’” The court found that a visitation order would be in the Child’s best interest as he had a strong bond with his father and siblings and, therefore, remanded the case to the juvenile court to enter the post-termination visitation orders.

Cite: No. SJC-10280; 2009 Mass. LEXIS 72 (Mass. May 7, 2009)

Indiana: In re Parent-Child Relationship of G.Y.

The Indiana Supreme Court reversed the trial court’s order terminating mother’s parental rights, finding that state had not met its burden of showing by clear and convincing evidence that termination was in the child’s best interests. The court found that the evidence did not justify terminating the mother’s rights including that the mother did not have a criminal record after G.Y.’s birth, was working towards her

associate’s degree, had started a culinary arts certification program, was due to be released from prison imminently and had arranged for housing. In addition, the court agreed with the mother that “there was no evidence presented to show that permanency through adoption would be beneficial to [G.Y.]”

Cite: No. 49S02-0902-JV-091; 2009 Ind. LEXIS 397 (Ind. April 24, 2009)

Uniform Child Custody and Jurisdiction Enforcement Act

Utah: D.M. v. S.H. (In re A.M. & C.M.)

The Court of Appeals of Utah affirmed the lower courts termination of father’s parental rights, holding that the lower court had subject matter jurisdiction under the Utah Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) and termination was in the children’s best interest. Mother, who lived in another state with the children, filed a petition to terminate father’s parental rights in the Utah court that granted the couple’s divorce. While the father argued that the court no longer had jurisdiction, the court found that under the UCCJEA “jurisdiction will continue in Utah until ‘substantial evidence is no longer available in this state.’” The court then found there to be extensive evidence regarding the relevant issues in Utah.

Cite: No. 20080411-CA; 2009 UT App. 118; 2009 Utah App. LEXIS 119 (Utah Ct. App. April 30, 2009)