

Vermont Juvenile Defender Newsletter

Spring 2013

This newsletter is made possible through the Vermont Court Improvement Program with federal funding from the U.S. Administration on Children and Families.

Bullying and Harassment

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Impediments to Getting an Education

As Judge Timberlake recently noted in the February 2012 issue of Youth Today, “While on the bench, I saw many reasons behind frequent absence from school: illness, no parent at home to get kids off to school, an effort to hide child abuse, drug addiction or gang activity.” See his article on Truancy here:

http://www.youthtoday.org/view_blog.cfm?blog_id=691

There are barriers to getting an education such as the effects of bullying, lack of housing, and immigration status.

Vermont statute defines both harassment and bullying. (See 16 V.S.A. § 11(a) §§ 26 and 32 respectively. Usually an imbalance of power and repetition are involved. These behaviors can be manifest in three different ways:

- 1) Verbally by teasing, name-calling, inappropriate sexual comments, taunting, and/or threatening to cause harm;
- 2) Socially by leaving someone out on purpose, telling other children not to be friends with someone, spreading rumors about someone, and embarrassing someone in public; and/or
- 3) Physically by hitting/kicking/pinching, spitting, tripping/pushing, taking or breaking someone’s things and making mean or rude hand gestures.

Children react differently to being exposed to any of these types of behaviors. It can make it very difficult for some children to face going to school every day, leading to truancy, and in the extreme cases, even death.

A child considered to be a bully in a school which has adopted a zero-tolerance policy towards bullies, may be suspended or expelled from school. Positive Behavior Interventions and Support programs (www.pbis.org) are preferable to the

punishment of depriving the child of a school based education.

The ABA policy around bullying opposes “ (1) inappropriate referral of youth to the juvenile justice system for acts of bullying and student-on-student harassment, and (2) inappropriate use of expulsion and out-of-school suspension for such acts.”

“If you have a client who is facing school suspension and/or expulsion and you want someone to help, there's a new Staff Attorney/Poverty Law Fellow at Legal Aid who is working on these cases. His name is Jay Diaz and you can contact him at (802) 383-2207 or via email at jdiaz@vtlegalaid.org.”

Stable Housing

Many case plans for children in DCF custody require that parents, or a single parent, obtain stable housing, and attaining this goal is identified as a requirement to avoid having the state file a termination of parental rights petition.

The Agency of Human Services (AHS) has defined Homeless and At Risk of Homelessness in the policy on Housing Stability effective August 22, 2012. <http://humanservices.vermont.gov/boards-committees/vermont-council-on-homelessness/ahs-housing-policy/view>

The first and second categories of the definition of “homeless” relate to an individual or family without a fixed address, or those who will imminently (within 14 days) lose their primary nighttime residence.

The third category of the definition of “homeless” applies to “Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise

qualify as homeless under this definition. Without a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance, a family is heading towards qualifying for homeless assistance. Chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, are all factors which can contribute towards homelessness, especially when combined with other barriers to employment. In these economic times the problem of homelessness as defined here is increasingly the basis for parents being separated from their children. The AHS goal is to establish practices and policies to promote greater housing stability. It bears looking at to make sure that everything is being done by DCF to access services for your clients in an effort to comply with the State’s Plan to End Homelessness.

In 2012 there was a 55% increase in the amount spent by DCF to provide temporary housing for 2000 families. There are long waiting lists for housing. The lists are so long that while waiting to be considered for specialized Family Reunification Program (FUP) housing, the section 8 program for families at risk of separation due to lack of housing, the courts may get anxious to find permanency relatively quickly for children, especially those at a young age. Stable housing is key to preventing family separation.

See: <http://women.vermont.gov/resource-directory/Housing-and-Homelessness>

Our Family Support Workers have had some success helping families find housing .

Attorneys, please contact Anna to request their services.

Citizenship and Immigration Needs of Foster Children

It is important to know the immigration status of your clients as soon as possible in order to identify and preserve avenues for them to keep or obtain lawful immigration status. Basic knowledge of a client's immigration status and background enables the attorney to identify when a client's lawful status is at risk and to advocate for resolutions that avoid or minimize his/her risk of deportation. Many undocumented children often have avenues available to them to obtain lawful immigration status.

Determining whether your undocumented client is eligible to pursue one of the avenues to lawful immigration status generally involves consultation with an immigration expert. The second you represent a child who is a non-citizen, you should be speaking with an immigration attorney, right away.

A common path to Lawful Permanent Resident status for undocumented foster children is to apply for Special Immigrant Juvenile Status ("SIJS"). Three findings by a juvenile court are required: The court must find the child "has been declared dependent on a juvenile court" or has been placed by such court "under the custody of, an agency or department of a state, or an individual or entity appointed by a State or juvenile court..." and that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law". Secondly the juvenile court must have made the determination that "[I]t would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual

residence." Thirdly the Secretary of Homeland Security must consent to the grant of Special Immigrant Juvenile Status, with some exceptions. 8 U.S.C. § 1101(a)(27)(J)(i)

For those children who are Lawful Permanent Residents approaching age 18, it's important to assess and discuss the option of obtaining U.S. citizenship by applying for naturalization. It is also possible under certain circumstances that these Lawful Permanent Resident children have already automatically derived U.S. citizenship if their biological parents are U.S. citizens.

The Vermont Refugee Project guides those in the resettlement program through the process of applying for Permanent Resident Alien status after they have been in the U.S. for one year. Children's status depends on this family connection. If the family does not remain unified then steps must be taken to insure the status of the children.

Rebecca Turner at the Defender General's office is an excellent resource for any questions on immigration status, and ramifications of criminal charges for aliens. Rebecca.turner@state.vt.us

Art Edersheim at the Vermont Law School Legal Clinic can be helpful sorting through the complexities of immigration law also. aedersheim@vermontlaw.edu

There is also a lot of information on the Defender General website including Material relating to Diagnostic Questions for Noncitizen Youth: Determining Potential Avenues for Legal Status and Defending Non-Citizen Juveniles. See: http://defgen.vermont.gov/resources_and_research/Defending_Non_Citizen_Juveniles

Education Matters

Focusing on Educational Stability

Each time a student changes school they lose approximately six months of educational progress, resulting in a lack of basic academic skills and major disadvantages when transitioning to adulthood. They also lose important social connections and the security that comes with attending a familiar school each day. Additionally, there is a direct connection between permanency and school stability.

You may hear judges ask about the following during hearings:

- Is the child currently enrolled in school? Where?
- Has the child been asked about their school placement? What connections does the child have to his or her home school?
- Has DCF, the GAL, and child's attorney considered the appropriateness and proximity of the child's school? What will be lost or gained if the child is moved to a new school?
- Is educational stability reflected in the child's case plan?
- What is being done to move the child towards educational success?

The child's attorney can talk to DCF Social Workers and Guardians ad Litem about these issues before court hearings. The ABA's Legal Center for Foster Care and Education has great resources and a useful toolkit. See http://www.americanbar.org/groups/child_law/what_we_do/projects/education.html.

Improving educational stability and educational outcomes for Vermont youth in foster care is one of the goals of the Vermont Court Improvement Program. It is also the focus of a new collaborative, grant-based effort called VT-FUTRES (Fostering Understanding To Reach Educational Success). Based in UVM's College of Education and Social Services, VT-FUTRES is partnering with the Justice for Children Task Force, Department for Children and Families (DCF), and Agency of Education to provide training and outreach on this topic statewide. VT-FUTRES is also developing a Resource Toolkit that will soon be available at vtfutres.org. (by Kristen Hayden-West, Shari Young ed.)

Collateral Consequences

States should provide clear and accurate information about collateral consequences as part of the criminal justice or juvenile adjudication process. This doesn't always happen. The ABA Standards require defense counsel to inform clients about collateral consequences to the extent possible, sufficiently in advance of the entry of any plea.

In September 2012 the ABA introduced a National Inventory of Uniform Collateral Consequences which reflects nearly 40,000 rules addressing the effects of conviction or juvenile adjudication in such areas of employment, occupational and professional licenses, business licenses and other property rights, government contracting and program participation, government loans and grants, judicial rights, government benefits, education, political and civic participation, housing, family/domestic rights, recreational licenses, including firearms, registration, notification and residency restrictions, motor vehicle

licensure, and general relief. This inventory can be found at:

<http://www.abacollateralconsequences.org/CollateralConsequences/RetrieveValues?id=Vermont>

In Vermont judges are not required to advise delinquent children in the Family Division or youth in the Criminal Division of the collateral consequences a minor may face upon a finding of delinquency or upon a criminal conviction. The Juvenile Law Committee of the Vermont Bar Association, under the leadership of Pam Marsh, produced a fact sheet explaining some of the collateral consequences of an adult conviction in Vermont (see newsletter from Fall, 2009).

Many minors are treated as adults in Vermont, and may end up unaware of the rights available for sealing their records not only from juvenile court but also from the Criminal Division for convictions for crimes which took place when the defendant was under 21 years old. See 33 V.S.A. § 5 (a) and § (g).

If you were under the age of 21 when the crime was committed you may be able, as soon as two years from now, to have

your conviction sealed. If it is sealed it will mean it will not show up if a criminal record check is done. In order to have this record sealed you will have to come back to this same court and ask the court to seal this record. In order for the court to seal this record the court will have to find that you have not been convicted of other certain crimes during those two years, are not charged with one of those crimes at the time you fill out the application, and that you are rehabilitated.

National Juvenile Defense Standards

In 2012 the National Juvenile Defender Center published guidance to integrate the law with best practices and latest developments regarding defending children.

Here is the link to an electronic copy of the Standards for your use:

<http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>

Youth Justice Summit - Friday, April 19, 2013 9:00 a.m. - 3:30 p.m. Howe Center, Rutland

To sign up for the April 19th Youth Justice Summit, you can email Brenda.Palin@state.vt.us by April 5th.

Speakers: Youth Justice in Vermont *Cheryle Bilodeau, Juvenile Justice, Director/Policy and Operations Manager, DCF-Family Services Division*

The Cortex Vortex: A Reasoned Approach to Understanding the Intersection Between Adolescent Brain Development & Juvenile Justice Policy

Kreig Pinkham, Executive Director, Washington County Youth Services Bureau

Youthful Offender Training

Judy Brassard, Youth Specialist, DOC and Gillie Hopkins, MSW, Social Worker, DCF-Family Services Division