

Vermont Juvenile Defender Newsletter

Spring 2014

In this issue:

Ed.Matters – Two Cases by Jay Diaz	1
Concurrent Goals	2
Representing Very Young Children.....	3
Credit Checks.....	3
Status Offenses.....	4
Expanded Medicaid.....	4
ICPC & ICJ (Gillie Hopkins).....	4
Important Dates	5
Resources for Immigrants and Refugees –by Susan Hong.....	6-7

Education Matters

JD-VLA Partnership Gets Kids Out of Court and Back to School

Vermont Legal Aid Attorney, Jay Diaz, has collaborated with juvenile defenders in a truancy case to get a truancy petition dismissed for a student with disabilities and have him returned to a supportive educational setting. In the case, a school repeatedly required a student with emotional/behavioral disabilities to leave school because of behavioral outbursts. The school then used the “early dismissals” as the basis of a truancy petition. Mr. Diaz, representing the student in the education matter, demanded that the school perform educational and psychological evaluations. He then forced the school to recognize the

outbursts as manifestations of disabilities, and to provide adequate behavioral and educational supports.

In addition, Mr. Diaz partnered with attorneys Marc Eagle and Richard McCormick to address the truancy case. To prepare proposed findings, they gathered information regarding the early dismissals, student’s disabilities, and relevant education law. In December, the presiding judge dismissed the petition, stating that early dismissals, particularly for disability-related conduct, amounted to suspensions. Thus, the student could not be considered absent “without justification.” Since the case concluded, the student has not had problems with absenteeism and has had greater academic success. Mr. Diaz can be reached at jdiaz@vtlegalaid.org or (802) 383-2207.

Student Excluded from School for Overturned Delinquency, Finally Returned

In early 2012, a student with long-standing and recognized behavioral disabilities was charged for a physical incident with a school-based clinician. Days later, long before the juvenile was adjudicated, the student was expelled from public school. Due to the work of Juvenile Defenders Lucas Collins and Marshall Pahl, the initial adjudication was overturned. However, the school refused to return the student to school because of an assumed safety risk, despite an evaluator’s finding that there was only a low to moderate risk of reoffending.

Mr. Pahl contacted Vermont Legal Aid attorney Jay Diaz about representing the

family in the education matter. Mr. Diaz discovered that the school had violated the student's procedural and substantive rights under special education law. He also determined that the student's eventual placement in an alternative program was unlawfully prolonged. Due to the advocacy of Mr. Diaz, the school recently agreed to return the student to the mainstream high school after more than two years of exclusion. The student looks forward to succeeding academically and eventually transitioning to a technical center. Mr. Diaz can be reached at jdiaz@vtlegalaid.org or (802) 383-2207.

Concurrent Goals and the Role of the Attorney

It is common practice for DCF to set out concurrent goals in the case plan. Consequently parents attempting to follow a reunification plan may often be hindered and confused by the concurrent goal of adoption.

A successful process depends on a clear understanding of what both DCF and the parents must do to achieve reunification. Committed collaboration between DCF, the courts and service providers can aid this process.

According to Mimi Laver of the ABA, a parent's attorney can facilitate this process by following these six guidelines:

- Spend time getting to know your clients.
- Know your work outside the courtroom is at least as important as in-court advocacy.
- Know it may be helpful for the client to collaborate with DCF.

- Know that delay tactics rarely help the client because the "AFSA clock" is ticking.
- Identify your clients' parenting strengths.

See "[A Cut Above: What Makes a Parent Attorney Great](#)" Child Law Practice Vol. 27 No. 4

In Vermont some attorneys may not be able to attend all case plan reviews. According to a 2013 survey by the Justice for Children Task Force with 280 responses, indicating that attorneys representing parents and children could do better in the following areas:

- meet with client prior to the date of the hearing
- monitor client's case plan progress, including frequency of family contact
- attend administrative case plan reviews

The client may need an advocate at these reviews. Attendance at administrative case plan reviews is included in assigned counsel's contracts. It is important for attorneys to have contact with their client *before* and *after* the administrative case plan reviews, if the attorney will not be *attending*. One barrier to attorneys speaking with their client between hearings is difficulty getting in touch with the client. As noted at the Juvenile Defender training last fall, when representing a parent, it is good practice to clarify with your client multiple ways to be in contact. DCF social workers are required to have monthly face-to-face contact with parents and children. If you are unable to reach your client, ask the

social worker for current contact information.

Attorneys must be invited to case plan reviews. See the new [DCF #122 policy](#) on Case Plan Reviews and Permanency Hearings for Children and Youth in Custody. If you are not routinely invited to the case plan review, you can contact the local DCF district director.

Often the parent's progress is discussed at the reviews, and if the parent has no advocate, it may appear that the parent is dropping the ball, when in fact better coordination of services on the part of DCF could make all the difference.

Using a Family Support Worker to attend case plan reviews may be helpful to provide support and advocacy for a parent. The Family Support Workers are listed on the Defender General's web site under Expert Services.

Representing Very Young Children Best Interest or Stated Interest

In the case of the very young child attorneys often feel bound to what the GAL recommends is in the best interest of the child. But attorneys should make efforts to meet the child and evaluate his or her wishes. As children become older they are more competent to express their wishes. The juvenile's attorney must first consult with the child in an age appropriate manner to determine the child's wishes.

The attorney representing the juvenile should keep in mind issues regarding child development and the capacity to reason, and the fact that this capacity may be contextual, incremental and/or intermittent. Consider the following factors in reaching this determination:

- The child's cognitive ability;
- Emotional and mental development and stability;
- Ability to communicate
- Ability to understand consequences;
- Consistency of decisions; strengths of wishes and opinions of others (while guarding for potential bias).

The attorney should determine the child's feelings about the proposed caretaker.

When the attorney believes that the child does understand the nature of the proceedings, the issues involved, the possible outcomes of the case, and their attendant repercussions, it is appropriate to take direction from the juvenile.

If the attorney and the GAL disagree, it is incumbent on the attorney to inform the Court that the juvenile and the GAL have differing opinions, and these must be stated to the Court.

Credit Checks (for youth over 16)

Research suggests that 5 – 10% of youth in foster care have negative credit files due to creditor errors, incorrect or fraudulent use of a youth's name or social security number, or identity theft. Many foster children are easy targets. (Cover story of *Child Law Practice*, March 2014, vol 33 No. 3

There is now a federal requirement that DCF request a check on the youth's credit status to ensure that there has been no

unauthorized use of the youth's social security number to establish negative credit.

A new format of case plans for youth over the age of 14 in Washington County reflects whether this check has been made and what the results were.

The attorney can help with a smooth transition towards financial success by helping the youth clear false credit reports and ensuring that the youth preserves and secures the documents they need when leaving DCF care.

Ensuring that SSI benefits continue where the child qualifies is much less cumbersome than the reapplication process.

Expanded Medicaid Coverage

The Affordable Care Act (ACA) expands Medicaid coverage for youth who age out of foster care. "Former foster children" are eligible for Medicaid under the ACA until they turn 26.

Eligibility depends upon whether:

- 1.) they were in foster care when they turned 18 or "aged out",
- 2.) they were receiving Medicaid when they exited care, and
- 3.) they are not otherwise eligible for, or enrolled in, mandatory coverage

If the youth is placed permanently with a relative, he or she may become ineligible for categorical Medicaid coverage through age 26 as a "former foster child".

Status Offenses New Standards

The Coalition for Juvenile Justice released its *National Standards for the Care of Youth Charged with Status Offenses* ("the

Standards") in December, 2013. Common examples of status offenses include truancy, running away, curfew and liquor law violations and being "unruly", "incorrigible", or "ungovernable" (e.g., beyond the control of the youth's parents).

The focus of the *Standards* in section 2 includes efforts to avoid court involvement for status offenders altogether. In section 3 it is suggested that judicial officers "Never order secure confinement for youth in status offense cases, and determine what options are available to avoid detention and out-of-home placements." The *Standards* can be found here: [Standards](#)

Interstate Compacts for the Placement of Children and Juveniles

Interstate Update-

**Provided by Gillie Hopkins, MSW-
gillie.hopkins@state.vt.us,**

802-769-6357

In July of 2013, Gillie Hopkins began as the new Interstate Compact Administrator at the Department for Children and Families-Family Services Division (DCF-FSD). Margo Bryce, who had been in the role for 14 years, spent a few weeks training Gillie prior to moving on to a full-time role as Quality Assurance Administrator with The Division. Prior to this role, Gillie was a Juvenile Services Social Worker in Burlington, and completed her MSW internship at FSD's Central Office in the System of Care Unit, where the Interstate Compact Administrator position is now housed.

Gillie is working closely with FSD's Residential Licensing and Special

Investigations Unit in order to decrease Vermont's average length of completion for home study requests from other states. As many readers likely know, there has been recent judicial advocacy to reduce the length of time states are requiring to complete ICPC requests, which averages well over the regulated 60 days.

Gillie is also working with FSD Social Workers to improve the quality of outgoing referrals so that other states find greater ease at completing timely home studies as a result of receipt of comprehensive referrals. With a new ICPC pending ratification nationally in the next few years, it's the Division's hope to improve the efficiency of ICPC processes prior to new Regulations being adopted. These changes are also occurring in tandem with efforts to revise Vermont ICPC policy and create written Division Practice Guidance for these cases via an FSD Interstate Workgroup.

The total number of all types of ICPC referrals in and out of Vermont in a year is about 350. That includes both parents placing their kids in residential programs, and child welfare residential placements, here and in other states, and private adoptions. The Interstate Compact on Juveniles (ICJ) volume is much lower, with fewer than 30 cases a year, including runaways and travel permits.

With regards to the Interstate Compact on Juveniles cases (ICJ), the most animated multidisciplinary conversations surround the matter of runaways. ICJ has now adopted an electronic file management system, which means the transferring and receiving of parole and probation supervision is more efficient than ever. The diversity of runaway cases, however, along with the infrequency of their occurrence in Vermont, leads for more struggles in uniform approach to these youth, both in ensuring their rights and their return to their home states. Gillie is in the process of activating an interdisciplinary ICJ State Council in order to further the practice around runaways and ICJ probation and parole cases, as well.

Please find Gillie's contact information above, should you wish to be in touch either about ICPC or ICJ cases, or have interest in serving on the ICJ State Council.

(See Fall 2010 Newsletter p. 5 – 8 for ICPC Resources last updated 10/28/2010)

Important Dates and Links

Friday, April 18, 2014 from 9:30 – 3:30 **Youth Justice Summit** Rutland, Vermont focusing on working with youth in the juvenile justice system who have been impacted by trauma. No registration fee – Register here: <https://www.surveymonkey.com/s/92FHM9R>

Tuesday (Mini-Trial School) – Thursday, June 3, 4 (Juvenile Law Day), 5 and 6th - Defender General Training at the Inn at Essex. Wednesday will be the Juvenile Law Day

Susan Hong's list of Resources for the Diverse and Immigrant Populations

Susan discovered these useful resources for attorneys and Family Support Workers through her work with immigrant and refugee populations in the Burlington area:

- **Association of Africans Living in Vermont**, 20 Allen Street, 3rd Floor, Burlington, VT 05401
(802) 985-3106 www.aalv-vt.org

Helps African refugees and immigrants, and refugees from all nations, adjust to life in Vermont by connecting them to educational opportunities, social services, employment, and each other.

- **Vermont Refugee Resettlement Program**, 462 Hegeman Avenue, Suite 101, Colchester, VT 05446 (802) 655-1963 www.vrrp.org/

Helps refugees and asylum grantees with housing, health, employment, ESL classes, professional interpretation/translation, family reunification, and more. Resource guide available as pdf at <http://www.refugees.org/assets/documents/vrrp-folder/vrrp-resource-guide-112011.pdf>

- **VRRP's (above) Vermont Interpreting and Translating Services (through VRRP, above)**

(802) 654-1706 or (802) 655-1963 <http://www.vrrp.org> (Click on "Our Services" then "Interpretation Services")

Provides fee-based interpreting and translating services in several world languages.

Including but not limited to: Albanian, Arabic, Armenian, Bengali, Bosnian (Serbo-Croatian), Burmese, Cantonese (Chinese), Dinka, Dzongkha, Ewe, French, Fon, Georgian, German, Gujarati, Hindi, Italian, Kinyarwanda, Kirundi, Kuku, Kurdish, Lingala, Lithuanian, Mai-Mai, Mandarin (Chinese), Nepali, Oromo, Polish, Punjabi, Russian, Sharshokpa, Somali, Spanish, Swahili, Turkish, Ukrainian, and Vietnamese.

- **Connecting Cultures**, Behavior Therapy and Psychotherapy Center, Department of Psychology, University of Vermont, 2 Colchester Ave., Burlington, VT 05401

(802) 656-2661

www.uvm.edu/~psych/graduate/?Page=BTPC/specialty_services.html&SM=BTPCsubmenu.html

In response to the mental health needs of Vermont's refugees, a model of mental health services now exists through the Connecting Cultures Program, a clinical-science specialty service of the BTPC in the Clinical Psychology Program at the University of Vermont. The Connecting Cultures Program provides an integrated, culturally sensitive approach to working with these populations, including: community-based outreach services; direct clinical services; mental health research; and training.

New England Survivors of Torture and Trauma, or NESTT

(802) 656-2661 newenglandsurvivorsoftorture.org

Vermont Immigration and Asylum Advocates, 241 N. Winooski Avenue, Burlington, VT 05401

(802) 864-3200 www.vtimmigrationandasylum.org (Both are entities within Connecting Cultures)

• **Vermont Student Assistance Corp (VSAC)**, 10 East Allen Street, PO Box 2000, Winooski, VT 05404 (802) 655-4050

services.vsac.org/wps/wcm/connect/vsac/vsac/library/pathfinders/vsac++library++pathfinders++education+resources+for+refugees+and+immigrants+to+the+us

Education resources for refugees and immigrants. Provides links to services and organizations that serve the refugee and immigrant population. Has an extensive library of books in several languages.

• **Champlain Valley Office of Economic Development**, 255 South Champlain Street, PO Box 1603, Burlington, VT 05402

(802) 860-1417 www.cvoeo.org/index.cfm?fuseaction=dep_intro&dept_id=12

Sponsors the Micro Business Development Program, which offers assistance and training to low- and moderate-income Vermonters who own or wish to start their own business. Also provides counseling and educational programs on personal finance and credit.

• **Somali Bantu Community Association of Vermont**, 325 Main Street, Suite 8, Winooski, VT 05404

(802) 658-2683 www.somalibantuvermont.org

Provides members of the Somali Bantu community with educational, cultural, and life-skills training programs.

• **Working Hands in Vermont's Borderlands**

A website resulting from a class research project at Middlebury College. Contains a guide to resources for migrant workers in Addison County.

sites.middlebury.edu/migrantresources/about/

• **Migrant Justice**, 294 N. Winooski Avenue, Suite 130, Burlington, VT 05401

(802) 658-6770

www.migrantjustice.net/about The mission of Migrant Justice is to “build the voice, capacity and power of the migrant farmworker community and engages community partners to organize for social and economic justice and human rights.”