

Affirmative Litigation Course
February 7, 2007
Issues Affecting Children, Youth and Families

Overview of the San Francisco City Attorney's work on issues related to children, youth and families

- Jennifer Williams, Deputy City Attorney, General Counsel to the Human Services Agency

Preliminary Ideas for Affirmative Litigation that we will explore further in the working groups:

Mental Health Issues –Like children throughout our country who are subject to the public child welfare system, many, and perhaps a substantial majority, of the children in San Francisco who have been adjudged “dependent” under Cal. Welfare and Institutions Code § 300 have serious emotional and mental health disturbances. Most of these children are eligible for Medi-Cal which supposedly entitles them to all the medically necessary “early and periodic screening, diagnostic, and treatment services” (ESPT) that federal Medicaid laws and regulations require participating states such as California to provide with “reasonable promptness.” Professor Hollinger will discuss several examples of how the California Department of Health Services and Regional Centers that are responsible for administering Medi-Cal may be in violation of federal Medicaid requirements by failing to provide our dependent children the mental health services that they are entitled to receive.

Youth Aging Out of Foster Care – Although recent federal and state legislation is intended to facilitate the transition of older youth exiting the foster care system to a sustainable independent living status, eligibility for federal and state financial, housing, educational, vocational, health and similar transitional and independent living benefits is often restricted by state regulations. Professor Hollinger will discuss the possibility of applying the rationale of *Fry v. Saenz*, 98 Cal App 4th (2002) to claims that disabled and other kinds of older foster youth should be entitled to receive these benefits beyond their 18th birthday.

Accessibility to Child Welfare Services – The federal government provides funding under Title IV-E of the Social Security Act for the purposes of assisting states in providing safe and stable out-of-home care for abused or neglected children until the children can be safely returned home, or placed permanently with adoptive families, guardians or in other stable living arrangements. Eligibility for Title IV-E funds is tied, however, to poverty levels established in 1996 and, as a result, many families who need these services do not qualify. Jennifer Williams will discuss possible litigation around these issues.

Other Child Welfare Issues – Jennifer Williams will highlight two other issues that are problematic from a policy standpoint and could potentially involve affirmative litigation: (1) Title IV-E funds may be used only for out-of-home care, but not in-home care. The goal of California’s child protection laws is to keep children in their home with court supervision, but federal funding cannot be used for this purpose; (2) Children and youth who are placed with a non-relative legal guardian are ineligible for federal support through the Independent Living Skills Program.

Impact of Food Industry Practices on the Health & Weight of Children, Youth and their Families – The City Attorney's office is currently considering litigation against businesses that falsely or deceptively advertise products to children and youth which may be bad for their health. The office is also considering litigation on the marketing of products to children. Deputy City Attorneys Danny Chou and Ann O'Leary will provide an overview of this work.

Litigation Strategies and Hurdles in these Cases

- Danny Chou will discuss the legal, jurisdictional and procedural hurdles that we may face in bringing these cases, including concerns about standing and remedies.