

Children's Section: Experiences of a Juvenile Delinquent

With the large number of children being adjudicated as juvenile delinquents, it is easy to forget that all of them have their own story. There are many reasons why these youth find themselves involved with the system; some of the reasons challenge our ideas of the stereotyped 'delinquent.' This issue's Children's Section showcases stories and poems by five teenagers, demonstrating the different experiences that led each one to being labeled as a delinquent. Each of these youths also found something to lead them away from a life of a crime and towards a healthy and productive adult life.

The Children's Section concludes with recent case summaries and legislation pertaining to the fields of dependency, delinquency, health and education law.

STRIKING 'DELINQUENCY' FROM THE DICTIONARY

By Danny A.*

So you want to hear my story? I've told this story so many times, but each time I tell it I wonder how I got here. I grew up in that place that you see on TV - you know where all the real gangsters grow up in East Los Angeles, not too far from Skid Row. My mom worked two jobs and we struggled. We couldn't afford to live anywhere else. We could barely afford what we had as it was. I had four other siblings and we were expected to pitch in with chores after we came home from school. This idea of doing something with our lives wasn't really on our minds. We had more important things to worry about, like eating, keeping everyone safe at night, paying rent. No one ever told us to think of tomorrow.

I was the oldest male, 16 years old, when I first got arrested. It was my job to protect the family, pitch in and earn some money to get by okay, but my dad was a respected veteran of the Maravilla Diablos. Being in the gang wasn't about just respect you see. It was about family, sticking together in the barrio, continuing tradition. It was just about protection. Being a homeboy meant having somebody to watch your back. You lost respect if you didn't command it. So I started in the gang when I was in sixth grade. My friend Juan who was in the gang used to bother me about it on the way back from school. I had to put in a lot of work to earn my position in the gang, to earn the respect of my homeboys and the fear of our rivals. Before we could get jumped-in we had to do a couple of shootings, some robberies, a couple of ass-kickings. I even watched my mom get kicked in the face. I've been shot at over ten times. Sometimes I can't believe I'm still

* Danny A. is nineteen years old, currently living in Southern California. He currently works in construction, with many thanks to Homeboy Industries. He is taking classes at a junior college trying to get an Associates Degree in Criminal Justice. He feels very passionately about his experience as a delinquent and hopes to one day work to change state policy.

here. It was a way of life for us. We needed the money to get by so we robbed. Once you were in, you couldn't get out. We did everything for each other; it was just the way it was. You're either with us or against us. That was the mentality.

Eventually all my close run-ins caught up and I got put on probation and arrested a couple times. A lot of my boys are on lock down and a while ago, I learned another one had been shot in a drive by. I had become a father by then, and when that happened, all of the shootings and the robberies seemed no way to live. I didn't want to lose the chance I could have to be with my kid. I wish I could say the system helped, that being called a delinquent and serving some time got my act together. It was just a temporary break.

When I got out, I knew I didn't want to go back. I had enough of that. There's nothing like not being able to go outside whenever you feel like it, not being able to see your baby, not being able to see your brothers and sisters and mom that puts things into perspective. My sting as a juvenile delinquent didn't do much for me. I didn't have a high school diploma at the time so I had no skills to get a job. Having a record wasn't a résumé builder. I had heard of this place called Homeboy Industries run by a Reverend who people called "G-Dog". His name was Gregory Boyle. I needed a way to make money and wanted a new life. I was through with the gang.

I got a job. When I got that first paycheck, I can't tell you how proud I was. I didn't fight for it, I didn't steal for it. It was mine and I had worked for it. I got my tattoos taken off. I had an adult criminal record by that time so getting a decent job was almost impossible. Homeboy Industries works with employers who are willing to give a person a second chance. I worked in the silk-screen business for awhile and finally got on my feet, gang-free and living legit. I see my baby every week.

I know how lucky I am. I know most people don't get out of the gang the way I did, alive. I also know that I needed to know I wasn't just a delinquent, and that someone saw me for what I was, a kid that had gone off on a path and didn't know how to get back onto the right path. Until the system

changes and we stop sweeping kids like me under the table, in a cell, we are just re-inviting them to rejoin the gang once they are out. We are labeled and then expected to become something else. It never works like that. Where I am from, education isn't a way to survive. Shooting and robbing is. If I could change one thing only about the system, it would be to strike the word delinquent from the dictionary.

GETTING OUT OF THE FAMILY BUSINESS

By Jose D.*

When I was growing up, both of my parents were in jail for a good amount of time. Sometimes they switched – when my mom got out, my dad would screw up and go back in. That’s just how it went. My brothers and I had to get by without them. Once, when they both got caught together, we had to go to a foster home. The family that we went to was nice enough, but it was just a job for them. They took care of us though. We didn’t stay long though. My brothers and I wanted to go home, so we took off one night. We went back to our house. My oldest brother was 15 at the time, and I was 11, so we thought we could take care of ourselves. But the problem was, we couldn’t really work and we needed to eat. We started out one day by stealing little things from the grocery store. We found that if we went around opening time, early in the morning, we could run in, put a few things away and run out. No one paid attention to us.

The first time I went to “baby prison” was when I let myself get caught. If I had paid enough attention, I would have realized that the clerks were catching on, and they called the police to wait for me one morning. I had left my younger brother at the house (or shack as we called it) and so I tried to run from the cop. That didn’t work out too well for me. A couple days later, they tried charging me with a bunch of different crimes when all I wanted to do was eat. I spent a couple weeks in there, but then they let me go. Those few weeks were hell. I wasn’t used to that, but I should have been.

* Jose D. was born in Mexico and immigrated here with his parents when he was just a baby. Because they did not have legal status to be here, his parents lived a life of crime to get by. Both of his parents were in and out of prison, and by the time he was sixteen, both of them were in for life. His brothers have moved back to Mexico with extended family, but Jose’s probation officer is helping him petition for legal status. Jose volunteers with Big Brothers when he is not working. He wants to go into law enforcement eventually.

When I got out, my father had been released, so I got to go back with him. Instead of being angry that I had done something so stupid, he tried to tell me how to steal and get away with it. He gave me little tasks – a soda from the gas station or a small toy from the toy store. When I figured out all the tricks about guards and cameras, and little beepers on the doors, he thought I should take some bigger jobs for him, or for the family like he would say. I never did it though. I never had the chance. I was with my father, a big time meth addict. We were in the park. Why we were there, I still don't really know. Somehow, we got stopped by some cops (probably because we were some Mexicans in an all white neighborhood). My dad threw some package at me and told me to "get the hell out of there." So, I tried. But like last time, I let myself get caught, and ended up going to jail for possession of three grams of cocaine. I had been a light drug user, but I'd never seen this stuff before. I really didn't know why he did that to me, but after I was given a six-year sentence, he never bothered to contact me.

Luckily, my probation officer from the first time managed to cut some deal for me, and I didn't serve more than six months, but I will be on probation for a very long time. When I was released, I wasn't allowed to go home. They had taken my youngest brother. The oldest had disappeared. My mother was nowhere to be found either. So, back to the foster care place I went. This man told everyone that I was a bad kid, that I had just come from jail. I had to go to a continuation school for high school since everyone thought I was so bad. I mean, I had a rap sheet, but man, I never hurt anyone. But, as it was, I couldn't get a job, went to a dumb school, and couldn't make friends.

My probation officer is the one that really pulled things around for me. This man went out of his way to help me like I've never seen. I always thought they hated us and all that. But, he got me out of jail in the first place, and then he hooked me up with some work with his family. I made some money, learned to deal on my own, and honestly, I didn't need to get in any more trouble. Finally, my dad was caught doing

something bad, and he's put in for life. He tried to ruin my life to save his neck, but at the end of the day, it all worked out. I just owe it to my probation officer since he was the one who took a chance on me. I don't want to let him down.

FINDING HOPE IN THE DARKNESS

By Paula B.*

There is no easy place to start. My life has never been easy. I never knew my father because he left when my mom was pregnant. I hated my childhood. My mom always had new guys at the house. She could never be alone, but she never wanted to be with me. The men she had over were always on drugs or drunk. I can't remember any of them ever being nice. I was always told to go to my room because I was bothering them. There were many times that I would be screamed at, hit, or kicked around. She would also lock me out of the house. I could never understand why my mom chose the men over me.

Around the age of fifteen, my mom had a new guy over, of course. My mom went to work and I stayed home from school. He was there. I was in my room when this guy pushed his way in my room. I was so scared. He held me on the bed. He reeked of alcohol. He overpowered me and raped me. I cried and pleaded for him to stop. When he was finished, he told me to keep my mouth shut because he would deny doing it and blame me for coming onto him.

This incident was a turning point in my life. When I told my mom what happened, she called me a whore and accused me of trying to steal the only "good" man in her life. She then told me to pack my few belongings and get out. I was fifteen, and I had nowhere to go. I started staying with friends until their parents realized that I wasn't going home. They called CPS. After I told them what happened, they put me in foster care. I was angry and bitter and kept running away. After a few months, I was placed in a group home. I became even angrier. I was full of rage, throwing and breaking stuff around me. I found myself in more trouble and then placed in

* Paula B. was a foster youth in Sacramento County, California. Currently, she has a great job, began some vocational training and is enrolled in parenting classes. She has not had any contact with her mother since being released from the dependency system. Her juvenile records have been sealed, and she plans on staying out of trouble.

“the hall.” I made friends while I was there. I had a street family. I got caught up with drugs real quick. To support this habit, I turned to prostitution like many of my friends.

From about the time I was fifteen to eighteen years old, I was in and out of “the hall” and group homes. I hated being at both places, but the group homes became like home. The same staff would be there and they would talk to me. I was fed and pretty much safe. At the age of eighteen, I had another turning point. I was released from the system with nowhere to go—literally. I packed my stuff up; I walked outside, realized I had no friends or family to head to. For a while, about a year, I was in and out of shelters. I had no plans or goals for my life. At nineteen, I found myself pregnant with no clue who the baby’s dad was. The case manager at the shelter found a program for pregnant and parenting moms.

I want to be a good mom to my baby. I don’t ever want to become like my mom. It has been two years since I had my daughter. I have stayed out of trouble. I have started counseling to start the healing process. I am very blessed to have the staff from the home help me get my life together for myself and my daughter. Looking back I realize that the group home was a home to me. It was a safe place. My daughter became the foundation that grounded me, and I owe her a decent shot to succeed in life for it. I want to be everything for this little girl that my mom couldn’t be for me.

YOU DON'T KNOW MY NAME

By Tyrell*

You don't know my name
Don't know why I play these games
Think you got me figured out
You ain't know nothin' about what I'm about

I'm a rose busting up from concrete
Drummin', hummin', runnin' from my ghetto beat
Tired of runnin', bustin' up at the seams
Desperate for a lil' land to bury scattered dreams

In your mansions, your colleges, you study me
But I'm the Generation XYZ
Till you stand in my shoes, you can't know what I'm about
Can't think you got me figured out

Or you won't know my name
Won't know why I play these games

Game over
I'm out.

* Tyrell wrote this poem at age sixteen. He ran away from an abusive home at the age of thirteen. He stopped attending classes at school, yet his love for song-writing continued. He turned to drug-dealing to earn the money he needed to get by on the streets. Eventually he found himself in the delinquency system and is now a foster youth in Glenn County, California.

WHAT WOMAN'S WORTH ?

By D.M.*

Sometimes you wake up wonderin how the hell it got to this
how it all ended up, jaded, like love imprinted in his fists
It started with a heady bang, a dose of turpentine
swimming through my veins, and the bills he left behind

Puttin two and two together, see it left me with no choice
my belly getting rounder, couldn't afford to think twice
makin ends meet was my only choice,
pimpin myself my only vice

Think it's all glamour, all smooth n' style,
better get your self to my hood
and kill or be killed for awhile

my babys all my woman is
lock-down's a life without
books and education can't feed our mouths

So preach to me what a woman's worth,
with all your heady lies,
tell me from ghetto ashes
this big-bellied woman will rise

Come into my hood
promise me the skies
fill me with books and education
and every other lie
I'll invite you into my hood
Don't even have to walk a mile

* D.M just turned eighteen. While she never ended up incarcerated, she spent many years running from the police for petty theft crimes and heavy drug use. She had Baby A. at sixteen years old and turned to prostitution as a way to feed the child. The baby was taken from her and now she is trying to get her life together.

just kill and be killed-
do it with a smile

Then preach to me
what a woman's worth
if you're still standing
for awhile

RECENT COURT DECISIONS AND LEGISLATION IMPACTING JUVENILES

DELINQUENCY



O'Brien v. Marshall
453 F.3d 13 (1st Cir. 2006)

In August 1995, fifteen year old O'Brien was indicted by a Middlesex County grand jury for the murder of Janet Downing. The state was required to prove by a preponderance of the evidence that O'Brien was a significant danger to the public and not amenable to rehabilitation within the juvenile justice system, in order to try him as an adult. After two transfer hearings, O'Brien was ordered to be tried as an adult. After a two week trial in 1997, a jury found him guilty of first-degree murder and sentenced him to life in prison. On appeal, the Massachusetts Supreme Judicial Court affirmed. O'Brien appealed the denial of his first habeas petition, and the First Circuit reviewed *de novo*.

O'Brien contended that in the transfer proceeding leading to his trial as an adult, the court had relied upon his silence in determining that he was not amenable to rehabilitation within the juvenile justice system. The lower court made three findings: O'Brien had never voiced a need for treatment, he had not voiced or exhibited motivation to change, and he lacked any sign of anxiety or emotional distress about a problem he may recognize with himself. O'Brien argued that the court had therefore inferred guilt from his silence in violation of his right to refrain from making self-incriminating statements.

The First Circuit turned to *Estelle v. Smith*, 451 U.S. 454 (1981), wherein the U.S. Supreme Court in dicta suggested that the Fifth Amendment did not apply in a state court hearing to determine whether a defendant was competent to stand trial as long as the evidence was used only for the competency hearing. Since juvenile transfer hearings closely

parallel competency hearings, the Fifth Amendment did not preclude the judge from taking account of O'Brien's attitude.

The court acknowledged that if incriminating information had in fact been extracted involuntarily during a transfer hearing and then later used against a defendant at a criminal trial, there would be cause for concern. However, Massachusetts practice prohibits a juvenile from being asked about his guilt or innocence during a transfer hearing. Even if the evidence has only a small chance of implicating a defendant in a crime, a defendant still has the right to invoke the Fifth Amendment privilege. However, O'Brien had not made a timely motion *in limine* that he be able to make statements in opposing transfer but be protected against use of these statements at trial. The First Circuit affirmed the lower court's denial of O'Brien's habeas petition.



C.G. v. State

941 So.2d 503 (Fla. Dist. Ct. App. 2006)

C.G. attended Redland Middle School. One day he became dizzy while at school and passed out in the bathroom. Upon regaining consciousness, C.G. located the school monitor and informed the monitor that he was not feeling well. The monitor took C.G. to Assistant Principal Fahringer's Office. C.G. informed her that he had passed out in the bathroom. Fahringer testified that C.G. had appeared "a little quiet and subdued" and seemed a little pale. Without any further information, Fahringer ordered C.G. to empty his pockets and book bag. When C.G. emptied his pockets, Fahringer noticed a plastic bag filled with green material which she believed to be marijuana. Fahringer summoned the police who tested the material and confirmed that it was indeed marijuana.

After being charged with possession of marijuana, C.G. filed a motion to suppress the physical evidence. C.G. argued that school officials lacked reasonable suspicion of criminal activity to justify conducting a search. After a bench

trial, the motion to suppress was denied and C.G. was adjudicated delinquent.

The appellate court agreed with C.G. that the search of C.G.'s person and belongings was an illegal search. The court stated that the school official must have reasonable grounds to suspect that a search will result in evidence that the student has violated the law or school rules. The court indicated that there were no facts that, if combined with rational inferences, would have given Fahringer reasonable grounds to conclude that C.G. had violated the law or the school's rules. This court has previously held that facts consistent with illness without more are not reasonable grounds to infer criminal behavior. The court reversed the adjudication of delinquency and remanded with instructions to discharge C.G.

DEPENDENCY

In Re Kobe A.

146 Cal. App. 4th 1113 (Cal. Ct. App. 2007).

Appellant, the biological father of Kobe A., appealed the termination of his parental rights under the Due Process Clause of the Constitution on the grounds that the court clerk did not provide proper notice of the proceedings. At the child's birth, Kobe's mother relinquished custody of her child because of drug problems. A couple days after the birth of Kobe, the appellant became incarcerated for a felony of armed robbery. Thus, the Department of Children and Family services began dependency proceedings. The petition included the appellant's name. However, the clerk failed to correctly provide the appellant notice of a review hearing by sending it unregistered and without a copy of Form JV-505. This form informs an alleged father that he can compel the court to determine his paternity, and gives him the means to request appointment of counsel, state his belief that he is the father of the child, and ask that the court enter judgment of paternity. Despite the fact that the clerk gave improper notice to the appellant, the trial court deemed Kobe A. to be a dependent of the state.

The California Court of Appeal affirmed the previous holding. Even though appellant was denied his right to be provided with statutory and adequate notice as an alleged father, the error was harmless. The father lacked the requirements to qualify for reunification services. Being present for only two days after Kobe's birth, the court ruled that the appellant had no prior relationship with his child. Additionally, the appellant's criminal history with a violent felony prevented reunification services for him and his son. Based on these facts, the trial court would not have placed Kobe A. in the care of the father even if he had been given proper notice.



Wayne F. v. Superior Court
145 Cal. App. 4th 1331 (Cal. Ct. App. 2006)

Antonio E., a special needs child, was under the care of Wayne F. and Lisa F., designated as “prospective adoptive parents” (PAP). A newly assigned social worker notified Wayne and Lisa that the agency decided that Antonio should be removed from their home. The notice included allegations that Wayne and Lisa lacked parenting skills and preferred their own biological son to Antonio. Wayne and Lisa objected to these allegations in a response. At a hearing to determine Wayne and Lisa’s procedural rights, the juvenile court decided that they could not participate or offer evidence at the removal hearing. Wayne and Lisa filed a petition for writ of mandate and argued that under California Welfare and Institutions Code, section 366.26, subdivision (n), they did have the right to participate in the removal hearing.

In a removal hearing under section 366.26, the court determines if parental rights should be terminated. At the same time, the court can designate a PAP. Subdivision (n)(3)(C) of section 366.26 provides “A determination by the court that the caretaker is a designated prospective adoptive parent...does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency...” CAL. WELF. & INST. CODE § 366.26(n)(3)(C).

The California Court of Appeal decided that based on the statutory and legislative history, this provision does not prevent PAPs from fully participating in removal hearings. The Court of Appeal was open to Wayne and Lisa’s interpretation that perhaps PAPs should be prevented from participating in other hearings aside from a removal hearing under subdivision (n). In addition, the Court reasoned that it did not make sense for only one litigant or the social services or adoption agency to be able to present to the juvenile court and deny the PAPs the same opportunity.



Los Angeles County Dept of Children & Family Services v. Superior Court
145 Cal. App. 4th 692 (Cal. Ct. App. 2006)

Ethan G., a seven-year-old child, was removed from the home of fathers David P. and Maurice G., on October 3, 2005 after Ethan reported that he had been sexually abused by father Maurice G. The Los Angeles County Department of Children and Family Services filed a dependency petition under California Welfare and Institutions Code, section 300, subdivisions (b) and (d), and alleged that David P. knew of the abuse and had not protected Ethan. At the detention hearing, the juvenile court allowed Ethan to remain with David P. but ordered that Maurice G. could only have monitored visits with Ethan in a neutral setting. The visits had to be monitored by someone other than David P. On January 5, 2006, the juvenile court sustained the dependency petition. The court also decided that Maurice G. could not reside in the family home with Ethan and David P.

However, at a hearing on September 25, 2006, the court ordered that although Ethan would still remain a dependent of the court, Maurice G. could return to the family home as long as he was monitored at all times, and that David P. could be the supervisor. The Department of Children and Family Services filed a writ of mandate to stay this order. The California Court of Appeal decided that Maurice G. should not be allowed back in the family home and granted the Department's writ of mandate. The court reasoned that for the offending parent to live in the same home was inconsistent with monitored visits, as there would be times when the supervisor would not be available to serve in the protective role. The court ordered the trial court to enter a new order that would prevent the offending parent from living in the family home. The order would also prevent the offending parent from having overnight visits until the juvenile court decided that it was safe for the child to have visits with the offending parent without a supervisor.

*Ex parte T.V.*

2007 Ala. LEXIS 17, at *1 (Ala. Jan. 12, 2007)
(subject to formal revision before publication in
Southern Reporter)

Following the birth of N.V., Department of Human Resources began dependency proceedings because of the mother T.V.'s drug abuse, potential criminal charges, and lack of housing. Department of Human Resources tried to reunify the mother and child. However, the mother, still involved with drugs, eventually approved the placement of her child with an acquaintance. The trial court confirmed the placement with the acquaintance and gave permanent custody to the acquaintance. Approximately three years later, the mother was drug-free, working, married, and involved with the community. She attempted to establish visitation with her child and sought visitation rights. However, the custodian of the child filed to terminate the mother's rights. The trial court terminated the biological mother's rights and the Alabama Court of Appeal affirmed. T.V. appealed the termination of her parental rights for failure of the appellate court to properly consider her as a viable alternative.

The Supreme Court of Alabama reversed and remanded the case because the trial court failed to find by clear and convincing evidence that no viable alternatives existed to terminating T.V.'s parental rights. The Supreme Court said that because a parent's due process rights are involved, a higher standard of proof—clear and convincing evidence—is required to terminate parental rights. Evidence from an expert demonstrated that the biological mother desired and had continued to establish a bond with her child in the past couple of years. The Supreme Court rejected the argument that the visitation with the biological mother would harm or hinder the child. The court said that the child would ultimately discover the information that he is adopted.

The dissent by Justice Stuart argued that the Supreme Court of Alabama is asking the trial court to repeat what it had

already done: to determine whether or not viable alternatives exist to terminating the biological mother's parental rights. The trial court had already determined that it was in the best interest of the child to terminate the mother's parental rights.

The dissent by Justice Smith argued that the lower court has already considered the biological mother's request for visitation. However, because of her past discretions with drug abuse, the lack of visits, problems with homelessness, the trial court properly ruled that no viable alternative exists. The dissent emphasized that the trial court is the most appropriate court to determine this situation because of their ability to best gauge the parties involved.



Judkins v. Duvall

2007 Ark. App. LEXIS 54, at *1 (Ark. Ct. App. Jan. 31, 2007)

Sheila Judkins gave birth to her son, Braydon, in March of 1998. The court granted visitation rights to biological father Donnie Duvall and ordered him to pay child support to the mother.

In December 2002, Judkins filed a petition to halt Duvall's visitation rights, based on allegations that he had sexually abused their four year old son. Duvall filed a motion for contempt because he was denied visitation over Thanksgiving. Duvall then moved for full custody, claiming Judkins coached their son to verify false claims of sexual abuse. Unable to verify claims of sexual abuse at that time, the court reinstated Duvall's visitation rights so long as there were neutral parties to make the exchange. One year after the first claim of abuse, Judkins again petitioned for suspension of Duvall's visitation rights, claiming new allegations of sexual abuse. Judkins also requested that a family-in-need-of-services (FINS) case be opened for Braydon.

In June 2004, a trial judge ordered that the Department of Human Services (DHS) take temporary custody of Braydon. This decision was based on compelling testimony

that Judkins suffered from a personality disorder, which adversely affected her son. Braydon stayed in the custody of DHS for six months until temporary custody was granted to Duvall, with visitation rights given to Judkins. Duvall was then granted permanent custody of Braydon at the permanency hearing. Judkins appealed the decision here.

Judkins' appeal argued that there was a burden on Duvall to show that a change in custody was warranted. Additionally, she contended that the psychological testimony, as to her mental state and the validity of her allegations of sexual abuse, were incorrect. The court found both points to be without merit. In Arkansas, a FINS case is ruled entirely by the Juvenile Code, and thus does not place the burden of proof on either party for custody determination. As for the contention that the testimony at trial was incorrect, the appellate court deferred to the superior position of the trial court in judging witness credibility.

EDUCATION

Straights and Gays for Equality v. Osseo Area Schools
471 F.3d 908 (8th Cir. 2006)

Maple Grove Senior High School (MGSH) designated their student groups into “curricular” and “non-curricular” categories. Groups such as the synchronized swimming team and cheerleading squad were defined as curricular and enjoyed the use of the school’s public address system and “scrolling screen.” They were also allowed to participate in fundraising and the organization of field trips. Non-curricular groups were limited to communicating only on bulletin boards. Straights and Gays for Equality (SAGE) was deemed a non-curricular group and denied equal access to modes of communication. Plaintiffs SAGE, brought a 42 U.S.C. § 1983 action against the school district, alleging that the school’s policy violated the Equal Access Act (EAA). The U.S. district court determined that plaintiffs were likely to prevail on their claim that MGSH prohibited SAGE from equal access, and granted SAGE a preliminary injunction. MGSH appealed to the Eighth Circuit Court of Appeals.

The Eight Circuit affirmed the injunction ordering MGSH to grant SAGE the same rights as the curricular groups. The court reasoned that cheerleading and synchronized swimming, like SAGE, were essentially non-curricular groups, and thus SAGE was entitled to the same communication liberties enjoyed by those other groups. The court determined that MGSH was in violation of the EAA by prohibiting SAGE from having equal access to the school’s facilities.



Z.W. v. Smith

No. 06-1201, 2006 WL 3797975, at *1 (4th Cir.

Dec. 21, 2006)

Plaintiff was a seventeen year old boy with learning disabilities and Attention Deficit Hyperactivity Disorder. During the 1999-2000 school year, he experienced academic and emotional problems while at a public school. As a result, his parents decided to enroll him in a non-public day school, The Lab School of Washington, Baltimore Campus (“Lab School”), at their own expense for the 2000-2001 school year. Later, the Anne Arundel County Public Schools (AACPS) agreed to provide public funding for Z.W. to go to the Lab School the following year (2001-2002).

In spring of 2002, a group of his parents, teachers and school staff met to develop an individualized education program (IEP) for Z.W. AACPS told Z.W.’s parents that the Lab School was not approved by the Maryland State Department of Education as a fundable non-public special education school. They were told that Z.W. could attend High Road Academy, which had been approved. However, Z.W.’s parents were concerned that a change in placement would impair Z.W.’s social, emotional, and academic progress, and placed him in Lab School for the 2002-2003 school year. Lab School was approved by the Maryland State Department of Education during the summer of 2003 and AACPS agreed to publicly fund Z.W.’s education there for the 2003-2004 school year.

The parents requested a due process hearing on the grounds that AACPS did not provide Z.W. with a free appropriate public education (FAPE) for the 2002-2003 school year (the year that AACPS attempted to send him to High Road Academy). The Administrative Law Judge held that AACPS was not required to reimburse the parents. On appeal, the U.S. district court in Maryland granted AACPS’s motion for summary judgment, and Z.W.’s parents appealed to the Fourth Circuit Court of Appeal.

Congress enacted the Individuals with Disabilities Education Act (IDEA) in order to make a FAPE available to children with special needs. When a child is referred to a private school in order to receive an appropriate education, the statute requires the local educational agency to pay for the child's tuition. If the agency fails to make a FAPE available to a child in a timely manner, parents may choose to place the child in a private school and receive reimbursement from the agency later. However, the agency is required to reimburse the parents only if they meet certain requirements. They must either make it clear at the IEP meeting that they reject the proposed placement or give written notice to the agency 10 days prior to the removal of the child from public school.

In its analysis, the Fourth Circuit emphasized that the IDEA's requirements regarding a FAPE are modest. The parents and AACPS agreed on the substance of the IEP. However, the parties failed to agree on which school was the appropriate place to carry out the IEP. The low standard required by IDEA is that the FAPE provide *some* educational benefit; it does not require that the child receive potential-maximizing education. Neither of plaintiff's witnesses testified that High Road Academy would be unable to provide Z.W. with an educational benefit. The parents were concerned because the school lacked a strong art department and allowed less social interaction. They were especially worried about Z.W. resisting the transition. However, the fact that Lab School may be a better match for Z.W. did not mean that High Road Academy would not meet the FAPE standard. The court held that the offer to send Z.W. to High Road Academy constituted a FAPE; therefore, the parents were not entitled to tuition reimbursement.



Weinbaum v. Las Cruces Public Schools
465 F. Supp. 2d 1182 (D.N.M. 2006)

Plaintiff Weinbaum's daughter attended Las Cruces Public School. Las Cruces, the name of the city where the school district is located, is Spanish for "the crosses." Many

entities in the city of Las Cruces use three crosses as a symbol to identify themselves as a local entity. This emblem marks approximately thirty-five vehicles that are associated with the maintenance department for the school district. A mural, which was created by students, depicts three crosses in addition to other images related to Las Cruces geography, culture, and history.

The question for the court was whether the display of crosses on the vehicle and the mural violated the Establishment Clause of the First Amendment. The court applied the *Lemon* test, which provides that government action does not violate the Establishment Clause so long as it (1) has a secular purpose, (2) does not have the principal or primary effect of advancing or inhibiting religion, and (3) does not foster an excessive entanglement. Justice O'Connor refined this test to focus more on whether the government is endorsing religion. The court stated its understanding that the cross is a powerful symbol of faith for Christians, while representing a symbol of oppression and persecution for others. The court conceded that the Latin cross is undeniably religious. However, the court emphasized that religious symbols can have both religious *and* secular meaning.

In its analysis, the court explained Weinbaum bore the burden of proving the emblem lacked a genuine, secular purpose and that the emblem had the primary effect of endorsing religion, and failed to meet this burden. The court deemed the emblem secular because the school had the legitimate aim of making the vehicles readily identifiable. In other situations, courts have ruled that displaying crosses is unconstitutional when local governing bodies imposed their beliefs by choosing symbols unrelated to the name of the entity. However, the fact that the city and school district were named Las Cruces made it acceptable for the school to use the cross as a symbol. Also, the court noted that the crosses were quite small, while the words "Las Cruces Public Schools" were large. The court also noted that the only place the emblem appeared was on maintenance vehicles, and it was not used for all school district paperwork, vehicles, and uniforms

The court asked whether a reasonable observer would consider the emblem religious, and found that it did not.

Similarly, Weinbaum failed to prove that the mural lacks a genuine, secular purpose. The mural provided an artistic opportunity for students. The students were not told to draw the three crosses, but they chose to do so. There were no religious activities linked to the mural. A reasonable observer of the mural – aware of the history and context of the forum – would understand the crosses incorporated in the artwork symbolically represent this uniquely named geopolitical subdivision, rather than an endorsement of Christianity. The court found that endorsing religion was not the purpose of the mural and was therefore constitutional.



Levi v. O'Connell

144 Cal. App. 4th 700 (Cal. Ct. App. 2006)

Leila Levi brought suit on behalf of her thirteen-year-old son, Clancy, against the California Department of Education (CDE). Levi alleged that the CDE owed her son, a highly gifted child, an adequate, free, and equal education adhering to his specific needs, which in his case amounted to a college education. The lawsuit cited educational guarantees under the No Child Left Behind Act (NCLB) of 2001, the Individuals with Disabilities Education Act (IDEA), and various sections of the California Constitution concerning the right of a student to receive a free public education. The trial court sustained CDE's demurrer and entered a judgment of dismissal. Levi appealed.

The California Court of Appeal affirmed the ruling. The court dismissed the NCLB argument because Levi had not cited any specific provision (nor could the court itself find such) within the Act that guaranteed a tailored K-12 public education to meet each student's particularized needs. The court also rejected the claim that Clancy fell under the protection of the IDEA. The purpose of IDEA is to ensure the right of all individuals with disabilities access to appropriate public education to meet their unique needs. Levi's complaint

did not allege that Clancy was in need of any of the special education services due to any disability or impairment listed in the IDEA. The court further stated that the free appropriate public education guaranteed by the IDEA did not include a free college education, as that guarantee is limited to preschool, elementary, and secondary education.

Levi argued that because the state's truancy laws required Clancy to attend school until the age of 16 and the California Constitution required the state to provide him with a free appropriate education, Clancy was entitled to a free college education. This claim was also dismissed as the court found the argument inadequate and entirely speculative.

HEALTH

A.B. 16, 2007 Leg., Reg. Sess. (Cal. 2006)

In December 2006, the California Assembly introduced Assembly Bill 16 to amend section 120335 of the California Health and Safety Code. This section of the Code provides a list of immunizations that children must receive prior to admission to private or public schools and other child care facilities. The bill, if passed, will require female students to receive the human papilloma virus (HPV) vaccine prior to admittance to the seventh grade. Like other states, California exempts children from immunization requirements upon proof that the immunization is contrary to their beliefs or is a threat to their health. The bill was sent to the Committee on Health on March 5, 2007.

HPV is a sexually transmitted disease known to cause cervical cancer. The Food and Drug Administration approved the HPV vaccine in June 2006 for use in females between the ages of nine and twenty-six years. Several other states have introduced similar bills; Virginia's General Assembly passed a similar bill on February 28, 2007. In early February 2007, the governor of Texas signed an executive order requiring the vaccination for female students. However, the Texas House Public Health Committee is working to pass a bill overturning that order.



Micheletti v. State Health Benefits Comm'n
913 A.2d 842 (N.J. Super. Ct. App. Div. 2007)

Minor Micheletti is the dependent child of a New Jersey state employee and is insured through the State Health Benefits Program ("Program"). Micheletti is autistic, and his prescribed treatment included speech and occupational therapy, both of which his doctors described as imperative and medically necessary to his treatment plan. The Program administrator initially granted coverage for speech therapy but not for occupational therapy. However, during the appeals

process, the Program administrator rescinded its approval of the speech therapy. The Program justified its denial of coverage under a provision of the policy which denies coverage for services that provide training in activities of daily living and those which promote development beyond any level of functioning previously demonstrated.

The New Jersey legislature enacted the Mental Health Parity Law in 1999, which requires health insurers and health maintenance organizations to provide "coverage for biologically based mental illness under the same terms and conditions as provided any other sickness under the contract." N.J. STAT. ANN. §17:48-6v (West 2006). The Program is not a carrier within the meaning of this statute. However, a companion statute was enacted shortly thereafter which places the Program under the same guidelines as private health insurers regarding coverage for biologically based mental illnesses. N.J. STAT. ANN. §52:14-17.29e (West 2006). Autism is recognized as a biologically based mental illness within the meaning of these statutes.

The court concluded that the Program's denial violated the statute requiring the Program to adhere to the same standards as private insurers governed under the Mental Health Parity Law. The therapies prescribed to Micheletti are traditional and medically necessary for children with autism. By denying these forms of treatment, the Program excluded a class of dependents, notably afflicted children, from coverage based on the nature of their mental illness, which is beyond the limits of the Program's statutory authority. The court ordered the Program to cover speech and occupational therapy for Micheletti.