

Children's Section on the Juvenile Justice Experience

The Children's Section highlights one individual's use of poetry to endure his sentence in the juvenile justice system. Through his writings, Will Roy reflects on his experiences in juvenile hall and questions the motives and effectiveness of the juvenile justice system. Roy now helps those currently serving their sentences to direct their energy into creative outlets. The Journal would like to thank Will Roy and Matt Melamed for contributing their time and work to this issue.

The Children's Section also includes a case spotlight on one juvenile's experience with the criminal system and a statutory spotlight examining current developments in the Individuals with Disabilities Education Improvement Act. Summaries of recent court decisions in the fields of delinquency, dependency, education, and health law and useful websites follow the case and statutory spotlights.

THE POETIC PRISONER: PROFILE OF A JUVENILE

Will Roy began his relationship with the juvenile justice system when at 16 he shot a man with a BB gun in 1997. After entering a guilty plea for aggravated mayhem, Roy served his time. He spent years at various juvenile facilities including the Youth Guidance Center (YGC) in San Francisco, Fire Camp, and the California Youth Authority. It was during Roy's first three months at the YGC that he learned about *The Beat Within* (*The Beat*). *The Beat* publishes a weekly magazine of art and writings contributed by incarcerated youth. It is based in San Francisco and provides a vehicle of expression to individuals in juvenile halls. From the beginning of his sentence, Roy wrote from his cell for *The Beat* and maintained a relationship with members of the staff while incarcerated. Roy began working as a staff member at *The Beat* just weeks after being granted parole in 2003. Now, while he continues to write for *The Beat*, he facilitates writing workshops at the various juvenile detention facilities in San Francisco and San Mateo counties. Roy sees his work for the *Beat* as form of redemption. When Roy visits juvenile hall and meets with the youth there, he says, "It is like talking to a younger him." He sees a piece of himself in each of the incarcerated boys with whom he works. Roy hopes to continue working with the *Beat* to bring creativity and hope to juveniles serving their sentences.

Coffee And Croissants

Envision this ... A discussion ...
About how our society is failing the youth.
Sitting in a coffee shop molding the fate of our children
While flakes of croissants melt on each tooth.
Envision a child without his father,
Why should I suffer for his mistake?
Why should I be left to choose a man to be
A fantasy male role model that I emulate?
Envision living in a house that wasn't a home,
And your happiest moments were spent alone.
Gradually your heart gets cold
Until it eventually turns to stone.
Envision a young single mother
Trying to teach two boys to be men.
Imagine these boys rebelling
While finding acceptance among negative friends.
Envision all the heartache and pain.
A generational cycle of shackles and chains.
The system took my father and now it is my father,
But it'll never love me the same.
So while you're drinking coffee and eating croissants
Discussing how we can make these wrongs right.
Understand that this isn't a horror movie,
Understand that this is my life!

-The Poetic Prisoner

A Master Poet

I break down words
Like a pothead breaks down herb.
I give a piece of paper what it deserves,
By offering ideas that aren't often heard.
I drop piece after piece like when I release
Turds.
Give you something to observe
Like a flock full of birds.
I play with ideas
Like a child playing with sand in a playground.
I represent the things I say,
And I'll do anything to stay down.
I can bring laughter to a disaster,
Tell you about the before and after,
Make things slower when they're supposed to be faster,
And attempt to motivate the world like a pastor.
I'm a master
Poet.
Reveal flaws in my character
When others wouldn't even show it.
Sometimes I rhyme
And don't even know it.
If there was such a thing as a poetry king,
I'd be the closest.
I always have something to write about
Because my life is its' own feature film.
I try to give lessons through my words,
So I'm living in a teacher's realm.
I'm at the helm of a life long movement,
Yet I leave room for improvement.
I let the world grasp me like music,
Then brag about how I survived through it.
For I'll live this life to the fullest
Even though I didn't choose it.
If there was a language for the heart,
I think I'd be the most fluent.
Words create my pieces,
But my life is the actual puzzle.

You can silence me if you want to,
For I can still write when I'm wearing a muzzle.
And whether I'm in or out
Of trouble,
I pick up a pen and float away
Like a bubble.
Each space has its own meaning,
But I make them work together when they're convening.
So you have to pay attention,
The things I say may seem misleading.
I grow by feeding
Off of my own flaws.
Everything you say is artificial,
What I speak is raw.
This is not for a chosen few,
But for all.
I write my with paws what I'd say with my jaws
Because I wouldn't want my poetic presence
To wet your draws.
My ideas are contagious,
Even when they're outrageous.
I'm trying to fill these pages
With struggles that have made me courageous.
Hopefully it's appreciated,
For this is my vulnerable side and I don't have to show it.
But I do while making it through like I've got nothing to lose,
That's what makes me a master poet.
-The Poetic Prisoner

What Will It Take?

Today we're commemorating two beautiful souls
That will never be forgotten.
Two souls that were told to grow and remain whole
In a place that's rotten.
These two young lives are just as important
As the San Francisco police officer who died.
Our families' tears are just as real
As the tears the SFPOA have cried.
Sh*t! They should be on our side,
We're also pushing for an execution but of Y.A. institutions.
We're tired of having to clean up our communities
Because of the Youth Authority's pollution.
Their corruption is not an illusion,
We saw youth counselors beating kids on tape.
Yet and still our great country refused to prosecute them,
Or even give them a slap on the wrist, so what will it take?
You have outrageous reports about cages
Endless pages of a failed system.
The faults of these institutions are endless,
It would take a lifetime to list them.
You've heard horror stories from people who've been there,
And the grief families experience.
We've made you curious by being furious about how delirious
California is for acting as if the lives of children aren't serious.
You've got money to lock us up,
But our colleges are receiving constant budget cuts.
They refuse to teach us and when we act ignorant,
They discard us like old cigarette butts.
Why don't they use all the money they make to rehabilitate?
The Y.A. programs are fake and we should set them straight.
Not by giving them one more opportunity to procrastinate,
But by refusing to wait while asking what will it take?
How many kids have to pass away?
Why should we pay people to beat children?
Is it fair not to care
While disregarding our future's feelings?
Lots of men lose oxygen
Because of the excessive use of mace.

We watched the videotape with disgrace
When did we start to tolerate the brutal mistake
Of letting youth counselors hit a kid 28 times in the face.
We need to be embraced
Just like anyone else,
So if you really want us to change meet us halfway
By giving us a little help.
It's not right to sacrifice our health for your wealth,
So stop looking out for only yourself.
Y.A. is quick to point the finger,
And make youth suffer for their mistakes.
But now the tables are turned and more of us are concerned,
We know Y.A. will never learn, so what will it take?
A system that's based on interacting with hate,
The first thing they do is put you in a gang.
Two kids with great potential were hanged,
And all we're asking for is some sort of change.
We can let them resort to expert reports,
And they still couldn't give us any reason to exist.
Do you think being a five-digit number
Was our childhood wish?
There are too many young lives at stake
To ignore a ninety percent recidivism rate.
The young people have no faith
In Y.A.'s ability to rehabilitate.
So as we commemorate the unfortunate fate
Of the youth that are still suffering in that brutal place
Ask yourselves if it's right to let lives go to waste,
Or to not give two predators caught on tape a case.
Then join me in asking the state,
What the f*ck will it take?

-The Poetic Prisoner

CASE SPOTLIGHT: A.M. v. BUTLER
360 F.3d 787 (7th Cir. 2004)

Stephen M. Siptroth*

One of the fundamental functions of the justice system is to impose punishment or obligation on an individual that, in the eyes of the community at large, serves punitive and reconciliatory purposes. The criminal system serves both the rights of the accused and the values of the community. The individual accused of a crime occupies a unique position of vulnerability and hopes the justice system will treat him ethically and fairly. The degree of vulnerability and the difficulty of the situation become amplified when the accused is a 10-year-old. In the case of *A.M. v. Butler*,¹ the courts struggled to acknowledge the youth of the accused while vindicating the rights of the victim.

A.M., a 10-year-old, was tried for the murder of his 83-year-old neighbor in a two-day trial in an Illinois court. At trial A.M. was sentenced to a five-year probationary term. The Illinois Court of Appeals (state appellate court) upheld this judgment. A.M. then petitioned the federal court for habeas relief, which the district court granted him.² Upon the grant of habeas relief, the State appealed to the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit), arguing the case presented a moot issue because of the amount of time that had elapsed since the adjudication.³ In response to this claim, the Seventh Circuit explained that, although A.M. was now 20 years old, a challenge to a “criminal conviction ... is not moot when the party convicted can continue to face adverse consequences stemming from its adjudication.”⁴ Because A.M.’s prior juvenile adjudication could increase his sentence or be used as an aggravating circumstance in a future criminal

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¹ 360 F.3d 787 (7th Cir. 2004).

² *Id.*

³ *Id.* at 790.

⁴ *Id.*

prosecution, the court found it clear that A.M. had an interest justifying habeas relief.⁵

The Seventh Circuit first dealt with a number of procedural issues but then turned its focus to the merits of A.M.'s case. The court's analysis of this case illustrates the criminal process's failure to serve justice in this child's life.

A.M. lived with his mother in a home adjacent to 83-year-old Anna Gilvis. On October 5, 1993, Gilvis was found dead in her home, the victim of a brutal attack. Detective Doug Habiak interviewed A.M. as he stood in Gilvis' yard and A.M. was in his own yard. A.M. told the detective he had seen an unfamiliar black man walking toward Gilvis' back door the night before.

Eleven months later, detectives James Cassidy and Edward Schmidt again questioned A.M., now 11. The detectives brought A.M. to their car, parked outside of A.M.'s home, to conduct the interview. Again, A.M. identified a black man as someone who was involved in the murder. This time A.M. said the black man's name was Nolan Coleman. The next day, the detectives requested permission from A.M.'s mother to bring A.M. to the police station for further questioning. His mother asked whether she should accompany him, but the detectives told her it was not necessary.⁶

A.M.'s mother did not accompany him to the police station. At this time, A.M. did not have counsel. Nonetheless, detectives Cassidy and Schmidt continued to ask him about Gilvis' murder. A.M. claimed that, during their meeting, Cassidy cursed at him, yelled at him, patted his knees, told him his fingerprints were on the murder weapon, and offered that, if he confessed, God and the police would forgive him. Subsequently, A.M. confessed to murdering Gilvis.⁷ The detectives never told A.M. he was free to leave during the interrogation, and at no point was he allowed the company of counsel or his mother. Further, the detectives read A.M. his

⁵ *Id.*

⁶ *Id.* at 793.

⁷ *A.M.*, 360 F.3d at 794.

Miranda warning only after he made inculpatory statements.⁸ Despite a complete lack of physical evidence tying A.M. to the crime, a jury convicted A.M. of murder based exclusively on those statements he made during interrogation. At trial, A.M.'s counsel did not move to suppress his statements.

Following his adjudication as delinquent for first-degree murder, A.M. appealed to the state appellate court claiming his counsel was ineffective at trial because he did not move to suppress his statements. On appeal, the state maintained A.M. was never "in custody" and was treated as a witness and as such not entitled to a Miranda warning under the Fifth Amendment. The state appellate court affirmed A.M.'s delinquency adjudication, finding A.M. was not in custody, his statements were voluntary, and, as a result of these findings, his counsel was not ineffective.⁹ A.M. filed a habeas petition with the district court. The district court concluded A.M. was entitled to habeas relief on the basis A.M. was under arrest and in custody when he gave his statements involuntarily. The district court ordered A.M.'s adjudication of delinquency be vacated and his record expunged.¹⁰

Subsequently, the State appealed this holding to the Seventh Circuit. The issue posed for the Seventh Circuit was whether the state appellate court erred in holding A.M. was not in custody, he was not interrogated, and his statements were voluntary. The Seventh Circuit held the state appellate court erred in each of these findings.

The Seventh Circuit examined the conditions of A.M.'s interrogation and found the state appellate court erred in its analysis of A.M.'s situation. The state appellate court had relied on Detective Cassidy's subjective beliefs about whether an interrogation had occurred instead of applying an objective test through which the court would inquire what a reasonable person would have perceived in the defendant's

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 795.

circumstances.¹¹ In contrast to the state appellate court, the Seventh Circuit weighed A.M.'s maturity, the conditions of the interrogation, A.M.'s vulnerability in being at the mercy of the police for a ride home, and A.M.'s lack of experience with the justice system to assess whether A.M. would have felt free to leave the police station.¹² The Seventh Circuit held the state appellate court's finding that A.M. was not in custody was "objectively an unreasonable application of federal law" and the state appellate "court's resolution of whether Morgan was seized was contrary to established Supreme Court precedent."¹³ Further, the Seventh Circuit found "the circumstances [of the interrogation] weigh in favor of a determination that [A.M.]'s inculpatory statements were involuntary".¹⁴ The Seventh Circuit continued on to say "youth remains a critical factor for our consideration and the younger the child the more carefully we will scrutinize police questioning tactics" in querying whether a confession has been voluntary.¹⁵ In closing, the Seventh Circuit noted that A.M.'s counsel should have moved to suppress his statements, and counsel's failure to do so "compels the conclusion that counsel was ineffective."¹⁶

The Seventh Circuit expressed concern as to the Illinois courts' failure to take A.M.'s youth and inexperience with the criminal justice system into account when considering his case. While the detectives in A.M.'s case may not have coerced their suspect directly, they used their professional skills to place the child in a position of vulnerability leading to his inculpatory statements. The detectives failed to ensure A.M. was assisted by counsel or a state juvenile officer, either of whom would have advocated on the child's behalf. They also did not facilitate the presence of A.M.'s mother.¹⁷ When weighing all the evidence in this

¹¹ *Id.* at 796.

¹² *Id.* at 799.

¹³ *A.M.*, 360 F.3d at 798.

¹⁴ *Id.* at 800.

¹⁵ *Id.* at 800.

¹⁶ *Id.* at 801.

¹⁷ While a state juvenile officer was present during a brief portion of the custodial interrogation, the officer acted as an observer, not as an advocate.

case, the Seventh Circuit, like the district court, could not ignore the plethora of injustices and attempted to rectify the damage done to A.M. The Seventh Circuit ordered the state appellate court to expunge A.M.'s adjudication unless it granted him a new trial within 120 days of its judgment.¹⁸

This case serves as a reminder that juvenile suspects are in a far more vulnerable position under the law than their adult counterparts. The Seventh Circuit shows other courts that youth should be a factor in considering whether juvenile suspects have made involuntary statements while in custody. A.M.'s case emphasizes the need for law enforcement to remain aware of this vulnerability and to fight against taking advantage of children in the context of interrogations and confessions.

¹⁸ *Id.* at 802.

Statutory Spotlight: Individuals with Disabilities Education Act 2004

Diana B. Glick*

On December 3, 2004, President Bush signed into law the reauthorization of the Individuals with Disabilities Education Act (IDEA). This amended version of IDEA incorporates several important changes that reflect new attitudes toward this area of education, as well as the objectives of the No Child Left Behind Act (NCLB) and the Elementary and Secondary Education Act. The majority of these changes will go into effect on July 1, 2005.

IDEA was first enacted in 1975 as a response to the growing awareness of the need to provide appropriate educational services to children with disabilities. Since then, it has been modified and amended several times, most notably by the 1997 reauthorization, which served as the working model until the most recent changes in 2004.¹

The 2004 provisions reflect a desire to reduce the paperwork burden on the schools, ensure the presence of qualified special education teachers, and encourage the resolution of disputes between parents and schools.² Several of these changes have the potential to negatively affect advocacy for children receiving special education services. However, much of their impact will depend on how the provisions are applied at the state and local levels. Some of the major areas affected include:

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¹ Richard N. Apling & Nancy Lee Jones, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, CRS Report for Congress, January 5, 2005, at 1.

² *Id.* at summary page.

Discipline

One of the most significant changes relates to the manifestation determination review. This is a meeting to be held within 10 days after a child receiving special education services violates a school rule, resulting in the recommendation of a change in placement by school personnel. Under the 1997 law, it was the individualized education plan (IEP) team that conducted the evaluation. This team was required to apply specific criteria in concluding a child's misconduct was not a manifestation of his/her disability. If the IEP team could establish there was no link between the disability and the misbehavior, the school was then authorized to apply the same disciplinary standards as those for mainstream students. The 2004 law eliminates the burden previously placed on the school district to establish a behavior *was not* a manifestation of the child's disability. Now the meeting is to be conducted by representatives of the local education agency, the parents, and certain members of the IEP team who jointly may make the determination that the offending behavior *was* a manifestation of the disability. It is not clear from the language of the statute how this decision is to be made, although there is still an appeals process available to parents who are dissatisfied with the outcome of the review. If it is found the behavior was a manifestation of the child's disability, then it will be incumbent on the IEP team to develop a plan to address the behavior or adjust an existing plan, and standard disciplinary procedures will not be applied to the child.

With regard to interim alternative educational settings, there is an additional type of offense that can authorize school personnel to place a child in such a setting, and a slight change in language affects the number of days in which a child may be placed there. Under previous and current law, a school official is allowed to place a student in an alternate setting whether or not the offense was a manifestation of his/her disability if the child has been found in possession of weapons or drugs on school grounds or at school-sponsored activities. Under the 2004 law, this authority extends to an additional circumstance: if a child causes serious physical harm to

another person at school. Under IDEA 1997, this placement was to last a maximum of 45 calendar days while the current law indicates a maximum of 45 *school* days.

Individualized Education Program

IDEA 1997 required the enumeration of short-term objectives in a child's IEP in order to measure progress incrementally toward yearly or long-term goals. IDEA 2004 does away with short-term objectives in all cases except for those children who have the most severe cognitive disabilities and are assessed according to alternate standards. While the objective here is to reduce the amount of paperwork imposed on teachers and schools that are already overburdened, it begs the question of how one measures progress toward IEP goals. The law does require the child's progress toward annual goals be reported to parents on a regular basis. It will be up to the local education agency to determine how this is accomplished.³

An additional change in the IEP evaluation process affects the designation of specific learning disabilities. IDEA 1997 required the identification of a "severe discrepancy" (measured by specific assessments) between overall intelligence and achievement in a particular area in order to designate a child as having a specific learning disability in that area. The 2004 reauthorization eliminates this requirement and replaces it with a more flexible approach, in which the school is able to "... use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures."⁴

³ Robert Silverstein, *A User's Guide to the 2004 IDEA Reauthorization (P.L. 108-446 and the Conference Report)*, Center for the Study and Advancement of Disability Policy, January 2005, at 27.

⁴ *Id.* at 26.

Due Process

Under IDEA 2004, parents will be held to a statute of limitations of two years for bringing complaints through due process. Another new requirement is a mandatory resolution session between parents and the school, to be held within 15 days of the district's receipt of a due process complaint. The local education agency will have the opportunity to hear the concerns of parents at this meeting and respond to the issues presented. The only way to avoid this requirement is for both parties to agree to submit the issue to mediation. On the other hand, IDEA 1997 authorized states and local education agencies to create rules that would obligate parents to consult with a disinterested third-party if they refused to participate in mediation. IDEA 2004 eliminates this power and authorizes the agencies to, "... establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet ... with a disinterested party ..."⁵

Teacher Qualifications

In accordance with the changes implemented by NCLB, the IDEA reauthorization requires that "... all special education teachers ... must hold at least a bachelor's degree and must obtain full state special education certification or equivalent licensure."⁶ This means teachers who are working under emergency credentials will not qualify. Unlike the other provisions of IDEA 2004, this change went into effect immediately upon enactment of the law on December 3, 2004.

Pilot Programs

There are two pilot initiatives authorized by IDEA 2004, both of which have the potential to create far-reaching effects on the ability of children to receive special education services. The first of these initiatives is the multiyear IEP,

⁵ Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 612, 118 STAT. 2647, 2716 (2004).

⁶ Apling, *supra* note 1, at 3.

which up to 15 states will be allowed to implement. This would create an option for three-year IEPs, meaning there would be progress reports but no comprehensive review of the goals, objectives, and progress of the child for up to three years at a time. The second initiative is one that seeks to reduce the paperwork burden and also is to be piloted in 15 states. These states would experiment with waiving all written notice requirements except for those relating to civil rights and the right to a free and appropriate public education.

Other Changes

- IDEA 2004 incorporates specific requirements and qualifications for due process hearing officers, where before none existed.
- The notice of procedural safeguards informing parents of their rights will be distributed only once a year after the initial evaluation of the child.
- Members of the IEP team who in past years have been required to attend the IEP meeting may now be excused with the permission of the local education agency and the written consent of the parents.
- The transition planning process for children that is part of the IEP will now begin at age 16 instead of 14. This is a process whereby the student, in collaboration with his/her IEP team, is encouraged to think about long-term educational and vocational goals. Objectives to that end are incorporated into the IEP to ease the transition from high school into higher education or the job force.
- The requirement to administer assessments in the language best understood by the child has been softened with the caveat "... unless it clearly is not feasible to so provide or administer."⁷ This exception also applies to the required written notification to

⁷ Individuals with Disabilities Education Improvement Act of 2004, *supra* note 5, at 2678.

parents of any change made by the local education agency in the placement or services provided to the child or if agency is refusing to make a change. It is no longer an absolute requirement that this notice be provided in the language best understood by the parents and the child.

- The reauthorization comes in line with recent California legislation allowing for the juvenile court to appoint an educational surrogate for wards of the state and/or children who are in the dependency system. This system appears to run parallel with the duty of the school district to make a timely appointment of a surrogate parent to hold educational rights for children whose parents cannot be identified or located.
- IDEA 2004 also includes a statement that the local education agency will be responsible for appointing a surrogate when it is determined a student qualifies as homeless under the McKinney-Vento Homeless Assistance Act.

Under IDEA 2004, there is potential for considerable change in the way that special education services are administered to children and the type of recourse available to parents and advocates if they feel their child's needs are not being met. As these provisions come into effect and are assimilated by state and local education agencies during the next few years, it will be important to monitor children's access to special education and the ability of persons with disabilities to achieve academic success.

Recent Court Decisions Impacting Juveniles

DELINQUENCY

 *Reynolds v. City of Anchorage*
379 F.3d 358 (6th Cir. 2004)

As a minor, Reynolds was convicted in juvenile court of possession of marijuana, forgery, and fraudulent use of a credit card. She was placed in the Bellewood Presbyterian Home for Children, which is a state-approved private facility for juveniles. On June 8, 1997, facility employees suspected Reynolds and two other girls were using drugs. At the same time a police officer whose beat included the facility stopped by to say hello. With two other officers, the police searched the rooms of the girls and found what they suspected to be drug items (baggies). It was at this time that Reynolds allegedly made a comment insinuating she had drugs in her underpants. The police officers then called for a female officer to strip search the girls. The female officer visually searched the girls' bodies and anal cavity but found nothing. Reynolds sued the police officers involved under 42 U.S.C §1983 for a warrantless search of a female juvenile resident of a children's home. The district court granted defendant's motion for summary judgment based on qualified immunity. The Sixth Circuit affirmed this decision. The court held warrantless searches were allowed when the special interest of the state outweighs the intrusive nature of the search; therefore the officers did not violate Reynolds' Fourth Amendment rights. While the court acknowledged the strip search is intrusive, it held there is a special interest concern for juvenile facilities to maintain order and prevent drug use. The searches are limited to when there is reasonable suspicion and when the search follows a reasonable method. The court determined because there were no previous decisions about whether a warrant is needed to search a juvenile in a facility, Watson's qualified

immunity was justified. In a dissenting opinion, one justice claimed this did not fall under the circumstances allowing for warrantless searches because it was done by police officers with a law enforcement purpose.

 *In re M.H.M*

864 A.2d 1251 (Pa. Super. Ct. 2004)

In Sept. 2003, 16-year-old M.H.M. fired a carbon dioxide-powered paintball gun at three empty cars and one garage door with a friend. M.H.M. and his friend returned to school, leaving the paintball gun in the trunk. The police connected the damage of the empty cars to M.H.M., and, with his father's consent, the police searched the car at school. Inside the trunk, the police found six paint ball guns. M.H.M. was charged with possession of a weapon on school property, criminal mischief, and sale and use of air rifles. In Dec. 2003, the juvenile court conducted a hearing on the matter and M.H.M. admitted the facts of the charges, but his counsel reserved the legal issue of whether a paintball gun qualified as a "weapon" or an "air rifle" under sections 912 and 6304 of the Pennsylvania Crimes Code. After the hearing, the juvenile court held M.H.M. as a delinquent. The decisions were appealed on the issue of whether the court erred in determining a paintball gun qualified as a "weapon" or an "air rifle." The court ruled a paintball gun did qualify as a weapon because a paintball gun is similar to a BB gun, which the court had earlier classified as a weapon because it can cause serious bodily injury. Though used for recreation, the use of the paintball gun requires safety equipment, such as goggles, showing its capacity to be dangerous. The court rejected the argument that because the gun is used for recreation it should not be classified as a weapon.

 *Roper v. Simmons*
125 S. Ct. 1183 (2005)

The U.S. Supreme Court held by a 5-4 vote that imposing the death penalty on individuals who have committed a capital offense while under the age of 18 violated the Eight and Fourteenth amendments. At the age of 17, Christopher Simmons went to the home of Shirley Cook in the middle of the night. Simmons along with two other minors put duct tape on her eyes, mouth, and hands, drove her to a state park, walked her to a railroad trestle across a river and pushed her into the river. The victim drowned. Before the incident, Simmons had said he wanted to kill someone and claimed he and his friends could “get away with it” because they were minors. Simmons was found guilty and sentenced to death. The Missouri Supreme Court overturned the death sentence. The U.S. Supreme Court affirmed this decision, overturning their prior decision in *Stanford v. Kentucky*, where the Court upheld the death penalty for juveniles over the age of 16. In the majority opinion by Justice Kennedy, the Court overruled *Stanford* in light of *Trop v. Dulles*, where the plurality held that standards of the society should be considered in what is determined to be cruel and unusual punishment under the Eighth Amendment. In *Roper*, the Court determined juveniles were not mature enough to make the cost-benefit analysis of death when they commit the crime so there was no deterrent effect. This lack of maturity, susceptibility to peer pressure, and lack of character formation makes juveniles less culpable. The Court decided to set the new threshold at 18 instead of 16 because of the division our society imposes on juveniles and adults as reflected in voting age and other public policies. This opinion reflected an increase in states banning the death penalty for juveniles. In dicta, Justice Kennedy also showed that banning the execution of juveniles has been a global position as well. Although Justice Kennedy recognized the international consensus does not affect the interpretation of the Eighth Amendment, in this case it was clear the United States until now diverged from the global community. The dissenting judges expressed concerns about judicial activism in the decision, the absence of proof as to the difference between the

maturity of a 17-year-old and 18-year-old, and the failure to recognize the cruel and premeditated behavior of the defendant.

DEPENDENCY

 *In re K.D.*

124 Cal. App. 4th 1013 (2004)

K.D. was placed in foster care because his mother was said to have an adjustment disorder with mild anxiety and depressed mood, a personality disorder, methamphetamine dependence, and mild mental retardation. There was doubt she was stable enough to be a safe parent. He was placed with a foster father who was a registered nurse and was able to administer medical treatment for K.D.'s respiratory problems at his home. The court-appointed special advocate and the social worker both recommended the foster father adopt the boy even though K.D. had an affectionate relationship with his mother. The foster father wanted to adopt K.D. and had received a job offer in Ohio and was planning to move there. The court found it would be detrimental to remove K.D. from the foster father's care, but it ordered supervised visitation by the mother to occur at least twice a year. The court ruled it was in K.D.'s best interest to maintain a bond with his mother. The juvenile court named the foster father K.D.'s guardian and terminated the court's dependency jurisdiction. The mother appealed, arguing the court abused its discretion in not selecting a guardian in California or, in the alternative, abused its discretion by not maintaining jurisdiction. The appellate court ruled the juvenile court did not abuse its discretion in appointing the foster father to be K.D.'s guardian because there was a strong bond between them. The foster father also had a specialized ability and history of providing for K.D.'s medical needs. The court reversed the order terminating dependency jurisdiction, finding that because it was in K.D.'s best interest to maintain his relationship with his mother, dependency jurisdiction must be retained to hold periodic review hearings to oversee visitation.

 *In re Dependency of G.M.*

123 Wash. App. 1040 (Div. 1 2004)

G.M. was born on July 30, 2002, with cocaine in his system and was placed in a stable home with a maternal relative. His father was incarcerated when G.M. was born and has never seen his son. The father was ordered to obtain drug/alcohol evaluation and treatment, to submit to random urinalysis, to obtain a psychological evaluation and receive any treatment necessary, to undergo domestic violence treatment, and to complete parenting classes. The father completed an intake interview for drug and alcohol evaluation, but he did no other treatment before he returned to jail. The trial court terminated his parental rights. The trial court found G.M. was in a pre-adoptive home with the only parent he had ever known and continuing the biological parent-child relationship would diminish G.M.'s prospects for a permanent and stable home. The father contends the state failed to establish it had offered or provided all necessary services to him because the institutions he was placed in did not offer the services he needed. By statute, the state must provide all reasonable services necessary in enabling a parent to resume custody. Social workers had attempted to provide services for the father during the dependency of G.M. including during his incarceration. The state also moved promptly to provide services when the father was released in Feb. 2002. The appellate court established that the trial court can consider the causes and frequency of imprisonment in the termination proceeding. The appellate court ruled the trial court did not err in finding that through the father's choices, he made himself unavailable for services. The court felt it would be devastating for G.M. to be taken from his home, and it was unclear if the father would be able to parent him.

 *Laurie Q. v. Contra Costa County*

304 F. Supp. 2d 1185 (N.D. Cal. 2004)

The class-action plaintiffs, foster children who were afflicted with various disabilities, sued the county where they were dependents for violation of state and federal law. They alleged

the county did not provide them the federal benefit funds to which they were entitled, that the county wrongfully delayed their adoptions, and the county failed to advise potential adoptive parents of the availability of funds for individuals adopting special needs children. The county moved to dismiss, contending it was entitled to state sovereign immunity for the damages. The court held the county was not entitled to state immunity because it was not acting as an arm of the state when it failed to distribute the benefit funds to the children.

📖 *In re G.T.*

845 A.2d 870 (Pa. Super. Ct. 2004)

A mother took her 10-month-old child to the doctor for a routine check-up. She had not taken the child to the doctor in seven months. The doctor noticed some abnormalities and ordered a CT scan, which revealed brain damage and other abnormalities. The mother had noticed abnormalities, but she had waited until she had medical insurance before taking the child to the doctor. The child underwent brain surgery but suffered permanent brain damage and is not expected to walk. The trial court held that both the 10-month-old child and her older sister were without proper parental care because of the parents' extremely poor judgment. On appeal, the court found the trial court did not abuse its discretion in adjudicating the older child dependent. The fact the older child did not suffer any adverse effects did not mean she was not in the same danger.

EDUCATION

📖 *Weast v. Schaffer ex. rel. Schaffer*

377 F.3d 449 (4th Cir. 2004), *cert. granted sub nom Schaffer v. Weast* (U.S. Feb. 22, 2005)

In Maryland, parents of a child with multiple learning disabilities sought special education services for him when it became clear he needed special accommodations. Maryland's Montgomery County Public School System (MCPS) decided the child was eligible for special education services and

proposed an IEP to meet the child's educational needs. The parents believed the IEP to be inadequate and informed the MCPS that their child would be attending a private school. The parents initiated a due process hearing to challenge the IEP offered by the MCPS under the Individuals with Disabilities Education Act (IDEA), which entitles all disabled children the right to a "free appropriate public education" (FAPE). As part of their request for due process, the parents demanded reimbursement of tuition and expenses for the child's private school attendance. At the first due process hearing, the Administrative Law Judge (ALJ) assigned the burden of proof to the parents. The ALJ found the IEP to be adequate and denied the parents' request for reimbursement. The parents subsequently sued the MCPS in district court, alleging the ALJ erred in imposing the burden of proof on them rather than the school district. The district court found for the parents and remanded the case to the ALJ with the reallocated burden assigned to the MCPS. The MCPS appealed the finding to the appellate court and, in the meantime, the ALJ reassigned the burden of proof to the MCPS and found the school had failed to prove the adequacy of the IEP. As part of the decision, the ALJ ordered the MCPS to partially reimburse the parents for the child's private school tuition and expenses. Following this decision, the MCPS moved to challenge the ALJ's reallocation of the burden of proof in the district court. The district court reaffirmed the ALJ's holding that the school district bears the burden of proof and also awarded full, rather than partial, reimbursement to the parents. The MCPS appealed the district court holding. The issue before the U.S. Court of Appeals for the Fourth Circuit was whether the burden of proof as to the adequacy of an IEP rests with the school district or the parents. The appellate court held the burden of proof rests with the parents. In finding for the school district, the court considered the split in circuits on the allocation of the burden. The parents' argument was that because IDEA requires public schools to provide students with a FAPE, it would be consistent with IDEA to place the burden of proof on the school. The parents also argued the school district will have an advantage over the parents in a due process hearing and should therefore have the

burden of proof to establish the IEP was adequate. The court found that IDEA's silence on the burden of proof does not mean the burden should be allocated to the school district. Rather, the court chose to follow the general rule that the party initiating the action bears the burden. The court believed the procedural safeguards built into the due process system protect parents sufficiently to allow the burden of proof to remain with the parents. This ruling will be considered by the U.S. Supreme Court as the Court granted the parents' writ of certiorari this term.

📖 *Christopher S. ex. rel. Rita S. v. Stanislaus County Office of Educ.*

384 F.3d 1205 (9th Cir. 2004)

Christopher S. and two other minor children diagnosed with autism brought suit against the County Office of Education and others for alleged violations of their rights under the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. The Eastern District Court of California dismissed the claims for failure to exhaust administrative remedies under the Individuals with Disabilities Education Act (IDEA). The three minors appealed to the Ninth Circuit and the judgment of the district court was reversed and the case remanded. The court found the use of the complaint resolution procedure through the California Department of Education (CDE) was sufficient to exhaust their remedies and noted the complaint was against a district-wide policy and did not address the contents of any individual child's special education program. The district had reduced the number of instructional hours for autistic children for three consecutive school years, claiming budgetary constraints. When the parents of the children lodged a complaint through the CDE, they prevailed on the claim that the district was violating the requirement that special education students receive the same amount of instructional time as their regular education counterparts. The CDE ordered the district to come into compliance within 60 days. In response, the district changed the way it calculated instructional hours to include lunch and recess breaks. Under the new formula, autistic children in the

district were receiving a higher number of instructional hours than the regular education students. The CDE accepted this change and indicated they would not pursue any further action against the district, despite the fact lunch and recess time were not used to calculate instructional hours for mainstream education students. The court found there was no need to require appellants to pursue remedies under IDEA because the decision to reduce the number of instructional hours and count them differently for autistic children had nothing to do with the individual educational programs of the children bringing suit.

 *L.B., and J.B., on behalf of K.B. v. Nebo Sch. Dist.*
379 F.3d 966 (10th Cir. 2004)

The Nebo School District conducted an evaluation of K.B., a child diagnosed with autism, for placement and identification of an appropriate individualized education plan (IEP). The school district identified the least restrictive environment (LRE) to be placement in a special education preschool with the services of a classroom aide and assistance at home with an Applied Behavioral Analysis (ABA) program. The parents declined placement in the special education preschool and placed their child in a mainstream preschool, while still using the aide and the ABA services. A dispute arose over payment for the aide and the ABA program. The school district argued that 8 to 15 hours of ABA per week was an appropriate level, while the parents argued for 35 to 40 hours per week. The due process hearing officer found that K.B.'s IEP afforded her an appropriate level of services in the least restrictive environment. K.B.'s parents brought suit in district court, alleging they were due reimbursement for K.B.'s services and they had not received an impartial hearing. The district court granted summary judgment to the district and other defendants on both counts. The Tenth Circuit Court of Appeals affirmed the summary judgment for the district on the issue of impartiality and reversed the summary judgment on the reimbursement claim. The court found a preponderance of evidence indicated K.B. had benefited more from the mainstream preschool than she would have under the district's

proposed placement in a special education classroom, thereby entitling her parents to seek reimbursement on remand. However, the court did propose elements of equity that the lower court should consider on remand, including whether the reimbursement costs would be unreasonable in light of the total school budget.

📖 *In re A.C.T.*

816 N.E.2d 1098 (Ohio Ct. App. 2 Dist.)

The juvenile defendant was arguing with another student when the teacher observed the defendant getting ready to punch the other student. The teacher inserted herself into the fight, and the defendant struck the teacher in the back and knocked her to the floor. The defendant was charged with two counts of assault: a misdemeanor for striking the student and a felony for striking the teacher. The trial court found the defendant guilty of the second count. On appeal, the court noted the defendant had not been aware of the teacher's presence until she had struck the teacher. It was not a situation where the student had continued to fight even after she had heard the teacher's warnings. The court determined the doctrine of transferred intent did not apply. It also concluded the state had not shown the defendant had the requisite intent for purposes of obtaining a delinquency finding under the assault statute. The judgment of the trial court was reversed, and the case was remanded.

HEALTH

📖 *Washington State Dept. of Soc. and Health Servs. et al. v. Guardianship Estate of Danny Keffeler et al.*

537 U.S. 371 (2003)

Plaintiffs, representing foster children, sued defendants, including the state's department of social and health services, for using foster children's social security benefits. The state had been using the social security benefits to reimburse itself for the cost of caring for the foster children. Plaintiffs argued the practice ran afoul of the Social Security Act's anti-

attachment provision and failed to serve the best interest of the children as required. The state Supreme Court affirmed the trial court's holding that the department's use of social security benefits for foster care violated the anti-attachment provisions of the Social Security Act. The U.S. Supreme Court determined the department's reimbursement did not violate the Act. The Court held the state's practices served the children's interest inasmuch as their basic needs were being met.

📖 *Rosie D. et al. v. Jane M. Swift, Acting Governor, et al.*
310 F.3d 230 (1st Cir. 2002)

Plaintiffs, representing minor children, filed a class action on behalf of thousands of Medicaid-eligible children residing in Massachusetts. The minors claimed they were representative of children who suffered from similarly severe behavior, emotional and psychiatric disorders and who required home-based care. The minors alleged state officials denied them in-home intensive mental health services and had created a mental health crisis within the state. Plaintiffs sought prospective injunctive relief for the provision of home-based mental health services. The defendants claimed the Eleventh Amendment barred the prosecution of the plaintiffs' action in federal court. The district court rejected the defendants' Eleventh Amendment argument, and the defendants filed an interlocutory appeal. The court of appeals affirmed the district court, explaining that Eleventh Amendment immunity does not protect state officials from federal court suits for purposes of injunctive relief under the Medicaid Act.

📖 *Annie Garrett, on behalf of Myron Moore v. Jo Anne B Barnhart, Comm'r, Soc. Sec. Admin.*
366 F.3d 643 (8th Cir. 2004)

When Myron's mother filed a supplemental security income (SSI) application on his behalf he was 13 years old and had been diagnosed with a cognitive disorder, recurrent major depression, bipolar disorder, and attention deficit hyperactivity disorder. By the time of his SSI hearing two years later, Myron had attempted suicide four times within a nine-month

period. The Administrative Law Judge (ALJ) denied Myron's application for SSI because he found his limitations did not meet the listed impairments, nor did his impairment or combination of impairments medically equal in severity the criteria for a listed impairment. The Social Security Appeals Council declined review of Myron's case and upheld the ALJ's determination. The trial court concluded the commissioner's decision to deny benefits was supported by substantial evidence. On appeal, appellant argued that Myron's major depressive syndrome met the requirements for a listed impairment. The court of appeals reversed and remanded the case to the ALJ for further proceedings. The court of appeals found the ALJ failed to properly assess the impact of suicide attempts on Myron's personal functioning. The court directed the ALJ to re-evaluate the child's degree of impairment in light of the repeated suicide attempts.

Websites on Juvenile Issues

The Journal has compiled a list of websites focused on issues facing children. The websites offer summaries of current and proposed legislation, recent case law, and include links to other resources to keep members of the community aware of developments in the fields of dependency, delinquency, health, education, family law, and children and the Internet.

The Center for Children's Advocacy

<http://www.kidscounsel.org/kidscounsel/index.html>

The Center for Children's Advocacy, a non-profit organization at the University of Connecticut School of Law, runs a website that includes case summaries, legislative updates, and resources for the public. The website includes summaries of cases decided in Connecticut's state and federal courts and the U.S. Supreme Court spanning the fields of guardianship, juvenile justice, discrimination, and family law, to name a few. The website also contains a section that catalogues pending and recently passed legislation affecting children. The website offers legal resources for the public as well as professional resources, including sample complaints, motions, and information about getting services for children in need.

Children's Rights

<http://childrensrights.org/Legal/cases.htm>

http://childrensrights.org/Legal/recent_legal.htm

Children's Rights is a non-profit organization founded in 1995 that began as part of the American Civil Liberties Union. Children's Rights takes on the child welfare system to protect the rights of children. The first website profiles cases in which Children's Rights is involved, illustrating the issues facing children throughout the country and the types of changes the organization seeks to make. The second website includes links

to articles detailing recent legal developments for Children's Rights.

 **Children's Online Privacy Protection Act**

<http://www.epic.org/privacy/kids/#introduction>

The Electronic Privacy Information Center's (EPIC) website provides information on the Children's Online Privacy Protection Act (COPPA). EPIC is a public interest research center that informs the public about issues regarding civil liberties. EPIC summarizes COPPA's history, provisions, enforcement, criticisms, the effects of the Act, and news and cases dealing with COPPA.

 **Syracuse University College of the Law**

http://www.law.syr.edu/academics/centers/flsp/childrens_issues.asp

Syracuse University College of the Law's website compiles many organizations and websites relating to children's issues. The website includes links to advocacy groups, information about child support, adoption, and juvenile justice. This website is a good place to start researching as it offers links to many advocacy organizations and general information about children's rights.

 **The National School Boards Association**

<http://www.nsba.org/site/index.asp>

The National School Boards Association (NSBA), a federation of state school boards throughout the country, operates a website listing school board policies, publications and reports, stories in the news, and recent cases in school and education law. The website provides information to school board members, district staff, school board associations, school attorneys, and members of the community.