From the Chair and Vice Chair

By Judge Stephanie Domitrovich, chair, and Eleanor L. Bush, vice chair

As usual, the Pennsylvania Bar Association’s Children’s Rights Committee has been busy!

On the legislative front, we have experienced success in conveying and advancing our views about legislation that will affect thousands of Pennsylvania children. This summer, Act 55 of 2013 passed the General Assembly and was signed by Gov. Tom Corbett. The act includes provisions of the former House Bill 1075, regarding “family finding.” Our Legislative Action Subcommittee studied that bill and prepared a resolution, which ultimately passed the PBA House of Delegates last May. About a year ago, committee member Ilene Leventhal testified at a hearing regarding an earlier version of that bill. We are happy to report that the bill was amended to reflect several of the suggestions we made.

We have also been very active in adding our voice to the many groups speaking to legislators about proposed amendments to the Child Protective Services Law. Again, we moved resolutions through to adoption by the PBA, and committee member Jonathan Budd testified in Harrisburg on behalf of the PBA. We believe that the final legislation will better serve the interests of children as the result of our efforts.

Thanks goes to our Newsletter Subcommittee, and contributing authors, for this very full edition. We hope you enjoy it and that we will see you at our annual fall CLE program on Nov. 8 in Mechanicsburg.

Nominations Sought for 2014 Child Advocate of the Year Award

The PBA Children’s Rights Committee is accepting nominations for the 17th annual Child Advocate of the Year Award. The award recognizes the accomplishments of lawyers who are advocates for Pennsylvania children, who exhibit the highest degree of professional excellence and who advance the rights of children.

Nominations must be received by Jan. 17, 2014.

Download the nomination application here.
Educational Advocacy for Dependent and Delinquent Youth

The fall training program of the PBA Children’s Rights Committee

**Date & Location**
8:25 am to 3:45 pm; check-in begins at 8:00 am
Mechanicsburg • Fri., Nov. 8, 2013
PBI Conference Center
5080 Ritter Road
Rossmoyne Exit, Rt. 15

Create positive outcomes for your client: a 6-hour course that explores how

Dependent and delinquent youth are in educational crisis. Separation from family, changes in placements, and trauma from abuse or neglect can create significant barriers to educational success. Children placed in congregate care facilities are especially at risk for being wrongfully excluded from community, school, and extracurricular opportunities. More than ever before educational success and pursuit of postsecondary education and training are critical to a successful transition to adulthood. Without educational advocacy and access to quality educational opportunities, delinquent and dependent youth are put at great risk for poor adult outcomes.

Join a panel of legal advocates as they explore the legal tools and strategies you need to ensure access to quality educational opportunities for your clients.

Check out the agenda—your key to joining the movement to provide better outcomes for system-involved youth!

- Educational advocacy in the courtroom: using the Juvenile Court rules to improve educational outcomes
- Educational advocacy in residential and congregate care settings
- Special education nuts and bolts for youth in the child welfare and juvenile justice systems
- Protecting the rights of your clients in school discipline matters, including transfers to Alternative Education for Disruptive Youth programs
- Educational Advocacy for older youth through transition planning in the IEP
- Understanding the new graduation requirements

**Course Planners**
Maura McInerney, Esq.
SENIOR STAFF ATTORNEY, EDUCATION LAW CENTER, PHILADELPHIA
Jennifer K. Pokempner, Esq.
JUVENILE LAW CENTER, PHILADELPHIA

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**EDUCATIONAL ADVOCACY FOR DEPENDENT AND DELINQUENT YOUTH**

**Mechanicsburg • Fri., Nov. 8, 2013**
PBI Conference Center
5080 Ritter Road
Rossmoyne Exit, Rt. 15

**Tuition (includes course book and lunch)**

- $229 Members — Pa., or any co. bar assn.
- $209 Members admitted after 1/1/09
- $249 Nonmembers
- $99 Paralegals attending w/attorney
- $115 Judges and judicial law clerks
- $105 Judges and judicial law clerks admitted after 1/1/09

Add $25 for registrations received 3 or fewer business days before presentation.

**Registration Form**

Name___________________________________________Atty. #_____________________
Firm____________________________________Email______________________________
Address_____________________________________________________________________________________________
City________________________________________State________Zip_____________________
Phone_____________________/__________-FAX_____________________/___________-

I have enclosed my discount coupon in the amount of $__________ for my ________ seminar.

A check made payable to PBI for $___________ is enclosed.

Charge my: □ VISA □ MASTERCARD □ DISCOVER □ AMERICAN EXPRESS

Card #____________________/exp. Date_________________________

Signature___________________________________________________________________________________________
Discovery of Children and Youth Records

By Melissa P. Tanguay

A children and youth agency in Pennsylvania is tasked with the great responsibility of protecting the confidentiality of family case records, per the mandates of the Child Protective Services Law, the Juvenile Act, the Public Welfare Code and the Rules of Juvenile Court Procedure, not to mention a myriad of relevant federal regulations. However, family case records are also in high demand, and often quite relevant, for use in non-dependency court proceedings, including protection from abuse, criminal and child custody proceedings.

A children and youth agency regularly receives requests for family case records from judges and attorneys involved in non-dependency proceedings. These requests sometimes come in the form of a court order, which is the preferred method for obtaining the agency response. However, requests come in various other formats – subpoenas, motions, letters, emails and phone calls. Due to the confidentiality requirements of the aforementioned legal authorities, it is difficult for a children and youth agency to respond to a records request absent a court order.

As with most legal procedures in the commonwealth, the method of seeking production of children and youth records varies by county. Dauphin County has adopted a local rule which addresses this issue. The rule provides:

RULE 573. DISCOVERY OF CHILDREN AND YOUTH RECORDS IN NONDEPENDENCY CASES

Pursuant to the Juvenile Act, 42 Pa. C.S. §6307, and the Child Protective Services Law, 23 Pa. C.S. §6340, any party to litigation seeking discovery of confidential reports and records of Dauphin County Services for Children and Youth (Child Protective Service Agency) shall file a motion stating with particularity the scope, necessity, and authority for the discovery sought.

The motion shall be served on any adverse party, on the Dauphin County Children and Youth Agency, and on the guardian ad litem (if any) for the child.

Any objection must identify that portion of the reports of records sought to be withheld and state with particularity any privilege asserted thereto.

Thereafter, the court shall either a) schedule a hearing on the motion; or b) schedule an in-camera conference; or c) issue an order based on the averments in the motion and in any response filed thereto.

Dauphin County Local Rule 573 affords the children and youth agency the opportunity to review the request for records and, if appropriate, file an objection. If a guardian ad litem represents the child, that attorney has the opportunity to advocate the child’s interest. The rule also enables the court to weigh competing interests in ruling upon the discovery request. The court may seek more information through a hearing or schedule an in-camera conference for judicial review of the records. When this procedure is followed, even when the court orders release of records, the children and youth agency has had the opportunity to seek

Want to Submit Articles?

The Children’s Rights Committee invites members to submit material for publication in the newsletter. Please contact co-editors Pamela S. Parascandola at pparascandola@dauphinc.org and Melissa P. Tanguay at MTanguay@dauphinc.org.
By Jennifer Lutz

In late 2012, the lives of many Pennsylvania children were forever changed. Act 111, or SORNA (Sex Offender Notification and Registration Act), went into effect, requiring children to register for life as sex offenders and suffer jail time if they fail to meet harsh requirements. Act 111 was the response by the state legislature to the Adam Walsh Act, or SORNA (Sex Offender Notification and Registration Act), passed in 2006 by President George W. Bush. Federal SORNA legislation requires each state to create its own sex offender registry. Act 2011-111 (PA Senate Bill 1183) was signed into law in Pennsylvania on Dec. 20, 2011, and became effective Dec. 21, 2012.

SORNA laws change the course of a child’s life by making him or her a registered sex offender; juvenile attorneys and child advocates must understand the law and be able to effectively advise clients and families. To do anything less is ineffective. Because SORNA requirements are complex and children often have little choice over their own circumstances, the potential for children to violate registration requirements and be sentenced to jail time is very high. This article is a summary of the SORNA law with suggestions about how advocates for children can help.

Because SORNA requirements are complex and children often have little choice over their own circumstances, the potential for children to violate registration requirements and be sentenced to jail time is very high. This article is an overview of the SORNA law with suggestions about how advocates for children can help.

Permission judges to determine whether a particular child is likely to re-offend and therefore should register, nor do the laws account for the fact that children are receptive to treatment, and some may pose no risk of future offending. Often these children are themselves the victims of adult perpetrators that registration laws claim to protect. Laws in Pennsylvania do not create responsibility for parents, guardians or social service agencies to assist children in registration. In fact, “juvenile offenders” have the same registration requirements and penalties as the most serious, or Tier III, adult offenders.

Under SORNA, “juvenile offenders” are required to register extensive information with the Pennsylvania State Police in person every 90 days. Registrants are also required to report the addition, change or termination of any registration information to the state police in person within 72 hours. These registration obligations are life-long requirements with only a limited right for some registrants to petition the court for relief after 25 years.

Changes to Pennsylvania expungement laws, also effective on Dec. 21, 2012, now prohibit any child or adult ever adjudicated of a SORNA offense from receiving an expungement, or erasure, of a juvenile record. This is true even if the person is currently an adult who is not required to register under SORNA.

Information which must be registered with the state police is incredibly broad. Children and young adults may not know this information or may not understand what constitutes a “change” in this information. Registration information includes the child’s social security number, date of birth, physical description, address, telephone numbers, schools, employers, photographs, driver’s license and state ID information, license plate of any vehicles available, storage location of any vehicles, professional or occupational licenses or registration, email addresses, Internet identifiers, and travel and immigration documents. While all of this registration information could be problematic for children, areas of particular concern are Internet identifiers, which could include anything with an account and password, as well as phone numbers, which are prone to frequent change and loss of service.

Fortunately, registration information of “juvenile offenders” is not included on the Pennsylvania State

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Police’s website. However, nothing prevents the release of registration status, even by the state police. The door is wide open for information about children registered as sex offenders to be released to neighbors, probation officers, schools, classmates, employers and peers.

If children fail to follow complicated SORNA requirements, they are at risk for incarceration. Anyone who fails to register, verify or provide accurate registration information will be in violation of 18 Pa.C.S. § 4915.1, or failure to comply with registration requirements, which is a felony. Under 42 Pa.C.S. § 9718.4, “juvenile offenders” are subject to mandatory minimum jail sentences of anywhere from three-to-six years to seven-to-14 years jail time. Mandatory sentences will apply to “juvenile offenders” who are over 18 at the time of the registration violation. Registrants who are under age 18 at the time of violation will remain under the jurisdiction of the Juvenile Act and could be adjudicated delinquent, placed in a residential facility or put on probation.

SORNA recognizes a distinction between “juvenile offenders” and “sexually violent delinquent children.” Under SORNA, anyone found to be a “sexually violent delinquent child” under 42 Pa. C.S. §§ 6358, 6401 - 6409, also known as Act 21, and civilly committed to the state Sexual Responsibility and Treatment Program (STRP) in Torrance, Pa., is required to register under SORNA. Someone is at risk for civil indefinite civil commitment under Act 21 if he or she has an adjudication of delinquency on an Act 21 offense and has been committed to a delinquent facility/institution and remains in there at age 20. Individuals are eligible for Act 21 commitment, and thus registration, for a much broader range of offenses, including misdemeanor sexual offenses and sexual assault. Act 21 applies to those as young as 10 years old at the time of the offense. Anyone committed under Act 21 is subject to active community notification and must appear on the public website. Unlike “juvenile offenders,” individuals falling under Act 21 may never petition for removal from the registry. For more on the civil commitment process and timelines, please see 42 Pa. C.S. §§ 6401 – 6409.

In addition to setting children up for failure and funneling them toward lives in prison, there are many collateral consequences for children required to register under SORNA. Some jurisdictions (including counties in Pennsylvania) prohibit registered sex offenders from residing within a set distance from certain locations such as schools, recreation centers, day care centers or bus stops. Children and their families are also at risk to lose access to housing because lifetime registration under a state sex offender registration statute makes the child ineligible for federally-assisted housing under 42 U.S.C. § 13663. In addition, children required to register under SORNA will undoubtedly suffer great emotional harm. Registration status can be disclosed to neighbors, co-workers and fellow students, subjecting children to stigma and painful labeling by peers and adults. Many young men and women will be turned down for jobs, prevented from working in certain fields and even rejected from schools or vocational programs because they are registered sex offenders for something which occurred when they were 14 years old.

Notably, each state’s registration laws are different. Even if a child is not required to register in Pennsylvania, he or she may be required to do so if he or she resides, attends school or works in another state. This could apply to temporary changes for periods of time as short as a few days. These children who do not have to register in Pennsylvania are particularly at risk, because they will likely have no idea that moving, getting a job or taking classes in a different state could transform them into registered sex offenders.

Child advocates can, and indeed must, be aware of SORNA’s effects and inform clients. Knowledge of a child’s situation and frequent communication are keys to successful advocacy. Advocates should identify clients who are at risk for SORNA registration in Pennsylvania and help those clients learn to register properly. Many children could violate requirements simply because they do not understand or remember the rules. Juveniles may need help gathering registration information and remembering where, when and for what they must register. Child advocates can develop materials to assist children understand these obligations, refer clients to delinquent counsel in order to explore other legal consequences and ensure that Children and Youth Services (CYS) is aware of the implications for certain children. There will undoubtedly be potential registration consequences and residency restrictions for children in placement or foster care who cannot control their own location of residence or school. If a child is moved by CYS to a different dependent placement, this is a change in registration information and requires that the child report to the state police barracks in person within 72 hours. Child advocates must help ensure that this type of transfer does not happen, or if it does, that the child is permitted to comply with registration laws. Child advocates may also be in unique positions to remind clients who have adjudications for sexual offenses but who are not required to register in Pennsylvania that they may be required to register if they live, work or attend school in another state.

Because SORNA is a new law, and because it requires children to register as sex offenders for the first time in our state, there may be unforeseen complications and developments. Child advocates can greatly increase the quality of children’s lives by

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Discovery of Children and Youth Records

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adequate protection of family case records.

Of course, individual counties and judges have their own preferred method of discovery requests. The following is a list of authorities which counsel may find helpful in addressing the issue of requests for disclosure of confidential of children and youth agency records.

Pennsylvania

Juvenile Act, 42 Pa.C.S.A. § 6307
Child Protective Services Law, 23 Pa.C.S.A. § 6340
Public Welfare Code, 55 Pa. Code § 3490.91
Mental Health Procedures Act, 50 P.S. §§ 7101 - 7503
Pennsylvania Rules of Juvenile Court Procedure, Pa.R.J.C.P. 1160

Federal

Title IV-B of the Social Security Act, 45 CFR 1355.21, 45 CFR 1355.30 (p)(3) and 45 CFR 205.50
Title IV-E of the Social Security Act, 45 CFR 205.50 (a)(1)(i)
Social Security Act, Sections 471 (a) (6) and (8) and 479Bb; H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)
Health Insurance Portability and Accountability Act (HIPAA), 45 CFR 160, 45 CFR 164 Subparts A and E
Family Educational Rights and Privacy Act (FERPA), 34 CFR 99 Subpart D
Federal Drug and Alcohol Regulations, 42 CFR Part 2

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What Child Advocates Must Know About Sex Offender Registration for Children

understanding SORNA laws, in some cases preventing registration by making children and families aware pre-adjudication of delinquency and helping children comply with SORNA requirements.

Jennifer Lutz is currently the juvenile justice policy attorney and director of training in the Juvenile Unit of the Defender Association of Philadelphia. In addition to conducting all training for attorneys in the Juvenile Unit, she engages the court, district attorney, treatment providers and other stakeholders on policy issues to improve the quality of representation for indigent children in Pennsylvania. From 2009 to 2011 she served as the supervising attorney for the Juvenile Special Cases Section, where she supervised the representation of all juveniles charged with sexual offenses and tried dozens of complex sexual assault cases.

Melissa P. Tanguay is a staff attorney with Dauphin County Social Services for Children and Youth in Harrisburg. She represents the agency in proceedings before the Juvenile Court, Orphan’s Court, Superior Court and Department of Public Welfare Bureau of Hearings and Appeals.
Adoption Requires Clear Eyes, Full Heart

Editor’s note: This article originally appeared in the Harrisburg Patriot-News newspaper.

By Eleanor L. Bush

Twelve-year-old David stood quietly in the hallway outside the courtroom, looking shy and awkward in his jacket and tie. This day – adoption day – had been a long time coming.

David’s foster parents brought him into their home years earlier from the rehab hospital where David lived for five years, because he didn’t have a family capable of taking care of him. His foster parents taught him the basics of living in a real home in a real neighborhood – how to turn on a lamp, what a kitchen looks like, how to play in the backyard.

They coped with the frustrations of finding a special education program that met David’s needs.

And they waited through what seemed like interminable court delays and appeals until this day finally arrived. Now they were all waiting again, but only for a few minutes.

David’s case was called, and we went into the courtroom together. Just a few minutes later the judge signed the paperwork, and David and his foster parents became a legally recognized permanent family.

David’s adoption day, like adoption hearing days, for so many children who have been living in foster care, was a day filled with joy, gratitude and hope for the future.

That happy event stands in stark contrast to another adoption-related story that has made headlines recently – criminal charges against the adoptive parents of two young Ethiopian children. The 6-year-old boy and 1-year-old girl arrived six months before both were admitted to the hospital.

The boy was malnourished and had skin lesions, and the girl had multiple fractures to her skull. At this point, we do not know exactly what happened, how or why. Among the many questions this tragedy should prompt us to ask is what does it take to ensure that adoptive families succeed?

Experts agree on many of the keys to success:

• Thorough preparation – Prospective adoptive parents need to be prepared for the needs of the children who will enter their homes and hearts.

Adoptions from foster care and from foreign orphanages jointly comprise the vast majority of nonstep-parent adoptions in the United States. The children involved in these adoptions generally are not newborns. Many have experienced deprivation, maltreatment or other forms of trauma. They come to their new families at increased risk for developmental, behavioral and other challenges because of this. Adoptive parents need to be aware that these challenges might arise, and they need to be supported with training and education that reflect current knowledge on effective parenting techniques to cope with and overcome such challenges.

• Information on the child’s background and early experiences – the more adoptive parents know about the child, the better they will be able to understand and respond to the child’s needs.

• Realistic expectations – Thorough preparation and full information help adoptive parents develop realistic expectations about their adopted children. Every parent has hopes, dreams and desires for their children. When a child does not match those initial hopes and dreams, developing realistic expectations makes for stable placements and healthy parent/child relationships.

• Support from extended family – “It takes a village to raise a child” might seem like a cliché, but support from extended family – grandparents, parents, brothers and sisters, cousins, etc. – can go a long way toward helping adoptive parents succeed. This means that the extended family should be part of the preparation for adoption, not just the adoptive parents.

Most adoptive families succeed. So it is appropriate and important that we celebrate the love and dedication of all of our adoptive families.

At the same time, we must also recognize the need for hard work, quality professional services and supportive communities to make sure that the excitement and joy that families experience on adoption day are followed by successful journeys where “all live happily ever after.”

Eleanor L. Bush of Pittsburgh is a child welfare attorney and vice chair of the Pennsylvania Bar Association’s Children’s Rights Committee.
The Children’s Rights Committee’s Child Advocate of the Year Committee is pleased to announce that this year’s recipient is Jennifer Staley McCrady. McCrady is a supervisor and a program and policy coordinator at KidsVoice in Pittsburgh. She has been involved in child advocacy for over 16 years, including nearly five years as a teacher and counselor in a group home with an on-grounds school for at-risk teens. She has received many awards for her work in child advocacy, including the Staff of the Year Award and Director’s Award for Excellence from The Whale’s Tale Youth Shelter, Allegheny County Bar Association’s Pro Bono Student of the Year and CASA Volunteer of the Year. She regularly participates in the planning committees, as well as panels, for the Children’s Rights Committee CLEs.

McCrady is described as a prime mover-and-shaper of most of the ground-breaking KidsVoice initiatives. Many of the initiatives include a significant focus and provision of specialty advocacy to older youths, a focus on the needs of the medically fragile youths, representation of dually adjudicated youths and a focus on educational quality and stability for youths in a residential setting. She has also participated in class and individual litigation that has resulted in systemic changes for youths in care in Allegheny County and beyond. She is always looking for opportunities to make a difference for her clients and foster youths in Pennsylvania, particularly with regard to older youths.

She is recognized nationally for her expertise and innovation in advocating for youths “aging out” of the foster care system, including the right to education services, scholarships and SAT and tuition waivers. She speaks and trains on those subjects across the state and country. Locally, she served as the chair of the Allegheny County Bar Association’s Juvenile Law Committee.

Policy work and impact litigation are only a part of what McCrady has done to support child advocacy. She continues to carry individual cases and is often in court. She is a skilled and hands-on supervisor who both holds her staff members to high standards and also provides them with the tools, guidance and support to meet those standards.

Also noteworthy is McCrady’s training and support of young lawyers. She has been central in developing expertise, training and resource materials on complicated areas involving child advocacy, such as older youths, education and disability. She embodies her belief that attorneys for children must provide comprehensive representation requiring expertise on many issues and areas of the law. She has a reputation among her peers as an expert, innovator, hard-worker and a leader. McCrady’s commitment to child advocacy and the growth and quality of her profession and colleagues is strong, unwavering and demonstrated by her years of service.

The Children’s Rights Committee is pleased to announce this year’s recipient of the Child Advocate of the Year Award: Jennifer Staley McCrady!
Children’s Roundtable Summit 2013: Are We There Yet? Impressions from Dauphin County

By Marisa K. McClellan

This past spring, a team from Dauphin County, made up of a variety of professionals – including the Children and Youth Services Agency administrator, the juvenile court judge, a juvenile court hearing examiner, a permanency caseworker, a permanency supervisor, the Children and Youth Services solicitor and a county commissioner – attended the Administrative Office of Pennsylvania Courts’ Roundtable Summit at Seven Springs, Pa. Many counties attended the two-and-a-half day event.

The Dauphin County team left the summit educated and inspired on issues, including safety assessment, trauma identification, team-building and brainstorming as a county and to address issues present in our dependency system effectively and to develop methods to work through those issues.

The summit provided an incredible opportunity to share thoughts and best practices with statewide shareholders. Additionally, it provided the individual counties an opportunity, outside the normal venues, to dialogue, troubleshoot and, yes, socialize with our judges, solicitors, parent attorneys, guardians ad litem, casework staff, hearing examiners, commissioners and administrators.

Multiple speakers presented at the summit, but one in particular made a great impact on the Dauphin County team. Speaker Janine M. D’Anniballe, a licensed psychologist and director of Access, Emergency and Community Services at Mental Health Partners in Boulder, Colo., presented the topic “Trauma: Explore the Body’s Physical and Emotional Response to Trauma and Learn Strategies to Reduce Trauma for Children, Families and the Professionals Serving Them.” D’Anniballe’s presentation significantly changed our way of thinking about the deep impact of trauma on the children and youths with whom we work. The enlightenment of her presentation has moved us in the direction of trauma-informed practice, an approach often missing in traditional child welfare work, which Dauphin County seeks to change.

A panel of youths and families, which included a Dauphin County youth, discussed the impact of strength-based practices on their involvement with social services. One of our county team members described the panel’s presentation as “gut-wrenching and heartwarming at the same time.” As I have always noticed, summit panel participants are brutally honest. This summit’s panel was no exception. The Dauphin County youth gave a candid review of her experiences in the court system while she was in foster care. I have to admit, I was worried about what her comments would reveal, but in the end, I appreciated her honesty. She gave a good picture of her experiences as a youth in foster care.

Attending the summit provided the benefit of hearing about the practices of other counties and gathering information and resources to assess where, as a county, we may grow in order to expand our services and supports to our families. Though it was reassuring to see we are on the right track in some areas, we also saw areas in which we can grow.

As with most seminars, we each take away various impressions. I can say this much – getting together to discuss with other counties the issues they strive to address is time well spent. In few other venues can so many people meet with the same goal in mind: improving child welfare. Everyone who attends the summit returns home with renewed energy and passion to share in our counties and to improve our child welfare practices.

So are we there yet? No, not yet. But with each summit, as a county, we task ourselves with new initiatives and practices. When we return to another summit, we consider how these practices and initiatives have played out and gain feedback from individuals statewide. If you are in a county that has not yet attended a Roundtable Summit, I highly recommend that you take the opportunity to meet in this unique forum.

Marisa K. McClellan has served as the solicitor for Dauphin County Social Services for Children and Youth since 2010.
Special Education and Court-Appointed Surrogate Parents

By Audrey Rasmussen

Some 30 to 45 percent of children in protective custody in the United States receive special education, compared to 11 percent of all school children. However, courts often appoint educational decision-makers for minors without including language about special education.

Under the Individuals with Disabilities Education Improvement Act (IDEIA) 20 USC 1400, a person who makes decisions in a parent’s place is a “surrogate parent” (SP). When a parent’s educational decision-making rights have been terminated or suspended by court order, IDEIA requires the Local Education Agency (LEA) to appoint someone to “represent the child in all matters relating to (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child.” 34 CFR 300.519(d)(2)(g). Another option, and the best practice, is for the court to appoint one individual as the general education decision-maker and the surrogate parent. In the dependency proceeding the court might appoint the guardian ad litem or the foster parent as the educational decision-maker. If the parent’s whereabouts are known, the LEA may not appoint a surrogate parent. However, the court is within its discretion to do so. Individuals who are employed by agencies providing care or education for the child may not act as surrogate parents. This would include Office of Children, Youth and Families employees. The court may designate the role to a court-appointed special advocate (CASA) or a guardian ad litem (GAL). Foster and resource parents are eligible to surrogate parents, even if they receive funding for the care of the child.

The best practice is for court orders to include such language as “…hereby designate ________ as the educational decision-maker, including but not limited to serving as a ‘surrogate parent’ for all matters relating to special education. (34 CFR § 300.519).”

A child may already have an Individualized Education Plan (IEP) in place when she is removed from the home. Any new LEA must follow that plan per the “stay put” doctrine pending implementation of a new one. The SP may request one evaluation per year from the LEA, regardless of whether the child has an IEP with it or any other LEA. The LEA then has a “reasonable” time period to send the SP a “Permission To Evaluate” form. Once the SP signs it, the LEA has 60 calendar days to evaluate the child and to issue an evaluation report (ER). If the child already has an IEP, IDEIA requires the LEA to follow it under the “stay put” doctrine, even if the IEP came from a different LEA.

LEAs must issue invitations to attend an IEP team meeting at least 10 school days (14 calendar days, in early intervention programs) prior to the proposed IEP team meeting date. SPs have the right to request that the meeting be held at a time and on a date when they are able to attend. These time frames also apply to issuing the ER to the SP. Sometimes, an LEA will produce the ER for the first time at the IEP team meeting and ask the SP to waived the 10-day (or 14-day) rule. If an SP finds herself in this situation and the LEA states that it will not be able to reassemble the IEP team anytime soon, she should consider signing the waiver, adding the condition that the IEP team reassembles no later than a specified date.

IDEIA’s minimum requirements for a team are as follows: the SP, a regular education teacher, a special education teacher, a representative from the LEA with authority to commit resources, an “individual who can interpret the implications of the evaluation results” (typically, a school psychologist) and other individuals who have “knowledge or special expertise regarding the child.” (34 CFR 300.321). The SP may invite caseworkers, therapists, advocates and even the child’s parents under this last provision without leave from the LEA.

If the team agrees on the placement and the program, the LEA will ask the SP to sign a Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN). It must then implement the IEP within 10 school days. If the SP disagrees, he may request mediation and/or file a due process complaint. “Stay put” applies during the pendency of litigation. If the SP agrees with parts of the proposed IEP, he might consider signing the NOREP, as long as there is language in the IEP stating when the team will meet again. An LEA must also issue a NOREP/PWN when the ER states that the child is not eligible to receive special education services.

LEAs must hold IEP meetings annually. They must obtain permission to re-evaluate the child and produce an IEP every three years, unless waived by the LEA and the SP. If the student has a diagnosis of mental retardation, it must re-evaluate every two years. This evaluation is not waivable.

The vast majority of students who receive special education services spend at least some of their time in the general education setting. The roles of general educational decision-maker and surrogate parent are

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therefore not divisible. To avoid delay in obtaining help for a child, attorneys should request orders stating that the educational decision-maker is also a surrogate parent.

1 Smithgall et al., 2004; van Wingerden, Emerson & Ichikawa, 2002).
2 Local Education Agency; in Pennsylvania, school districts, charter schools and intermediate units.

3 Free and Appropriate Public Education, the standard the LEA must meet under IDEIA.

Audrey Rasmusson first became acquainted with special education law while interning with a school solicitor during a summer break from Wake Forest University School of Law. She learned how difficult it was for parents to obtain appropriate education for their children with disabilities. When Rasmusson’s son was diagnosed with severe autism in 1999, she discovered that procedural due process protections for special education students and their parents had become far more robust. The state of the art of special education had also progressed dramatically. Since then, Rasmusson has represented and advised parents of children with special needs about their children’s educational rights. Rasmusson’s office is in Pittsburgh, and she welcomes questions from social services agency employees and court-appointed educational decision-makers and SPs. She offers talks and workshops on special education to parents and professionals. Rasmusson is a member of the board of directors of the Autism Center of Pittsburgh. She also serves on the board of Transitional Services Inc., a Pittsburgh-based not-for-profit organization that provides housing resources for adults with disabilities. For more information about special education law or to contact Rasmusson, please visit www.audreylawyer.com.

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To subscribe, login on the PBA Web site with your PBA member username and password, select the “Committees/Commissions” tab on the left side of the page, then the “Children’s Rights Committee” tab, then the “Listserv Sign-Up” tab.

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To reply to the entire listserv membership, hit “Reply to All,” and type your response. This response will go to the sender and to the entire listserv membership.

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