We send our children off to their public school each day with the assumption that they will be safe in the care of school personnel. Most times, this remains true. Unfortunately, despite the many caring, professional teachers who dedicate their days to educating our children, there are the occasional bad eggs – those personnel of a public school who physically, mentally, and/or emotionally harm our children, abusing their positions of power. There are also instances in which our children’s fellow students are the perpetrators, harming peers through bullying, hazing, or other types of abuse. While criminal charges may be pursued against these perpetrators or a complaint for abuse or neglect may be pursued with the Department of Children and Families, there are also civil claims that may be made in order to recover monetary damages for your child’s injuries. These claims fall into three broad categories: (1) state-based claims for negligence or “tort” claims; (2) state-based claims for intentional actions, such as intentional infliction of emotional distress or violation of the Massachusetts Civil Rights Act; and (3) federal claims, such as those under 42 USC § 1983, the Americans With Disabilities Act, or Title IX. Each of these types of claims has specific elements that must be proven in order to win at trial, and unfortunately, trying to prove one type of claim may make the others more difficult to prove. Because of the complexity of these claims, it would be beneficial to consult with an attorney experienced in this area of the law as soon as possible, if your child has received any such injuries.

When asserting negligence claims against a public school district, you are alleging that the district did not provide reasonable care to your child; therefore, even though the district and its personnel may
Equal Opportunity For Students with Disabilities to Participate in Extracurricular Athletics: U.S. Department of Education Clarifies Schools’ Obligation to Provide Equal Opportunity to Students with Disabilities to Participate in Extracurricular Athletics

On January 25, 2013, the US Department of Education’s Office for Civil Rights issued guidance clarifying school districts’ existing legal obligations to provide equal access to extracurricular athletic activities to students with disabilities. In addition to explaining those legal obligations, the guidance urges school districts to work with community organizations to increase athletic opportunities for students with disabilities, such as opportunities outside of the existing extracurricular athletic program.

Students with disabilities have the right, under Section 504 of the Rehabilitation Act, to an equal opportunity to participate in their schools’ extracurricular activities. A 2010 report by the U.S. Government Accountability Office found that many students with disabilities are not afforded an equal opportunity to participate in athletics, and therefore may not have equitable access to the health and social benefits of athletic participation.

“Sports can provide invaluable lessons in discipline, selflessness, passion and courage, and this guidance will help schools ensure that students with disabilities have an equal opportunity to benefit from the life lessons they can learn on the playing field or on the court,” said Education Secretary Arne Duncan.

The guidance letter provides examples of the types of reasonable modifications that schools may be required to make to existing policies, practices, or procedures for students with intellectual, developmental, physical, or any other type of disability. Examples of such modifications include:

• The allowance of a visual cue alongside a starter pistol to allow a student with a hearing impairment who is fast enough to qualify for the track team the opportunity to compete.

• The waiver of a rule requiring the “two-hand touch” finish in swim events so that a one-armed swimmer with the requisite ability can participate at swim meets.

The guidance also notes that the law does not require that a student with a disability be allowed to participate in any selective or competitive program offered by a school district, so long as the selection or competition criteria are not discriminatory.

“Participation in extracurricular athletics can be a critical part of a student’s overall educational experience,” said Seth Galanter, acting assistant secretary for the Office for Civil Rights (OCR). “Schools must ensure equal access to that rewarding experience for students with disabilities.”

The mission of the Office for Civil Rights (“OCR”) is to ensure equal access to education and to promote educational excellence throughout the nation through the vigorous enforcement of civil rights. Among the federal civil rights laws OCR is responsible for enforcing are Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendment Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act. For more information about the Department of Education’s Office for Civil Rights and the anti-discrimination statutes that it enforces, please visit OCR’s website at http://www2.ed.gov/about/offices/list/ocr/aboutocr.html and follow OCR on twitter @ EDcivilrights.

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The Federation for Children with Special Needs

Our Mission:
To provide information, support, and assistance to parents of children with disabilities, their professional part-ners, and their communities. We are committed to listening to and learn-ing from families, and encouraging full participation in community life by all people, especially those with dis-abilities.

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From the Executive Director
That Their Dreams Can Someday Come True

Sybil Raye Feldman was a friend of mine! I met her over 20 years ago when I worked for a period of time at the Fernald Developmental Center in Waltham. Sybil was protesting for disability rights outside the front entrance when we met. A former resident of that facility, Sybil had established herself in the community, living independently and free. Sybil made it her business to advocate for the rights of individuals with disabilities. Sybil passed from this world late last fall after a lifetime of advocacy.

Sybil was born in 1940 in Boston and for four years lived with her parents and sister in Malden. Born with CP, she experienced a 105 degree fever when she was an infant which worsened her condition. Her parents were unable to find adequate medical care and she spent a great deal of time in a hospital. At age 5, she had several surgeries at Boston Children’s Hospital to reduce her severe muscle spasms. Sybil was sent to a private special school in Rhode Island for “18 months of training”. During this time she was able to visit her family on weekends. However, she told me that her parents felt that they had to keep her inside the house because of excessive teasing by the neighborhood children.

According to her autobiography, “Sybil Disobedience”, she was enrolled in the “Industrial School for Crippled Children” (later known as the Cotting School), then attended the Kennedy School for five more years. On March 30, 1955 (at the age of 15) she was admitted to the Walter E. Fernald State School to receive “psychotherapy and scholastic training” and there remained until she was 36 years old. In 1976 she was moved to a community residence and remained there until 1982.

Sybil declared, “On May 18, 1982, my new life began. I participated in a transitional living program through the Boston Center for Independent Living and moved into my very first apartment. It was on the third floor. Hallelujah!” (Sybil experienced mobility issues and eventually became a wheelchair user – but was thrilled with a third floor apartment). “At 2 pm on that day”, she continued, “I had my first place and I will never forget that moment. I drank some Kalua to celebrate that I was able to go there all on my own.”

During the next 30 years Sybil worked, volunteered, transported paperwork, became a disability access monitor, held a paying job (for $9 per hour) and “motored” around Boston, Lynn, Brookline and many other places like a bird let out of a cage. Sybil was 72 years old when she died and had lived independently in her own apartment with support services for most of her adult life. Her fiery spirit and passionate commitment for justice lives on. She wrote, “Over these years I have developed my own motto, ‘I live on my own, I go out on my own, I go anywhere I want and I live dangerously!’”

Sybil Feldman reminds us all of why we advocate for each child, every day – that they experience the dignity of risk in order that their dreams can someday come true. Let her spirit live on in each one of us.

Best wishes,

Rich Robison

Legislative Updates

Chapter 222 of the Acts of 2012: An Act Relative to Students’ access to Educational Services and Exclusion from School was passed by the Legislature and signed into Law by Governor Patrick. This new law ensures student access to educational services when a student is being excluded from school due to discipline reasons. Under the new rule, schools are responsible for ensuring that students who are excluded from school are able to continue to make academic progress during the period of exclusion. It further requires schools to create a “school-wide education service plan” to ensure that students who are excluded for more than 10 consecutive days have access to some form of alternative educational services. Such services may include tutoring, alternative placement, Saturday school, and online or distance learning. Any school that excludes a student for more than 10 days must provide the student and his parent or guardian with a list of available alternative educational services. The bill shall take effect on July 1, 2014 – allowing school districts 2 years to plan for implementation.

Chapter 233 of the Acts of 2012: The Children’s Hearing Aid bill, also was signed into law at the end of the session in December 2012. This law applies to any minor child age twenty-one or younger covered under the Group Insurance Commission (GIC), accident and sickness insurance policies, HMO and others to mandate coverage for the purchase of one hearing aid per hearing impaired ear every 36 months with a written statement of medical necessity. More information can be obtained from the Massachusetts Commission for the Deaf and Hard of Hearing.

New DDS Eligibility Statute: On January 8, 2013, Governor Patrick signed H 4252, An Act Providing for a Definition Consistent with the American Association of Intellectual and Developmental Disabilities (AAIDD). This new law provides a separate statutory basis for Massachusetts adopting the AAIDD standard. This legislation is important for a few reasons. First, it will prevent the Massachusetts Department of Developmental Services (DDS) eligibility standard in the regulations from being narrowed, as happened once before in the 1990s. Second, it may also mean that if a family member or consumer appeals a decision of ineligibility, a hearing officer will be looking at the AAIDD standard in determining if DDS complied with the AAIDD definition of “intellectual disability”. Third, the statute refers to the most recent version of the AAIDD standard, so if this is ever amended in the future, the state regulations will also need to be updated.
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Of Civil Rights and Children (continued from page 1)

not have intended to harm your child, the result of their actions is that your child was, indeed, injured. Negligence-based claims are also called tort claims. A public school is an entity of the Commonwealth of Massachusetts; therefore, it is afforded the protections of the Massachusetts Tort Claims Act (MTCA). The MTCA is multi-faceted; however, the three main protections it affords public schools for any tort claims are:

(1) You must serve the appropriate public school and town or city personnel with a proper presentment letter within two years of the incident; otherwise, you will be barred from suing the school district for any tort claims, no matter how liable you believe the district may be for the injuries your child suffered.

(2) The district and its personnel are limited in liability for any tort claims up to only $100,000 per plaintiff. This means that, even if a jury were to award your child $1,000,000 for his or her tort claims, the judge would have no choice but to decrease the recovery to $100,000 for each plaintiff (therefore, up to $300,000 for your child, and both parents, for example).

(3) Public employees whose actions were undertaken as part of their employment may be protected from individual liability; conversely, the public school may be protected from liability for those actions of school personnel outside of their employment responsibilities.

As you can see, the overcoat provided to public school districts by the MTCA heavily insulates them and their personnel from the cold reality of civil liability for the negligent actions of their personnel. However, these three protections are generalities. Consulting with an attorney experienced in this area of the law may provide you with additional avenues of liability and compensation for your child’s tort-based claims.

Unlike negligence claims in which the public school and its personnel did not intend to cause the injuries your child may have suffered, intentional claims, such as the intentional infliction of emotional distress, are outside of the protections of the MTCA. Therefore, even if you had not sent a timely presentment letter, you may still include intentional claims in your lawsuit. Also, the liability limit of $100,000 does not apply to intentional claims, nor are public school personnel protected from liability for their actions that are intended to result in harm. However, intentional claims can be more difficult to prove. Federal claims for violations of your child’s civil rights or impermissible violations based upon his or her disability or gender can be the most difficult to prove. While attempting to prove your federal claims, you may also be undermining your tort and intentional claims. However, there are two benefits, if you can prove that your child’s federal protections were violated. First, like intentional claims, the MTCA does not protect public schools and their personnel from liability or paying full compensation for their violations of federal statutes protecting your child’s rights. Second, these federal statutes may allow you to recover your attorneys’ fees and costs of litigating to recover monetary compensation for your child’s injuries. As such, these federal claims may provide additional resources for your child’s monetary compensation for his or her injuries.

Assuming your child has been injured through the actions of a public school district and its personnel, and that you may be able to assert any or all of these claims, there remain additional hurdles before you can file any claims in state or federal court, if your child receives special education services or accommodations through an Individualized Education Plan (IEP) or a 504 Plan under the Rehabilitation Act. The Individuals with Disabilities Education Act (IDEA) may prohibit you from suing a school district for injuries your child receives as a result of the actions of its personnel, if your child is on an IEP or 504 Plan until you have done what is termed “exhausting” your administrative remedies. This simply means that, prior to filing any lawsuit in court, you must first file a request for a due process hearing in order to determine if the Bureau of Special Education Appeals (BSEA) has any authority over deciding your claims. For example, when our firm has represented students abused, assaulted or illegally restrained by special education teachers in their claims for monetary damages, we have litigated the matter first in the BSEA. Once you have “exhausted” this avenue, then you may proceed to file your complaint in the state or federal court.

As you can see, this area of the law is quite complex, and a misstep may prevent you from being able to litigate your child’s claims at all in court. If you think your child has been injured as a result of a public school district and its personnel, you should meet with an attorney experienced in this area of the law as soon as possible in order to make sure that your child’s potential claims are protected and can be asserted correctly in a timely manner.

Sherry Rajaniemi-Gregg and Daniel T.S. Heffeman are attorneys with Kotin, Crabtree & Strong where they concentrate on special education and civil rights law. They have represented numerous families with children with special needs in abuse, civil rights and negligence actions. Contact them at srajaniemi-gregg@kcslegal.com and dheffeman@kcslegal.com.

“...prior to filing any lawsuit in court, you must first file a request for a due process hearing in order to determine if the Bureau of Special Education Appeals (BSEA) has any authority over deciding your claims.”
Acerca de los Derechos Civiles y los Niños
Sherry L. Rajaniemi-Gregg, Esquire and Daniel T.S. Heffernan, Esquire

Enviamos a nuestros niños a sus escuelas públicas cada día suponiendo que estarán seguros bajo el cuidado del personal escolar. Muchas veces así es. Pero lamentablemente, a pesar de los muchos maestros atentos y profesionales que dedican sus vidas a la educación de nuestros hijos, nunca falta entre el personal escolar la ocasional persona mala que le ocasiona daño físico, mental o emocional a un niño abusando su posición de poder. También hay casos en que los compañeros de los niños quienes causan daño a otros alumnos mediante intimidación, novatadas u otras formas de abuso. Además de presentar cargos contra los autores de estos delitos o denuncias por maltrato o descuido ante el Departamento de Niños y Familias, también se pueden presentar reclamaciones de carácter civil por daños y perjuicios derivados de las lesiones del niño. Estas reclamaciones pueden clasificarse en tres categorías generales: (1) reclamaciones a nivel estatal por negligencia o por “agravio”, (2) reclamaciones a nivel estatal por acciones intencionales en el estado, como causar deliberadamente angustia emocional o violar la Ley de Derechos Civiles de Massachusetts, y (3) reclamaciones a nivel federal como lo dispone la ley, p. ej., 42 USC § 1983, Americans With Disabilities Act (Ley para Estadounidenses con Discapacidades) o el Title IX (Título IX). Cada tipo de reclamación tiene elementos específicos que hay que probar para ganar el juicio y, por desgracia, tratar de probar un tipo de reclamación puede hacer que las otras sean más difíciles de demostrar. Como estas reclamaciones son muy complejas, si su niño ha sufrido este tipo de lesiones, conviene consultar lo más pronto posible a un abogado con experiencia en este campo de la ley.

Al presentar reclamaciones por negligencia contra un distrito escolar público, usted alega que a su niño no se le ofreció un cuidado razonable. Por lo tanto, aunque el distrito y su personal no hayan tenido la intención de causarle daño a su niño, como resultado de sus acciones su niño resultó, en efecto, lesionado. Las reclamaciones por negligencia también se conocen como reclamaciones por agravio. Como entidades del estado de Massachusetts, a las escuelas públicas se les concede las reclamaciones por agravios son:

(1) Los empleados públicos que actuaron en el marco de su empleo pueden estar protegidos de responsabilidad individual. Por otro lado, la escuela pública puede estar protegida de responsabilidad por las acciones de su personal que no forman parte de sus responsabilidades laborales.

Como pueden ver, las salvaguardias que la ley MTCA ofrece a los distritos escolares públicos los protegen a ellos y a su personal de la fría realidad de la responsabilidad civil por los actos negligentes de su personal. Sin embargo, estas tres protecciones son generalidades. Un abogado con experiencia en este campo de la ley puede mostrarle otras vías para encauzar las reclamaciones por daños y perjuicios a favor de su niño.

A diferencia de las reclamaciones en que la escuela pública y su personal no tienen la intención de causar lesiones a un niño, las reclamaciones por daños intencionales, como causar deliberadamente angustia emocional, no están cubiertas por las protecciones de la ley MTCA. Por lo tanto, aunque usted no haya enviado una carta de presentación del caso dentro del plazo establecido, en su demanda puede incluir reclamaciones por daños intencionales. Además, para las reclamaciones por daños intencionales no rige el límite de responsabilidad de $100,000, y el personal de la escuela pública no está protegido si comete acciones con la intención de causar daños. No obstante, las reclamaciones por daños intencionales pueden ser más difíciles de probar. Las reclamaciones a nivel federal por violación de derechos civiles u otras violaciones ilícitas basadas en la discapacidad o el sexo del niño pueden ser más difíciles de probar. Intentar probar sus reclamaciones a nivel federal puede debilitar sus reclamaciones por daños intencionales. Pero probar que se violaron las protecciones de las leyes federales tiene dos ventajas. En primer lugar, al igual que las reclamaciones por daños intencionales, la ley MTCA no protege a las escuelas públicas y su personal de responsabilidad o de pagar indemnización completa por violaciones de las leyes federales que protegen los derechos del niño. En segundo lugar, estos estatutos federales pueden permitir que usted recupere los honorarios de abogados y gastos del litigio. Como tales, estas reclamaciones federales pueden ser una fuente adicional de compensación monetaria por las lesiones del niño.

Aun suponiendo que su niño haya sufrido lesiones por las acciones de un distrito escolar público y su personal y que usted pueda probar todas sus alegaciones, si su niño recibe servicios de educación especial o adaptaciones a través de un plan educativo...
Helping Traumatized Children Learn, written by the Massachusetts Advocates for Children in collaboration with Harvard Law School and the Task Force on Children Affected by Domestic Violence, is both critically acclaimed and nationally recognized as a much needed resource for educators, service providers, and parents (including Special Education Surrogate Parents). This is the second in a series of articles on the four opportunities to advocate for trauma-sensitive individual supports for a child: sharing information; trauma-sensitive evaluations; trauma-sensitive team meetings; and the IEP.

When children are referred for initial evaluations for special education due to a myriad of symptoms or behaviors, it is important to consider whether complex childhood trauma is at the root of the problem. So many issues can be subsumed under this heading: aggression, defiance, withdrawal, hyperactivity, lack of motivation, impulsiveness, dramatic mood shifts, and even language delays. How does an IEP Team decide that trauma is playing a role, and avoid inadvertently misdiagnosing some of the symptoms? Trauma-sensitive evaluations should be used to address the interface between trauma and the student’s cognitive and learning profile.

School evaluations should address the role trauma may play in learning, behavior, and social/emotional growth. If the role of trauma has already been identified (as is the case for many students in the custody of the Department of Children and Families), then the link is easily established and the evaluators should proceed with complex childhood symptomology clearly in mind. What about the “gray area” where the Team is not exactly sure about the trauma history? A “trauma” evaluation can be made. This kind of assessment is different than a “trauma-sensitive” evaluation in that it is clinically oriented and looks to pinpoint the source and type of the trauma (physical, sexual, emotional); a trauma-sensitive evaluation tries to determine whether or not there is a component of trauma to the difficulties the child is experiencing at school. In either case, the default approach should be to encourage success for the child and create a trauma-sensitive environment for him (calming, caring, nurturing, and safe), and avoid re-traumatization by the wrong disciplinary approach.

If the Team is determining eligibility of a student with a history of trauma for an IEP, an Emotional Disability is commonly agreed upon as the type of disability that is impairing academic progress. To establish the criteria for making this determination, several evaluations can be useful, but the focus should be on psychological, speech and language, functional behavioral, and occupational therapy assessments. Below are ways to ensure that each of these can ensure appropriate evaluation:

1. Psychological Evaluation: It is helpful to refer a traumatized child (or one suspected as such) to a mental health professional (preferably, with a Ph.D.) who has knowledge about the impact of trauma on academic and non-academic progress. To protect the confidentiality of the student and his family, the details of the trauma are far less important to a school than an understanding of how the child is functioning and why this is so. Trauma triggers, specific ways to help the student modulate emotional and physical responses, ways to make the student feel safe and secure at school, and specific modifications and/or accommodations should be included.

2. Speech and Language Evaluations: An appropriate evaluation should include the linguistic, pragmatic, and narrative aspects of language. Many children with complex childhood trauma are challenged by receptive and expressive language delays, age-appropriate perspective taking, and social cueing.

3. Functional Behavioral Assessments (FBAs): Specific behavioral challenges require specific behavior plans to ensure academic and non-academic success. An FBA consists of collecting information about the antecedents and consequences to the student of certain environmental (or internally driven) challenges, like trauma triggers, distorted image of authority figures, and an inability to follow routines and rules. Therefore, there must be a careful assessment of the school and classroom environments.

4. Occupational Therapy Evaluations: In addition to developmental delays in fine motor skills that may be evident with a traumatized child, accommodations and modifications that will produce a calm and nurturing learning environment can be recommended through these evaluations.

In conclusion, children with histories of complex childhood trauma can display many “comorbid” issues and diagnoses. Many of these symptoms respond positively to “trauma-sensitive” recommendations made by evaluators to an IEP Team. By becoming aware that violence may be at the heart of many of the child’s learning and behavioral difficulties, school personnel may be able to mitigate much of the lasting impact of trauma. An understanding of its impact on learning and behavior will help educators and other school staff plan the most successful path to the future.

In the next Newsline, we will discuss Trauma-Sensitive Team Meetings so that everyone can participate in helping the traumatized child learn.
Development Corner: MLK Summer Scholars Find Success

Derrick Sapp became part of the Federation family through John Hancock’s MLK Summer Scholars program, which aims to provide Boston’s youth with work experience and job readiness skills while giving back to local non-profit organizations. The Federation was awarded a Partnership with the 2012 MLK Summer Scholars program, enabling us to hire two summer interns. Derrick assisted Mass Family Voices and the Recruitment, Training and Support Center for Special Education Surrogate Parents by completing research, collating and implementing mailings, and organizing the stock room. Derrick graduated from New Mission High School and has an ongoing relationship with the Federation, as several staff members are assisting him with educational goals. He says his experience at the Federation has really helped his computer skills, especially with using email.

Working at the Federation gave Derrick something unexpected as well – a new bike! When Derrick’s bike broke on his way to work one morning, he was unsure how he’d be able to complete his internship. A staff member heard about what happened and offered a solution; her son had a bike that Derrick could have. Derrick decided to donate his old bike to the Boys and Girls Club in Charlestown which is starting a Bikes Not Bombs program, accomplishing exactly what the Summer Scholars Program sets out to do – empower Boston’s youth to be able to give back to our communities.

The Federation is extraordinarily grateful to John Hancock for the opportunity to participate in this program!

Calling All Writers

The Federation has started a new blog!

Are you a parent of a child with special needs or young adult with a disability? The Federation is actively seeking stories for publication in Newsline and our Blog, “Perspectives, What Matters to Us”. If you would like to share your positive “perspective”, please email your contribution to the Federation’s Communications Coordinator, Sarah Stevenson at sstevenson@fcsn.org. Submissions should be no longer than 500 words. The Federation reserves the right to determine appropriateness of material submitted for publication, and to edit submissions.

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It’s time to celebrate! Once each year, the Federation community gathers to celebrate all that we have achieved, and to honor those in our community who have made significant contributions to furthering our mission of parents helping parents in ensuring that each child is fully included in school and in the community. Please join us on Friday, May 3rd, 2013 from 6pm until 10pm at the Seaport Hotel in Boston for Gala 2013, "Celebrating Every Child!"

Gala 2013, “Celebrating Every Child” is the Federation’s signature event and its largest fundraiser. Featuring an extensive silent auction with items that range from the much sought after local sports tickets and memorabilia to local art and vacation packages, this event will also include a cocktail reception, dinner, and a variety of entertainment throughout the evening.

We are thrilled to welcome Ron Sanders, an award-winning veteran Boston-based broadcast journalist as the emcee of this year’s event! We are also pleased to honor three wonderful people who have inspired us, and who have furthered the work of the Federation in a variety of ways.

Our honorees for 2013 include State Representative Tom Sannicandro, who will receive the Martha H. Ziegler Founders Award. The father of a child with special needs, Representative Sannicandro is considered a leader in Massachusetts on civil rights of persons with intellectual disabilities and has been called “a strong advocate for education funding and a strong voice for people with disabilities.” Sannicandro will be honored as a legislator who continues to lead, advocate and inspire.

Our President’s Award will be presented to Angela Peri. Ms. Peri is an actress, a comedienne, and the owner/founder of Boston Casting. The parent of a son with autism, Angela is active in the autism and special needs community, and has made an outstanding contribution to furthering the work of the Federation by donating her time, talent and expertise in a multitude of ways that have helped ensure the Federation’s success.

This year’s Patricia Blake Parent Advocacy Award will be presented to Janet Vohs. Ms. Vohs, a parent and Federation staff member for over 30 years, will be recognized for her extensive contributions to the field of parent empowerment as an author, educator, researcher and advocate.

Visit www.fcsn.org for event updates on entertainment, silent auction items, and more! If you are interested in being part of our Gala Committee, helping sponsor the event, donating to the silent auction, purchasing individual tickets or a table, or advertising in the event’s program book please contact Maureen Jerz, Director of Development at 617-236-7210, ext. 374 or e-mail mjerz@fcsn.org. We hope to see you there!
Acerca de los Derechos Civiles y los Niños (continuación de la página 6)

individualizado (IEP, por sus siglas en inglés) o un Plan 504 según la Ley de Rehabilitación, hay otros obstáculos para la presentación de reclamaciones ante un tribunal estatal o federal. Si el niño tiene un IEP o un Plan 504, hasta que usted haya “agotado” sus remedios administrativos la Ley de Educación para Personas con Discapacidades (IDEA) puede prohibirle que entable una demanda contra un distrito escolar por lesiones sufridas por su niño como resultado de las acciones de su personal. Esto significa simplemente que, antes de presentar una demanda ante un tribunal, debe solicitar una audiencia de proceso debido para determinar si la Oficina de Apelaciones de Educación Especial (Bureau of Special Education Appeals, BSEA) tiene autoridad para tomar una decisión en su caso. Por ejemplo, cuando la firma nuestra representó en reclamaciones por daños y perjuicios a estudiantes que sufrieron abusos, agresiones o sujeción ilegal por maestros de educación especial, primero le presentamos el caso a BSEA. Una vez que se “agota” esta vía, se puede presentar la reclamación ante un tribunal federal o estatal.

Como pueden ver, este campo de la ley es bastante complejo y un mal paso puede impedirle que siga litigando el caso de su niño. Si cree que su niño sufrió lesiones por las acciones de un distrito escolar público o su personal, consulte lo más pronto posible a un abogado con experiencia en este campo de la ley para proteger y hacer valer su derecho de presentar reclamaciones a favor de su niño en forma correcta y oportuna.

Sherry Rajaniemi-Gregg y Daniel T.S. Heffernan son abogados en la firma Kotin, Crabtree & Strong, donde se concentran en educación especial y derechos civiles. Han representado a muchas familias de niños con necesidades especiales en casos de abuso, negligencia y derechos civiles. Puede escribirles a srajaniemi-gregg@kcslegal.com a dheffernan@kcslegal.com.

―...antes de presentar una demanda ante un tribunal, debe solicitar una audiencia de proceso debido para determinar si la Oficina de Apelaciones de Educación Especial tiene autoridad para tomar una decisión en su caso.―

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Federation Staff Comings and Goings:

Laura Yellick has been hired as the new Director of Training for the Parent Training and Information Center (PTI). Laura is the proud mother of an 18 year old daughter with an intellectual disability and a 10 month old infant. She holds a B.A. in Religion from Mount Holyoke College and a J.D. degree from Western New England College School of Law. Laura has worked as an attorney with a small private practice firm. Laura completed the FCSN Parent Consultant Training Course three years ago and has been working with families as an advocate and FCSN workshop presenter ever since. “I am proud to join the Federation staff and look forward to working with such a distinguished and passionate group to accomplish great things!”

Sarah Stevenson is our new Communications Coordinator. This is a new position for the Federation which focuses on using technology and social media such as Facebook, Twitter and others to ensure the Federation is accessible to anyone interested. Sarah’s background includes experience in database, IT, web-based management and graphic design. Previously she worked as an AmeriCorps VISTA Volunteer at the MA Adoption Resource Exchange. Sarah additionally brings knowledge, experience and skills in the area of fundraising, including grant writing, event planning, communications and social media.

Emily Gaudette has been appointed as the Project Coordinator for the Recruitment, Training and Support Center (RTSC) at the Federation. This project supports the needs of Special Education Surrogate Parent volunteers who volunteer to fill the parent role for students with special needs in state care and custody. Emily recently moved to Boston from New Mexico. She brings many outstanding computer and organizational skills to her new position. Emily is also a gifted writer, winning many awards in college.

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Families of children who have special needs of all ages and all types have one deep connection: succinctly said, they need support and assistance, to enhance quality of life for their children and themselves, as a family unit.

From the experiences of our own families and the many families we meet through our community connections and our work, Family TIES staff is deeply aware of the varied types of assistance that can enhance the lives of this community. The medical, educational, and community activities all factor into the richness of our children’s lives. The piece that is harder to nail down is emotional support.

You see, it’s not easy for a parent or family member to say out loud, “I want to talk to someone who truly understands my emotions. I need to share my joys and fears, to ask why and how can I experience happiness in my everyday life, to know what might be in our family’s future and how to accept and explore that this is my life, my family’s life.”

It’s important to also realize it’s not easy for those who offer assistance and support to our families to ask a parent, do you feel like talking about those issues. There is a worry, will I cause upset or distress by raising these questions for the parent or family? Who could I possibly suggest is a good person to share in those conversations, to really enrich the conversations that need to be considered?

It is imperative that parents and family members be given opportunities to explore these questions (and so many more), in order to bring balance to their emotional state. As parents achieve understanding, they gain much more energy to bring to the everyday experience of living life and caring for their children and families.

Truth be told, the best place for parents to have these conversations is – with other parents who are on a similar journey. Call Family TIES, to begin the process of exploring the emotional aspects of raising a child with special needs. Our Parent-to-Parent Program is a great place to start.

Our Parent-to-Parent Coordinator offers parents an opportunity to find a trained volunteer Support Parent whose family experiences can offer keen insight that will be helpful, as you sort through the various challenges that you face in identifying and advocating for your child’s needs. For more information about our Parent-to-Parent Program, contact Gloria Klaesges, our Parent-to-Parent Coordinator, at gloria@fcsn.org.
Os Direitos Humanos e as Crianças
Sherry L. Rajaniemi-Gregg, Esquire and Daniel T.S. Heffernan, Esquire

Nós mandamos nossas crianças diariamente para suas escolas públicas, assumindo que estarão seguras sob os cuidados dos funcionários da escola. Na maioria das vezes, isto é correto, mas infelizmente, apesar dos muitos cuidados dos professores que dedicam seus dias à educação de nossas crianças, existem os maus elementos ocasionais – aqueles funcionários que maltratam fisicamente, mentalmente e/ou emocionalmente as nossas crianças, abusando de suas posições de poder. Há também casos nos quais os estudantes, colegas de escola de nossas crianças são os autores, maltratando seus colegas através de intimidação (Bullying), participando em trotes ou outros tipos de abusos. Enquanto acusações criminais podem ser legalmente contestadas contra esses autores ou uma queixa sobre abuso, ou negligência pode ser legalmente contestada através do Departamento da Criança e da Família, existem também ações civis que poderão ser feitas a fim de recobrar danos monetários para os abusos sofridos pela sua criança. Estas reivindicações estão classificadas nestas três categorias gerais: (1) reivindicações baseadas no estado para negligência ou ações judiciais por “atos ilícitos”; (2) reivindicações baseadas no estado para ações intencionais, tais como imposição intencional de sofrimento emocional ou violação da Lei de Direitos Civis de Massachusetts; e (3) reivindicações federais, tais como aquelas sob o 42 USC § 1983, a Lei de Americanos com Direitos Civis de Massachusetts; e (4) reivindicações federais, segundo a Lei de Direitos da criança.”

Ao declarar estas reivindicações de negligência contra um distrito escolar público, você está alegando que o distrito e seus funcionários não tenham tido a intenção de fornecer cuidados razoáveis para o seu filho; portanto, mesmo que o distrito não tenha sido responsável você acredita que o distrito tenha sido no caso questionado o responsável. Isto significa que, mesmo que um juri tenha concedido ao seu filho $1.000.000 por suas reivindicações de ato ilícito, o juiz não teria outra escolha que de diminuir o valor para $100.000 para cada requerente da ação (portanto, até $300.000 para o seu filho, e ambos os pais, por exemplo).

(3) Funcionários públicos cujas ações foram realizadas como parte de seu trabalho, poderão estar protegidos da responsabilidade individual; por outro lado, a escola pública poderá estar protegida de responsabilidade para aquelas ações do pessoal da escola fora das responsabilidades de seu emprego.

Como você pode ver, a cobertura oferecida aos distritos escolares públicos pela MTCA isola-os e ao seu pessoal da fraia realidade da responsabilidade civil para as ações de negligência de seus funcionários. No entanto, estas três proteções são generalidades. A consulta com um advogado experiente nesta área da lei, pode fornecer-lhe caminhos adicionais de responsabilidade e compensação para as reivindicações para seu filho com base de ato ilícito.

Ao contrário das reivindicações de negligência na qual a escola e seu pessoal não teve a intenção de causar danos que possivelmente seu filho tenha sofrido, reivindicações intencionais, tais como a imposição intencional de sofrimento emocional, estão fora da proteção da MTCA. Portanto, mesmo que você não tenha enviado uma carta de apresentação no tempo devido, você ainda pode incluir reivindicações intencionais no seu processo judicial. Além disso, o limite para responsabilidade de $100.000 não é aplicado às reivindicações intencionais, nem está o pessoal da escola protegida da responsabilidade de suas ações cujas intenções resultam em dano. Entretanto, reivindicações intencionais podem ser mais difíceis de serem provadas.

Reivindicações federais por violações dos direitos civis de seu filho ou violações inadmissíveis tendo como base a deficiência ou gênero de seu filho ou filha, podem ser mais difíceis de serem provadas. Ao tentar provar suas reivindicações federais, você pode também estar enfraquecendo suas reivindicações intencionales e de ato ilícito. Entretanto, existem duas vantagens, se puder provar que as proteções federais de seu filho foram violadas. Em primeiro lugar, como reivindicações intencionais, a MTCA não protege as escolas públicas e seu pessoal de responsabilidade e pagamento integral da compensação pelas violações dos estatutos federais que protegem os direitos da criança. Em segundo lugar, os estatutos federais poderão permitir que você recupere os honorários de seu advogado e custos do litígio para recobrar compensação monetária para os danos sofridos pelo seu filho. Como tal, estas reivindicações federais podem fornecer recursos adicionais para a compensação monetária dos danos sofridos por seu filho ou sua filha.

Suponha que seu filho tenha sofrido danos por meio de ações de um distrito escolar público e de seu pessoal, e que você seja capaz de afirmar alguma ou todas estas alegações, haverão obstáculos adicionais antes que você possa dar entrada em qualquer reivindicação em um tribunal estadual ou federal, se o seu filho recebe serviços de educação especial ou acomodações através do Programa Educacional Individualizado (IEP) ou um Plano 504 sob a Lei de Reabilitação. A Lei de Educação para Individuos com Deficiência (IDEA) pode proibir você...
Book Review by Dorothy Robison

When Down Syndrome and Autism Intersect: A Guide to DS-ASD for Parents and Professionals

By Margaret Froehlke, R. N. & Robin Zaborek, Woodbine House, 218 pp.

This guide book provides an important starting point and a continuing reference guide for parents of children who have both Down syndrome and a diagnosis on the autism spectrum. The book begins with the experiences and perspectives of two parents who tell their stories with warmth and compassion. Both acknowledge the double grief of first adjusting to the life differences that having Down syndrome is likely to bring to their child and to their family and then to the additional pain of understanding why their son or daughter is so unlike other children with Down syndrome.

They openly discuss the isolation they felt at events where other children with Down syndrome were playing, socializing, and talking while their child sat on the sidelines, seemingly uninterested, or more interested in staring at the light through the window than in interacting with others. The parents in the book acknowledge that for some parents the second diagnosis of an ASD (autism spectrum disorder) is a relief; that they finally have a word for why their child is different from others with DS (Down syndrome). For others, the second diagnosis brings new pain and an overwhelming idea that now they must learn all there is to know not only about Down syndrome, but about autism as well.

I found myself asking at the end of the book, “This book has been great about taking the person apart into different parts – important parts including medical needs, behavioral needs, etc. Why not put the whole person back together again at the end and let parents know how truly cool their child with DS-ASD is?” No matter how many diagnoses a child has, he or she is still a whole person to be valued and loved for who they are. One cannot deny the stress on parents who live with the accommodations they must make in their lives day in and day out for their son or daughter. The stress might be eased just a bit by acknowledging the pride and the wonder in who their son or daughter turns out to be: perhaps funny, maybe a little quirky, no doubt interesting, with skills and interests where a parent might never have expected them.

Overall, the book provides very helpful information on every topic from possible problem behaviors to health care to designing educational programs. The checklists and notations of what to look for at various ages is very helpful in making this guidebook one to which parents will refer as their child goes all the way through school. I do wish the book had done more to encourage parents to be prepared to be positively surprised.

Woodbine House has donated a copy of this book to the Federation. Call 617-236-7210, to borrow the copy. Learn about other Woodbine House selections at www.woodbinehouse.com

Os Direitos Humanos e as Crianças (continuação da página 13)

de processar um distrito escolar a respeito dos danos que seu filho recebeu como resultado das ações de seu pessoal, se seu filho está em um programa IEP ou Plano 504 até que você tenha o que é denominado de “esgotamento” de seus recursos administrativos. Isto significa simplesmente que, antes de dar entrada em um processo no tribunal, você deve primeiramente, dar entrada em um pedido para uma audiência do devido processo legal a fim de determinar se o Escritório de Apelação de Educação Especial (BSEA) tem alguma autoridade sobre a decisão de suas reivindicações. Por exemplo, quando nosso escritório representa estudantes que foram abusados, agredidos, ou impedidos ilegalmente por professores de educação especial em suas reivindicações para danos monetários, nós litigamos o assunto primeiramente no BSEA. Quando você tiver “esgotado” este meio, então poderá proceder com a entrada do processo de denúncia no tribunal estadual e federal.

Como você pode ver, esta área da lei é bastante complexa, e uma distorção pode impedi-lo de ser capaz de qualquer litígio das reivindicações de seu filho no tribunal. Se achar que seu filho sofreu danos como resultado de um distrito escolar público e de seu pessoal. Você deveria ser acompanhado de um advogado com experiência nesta área da lei, tão logo quanto possível, a fim de certificar-se de que as reivindicações em potencial de seu filho estejam protegidas e possam ser reivindicadas corretamente em um prazo adequado.

Sherry Rajaniemi-Gregg e Daniel T.S. Heffernan são advogados da Kotin, Crabtree & Strong no qual especializam-se na lei de educação especial e de direitos civis. Eles já representarão inúmeras famílias com crianças com necessidades especiais em ações para casos de abuso, direito civil e negligência. Podem entrar em contato com eles no srajaniemigregg@kcslegal.com e dheffernan@kcslegal.com.

“...dar entrada em um pedido para uma audiência do devido processo legal a fim de determinar se o Escritório de Apelação de Educação Especial (BSEA) tem alguma autoridade sobre a decisão de suas reivindicações.”
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