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**PARENT RIGHTS AND CHILD ABUSE ISSUES: PRIOR NOTICE AND MANDATORY REPORTING****Overview**

Educators recognize that teachers cannot effectively teach and students cannot successfully learn without the active support of parents. Experience has taught us that parents are significant partners in the educational process. At the same time, however, it is recognized that some parents can actually hinder the educational process.

Prior to the early-1960's children (generally categorized in law as infants) had few, if any, rights and protections. What rights and protections children did have accrued to their parents. The era of childrens' rights did not take root in our legal system until the United States Supreme Court handed down its landmark decision in In re Gault (1967) where the high court made it clear that "children are persons under the United States Constitution."

**Parent Rights Post-Gault**

In the post-Gault era the issue analysis applied by judges in juvenile law cases changed from the traditional "tender years doctrine" to the "best interests of the child" standard. The net result was that parent prerogatives in the home had to be balanced with the rights and protections of their children. It was in this period that the terms child abuse and child neglect took on new meaning as child protective services organizations became more active in enforcing emerging state statutes.

Contemporary experts in education law tell us that "while parents still have inherent rights to "rear and control their children...these rights may be legitimately restricted by the state when parental prerogatives are exercised to the detriment of the child." Alexander and Alexander (1995) At the same time, and specifically regarding education issues, the courts have consistently held that a state's interest (*parens patriae*) in providing students with a proper education outweighs the rights of parents who object to the school's curriculum. Davis v. Page (D.N.H. 1974); Mozert v. Hawkins County Public Schools (6th Cir. 1987); Di Bari v. Bedford Central School District (2nd Cir. 2001); and Parker v. Hurley (1st Cir. 2007) To put it another way, while parents continue to

possess a fundamental right to raise and educate their children, they are not free to mistreat their children, and they do not have a right to prescribe what the state teaches their child.

*Who is Parent?* In addition to knowing where children legally reside, one key issue producer involves the following question: In the current legal scene where there are different custodial arrangements, who is (legally) parent? To answer this question the reader must look to appropriate state statutes for guidance. For example, in Virginia the law states that the term parent “includes a natural parent, guardian, or an individual acting as parent or guardian” Kaminski, Cafferky, Ewing, and Lacy (2008). The Code of Virginia also specifically references “any parent, guardian, or other person having control or charge of a child.” Code of Virginia, 22.1-279.3:1F (2007)

In addition to statutory changes, courts of law have extended parental rights and prerogatives to non-custodial parents in matters (e.g., health and education-related) involving their children. As the Seventh Circuit Court has opined, “a non-custodial parent has a right to access his child’s educational record and other information.” Crowley v. McKenney (7th Cir. 2005)

*Federal Law.* Beginning in the mid-1970’s federal law also began to change. In addition to new statutes treating such matters as parental kidnapping, federal statutes dealing with education matters came into being. For example, such comprehensive statutes as the Individuals with Disabilities Education Act (IDEA, originally enacted in 1975) and the Family Educational Rights and Privacy Act (FERPA 1974) included specific provisions covering parents whose children came under those statutes. At the same time, however, parental rights were not intended as absolute and were balanced with those of their children. In recent years the United States Supreme Court, and the courts below it, have been busy interpreting the meaning of federal law so that a balance between children’s rights and those of their parents is maintained. Schaffer v. Weast (2005), and Winkelman v. Parma City School District (2007)

*Right to Notice.* Of all the parental rights enumerated in law (federal and state) parental due process emerged as a universal requirement. And, of the basic elements of due process, the right to receive adequate and timely notice regarding matters involving their children was the *sine qua non*. Thus, as a general rule parents were to be given prior notice of and involved at the outset and/or as early as possible in all matters involving their children. Vacca and Bosher (2008)

## **Child Abuse and Neglect**

One aspect of family law where it is clear that parent rights and prerogatives in controlling and raising their children are strictly limited involves child abuse and neglect. To accurately define these terms, the reader must search out and become familiar with the statutes of his or her respective state. The reader also is reminded that proving child abuse and/or neglect is no simple task. As Gardner and Dupree tell us, “[b]ecause child abuse routinely occurs in the privacy of the house, the crime is often proved solely on the basis of circumstantial evidence enriched by expert testimony, as well as through a variety of presumptions and relaxation of some ordinary rules of evidence.” Gardner and Dupree (2001)

The Supreme Court has held, in a case specifically involving allegations of parental child abuse, that while the Fourteenth Amendment requires a state to protect life, liberty, and property of citizens against invasion by private actors, such protections are not triggered absent the existence of a “special relationship.” DeShaney v. Winnebago Department of Social Services (1989) However, as a general rule, state law requires mandatory reporting of suspected child abuse to the proper authorities. What is more, state statutes list by professional title

(e.g., teacher, nurse, social worker, physician, etc.) individuals who are required to make such reports. See, for example, Code of Virginia, 63.2-1509, et seq. (2008) Moreover, courts have held that a failure to report suspected child abuse to the proper authorities could result in liability for money damages. Fischer, Schimmel, and Kelly (1999)

Recently, while doing research in the law library, I came across an interesting court decision--one that directly involves prior parental notice and clearly demonstrates a potential issue producer for public school officials, administrators, counselors, and teachers. The court decision, out of the United States Court of Appeals for the Seventh Circuit, involves a conflict between the legal authority and responsibility of school personnel to immediately report suspected child abuse to the proper authorities against the due process right of a parent to direct the upbringing of their child. While the decision itself lacks precedential value (i.e., it was not selected for publication in the Federal Reporter) the facts and judicial rationale in the case should prove informative and helpful to public school policy makers.

**Thomas v. Evansville-Vanderburgh School Corporation, et al. (7th Cir. 2007)**

*Facts.* Between 1998 and 2000, plaintiff's daughter was enrolled in a public elementary school in Evansville, Indiana. During that period members of the school staff (principal, teacher, nurse, and guidance counselor) reported ten incidents of suspected child abuse of plaintiff's daughter to Child Protective Services (CPS). In eight of the incidents plaintiff's daughter (hereafter referred to as "the student") told a staff member that "her mother had slapped her, struck her with an electric cord, and whipped her with a switch." Subsequently, CPS confirmed that two of the incidents were substantiated by observations of bruises and welts on the student's body. Two other incidents were reported by the school principal. In one of the reports the principal stated that plaintiff had called the school and threatened to kill her daughter. CPS had the police visit the home, but no action was taken. Neither one of these last two incidents was deemed substantiated nor at no time was the student removed from her mother's custody or from the home.

In the period that followed, teachers, school administrators, and other personnel frequently called upon a "special concerns counselor" at the elementary school to work with the student. They asked that the counselor take the student out of class "to discuss her difficulties functioning and performing at school." Each time the counselor did not inform plaintiff of the conversations with the student.

On February 29, 2000, the counselor met with plaintiff, the student's father, the principal, and a guidance counselor. The purpose of the meeting was to discuss the student's behavioral problems in school. In the meeting the special concerns counselor related conversations with the student in which the student said that her mother "threatened to kill her."

On March 1, 2000, the special concerns counselor called CPS to discuss her concerns about plaintiff's treatment of the student. However, she did not report the matter to CPS as suspected child abuse or neglect.

*United States District Court Action.* Ultimately, the student's mother (an African-American) filed suit in a federal district court claiming that her constitutional rights had been violated. She claimed that her Fourteenth Amendment due process right to direct the upbringing and education of her child and her equal protection against racial discrimination had been violated. More specifically, she cited the: (1) measures taken, without her prior knowledge, by the school principal, teacher, counselor and a school nurse in response to her daughter's claims of abuse, (2) reports to CPS (which she said were false), and (3) regular meetings, without her prior knowledge, of her daughter with the special needs counselor as being in violation of her "substantive right to

direct the upbringing of her child.” In addition, she alleged in her lawsuit that “school officials have since retaliated against her” for complaining about her handling of the situation by rejecting her request to enroll her child in another school.

The district court granted summary judgment to the school corporation and school officials. Thomas, 2004 L.W. 2550441 (S.D. Ind. 2004) Plaintiff appealed to the Seventh Circuit.

*Seventh Circuit Decision and Rationale.* Regarding the claim of racial discrimination and retaliation the appellate court held that the mother had failed to show sufficient evidence from which a jury could conclude that actions of school officials had a discriminatory purpose. Also, said the court, she failed to show evidence that “she was treated differently than similarly situated parents who were not African-American, and that the school officials filed the reports at least in part because of race.” Moreover, she failed to show where school officials engaged in a pervasive and widespread practice of discrimination against African-American parents; and, she failed to show evidence that school officials engaged in acts of retaliation against her.

To analyze the mother’s claim that her substantive rights as a parent were violated by the private conversations between her daughter and the special needs counselor and the filing of reports to CPS (which the mother said were false), the appellate court relied on Pierce v. Society of Sisters (1925), Wisconsin v. Yoder (1972), Fields v. Palmdale School District (9th Cir. 2005), and other decisions. While it is clear, said the Court, that a parent has a “fundamental right, secured by the due process clause, to direct the upbringing of her child...,” Pierce (1925) the Seventh Circuit Court made it clear that a parent’s right to choose the type of school one’s child attends, or direct the private instruction of one’s child, does not imply a parent’s right to control every aspect of her child’s education at a public school.” Thomas (2007) The court then reasoned that because the private conversations between the special needs counselor and the daughter were “academic in nature, focusing only on her problems performing and functioning in school...,” no constitutional violation had occurred.

### **Policy Implications**

Fewer legal issues are more emotionally laden and have a more profound impact on educational policy-making than do those associated with parent rights. In our society the upbringing, control, discipline, and education of children have been and remain a major prerogative of the parent. However, as the above commentary demonstrates this fundamental parent right is not without legal limitations and boundaries and must be balanced against the rights and protections of children.

In 2008-2009 children are to be protected from child abuse and neglect, including abuse and neglect suffered on them by their own parents. Over the past four decades both statutory law and court decisions have made it clear that the “best interests of the child” outweigh the rights of parents and it is the legal duty and responsibility of public school officials and personnel to immediately report incidents of suspected abuse and/or neglect to the proper authorities. As a general rule, prior parental notice of such reports is not a specific statutory requirement.

As stated at the outset of this commentary, the value of the Thomas (7th Cir. 2007) decision can be found in the Court’s opinion and rationale, and will prove both informative and helpful to local school system policy-makers. What follow are some suggestions for policy that I have gleaned from the Seventh Circuit’s rationale.

Local school board (the Board) policy must make it clear that:

- All school system personnel (especially principals, counselors, social workers, school psychologists, and classroom teachers) will work to identify and professionally assist all students who are at risk of academic failure in school.
- All parents whose children are identified as being at risk of academic failure and/or are involved in school disciplinary matters will be immediately notified and encouraged to be actively involved in the disposition of the situation.
- School system administrators and other professional personnel will continuously monitor the academic progress of students, especially those identified as being in jeopardy of academic failure and/ or those involved in disciplinary situations, or who are experiencing emotional and/ or physical problems in school, in an effort to remediate such problems and to otherwise help such students to succeed in school.
- The school system views the protection of its students from abuse and/or neglect as a legitimate pedagogical concern.
- While the Board acknowledges and respects the rights and prerogatives of parents to control and discipline their children, and the importance of parents to be actively involved in the education of their children, school officials and school personnel are legally and ethically obligated to immediately report all cases of suspected child abuse and/or neglect to the proper authorities.
- Reports of suspected child abuse to the appropriate authorities do not require prior notice to parents.

Three final comments must be made. First, the reader is reminded that this commentary discusses one narrow subject, *i.e.*, child abuse. Second, the discussion of parental notice requirements deals only with child abuse reporting and does not address the rights of parents in such other areas of law as access to school records and students with educational disabilities. Finally, school officials must work with their legal counsel to make certain that school system child abuse reporting policies and procedures comply with the requirements of state law.

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**Note:** The views expressed in this commentary are those of the author.