

# Legal Update



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## *FROM CHURCH BASEMENTS TO OFFICE PARKS: CHALLENGES TO CHILD CARE FACILITY DEVELOPMENT*

*by Kristen Anderson*

Consensus is growing about the importance of child care not only for the healthy development of children but as a key component of many social policies, including school readiness and welfare reform. In addition, policy makers are coming to recognize what parents have long known: that there is a drastic shortage of child care, particularly high-quality and “affordable” care, and that huge numbers of new child care slots must be created.

New child care slots, however, require new child care facilities. Especially in densely-populated, high-cost, urban areas and/or where use of

the obvious “inexpensive” spaces has already been maximized, traditional opportunities to expand child care resources may no longer exist. Many a child care operator got a start 20 or more years ago by calling a school district or church and asking to lease an available classroom or two. Often these programs have paid nominal rents — in some cases just maintenance and utilities costs; in others up to \$1.00 to \$1.50 per square foot — and have had relatively low expenses in retrofitting classrooms and outdoor play space.

Now, in many communities, child care or preschool programs are losing classroom space leased from school districts, as class size reduction and/or enrollment increases result in a need for the rooms. This is particularly true in urban districts where schools already have small playgrounds and lack space to install portable classrooms. Church buildings may be at capacity for housing

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child care programs and some churches have taken back space for other church uses or for their own elementary schools. These two types of space have been an essential part of the infrastructure and have been a significant factor in subsidizing a child care business.

As we begin to expand the search for facilities, the unique nature — and consequent true expense — of good quality child care space makes the effort a very different challenge. For one thing, the types of spaces to which we turned in the past were often located in the public or non-profit sector. They were likely administered by people who had some relationship to the community and, hence, understood the need for child care space.

With public resources largely (although certainly not fully) depleted, child care advocates must venture into heretofore unknown territory. We must work with developers to try to integrate child care space into new residential developments, office parks, shopping centers, or other non-residential projects. We must also work with local city/county planners and elected officials to plan for child care as part of municipalities' land use decisions. Both efforts require new sets of skills and knowledge.

Child care advocates must come to think of ourselves as child care developers and take the lead in thinking creatively, taking steps toward compromise to make projects work, and helping planners and elected officials understand child care's importance and how it can be accommodated. To see new facilities developed we have to learn their perspectives, which will be new to many of us. We also must share with

them our knowledge of building, starting, and operating child care programs, including state licensing regulations, the 'economics' of the child care business, the affordability/quality relationship, and the resources available for projects serving different populations of families.

It is our challenge to find common ground among all parties. To do so, we must learn planners' and developers' language and understand the challenges they face, so that we can minimize any negative impacts of child care facilities on their goals. For example, city planning staff is required to ensure that any project, including child care, does not harm the surrounding neighborhood by, for example, bringing unreasonable increases in noise and traffic. If we understand that it is their job to be alert for such negative outcomes, we can help by offering planners evidence that the true impact of child care facilities likely will not be what they feared. . Even those elected officials who are, as a rule, our allies must balance advocacy for child care with negative impacts on the community. If we understand their need to be responsive to all segments of their constituencies, we can help them answer the concerns raised by those who may speak against the development of child care facilities.

### **The Developer's Point of View**

Enlisting the cooperation of developers of residential or non-residential projects in addressing child care facilities needs is very much related to the local economic and real estate climate. In a region experiencing new growth, where land is inexpensive and new developments are competing for tenants, child care can be an

attractive amenity and may give a project a marketing edge. On the other hand, in a region such as the Bay Area, and especially considering the recent economic and office development boom, a square foot of space is so valuable that extra amenities are not necessary in order to sell or lease space, and subsidizing a child care facility may be a much harder sell. The challenges developers face to including space for child care, and the resistance of some, are rooted in several factors.<sup>1</sup> These include:

- *loss of revenue-generating space* — Child care operators are seldom able to pay commercial rates for space. Thus, a developer who is asked to provide the child care facility space free or at a subsidized rate must either pass the cost on to other tenants or absorb it. For example, a developer who provides 5,000 square feet of space at no cost that would otherwise be leased at \$8.00 per square foot per month will lose \$40,000 in monthly revenue.
- *construction cost* — Developing child care space is more expensive per square foot in comparison to many other tenant improvements, due to factors such as plumbing requirements (multiple toilets and sinks) and the need for multiple interior dividers and cabinets.
- *limited alternative uses* — If the anticipated demand for child care does not materialize and the developer is unable to lease the space to a child care operator, he or she is left with a building that cannot be used for another purpose without significant alterations. This risk may make it difficult to get bank financing.
- *liability concerns* — The developer may fear being seen as a "deep pocket" in the event of a lawsuit stemming from an accident on the

property or a hazardous use nearby that causes injury to users of the child care facility.

### Addressing These Concerns

These concerns are real, and we must address them by seeking compromises. Fortunately, with a bit of creativity, it is possible to address developers' misgivings without compromising the quality of child care settings. Settling for less than the "ideal" amount of space, for example, should not have to mean settling for a lesser quality facility. If we start out insisting that we need an acre of land to build a child care center, and land value is \$1 million or more an acre, we virtually guarantee failure from the outset. If we start out with greater flexibility, however, our chances of finding sites or getting developer cooperation will increase dramatically. The following are some examples of new ways of thinking about child care space.

- Define what the minimum indoor and outdoor space requirements would be if a child care center were designed in a most efficient way. These would include play space offering a healthy and educational environment for children and sufficient high quality spaces for adults to function in comfort. Minimizing circulation space and finding creative ways to meet requirements while maximizing usage is important. No developer, including one whose focus is on child care facilities would choose to design an "inefficient" building and pay off long term debt per square foot for "wasted" space (i.e., the large percentage that does not contribute to licensed child capacity). One design idea is to place required child sinks adjacent to toilet

areas but within classroom space where they can be used for hand washing and clean-up, thus minimizing "uncountable" bathroom space.

- Reduce playground space needed by requesting Community Care Licensing waivers to allow classrooms to share playgrounds. For example, two preschool-age programs may each use a single playground at different hours, with infants and toddlers sharing another one.
- Look for ways to include child care space as part of a parking structure or office building, so that a completely separate site or building "footprint" dedicated to child care is not needed. For example, if a developer is restricted to a certain number of stories in constructing a building and is allowed to add an additional floor providing it is devoted to child care, the child care facility will not result in the loss of revenue-generating space. Local governments may offer "density bonuses" to developers for including child care space.<sup>2</sup>
- Encourage cities to allow playground space to count toward open space/landscaping requirements, especially where those requirements are generous. Also, help them to recognize that parking needs and traffic impact that a child care facility will create will vary depending on the program hours, ages of children served, whether the center is located in a residential or non-residential development, etc.
- Develop designs for two-story child care centers, to maximize use of small sites. A center with a roof-top playground was built in Sacramento many years ago; one with children's playrooms on the first and second floors is planned in downtown Palo Alto.
- Promote the inclusion of family

child care homes in residential developments that may not have sufficient child care demand (or land) for a center. The City of San Mateo is completing such a project.

- Consider shared space models. A playground that is for the exclusive use of a child care facility during the hours it operates can be open to a residential development or neighborhood in the evenings and on weekends. At Westborough Park in South San Francisco, for example, the City-operated child care program has exclusive use of a fenced playground for certain weekday hours. Where insufficient playground space is available, a multi-purpose room can help meet the requirement and be used by office park or residential tenants at other times for other activities. In both cases, the broader benefit may make the inclusion of child care more acceptable to the developer and the community.

Child care advocates and planners may assist child care facility developers, be they child care agencies or residential or office park developers, by taking steps such as the following:

- Develop and disseminate child care center development guidelines that are more complete than the minimal licensing regulations. Regulatory square footage requirements can be deceptive to developers and architects who are not familiar with child care operations.<sup>3</sup> They may misunderstand the minimum requirements per child for indoor and outdoor play space as all the space needed in a child care facility and fail to consider other space needs such as bathrooms, kitchens, adult space, and circulation space. It is critical that all involved understand what a child care

facility must include from the inception of planning. Work with Community Care Licensing to allow waivers for reduced playground space in all districts, when the required amount of land is not available. The Peninsula and San Jose District CCL offices have granted such waivers, based on a schedule of shared use.

- Work with city and county planners to develop incentives for developers that will encourage them to include child care space. Though planners may prefer to negotiate with developers for child care space on a case-by-case basis, developers may never even consider the option if potential incentives are not presented first.

- Develop traffic and parking studies and data that are specific to the type of child care or preschool program being proposed. Planners are likely to think of a more familiar setting where children congregate, such as an elementary school. With this picture in mind, where all children arrive and leave at the same time, they may assume traffic patterns and parking needs that are much heavier than would be the case with a child care center.

## Conclusion

All developers, including those whose main focus is child care facilities, must face and overcome the challenges discussed in this article. For the more traditional developers who do not specialize in child care, and for many city planning staff, the need for child care is seldom even “on their radar screens”. Most do not understand how to incorporate child care facilities in their plans, even if they are interested. It is, therefore, up

to the child care community to make sure that child care needs are taken into account. Child care advocates should remember that if we remain flexible in our approach, are open-minded regarding developers’ and planners’ concerns, and provide clear and concise information about what is required to construct and operate a child care center, we can often convert developers into allies. And who knows? With the next project, they might even incorporate child care from the outset, with no advocacy needed.

<sup>1</sup> Note that private child care companies or agencies must also deal with these challenges when building new centers.

<sup>2</sup> California Government Code Section 65917.5

<sup>3</sup> The newly published Child Care Design Guide, by Anita Rui Olds (McGraw-Hill Professional Architecture 2001), is an excellent resource. The author has a background in both child care and architecture and the facility designs are informed by a knowledge of child development principles.

## *CCLC WELCOMES NEW MANAGING ATTORNEY, CHRIS CLEARY*

The Child Care Law Center is happy to announce that Christine Cleary has joined us as the new Managing Attorney. Chris is perfectly suited to the organization, as she has a background in both children’s issues, including child care, and poverty law issues.

Chris first became involved in child care (apart from her experience with the issue as a single mom!) in Butte County in Northern California, where she was one of the founders of the resource and referral agency there. She later became director of the parallel agency in San Joaquin county and then moved to the San Francisco Bay Area.

An interest in public policy issues affecting children directed Chris to law school. While she was a law student, a part-time job as an advocate representing tenants before the Berkeley rent control board piqued Chris’ interest in landlord-tenant law as well. During many years in private practice, she was able to combine both interests, suing slumlords on behalf of tenants in both subsidized and unsubsidized apartment complexes and doing appellate work in child dependency cases representing both children and parents. She speaks with pleasure about a case she won on behalf of an incarcerated mother, in which the court of appeal affirmed her client’s right to services to reunite her with her children.

While she is still winding up her private practice, Chris has already rolled up her sleeves and become enthusiastically involved in CCLC’s work. She expects to be here full time as of July 1.

## ***COURT FINDS CALIF. IN VIOLATION OF LAW; STATE TO ISSUE EMERGENCY CHILD CARE REGS.***

On April 3 the San Francisco Superior Court ordered the California Department of Education (CDE) to stop implementing certain “underground regulations” upon which it had been relying in administering child care benefits on behalf of participants in CalWORKS, California’s welfare-to-work program. The order came in *Rose v. Eastin*, a case filed in January, 2000 on behalf of two CalWORKS participants and a child care provider.

The plaintiffs charged that, by setting policy through “Management Bulletins” issued on an *ad hoc* basis and through “Funding Terms and Conditions” contained in contracts between CDE and agencies that administer child care programs, CDE violated California’s Administrative Procedures Act (APA). Plaintiffs alleged that these underground regulations harmed them because, in the absence of officially promulgated regulations, those affected are unable to know what to expect from the agency administering their child care subsidies. Parents are unable to learn their rights, children experience interruptions in care, and family child care providers must sometimes wait months for payment.

California administers CalWORKS child care in three stages. Stage 1, for families who receive welfare and participate in welfare-to-work activities, is under the auspices of the Department of Social Services, which did issue official regulations governing child care subsidies. CDE, however, is in charge of Stages 2 (for families whose employment has become stable and who are leaving

welfare) and 3 (for former CalWORKS participants), and it failed to issue regulations. The APA defines a “regulation” as a rule used by a state agency to implement or interpret a statute enforced or administered by the agency.<sup>1</sup> The Act requires that before regulations become final, the agency adopting them must give the public notice and an opportunity to comment.<sup>2</sup>

The court found specifically that Management Bulletins 99-02 and 99-05 contained provisions that were “regulations” as defined by the APA but had not been adopted pursuant to the required procedures. It stated that Management Bulletin 99-02 interpreted time limits regarding diversion services and the definition of employment for purposes of determining eligibility for Stage 3 child care, neither of which was covered by the relevant provisions of the Education Code.<sup>3</sup> It also said that Management Bulletin 99-05, which addressed a policy limiting the percentage of children with subsidies who are cared for by a particular child care provider, interpreted provisions of the Education Code and amended and supplemented official state regulations.<sup>4</sup>

Thus, the court ordered CDE, in administering Stages 2 and 3 of CalWORKS child care, not to implement or enforce these Management Bulletins until the agency deleted the provisions that violate the APA. Following the court’s decision, counsel for plaintiffs met with CDE to discuss regulations governing these and other important provisions governing CalWORKS child care. CDE has agreed to draft emergency

regulations for public notice and comment, to be effective July 1, 2001.

The plaintiffs in *Rose v. Eastin* are represented by the Child Care Law Center, San Fernando Valley Neighborhood Legal Services, Legal Aid Foundation of Los Angeles, Legal Services of Northern California, Legal Aid Society of San Mateo County, and Public Counsel. For further information contact Sujatha Jagadeesh Branch at CCLC.

<sup>1</sup> Gov. Code § 11342(g).

<sup>2</sup> See, e.g. *id.* § 11346.2.

<sup>3</sup> Education Code §§ 8300 & 8354.

<sup>4</sup> Education Code §§ 8357 & 8225.5; Title 5 CCR.

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## ***NEW WARNING ON CHILD LEAD POISONING***

A new study suggests that the current measure used to define lead poisoning may not be stringent enough. Over recent decades the amount of lead per deciliter of blood that is considered dangerous to a child has been greatly reduced; the current level considered harmful by most public health officials is 10 micrograms of lead per deciliter.

However, a researcher at the Children’s Hospital Medical Center of Cincinnati reported that in children he and his colleagues had studied, I.Q. declined in children with lower lead levels. The findings, he said, suggest that millions more U.S. children may be at risk. The researchers studied 276 children from Rochester, N.Y. over five years, measuring their lead levels and then their I.Q.’s at age five. They reported an inverse relationship between I.Q. and lead levels.

## *ABUSE INVESTIGATIONS OF ILL. CHILD CARE PROVIDERS RULED UNCONSTITUTIONAL*

A federal district court judge in Illinois has ruled that the state's Department of Children and Family Services (DCFS) scheme for investigating, deciding, and administratively adjudicating cases of child abuse and neglect is unconstitutional and harmful to children. The lead plaintiff in the class action lawsuit, *Dupuy v. McDonald*, is a family child care provider whose 10-year-old daughter, Sara, was charged with sexual abuse when she helped some children cared for by her mother pull up their pants.<sup>1</sup>

In a ruling entered on April 2, 2001, Judge Rebecca Pallmeyer found that extraordinarily high rates of error following often cursory and one-sided investigations characterized the DCFS system for addressing reports of child abuse. She directed the department to revise its system for investigating some 65,000 abuse and neglect reports it receives annually, to conform its decision-making standards for making findings of guilt (some 23,000 annually) to constitutional requirements, and to revamp its appeals system.

The experience of the Dupuy family illustrates many of the problems with the Illinois system. The child care business operated by Jeff and Belinda Dupuy was their sole source of income; both parents worked as caregivers and they offered care around the clock for parents working night shifts, a rare and desperately needed service.

Plaintiffs' counsel report that the family's nightmare began when a parent who owed the Dupuys \$800 telephoned DCFS and accused

Belinda Dupuy of sexual abuse. (Ms. Dupuy testified in a deposition that this parent subsequently called her on occasion to gloat that no judge would now order her to pay her debt.) As part of the ensuing investigation, Ms. Dupuy told investigators about the incident in which Sara helped several young boys pull their pants up after the boys had pulled them down and were staring at each other.

DCFS then dropped the allegation against Belinda and charged Sara with sexual abuse. The agency gave the Dupuys the choice of closing their business or barring Sara from their home whenever a child being cared for was present; in addition, the home was no longer allowed to operate at night. Afraid of losing their income, they continued to operate, with Sara excluded from her home between 7 a.m. and 9 p.m.

Sara grew despondent and threatened suicide, and the allegations became widely known in the small town downstate where the Dupuys lived. DCFS informed all the parents of children in care about the allegations. While most knew the family well and discounted the reports, the inability to operate at night and a DCFS order directing the Dupuys to hire people to watch them caring for the children were devastating financially for the family, who eventually filed bankruptcy. DCFS contended that its treatment of the family caused them no injury and that Sara's exile from her home was voluntary. In recounting this story, Judge Pallmeyer was not persuaded, observing that a choice between

one's child and one's job is "not a choice."

In their complaint, plaintiffs alleged that DCFS maintained the abuse and neglect allegations accompanying "indicated reports" in a state central "register" for five, 20, or 50 years (depending on the nature of the report) if there was *any credible evidence* in support of the allegations. This is the agency's practice even if the preponderance of the evidence weighed heavily against the reliability of the report, effectively blacklisting anyone whose name is registered from working with children and putting their families at risk of separation by the state even if they are innocent. They alleged that DCFS failed to provide hearings within a reasonable time and in a reasonable manner for those wishing to challenge "indicated" reports and findings, or to issue timely decisions on such appeals. They further alleged that DCFS forwarded the reports to numerous outside parties, including licensing officials and current and prospective employers, and that as a result many members of the plaintiff class had lost their jobs.

Following a three and one-half week court trial, Judge Pallmeyer concluded that the "massive record," including a trial transcript of nearly 3,000 pages, supported plaintiffs' claims. DCFS policies, she found "harm the children of Illinois," both because children lose the benefit of a stable caregiving environment and because "actual perpetrators, not targeted during cursory investigations, remain at work in the child care field." She went on to note that "[s]omething is seriously and obviously flawed in a system where 75% of those child care employees

who appeal an indicated finding against them have such a finding overturned or voluntarily expunged by the State months, sometimes even years, later.”

According to plaintiffs’ counsel, one of the biggest problems with the DCFS system is the “any credible evidence” decision-making standard. Furthermore, the decision to find a child abuse or neglect report “indicated,” and thus to maintain it for years in the state’s central “register,” is not made by a neutral person who hears all sides and weighs the evidence. Rather, the same person who conducts the investigation, who often has little training or experience,

makes the decision based on evidence he or she decided to pursue. Counsel contend that such an approach resembles allowing a police officer to investigate, charge, try, and sentence an accused with no involvement by a judge or jury.

Diane Redleaf, one of the attorneys for the plaintiff class, says that virtually every state has a child abuse and neglect investigation system similar to that of Illinois. Therefore, she predicted, Judge Pallmeyer’s ruling will likely have significant nationwide ramifications. “Most important,” she noted, “is that the decision recognized that falsely branding a loving parent or caring

professional, such as a day care provider or social worker, a child abuser hurts the very children DCFS claims to protect.”

The opinion in *Dupuy v. McDonald* is available at [www.ilnd.uscourts.gov/judges/pallmeyer/recentopinions](http://www.ilnd.uscourts.gov/judges/pallmeyer/recentopinions). Briefs and pleadings are available from the National Center on Poverty Law ([www.povertylaw.org](http://www.povertylaw.org)), Clearinghouse No. 51679. Diane Redleaf is an attorney with Lehrer and Redleaf in Chicago: (312) 332-2121.

<sup>1</sup> Plaintiffs’ counsel report that Sara has asked that her story be publicized to help prevent what DCFS did to her from happening to other children.

## *REPORT DOCUMENTS SHORTAGE OF AFTER-SCHOOL CARE*

Half of the low-income California children who need after-school care because their parents work lack access to care because subsidies are not available, according to a report released in May by Children Now. The report, entitled “After School Care for Children: Challenges for California,” notes that research shows that without adult supervision, these children are at greater risk of violent crime, drug use, and other dangers.

The report estimates that 1.2 million California children between the ages of five and 14 need subsidized after-school care, but only about 600,000 slots are available. It counted children in families where both parents or a single parent work at least 30 hours per week for less than \$32,000 per year and who were not cared for by relatives. It did not include children whose parents are unemployed or unable to work.

The hours between 3 p.m. and 6 p.m. are the peak hours for juvenile crime and also are when children are most likely to be victims of crimes. Young adolescents left unsupervised for 11 or more hours per week are twice as likely to abuse drugs and alcohol as those under adult supervision. In addition, many after school programs have been shown to improve academic performance and school attendance, as well as lead to better behavior in school.

The full report is available on Children Now’s web site at [www.childrennow.org](http://www.childrennow.org).

## *OHIO COURT REQUIRES "APPROPRIATE" CHILD CARE FOR WELFARE-TO-WORK PARTICIPANT*

Sheri Rimes, an Ohio single mother of a two-year-old son, faced loss of her public assistance benefits for a month for failure to agree to a child care placement so she could participate in work activities. An Ohio Court of Appeals overturned the sanction, finding that Ms. Rimes had proven that appropriate child care was not available.<sup>1</sup> In its decision, the court said that what is "appropriate" must be viewed from the standpoint of the safety and well-being of the child.

As a recipient of public assistance, Ms. Rimes was required to enter into a written "self-sufficiency contract" with the county welfare department, which she did in December of 1997, and to participate in welfare-to-work activities. One month earlier, however, in November, she had reported to the police that her son had been sexually molested by a private babysitter. Investigations by both the police department and child protective services determined that the allegation could not be substantiated.

In early December the welfare agency found a conveniently located child care placement for Ms. Rimes' son and notified her that she was to begin her work program at the end of the month. She asked if her participation could be delayed, not wanting to place her son in child care so soon after the alleged sexual abuse she had reported. Based on the child protective services determination that the abuse report could not be substantiated, the welfare worker told Ms. Rimes that she would have to participate. She failed to attend the program and the welfare agency sought to impose the sanction against her.

Ms. Rimes asked for a state fair hearing on the issue of whether she had good cause for her refusal to participate in the work program. At the hearing, Dr. Barrett, a child psychoanalyst testified on her behalf that he had worked with Ms. Rimes and her child for several weeks. He stated that while he could not definitively conclude that the abuse had or had not occurred, the child showed compelling symptoms of separation anxiety. For this reason, Dr. Barrett testified, it would not be in the child's best interest to place him in child care unless his mother were present there with him for four to six months. He also recommended placement in a program experienced in working with children who had similar issues.

Both the state hearing officer and the lower court ruled against Ms. Rimes and upheld the sanction. She appealed to the court of appeals, arguing that as a condition for her participation in the work program, the welfare agency was obligated under state law to provide not just child care, but "appropriate" child care.

The Ohio law in question stated that someone in Ms. Rimes' position had good cause for failing to participate in work activity includes the county's failure to provide support services it determines to be necessary. In determining whether good cause exists, a county department shall determine that day care is a necessary support service if a single custodial parent caring for a minor child under age six proves a demonstrated inability ... to obtain needed child care for one or more of the following reasons:

(i) Unavailability of appropriate

child care within a reasonable distance from the parent's home or work site;

(ii) Unavailability of appropriate and affordable formal child care arrangements.<sup>2</sup>

The court said Ms. Rimes was correct in arguing that state law required child care to be appropriate and that what constituted "appropriateness" had not yet been addressed by Ohio courts. It went on to say that [t]he clear implication of the statute is that "appropriate," or the appropriateness of an arrangement, is to be looked at from the standpoint of the safety and well-being of the child. The term cannot be construed to address the appropriateness with respect to the parent .... Thus, the term ... can only concern the suitability of an arrangement with respect to the health, safety and welfare of the child.

The appellate court found that Ms. Rimes had, through Dr. Barrett's testimony, satisfied her burden of proving that appropriate care was unavailable. The only evidence on the other side was hearsay testimony by the welfare agency's work program supervisor about the child protective services and police conclusions that the allegations of abuse were not substantiated. This testimony, said the court, "contained no specificity as to what *type* of child care arrangements would be appropriate." Therefore, it ordered the judgment of the lower court reversed and ordered the welfare agency to restore Ms. Rimes' benefits and remove the sanction against her.

<sup>1</sup> Rimes v. Ohio Dep't of Human Serv., No. 99-L-068 (Ohio Ct. App. 2001).

<sup>2</sup> Ohio Rev. Code § 5107.16(B)(1)(b).

## *PROPOSED CALIF. LEGISLATION WOULD PROVIDE CHILD CARE FOR FOSTER CHILDREN*

*by Alice Bussiere*

Making sure that foster children have access to child care was one of the recommendations developed at a meeting last fall that was co-sponsored by the Child Care Law Center and the Youth Law Center.<sup>1</sup> That idea is now the subject of proposed legislation in California. AB 1105, co-authored by Assembly Members Joseph Simitian and Kevin Shelley, would use an option under Title IV-E of the Social Security Act to draw down federal foster care funds for child care. The bill is part of a foster agenda that includes 13 bills sponsored by Assembly Democrats, led by Speaker Hertzberg.

In the past, when California has considered providing child care for foster children, the primary perspective has been the need to provide support for foster parents. This year child care and development experts have joined the debate to point out that the issue is important from the children's standpoint as well, and that foster children will be the primary beneficiaries of high quality child care. Recent studies have confirmed that high quality child care helps prepare children for school by getting them "ready to learn."<sup>2</sup> School readiness is especially important for foster children, many of whom fall behind their peers in school achievement and graduation rates. Foster children, who are in state care due to abuse or neglect, will also benefit from the supportive environment, socialization, and structure available in a good child care program.

Foster children also benefit when foster parents are supported. The

availability of child care will encourage more families to serve as foster families, thus reducing impermanence and inappropriate placements. Child care can help foster parents meet obligations such as foster parent training and attending court hearings, meetings, or appointments concerning children placed with them. It will also allow working parents to serve as foster parents. This will increase the pool of families available to care for abused and neglected children and provide foster children with working foster parents as role models.

The dual benefits of child care to foster children and foster families have brought together children's advocates, county child welfare administrators, foster parents, and the child development community to urge California policy makers to address the issue. AB 1105 includes protections to ensure that the child care foster children receive is appropriate. It requires that child care be licensed, which means it will meet basic health and safety standards. It also requires that child care be included in the child's case plan in order to be covered. Therefore, the type and amount of child care (full day, part day, etc.) will have to be approved by the child's social worker.

Contrary to popular belief, foster parents do not receive a salary to take care of foster children. Rather they receive a monthly payment to cover the cost of food, clothing, shelter, school supplies, personal incidentals, and other items related to the care of a foster child. In California basic foster care rates range from \$405 to \$613 per

month based on the age of the child and the county where the child lives. Higher rates are available when children have special needs. This monthly payment is not, however, sufficient to cover the cost of child care. For example, the total monthly foster care payment for a four year old preschooler is \$405, while the average monthly cost of licensed child care for a four year old is \$407 in Fresno, \$460 in Los Angeles, and more than \$600 in Santa Clara.

Although AB 1105 will require some funding from the state, it will bring in additional federal dollars to help pay for child care. Federal law permits states to use funds they receive for foster care under Title IV-E of the Social Security Act to pay for child care for eligible foster children. Title IV-E is an entitlement program that provides 50% federal financial participation for all qualifying expenditures. If California uses this option, the federal government will pay 50 cents of every dollar spent on child care for eligible foster children. According to the American Public Human Services Association, 26 other states had elected this IV-E option by 1996.

By using foster care funds, AB 1105 will ensure that foster children are not competing with other children for subsidized child care slots or other child care resources. Title IV-E is separate from the federal Child Care and Development Block Grant used for general child care and development programs.

AB 1105 has attracted a wide variety of supporters, including the Child Development Policy Advisory Committee (CDPAC), the Child Development Policy Institute (CDPI), the California Child Care Resource and Referral Network, the Child Care

Law Center, the California State Foster Parents Association, the California Children's Lobby, Children's Advocacy Institute, the Northern California Association of Counsel for Children, the San Francisco Women Lawyers Alliance, California Women Lawyers, the County Welfare Directors Association of California (CWDA), and the counties of Alameda, Fresno, Orange, Sacramento, San Francisco, San Joaquin, San Mateo, and Santa Clara, as well as other individuals, child care centers and service providers. No one has expressed opposition to AB 1105 on a policy basis. The greater challenge will be for the legislature and the Governor to approve the funds to make it a reality.

*Alice Bussiere, former CCLC Managing Attorney, is a staff attorney at the Youth Law Center. AB 1105 is co-sponsored by San Mateo County, Santa Clara County, and the Youth Law Center. For more information, contact: Greta Helm, 650-595-7902, gretahelm@yahoo.com, Diana Kalcic, 916-498-0134, dkalcic@earthlink.net or Alice Bussiere, 415-543-3379, abussiere@youthlawcenter.com.*

<sup>1</sup> See Cynthia Goodsoe, "CCLC, Youth Law Center Seek Closer Links Between Child Care & Child Welfare" in the March, 2001 issue of *Legal Update*.

<sup>2</sup> For one of the most recent, see Arthur J. Reynolds, *et al.*, "Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-up of Low-Income Children in Public Schools" in the May 9, 2001 issue of the *Journal of the American Medical Association*.

## *STUDY DOCUMENTS "ALARMING INSTABILITY" IN CHILD CARE WORKFORCE*

What everyone in the child care community knows about the shortage of child care teachers was confirmed by a study released at the end of April. Entitled "Then and Now: Changes in Child Care Staffing, 1994-2000" and conducted by the Center for the Child Care Workforce and the Institute of Industrial Relations at U.C. Berkeley, the study documents the alarming instability in the child care teaching and administrative workforce.

As well-educated teachers and administrators leave the child care field, their replacements bring notably less training and education, according to the study. The report is the first longitudinal study based on observations of quality in the same child care centers at three points in time: 1994, 1996, and 2000. The centers studied were accredited by the National Association for the Education of Young Children, seeking accreditation, or were rated highly based on the nationally recognized Early Childhood Environment Rating Scale. Thus, they are the "best." It is fair to assume that staffing problems these centers face are even more severe elsewhere.

The study examined 75 child care centers, representing 85 percent of the programs participating in 1994 and 1996. It looked at three different groups of staff: 1) teaching staff and directors employed at their centers in 1996 and 2000; 2) teaching staff and directors employed in 1996 but no longer at the center in 2000; and 3) teaching staff and directors new since 1996.

Three-quarters of the teaching

staff in place in 1996, and 40 percent of the directors, were no longer on the job in 2000. Average turnover rates in just one year, between 1999 and 2000, were 30 percent for all teaching staff. Six centers reported 100 percent or higher turnover of their assistants and nine reported 100 percent or higher turnover among teachers in the previous year. More than half of centers reporting turnover had not been able to replace all the staff they had lost. The study found that director turnover contributed to staff instability; centers that lost directors also had higher rates of teacher turnover.

Wages for the majority of teaching staff positions decreased in real dollars between 1996 and 2000, by six percent for teachers and two percent for assistants. The small number of teaching staff who remained on the job during that period saw a two percent real increase in wages. Teachers earned an average full-time-equivalent salary of \$24,606 for a 12-month year, slightly more than half of the average public school teacher salary for a 10-month year.

New teaching staff were, as a whole, significantly less well-educated than those they replaced. Nearly half of those who left had a bachelor's degree, compared to only one-third of new teachers. Those who left had educational backgrounds comparable to those who remained but earned significantly lower wages. Highly-trained teachers who remained at their jobs earned an average of \$3.00 per hour more than highly-trained teachers who left. The presence of a greater proportion of

highly-trained teaching staff in 2000 was the strongest predictor of whether a center sustained quality improvements over a four-year period; wages were also a significant predictor.

In its conclusion, the report noted that child care staffing crisis has been known for decades and remains in need of urgent attention. The researchers contend that “services for young children, like those for elementary, secondary, and college students, must be seen as a public good, rather than a service underwritten primarily by families.” They offer several recommendations, including:

- Expanding the focus of educational reform and the resources dedicated to it to include preschool
- Convening bipartisan think tanks to generate proposals for sustained funding to deliver high-quality early care and education
- Sponsoring national legislation to complement state and local investments to improve compensation linked to the educational attainment of those working with young children
- Encouraging those working with young children to organize for increased pay and improved benefits as well as greater access to education and training.

*The full report is available for \$15.00 from the Center for the Child Care Workforce, 733 15th St., NW, Suite 1037, Washington, DC 20011, (800) UR-WORTHY or (202) 737-7700, fax (202) 737-0370.*

## ***CCLC WELCOMES NEW PROGRAM ADMINISTRATOR, JONAS PARKER***

The Child Care Law Center is pleased to announce that Jonas Parker has joined us as our new Program Administrator. A recent honors graduate from Brown University, Jonas comes to CCLC after successfully co-founding Bike For Youth Votes, a not-for-profit bicycle ride that toured the entire U.S. West Coast this past fall, stopping along the way to re-engage Generation X’ers in the political process. Born, raised, and educated on the East Coast, Jonas moved to San Francisco this past March and began working at CCLC in May.

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## ***U.C. EXPANDS CAMPUS CHILD CARE***

The president of the University of California has offered each of the system’s 10 campuses more than \$1 million to help build child care facilities. The Office of the President will contribute \$1.25 million to each campus that agrees to spend \$2 million; \$1 million for those that spend \$1.5 million, and \$750,000 for those spending \$1 million.

Currently the campuses provide child care for about 2,000 children of faculty and students. Each campus has a waiting list for, and a recent study concluded that demand for on-campus child care slots is more than double the number available.

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## ***COPY EMPIRE TO FUND CHILD CARE***

The founder of the 1,100-store Kinko’s chain of photocopy stores is giving \$8.5 million to the City College of San Francisco (CCSF) to expand its child care programs and provide more training for child care workers. The gift will enable more single parents to attend the school. Paul Orfalea, Kinko’s founder, has given grants to other community colleges in California to help them provide child care, but the donation to City College is the biggest yet.

The money will consist of annual \$350,000 gifts over 10 years, followed by \$5 million in the 10th year. Currently about 300 four- and five-year-olds are in child care at CCSF and there is a waiting list of several hundred. The new money will enable the college to expand its program to provide care for infants as young as six months, to provide care for slightly ill children, and to offer more opportunities for students to train in providing child care.

## THANK YOU!

The Child Care Law Center extends special thanks to major supporters of our work:

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## LEGAL UPDATE

June 2001

LEGAL UPDATE is published quarterly for Legal Services Offices, R & R's, child care programs, and friends and supporters of the Child Care Law Center. CCLC is a national nonprofit legal services organization that uses legal tools to make high quality, affordable child care available to every child of every age, every family and every community.

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