

Legal Update



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CHILD CARE LAW CENTER
973 MARKET STREET
SUITE 550
San Francisco, CA 94103
415-495-5498
415-495-6734 (fax)
www.childcarelaw.org

CHILD CARE ISSUES IN THE WELFARE REAUTHORIZATION DEBATE

By DORA LOPEZ

The unwieldy term “reauthorization” will become prominent as Congress decides during the next year what the extension of welfare reform will look like. The federal legislation passed in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), created the Temporary Assistance for Needy Families (TANF) block grant as well as the Child Care Development Block Grant (CCDBG – sometimes called the Child Care and Development Fund or CCDF). TANF was authorized only for five years, however, through September 30, 2002. Thus, for the program to

continue, before that date Congress must pass, and the President must sign, legislation reauthorizing it. CCDBG and the food stamp program face the same time frame for reauthorization. (This article will focus on the child care issues connected to TANF reauthorization. A future issue of *Legal Update* will more directly discuss CCDGB reauthorization.)

It may well be that the final result will be extension of TANF with no changes. However, even if that is the case it is likely that considerable discussion will occur about the direction reauthorization should take. Advocates will be pressing for changes that will make TANF less harsh for low-income families. The reauthorization debate will offer opportunities to educate the public and policy makers as to the real effects of welfare reform and changes that could lead to improved conditions for low-income families.

How Does TANF Funding Work?

Before 1996, the cash assistance program for low-income families with children was Aid to Families with Dependent Children (AFDC), and the federal government paid states half or more of all program costs. AFDC was an “entitlement” program, which meant that anyone who applied and was found eligible received assistance, and as the caseload grew or shrank, so did the federal funds received for the program by the state.

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TANF, in contrast, is a “block grant” – the states receive a certain amount of money each year from 1997 to 2002 that they may use for an array of related purposes. If they use the funds to provide “assistance,”¹ recipients are subject to work and participation requirements, a five-year time limit on federal assistance, data reporting, and certain prohibitions. These restrictions do not generally apply, however, to other services and benefits that are not “assistance.” States have broad discretion to provide a wide range of benefits and services and to set different eligibility standards for the different types of benefits.

In return for receiving TANF block grants, each state must adhere to a maintenance-of-effort (MOE) requirement. This means that state must continue to spend 75% or 80% of its 1994 AFDC-related expenditures on serving TANF eligible families.²

Benefits and Services Available under TANF

States decide what services or benefits to provide with TANF funds, within the framework of four broad goals articulated by the federal statute:³

- 1) To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives (this is the cash grant component);
- 2) To end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- 3) To prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the

incidence of these pregnancies; and
4) To encourage the formation and maintenance of two-parent families.

Thus, for example, TANF funds could be used for a tutoring program for teenagers, on the theory that such a program would keep teenagers focused on school and thus reduce dropout and teen pregnancy rates. Certain rules must be applied, however, regarding the use of TANF funds for child care.⁴

Both federal and state funds provide significant resources and allow states to develop innovative ideas to help families find or retain employment and move out of poverty. These services may include child care. States can also re-direct funds to child care by transferring up to 30% of TANF funds for a fiscal year to the Child Care Development Fund (CCDF) or up to 20% to CCDF and up to 10% to the Social Services Block Grant (SSBG).⁵ Once they undertake such a transfer, the funds must be used in accordance with the rules of the receiving program.

TANF’s Effect on Child Care

Before the 1996 welfare law, there were multiple federal child care funding streams, including three linked to AFDC families who worked or were engaged in education/training programs. Transitional Child Care (TCC) was available to AFDC recipients who had left cash aid for work; At-Risk Child Care was for families at-risk of relying on AFDC if they did not receive help with child care costs; and the Child Care and Development Block Grant (CCDBG) provided federal funds to states to serve low-income families in work or education/training programs. With the PRWORA, Congress consolidated

most federal child care funding into a single Child Care and Development Block Grant (also known as the Child Care and Development Fund, or CCDF). CCDF provides basic funding levels to all states to help them subsidize the child care expenses of low-income families, who are then able to work or attend education or training programs.

In addition to providing child care subsidies to families, TANF also allowed states to engage in several new child care initiatives. They can transfer money directly into the child care system by transferring federal TANF funds to CCDF or spend TANF and/or MOE funds directly on child care. States must spend at least 4% of their CCDF funds on child care quality improvement, through measures such as funding professional development activities, increasing payment rates to allow for better compensation of child care workers, and establishing or enhancing incentives for providers who attain accreditation. Congress may also earmark certain amounts for particular purposes in each appropriation year, as it did for fiscal year 2001 by including a \$100 million set-aside to increase child care available for infants and toddlers.⁶

The opportunities to redirect TANF funds into child care became more apparent as states accumulated surpluses of unspent TANF funds. Money saved from the decline in the nation’s caseload and drop in cash assistance spending⁷ could be spent on other non-cash assistance benefits, including child care. By mid-1999, an estimated \$7.3 billion in TANF funds remained unspent. Fearing that Congress would respond by reducing TANF funding levels, certain states

decided to redirect some of their unspent TANF funds to the expansion of child care.

One result of the changes brought by welfare reform is that TANF has played a key role in child care funding. Federal and state spending under CCDF totaled \$4.2 billion for 1997, a 35% increase over 1996.⁸ The Center for Law and Social Policy estimates that states transferred \$652 million of TANF funds to CCDF in fiscal year 1998, \$2.4 billion in fiscal year 1999, and \$2 billion in fiscal year 2000. Direct TANF spending on child care has also grown, from \$604 million in fiscal year 1999 to \$1.5 billion in fiscal year 2000.⁹

Availability of Child Care for TANF Families

Under TANF, unlike AFDC, child care is not guaranteed to cash assistance recipients who need the assistance in order to work or enter education/training, or to families in their first year of leaving cash assistance due to employment or earnings, although states have the option of making such a guarantee. According to recent research, 35 states continue to guarantee child care to families receiving cash assistance; 31 states continue to provide transitional child care; and 17 give families leaving TANF due to employment priority over other low income families. Some states have streamlined their child care systems so that all families meeting certain income eligibility standards receive child care benefits, regardless of TANF status.¹⁰

Although TANF emphasizes work above all else, in recognition of the importance of child care to participation in the labor market, the

statute does provide that lack of child care is good cause for failure to work or participate in work activities. It does this by prohibiting states from reducing or terminating assistance to single parents of children under age six who are unable to obtain needed child care. Acceptable reasons include:

- Appropriate child care within a reasonable distance from the home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.¹¹

TANF agencies must inform families about this good cause child care exception, the state's procedures for assessing a family's inability to obtain child care and any other procedures (e.g., state fair hearings) associated with this provision, and the fact that the exception does not stop the clock on the family's 60-month federal cash assistance time limit.¹² A state can be penalized up to 5% of its TANF grant if it violates this requirement.¹³

Federal law allows states to make CCDF child care subsidies available to families with incomes up to 85% of the state's median income (SMI), up from an earlier cutoff level of 75%. Few states have taken advantage of the new ceiling, however. As of June, 1999 only six states had set their initial income eligibility limits for family of three at 85% of SMI, while 26 had set their limits between 40% and 59% of SMI.¹⁴

Family copayments also vary from state to state, although CCDF recommends that copayments not exceed 10% of gross income. A

Children's Defense Fund analysis of copayments required by states from a hypothetical family of three earning \$13,880 found that two states required no copayment, 31 required 10% of income or less, nine required between 11% and 29% of income, and in nine the family was ineligible for assistance.¹⁵

Potential Reauthorization Issues

While the Child Care Law Center focuses primarily on implementation of TANF and the CCDBG on the state level, we work closely with the organizations advocating for low income children and families at the national level. Child care issues that probably will arise in the TANF reauthorization debate include:

- Whether CCDF funding levels are adequate and how to allocate more resources for child care.
- The unmet need remains significant.
- Pressing needs for quality care for certain populations of children, including infants, toddlers, and children with disabilities.
- The need for care during the non-traditional hours that many in the low-wage labor force must work.
- The need to increase the availability of quality child care in low-income areas.
- The need for reimbursement rates that will enable states to compensate the child care workforce at levels sufficient to attract and retain qualified providers.
- The potential to expand the good cause exception from work requirements when child care is unavailable and stop the clock on lifetime cash aid benefits when child care is unavailable.

- Time limits for families of children with disabilities, for whom appropriate child care is the most difficult to obtain.
- The relationships among TANF, CCDF, and other federal and state initiatives.
- Reauthorization also brings up related state and local issues including:

- Encouraging states to cover more eligible children, and expanding use of the 85% eligibility standard.
- Emphasizing the importance of high quality child care over a focus on slots to warehouse children while their parents work.
- Ensuring that eligible families are aware of the availability of child care benefits.
- Ensuring that TANF families are made aware of the protection against sanction when child care is unavailable and that states take seriously the threat of penalties for violating this protection.
- The need to increase compensation to retain qualified child care providers.
- Developing communication with K-12 schools to ensure that child care funded under the CCDF will enhance children's school readiness.
- The relationship between CCDF and other state and local initiatives affecting low-income children.
- Moving toward making child care an entitlement for low-income children.

What Voices Will Be Heard on Reauthorization?

The position of the new administration on many of these issues is an open question, although with former Wisconsin Governor Tommy Thompson as Secretary of Health and Human Services, some predictions can be made about the director of welfare reform (see companion article). A Congress that is nearly evenly split between Democrats and Republicans further complicates the picture. Several groups, including the following, are tracking or working on TANF reauthorization issues, and current information can be obtained from their web sites:

Bob Coalition (Building Opportunities Beyond Welfare Reform); www.nowldef.org
 Center on Law and Social Policy; www.clasp.org
 GROWL (Grassroots Organizing for Welfare Leadership), www.ctwo.org/growl
 National Campaign for Jobs and Income Support; www.nationalcampaign.org
 Welfare Made a Difference Campaign; www.wmadcampaign.org
 Welfare Law Center Linc Project; www.lincproject.org/tanf
 Welfare Reform Network; www.lincproject.org/tanf/oppty.htm
 Western Regional Welfare Activist Network; www.wrwan.org

The best sources of information regarding CCDBG Reauthorization and updates on national child care issues are:

Children's Defense Fund; www.childrensdefense.org
 Center for Law and Social Policy; www.clasp.org

Dora Lopez is a Child Care Law Center board member and a staff attorney at San Fernando Valley Neighborhood Legal Services. She wishes to give special thanks to the Center for Law and Social Policy and the Children's Defense Fund, whose work formed much of the basis for this article.

¹ Assistance is defined as cash or non-cash benefits designed to meet a family's ongoing basic needs and includes supportive services such as transportation and child care. See Mark Greenberg and Steve Savner, *The Final TANF Regulations: A Preliminary Analysis* (Center on Law and Social Policy, May 1999), at 3.

² See Mark Greenberg, *The TANF Maintenance of Effort Requirement* (Center on Law and Social Policy, June 1999).

³ Or, in the case of the Federal TANF funds, to continue services and benefits authorized under its former title IV-A or IV-F State plans (which covered Aid to Families with Dependent Children (AFDC), Emergency Assistance (EA), Job Opportunities and Basic Skills Training (JOBS), and Supportive Services).

⁴ See the Center for Law and Social Policy website for forthcoming descriptions of the rules for using TANF funds for child care services. <http://www.clasp.org>

⁵ The 10% limit to SSBG was scheduled to decrease to 4.25% beginning in fiscal year 2001, but Congress included appropriation language in the budget that halted any such change at least for that fiscal year. See www.acf.dhhs.gov/programs.

⁶ See Mark Greenberg, et al., *Welfare Reauthorization: An Early Guide to the Issues* (Center for Law and Social Policy, July 2000), at 18, www.clasp.org/pubs/TANF/packa.htm (hereafter *Welfare Reauthorization*).

⁷ The cash assistance caseload had fallen approximately by slightly less than half since welfare

***WHAT SHOULD WE EXPECT
FROM NEW HHS SEC.
TOMMY THOMPSON?***

Former Wisconsin Governor Tommy Thompson was confirmed by the Senate as the new Secretary of the Department of Health and Human Services (HHS) at the end of January. Regarded by many as far less controversial than the new Attorney General, John Ashcroft, Thompson's nomination sailed through with little debate.

Thompson achieved national renown as the architect of W-2, or Wisconsin Works, an approach to "welfare reform" that was the model for the 1996 federal welfare legislation. That law repealed Aid to Families with Dependent Children (AFDC) and established the Temporary Assistance to Needy Families (TANF) block grant to states as well as the Child Care Development Block Grant (CCDBG), also known as the Child Care Development Fund (CCDF).

Congress will be debating welfare reauthorization this year, and TANF and CCDF will presumably be extended in some form (see companion article). HHS, as the agency that administers TANF funds, will have a

major voice in Welfare Reform, Round 2. If Congress enacts changes to the legislation, HHS will be charged with writing regulations to implement those changes. Thompson, as HHS Secretary, will determine the agency's position on these matters.

During the confirmation process, the National Campaign for Jobs and Income Support examined the impact of W-2 on Wisconsin's low-income families in an effort to determine what might lie ahead with Tommy Thompson at the helm of HHS. What they found was devastating. Some of the highlights follow.

On child care specifically, the record is mixed. Wisconsin significantly increased funding for child care in recent years but did an even poorer job than surrounding states of seeing that eligible families actually received child care benefits. In 1998, according to the Wisconsin Legislative Audit Bureau, approximately 14% of eligible families participated in the program, compared with 24% and 27% in Michigan and Ohio. The eligibility cutoff as a percentage of state median income is low compared with other states. Co-payments are high and are required from the

poorest families. Families who have license-exempt care, however, are charged lower co-payments, a policy that steers them away from higher-quality care.

With regard to treatment of families in need of cash assistance, the record is appalling. Welfare rolls have declined by over 90%. The Institute for Research on Poverty at the University of Wisconsin published a study entitled *Before and After TANF: The Economic Well-Being of Women Leaving Welfare*. The study found that, while many of the families leaving welfare have earned income, nearly 60% are worse off because the decline in benefits outweighs their increase in income. Only one-third are better off, while the remainder are in approximately the same economic position. In fact, Wisconsin is one of only 18 states in which the poorest 20% of families actually lost income between the late 1970's and the late 1990's. All the higher income groups in the state saw their incomes increase.

The welfare reform era in Wisconsin has actually seen a dramatic increase in *extreme* poverty, defined as an income level *less than half* of the poverty line. Food stamp data provide some evidence of this trend. In 1989, about 10% of food stamp recipients with children in Wisconsin were living in extreme poverty; by 1997 the proportion had increased to 32%. Nearly the entire increase was among families who received cash assistance. Nationally, the percentage of food stamp recipients with children who lived in extreme poverty did not change during this period.

A particularly devastating indictment is that infant (under 12 months) mortality in communities of

reform was enacted. Caseload data is available at www.acdf.dhhs.gov/news/tables.htm. Information is scanty on the fate of families who have left the rolls.

⁸ HHS fact sheet, State Spending under the Child Care Block Grant, November 12, 1998, www.acf.dhhs.gov/new/press/1998/c97fund.htm.

⁹ Calculations by Center for Law and Social Policy from U.S. Department of Health and Human Services, Administration for Children and Families, *TANF Program Federal Awards, Transfers, and Expenditures through 4th Qtr. FY98; TANF Program Federal Awards, Transfers, and Expenditures 4th Qtr. FY99*, www.acf.dhhs.gov/programs/ofs/data.

¹⁰ See *Welfare Reauthorization* at 17, citing Parizek, E., Falk, G. and Spar, K., *Child Care: State Programs Under the Child Care and Development Fund*, CRS-98-875EPW, 1998, 8.

¹¹ For a more complete analysis see Greenberg, M. and Savner, S., *The Final TANF Regulations: A Preliminary Analysis*, May 1999, 39-45, www.clasp.org/pubs/TANF/finalregs.html.

¹² 45 C.F.R. §261.56(c).

¹³ 45 C.F.R. §261.57(b).

¹⁴ See *Welfare Reauthorization* at 17, citing Blank, H., and Oxendine Poersch, N., *State Developments in Early Child Care and Education in 1999*, 20-21.

¹⁵ See *id.* at 26-27.

color has skyrocketed at the same time that white infant mortality has declined. In the years 1989-91, Wisconsin had a slightly lower death rate among black infants than did the U.S. as a whole. Seven years later (1996-98), however, when welfare reform was in place, the state was doing significantly worse, with 16.6 black infant deaths per thousand compared to 13.9 in the U.S. as a whole. This "death gap" for Latino infants was even greater: 10.3 deaths per thousand in the state compared to 5.9 in the U.S. as a whole. In fact, during the period 1996-98, Wisconsin had the highest Latino infant mortality rate of any state.

The discrepancy in the neonatal (under 28 days) mortality rate is even more extreme. In 1989-91 Wisconsin had the seventh lowest rate of black neonatal mortality in the 33 states that had more than 50 cases. By 1996-98 it was tied for fifth worst, one of only four states where black neonatal mortality increased. The Latino neonatal death rate in 1996-98 was the highest of any state (8.0 per thousand); no other state came close.

The philosophy of W-2 has been that people in need should be steered away from cash aid at all costs. A 90% caseload reduction in part reflects a strong economy but it also is a result of finding ways to deny benefits to vulnerable families. In Wisconsin, as demonstrated in the National Campaign for Jobs and Income Support analysis, welfare reform has meant worse economic conditions for the majority of people leaving assistance, dramatic growth in extreme poverty, and a startling climb in infant mortality in communities of

color. With Tommy Thompson as Secretary of HHS, advocates will need to be alert to prevent these trends from taking hold nationally.

The full text of the analysis of the record in Wisconsin, entitled "Credit Where Blame Is Due," is available at www.nationalcampaign.org.

CHILD WITH AUTISM RETURNS TO AFTER-SCHOOL PROGRAM, COURT ORDERS REASONABLE MODIFICATIONS

Eight-year-old Jordan has returned to his after-school child care program following an order from a federal district court judge in *Burriola v. Greater Toledo YMCA* (Case No. 3:00CV7593, N.Dist.Ohio). Jordan, who has autism, had been terminated from the program due to what the director said was inappropriate behavior. Judge James G. Carr of the Northern District of Ohio, Western Division, ruled in the boy's favor and granted a preliminary injunction ordering the program to reinstate Jordan. The judge also ordered the staff and counselors to undergo free training offered by Jordan's school in how to work with him successfully and directed the program to implement the reasonable modifications proposed by Jordan's mother.

The child care program in question is operated by the YMCA of Greater Toledo. Jordan began attending the program in January of 1999, usually in the afternoons after attending a charter school established to serve children with autism. He attended all day when there was no school or during summer break.

Jordan's autism caused him to have certain symptoms related to the disability, including repetitive activities; movements such as flapping his hands, pounding his chest, and pounding his head; and running into walls. Abrupt transitions and other causes of frustration tended to exacerbate Jordan's symptoms, causing him to cry, run in circles, or run to hide from noise. On occasion, when extremely frustrated, he would become violent and destructive and would hit or bite other children or counselors, throw things, or urinate on the floor.

Jordan's mother, Melissa, explained to the child care program director some simple measures that could minimize the likelihood that her son would exhibit these symptoms. Her recommendations included providing written activity schedules, offering explanations prior to transitions, and providing a quiet place to recover from frustration.

A staff member from Jordan's school also observed him at the child care program. She made suggestions to the YMCA staff and made free training available to the staff on how to work with Jordan and other children with autism. The training was not mandatory for the staff, but two counselors attended on their own. They learned simple techniques to help Jordan adjust to his after-school program.

Unfortunately, both left the program shortly after the training, but one of these counselors, Jerry Kelly, was able to begin to implement the suggested supports for a brief time before he left. This effort appeared to help Jordan adjust to the program, but

Kelly stated that the program director instructed staff not to implement the supports.

Following Kelly's departure, Jordan's inappropriate behavior increased. Two weeks later Jordan's mother received a letter dated September 6, 2000, informing her that Jordan was terminated from the program effective two days later.

Judge's Opinion

Judge Carr began by noting that there was no dispute that the defendant child care center was a place of public accommodation under the Americans with Disabilities Act, and that Jordan was an individual with a disability who was, therefore, protected under the Act. The defendants made three arguments as to why their expulsion of Jordan was permissible: 1) the modifications requested would fundamentally alter their child care program; 2) implementing them would amount to an undue burden, and 3) Jordan's presence threatened physical harm to the other children. The judge rejected all three arguments.

With regard to the first argument, the judge noted that the claim that fundamental program alteration would be required was based on the assertion that Jordan required one-on-one supervision. However, said the judge, this was simply not the case. The requested modifications involved preparation of a written daily schedule, which could be done quickly with minimal, inexpensive supplies, and watching Jordan's behavior for warning signs in order to redirect him before he lost self-control. Use of the schedule would minimize the individual attention Jordan required.

Similarly, the judge found little basis for defendants' second argument, that they were being asked to shoulder an undue burden. He pointed out that training in working with Jordan was being offered to the YMCA child care staff at no cost and that there was little if any cost involved in implementing the recommended supports.

Finally, Judge Carr rejected the program's contention that Jordan posed a threat. While the child had exhibited physically aggressive behavior, that was when none of the recommended supports were in place. Staff had testified that several children in the program frequently hit other children and yet none of them, the judge pointed out, had been terminated.

Jordan's Return to Child Care

Following the court order, Jordan's first day back in his after school program was Monday, January 22. His mother Melissa reports that he was very excited about going back to the Y when he woke up that morning, and that his return was a great success. She added that the program director, who had originally terminated him, "told me she was very impressed with how well he did." Melissa also says that "he keeps asking each morning if he gets to go after school. He's so afraid it's going to be taken away from him again."

Jordan was represented by Thomas J. Zraik, a private attorney in Sylvania, Ohio. Copies of the opinion are available from CCLC. For more information about the issues raised in the case, contact Chris Palamountain at CCLC.

EXCEPTIONS FOR POSTURAL SUPPORTS NO LONGER NECESSARY

In response to the advocacy of CCLC staff and clients Ilene Chazan and August Chazan-Gabbard, Community Care Licensing has stated that it no longer needs to grant exceptions in order for children with disabilities to use certain postural supports and adaptive equipment in child care. This has enabled August, who has cerebral palsy and requires numerous postural supports, to participate fully in child care.

Licensing's statement clarifies regulations which indicate that Licensing must approve in advance the use of postural supports and protective devices,¹ although no medical procedures are involved and such devices pose no clear threat to health and safety. Many children with various disabilities need this equipment to participate in child care, and have been discouraged from participating by the lengthy exception application process. CCLC commends Licensing for beginning removing this barrier to the full inclusion of children with disabilities in child care.

¹ Cal. Code Regs., Title 22, § 101223.1.

**CCLC, YOUTH LAW CENTER
SEEK CLOSER LINKS
BETWEEN CHILD CARE &
CHILD WELFARE**

By CYNTHIA GODSOE

On October 25, 2000, the Child Care Law Center and the Youth Law Center sponsored a one-day conference with the theme "Child Welfare and Child Care: Working Together to Provide Better Services for Children and Their Families." The assumption underlying the conference was that the child welfare system, which serves children who have been abused or neglected and children at risk of maltreatment, and the child care and development system, which serves all families and children including those affected by the child welfare system, face similar challenges. However, they are often on different tracks and those involved in the two systems do not work together consistently. The goals of the conference were both to increase collaboration between child welfare and child care professionals in California and to develop policy recommendations to improve services for children and families. Approximately fifty participants selected one of three working groups, focusing on "Funding and Resource Development," "Building on Complementary Strengths," and "Enhancing Quality and Choice." Each group developed a series of policy recommendations for California.

**Funding and Resource
Development recommendations:**

Use federal Title IV-E funds to pay for child care for foster children (this title of the Social Security Act

gives states federal funds for foster care and adoption assistance). Use of IV-E funds in this way would bring in additional resources to pay for child care. It would probably require a change in state law and amendments to California's Title IV-E plan.

Provide adequate child care services to avoid foster care placement. Current law gives a preference in obtaining child care assistance to children in need of protective services (those at risk of entering the child welfare system), but the preference is inconsistently implemented and access to child care is uneven. The "in need of protective services" designation may create additional problems for a family or impose a stigma.

Provide child care that meets the needs and circumstances of children in the care of relatives. Child care eligibility criteria should focus on child care and development programs as a service to the child, and should not be based on the financial circumstances of the relative caregiver or on a juvenile court order.

Provide child care and development services based on the needs of the child, not the cooperation of the parent. Sanctions against parents pursuant to welfare reform may penalize children for the actions of their parents. Child care can be a safety net to avoid foster placement for the children of parents who are not succeeding in welfare to work programs. Transitional child care should be fully used and child care and development services should be available to children in families

affected by welfare reform who need it, regardless of parental cooperation with work requirements.

**Enhancing Quality and Choice
recommendations:**

Increase the appropriate child care available for children from birth through age 18 who have disabilities and other special needs. The families of these children are under great stress and the children are particularly at risk for involvement in the child welfare system. At the same time, there is a severe shortage of appropriate child care. Increased funding and training are needed, which may require legislative change. Removal of licensing barriers will require amending licensing regulations.

Ensure that all parents have the information and support they need to make appropriate child care choices. Inter- and intra-agency change, including ongoing communication between resource and referral and child welfare workers, is vital.

Employ child care as a support for families of all kinds (biological, kin, foster, and adoptive) in the child welfare system. Strategies would include changing child welfare agency policy to require that a family's child care needs are considered in every plan, training and supporting child care providers in caring for children involved with the child welfare system, and, where appropriate, including child care providers in family conferencing and child welfare service plans.

Building on Complementary Strengths

Integrate child care into child welfare case plans, where appropriate, and include the child care or respite care provider as a member of the team serving the family. If child care is available the number of relatives and foster families able to care for children who have been removed from their families will increase. Child care can also help stabilize placements and minimize disruptions by supporting foster families or relatives.

Require cross-training of child care, child welfare, and licensing professionals.

Provide ongoing, individualized support to child care providers, with a focus on serving children with disabilities or other special needs. These children may experience multiple “failures” in both systems, and locating caregivers for them can be difficult. Such support for child care providers would increase the success and stability of both child care and foster care placements. Legislation could be proposed that would create a voluntary pilot project to coordinate child care and child welfare services.

Legislation is being drafted to expand child care for children in the foster care system in California using Title IV-E funds. CCLC and the Youth Law Center will continue to advocate for cross-system training on these issues. In addition, the Child Welfare League of America will

shortly be issuing a report examining similar issues at a national level and will feature these issues at their upcoming national conference (for more information, see www.cwla.org/conferences). Watch *Legal Update* for coverage of future developments in the intersection of child care and child welfare.

NY AGREES TO DUE PROCESS FOR RECIPIENTS OF CHILD CARE VOUCHERS

The New York City Administration for Children’s Services has agreed to provide notice to recipients of child care services before discontinuing such services and to give applicants and recipients of the services information about eligibility and other requirements. The agreement, entered into by the city agency as part of the settlement of a lawsuit, in effect gives recipients of child care services the same due process rights as recipients of cash assistance.

Petitioner Liza Damavandi, the mother of three, received voucher child care services for her two older children, Moshe, age seven, and Yael, age 5. The children transferred child care programs during their summer break from school in 1998. At the end of July that year, Ms. Damavandi, following agency policy, telephoned the city’s Agency for Child Development (ACD) and requested a voucher transfer so the children could return to their school year child care programs. Although it did not provide any notice finding either child ineligible or stating that services would be discontinued, the city issued a voucher for Yael but not for Moshe.

When Ms. Damavandi recertified for child care services in September, both children were found eligible. Nonetheless, the agency still failed to issue a voucher for Moshe. Eventually he had to leave his after school child care program because his mother could not afford to pay the fee.

Ms. Damavandi requested a fair hearing to contest the discontinuation of services without notice; the hearing was held in two parts in late 1998 and early 1999. The city’s representative at the hearing testified that Moshe’s child care services were discontinued on September 1, although she had no explanation to offer and stated that the action may have been a mistake. She also said that it was ACD’s policy not to send notices of discontinuation or ineligibility in such circumstances.

The Administrative Law Judge who presided over the hearing found that ACD had redetermined both children to be eligible for services in September of 1998 and that a voucher had been issued only for one. Nonetheless, she found that “there has been no denial or discontinuance of services” and that, therefore, “there is no issue to be decided.”

Ms. Damavandi then filed a petition in New York state court. She asked the judge to issue an order declaring that the policy of discontinuing child care services without timely and adequate notice, and the policy of failing to inform recipients of voucher child care services about eligibility and other requirements, violates the law.

No order was issued because the case was settled. In addition to agreeing to abide by the requirements

of due process, the Administration for Children's Services will issue a memorandum and train the relevant staff regarding notice requirements.

The case is *Damavandi v. Wing*, Index No. 402371/99 (Sup. Ct. N.Y. Co). The petitioner was represented by Joyce Heller of South Brooklyn Legal Services; pleadings, briefs, and the Stipulation of Settlement are available from the National Center on Poverty Law in Chicago (Clearinghouse No. 53,425).

FOUR MILLION ARE HOME ALONE

A recent report from the Urban Institute estimates that 4 million 6- to 12-year-olds with employed mothers—roughly 21 percent of these children—are regularly without adult supervision when not at school. The report finds a greater incidence of self-care among 10- to 12-year-olds, particularly those in higher-income families, in families with mothers who work traditional hours, and in families who are white.

The report, entitled *Child Care Patterns for School-Age Children with Employed Mothers*, looks at a variety of child care arrangements, including the time children regularly spend caring for themselves or staying with a sibling younger than 13 during the school year, which it defines as self-care. Other arrangements studied include care in a before- or after-school program, by a

STUDY LINKS QUALITY CHILD CARE, SCHOOL READINESS

A federally-funded University of Wisconsin study, "Child Care Quality: Does It Matter and Does It Need To Be Improved", found that children in high quality care are better able to get along with their peers, have better language skills, and are more successful in school than children in poor quality child care. The study is an important step in informing the debate about whether quality care matters to a child's future achievement.

Studies linking quality and outcomes face many methodological barriers, but the authors gauged quality through a series of complex measures, including caregiver characteristics and child care type and by controlling for family characteristics. The report also describes the child care system as a "market failure", makes the case for increased government intervention as a way to reduce future costs, and makes specific suggestions for improving the quality of care in America.

The full report is available at <http://aspe.hhs.gov/hsp/ccquality00/ccqual.htm>

non-relative outside of the child's home, by a nanny or babysitter, by a relative, or by a parent.

The amount of time that school-age children with employed mothers spend in self-care varies significantly. While children in self-care spend an average of five hours unsupervised each week, 15 percent spend more than 10 hours in self-care each week. As children get older, they are more likely to care for themselves when not at school. While 10 percent (nearly 1.2 million children) of 6- to 9-year-olds regularly spend time in self-care when not in school, this rises to 35 percent (nearly 2.9 million children) for 10- to 12-year-olds and 44 percent (nearly 1.2 million children) for 12-year-olds.

In the report, child care arrangements are examined along a variety of family characteristics, including income, race and ethnicity, parental work schedules, and parental availability (full- or part-time work status

of single- or two-parent families). The research is based on the 1997 National Survey of America's Families, a 44,000-household survey that oversamples the low-income population. The report is also the first to shed light on the out-of-school child care arrangements in 12 states (Alabama, California, Florida, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, Texas, Wisconsin, and Washington).

Key Findings

- **Income:** Family income makes little difference in the use of self-care for 6- to 9-year-old children, but self-care is more often used by 10- to 12-year-olds in higher-income (more than twice the federal poverty level) families.
- **Race and Ethnicity:** White 10- to 12-year-olds are nearly twice as likely as their black and Latino peers to

spend time regularly in self-care. There are few differences among racial and ethnic groups in the use of self-care for younger children.

- Parental Work Schedules: Ten- to 12-year-old children whose parents work traditional hours are more likely to be in self-care than those who work nontraditional hours.
- State Variation: Use of self-care varies significantly by state. The share of younger children with employed mothers in self-care varies from 17 percent in Minnesota to 5 percent in Michigan and 6 percent in Alabama, California, and Mississippi. A similar amount of state variation in self-care exists for 10- to 12-year-olds with employed mothers: in Minnesota, 56 percent are regularly in self-care each week, compared with 22 percent in Mississippi and 23 percent in Alabama and New Jersey.

The full report is available on the Urban Institute website: www.urban.org.

CCLC WELCOMES NEW STAFF ATTORNEY

CCLC is happy to report that a new staff attorney has joined us! Eve Hershcopf staff attorney with the Child Care Law Center. Eve comes to CCLC from the Welfare Policy Research Project (WPRP) at the University of California Office of the President. Her work there focused on cataloging and funding welfare-related research in California and providing California policymakers with relevant research on CalWORKs and other welfare policies. Before that Eve was a program developer in the Office of Legal Services at the State Bar of California. There she managed a variety of projects on issues affecting legal services for low-income Californians, and provided technical assistance and program evaluation to legal services and volunteer attorney programs statewide.

Eve began her legal career with Southern Minnesota Regional Legal Services, where she represented clients on welfare, employment, immigration and housing issues. She later became the supervising family law attorney, and continued representation of individual clients while also engaging in legislative and community advocacy and producing a manual on welfare law issues in dissolution cases. A continuing interest in social policy led Eve to return to graduate school where she obtained her M.A. in Sociology at the University of California, Davis.

Eve says that before she joined the CCLC staff, “child care issues were relevant to my clients’ lives but peripheral to my legal advocacy. But as a working mother and on-going consumer of child care services for my 3 and 6 year old daughters, I have a personal understanding of how important these issues are.”

At CCLC, Eve will primarily be working on the intersection of child care and welfare reform issues through the Center’s National TANF Project.

FAMILIES WITH TWO EMPLOYED PARENTS NOW THE MAJORITY

Even among the most traditional families – married heterosexual couples with children – in the majority of cases both parents are employed outside the home, according to a recent Census Bureau report. The report, based on data from 1998, found that both spouses were employed at least part time in 51% of such families, compared with 33% in 1976. Among women with infants less than 12 months old, single as well as married, 59% were employed at least part time. Of those with children older than one year, nearly three-quarters worked at least part time and more than half worked full time.

Census Bureau researchers said there is no sign the trend has peaked. Not surprisingly, families with two employed parents had higher incomes: 55% had earnings of over \$50,000, compared with 40% of households in which only the husband worked. Education was also an important factor: among women with college degrees, 68% of those with infants were employed, compared to 38% of those without high school diplomas.

And the demand for child care continues to climb....

THANK YOU!

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