

# Welfare News



## Welfare Law Center and Allies Win Greater Access to Education and Training for New York City Welfare Recipients

### Introduction

Numerous studies of welfare reform implementation have revealed that all too many families suffer multiple barriers to securing employment that will enable them to secure financial independence. For example, a recent Urban Institute study documents that only 14% of recipients with two or more barriers were employed. The lack of necessary education and training constitutes a significant barrier to a welfare recipient's ability to acquire and maintain employment.

In New York City, despite drastic reductions in the welfare rolls caused by policies and practices of active and often unlawful deterrence implemented under the leadership of former Mayor Giuliani, more than 180,000 adult heads of households remain on public assistance. One of the most common barriers faced by New York City TANF recipients is the lack of education and training necessary to secure

employment. TANF recipients are less likely than other New Yorkers to have a high school diploma or GED (72.3% for all City residents but only 50% for adult welfare recipients). New York City TANF recipients are also less likely than the national average to have a high school diploma.

It is particularly troubling that the New York City welfare agency's record of engaging adults in education and training remains dismal: Of the almost 180,000 adults on the public assistance rolls in June 2003, only a relatively modest percent were engaged in work activities and far fewer were in an education or training program full-time. Yet, there is ample evidence that completion of education or well-targeted vocational training will help recipients to secure employment and achieve higher earnings, thereby contributing greatly to overall family economic well-being.

This article reports on a coordinated campaign by advocates, low-income organizers, education and training providers,

and other allies to increase education and training opportunities for New York City recipients in the TANF program and state-funded Safety Net Assistance (SNA) (the cash assistance program for single adults and families not eligible for TANF). The Welfare Law Center, long committed to maximizing opportunities for low-income families to secure employment, recognized after the 1996 enactment of the federal welfare law that New York City would be a laboratory for a "work-first" approach that focused on workfare (that is, work in exchange for the grant) to the exclusion of all other work activities. Accordingly, the Center actively participated in this campaign to preserve and expand education and training as a means of assisting TANF families and SNA recipients to secure employment. In 2003, we saw the successful conclusion two major efforts - the settlement of a major class action and the passage of landmark legislation by the New York City Council.

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## Save the Date for Senator Edward M. Kennedy!

Senator Kennedy will be the guest of honor at the Welfare Law Center's Benefit Dinner in New York City on March 1, 2004. Please let us know if you would like an invitation.

While work remains to be done, New York City welfare recipients now have greater ability to participate in training and a range of education programs - from basic education to post-secondary education. On the federal level, current TANF reauthorization proposals under consideration in Congress fall short of providing states the flexibility they need to implement effective programs to address recipients' barriers to employment. The House-passed reauthorization bill would severely restrict state flexibility; the Senate Finance bill, while giving some limited flexibility to the states, does not provide the flexibility that states need.

### **Davila v. Turner**

#### **Background on the litigation.**

Plaintiffs, represented by the Welfare Law Center, the New York City Legal Aid Society, the New York City Urban Justice Center, and the private law firm of Davis, Polk & Wardwell reached a settlement with New York City and New York State in June 2003 in the long-standing class action, *Davila v. Turner*, that challenged the City's refusal to comply with state laws enacted to implement the TANF block grant. Those state laws required the local social services districts to honor the preferences of recipients who wish to participate in education or training and to evaluate recipients to determine whether education or training would be the most appropriate assignment.

In December 1996, when *Davila* was filed in state court, New York City's policy was to assign *all* TANF recipients to workfare unless the recipient had been employed within the three months prior to assignment. The City was pulling thousands of recipients out of education and training and denying thousands of others the right to attend any such program. Moreover, the City was not conducting assessments that would enable it to tailor work assignments to the specific and unique needs of individual recipients.

While we were able to obtain three separate preliminary injunctions enjoining the most egregious behavior, the City continued to resist broad policy changes and often failed to implement Court orders absent threats of contempt or other enforcement action. Consequently, this settlement represents a sea change in the City's position and greatly expands rights to education and training beyond what the Court might have ordered or what might have been sustained on appeal.

**The settlement protects a TANF recipient's ability to participate in education and training.** The settlement sets forth a number of key protections designed to ensure that a TANF participant's needs are accurately identified and that work activities are tailored to meet those needs. For example, a caseworker must conduct an assessment interview before assigning a parent to a work activity. During the assessment interview, the caseworker must obtain information about the parent's education and employment background, the need for supportive services, and the recipient's preferences. The settlement imposes a further duty on the caseworker to discuss with the parent whether vocational education or training makes sense for that parent.

If a TANF recipient has a preference for education, vocational education, or training (rather than workfare, for example) as her work activity, under the settlement, the case worker must record her preference and honor it, if possible, when assigning her to a work activity. The worker must also complete an Employability Plan, which must identify the parent's work assignment and the basis for that assignment. The welfare agency must provide a reason in the Plan in writing if it cannot honor the parent's preference for vocational education or training.

Single parents can participate in vocational education and training programs and use that participation to satisfy part or all of their weekly work requirement. For example, parents can attend approved vocational education programs and can count up to 15 hours a week spent in those programs toward the weekly work

requirement for as many months as they need. Moreover, they can count time spent in class, lab, or tutoring as part of the 15 hours. If a parent's class schedule requires her to be in school more than 15 hours a week, she can count all of her school hours for up to a life-time limit of 12 months. For example, if a student is in class 21 hours a week, she can count all 21 hours as her work requirement for up to 12 months.

In addition, a parent can extend the 12 month limitation on counting more than 15 hours a week in special circumstances, including: (1) if she had a housing crisis, illness, domestic violence or other emergency during the 12 month period; (2) her curriculum requires her to take remedial courses and she has maintained a 2.0 average; (3) her curriculum requires her to take more than 60 credit hours to graduate and she has maintained a 2.0 average; or (4) she left public assistance for at least 3 months or maintained employment for at least 3 months, and seeks to enroll in education and training as her work activity.

The protections secured in the settlement extend to education necessary to enable a TANF recipient to obtain basic literacy skills or acquire English as a Second Language. Under the agreement, single parents can participate in adult basic education and satisfy part or all of their weekly work requirement. Moreover, a parent can count 15 hours of class time spent in adult basic education toward her weekly work requirement for as long as she needs.

**The settlement provides for supportive services, due process, and monitoring.** Of course, the right to participate in education and training is often rendered meaningless without access to supportive services, such as child care and transportation allowances. Under the settlement, TANF recipients can get all training related expenses, such as car fare and child care for any child up to the age of 13 during the time spent in an approved school program, including hours spent in class, lab, tutoring, internships, or work-study. However, a parent cannot get child care during the period in which she is

sanctioned or for time spent in a program that is not approved.

The settlement provides basic due process protections. Any written notice sent to single parents on welfare that instructs them to come in for an assessment or assignment must also include information explaining the option to go to school as their work activity. Parents must also receive written notice or a letter any time the City approves, denies, or discontinues education or training. Similarly, parents must receive notification any time the City approves, denies, or discontinues supportive services, such as child care or car fare. These notices trigger the right to a fair hearing. The settlement includes opportunities for TANF recipients to address unfairness in the assessment and assignment process. For example, the parent has a right to challenge the Plan and work assignments reflected in the plan at a fair hearing if she does not believe the activities assigned reflect her needs and/or preferences.

The settlement also provides for very stringent monitoring requirements that will enable the Welfare Law Center and its partners to monitor the City's performance under the agreement. The monitoring data, along with contacts with the client community, low-income grassroots organizers, and service providers, will all help to ensure that parents receive the benefit of the policy changes represented by the settlement.

### **Coalition for Access to Training and Education Wins New York City Legislation**

The Center also worked with the Coalition for Access to Training and Education (CATE), a coalition of grass-roots organizers, including Community Voices Heard, FUREE, the Welfare Rights Initiative, and ACORN, and other advocates, to secure New York City legislation to expand education and training opportunities for welfare recipients beyond those provided in state law and secured through the *Davila* settlement. Specifically, the coalition's effort focused on the goal of expanding access to education and training to those not covered by the *Davila* settlement - including two-parent TANF households and SNA households without minor children.

In this era of devolution, New York State law provides the local districts the

option to select from various work activities to fulfill state participation rate requirements. State law largely mirrors the TANF block grant work requirements for TANF recipients in this respect and imposes parallel requirements for SNA recipients. However, the New York City administration failed to avail itself of all options to remove public assistance recipients' barriers to obtain and maintaining work.

The Coalition for Access to Training and Education (CATE) fought hard in support of a bill, Local Law 23, which allows hours worked in education and training programs to count towards fulfillment of work requirements for welfare recipients, consistent with federal and state participation rate requirements. The Coalition members pressed their case directly to City Council members and staff, provided empirical information coupled with real-life examples of why education and training makes a difference, and brought out large numbers of low-income individuals and their supporters to demonstrate the need for this important legislation.

In March 2003, the City Council passed Local Law 23 by a vote of 42 to 3. The bill was vetoed by the Mayor, and the Council overrode the veto. We are now part of a coalition of legal advocates working to enforce the legislation and turn the opportunities for education and training into a reality.

The greater opportunity to participate in education and training provided by Local Law 23 centers around strengthening the assessment process and allowing more education and work activities to count towards fulfilling the recipient work activity obligations. Under Local Law 23, the City must conduct an assessment and develop a written employability plan for any TANF or SNA recipient who has been accepted for public assistance (within 45 days after acceptance); been in an activity for at least 6 months; or was in an activity that has ended and the City wishes to make a new assignment. The recipient cannot be given any work-related assignments until the assessment has been done.

In contrast, State law has far more stringent assessment requirements for TANF recipients than for SNA recipients and does not tie an assessment requirement to each new assignment. However, repeated assessments will enable the social services agency to know the effectiveness of the prior assignment and

to tailor the next assignment to meet identified need.

Local Law 23 defines when a recipient may participate in education, training or vocational rehabilitation. Generally, the City must permit participation if the recipient is "eligible" for that activity, (2) the activity is "countable" and (3) the particular program is "approved." The rule applies to people who are already enrolled in education and to people who express a desire to participate in education.

A recipient will be considered eligible if she meets certain educational/training criteria. For example, a recipient will be deemed eligible for adult basic education if she lacks basic literacy (less than an 8<sup>th</sup> grade, 9<sup>th</sup> month reading level or a score of 50 or less on the New York State PLACE test for English language proficiency). Similarly, the recipient will be eligible for a GED program enrollment if she has basic literacy but not a high school diploma. Entitlement to vocational education arises if the recipient has been accepted into a program, has not been in the same type of program before, has not begun a different program in the past 90 days, has not failed three vocational educational programs while on public assistance, and has not accumulated 24 months of vocational programs of over 15 hours a week while on public assistance.

Local Law 23 defines an activity to be countable when State law allows it to be counted towards meeting a person's work requirements. The City must classify activities as countable to the greatest extent allowed by law.

Finally, a program is deemed approved if it is licensed or certified or otherwise approved by the City or State, funded under the Workforce Investment Act, or already listed on the City's Master List of Approved Programs.

Because of the demonstrated impact that acquisition of even a two-year college degree has on earnings, Local Law 23 builds in special provisions for recipients who are ready to participate in an approved college program. Thus, even if college is not otherwise countable under the provisions of Local Law 23 discussed above, a recipient will must be permitted to attend college if: (1) the State has met its required participation rate by at least 10% for each of the last 2 years, and the City's caseload has not increased by more than 25% in the past 6

months; the recipient is engaged in a combination of work, study, training and WEP (the City's workfare program) for at least 35 hours per week, and the recipient is making satisfactory progress toward completion.

**Conclusion.** The Davila settlement and the passage of Local Law 23 represent a growing acknowledgment of the important

role that education and training play in equipping individuals to secure and maintain employment that will enable them to secure economic self-sufficiency. However, much work remains to be done to ensure that the settlement and new law are implemented as effectively as possible and that other efforts are undertaken to remove other barriers, such as the lack of adequate

childcare or disabling conditions. The Davila settlement and Local Law 23 are posted on the Welfare Law Center's website, [www.welfarelaw.org](http://www.welfarelaw.org). For further information about either contact Marc Cohan at the Center, [cohan@welfarelaw.org](mailto:cohan@welfarelaw.org).

Marc Cohan

## Selected Reports on Welfare Reform and Access to Education and Training

The following are selections from the extensive literature on this topic.

*Poverty to Self-Sufficiency: The Role of Postsecondary Education in Welfare Reform* (Center for Women Policy Studies, 2002), [www.centerwomenpolicy.org](http://www.centerwomenpolicy.org)

*Built to Last: Why Skills Matter for Long-Run Success in Welfare Reform* by Karin Martinson and Julie Strawn (Center for Law and Social Policy, April 2003), [www.clasp.org](http://www.clasp.org)

*Credentials Count: How California's Community Colleges Help Parents Move from Welfare to Self-Sufficiency* by Anita Mathur et al. (Center for Law and Social Policy, May 2002), [www.clasp.org](http://www.clasp.org)

*Opening Doors - Students' Perspectives on Juggling Work, Family, and College* by Lisa Matus-Grossman and Susan Gooden (MDRC, July 2002), [www.mdrc.org](http://www.mdrc.org)

*Mothers' Work: Single Mothers' Employment, Earnings, and Poverty In the Age of Welfare Reform* by Mark Levitan and Robin Gluck (Community Service Society, Sept. 2002), [www.cssny.org](http://www.cssny.org)

## Education Opportunities for TANF Participants in Tennessee

Tennessee's "Families First" TANF program allows recipients to satisfy their work activity requirement by participating in a wide variety of education programs. Because Tennessee still has a federal waiver, it has the flexibility to count a full range of educational options towards federal work participation requirements.

Persons who score below the ninth grade level on a standardized test of reading and math abilities have the option of participating in Adult Basic Education (ABE) classes for 20 hours per week. This satisfies the Families First work activity requirement, and the months spent in ABE do not count against time limits until a ninth grade level of proficiency is achieved. Persons who are not making progress in ABE classes are given the option of seeing a master's degree level counselor to determine if another activity is more appropriate, or if special assistance is needed due to a

disability or other barriers to work. This assessment includes a screen for learning disabilities.

Persons who score above the ninth grade level in reading and math also have the option of participating in ABE programs if they do not have their high school diploma or GED. However, they are subject to a 40 hour per week work activity requirement and the months they participate in ABE count against their time limits. Families First participants who had not completed the 12<sup>th</sup> grade were found to be more than twice as likely to get a GED if they had participated in the Families First ABE program.<sup>1</sup>

<sup>1</sup> *Academic Outcomes for Families First Participants Attending and Not Attending Adult Education Classes*, CLS (University of Tennessee Center for Literacy Studies) Research Brief (September 2002).

Persons who have a GED or high school diploma have the opportunity to participate in post-secondary education. Persons participating in post-secondary education are subject to a 40 hour per week work activity requirement. They receive credit toward this requirement for one hour of study time for every hour of class credit time where study outside the classroom is required for the course. This means that a person who is carrying a class load of 14 credit hours would have 28 hours of credit towards the 40 hour requirement. Students can also get credit for hours spent in student internships, labs and tutoring hours. A post-secondary student will be required to participate in other Families First activities if they are needed to bring the total up to 40 hours. The Families First program provides some financial assistance for books, fees or other costs that are not covered by Pell grants or other student loans or grants.

Tennessee had developed a network of ABE classes for AFDC participants before welfare reform in 1996. However, the original proposal in 1996 for the Families First program did not contain all the educational options just described. The Tennessee Department of Human Services decided that rather than just seek a federal waiver and redesign the program, they would subject their proposal to the state legislative process. The Families First legislation was amended in committee to include many of the provisions just described for persons who score below the

ninth grade level on a standardized test, as well as to add the opportunity for post secondary education.

Tennessee's emphasis on the importance of TANF education programs is supported by a recent report issued by the Center for Business and Economic Research at the University of Tennessee.<sup>2</sup> The Center conducted a nationwide

<sup>2</sup> *Assessment of Tennessee's Families First Caseload Trends*, Center for Business and Economic Research, College of Business Administration, University of Tennessee (November 2003).

statistical survey of the economic, demographic and policy factors that are the underlying determinants of TANF caseloads. The survey found that requiring more of the work requirement to be met with non-education hours was a significant factor in increasing the TANF caseload, while allowing more different work requirement activities was a significant factor in reducing the TANF caseload.<sup>3</sup>

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<sup>3</sup> *Id.* at 3.

## Lost in the Maze: A Look at New York City's Fragmented Child Care Subsidy System

*by Barbara Coccodrilli Carlson and Rebecca Scharf*

*Editor's Note: The following is the Executive Summary of a Welfare Law Center report that will be issued in January 2004. The full report will be posted on the Center's website: [www.welfarelaw.org](http://www.welfarelaw.org).*

### Overview

New York City's child care system is in crisis. For years, critics have talked about reform. Over the past 20 years, numerous reports and commissions have presented conclusive evidence that the rules and regulations governing the system actually impede the delivery of child-care services. Some of the most creative and committed professionals within the system have struggled to improve it. Yet even when budgets were looser and money was available, little was allocated to reform. As a result, the system remains badly broken. Every day in New York City, children are placed at risk by poor and patched-together care.

The situation is shameful, and the need to fix the system more urgent than ever. Nevertheless, the Welfare Law Center strongly believes that the systemic ills can be cured; that a streamlined, seamless delivery system can be designed and implemented; and that New York City's child-care bureaucracy can be transformed into a

model deliverer of child-care services.

The Welfare Law Center is proposing a realistic way to make reform happen. WLC's approach is based on a striking concurrence of opinion among a broad group of child-care providers, parents, and advocates whom we brought together in 2002, to discuss how a better system can be created. Our approach requires vision, bold leadership at the top, and a willingness to make the structural changes necessary for real reform. Only a courageous leader can impose order on the chaos that results when no single authority is in control of multiple, often competing agencies. We call on Mayor Bloomberg to be that leader—to mandate the changes and allocate the resources that will transform a dysfunctional system into one New York City can be proud of.

### The Challenge in New York City

It is no secret that New York City's child care system is badly in need of reform. Families in search of subsidized child care are confronted by daunting barriers, including a multitude of agencies whose functions overlap, a complex application process, disruptions in child-care payments, misinformation, and requirements that force families to negotiate a bureaucratic maze (for example, a parent must reapply for child

care in a different agency office each time his or her employment status changes). Furthermore, while the city's stringent work requirements for welfare recipients have made access to affordable child care more essential than ever, the system has fallen woefully short of meeting the demand. Every day, the list of children who need child care far exceeds the available spots. (There are currently 38,000 children on child-care waiting lists.) Every day, lack of access to affordable child care threatens the efforts of families on public assistance to move from welfare to work and impedes the ability of low income families to attain economic security. Meanwhile, as a confusing array of bureaucracies deliver child care services, families fall between the cracks, with the result that many eligible families never receive the child care subsidies to which they are entitled. Despite the best efforts of many, many knowledgeable and concerned professionals, from agency heads to care givers at the local level, the system isn't working.

### The Welfare Law Center Focus Groups

To understand the dimensions of the problem and find workable solutions, the Welfare Law Center turned to a critical group of insiders who know the system best:

the users and the providers of child-care services. The Center successfully organized focus groups that brought together New York City agency officials, parents, advocates, and service and child care providers. We asked the groups three major questions: What would a “seamless” delivery of child care services for low-income families look like? What are the major barriers to its realization? What would it take to achieve a seamless child care delivery system in New York City?

The focus groups were remarkable for two reasons. First, they brought together participants who came from vastly different backgrounds and were often on opposite sides of the reform debate. Second and most important, in all of these groups the participants made essentially the same recommendations; from managers to clients,

they agreed on the fundamental reforms necessary to fix the system. For the first time, every side was on the same page.

### **The Welfare Law Center’s Recommendations**

Drawing on the vision of our focus groups for a seamless child care delivery system, the Welfare Law Center proposes that New York City begin the process of reform by taking three major steps:

1. Create a single city agency for child care services with a knowledgeable Commissioner.
2. Develop an integrated, interactive computer system for all child-care subsidy administration, with the capacity to determine eligibility, house a

centralized waiting list, and identify vacancies.

3. Build in presumptive, continuous child-care subsidy eligibility for all families demonstrating need.

We believe these proposals are sensible, practical, and most important, achievable, and that they will result in a dramatic improvement in New York City’s child care delivery system.

This report offers a brief history of the New York City child care subsidy system; documents the problems that have arisen because multiple agencies are charged with providing child care services; examines the barriers standing in the way of creating a better system; and describes how to bring to fruition our vision of a seamless child care delivery system.

## **Low Income Networking and Communications (LINC) Project Update**

In addition to providing ongoing technology assistance to grassroots groups throughout the country, in recent months the Welfare Law Center’s LINC staff have conducted workshops and participated in a number of conferences sponsored by grassroots coalitions and non-profit technology assistance providers. Highlights follow.

The **Southern Welfare Activist Connection (SWAC)** held its second annual meeting in late September in Abingdon, Virginia. The Appalachian Women’s Alliance (AWA) hosted the meeting which was attended by the representatives of Solutions (TN), Welfare Rights Organization (LA), Direct Action Welfare Group (WV), and the National Welfare Engine. LINC Circuit Rider Amanda Hickman led a workshop for participants on technology planning, during which participants drew up sample technology plans and discussed their goals for their own technology use. The participants discussed short and long term plans for the coalition and developments around TANF reauthorization. LINC has been providing technology support to the coalition.

The **National Welfare Engine (www.welfareengine.org)**, a collaboration of low-income grassroots groups, met in Washington, D.C. in late October to share information and strategies on welfare and

economic security issues and discuss plans to improve civic participation in the democratic process in 2004. Some 30 grassroots organizers and activists attended and had the opportunity to hear updates from representatives of national organizations, exchange information and brainstorm on strategies for communicating with their legislators and the public on issues of mutual importance, including TANF reauthorization, access to higher education for women receiving TANF, proposed “marriage promotion initiatives”, and child support assurance. The participants also heard experts discuss how grassroots groups can promote civic involvement through non-partisan candidate forums, voter education, voter registration and get out the vote campaigns. LINC Circuit Riders Dirk Slater and Amanda Hickman led a workshop on how a group’s database can support civic engagement campaigns and encouraged groups to identify ways to incorporate technology into their overall campaigns.

The **Western Regional Welfare Activists Network (www.wrwan.org)**, a coalition of low-income grassroots organizations in western states that address economic security issues, met in Portland, Oregon in August. The groups represented at the meeting included Welfare Rights Organizing Coalition (WROC-Washington), NEW Project (Nevada),

WEEL (Montana), Oregon Human Rights Coalition (OHRC), Progressive Leadership Alliance of Nevada (PLAN), National Welfare Engine, and Welfare Made a Difference Campaign. Among the agenda items was a discussion of TANF reauthorization and the coalition’s ongoing strategy on reauthorization. LINC Circuit Riders Dirk Slater and Askia Foreman attended the meeting. LINC has provided ongoing technology support to the coalition, most recently through improvements to the WRWAN/Engine legislative bills database (visit [www.wrwan.org](http://www.wrwan.org)), a strategy that allows grassroots activists to share otherwise hard-to-find information about state welfare legislative developments.

**International Meeting on Free/Open Source Software for Non-Governmental Agencies.** LINC Senior Circuit Rider Dirk Slater attended Summer Source Camp in Croatia in late August. Organized and hosted by Tactical Tech in partnership with the Open Society Institute and Omidyar Foundation, the conference brought together non-profit technology assistance providers (NTAPs) and software developers working to implement Free and Open Source Solutions (OSS) for civil society organizations. OSS offers a reliable and cost-effective technology solution for grassroots groups with limited resources.

The conference organizers invited

Slater to lead several workshops because of LINC's expertise and innovative work in recognizing and realizing the potential of OSS for grassroots groups. (For a case study on how LINC deployed OSS for Missouri's GrassRoots Organizing (GRO), making its operations more efficient and enhancing its organizing and advocacy, visit [www.lincproject.org](http://www.lincproject.org).) Slater's participation provided him with a valuable opportunity to meet and develop relationships with colleagues who are interested in OSS and to build his OSS expertise - experiences that will enrich LINC's work with its grassroots groups.

The **Progressive Technology Project** convened a wide range of social justice

grassroots groups in Minneapolis in November for conference on *Using Technology in Organizing for Civic Participation in the Democratic Process*. The conference focused both on the nuts and bolts of non-partisan voter engagement projects and the technology needed to advance these projects. LINC Circuit Riders Dirk Slater and Amanda Hickman attended and joined staff from Project Alchemy in leading a workshop on database basics. Slater also conducted a workshop on advanced databases. Representatives of several LINC groups - Families United for Racial and Economic Equality (FUREE), Community Voices Heard (CVH),

GrassRoots Organizing (GRO), and Working for Equality and Economic Liberation (WEEL) - were among the more than forty groups represented. Representatives of Montana's WEEL and New York City's CVH made presentations on their voter engagement efforts. CVH staff discussed CVH's Civic Engagement Campaign at the opening plenary. The CVH presentation is available at [www.progressivetechnology.org/Convenings/CivicParticipationConvening/index.htm](http://www.progressivetechnology.org/Convenings/CivicParticipationConvening/index.htm). LINC works closely with both WEEL and CVH and has provided technology assistance that supported their voter participation campaigns.

## Georgia Advocates Launch Web Sites on Using Disability Rights Laws to Improve Welfare Programs

Georgia Legal Services has launched two web sites on the rights of welfare applicants and recipients under federal disability rights laws. One web site is designed for welfare applicants and recipients; the other for welfare advocates. Though both are geared for Georgia audiences, they are a tremendous resource for advocates in other states who are interested in using disability rights laws to obtain improvements in welfare programs.

The first, [www.glsp.org/extranet/attyguide.htm](http://www.glsp.org/extranet/attyguide.htm), is designed for attorneys and other advocates. It contains links to the Policy Guidance issued by the Office for Civil Rights (OCR) U.S. Department of Health and Human Services on the application of federal disability rights laws to TANF programs; related reports on the prevalence of disabilities in welfare programs and strategies for serving these clients; a checklist that advocates can use to identify violations of the Americans with

Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) in welfare programs; other reference materials on welfare, disabilities and the ADA; and other web sites with relevant research, information, and advocacy strategies.

The web site also contains a number of materials related to Georgia's efforts to comply with the ADA in its welfare program, including complaints filed by Georgia Legal Services against the with OCR against the Georgia Department of Children and Family Services on behalf of clients with disabilities; the voluntary compliance agreement between DCFS and the Office for Civil Rights detailing the changes the Georgia welfare agency agreed to make; the Georgia DFCS ADA/Section 504 notice, and the training materials currently used by Georgia DCFS to train welfare agency staff on the ADA and Section 504. The web site also contains a guide for Georgia attorneys on using the

ADA on behalf of clients in the Georgia welfare system.

The second web site, [www.glsp.org/extranet/clientanfada.htm](http://www.glsp.org/extranet/clientanfada.htm), contains a guide for clients in welfare programs about the ADA and Georgia's welfare program; a short brochure on the rights of current and former welfare recipients with disabilities; an OCR complaint form, a link to the DCFS TANF manual, basic information on depression and learning disabilities, and contact information for DCFS. The client materials are written in simple language and should serve as a useful model for advocates and welfare agencies in other states who want to develop consumer education materials on the welfare programs and the ADA.

For more information, contact Nancy Lindbloom at Georgia Legal Services, 706-369-5922, [nlindbloom@glsp.org](mailto:nlindbloom@glsp.org).

Cary LaCheen

*Editor's note: Cary LaCheen ([lacheen@welfarelaw.org](mailto:lacheen@welfarelaw.org)) is available to work with advocates addressing the treatment of individuals with disabilities in public benefits programs.*

## Welfare Law Center Welcomes New Board Members and Staff

The Center is pleased to welcome five new Board members:

**Cassandra Barham-Denton**, an activist with the Ohio Empowerment Coalition in Cincinnati, Ohio

**Douglas F. Curtis**, a partner at Wilmer, Cutler & Pickering in New York

**Evelyn Dortch**, a founder of the Direct Action Welfare Group in Charleston, West Virginia

**Jennifer Selendy**, a partner at Kirkland & Ellis in New York

**Diana Spatz**, a founder of Lifetime, an organization of welfare recipients pursuing higher education, in Oakland, California

We are also pleased to welcome **Nancy Yanofsky** as Director of Development. Nancy was Executive Director of the Pro-Choice Research Center for many years, and came to the Center from NYC2012, the effort to bring the Olympic Games to New York City.

### Welfare Law Center Hosts Listservs for Advocates and Grassroots Organizers

The Welfare Law Center currently hosts several moderated email listservs for advocates and grassroots activists across the country. If you are interested in participating in one or more of the lists, please get in touch with the Center staff person indicated below.

**Legal advocates' and welfare litigators' list:** This list is limited to legal advocates who represent low-income individuals on welfare and related matters or who provide support to legal advocates. Advocates can share information about developments in their legal advocacy, raise questions with their colleagues, and receive information about welfare case developments and related issues from the Welfare Law Center. Contact Gina Mannix, [mannix@welfarelaw.org](mailto:mannix@welfarelaw.org) and provide your name, program affiliation, address, telephone and fax number, website (if applicable), email address, and if you are not with a legal services program, a brief description of your legal work on welfare issues.

**Organizers' list:** This list is for low-income grassroots organizers and is hosted by the Center's Low Income Networking and Communications (LINC) Project. The list provides an opportunity for organizers to share strategies and information about campaigns, issues of common concern, and opportunities for collaboration. Welfare reauthorization is a major focus of current postings. Contact Dirk Slater, LINC Senior Circuit Rider, [dirk@welfarelaw.org](mailto:dirk@welfarelaw.org) and provide your name, your grassroots group affiliation, address, telephone and fax number, website (if applicable) and email address.

**Child Care Advocates' list:** This list is for legal advocates and low-income and child care advocacy groups who are working on child care issues affecting low-income families and those who want to expand their work to include this area. It is intended as a medium for sharing information about advocacy strategies and national child care issues and supporting advocacy. The list is part of the national Child Care Collaborative, a project of the Welfare Law Center, Child Care Law Center, and NOW Legal Defense and Education Fund. Contact Rebecca Scharf, [scharf@welfarelaw.org](mailto:scharf@welfarelaw.org) and provide your name, program, address, telephone and fax number, website (if applicable), email address, and a brief description of your child care work.

# Welfare Bulletin



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## SELECTED RECENT CASE DEVELOPMENTS

### **TX Court Blocks Medicaid Sanction for Failure to Comply with Personal Responsibility Requirements**

**Camacho et al. v. Texas Workforce Commission et al.**, (98th Judicial Dist., Travis County Dist Ct., Texas, Dec. 11, 2003) (Temporary Restraining Order)

Plaintiffs challenge the state's recently adopted policy of terminating Medicaid for parents and other adult caretakers who are sanctioned under TANF for their inability to ensure that their children attend school and receive health check-ups and immunizations, and for their own inability to refrain from drug and alcohol abuse. Federal Medicaid law allows states to terminate Medicaid for adults whose TANF is terminated for failure to comply with work requirements under 42 U.S.C. 607. Texas' new policy redefines work to include compliance with non-work conduct requirements included in an individual's responsibility agreement. Plaintiffs claim that the new policy violates federal Medicaid law, 42 U.S.C. §1396u-1 (b)(3) and the Texas Human Resources Code provision which authorizes termination of Medicaid to the extent allowed by federal law. The court has granted a temporary restraining order barring the state from terminating Medicaid pursuant to the challenged rules.

**Plaintiffs' attorneys:** P.M. Schenkkan, Mary A. Keeney, Graves, Dougherty, Hearon & Moody; Bruce Bower, Texas Legal Services Center, Austin, Texas; Of Counsel: Marc Cohan, Mary R. Mannix, Rebecca L. Scharf, Welfare Law Ctr., 275 Seventh Ave., #1205, New York, NY 10001, tel. 212 633-6967.

### **NY Court Invalidates Certain State Food Assistance Program Immigrant Restrictions**

**Teytelman v. Wing**, *Index No.* 402767/02 (Sup. Ct., N.Y. Co., Dec. 8, 2003)

On December 8, 2003, a New York state court held that certain immigration-related restrictions in the state Food Assistance Program (FAP) violate the Equal Protection clauses of the U.S. and New York Constitutions. In particular, in granting the plaintiffs' motion for a preliminary injunction on behalf of the named plaintiffs, the Court struck down provisions restricting FAP eligibility to immigrants who have been residing in the U.S. since August 22, 1996; and who have not been outside the U.S. for more than 90 days in the year preceding an application for benefits; and who have applied for citizenship or will do so within 30 days of becoming eligible to do so.

In practice, the decision is a big victory for domestic violence survivors who entered the U.S. after 1996, and who are either qualified aliens but in that status for less than 5 years, or who are identified by the social services district as DV survivors pursuant to the procedures in state Social Services Law 349-a. The other major beneficiaries include elderly (age 60 or over) non-disabled immigrants who entered the U.S. after 1996 and who have less than 5 years of qualified alien status. Both those groups are now eligible for State-funded FAP benefits under the reasoning of the decision.

**Plaintiffs' attorneys:** Rebecca L. Scharf, Welfare Law Center, 275 Seventh Avenue, Suite 1205, NY, NY 10001, tel. 212-438-8853; Jennifer Baum, The Legal Aid Society, 199 Water Street, New York, NY 10038, tel. 212-440-4232; Mary Ellen Burns, Northern

Manhattan Improvement Corp., 76 Wadsworth Avenue, New York, NY 10333, tel. 212-822-8346; Constance Carden, New York Legal Assistance Group, 130 East 59<sup>th</sup> Street, New York NY 10022, tel. 212-750-0800; Barbara Weiner, Greater Upstate Law Project, Greater Upstate Law Project, Inc 119 Washington Avenue Albany, New York 12210, tel. 518-462-6831.

### **NE Supreme Court Rules Family Cap Does Not Apply When Adult is Disabled**

**Mason v. State of Nebraska**, 267 Neb. 44, 2003 Neb. LEXIS 181 (Dec. 5, 2003)

The Nebraska Supreme Court has ruled that the state's family cap provision, which denies a grant increase for a child born while the family is receiving cash assistance, cannot be applied to families whose adult is disabled and unable to work. Plaintiffs had argued that state law limits application of the family cap to families with a self-sufficiency contract who are participating in the Employment First work program. Since families whose adults are incapacitated and unable to work are not required to enter into self-sufficiency contracts and are placed into a non-time limited benefit group, plaintiffs argued that they cannot be subject to the family cap. Plaintiffs had prevailed in the lower court.

The Supreme Court concluded that the language of the state's family cap provision was ambiguous, and it therefore looked to the purposes of the law and the legislature's intent. The court found that the application of the family cap to the plaintiff class does not further the welfare act's purposes of promoting the transition to economic self-

sufficiency, providing continuous support to individuals and families with disabilities, and protecting children. The court cited legislative history indicating that the legislature intended that the family cap apply to families participating in the Employment First program through a self-sufficiency contract. The court declined to apply the family cap to families with a disabled adult, absent a clear expression of legislative intent. It easily rejected the state's argument that the family cap would be rendered unconstitutional if the court accepted plaintiff's argument. The state had argued that there would be an equal protection violation if the cap were not applied uniformly. The court noted that "[t]his argument is without merit, for which the Department should be thankful. The Department may be overlooking the implications of its advocacy in this particular appeal. The Department's equal protection analysis could, if adopted, result in the invalidation of the entire Act." It concluded that there is a rational basis for treating plaintiffs differently from others subject to the cap.

**Plaintiffs' attorneys:** *Rebecca Gould, Milo Mumbaard, Sue Ellen Wall, Susan Koenig, Nebraska Appleseed Center, 941 O Street, Suite 105, Lincoln, NE 68508, tel. 402-438-8853; and NOW Legal Defense and Education Fund, New York, NY. The ACLU Women's Rights Project filed an amicus brief in support of plaintiffs.*

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## Settlement Agreement Confers Prevailing Party Status on Plaintiffs for Attorney's Fees

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**Roberson et al. v. Giuliani et al.,**  
*Docket No. 02-7306 (2d Cir., Sept. 30, 2003)*

The Second Circuit Court of Appeals, reversing the district court, has held that plaintiffs are prevailing parties for purposes of 42 U.S.C. § 1988 in a lawsuit that was resolved by private settlement agreement over which the district court retained enforcement jurisdiction. Plaintiffs had brought a §1983 class action against New York City welfare officials challenging

policies regarding the disposition of Food Stamp, Medicaid, and public assistance applications based on recommendations of the Eligibility Verification Review Offices. After the court granted summary judgment to defendants on one of the claims, the parties entered into a settlement agreement concerning the remaining claims, in which defendants agreed to assume various obligations and plaintiffs agreed to voluntary dismissal of claims. The agreement provided, among other things, that the agreement would not become effective if the order of discontinuance did not include a provision retaining jurisdiction over enforcement. In considering plaintiffs' subsequent motion for attorney's fees, the district court concluded that they were not prevailing parties under **Buckhannon v. Bd. & Home Care, Inc. v. W. Va. Dept of Health & Human Resources**, 532 U.S. 598 (2001). The district court concluded that its continuing jurisdiction over the agreement was not the judicial sanctioning of the parties' altered legal relationship under **Buckhannon**. The Second Circuit disagreed, concluding that the lower court "did not fully appreciate the implications of its retention of jurisdiction over enforcement of the Agreement." Such retention of jurisdiction "is not significantly different from a consent decree and entails a level of judicial sanction sufficient to support an award of attorney's fees."

**Attorneys for Plaintiffs-Appellants:** *Randal S. Jeffrey, New York Legal Assistance Group, 130 East 59<sup>th</sup> Street, 14<sup>th</sup> Floor, New York, NY 10022, tel. 212-750-0800, fax: 212-750-0820.*

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## MA Court Enjoins Cuts in Emergency Assistance Program

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**Wilson v. Dep't of Transitional  
Assistance, No. 03-3944-E (Suffolk Cy.**  
*Superior Court, August 21, 2003)*

According to a report from Massachusetts Law Reform Institute, the court has issued a preliminary injunction barring the welfare agency from reducing payments by 11.5% to recipients in the state's program of Emergency Aid to Elderly, Disabled, and Children in order to

respond to a projected FY 2004 funding shortfall. The agency cannot implement cuts until the appropriation approaches exhaustion and the legislature has failed to act.

**Plaintiffs' attorney:** *Ruth Bourquin, Massachusetts Law Reform Institute, 99 Chauncy Street, Suite 500, Boston, MA 02111, tel. 617-357-0700, fax: 617-357-0777.*

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## MA Court Rules that State Regulation Impermissibly Narrows TANF Exemption

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**Baynes v. Dep't of Transitional  
Assistance, No. 02-0068 (Middlesex Cy.**  
*Superior Court, May 16, 2003)*

Plaintiff challenged the welfare agency's decision that she did not qualify for the exemption from various TANF rules (e.g. time limits and work requirements) allowed to caretaker parents with a disabled child. The state statutory provisions provide an exemption when the disability of the child requires the parent's presence at home. However, a state regulation requires a parent to provide medical verification that she is required to be at home during normal school hours to care for the disabled child if the disabled child is of mandatory full-time school age. Plaintiff is the parent of a child whose disability qualifies her for SSI. The child is of mandatory full-time school age. As a result of her disability, the child has more school absences than non-disabled children. The medical report indicated that while the parent was not needed full-time at home to provide care, she was needed at home when the child is ill. The court ruled that the statutory exemptions do not provide authority to the agency to limit the exemption to those who must care for a disabled child full-time during school hours.

**Plaintiff's attorneys:** *Melanie Malherbe, Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114, tel. 617-603-1602, fax: 617-371-1222; Ellen Shachter, Cambridge and Somerville Legal Services, 432 Columbia Street, Suite 16, Cambridge, MA 02141, tel. 617-494-1800, fax: 617-494-8222.*

## Court Upholds GA Child Support Assignment Requirement for Family Cap Children

**Williams v. Martin**, *Civ. Action No. 1:01-CV-3343-TWT (U.S. District Ct., N.D. Ga.) (Sept. 22, 2003)*

Plaintiffs are children subject to the state's "family cap" provision under which a TANF cash assistance increment is denied to children born while the family receives TANF assistance, whose rights to child support must be assigned to the state pursuant to TANF rules. Plaintiffs claim 1) that the assignment requirement violates 42 U.S.C. 608 (a)(3) which requires that states condition TANF eligibility on the assignment of support rights for anyone applying for or receiving assistance; and 2) that the mandatory assignment constitutes a taking in violation of the Fourteenth Amendment to the U.S. Constitution. The court has ruled against plaintiffs.

After concluding that plaintiffs have standing and that the case is ripe for adjudication, the court rejects the statutory claim on the grounds that while 608 (a)(3) does not expressly authorize the assignment for such children, it does not bar the state from imposing such a requirement. On the constitutional claim, the court reaches a conclusion contrary to that of the court in **Williams ex rel. Ricard v. Humphreys**, 125 F. Supp. 2d 881 (S.D. Ind. 2000) which found the assignment requirement for a family cap child unconstitutional. In reaching its conclusion, the court looked to **Bowen v. Guilliard**, 483 U.S. 587 (1987) (upholding the AFDC mandatory filing unit rule) which applied the three factor test in **Penn Central Transportation Co. v. City of New York**, 438 U.S. 104 (1978) to evaluate the taking claim. First, as to the economic impact of the regulation on the plaintiffs, the court found it significant that although the plaintiffs' TANF grants did not increase for the capped child, the addition of capped children to the family increased the potential of GAP payments made to the family when the state collected child support. Plaintiffs had received GAP payments (which were not a factor in the Indiana **Williams** case), and these GAP payments together with the state's use of its

resources to collect the support mitigated the adverse economic effect of the assignment.

As to the second **Penn Central** factor - the extent to which the regulation interferes with the plaintiffs' investment-backed expectation - the court found that a child's property interest in child support can be modified by the parent or by law and does not give the child a "vested expectation in continued identical child support payments." As to the third factor - the character of governmental action - the court, relying on **Bowen**, noted that the state faces difficult choices in allocating government resources. Plaintiffs received an overall increase in benefits through the GAP payments and assignment is voluntary insofar as the choice to apply for TANF is not mandatory. In concluding that there is no constitutional violation, the court cited the wide latitude that the state has in designing social programs.

**Plaintiffs' attorneys:** Nancy Lindbloom, Georgia Legal Services, Athens, GA 30605, tel. 706-369-5922, Lisa Krisher, Sheila Khrzan, Georgia Legal Services, Atlanta, GA.

## NJ Supreme Court Upholds New Jersey Family Cap

**Sojourner A. et al. v. New Jersey Dep't of Human Services**, 828 A. 2d 306, 2003 N.J. Lexis 866 (August 4, 2003)

The New Jersey Supreme Court has upheld the constitutionality of the state law that denies, with limited exceptions, an increase in cash assistance benefits for a child born more than ten months after a family applies for and receives benefits. Plaintiffs had claimed that the "family cap" provision violates their rights to privacy and equal protection as guaranteed by the New Jersey Constitution. Relying on the approach established in prior decisions involving state constitutional claims, the court applied a balancing test the considers "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." The court noted, however, that while its analysis varies from the tiered test for federal constitutional claims, it considers similar

factors and often reaches the same result.

As to the claim that the family cap infringes on a woman's right to make reproductive choices by penalizing her for the birth of a child and singles out poor children, the court rejects arguments that there is an undue or new burden on reproductive choice. Family income from whatever source is likely to influence reproductive choices. Working families do not receive automatic wage increases when a child is born and the family cap puts families on welfare "on a par with working families." The court finds the state has "ample justification" for the cap as "resources available as a result of the cap have been diverted to job training, child care, and other programs..." which should help improve the lives of welfare families. The court distinguished an earlier New Jersey Supreme Court decision finding an equal protection violation where the state denied Medicaid funding for abortions except where medically necessary to save the mother's life. Noting that the court had also held that the state could exclude from Medicaid funding elective, nontherapeutic abortions that did not involve the life or health of the mother, the court said that in this case the life or health of the mother is not at stake. The court discounted plaintiffs' contention of disparate treatment based on when a child is born - i.e. before a family receives welfare or after. It noted that families subject to the cap receive additional Food Stamps and Medicaid, and rejected arguments of amici that the statute violates international norms regarding birth-status discrimination. The court concluded that the case is "not about the right to choose whether and when to bear children, but rather, about whether the State must subsidize that choice."

**Plaintiffs' attorneys:** Lenora M. Lapidus, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, tel. 212-549-2668, fax: 212-549-2651; Sherry Leiwant, NOW Legal Defense and Education Fund, 395 Hudson Street, New York, NY 10014, tel. 212-925-6635, fax: 212-226-1066; Gibbons, Del Deo, Dolan, Griffinger & Vecchione.

## CA Court Upholds CalWORKS and Food Stamp Fingerprinting Requirement

**Sheyko v. Saenz**, 2003 Cal. App. LEXIS 1532 (Ct. of Appeal of Cal., 3<sup>rd</sup> App. District) (Oct. 9, 2003)

This case challenges aspects of California's fingerprinting system for CalWORKS and Food Stamps and asserts that the implementing regulations exceed the statute mandating such a system. On appeal from a trial court decision that ruled partly for plaintiff, the appellate court has ruled for the state defendant and upheld the fingerprinting system. The court's decision includes the following points. Claims about the effectiveness of the fingerprinting system are for the legislature, not the court, to decide. The court rejects assertions that the system interferes with plaintiffs' privacy rights and religious freedom and that using fingerprinting as an eligibility requirement impermissibly deters people from applying for assistance and undermines the agency's obligation to aid eligible individuals. The agency may require all parents, legal guardians, and caretaker relatives in a CalWORKS household to comply with the fingerprinting requirement, even if they are not eligible. The agency's fingerprinting system may require photographs of individuals subject to fingerprinting. The agency may find the entire household ineligible if an individual fails to comply with the fingerprinting requirement. The court rejects a distinction between "refusal" and "failure" to comply, finds that people have many chances to comply and that non-compliance means that an eligibility requirement has not been satisfied.

**Plaintiffs' attorneys:** Stephen E. Goldberg, John F. Gianola, Legal Services of Northern California, 517 12<sup>th</sup> Street, Sacramento, CA 95814, tel. 916-551-2150, fax: 916-551-2195; Grace A. Galligher and Cynthia Anderson-Barker, Coalition of California Welfare Rights Organizations.

## NY Court Finds Due Process Violations in HEAP Program

**Kapps v. Wing**, 2003 U.S. Dist. LEXIS 17633 (E.D.N.Y., Sept 19, 2003)

Relying upon early Welfare Law Center due process victories in *Goldberg v. Kelly*, 397 U.S. 254, (1970) and *Escalera v. NYC Housing Authority*, 425 F. 2d 853 (2d Cir. 1970), the court held that despite the considerable discretion states have in establishing eligibility requirements for benefits under the federal Low Income Home Energy Assistance Program (HEAP) block grant, once eligibility standards are established, and so long as funds are available, eligible individuals have a constitutionally protected interest in HEAP benefits. This means that the state has violated due process when it (1) sends notices that do not provide the information necessary for the individual to determine whether eligibility and benefits were correctly determined, and (2) delays making determinations to a time when an appeal cannot be pursued. On the other hand, due process is not violated when the state takes more time to process a claim than state regulations permit.

The court also held that there was a private right of action under the federal HEAP statute, but that there was only one violation of those rights. The court also certified a class, rejecting arguments that such certification was unnecessary because all would benefit from a determination, noting that the defendants argued at the same time that resolution of the individual plaintiffs' claims would moot out the case. Finally, barred from ordering any retroactive money relief by the Eleventh Amendment, the court ordered *Quern* notice to the class of the fact that the defendants' past actions were unconstitutional.

At least one of the defendants has filed a notice of appeal to the Second Circuit.

**Plaintiffs' attorney:** Peter Vollmer, Vollmer & Tanck, 350 Jericho Tpke, Ste. 206, Jericho NY 11753, (516) 870-0355, Pvollmer96@aol.com.

## NY Court Upholds Class Certification in Tax Intercept Case

**Watts v. Wing**, 765 NYS2d 18 (1<sup>st</sup> Dept., 2003)

Under New York state law, the welfare agency was allowed to intercept state tax refunds to recover welfare overpayments. Plaintiffs claimed that the failure to provide notice and an opportunity to contest the debt violated due process. The Appellate Division, by a 3-2 vote, upheld the class certification on the grounds that there were issues common to all members of the class (adequate notice and a meaningful opportunity for a hearing). The "government operations rule" invoked by the State, which presumes that the State will comply with the decision in an individual case in future situations affecting others, has no application here because the alleged due process violations occurred in the past. The majority rejected the dissenters' claim that class certification was inappropriate because individual hearings would be required for each member of the class who wanted to challenge the validity of a debt.

**Plaintiffs' attorney:** Jane Greengold Stevens, New York Legal Assistance Group, 130 East 59<sup>th</sup> Street, New York NY 10022, (212) 750-0800, jstevens@nylag.org.

### Welfare Law Center Welfare Litigation Monitoring

The Center continues to monitor welfare and related litigation as part of Project Fair Play, our comprehensive effort to undertake, support, and promote critical litigation on public benefits issues. We encourage our readers to mail or e-mail us papers and updates in their significant cases so that we can disseminate this information to our network of litigators and other advocates. Send papers to Gina Mannix (mannix@welfarelaw.org) at the Center.

## Lawsuit Claims New Texas Computer System Problems Result in Illegal Benefit Denials

**DeLeon v. Hine**, Cause No. 6N304045  
(Travis County District Court, Texas)  
(complaint, filed October 2003)

Plaintiffs are individuals who have not received TANF cash assistance, Food Stamps, and Medicaid for which they have

been found eligible. They claim that the loss of benefits results from implementation of a new computer system that has significant system-wide software and data processing errors and that the defendants have not established an alternative method of assuring issuance of benefits to those who have lost assistance as a result of the roll-out of the new computer system. Plaintiffs claim that the defendants have violated the federal Food Stamp and Medicaid Acts and that the denial of benefits without notice of the

reasons for denial and notice of the right to appeal violates the Texas and United States Constitutions. They seek declaratory and injunctive relief.

**Plaintiffs' attorneys:** Mario Caballero and Renee Trevino, *Texas Rural Legal Aid*, 434 S. Main, Suite 300, San Antonio, TX 78204, tel. 210-227-0111; James C. Harrington, *Texas Civil Rights Project*, Austin, TX (The Welfare Law Center is of counsel to Texas Rural Legal Aid).

## RECENT NOTEWORTHY PUBLICATIONS

### Minnesota Studies Examine Racial and Ethnic Disparities in Welfare Outcomes

**Measuring Minnesota Family Investment Program Performance for Racial/Ethnic and Immigrant Groups**, *Minnesota Department of Human Services, Study Brief #7 (November 2003)*

This briefing paper reports on an analysis of differences in welfare outcomes for different racial/ethnic groups and immigrants. It is part of a continuing series analyzing performance in the Minnesota Family Investment Program (MFIP), and the first to look at racial/ethnic differences. The methodology was developed in response to a directive from the legislature to control for individual and county economic differences of counties when measuring MFIP performance. The analysis finds that there are disparities in outcomes in MFIP. "African American, American Indian, Somali, and other black immigrant participant outcomes based on the "Self-support Index" were lower than those of other racial/ethnic and immigrant groups. When controlling for several individual demographic and county economic characteristics, the actual outcomes for these groups were lower than expected. Further analysis is necessary to determine how much

of the disparity can be explained by these factors and how much can be attributed to bias." The report noted that focus groups conducted as part of the analysis suggested that there might be differential treatment of various racial/ethnic/immigrant groups within and outside of the MFIP system. These results point to the need to reduce disparities and improve service delivery to black and American Indian welfare participants. Available on the web at: <http://edocs.dhs.state.mn.us/lfserver/Legacy/D M-0039G-ENG>.

**Looking at Outcomes in Welfare by Race in Ramsey County**, *Rahel Tekel, Larry Timmerman (Office of Performance Measurement and Evaluation, Ramsey County Human Services, January 2003)*

This report examines various welfare outcomes for different racial and ethnic groups, immigrant and non-immigrant families in Ramsey County, Minnesota, concluding overall that different groups have different experiences with the welfare system. The report examines caseload composition trends, employment while receiving cash assistance and case closure due to employment, duration of welfare receipt, extensions granted to those who reach welfare time limits, reasons for extensions, and sanctions, and sanctions. The authors identify a number of policy questions raised by the data. For example, how can the county make

its services flexible enough to respond to the challenges faced by different families? Should standards for success look beyond overall totals to similar outcomes for different populations? How does information about high sanction rates for those who get time limits extensions affect implementation of sanctions? What services are needed for long-term recipients who have significant needs? Available on the web at: [http://www.co.ramsey.mn.us/hs/mfip/docs/racial\\_disparities\\_report.pdf](http://www.co.ramsey.mn.us/hs/mfip/docs/racial_disparities_report.pdf)

### California Families' Experiences Reveal Failures of CalWORKS Policies and Practices

**Falling Through the Cracks: How California's Welfare Policy Keeps Families Poor**, *The Race and Public Policy Program, Applied Research Center (2003)*.

This report, based on in-depth interviews with 30 California families receiving CalWORKS assistance found the following recurring problems with the state's implementation of CalWORKS: 1) routine, unjust and illegal use of sanctions; 2) improper denial of exemptions; 3) denial of job training and education opportunities.

The report recommends that the state adopts approaches used elsewhere to protect families from unfair sanctions; 2) allow families to participate in meaningful education and training programs to help them move out of poverty; 3) institute statewide data collection and reporting requirements regarding translation and English as a Second language services, education and job attainment, barriers to employment, support services offered and received, and application of sanctions and exemptions; and 4) in light of the agency's failure to handle cases properly, review all cases scheduled for closure at the end of the time limit to assure that families have been treated fairly and extend benefits as appropriate to remedy improper treatment. Available on the web at [www.arc.org](http://www.arc.org).

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## Review of Issues in Welfare Privatization

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### Outsourcing the Delivery of

### Human Services

*Evelyn Bando*  
(*Welfare Information Network, September 2003*)

This issue note provides a brief overview of issues related to the privatization of welfare and human services programs and identifies related resources. It reviews issues such as ensuring fair and competitive contracting; criteria for deciding

to contract out; various approaches to payment structure; ensuring equal access, due process, and customer satisfaction; and ensuring opportunities for faith and community-based organizations. Available on the web at [www.financeproject.org](http://www.financeproject.org).

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## Analysis of State Medicaid Spending Cuts

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**States Respond to Fiscal Pressure: State Medicaid Spending Growth and Cost Containment in Fiscal Years 2003 and 2004 - Results from a 50-State Survey**, *Vernon Smith et al.*  
(*The Henry J. Kaiser Family Foundation, Sept. 2003*)

This report reviews states trends in Medicaid spending in response to budget crises and how states have sought to cut Medicaid expenditures. Major findings include the following: 1) Although Medicaid spending growth continues, the rate of growth declined significantly in FY 2003; 2) All states implemented cost saving measures in 2003 and planned additional measures in FY 2004; 3) The June 2003 \$20 billion federal fiscal

relief offered some temporary relief; 4) For many states, FY 2004 was the third consecutive year of Medicaid savings measures. Available on the web at: [www.kff.org](http://www.kff.org)

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## TANF Sanction Research Reviewed

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**Review of Sanction Policies and Research Studies, Final Literature Review**, *LaDonna Pavetti, Michelle K. Derr, Heather Hesketh* (*Mathematica Policy Research, Inc., March 10, 2003*)

This report reviews the components of state TANF sanction policies and the research findings on sanctions, and identifies the outstanding gaps in what is known about sanctions and their effects. The authors examine the following issues: the incidence and duration of sanctions, characteristics and circumstances of sanctioned families, the effects of TANF sanctions recipients, and implementation of sanctions and local practices. Available on the web at [www.Mathematica-mpr.com](http://www.Mathematica-mpr.com).

## About The Welfare Law Center

The Welfare Law Center is a national legal and policy organization that works with and on behalf of poor people to ensure that adequate income support is available when necessary to meet basic needs and foster healthy individual and family development. The Center achieves its goals through legal and policy analysis, legal representation, public education, training, and aid and support to advocates. Contributions to the Center are tax deductible.

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### How To Contribute to the Welfare Law Center

With the loss of federal funding, the Center relies upon contributions and publications sales to support its work. Tax-deductible contributions may be made by check or credit card (MasterCard, Visa, American Express - information can be faxed to the Center). Monthly or quarterly contributions can be scheduled. Bequests have been left to the Center in wills, and we would be pleased to discuss possible arrangements. For information about any of these options, contact Kay Khan at the Center.

### About Welfare News and Welfare Bulletin

**Welfare News** is a periodic publication of the Welfare Law Center, 275 Seventh Avenue, Suite 1205, New York, NY 10001-6708, tel. 212-633-6967; fax: 212-633-6371; e-mail: [wlc@welfarelaw.org](mailto:wlc@welfarelaw.org); web pages: [www.welfarelaw.org](http://www.welfarelaw.org) and [www.lincproject.org](http://www.lincproject.org). **Welfare Bulletin**, issued with **Welfare News**, reports on recent court decisions, noteworthy publications, and federal policy issuances on income support programs.

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