

The CLS Connection

Summer 2008

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FUNDING FOR CRITICAL IMPROVEMENTS IN FOSTER CARE

Braam v. State is a class action case in which CLS, along with the National Center for Youth Law and a private attorney, represent foster children who have been moved repeatedly from one foster home to another. The case started when a private attorney was approached by guardians for several foster children who had been moved dozens of times, one experiencing more than 40 placements. Investigation showed that at any given time about 3,000 of the estimated 11,000 state foster children had been moved through three or more placements. The case addressed the causes of multiple placements: lack of adequate mental health treatment; lack of training and supports for foster parents; high caseloads leading to inadequate contact with foster children and foster parents; and other deficiencies.

In 2004—after the Washington Supreme Court held in an appeal of the case that constitutional due process principles give children in the state’s care the “right to be free from unreasonable risk of harm, including a risk flowing from the lack of basic services, and a right to reasonable safety”—the parties reached a groundbreaking settlement. The agreement called for marked improvement in several areas that are key to foster children’s health and safety: early health and mental health

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Mattawa Child Care Workers Reach Tentative Settlement With State



In 2002, agents of the Washington Department of Social and Health Services (DSHS) and federal immigration agents entered the homes of 47 Latina family home child care providers in the Mattawa area while they were caring for children. The government agents conducted unauthorized searches, seized original records the childcare workers are required to maintain (without leaving copies), and inappropriately interrogated and intimidated the workers. The agents served administrative agency documents on the providers that were not translated into Spanish, the providers’ primary language. The agents stated the documents were “court orders” and used them to immediately seize original records from the providers as if the documents were warrants signed by a judge, which they were not. (DSHS program policy stated that in the absence of a warrant, 14 days should be allowed to produce records.) After seizing the records, DSHS claimed that many of the workers had overcharged the state for children that weren’t in their care, and assessed “overpayment” notices, some for tens of thousands of dollars.

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Critical Improvements in Foster Care—cont.

screening and treatment; more frequent supervision by caseworkers; enhanced supports and supervision for foster homes; regular visits between siblings not living together; and other enhanced services to prevent constitutional harm. The settlement is overseen by a panel of five experts that has worked with the State to come up with a seven-year implementation plan, set benchmarks for ongoing improvements, and monitor progress. CLS and its co-counsel representing the children have worked with the expert panel, foster children, community partners, state agencies, and the Legislature on implementation. (Detailed information about the panel's work and progress toward the goals of the settlement can be found at braamkids.org.)

By late 2007, there was some progress, but many benchmarks had not been met and much work remained to realize the full promise of the settlement. The oversight panel has repeatedly found that the state has fallen short of many crucial goals. In early 2008, plaintiffs' attorneys urged appropriation of more money to increase compliance with the settlement in critical areas, but foster care was not initially given high budgetary priority by some state officials.

Seeing no alternative, counsel for the children, led by CLS lawyers Casey Trupin and Equal Justice Works Fellow Erin Shea, filed a motion in the court where the settlement was entered, asking for an order requiring compliance with the settlement in four critical areas: screening of children near the time of entering care to assess health and especially mental health needs; the need for visits to each foster child at least monthly by a state caseworker; reduction of caseloads for state social workers; and regular visits between siblings separated when they were taken into foster care.

The motion helped draw attention to the need, and the state budget finally enacted by the Washington Legislature added over \$13 million for foster care, about \$8 million of which addressed the four critical areas identified in the motion. The final budget signed by the Governor, after vetoes of some line items, reduced the amount related to these four areas to a little over \$6 million and the overall foster care appropriation to about \$10.7 million.

The final appropriation included, among other things, funding that addressed three of the issues raised in the motion to enforce the settlement: provision of monthly caseworker visits to all children in out-of-home placements by September 2008; facilitation of twice-monthly visits between siblings living apart from each other in out-of-home care; and hiring additional staff to perform child health and education tracking (CHET) screening near the time of entry to foster care. Also included was funding to increase placement stability by providing additional staff to address a licensing backlog, address other licensing issues, and expand use of the Mockingbird Family Model, a successful program shown to increase positive child welfare outcomes like those sought in *Braam*.



The children's counsel have worked with the Department of Social & Health Services (DSHS) to determine whether the new funding would lead to full compliance with the settlement on monthly visits, early health screening, and sibling visitation. While the children's counsel are hopeful that they can reach an agreement with the Department that it will achieve substantial progress in the areas funded, there may be a need to return to court again to

Statewide

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Office

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Office Locations:

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101 Yesler Way, Suite 300
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•Moses Lake Office

1405 S. Pioneer Way, Suite A
Moses Lake, WA 98837

• Olympia Office

711 Capitol Way S, #304
Olympia, WA 98501

• Seattle Office

101 Yesler Way, Suite 300
Seattle, WA 98104

• Tri-Cities Office

418—F North Kellogg
Kennewick, WA 99336

• Wenatchee Office

300 Okanogan Ave., Suite 2A
Wenatchee, WA 98801

•Yakima Office

600 Larson Building
6 S. Second Street
Yakima, WA 98901

Critical Improvements in Foster Care—cont.

address these issues. The fourth area that was addressed in the motion to enforce—high caseloads carried by Department caseworkers—was not included in the new appropriations and will have to be addressed in the near future.

While not all needs were funded, the Legislature did act to address some critical parts of the reforms required by the Braam settlement. The inclusion of these items was due to strong leadership on foster

care issues by key Legislators in the House and Senate. The final 2008 supplemental budget reflects movement toward a realization of the State's duty to keep foster children free from unreasonable risks of harm by providing adequate services to meet their basic needs. CLS and the other lawyers for the children will continue to work toward full implementation of the settlement and the goal of safety and adequate services for foster children.

About Our Newsletter

The CLS Connection is Columbia Legal Services' twice-yearly report to the community. We hope the material about our clients and what CLS staff members are doing for them is informative. If you have any questions or comments, please contact our Director, John Midgley at 206-464-1122, ext. 607. Thanks for taking the time to look at *The CLS Connection*.

CLS is a nonprofit corporation providing free legal services to low-income and vulnerable people. We have six offices and work on client problems around the state. CLS is proud to be part of the Alliance for Equal Justice, a state-wide network of legal services providers for low-income people. For more about the Alliance, please see www.allianceforequaljustice.org/. Referral and contact information for our offices can be found on our website, www.columbialegal.org.

Mattawa Child Care Workers—cont.

The workers searched for someone to help them. CLS staff in Wenatchee traveled to Mattawa to meet with them and began a long series of efforts to help.

CLS staff first worked to obtain copies of the seized documents so that they could contest the overpayments. Armed with the documentation, CLS staff then challenged the overpayments and were able to get nearly all of the overpayment claims dismissed.

In the meantime, 21 of the workers hired a private firm and filed a civil rights suit against DSHS and the Town of Mattawa (whose officials had been involved in encouraging the raids), seeking monetary compensation. CLS filed suit for nine others against the same defendants, claiming violations of their civil rights to be free from discrimination and illegal search and seizure. The suit by CLS clients sought both an injunction to prevent further raids of this kind and compensation for providers who were subjected to the searches. The two cases were combined and went forward together in federal court. CLS obtained class-action certification on behalf of about 7,200 childcare providers statewide and a subclass of non-English speaking childcare providers and sought an injunction for the class.

CLS filed pretrial motions that resulted in the federal court ruling that DSHS statutes and regulations allowing investigators to enter home childcare workers' homes at any time of the day or night were an unconstitutional invasion of privacy. The court found that while the workers' homes were subject to inspec-

tion, DSHS could inspect only at reasonable times.

After extensive pretrial investigation, in May the workers and DSHS filed a proposed settlement with the federal court. As in every class action, there must be notice to the class and a determination by the federal court that the settlement is fair to all. If the court approves the settlement, all individual plaintiffs will receive monetary compensation and DSHS will revise its manual on handling family home child care inspections statewide to prevent further raids of the kind that started this case. The State has adopted final regulations that cure constitutional infirmities identified by the Court. If the settlement is approved, DSHS must notify all of Washington's state-paid family home child care providers of the changes in policy and procedure. The childcare workers' case against the Town of Mattawa is still pending, as the settlement is only with the state agencies.

The proposed settlement is a testament to the courage and stamina of the Latina childcare workers of Mattawa. The wheels of justice sometimes turn slowly, and by staying with the case and being willing to challenge dubious government practices, these clients have demonstrated what it takes to seek real justice. Many CLS staff have worked on various aspects of the Mattawa cases, but the leaders have been Wenatchee staff: Attorneys Ty Duhamel and Joe Morrison and Legal Assistants Ivy Rosa, Rachael Pashkowski and Claudia Zarate.

CLS Client Work Highlights

- ◆ **Farm Worker Housing:** For many years Wenatchee's seasonal farm workers, including families with children, have had to live in the forest during the cherry harvest because of a lack of housing. CLS represented several of these workers supporting proposals by the Wenatchee Housing Authority (WHA) and the Washington Grower's League to build 256 farm worker housing units in Chelan County, and a proposal by WHA to build 128 units in Douglas County. CLS helped workers submit testimony about conditions in the forest tent camps, and their urgent need for safe and sanitary housing. CLS also showed that the housing would be consistent with the counties' comprehensive plans, zoning ordinances and other land-use regulations. In Chelan County, permits for the 256 units were approved in December.

In Douglas County, a building permit was granted but then revoked when neighbors appealed to the county hearing examiner. CLS represented a migrant farm worker and her husband and young daughter in WHA's superior court appeal of the revocation. CLS argued that the revocation was inconsistent with the county's comprehensive plan and zoning ordinances, and violated fair housing laws because of its impact on the Latino population. In March, the court overturned the revocation and reinstated the permit. The housing is expected to be built by summer, 2009.

- ◆ **Language Access to the Courts.** 14% of people in Washington State speak a language other than English at home, and often circumstance pulls people into court before their English skills are fully developed. Although state law guarantees an interpreter to anyone who lacks sufficient command of English to participate meaningfully in courts, people facing court hearings are often unaware of these rights. Working on behalf of a client group, CLS suggested legislation that requires each court to develop a language assistance plan to inform the public that interpreters are available and how to obtain one. The new law also states that no one shall be required to provide one's own interpreter. The new law allows the Administrative Office of the Courts to reimburse up to 50% of the cost of using qualified interpreters.
- ◆ **Victims of home ownership scams.** Many seniors and the working poor have been and are affected by the growing mortgage crisis. The Governor appointed a task force to address the problem and the Legislature considered several proposals. On behalf of clients impacted by foreclosure, CLS worked on two bills that passed and which significantly address the cause of the crisis as well as

the aftermath. One new law holds mortgage brokers to the high standard of acting as a fiduciary on behalf of the homebuyer. Previously, any duty of mortgage brokers was only by contract and there was no clear law regarding the duty of the broker to the client. The second new law deals with so-called "foreclosure rescue" transactions, which have increased with the tide of foreclosures. Foreclosure rescue operators locate a homeowner with equity who is going through the foreclosure process, and persuade the homeowner to sell the house to the scammer with the homebuyer leasing the property back, supposedly in order to give the homeowner time to buy back the property. In many instances, the "rescuer" ends up with the property. The new law will significantly curtail the incidence of this kind of problem in Washington by requiring clear disclosures, a homeowner's right to cancel the deal, and other limits on this kind of transaction.

- ◆ **Employment Leave for Victims of Domestic Violence.** Many victims of domestic violence, sexual assault, or stalking depend on working, as reaching economic self-sufficiency is often the foundation that allows a victim to leave a violent situation. Victims may have to go to court several times in order to obtain court-ordered protection, but these workers did not have the right to take leave from employment to attend these hearings. Along with victim and survivor groups, CLS, on behalf of low-income victims, worked on and the Legislature passed a new law that allows employees who are subjected to domestic violence, sexual assault, or stalking to take leave to secure medical care and attend court hearings. Employers do not have to provide paid leave, but must provide reasonable time off, thus ensuring that workers need not choose between employment and safety. The new Washington law is one of the strongest of this kind in the nation.

Low Income Renters: The Vancouver Housing Authority (VHA) proposed a flat rate rent structure where rents would no longer be based on a percentage of a household's adjusted monthly income. If implemented, the proposal would result in a major hardship for approximately 30% of current low-income participants — including especially families with children and households headed by ethnic minorities and women—who would pay higher rents. On behalf of renters who are clients, CLS submitted comments and an expert analysis on the impact of the proposed changes. The VHA Board recently approved an amended housing plan for FY 2008 without enacting the flat rate structure, and directed VHA staff to work with stake-

CLS Client Work Highlights

holders to design a rate structure for Board approval. CLS will continue to work for a rent structure that protects the poorest tenants.

- ◆ **First Welfare Grant Increase In Years.** Families with children receiving public assistance through the WorkFirst program had not seen an increase in cash benefits in over 15 years. For an adult with 2 children, the grant amount has been \$546 per month for this entire time. CLS represented clients and joined with many anti-poverty

advocates in this year's successful effort to get the legislature to authorize a 3% grant increase, resulting in a grant of \$562.00 for this family of three. Unfortunately, this increase will not extend to the single incapacitated adults who receive benefits through the General Assistance-Unemployable program (GAU). These people have not had an increase in benefits in 18 years and remain at \$339.00 per month. CLS represents clients who receive GAU and will continue to work for increases for this group.

CLS and NWIRP Open Moses Lake Office

It's been more than two decades since there was a legal aid office in Moses Lake. In early May, thanks to a special grant from the Legal Foundation of Washington, CLS and the Northwest Immigrant Rights Project (NWIRP) opened an office to serve this area of North Central Washington. CLS and NWIRP are also co-located with Grant-Adams Volunteer Legal Services (GAVLS), which was established by dedicated local bar members to help clients with pro bono legal services provided by private attorneys. Newly-hired CLS staff in the office includes attorneys Sarah Leyrer and Larelin Cartaya, community/outreach worker Zaida Rivera, and legal assistant Gina Yáñez.



CLS staff in Moses Lake will work with many other providers in the Alliance for Equal Justice to

provide as broad a spectrum of legal services as possible in the office's geographic area. NWIRP will provide immigration services as it has in other areas of the state. The Northwest Justice Project (from its Wenatchee office) has been providing representation of clients in Grant and Adams Counties on high-priority legal matters in areas such as employment, education, housing, and domestic violence and CLS will provide additional services in many of these areas. CLS will also consult with other statewide providers in areas of their expertise, for example consulting with TeamChild on youth and education issues.

Community response in Moses Lake and the surrounding area has been welcoming and enthusiastic. An official "grand opening" community event is scheduled for late summer. We are pleased to be working with our partners to set up this new office in an area that has not had a local office in many years.

NEW RULES PROTECT WORKERS AGAINST ILLNESS FROM OUTDOOR HEAT

On June 4, 2008, after several years of study, the Washington Department of Labor & Industries (L&I) established permanent rules to protect workers who toil in outdoor heat. These new rules stem from the work of CLS and others beginning with representation of the widow of a worker who died of heat stroke in 2005 after cutting grass with a machete in a hops field. The worker was wearing heavy protective equipment that didn't allow him to cool off, and was not supplied with adequate water. Two other Washington workers have died from heat illness in the past 3 years.

CLS originally persuaded L&I to adopt emergency rules, but also worked along with community and stakeholder groups toward permanent, more specific requirements. CLS staff assembled an extensively documented petition for rulemaking that led to L&I undertaking its permanent rulemaking process. Stakeholder meetings, rule redrafts and comments, and rulemaking hearings followed.

The new rules contain several crucial requirements to protect outdoor workers in hot weather, including:

- At least a quart of drinking water per employee per hour;
- Providing workers showing signs of heat illness with a way to cool down and monitoring them to determine if medical attention is necessary; and
- Information and training on heat-related illness, how to prevent it, and how to respond to it.

The rules are in effect May 1 to September 30 of each year. They are triggered at temperatures as low as 52 degrees (for workers who wear nonbreathing clothing such as chemical resistant suits), and start at 89 degrees for workers who wear a single layer of breathing clothing. These new Washington rules are expected to save lives and prevent serious illness, as similar rules have done in California.

CLS work on the heat illness rules was led by CLS attorney Candelaria Murillo and the Tri-Cities office team.

Columbia Legal Services



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Find us on the Web at:
www.columbialegal.org

MISSION STATEMENT

Columbia Legal Services advocates for people living in poverty. We work to reveal and end actions that harm our client populations; we seek social and economic justice for them through systemic change. CLS, directly and in concert with the Alliance For Equal Justice, provides legal assistance in the full array of civil justice forums to enable our clients to assert the rights and exercise the responsibilities inherent in a just society.

IF YOU WISH TO DONATE...

Columbia Legal Services is supported by grants, including money provided by the Campaign for Equal Justice, which raises money for legal services to low-income people in Washington. Please consider making a donation in the enclosed envelope to support our work.