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2011 NEWS

EDITED BY SLC, COPAA PUBLISHES MANUAL ON RESTRAINT AND SECLUSION IN SCHOOLS

"The Right to be Safe In School: Advocacy and Litigation Strategies to Combat the Use of Restraint and Seclusion," has just been published by the Council for Parent Attorneys and Advocates (COPAA). Written by Kristine Sullivan, and edited by SLC attorneys Jodi Siegel and Alice K. Nelson, and Leslie Seid Margolis and Denise Stile Marshall, this manual is intended as a practice guide for attorneys and advocates representing children with disabilities who have been injured or damaged by such unsound techniques in the educational setting. It is available to download for free for COPAA members and \$30 for non-members. To purchase, visit www.copaa.org.

FIRST DCA DENIES STATE'S EFFORTS TO AVOID EDUCATION CASE

On November 23, 2011, the First District Court of Appeals issued an En Banc Order in *Haridopolos, et. al. v. Citizens for Strong Schools, et al.*, denying the state's motion for a writ of prohibition, and certifying a question of public importance to the Florida Supreme Court.

A majority of the judges agreed that the lower court has subject matter jurisdiction and, therefore, can interpret the education clause, which says that the state must provide a uniform, efficient, safe, secure and high quality public education system.

The DCA certified the following question to be answered by the Florida Supreme Court: Does Article IX, Section 1(a), Florida Constitution, set forth judicially ascertainable standards that can be used to determine the adequacy, efficiency, safety, security, and high quality of public education on a statewide basis, so as to permit a court to decide claims for declaratory judgment (and supplemental relief) alleging noncompliance with article IX, Section 1(a) of the Florida Constitution?

The lawsuit was filed by Southern Legal Counsel in November 2009 representing Citizens for Strong Schools, Fund Education Now, two students in Duval County schools and four parents in Duval and Pasco counties. The suit alleges deficiencies in the public education system that violates the state's constitutional duty.

Co-counsel in the case are Jon Mills, Tim McLendon and Deborah Cupples.

ELEVENTH CIRCUIT COURT OF APPEALS ISSUES OPINION IN *CATRON ET AL. V. CITY OF ST. PETERSBURG*

On September 28, 2011, a federal appellate court has ruled that a lawsuit challenging the constitutionality of a St. Petersburg trespassing ordinance may proceed.

The opinion, issued by the 11th Circuit Court of Appeals in *Catron et al. v. City of St. Petersburg*, overturns a lower court's decision to dismiss a lawsuit brought by Southern Legal Counsel (SLC), Florida Institutional Legal Services (FILS), and the National Law Center on Homelessness & Poverty (the Law Center). The Plaintiffs assert that the ordinance violates their rights to freedom of movement and procedural due process.

The 11th Circuit ruled that the trespassing ordinance violates the due process clause of the Fourteenth Amendment of the U.S. Constitution. The ordinance authorizes the City to exclude people from public property by issuing a trespass warning. The lawsuit alleges that the City has used the ordinance to ban Plaintiffs and other homeless individuals from public parks, as well as surrounding sidewalks and bus stops. Under the ordinance, people are not given an avenue to challenge any warnings they receive without risking arrest. The City has requested a rehearing en banc, which is pending.

SLC SELECTED FOR NORTHEASTERN'S LEGAL SKILLS IN SOCIAL CONTEXT SOCIAL JUSTICE PROGRAM

SLC was selected as a client organization for the Northeastern Law School Legal Skills in Social Context (LSSC) Social Justice Program for the second year in a row. The LSSC program is a partnership between the law school and community or not-for-profit organizations to address unmet social needs.

This year's project will result in Northeastern students developing model legislation based on best practices to reduce and eliminate restraint and seclusion policies in schools. The project will also include an accompanying report for educating legislative bodies and regulatory policymakers about the need for changes to federal and state laws. The project will include legislative survey, scientific literature review and investigative field research. SLC will use the model legislation and report for its state and national advocacy efforts with special education partners nationwide to end these practices that sometimes end in death or cruel and unusual punishment for restrained and/or secluded students.

The student project will be completed by May 2012.

ORAL ARGUMENT IN *HARIDOPOLOS, ET AL. V. CITIZENS FOR STRONG SCHOOLS, ET AL.*

On Thursday, June 30, 2011, Florida's First District Court of Appeals heard oral argument in *Haridopolos, et al. v. Citizens for Strong Schools, et al.*, a Petition for Writ of Prohibition filed by the State of Florida challenging Judge Fulford's subject matter jurisdiction to hear *Citizens for Strong Schools, et al. v. Florida State Bd. of Educ., et al.*

Southern Legal Counsel filed Citizens for Strong Schools in November 2009, alleging that Florida is violating its own constitution by failing to provide a system of high quality public schools or adequately fund education. The suit was filed on behalf of citizen organizations, parents and students and seeks a declaration that Florida is breaching its duty to provide a high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX of Florida's Constitution. In August 2010, Leon County Circuit Court Judge Jackie Fulford rejected the State's motion to dismiss. The State had argued that courts have no authority to review the quality of the education system, and that "the Legislature has absolute discretion to implement any system, checked only by the ballot box." The State then filed *Haridopolos*, a Petition for Writ of Prohibition in the First District Court of Appeal.

SLC ATTORNEY TESTIFIES AT CONGRESSIONAL BRIEFING ON HOMELESSNESS

Attorney Kirsten Clanton testified at a congressional briefing on June 8, 2011, in Washington D.C. about the Federal Strategic Plan to Prevent and End Homelessness. This briefing featured a panel of advocates assessing various aspects of the plan including housing, vacant property, education and the criminalization of homelessness through a human rights perspective. Her testimony focused on steps members of Congress can take to implement the plan's objectives to reduce the criminalization of homelessness. "The federal plan to end homelessness clearly states that criminalizing acts of survival is not a solution to homelessness. Not only does the criminalization of homelessness result in unnecessary public costs for police, courts and jails, but it also systematically violates the civil and human rights of our most vulnerable and poorest citizens," Clanton said.

SLC CONCLUDES 5-DAY TRIAL IN *LEE, ET. AL. V. DUDEK, ET. AL.*

SLC concluded a 5-day trial in *Lee, et al. v. Dudek, et al.* A bench trial was held before Judge Hinkle in the Tallahassee division of the U.S. Northern District Court of Florida. A decision is expected shortly.

The suit, which was filed in January 2008, seeks injunctive relief to provide sufficient Medicaid-funded services to persons with disabilities on a long term basis in the community. According to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act the state is required to provide services in the most integrated setting for the individual. However, the current lack of integrated community-based services has forced many individuals, especially the elderly, to live in nursing homes for the sole purpose of receiving the services they require.