

CT COURT
CONNECTICUT

19. DISTRICT COURT
HARTFORD, CT.

Plaintiffs,

NO. 3,04CV1338
JCH

August 11, 2004

Defendants.

I. PRELIMINARY STATEMENT

1

(hereinafter "PAIR") 29 U.S.C. § 794e, et seq. OPA challenges the refusal of Defendants Hartford Board of Education (hereinafter "Board"), Hartford Public Schools (hereinafter "HPS") and Robert Henry (hereinafter "Henry"), (collectively "Defendants") to disclose certain directory information regarding the identity of parents or guardians of students attending the Hartford Transitional Learning Academy (hereinafter HTLA), a school operated by Defendants. That directory information, which consists of names, addresses and phone numbers, would enable the Plaintiffs to seek releases from those parents and guardians for the students' educational and other records so that OPA may conduct an investigation into serious allegations of abuse and neglect of students attending HTLA. OPA additionally challenges Defendants' refusal to allow OPA access to the HTLA facilities at times that the students are in attendance. These refusals by Defendants prevent OPA, the state and federally designated Protection and Advocacy System for persons with disabilities in Connecticut, from fulfilling its statutory mandates of investigating allegations of abuse and neglect as well as providing protection and advocacy services for individuals with disabilities. The actions of the Defendants further prevent OPA from determining whether the rights of students to be free from abuse and illegal restraint are being violated and whether there are appropriate procedures in place to prevent incidents of abuse and neglect.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Plaintiffs' federal claims are made pursuant to PAIMI, 42 U.S.C. §§ 10801-10827, the DD Act, 42 U.S.C. § 15041 et seq., and PAIR, 29 U.S.C. § 794e, et seq. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201, 2202.

2. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) as all of the events and omissions complained of below occurred in this district.

III. PARTIES

3. Plaintiff OPA is the Connecticut Protection and Advocacy program designated by the Governor of the State of Connecticut to provide protection and advocacy services to individuals with disabilities. Conn. Gen. Stat. § 46a-10. It is also allotted federal funds pursuant to PAIMI, the DD Act, and PAIR and is thereby obligated to similarly provide protection and advocacy for persons with mental illness, developmental disabilities, and individuals with disabilities who are not eligible under PAIMI or the DD Act. 42 U.S.C. §§ 10803 – 04, 42 U.S.C. § 15041 et seq., 29 U.S.C. § 794e, et seq. Under these statutes OPA is also authorized to investigate suspected incidents of abuse and neglect and to pursue administrative, legal and other remedies on behalf of individuals with mental illness wherever programs for such individuals are operated within the State of Connecticut or within the state's control. OPA is located at 60B Weston Street, Hartford, CT 06120.

4. Plaintiff James McGaughey is the Executive Director of OPA. He is authorized to investigate and bring suit on behalf of persons with disabilities pursuant to Conn. Gen. Stat. § 46a-11.

5. Defendant Hartford Board of Education is established pursuant to Conn. Gen. Stat. § 10-218. Its responsibilities are designated in Conn. Gen. Stat. § 10-220(a) where it is mandated to “maintain good public elementary and secondary schools” and provide, inter alia, “a safe school setting.” Defendant Board is located at 960 Main Street, 8th floor, Hartford, Connecticut 06103.

6. Defendant Hartford Public Schools is established pursuant to Conn. Gen. Stat. § 10-240. Its powers are designated in Conn. Gen. Stat. § 10-241. Defendant HPS is located at 960 Main Street, 8th floor, Hartford, Connecticut 06103.

7. Defendant Robert Henry is the Superintendent of School of the Hartford Public Schools. Pursuant to Conn. Gen. Stat. §10-157 Henry is responsible for the supervision of the schools and serves as the chief executive officer of Defendant HPS. Henry has executive authority over the school system and the responsibility for its supervision. As Chief of Staff for the Hartford Public Schools, Henry is responsible for general oversight of the operations areas of the district, including Finance and Business Services, Grants Administration, Human Resources, Security, Buildings and Grounds and other departments. He is being sued in his official capacity. Defendant Henry maintains offices at Hartford Public Schools, 960 Main Street, 8th floor, Hartford, Connecticut 06103.

IV. FACTUAL ALLEGATIONS

8. Defendants operate the Hartford Transitional Learning Academy. HTLA is a school that, despite its label of “transitional,” functions as a placement of last resort in the Hartford Public School system. HTLA primarily accepts children who have a label of “emotionally disturbed” and who have not experienced success at placements at other schools within the system, notably their local schools. Upon information and belief, students who are placed at HTLA have disabilities that include mental illness, developmental disabilities, brain injuries and other disabilities including cognitive disabilities. Children also have a documented history of challenging negative behavior. In order to be placed at HTLA a student and his/her parents or guardians need to sign an agreement that permits the use of “time-out procedures and/or restraints.” Students and their parents or guardians must also sign a form permitting the use of “reasonable physical force when [an HTLA staff person] believes it is necessary to (a) protect himself/herself or others from immediate physical injury; (b) obtain possession of a dangerous instrument or controlled substance upon or within the control of such student or (c) **protect property from physical damage.**” (Emphasis added.) Attached hereto as Attachment 1. HTLA is located at 110 Washington Street, Hartford, CT 06106 with an additional facility at 150 Tower Avenue, Hartford, CT 06120. HTLA is a facility as defined in the DD Act, PAIMI and PAIR. 42 U.S.C. § 15043(a)(2)(A)(i) and 42 U.S.C. § 10802(4)(B)(ii), 29 U.S.C. § 794e(f)(2).

9. As part of its regular intake process, OPA has received complaints from parents of students at HTLA. These complaints have included allegations that the students have been

subjected to inappropriate restraint and seclusion at HTLA. Some of these allegations have included claims that the students were injured during the restraint process. Aff. of Centeno at ¶ 4-10. Attached hereto as Attachment 2. Upon information and belief, the students had a variety of disabilities including mental illness, developmental disabilities, and other cognitive impairments. On information and belief students were also placed at HTLA with brain injuries.

10. Students are also placed at HTLA without adequate information to determine what kind of programming is required for the student. For example, OPA learned that students with behavioral issues have not received a functional behavioral assessment to enable Defendants to develop a behavioral intervention plan. The only “plan” these students have is that contained in the “Hartford Transitional Learning Academy, Student and Parent Handbook” at 12. This handbook sets forth “Standards of Student Behavior/Behavior Management Plans.” Attached hereto as Attachment 3. This general plan violates the Individuals with Disabilities in Education Act (IDEA) in that it fails to provide an individualized plan for each particular child. 20 U.S.C. 1414(d)(3)(B). This violation of IDEA places students at risk of inappropriate restraint and seclusion, and thus at risk of abuse and neglect. Aff. of Garrison at ¶18-20 . Attached hereto as Attachment 4.

11. As a result of the complaints as set forth in paragraph 9 supra and the information set forth in paragraph 10 supra , OPA determined that it had probable cause to suspect that these students with disabilities were being subjected to abuse and neglect. Based upon this probable

cause determination OPA decided to undertake an investigation of HTLA pursuant to its federal authority under PAIMI, the DD Act, and PAIR.

12. In a letter dated February 3, 2004, OPA notified Defendant Henry that investigators from OPA and The Office of the Child Advocate (hereinafter "OCA") would be jointly investigating "alleged programmatic deficiencies and violations of students rights." This letter stated that investigators from both offices would make an initial visit to the HTLA facility located at 110 Washington Street on Tuesday, February 10, 2004 at 9:00 am. The letter further informed Defendant Henry that the investigation would include "policy review, record review, interviews and direct observation of practices." OPA and OCA assured Defendant Henry that the investigators would "make every effort not to disrupt the educational environment." See Letter from OPA and OCA to Defendant Henry, February 10, 2004. Attached hereto as Attachment 5.

13. On Tuesday, February 10, 2004 investigators from OPA and OCA arrived at HTLA. Faith VosWinkel from OCA and Bruce Garrison from OPA went into the school office at approximately 8:30 am, signed in and informed the clerk where they were from and that they wished to see Barbara Macauley, the principal of HTLA. The clerk asked them to wait. Aff. of Garrison at ¶ 8-10 and Aff. of VosWinkel at ¶ 8-10. Attached hereto as Attachment 6.

14. When Macauley arrived at the office approximately 25 minutes later, she asked Mr. Garrison and Ms. VosWinkel to come into her office where Ms. VosWinkel told Macauley that they were there to initiate an investigation into HTLA. Aff. of Garrison at ¶ 12 and Aff. of VosWinkel at ¶ 12.

15. When Macauley expressed surprise and said she knew nothing about an investigation Ms. VosWinkel informed her that a letter had been sent to Defendant Henry. Aff. of Garrison at ¶ 13 and Aff. of VosWinkel at ¶ 13. Macauley informed Mr. Garrison and Ms. VosWinkel that she had not received a letter and asked what kind of investigation they intended to conduct. Ms. VosWinkel told her that they intended only to look at documents relating to policies, procedures and program descriptions of HTLA during this particular visit. She also stated that they planned additional visits to observe the programs at HTLA and to talk to faculty. She told Ms. McCauley that they would not be going into confidential student areas on that day. Aff. of Garrison at ¶ 14 and Aff. of VosWinkel at ¶ 14.

16. Macauley stated that before she could let Mr. Garrison and Ms. VosWinkel into the facility she needed to check with her administration. After leaving her office for approximately 10 minutes she returned and told them that she had spoken with Assistant Corporation Counsel Ann Bird who advised her not to let them into the facility or to review any documents. She then asked them to leave, which they did. Aff. of Garrison at ¶ 16 and Aff. of VosWinkel at ¶ 16.

17. On or about April 7, 2004 OPA and OCA met with Defendant Henry and Macauley and other officials from Defendant HPS and with counsel for the Defendants to try to resolve the question of access to the HTLA facilities for the purpose of conducting the investigation. OPA explained the areas of concern it had and explained its authority. OPA asked for directory information so that it could contact parents and guardians to seek consents for release of educational records and OPA renewed its request for access to the facilities. At the conclusion

of the meeting, OPA agreed that it would provide a letter to Defendants explaining its authority. On April 12, 2004 OPA wrote to counsel for Defendants and discussed the various statutes which provided this authority, and cited to case law. OPA renewed its request for both directory information and access to the facilities. See Letter from OPA to Ann Bird. Attached hereto as Attachment 7.

18. On May 3, 2004 counsel for Defendants responded to OPA's letter and, citing privacy concerns refuted in OPA's letter, refused to allow OPA access to either the directory information or the facilities. See Letter from Bird to OPA. Attached hereto as Attachment 8.

19. On July 20, 2004 counsel for OPA wrote to counsel for Defendants attempting to resolve the matter and informing Defendants that should the matter not be resolved the case would have to be litigated. Attached hereto as Attachment 9.

20. Counsel for Defendants responded on July 22, 2004. In that letter Defendants continued to refuse to allow Plaintiffs access to the directory information. Defendants did state that they would allow Plaintiffs access to the HTLA facility, but only when the students were not present. Plaintiffs replied to this letter on July 27, 2004 and informed Defendants that this offer was not acceptable. Attached hereto as Attachments 10 and 11.

21. To this date Defendants have allowed OPA only to have access to otherwise public documents. OPA was not permitted into the HTLA facilities to review these documents. Defendants continue to refuse OPA access to HTLA when the students are present, continue to

refuse OPA access to the directory information, and thus continue to deny OPA the ability to conduct its lawful investigation.

V. CLAIMS FOR RELIEF

First Claim for Relief – Violation of PAIMI

22. Plaintiffs incorporate and re-allege paragraphs 1 through 21, as if fully set forth herein.

23. OPA as Connecticut's designated Protection and Advocacy system has the authority to investigate incidents of abuse and neglect of individuals with mental illness to protect the rights of individuals with disabilities if there is probable cause to believe that the incidents occurred.

42 U.S.C. § 10805(a)(1)(A).

24. PAIMI specifically grants to OPA the authority to access facilities and residents that provide assistance to individuals with mental illness to protect the rights of those individuals. 42 U.S.C. § 10805(a)(C)(3), 42 C.F.R. § 51.42.

25. OPA has authority to have access to records of individuals with mental illness, including directory information of parents and guardians of students to protect the rights of those individuals. 42 U.S.C. § 10806, 42 C.F. R. § 51.41.

26. Defendants' refusal to permit OPA to have access to the HTLA facilities when the students are present, to have access to the directory information, or to conduct an investigation violates PAIMI.

27. Plaintiffs have no adequate remedy at law.

Second Claim for Relief – Violation of the DD Act

28. Plaintiffs incorporate and re-alleges paragraphs 1-21, as if fully set forth herein.

29. OPA as Connecticut's designated Protection and Advocacy system has the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities to protect the rights of individuals with disabilities if there is probable cause to believe that the incidents occurred. 42 U.S.C. § 15043(a)(2)(E).

30. The DD Act specifically grants to OPA the authority to access facilities and residents that provide assistance to individuals with developmental disabilities to protect the rights of those individuals. 42 U.S.C. § 15043(a)(2)(H), 45 C.F.R. § 1386.22(f) and (g).

31. OPA has the authority to have access to records of individuals with developmental disabilities, including directory information of parents and guardians of students to protect the rights of individuals with disabilities. 42 U.S.C. 15043(a)(2)(I) and (J). 45 C.F.R. § 1386.22(a)-(e).

32. Defendants' failure to permit OPA to have access to HTLA facilities when students are present, to have access to the directory information and to conduct an investigation violates the DD Act.

33. Plaintiffs have no adequate remedy at law.

Third Claim for Relief – Violation of PAIR

34. Plaintiffs incorporate and re-allege paragraphs 1-21, as if fully set forth herein.

35. OPA as Connecticut's designated Protection and Advocacy system has the authority to investigate incidents of abuse and neglect of individuals with disabilities under PAIR to protect the rights of individuals with disabilities if there is probable cause to believe that the incidents occurred. 29 U.S.C. § 794e(f)(2).

36. PAIR specifically grants to OPA the authority to access facilities and residents that provide assistance to individuals with disabilities to protect the rights of those individuals. 26 U.S.C. § 794e(f)(2).

37. OPA has the authority to have access to records of individuals with disabilities, including directory information of parents and guardians of students to protect the rights of those individuals. 26 U.S.C. § 794e(f)(2).

38. Defendants' failure to permit OPA to have access to HTLA facilities when students are present, to have access to the directory information and to conduct an investigation violates PAIR.

VI. REQUESTS FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

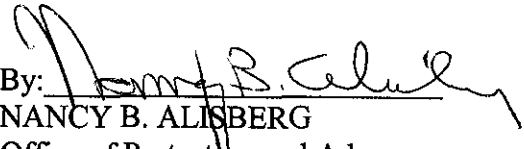
A. Enter a declaratory judgment, in accordance with 28 U.S.C. § 2201, declaring that the Defendants' actions and failures to act violate PAIMI, the DD Act, and PAIR by:

i) Denying the Plaintiffs access to HTLA facilities when students are present; and

- ii) Denying the Plaintiffs access to directory information of parents and/or guardians of students at HTLA;
 - iii) Preventing OPA from fully performing its statutory duty to investigate incidents of suspected abuse and neglect of persons all in violation of PAIMI, the DD Act, and PAIR;
- B. Enter preliminary and thereafter permanent injunctive relief, pursuant to 28 U.S.C. § 2202, requiring Defendants to provide OPA with access to HTLA when the students are present, with access to directory information of parents and/or guardians of students at HTLA and to permit OPA to conduct an investigation.
- C. Retain jurisdiction over this action to ensure Defendants' compliance with the mandates of PAIMI, the DD Act and PAIR;
- D. Order such other, further, or different relief as the Court deems equitable and just.

Respectfully submitted,

The Plaintiffs,
The State of Connecticut
Office of Protection and Advocacy
For Persons with Disabilities
James McGaughey

By: 
NANCY B. ALISBERG
Office of Protection and Advocacy
For Persons with Disabilities
60B Weston Street
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Fed. Bar. No. CT 21321

(860) 297-4397

Fax: (860) 566-8714

nalisberg@po.state.ct.us

By: 

PAULETTE G. ANNON

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For Persons with Disabilities

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Fed. Bar No. CT21556

Fax: (860) 566-8714

(860) 297-4329

paulette.annon@po.state.ct.us

Attorneys for the Named Plaintiffs

DATED: _____

8.11.04

Exhibit

1



Robert Henry
Superintendent of Schools

Dr. Barbara D. Macauley
Principal

Beverly Coker and Dwight Fleming
Assistant Principals

Hartford Public Schools

Hartford Transitional Learning Academy

110 Washington Street
Hartford, CT 06106

Phone: (860) 695-6120 Fax: (860) 722-8285

e-mail: htla@hartfordschools.org

&

150 Tower Avenue
Hartford, CT 06120

Phone: (860) 695-6020 Fax: (860) 522-6219

e-mail: htla.annex@hartfordschools.org

USAGE OF THERAPEUTIC PHYSICAL RESTRAINT TO MAINTAIN SAFETY

Please note the following important information:

1. The use of physical force (corporal punishment) as a disciplinary measure is not permitted in the Hartford Public Schools.
2. In accordance with state statutes, a teacher, administrator, or other person entrusted with the care and supervision of a student may use reasonable physical force when he/she believes it is necessary to (a) protect himself/herself or others from immediate physical injury; (b) obtain possession of a dangerous instrument or controlled substance upon or within the control of such student; or (c) protect property from physical damage.

Legal Reference: CGS 53a-18 (P.A. 89-186)

Parent: _____

Student: _____

Date: _____

~~02-06801-2~~

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**THE STATE OF CONNECTICUT OFFICE OF
PROTECTION AND ADVOCACY FOR PERSONS
WITH DISABILITIES, and JAMES MCGAUGHEY,**
Executive Director of The State of Connecticut Office
Of Protection and Advocacy for Persons with Disabilities

Plaintiffs,

v.

**HARTFORD BOARD OF EDUCATION,
HARTFORD PUBLIC SCHOOLS, and
ROBERT HENRY, in his official capacity as the
Superintendent of Schools**

Defendants.

CIVIL ACTION
NO.


August 11, 2004

AFFIDAVIT OF JOSE CENTENO

Jose Centeno, being duly sworn deposes and says:

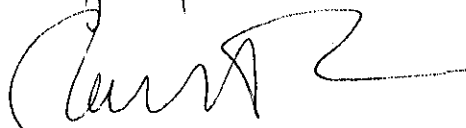
1. My name is Jose Centeno. I am over 18 years of age and I understand the obligations of an oath.
2. I have been employed as a Human Services Advocate at the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities (OPA) at 60B Weston Street, Hartford, CT 06120 since 1990. My area of specialization is Special Education. I have provided advocacy services for over 300 families and their children receiving special education and related services throughout the state of Connecticut.

3. I have a Bachelor of Arts from Northwest College, Kirkland, Washington.
4. As part of my work as a Human Services Advocate, I have served children who attended the Hartford Transitional Learning Academy [HTLA] At least two of these children were restrained and secluded while at HTLA.
5. One of these children was restrained on numerous occasions. He complained that he was treated roughly, and he developed bruises as a result of the restraints. He also reported being held tightly enough to cause pain.
6. He also frequently placed in seclusion. On one occasion he complained that his arms were forced behind his back as he was escorted to the "time-out" room.
7. On information and belief, he developed panic attacks as a result of the stress of this situation.
8. Another client also reported being restrained frequently. This child also suffered from bruising as a result of the restraints.
9. I have also heard reports that children served by Padres Abriendo Puertas, an agency housed in OPA offices, also reported being restrained. One such client reported on one occasion receiving rug burns on the face due to a prone restraint. On information and belief there are photographs documenting this injury.
10. In 2002, on a professional visit to the HTLA facility at 110 Washington Street, I observed a child who was subject to a prone 4-point restraint in the middle of the school hallway. I have no reason to believe that the practices at HTLA regarding restraint have changed in 2002.


JOSE CENTENO
Human Services Advocate

Signed and sworn to before me this 30th day of

July, 2004


Commissioner of the Superior Court

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Report Cards

Grade Equivalents:

A+	=	97	C+	=	77	F	=	59 and below
A	=	92	C	=	72			
A-	=	90	C-	=	70			
B+	=	87	D+	=	67			
B	=	82	D	=	62			
B-	=	80	D-	=	60			

High school credits will be determined by the guidelines of the student's district school.

Standards of Student Behavior/Behavior Management Plans

HTLA is a therapeutic program for students with emotional and behavioral needs who have been referred, through the PPT process, to modify their behaviors so that they may experience success in their district school. As such, we have very high standards of behavior for our students. Simply put, there are rewards for good behavior and consequences for poor behavior.

All students will participate in a Points and Levels System which will enable them to earn an increasing number of rewards and privileges as they display appropriate behavior.

Immediate consequences for any display of negative behavior may be:

- Verbal correction
- Loss of Point(s) on a daily point sheet; lowering of placement on the levels system
- Loss of privileges
- After school make-up room for time and/or work missed
- Time-out (see Time-Out section)
- Physical restraint (for students losing self-control). (See Physical Restraint section).
- Parent conference

Use of Time-Out Room

Controlled, monitored time-outs may be necessary to safely address aggressive and assaultive (verbal and physical) behaviors demonstrated by students during the school day. Time-out will be used as a last resort to remediate student behavior.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**THE STATE OF CONNECTICUT OFFICE OF
PROTECTION AND ADVOCACY FOR PERSONS
WITH DISABILITIES, and JAMES MCGAUGHEY,**
Executive Director of The State of Connecticut Office
Of Protection and Advocacy for Persons with Disabilities

Plaintiffs,

v.

**HARTFORD BOARD OF EDUCATION,
HARTFORD PUBLIC SCHOOLS, and
ROBERT HENRY, in his official capacity as the
Superintendent of Schools**

Defendants.

CIVIL ACTION
NO.

August 11, 2004

AFFIDAVIT OF BRUCE GARRISON

Bruce Garrison, being duly sworn deposes and says:

1. My name is Bruce Garrison. I am over 18 years of age and I understand the obligations of an oath.
2. I have been employed as a Human Services Advocate at the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities (OPA) at 60B Weston Street, Hartford, CT 06120 for 17 years. My area of specialization is Special Education. I have provided advocacy services for over 600 families and their children receiving special education and related services throughout the state of Connecticut.

3. I have a Master's Degree in Education/Special Education from the University of Connecticut and have my teacher certification in the areas of regular and special education.
4. During the fall and winter of 2003-2004 I was assigned to work as part of a team to investigate allegations of abuse and neglect at the Hartford Transitional Learning Academy. The team doing the investigation included staff from OPA as well as staff from the State of Connecticut, Office of Child Advocate (OCA).
5. On information and belief, Both OPA and OCA had received complaints alleging abuse and neglect concerning the misapplication of restraints and seclusion at the HTLA facility. OPA therefore had probable cause to conduct an investigation under our federal mandates.
6. On information and belief, OPA has authority under those federal mandates to visit the HTLA facility and observe the students in their environment.
7. On February 3, 2004 the Executive Director of OPA, James McGaughey and the Child Advocate, Jeanne Milstein, sent a letter to Robert Henry, Superintendent of the Hartford Public Schools informing him that the offices would be conducting an investigation of the HTLA programs. The letter further informed Superintendent Henry that investigators would be making their initial visit to the HTLA facility at 110 Washington Street, Hartford, CT on Tuesday, February 10 at 9:00 am.

8. On Tuesday, February 10, 2004 I met Faith Vos Winkel, an Assistant Child Advocate from OCA, and together we walked to HTLA where we arrived at approximately 8:30 am.
9. We entered the building and went directly to the school office where we signed in. We showed the clerk at the desk our ID's and Ms. Vos Winkel informed her that we were from the Office of the Child Advocate and from the Office of Protection and Advocacy. She requested that we meet with Barbara McCauley, the principal of HTLA.
10. We were informed that Ms. McCauley was not in her office, and we were asked to take a seat and wait until she could be contacted.
11. While we waited we observed students, parents and teachers coming and going into the office. Although the office was a public area, we heard students referred to by name. We also observed a large "transportation roster" in the main corridor of the school that contained student names and bus routes. Finally, when we signed into the building, next to the sign-in book on the counter in the school office was a schedule of PPT's that were to be held that day listed by student name. There was no apparent effort to maintain the privacy of students in this public waiting area.
12. We waited for approximately 20-25 minutes. At that time Ms. McCauley entered the school office, greeted us and invited us into her office. Once there, Ms. Vos Winkel informed her that we were there to initiate an investigation into HTLA.

13. Ms. McCauley expressed surprise, and said that she had not been informed that we would be there that day. Ms. Vos Winkel informed her that a letter had been sent to Superintendent Henry by OCA and OPA and Ms. McCauley told us that she had not seen the letter nor been told anything about it. She then asked us what kind of investigation we were there to conduct.
14. Ms. Vos Winkel told her that today we wanted to look at documents relating to policies, procedures and program descriptions of HTLA. She also stated that we would be setting up subsequent visits to observe the programs at HTLA and to talk to faculty. She further informed Ms. McCauley that we would not be looking at confidential records on that day.
15. Ms. McCauley continued to express puzzlement as to why we were there. She pointed to a large stack of documents and stated that representatives from the Center for Children's Advocacy had just been there to review documents and she asked if we were connected to her investigation. We informed her that we were not and that we were conducting a separate investigation. Ms. McCauley then asked who had made the "referrals" to us, and Ms. Vos Winkel told her that information was confidential, but that OCA had indeed received complaints.
16. Ms. McCauley told her that she didn't have a problem with our being there, but that she would have to check with the "administration." She left her office and returned some 10 minutes later. She informed us that she had spoken with Ann Bird, the Assistant Corporation Counsel, she advised her not to let

us into the facility until they could find the letter. Ms. McCauley then asked us to leave, and we did so without beginning our investigation.

17. To this date we have still not received permission to return to HTLA, and other than receiving certain documents we have unable to conduct our investigation of the facility.
18. As part of my work as a Human Services Advocate at OPA, I learned that students are placed at Students are also placed at HTLA without having received a functional behavioral assessment or without having a behavioral intervention plan in their record.
19. The only "plan" these students have is that contained in the "Hartford Transitional Learning Academy, Student and Parent Handbook" at 12. This handbook sets forth "Standards of Student Behavior/Behavior Management Plans." This general plan fails to provide a individualized plan for each particular child.
20. Based on my experience as a Human Services Advocate and based upon my educational experience, the failure to have an individualized behavioral intervention plan places students at risk of inappropriate restraint and seclusion, and thus at risk of abuse and neglect.


BRUCE GARRISON
Human Services Advocate

Signed and sworn to before me this 29th day of

July, 2004

Harry B. Calver
Commissioner of the Superior Court

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Jeanne Milstein
Child Advocate

STATE OF CONNECTICUT

OFFICE OF THE CHILD ADVOCATE

18-20 TRINITY STREET, HARTFORD, CONNECTICUT 06106

OCA
copy

February 3, 2004

Robert Henry, Superintendent
Hartford Public Schools
960 Main Street, 8th floor
Hartford, CT 06103

Re: Hartford Transitional Learning Academy

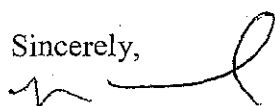
Dear Superintendent Henry:

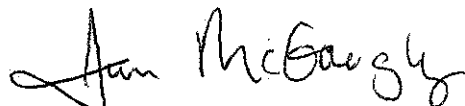
We are writing to notify you that both the Office of the Child Advocate (OCA) and the Office of Protection and Advocacy for Persons with Disabilities (OPA) have received complaints regarding the provision of educational and related services to Hartford students being served in the Hartford Transitional Learning Academy (HTLA) programs. We will be investigating jointly alleged programmatic deficiencies and violations of student rights pursuant to authority established in sections 46a-13q and sections 46a-11 through 46a-13a of the Connecticut General Statutes, and 42 U.S.C. § 15001 *et. seq.*; 42 U.S.C. § 15043; and 29 U.S.C. § 794(e) *et. seq.*

Investigators from OCA and OPA will be making their initial visit to the 110 Washington Street site of HTLA on Tuesday, February 10, 2004 at 9 a.m. We anticipate the investigation to include policy review, record review, interviews and direct observation of practices. We will make every effort to not disrupt the educational environment.

Thank you in advance for your anticipated cooperation. If you have any questions, please do not hesitate to call.

Sincerely,


Jeanne Milstein
Child Advocate



Jim McGaughey
Executive Director, OPA

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**THE STATE OF CONNECTICUT OFFICE OF
PROTECTION AND ADVOCACY FOR PERSONS
WITH DISABILITIES, and JAMES MCGAUGHEY,**
Executive Director of The State of Connecticut Office
Of Protection and Advocacy for Persons with Disabilities

Plaintiffs,

v.

**HARTFORD BOARD OF EDUCATION,
HARTFORD PUBLIC SCHOOLS, and
ROBERT HENRY, in his official capacity as the
Superintendent of Schools**

Defendants.

CIVIL ACTION
NO.

August 11, 2004

AFFIDAVIT OF FAITH VOSWINKEL

Faith VosWinkel, being duly sworn deposes and says:

1. My name is Faith VosWinkel. I am over 18 years of age and I understand the obligations of an oath.
2. I have been employed at the State of Connecticut Office of the Child Advocate ("OCA") at 18-20 Trinity Street, Hartford, CT 06106 since August 10, 2001. I currently am acting as an Assistant Child Advocate. In this position, my responsibilities include conducting fatality reviews/investigations regarding all unexplained unexpected child deaths and manage most of the casework related to special education issues and children with disabilities.

Previously, for approximately fifteen years, I worked at the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities (OPA) at 60B Weston Street, Hartford, CT 06120 as an Assistant Program Director, supervising Human Service Advocates. For approximately four of those years, I was the Acting Program Director overseeing the investigatory and advocacy divisions.

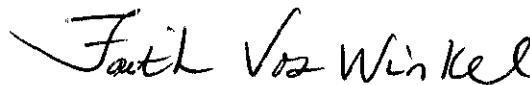
3. I have a Bachelor's Degree from the University of Connecticut and currently am pursuing a master's degree in social work from the University of Connecticut.
4. During the fall and winter of 2003-2004, OCA and OPA began discussions concerning allegations of program deficiencies, improper restraint and seclusion techniques and safety concerns at Hartford Transition Learning Academy (HTLA). Numerous high level inter-agency meetings took place to discuss the manner in which these allegations might be investigated, culminating in OCA and OPA entering into a joint investigatory agreement.
5. I was assigned as lead investigator for OCA. Mr. Bruce Garrison, a Human Services Advocate at OPA, was named lead investigator for OPA.
6. On February 3, 2004 the Executive Director of OPA, James McGaughey and the Child Advocate, Jeanne Milstein, sent a letter to Robert Henry, Superintendent of the Hartford Public Schools informing him that their offices would be conducting a joint investigation of the HTLA programs. The letter further informed Superintendent Henry that investigators would be making

their initial visit to the HTLA facility at 110 Washington Street, Hartford, CT on Tuesday, February 10, 2004 at 9:00 a.m.

7. In order to conduct a proper investigation of the allegations at HTLA, it is imperative that we be allowed to observe students in their school environment.
8. On Tuesday, February 10, 2004 I met Mr. Garrison, and together we walked to HTLA, arriving at approximately 9:00 a.m.
9. We entered the building and went directly to the school's office where we signed in. We showed the clerk at the desk our ID's and I informed her that we were from the Office of the Child Advocate and from the Office of Protection and Advocacy and requested that we meet with Barbara McCauley, the principal of HTLA.
10. We were informed that Ms. McCauley was not presently available, and we were asked to take a seat and wait until she could see us.
11. While we waited we observed students, teachers and other adults coming and going into the office. When we signed into the building, next to the sign-in book on the counter in the school office was a schedule of PPT's that were to be held that day listed by student name. This schedule was in plain view. We also observed, in the main corridor of the school, a large "transportation roster" posted on one of the hallway's walls, that contained students' first and last names, home addresses and bus routes. I pointed this roster out to Mr. Garrison.

12. We waited for approximately 20-25 minutes. At that time Ms. McCauley greeted us and invited us into her office. Once there, I informed her that we were there to initiate an investigation into HTLA.
13. Ms. McCauley expressed surprise, and said that she had not been informed that we would be there that day. I informed her that a courtesy letter had been sent to Superintendent Henry by OCA and OPA notifying him of our intention to investigate HTLA. I further stressed that this letter was a mere formality. Ms. McCauley told us that she had not seen the letter nor been told anything about it. She then asked us what kind of investigation we were there to conduct.
14. I told Ms. McCauley that today we wanted to look at documents relating to policies, procedures and program descriptions of HTLA. I also stated that we would be setting up subsequent visits to observe the programs at HTLA and to talk to faculty. I further informed Ms. McCauley that we would not be going into confidential student records on that day, although we would like a tour of the school building.
15. Ms. McCauley continued to express puzzlement as to why we were there. She pointed to a large stack of documents and stated that representatives of the Center for Children's Advocacy had just been there to review documents and she asked if we were connected to that investigation. I informed her that we were not and that we were conducting a separate investigation. Ms. McCauley then asked who had made the "referrals" to us, and I told her that information was confidential, but that OCA had indeed received complaints.

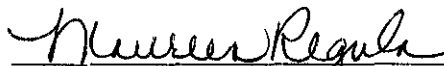
16. Ms. McCauley told us that she didn't have a problem with our being there, but that she would have to check with the "administration." She left her office and returned some 10 minutes later. She informed us that she had spoken with Ann Bird, the Assistant Corporation Counsel, who advised her not to let us into the facility until they could find the letter. Ms. McCauley then asked us to leave, and we did so without beginning our investigation.
17. Prior to departing HTLA, I again tried to impress upon Ms. McCauley the parameters of the Child Advocate's statutory authority and that we did not intend to review confidential material that day.
18. To this date we still have not gained access into HTLA in order to properly conduct our investigation.



Faith Vos Winkel
Assistant Child Advocate

Signed and sworn to before me this 20th day of

July, 2004



Commissioner of the Superior Court
Maureen Regula

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STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

April 12, 2004

Ann F. Bird
Assistant Corporation Counsel
City of Hartford
550 Main Street – Room 210
Hartford, CT 06103

Dear Ms. Bird:

It was a pleasure meeting you on Wednesday, April 7 at the offices of the Child Advocate. I am pleased to provide you with information regarding the federal statutes that govern the work of the Office of Protection and Advocacy. I am certain that after you review these statutes that you will understand that we have the authority to have access to the facilities that comprise HTLA while the students are present. Furthermore, you will come to understand that we have the authority to obtain the names of the parents and guardians of these students so that we may seek authorization to obtain their records. Put more simply, our federal authority supercedes the privacy provisions of the Family Educational Rights and Privacy Act [FERPA].

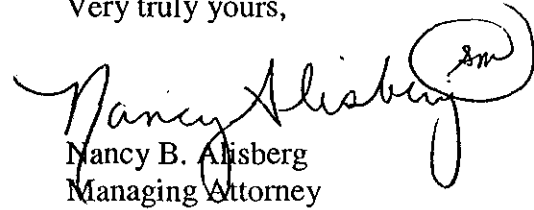
As I mentioned during our meeting, there are three statutes that are relevant to the investigation being undertaken by OCA and OPA. They are the Protection and Advocacy for Individuals with Mental Illness Act [PAIMI], 42 U.S.C. §§ 10801 – 10807, the Developmental Disabilities Assistance and Bill of Rights Act [DD Act], 42 U.S.C. §§ 15041 – 15045, and the Protection and Advocacy of Individual Rights Act [PAIR], 29 U.S.C. 794e. PAIMI is implemented by regulations at 42 CFR Part 51, and the DD Act at 45 CFR 1386.20-25. PAIR provides that it shall have the same access as the DD Act. 29 U.S.C. 794e (f)(2).

As a review of the case law will show you, courts have uniformly held that the P&A access authorities require facilities to permit the P&A to operate with broad discretion and independence in gaining access to facilities and records for investigative purposes. One case that I would particularly suggest that you read is Michigan Protection and Advocacy Service, Inc. v. Miller, 849 F. Supp. 1202 (W.D. Mich. 1994). Miller addresses the right of the Michigan P&A to obtain access to a juvenile facility and to records of individuals in that facility notwithstanding objections from the facility. I would also suggest you read Office of Protection and Advocacy for Persons with Disabilities v. Armstrong, 266 F. Supp. 2d 202 (D. Conn. 2003). This case will

give you a good idea of how broadly P&A access has been construed by the one Connecticut Court that has had the opportunity to do so as yet.

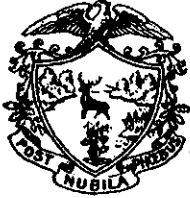
Again, I am confident that after a review of the statutes and the case law, we will be permitted to conduct our investigation utilizing the full extent of our authority. Please be assured that this office will act with complete discretion and will comply with our requirements to maintain confidential all student information. I look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script, reading "Nancy B. Alisberg". To the right of the signature is a small circle containing the initials "sm".
Nancy B. Alisberg
Managing Attorney

Cc: James McGaughey
Jeanne Millstein
M.J. McCarthy
Amador Mojica

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CITY OF HARTFORD

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May 3, 2004

Nancy B. Alisberg
Managing Attorney
Office of Protection and Advocacy
For Persons With Disabilities
60B Weston Street
Hartford, CT 06120-1551

Re: HTLA

Dear Attorney Alisberg:

Thank you for your letter of April 12, 2004. Now that I have reviewed the authorities provided in your letter and conducted additional research, I remain firmly convinced that neither these nor other legal authorities allow or require the Hartford Public Schools to provide your office with access to confidential student records or to the HTLA facility while students are attending.

Of the statutes you cited, The Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) would seem closest to applying to HTLA's students. That statute, however, addresses protection and advocacy for persons with significant mental illness who are inpatient or resident in a facility, or in the process of being admitted to a facility, or incarcerated. 42 CRF Section 51.2. The HTLA students generally do not meet this definition, as they are neither inpatient nor incarcerated, at least while attending HTLA.

Even if PAIMI did apply to the HTLA students, however, PAIMI provides that P&A may have access to records only under circumstances that do not apply here. P&A may have access to records of (a) persons who are clients of P&A and who have authorized such access; (b) persons whose mental condition prevents self authorization and who have no guardian or other representative who can give authorization and where P&A has a specific complaint or probable cause as to

neglect or abuse; or (c) persons who have guardians or conservators who have not responded to requests for authorization and where P&A has a complaint or probable cause to believe there is a serious or immediate threat to health or safety. 42 U.S.C. Section 10805(a)(1)(4). These conditions do not apply to HTLA students.

PAIMI also clearly does not require or permit Hartford Public Schools to provide P&A with access to the HTLA facility. Although PAIMI indicates that a P&A may "have access to facilities in the State providing care or treatment", the regulations clearly define "facility" to include only residential facilities. 42 CFR Section 51.2. HTLA is not a residential program and does not provide residential services. Students return to their parents or guardians each day after school.

Similarly, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) does not apply to HTLA students because they do not meet the definition of persons with a "developmental disability" under the Act. 42 U.S.C. Section 15002(8) defines developmental disability to mean "a severe, chronic disability of an individual that . . . results in substantial functional limitations in 3 or more . . . [defined] areas of major life activity." Although some HTLA students may have developmental deficits, these tend to be slight. Even if some HTLA students did had developmental disabilities, however, the DD Act's provision for access to records is very similar to PAIMI's provision, and does not apply here, in the absence of individualized authorization by a parent or adult student. See 42 U.S.C. Section 15043(a)(2)(I).

Finally, the Protection and Advocacy of Individual Rights Act (PAIR), provides funding for organizations such as yours, but does not vest your agency with additional powers or authority.

In addition, the judicial decisions that you cited, while interesting, all deal with situations very unlike HTLA's because they involve residential facilities, deceased disabled individuals, or severely disabled people who have no guardians and are incapable of seeking assistance or authorizing access to their own records by virtue of their disabilities.

HTLA's students are either capable of advocating for themselves or providing authorization for access or have parents or other guardians who are capable of advocating and consenting to access. Nor are HTLA students and their parents so disabled or isolated that they are unable to either seek assistance or to consent to access by P&A. Obviously, if any HTLA students are clients of P&A and P&A has received authorization for release of records, we will honor those authorizations. Otherwise, Hartford may not disclose records or identify parents or guardians or

Attorney Nancy B. Alisberg
May 3, 2004

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provide access to students at HTLA because to do so would violate FERPA and is not mandated by PAIMI, the DD Act or (PAIR).

Thank you for your courtesy and consideration in this regard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Bird".

Ann F. Bird
Assistant Corporation Counsel

cc: Robert Henry
Amador Mojica
Jody S. Lefkowitz
Barbara Macauley
James McGaughey
Jeanne Millstein
M.J. McCarthy

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STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

July 20, 2004

Ann F. Bird
Assistant Corporation Counsel
City of Hartford
550 Main Street – Room 210
Hartford, CT 06103

Re: Access to HTLA Facilities and Directory Information

Dear Ms. Bird:

This letter will serve as a demand letter regarding the refusal of the Hartford Public Schools to allow the Office of Protection and Advocacy to have access to the HTLA facilities and to directory information for the parents and guardians of HTLA students.

As we informed you in our meeting on April 7, 2004 and again on April 8 by letter, OPA has state and federal authority to conduct an investigation of HTLA. That investigatory authority includes the right to have access to the facilities and to the requested directory information. Your failure to comply with this authority constitutes a violation of OPA's rights. We hope to be able to settle this matter without resorting to litigation. We are prepared to file suit in Federal District Court by July 30, 2004. If the issues are not completely resolved by that date we shall proceed to litigate the matter.

I look forward to prompt reply to this letter, and I look forward to resolving the issues.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy B. Alishberg".

Nancy B. Alishberg
Managing Attorney

Cc: James McGaughey
Robert Henry
Amador Mojica

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CITY OF HARTFORD

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ANN F. BIRD
Assistant Corporation Counsel
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July 22, 2004

Nancy B. Alisberg
Managing Attorney
State Office of Protection And Advocacy
For Persons With Disabilities
60B Weston Street
Hartford, CT 06120-1551

Re: Access to HTLA Facilities and Directory Information

Dear Attorney Alisberg:

Thank you for your letter of July 20, 2004. Your letter's claim that the Hartford Public Schools has refused the Office of Protection and Advocacy access to the HTLA facilities is inaccurate. As you know, during our meeting on April 7, 2004, Superintendent Henry made clear that access to the HTLA facility and administration (but not students) will be provided at a mutually convenient time upon request. Superintendent Henry asked that communications to arrange such access be made through Acting Superintendent Amador Mojica. In fact, I also confirmed this officer in a letter of April 30, 2004 to Faith Voswinkel, Protection and Advocacy's "co-investigator" from the Office of the Child Advocate.

I do not believe Protection and Advocacy has contacted Mr. Mojica to arrange such a meeting or access to the facility.

As I also indicated during the April 7, 2004 meeting and in my letter to you of May 3, 2004, however, the Hartford Public Schools cannot allow access to the students themselves, absent individualized authorization, because to do so would violate its obligations under FERPA. I also provided a detailed explanation as to why the federal authorizing statutes for the Office of Protection and Advocacy do not authorize such access in my letter of May 3, 2004. You have not responded to my letter or otherwise indicated disagreement with its conclusions.

Your claim that the Hartford Public Schools has denied the Office of Protection and Advocacy Directory information for the parents and guardians of HTLA students is also puzzling because that information has never actually been requested. The only documents that have been requested were requested by the Office of the Child Advocate, and those documents were provided. Even if a request had been made for a list of parents and guardians, however, FERPA also prohibits the Hartford Public Schools from providing that data. The Hartford Public Schools has not followed a practice of notifying HTLA parents and guardians that their names and addresses would be disclosed upon request, and has not afforded them the opportunity to prevent that disclosure. Under those circumstances, FERPA prohibits disclosure of the names and addresses of parents and guardians.

Sincerely,



Ann F. Bird

Assistant Corporation Counsel

cc: Robert Henry, Superintendent of Schools
Amador Mojica, Acting Assistant Superintendent
Dr. Barbara Macauley, HTLA

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STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

July 27, 2004

Ann F. Bird
Assistant Corporation Counsel
City of Hartford
550 Main Street – Room 210
Hartford, CT 06103

Re: Letter of July 22, 2004

Dear Ms. Bird:

Thank you for your response to my July 20, 2004 letter. Unfortunately, it seems that we will not be able to resolve this matter short of litigation. Our access authority to facilities expressly permits us to have access to the individuals who are in the facilities. Access to an empty school is simply far short of the access granted to us under our federal statutes. See 42 C.F.R. § 51.42(b) and 45 C.F.R. § 1386.22(g).

Secondly, if you reread my April 12, 2004 letter, you will note that we did indeed request directory information at that time. Nevertheless, since you have stated that you will not provide that information, further discussion seems fruitless.

I therefore interpret your letter as refusing to allow us to have the access rights to which we are entitled.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Nancy B. Alisberg".

Nancy B. Alisberg
Managing Attorney

Cc: James McGaughey
Robert Henry
Amador Mojica
Peter Tyrrell