



December 2004

Law Center’s Gaskin Case Seeks Statewide Special Education Reforms

The Law Center is conducting negotiations with the Pennsylvania Department of Education (PDE) to settle its ten year old special education class action which charges that the state is not doing enough to make its 501 school districts comply with the Individuals with Disabilities Education Act (IDEA). The lawsuit seeks to change how the state helps school districts comply with federal disabilities law and how it monitors that compliance.

Pa. Seventh Lowest in Disabilities Integration

Pennsylvania has been the seventh worst state in the country in terms of the percentage of time special education students spend with non-disabled classmates, according to the U.S. Department of Education. Historically, many teachers who are not certified in special education are uncomfortable teaching students with significant disabilities and are not trained in the best instructional practices for their particular disability. A Law Center review of the state’s performance found that state monitoring of school district performance was focused on issues of procedural compliance and not on assessing the quality of education provided. It also found that the state has rarely required districts to actually increase existing low levels of integration or inclusion of students with disabilities.

Many parents of students with disabilities have reported deep hostility

from schools to actually providing meaningful educational opportunities in an integrated setting. Instead, the schools urge placement in non-integrated classes or abandon the child in the integrated class without providing meaningful instructional content, frequently because the personnel do not have any experience with successful models.

In this case, called *Gaskin v. Pennsylvania Department of Education*, the Law Center is representing a class of 280,000 special education students, 12 named plaintiffs, and 11 disabilities advocacy organizations, including The ARC of Pennsylvania, Pennsylvania TASH, and Pennsylvania Protection and Advocacy, Inc. Judith Gran has led the Law Center’s long fight, with the assistance of Barbara Ransom and former Law Center attorney Max Lapertosa. Major support is being provided by statistician James Conroy and by educators at Duquesne University.

To address these problems the Law Center is seeking to enhance the delivery system for providing teachers with knowledge about the best practices for individualized instruction in regular classes. It also seeks to improve the state’s monitoring process to ensure compliance of districts with the federal law’s requirements of knowledgeable teachers using best practices in the least restrictive environment feasible with supplemental aids and services. One objective is to have the state use

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GASKIN PROFILE:

On November 18, 1983 Joseph and Karen Gaskin became the proud parents of a second daughter whom they named Lydia. The Gaskin family was elated but their joy was tempered when their doctors informed them that Lydia had Down Syndrome and that she would likely never be able to communicate, do things for herself or relate with other children. Overwhelmed by the dismal assessment they received, the new parents felt a sense of hopelessness until one of their nurses offered to bring her two year old son, who also had Down Syndrome, to meet the family. They watched as that child acted just like other toddlers – he played, laughed, received and displayed affection. Their outlook, in an instant, was transformed.

What the Gaskins saw in their daughter, others necessarily did not. And while Lydia had attended a regular nursery school and found acceptance there, the story would not be the same when she entered public school. Many sought to define Lydia first and foremost by her differences. Lydia’s options for kindergarten included a reg-

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Lydia Gaskin as a young child



International Disabilities Rights Project Continues

From August 20-23 the Law Center hosted a conference in New York City attended by leading disabilities rights advocates from the United States, Japan and Korea. Participants included the United Nations representative of Japan, representatives of the Japan Foundation Center for Global Partnership (CGP), three members of the Japanese Diet, representatives from Disabled People International (DPI) and Legal Advocacy for the Defense of People with Disabilities (LADD) and the United Nations Ad hoc Committee



The Law Center's Co-Chief Counsel Thomas K. Gilhool and Toshihiro Higashi of Japan's LADD.

Advisor of the Korean government. (See box for listing of U.S. participants)

The seminar is the first of three scheduled exchanges funded in large part by CGP that will take place during 2004-2005. The next exchange will be held in Tokyo in early 2005. The goal of this project is to exchange information around the use of the law and the Constitutions of respective countries, as well as the use of interna-

tional law, to advance the human rights of persons with disabilities in each nation. The conferences revealed that Japan's and Korea's legal systems tend to focus on welfare versus rights-based law and society as a whole still strongly adheres to the viewpoint of a disability as a tragedy or a defect that is the fault of the individual. Service systems remain provider versus consumer based-something advocates are fighting to change. While both Japan and Korea have employment quota laws, enforcement remains lax with companies often electing to pay the penalty levied for non-compliance rather than hire persons with disabilities. In other areas of society, there exist very few effective legal remedies against discrimination. Institutionalization and segregation in education remain pervasive in both nations. Disabilities rights advocates in Japan and Korea are now seeking passage of an equivalent to the Americans with Disabilities Act. A key element to non-governmental organizations' efforts worldwide to strengthen the international disabilities rights movement has been the use of the processes and documents of the United Nations to advance respective nations' situations domestically. This August exchange was organized to coincide with the United Nations' annual ad hoc committee meeting on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights of Persons with Disabilities. The Law Center received accreditation in 2002 to attend and participate in these annual meetings. ■

U.S. Participants:

Thomas K. Gilhool, *Co-Chief Counsel, PILCOP*
Barbara E. Ransom, *Attorney, PILCOP*
Philip Calkins, *former Special Assistant, Equal Employment Opportunity Commission*
Cassie James, *Strategist, ADAPT*
Deborah Kaplan, *Executive Director, World Institute on Disability*
Denise Karuth
Disabilities Rights Advocate and former Director, Boston Self-Help Center
Deborah Mattison, *Employment Lawyer, Wiggins, Childs, Quinn & Pantazis*
Tina Minkowitz, *Co-Chair, World Network of Users and Survivors of Psychiatry*
Zena Naiditch, *President, Equip for Equality, Inc.*
Fred Pelka, *Author, The Disabilities Rights Movement*
Anne E. Smith, *Education Research Analyst, U.S. Department of Education*
Nancy Ward, *Founding Member, Self-Advocates Becoming Empowered*
James R. Wilson, *former President, ARC of the U.S. and P.A.*
John L. Wodatch, *Director of the ADA Division, Department of Justice*

Law Center Launches Its New Web Site

The Law Center is proud to announce the launching of its web site on December 23, 2004. The address is www.pilcop.org. The site features a home page with a "What's New at the Law Center" section that will keep visitors apprised of developments and upcoming events. Visitors will be able to read about each of the Law Center's seven project areas which include: children's health care, education funding and quality, disabilities rights, environmental health and justice, fair housing, employment discrimination and urban policing. Each project page highlights the history and major accomplishments, as well

as current activities, relevant to each area. Additional information will continue to be added to the site throughout early 2005 including select Law Center legal briefs, research publications, articles, training materials and current and past newsletters. Photographs taken over the course of the organizations 30+ year history will appear in an archives section. The Law Center's site will eventually exist as a comprehensive source of research, information and support on discrimination and related topics for individuals and advocates, both locally and nationally. ■

Gaskin Case Seeks Special Education Reforms

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assessments of the level of integration achieved by a district as a basis for selective intervention and required remediation.

Monitoring Specifically For Least Restrictive Environment

As a first step, any monitoring system must address directly a district's level of integration by using an index for inclusion of students with disabilities in regular classes as a trigger point for more intensive monitoring and intervention by the state. A good monitoring system must not just provide benchmarks for inclusion, but must also investigate whether students' IEPs and programs are providing meaningful educational benefit. This will require much better trained monitors and a more extensive monitoring process than has been used in the past. The Law Center therefore believes that such effort should be focused on those districts that are having the most difficulty complying and that districts with a high level of inclusion will not need such intensive monitoring.

Revised Approval Process for District Programs

Although the state currently requires districts to submit for approval their special education programs, the state needs to use its cyclical reviews or special education monitoring in assessing those plans rather than grant approval before the monitoring process begins. The state needs to realign its review and monitoring process so that the cyclical compliance reviews can be utilized in determining the adequacy of a district's special education plan.

The state's current Complaint Resolution process needs to be changed so that any PDE investigation interviews, and does not ignore, persons identified by parents as having knowledge about the complaint. PDE must also end the compartmentalization of its experience with districts, so that findings concerning problems in a district's program which arise in connection with a complaint investigation are utilized in subsequent compliance monitoring of that district.

Increased Oversight Roles

Although federal law clearly places responsibility for compliance with IDEA on the state, Pennsylvania, like most states, places operating responsibility on the Districts and claims that it has only limited ability to effectuate compliance. While settling this litigation provides motivation for the state to improve its oversight, over the long run, the state is not as likely to continue to demand change as parents and independent experts. The Law Center, therefore, is looking to establish a role for parents and such experts in assessing the level of compliance and what additional steps need to be taken.

Court Approval Process

If the parties are successful in negotiating a settlement, United States District Judge Eduardo Robreno will have to set a hearing for its approval after appropriate notice to the class.

This case was bitterly fought by the Ridge administration; however, settlement is now being assisted by former District Judge Louis C. Bechtle who acted first as a discovery master and then as a mediator. The Rendell Administration is represented in the negotiations by a team headed by Lawrence White, General Counsel in the PDE.

Largest Law Center Case

The Gaskin case is the largest in the Law Center's history in terms of cost in money and manpower. The Law Center has spent \$ 450,000 in out-of-pocket costs and its lawyers have spent more than 7,500 hours on the case. As part of the proof assembled in this case, the Law Center conducted a structured random survey of ten school districts to determine what services actually were being provided to special education students, reviewed selected IEPs in those districts to see if what was promised was delivered, and interviewed teachers and administrators in those districts to determine on what basis placement decisions were made. In addition to the analysis of that survey, the Law Center also reviewed the state's compliance and monitoring systems, as well as statistics concerning placements in all of the districts. ■

Law Center Improves Voter Access

A lawsuit by the Law Center forced the Philadelphia Board of Elections to provide the public with improved access to polling place information over the internet. The Board of Elections initially refused requests by Edmund Goppelt, operator of www.Hallwatch.org, to provide up to date electronic information on the boundaries of election districts in Philadelphia so that individuals could type in their address and be shown their polling place.

More than 25,000 persons used the Hallwatch Polling Place Locator to find where to go to vote. Hallwatch was the only on-line resource that allowed individuals to find their polling place based on their address. Newspaper and other services required voters to know what ward and division they lived in. Voters could call the Board of Elections to determine that, but the City did not have the information available on-line. Other services were using out-of-date maps which did not reflect recent changes in division boundaries.

The Law Center assisted the national Lawyers' Committee for Civil Rights Under Law with its Election Protection activities in Philadelphia run by John McKeever of Piper Rudnick. McKeever's effort coordinated over 200 volunteer lawyers on election day. ■

GASKIN PROFILE:

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ular classroom, without any support, or a mixed assessment program with support, but two hours away from her home. Her parents chose the latter option. Lydia failed to thrive there, in large part due to the uncontrolled nature of the classroom. She oftentimes cried when her bus came to pick her



up and faked being sick in an effort to avoid attending. Her parents ultimately got her into a regular classroom in her neighborhood school with the support services she needed. But in first grade, Lydia was placed in a learning support class due to a lack of funding for an aide, with a promise by the district to “look into” a more inclusive program. After eight hearings and a state appeal, Lydia was permitted finally to be mainstreamed, albeit for only a third of the school day in non-academic classes (*see side panel*). Her family’s advocacy efforts continued and by middle school she was included finally in regular classes for all but one hour per day.

When Lydia was ready for high school her parents knew they wanted her to be tracked in college-bound courses. In this way, she would continue to be challenged, as well as maintain and develop relationships with her peers – disabled and non-disabled kids alike. But the district sought a life skills placement. After seemingly endless battles with school administrators and a promise by the Gaskins to continue pursuing their legal rights, the district finally agreed to give it a try.

As a high school student, Lydia was required to complete a senior project and she used it as

an opportunity to learn more about Down Syndrome. As part of her research, she interviewed six persons with Down Syndrome from varied age groups and asked them a series of questions about their lives. The answers Lydia presented to her class told of their desires for family, friends and the achievement of future goals relating to work and education – desires shared by all. Lydia came away from the project viewing for the first time persons with Down Syndrome as belonging to a type of culture as opposed to members of a deficient or defective group. She felt proud of who she was. Lydia’s classmates all gave her As and her teacher wrote home in a note that she was moved to tears by the presentation and verbally stated to the family that her classroom was better because of Lydia’s presence and that everyone was proud to have her in class.

The class action lawsuit, *Gaskin v. Commonwealth*, was named such because Lydia’s case was the first inclusion matter in Pennsylvania to reach the state level. In reflecting on the struggles they have endured with regard to their long battles for Lydia’s inclusion in regular education classes, the Gaskins are not regretful. While inclusion posed many challenges for Lydia, today she is a responsible, hard-working young woman with many strong friendships. She volunteers on a regular basis and is not afraid to be challenged. She is a full and participating member of her community – capable of making meaningful contributions because of the opportunities she had. Her parents note that what is learned in a regular classroom cannot be done in a special education, pull out setting. The lessons go beyond the academics that foster independence, and include also mutual respect, tolerance, connectedness and compassion for fellow persons. The Gaskins have long contended that the presence of children with disabilities in regular classrooms with non-disabled children transforms classrooms into better classrooms and students, teachers and administrators into better people. Their hope is that the settlement of this lawsuit will open not only the doors of more regular classrooms to exceptional children but also the minds and attitudes of society. ■

A Pennsylvania Special Education Appeals Panel rejected the inclusion of Lydia Gaskin in regular first grade classes on the rounds that her presence “would lead to Lydia being included only in a physical sense.” The panel went on to state that, “there are still academic purposes to regular education. Those purposes have a place in deciding whether inclusion is appropriate for a particular child...”

*Subsequently, in *Oberti v. Board of Education of Clementon*, a case brought by the Law Center, the Third Circuit Court of Appeals made clear that inclusion should not be contingent on a child’s ability to master the academic demands of the general education curriculum.*

Law Center Settles Discrimination Suit Against Nazareth YMCA

The Snyder family's life plan had been to make the Borough of Nazareth its permanent home. All of the services that their child Ian, who has Down Syndrome, needed were within walking distance, including the recreation and exercise facilities at the YMCA – a place where Ian had long been a part beginning when he was a toddler enrolled in its daycare program and continuing throughout his youth. The family actually built a home very close to the YMCA and viewed Ian's membership as a critical means of helping him to develop a circle of friends and become an integrated part of the community.

In early 2002, that long-standing relationship soured, however, when Ian was suspended and then barred from the YMCA around two instances of adolescent misconduct. A suit was filed in June 2002 with the Pennsylvania Human Relations Commission in response to the actions taken against Ian by the YMCA, and for its subsequent adoption of a highly discriminatory organizational policy pertaining to persons with cognitive disabilities.

The policy called for adherence to a special set of rules before becoming a member that included evaluations of "cognitive age," a series of "interviews" and, when deemed necessary by the staff, a requirement that the parents hire a one-on-one, professionally trained aide to supervise their special needs child at all times – in effect barring such children from attending.

This summer, the Law Center's Barbara E. Ransom successfully settled this matter with the adoption of a new policy (*see excerpt of new policy below*) and an agreement on training.

Ian's case is just one example of a person being singled out for differential treatment on the basis of race, ethnicity, gender or disability – a practice that cuts at the heart of one's self-respect and access to the freedoms and experiences that should be available to all. Ending demeaning and discriminatory practices such as these remain a focal point of the Law Center's work. ■

An Excerpt From The Newly Adopted Policy

(the entire policy can be read by going to www.nazarethymca.org)

The Nazareth YMCA's mission is to put Christian principles into practice through programs that build healthy spirit, mind and body for all. The Nazareth YMCA is an association of individuals who come together to promote positive values. It is an inclusive environment open to all persons and seeks to serve the entire greater Nazareth community. The programs conducted at the YMCA are designed to be both age appropriate and safe for participants regardless of their abilities. The Nazareth YMCA, consistent with the Pennsylvania Human relations Act and the Americans with Disabilities Act, will make reasonable accommodations in its programs and services for those with disabilities. There is no charge for any aide of a person while they support a person with disabilities in an activity or program at the YMCA.*

**This provision relates to persons accompanying members with disabilities and is not meant to suggest or require that the Nazareth YMCA provide such an aide or assistant. While we are unable to provide one on one care to our membership, aides may accompany any member to a YMCA program.*

Updates...

■ Thomas K. Gilhool was awarded the Fialkowski Humanitarian Award by Vision for Equality. Mr. Gilhool was selected unanimously by the awards committee for his "life long precedent setting work and achievements to bring freedom and justice to the lives of people with mental retardation."

■ Surviving several motions to dismiss, the Pa. Environmental Hearing Board has agreed to hear the Law Center's case claiming that the Dept. of Environmental Protection granted a permit for a trash incinerator for all of Dauphin County (77 percent white) to be located in Harrisburg (83 percent minority) without making any investigation whether or not there was any disproportionate adverse impact on minorities. Discovery is scheduled to be completed by the end of the year.

■ The Law Center would like to welcome Kathy Miller who joined the firm in the spring as Controller. Ms. Miller holds a Bachelor of Business Administration degree in Accounting. Prior to working at the Law Center, Ms. Miller worked as Controller for an international manufacturing firm and sole proprietor of her accounting and bookkeeping services business.

■ Oral arguments in the Law Center's Sanchez v. Johnson case are scheduled to be presented before the Ninth Circuit Court of Appeals in San Francisco on December 8. Arguments will center on whether the section of the Medicaid Act that requires states to set payment rates for services sufficient to ensure quality of care and access to services is enforceable by beneficiaries. This is the first appellate test of this section since the Supreme Court changed the standard for interpreting when a statute is enforceable on the grounds that it creates an individual right.

■ Judith Gran and Barbara Ransom completed two trainings for parents of special education students and advocates in Wilmington, Delaware this summer. The trainings were made possible by a generous grant from the Helen F. Graham grants program of the MBNA Foundation.



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Increase In Gifts To Be Matched By The Independence Foundation

The Public Interest Law Center of Philadelphia has been awarded a challenge grant from the Independence Foundation in the amount of \$20,000 to stimulate increased giving from its core base of individual contributors, as well as help secure new donors. The foundation will provide a 1:1 match for every dollar received of new or increased money. The challenge component will serve as the driving force behind the Law Center's 2004-2005 campaign to expand and develop its individual giving program. A personal outreach effort will be made by select members of the Law Center's Board and by the leadership of the organization throughout the year in an effort to secure increased gifts from donors.

Devoting more time to improving and expanding individual gifts, a source of stable revenue with continual potential for growth, will greatly improve the Law Center's fundraising program, decreasing its reliance on foundation support and reducing its vulnerability to the fluctuations in cash flow that result from payment of fees from class action litigation.