



Disabilities Rights Center



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Judicial protection sought for abused and neglected children:

Plaintiffs in Eric L. class-action lawsuit ask federal court to order New Hampshire to make reforms it agreed to 5½ years ago

2003

Five and one half years after New Hampshire agreed to major reform of its child protection system, attorneys representing abused and neglected children asked a federal court today to order the state to live up to the agreement.

In a motion filed today in U.S. District Court in Concord, N.H., the plaintiffs' attorneys asked the court to enforce a settlement agreement that the state had signed in 1997.

Citing substantial noncompliance by the state, the plaintiffs' attorneys seek a court order ensuring that children are adequately protected. The attorneys also ask the court to extend the agreement, which would otherwise expire on January 31, until the court decides what further actions are required. The motion was filed in *Eric L.*, a class action lawsuit initially filed in 1991.

"We are extremely disappointed that we have had to return to court because the state has failed to live up to the commitments embodied in this settlement agreement," said Ronald Lospennato of the Disabilities Rights Center. The Disabilities Rights Center, Inc. and the Franklin Pierce Law Center, represented the plaintiffs in the original *Eric L.* lawsuit, brought in 1991, that alleged that DCYF's policies and procedures violated the constitutional and federal rights of children served by the agency.

Protecting at-risk children is one of the most important obligations of state government, according to Kenneth J. Barnes, Litigation Director at New Hampshire Legal Assistance, one of the attorneys for the plaintiffs. "The state's failure to live up to its agreement to reform the child protection system leaves children and families at risk. This creates a situation that is inexcusable and unacceptable, particularly where the state has had five years to come into compliance."

Today's filing follows months of negotiation and mediation during which the parties sought to resolve the issue without court intervention. With the help of a mediator, the parties reached a tentative agreement last July. That agreement hinged on approval by the Joint Legislative Fiscal Committee, then the Executive Council, of a proposal to allow the Dept. of Health and Human Services to move 60 vacant jobs into the Division for Children, Youth and Families.

In presenting the request to the Fiscal Committee, the Associate Attorney General said action on the request would avoid "uncertainty and loss of control over the outcome" that would occur if the case

request would avoid uncertainty and loss of control over the outcome, that would occur if the case went back to court. The Fiscal Committee tabled the request in July and hasn't acted on it since. Barnes, one of the plaintiffs' attorneys, says his clients have no choice now, but to ask the court to intervene.

The case resulted in a 1997 settlement agreement that required sweeping reforms to "promote the health, safety and well-being of children referred to DCYF pursuant to the Child Protection Act." Those requirements included improved case worker training and supervision, timely completion of assessments of allegations of abuse and neglect, more effective services provided to children and families to help them resolve issues relating to abuse and neglect, timely and appropriate planning for a permanent placement for every child (whether that means reunification of the family or some alternative placement), more visits and improved medical care to children in foster care or other placements, closer monitoring of cases, greater efforts to identify and locate absent parents of DCYF-involved children, reduced multiple placements, more training and support for foster parents, and transition services for youth nearing their 18th birthdays.

A three-person Oversight Panel monitored compliance with the agreement. In its most recent report, released in September, that panel found that DCYF had failed to comply with its agreement, particularly in areas that directly affect children and families.

The Oversight Panel reported that DCYF has an "inadequate number of staff on all levels exacerbated by episodic layoffs, hiring freezes and huge staff turnover, especially of social workers."

Administrators in the Dept. of Health and Human Services have agreed that caseloads are a huge problem. "Given the resources of the Division for Children, Youth and Families, we are unable to meet our statutory obligation to protect children," Acting Commissioner Kathleen Sgambati told the Fiscal Committee in July.

Children's Alliance of NH President Ellen Shemitz said the necessity of legal action was unfortunate. "This is a case in which a lack of executive branch and legislative leadership has forced the parties into court. Now is the time, with new leadership, for the Governor and the legislature to recognize the scope of the problem and commit resources to protecting children."

The refiling of Eric L. comes three days after a group of child advocates and legislators held a press conference to unveil the Cassidy Bortner Child Protection Accountability Act, a bill aimed at moving DCYF toward national accreditation. Shemitz said the reforms needed to reach accreditation were far more comprehensive than those needed to comply with Eric L.

For comment from the Eric L. plaintiffs' legal team, please contact Ken Barnes at New Hampshire Legal Assistance at 1-800-562-3174, ext. 212 or Ronald Lospennato at the Disabilities Rights Center in Concord, 228-0432 or 1-800-824-1721

For comment from child protection advocates, please call Jack Lightfoot at Child and Family Services at 668-1920 or Ellen Shemitz or Steve Varnum of Children's Alliance of NH at 225-2264.

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