

**JOIN HANDS FOR CHILDREN**  
**MINUTES FROM THE ADVISORY COMMITTEE ON LEGAL AND PRACTICE ISSUES**  
**May 3, 2010**

---

**Committee Members Present:** Chris Wickham; Tom Tremaine (alternate for Liz Mueller); Kris Powell; Jeanine Livingston; Nancy Foll; Joanne Moore (on phone); Steve Hassett; Jeanne McShane; Patrick Dowd (alternate for Mary Meinig); Leonard Costello; Ken Nichols (on phone); Maureen McGrath

**Staff Present:** Julie Dunnington, Melissa Takade, and Benjamin Berres, Partners for Our Children; Jann Hoppler, DSHS CA; Jennifer Strus, Washington State Senate Human Services and Corrections Committee

**Others:** Marna Miller and Stephanie Lee, Washington State Institute of Public Policy; Charles Shelan, Community Youth Services; Spring Hecht, World Association for Children and Parents; Roberta Nestaas, Lutheran Community Services; Charlotte Booth, Institute for Family Development; Laurie Lippold, Children's Home Society of Washington; Krista Goldstine-Cole, Washington State Senate Democrat Caucus

---

Chris Wickham called the meeting to order and welcomed the committee members. The advisory committee and the audience introduced themselves before Julie Dunnington discussed the meeting's agenda and presented each of the documents that would be used over the course of the meeting.

The committee began the meeting by reviewing the *Preliminary Service Array/List of Core Services*, *Preliminary Service Array Definitions*, and *Principles and Values used to Determine Core Services* documents. Benjamin Berres summarized the origins and chronology of each document and highlighted some of each document's most recent revisions. Julie Dunnington suggested that the advisory committee members take the documents home for review and submit revisions later. Steve Hassett recommended that the practice standards sections in the *Preliminary Service Array/List of Core Services* and *Preliminary Service Array Definitions* documents include a caveat stating that this is a tentative proposal by the Child Welfare Transformation Design Committee (CWTDC) and it is not a binding contractual agreement. The advisory committee made several minor changes in wording. These changes will be reflected in the next drafts of the documents. Tom Tremaine, alternate for advisory committee co-chair Liz Mueller, brought a couple documents that described requirements relating to provisions in the Indian Child Welfare Act (ICWA). One of the documents will be added at the end of the *Preliminary Service Array Definitions* document.

Advisory committee co-chair, Chris Wickham, opened up the floor to public comment before moving on to the next item on the agenda.

Charles Shelan of Community Youth Services suggested that the committee add "street youth services" to the "Services through Referrals" section of the *Preliminary Service Array/List of Core Services* document. The advisory committee agreed with the amendment.

The advisory committee voted to accept the *Preliminary Service Array/List of Core Services* and *Preliminary Service Array Definitions Services* documents with the changes made during this meeting.

Marna Miller and Stephanie Lee of the Washington State Institute of Public Policy (WSIPP) talked briefly about the issue of human subjects approval from the Institutional Review Board (IRB). There were two questions they addressed: 1) Does the research evaluation of the demonstration sites require human subjects IRB approval? 2) Will DSHS CA clients be given informed consent before they enter the demonstration projects? Marna Miller said that WSIPP is going to apply for human subjects approval through the Washington State Institutional Review Board through DSHS. She estimates that the process will be quick, around a month. With regard to the second question, she said that the chair of the IRB, Michael Gerrick, believes that this project will not need informed consent due to the considerable amount of authority held by the Asst. Secretary. He suggested, however, that DSHS CA be very transparent with clients about this project.

The advisory committee shifted the meeting to discussion of a memo describing legal issues written by CWTDC performance-based contracting expert Charlotte McCullough. The committee talked about a number of issues: Title IV-E waivers, contract monitoring, placement-and-care authority, judicial concerns, liability, and sovereign immunity.

The advisory committee talked next about two documents offered by Chris Wickham and Steve Hassett. The first document, created by Chris Wickham and Steve Hassett, listed a number of salient legal issues they felt the advisory committee would need to address. The second document is a DSHS CA training document that takes a caseworker through the important legal junctions in the timeline of a case. Steve Hassett outlined the list of legal issues first. At the end of the list are a number of questions that Steve Hassett and Chris Wickham suggested should be directed toward the Solicitor-General to garner a "Formal Opinion." Some of the issues included: representation by Attorney General of private agencies; placement and care authority; and the hearing process. He described each of the issues and how they related to the 2106 process. The advisory committee talked at length around the issue of legal representation for private providers but did not arrive at a unanimous resolution.

The advisory committee took a brief break, then returned back to the discussion of Chris Wickham and Steve Hassett's document of legal concerns regarding 2106. The advisory committee talked about the potential issue where clients might contest becoming part of the demonstration project. One solution is that the legislature could amend the bill to clarify that clients could not contest their participation in the project. Jann Hoppler said that she is interested in how this issue could arise before it becomes it reaches a courtroom, particularly with respect to how DSHS CA is going to explain this project to children and families that come into contact with the child welfare system.

Toward the end of the discussion, Chris Wickham summarized how he believed some of the difficult legal case-related issues could be dealt with, all while protecting the interest of the state. He conceived that in Washington State, the Attorney General would likely need to be in the courtroom when a case is presented. He then suggested a route for how a case would move through the courts: The case would originate from a private contractor, then be sent to a state welfare worker who would review the information, determine whether or not whether it is appropriate to be sent to a court, and either refer it to the court or refer it back to the private case worker. With this model, he claimed, the state could watch out for its own interests with regard to liability, avoid conflict of interest issues and avoid issues arising from discrepancies in Attorney General training. He also said that he doesn't believe it is cost effective to have two lawyers in the room, one representing the state, and one representing the private contractor. Others felt that this would limit the ability of the supervising agency to make case-related decisions. There was another suggestion that if a conflict arises between the Attorney General's opinion and the opinion of a private provider, the issue could be brought forward and dealt with

by DSHS CA. Others spoke about the benefits of having a direct relationship with the Attorney General's Office rather than having to go through an intermediary.

Steve Hassett then talked about the list of issues he felt might best be resolved by bringing them before the Solicitor-General for a formal opinion. Other members of the advisory committee agreed. Steve Hassett further suggested that the full CWTDC should make an official request for these questions, or some variation thereof, to be submitted to the Solicitor-General.

The advisory committee then broke for lunch.

When the advisory committee reconvened after lunch, Steve Hassett gave a presentation on Child Welfare Tort Liability in Washington State. This presentation covered issues ranging from: "sovereign immunity;" potential statutory bases for cause of action; "negligent investigation" claims; payouts in DSHS cases; and "joint and several liability." He talked about how DSHS payouts have increased substantially over the last couple years to roughly \$26 million per year. In FY2009, there were two foster care abuse cases that each paid over \$5 million. At the end of this presentation, he gave a supplementary presentation on statewide indemnity payouts over the last three fiscal years. In many of the cases a resolution was reached; many of the events have occurred upwards of ten years before.

After Steve Hassett finished his presentation, Chris Wickham recounted the earlier discussion and proposal to take some legal questions to the Solicitor-General. CWTDC co-chair, Judge Leonard Costello, who was in attendance earlier in the meeting, mentioned to Chris Wickham that he supported this proposal. Judge Costello further suggested that it would be helpful for the co-chairs if these questions were made available soon so they could be presented to the legislature during the Children's Legislative Oversight Committee Meeting. Chris Wickham outlined a timeline to finalize some of these questions. He also offered to write out a proposal that would detail the legal organization and relationships between Washington State, DSHS CA, the Attorney General's Office, and private contractors. Julie Dunnington reminded the advisory committee that there was still one more meeting before the June CWTDC quarterly meeting. So they could review some of this work before it is presented to the full committee. Jann Hoppler requested that Chris Wickham offer his proposal to the Advisory Committee on Financial Issues. Chris Wickham summarized that he is going to work on a list of questions that will be presented to the Children's Legislative Oversight Committee. Separately, he will begin work on a position paper that will propose a method of organizing the legal relationships between the state, DSHS CA, the Attorney General's Office, and private contractors.

Julie Dunnington summarized some of the next steps for the advisory committee. The advisory committee talked briefly about issues that need additional work.

The meeting was called to a close.