

**Office of the Child Advocate  
Advisory Board Meeting Minutes  
April 26, 2011**

**Board Members or Designees Present:**

Chair: Gail Garinger, The Child Advocate  
Secretary Paul Reville (EOE)  
Assistant Secretary Marilyn Chase (EOHHS)  
Deputy Assistant Secretary Kathy Betts (EOHHS)  
Commissioner Angelo McClain (DCF)  
Commissioner Jane Tewksbury (DYS)  
Commissioner Barbara Leadholm (DMH)  
Lydia Conley (DTA)  
Paul Cronin (DOR)  
Katharine Folger (MDAA)  
Lisa Kaminski (BRI)  
Georgia K. Critsley (DCJIS)  
Nurys Camargo (EOPSS)  
Carol Rosensweig (CPCS)  
Dianne Curran (ESE)  
Dr. Lauren Smith (DPH)  
Nicola Pangonis (OCP)  
Suzin Bartley (CTF)  
Anne Marie Ritchie (AOJC)  
Marissa Cole (EOE)  
Valdace Levarity, Governor's Appointee  
Anthony Barrows, Governor's Appointee  
Barbara Kaban, Governor's Appointee

**Other Attendees:**

Elizabeth Armstrong, OCA  
Susan Cummings, OCA  
Jenna Pettinicchi, OCA  
Dr. Laurel Leslie, Tufts University Medical Center  
Tom Mackie, Tufts University Medical Center  
Michele Scavongelli, Northeastern University School of Law

**Meeting Commenced: 3:10 PM**

### **Welcome from The Child Advocate, Gail Garinger**

The Child Advocate, Gail Garinger, welcomed attendees. OCA staff, board members, and other attendees introduced themselves.

### **Meeting Minutes from October 28, 2010 Meeting**

Gail Garinger presented the minutes from the previous meeting of October 28, 2010. She reminded the attendees that the minutes are posted online. Board members approved the minutes.

### **Child Welfare/Juvenile Justice Updates**

Gail Garinger provided an update regarding some key juvenile justice and child welfare initiatives.

### **Backdrop**

Many of these activities are occurring in the context of the following:

1. Tight federal and state budgets. We have all been working hard to maximize what we can do with the resources we have.
2. Proposed EOHHS reorganization of children and family services.
3. Proposed CHINS legislation (renamed FACES). The bill, Senate 1292, is sponsored by Senator Spilka and Representative Donato. How do the CHINS legislation and the proposed reorganization fit together to address concerns regarding access to services, common eligibility criteria, meeting the family where they are, and delivering timely and appropriate services?
4. Pending class action lawsuit, Connor B. v. Governor Patrick. The plaintiffs have been certified as a class and discovery is moving forward. It is anticipated that discovery will take at least 18 months.

The role of the OCA is to try to see the juvenile justice and child welfare systems from the broadest possible vantage point. With only three full-time and one half-time employees, the OCA relies on the Advisory Board members as experts in their respective fields to help inform our view and identify bills, initiatives, programs, and projects that are important to our common work on behalf of children and families.

### **Bills Pending**

Several bills recognize our understanding that youth need continued support as they enter adulthood.

- 1.) "Raise the age" legislation
  - a. CHINS bill proposes raising the maximum age for filing a CHINS from age 17 to age 18. The juvenile court would then remain involved with the youth until his or her 19<sup>th</sup> birthday. This bill also raises the age for compulsory school attendance from age 16 to age 18.
  - b. Senate 697 and House 923 would raise the age of juvenile court delinquency jurisdiction from age 17 to age 18.

- 2.) The Youth Fair Sentencing Act (House 1346 & Senate 672) does away with mandatory life sentences without parole for juveniles convicted of first or second degree murder. A juvenile who committed a crime while under the age of 17 could be considered for parole after he or she has been incarcerated for 15 years.

### **Projects/Initiatives**

- 1.) Juvenile Justice System Improvement Project (JJSIP), Center for Juvenile Justice Reform, Georgetown University: A letter of intent has been submitted by the Department of Youth Services, Department of Mental Health, Juvenile Court Administrative Office, CPCS Youth Advocacy Department, Office of the Commissioner of Probation and the OCA. This grant would provide technical assistance to Massachusetts to develop a comprehensive strategic plan based on positive youth development philosophy for the statewide implementation of coordinated, multi-disciplinary, and evidence-based juvenile justice practices.
- 2.) Fostering Media Connections will hold two town hall meetings to promote a greater understanding of the unique educational needs of children in foster care. "On the Road to Educational Equality" will be held on May 19<sup>th</sup> at Western New England College and on May 24<sup>th</sup> at Harvard Law School.
- 3.) *Rogers Project*: Over the last several months the OCA has been deeply involved in a project to examine the process for obtaining consent for the administration of antipsychotic medications for children in state custody. The details of the project and an update were provided at the end of the meeting.

### **The OCA: Information, Collaboration, Accountability**

#### **OCA Core Mission and Values**

Elizabeth Armstrong discussed the core mission of the OCA. Three values infuse this core mission -- information, collaboration, and accountability. The OCA receives and shares information, encourages collaboration, and hold agencies accountable. As the OCA staff work to execute the responsibilities described in our statute, we have identified several activities as our core mission activities. These are handling calls from the public through our help line, reviewing substantiated reports of abuse and neglect from institutional settings, and reviewing critical incident reports regarding children receiving services from executive agencies. In order to illustrate how these values direct our work, Elizabeth Armstrong and Susan Cummings presented three vignettes abstracted from matters the OCA staff worked on recently.

A question was raised as to what role a child's attorney plays. Gail Garinger explained that the role of a child's attorney is to articulate the child's position. The OCA is working to make others more aware of the CPCS performance standards for child's counsel. The OCA will be posting these on its website.

#### **OCA Challenges**

Gail Garinger presented some of the challenges that exist for the OCA in trying to fulfill its statutory mandate.

- 1.) Budget and staffing: The OCA remains at the same level of funding and staff (3.5 FTEs).
- 2.) Legislation has been filed to provide clarification on certain items in the OCA statute.
  - a. House 901 was introduced to clarify that OCA access to documents includes electronic information systems.
  - b. House 902 was introduced to add the Undersecretary of the Department of Housing and Community Development (DCHD) to the OCA Advisory Board.
  - c. House 908 was introduced to clarify that the OCA is to receive critical incident reports for all executive child-serving agencies, not just Executive Office of Health and Human Services agencies.
- 3.) M.G.L. Chapter 18C, Section 5H enables the OCA to apply for and accept federal, local or private grants, bequests, gifts, or contributions. However, the OCA is organized under the Governor's Office, and the Governor's Office presently does not accept federal grants. Gifts, bequests, and contributions to the OCA are not tax-deductible, and therefore we are faced with a challenge in our ability to receive money as intended by the Legislature.

### **Annual Report**

The OCA has decided to change the reporting period of its annual report from a calendar year to a fiscal year. The OCA annual report will be filed after June 30, 2011 for the 2011 fiscal year.

### **Rogers Project**

Gail Garinger introduced Dr. Laurel Leslie of Tufts Medical Center, Tom Mackie of Tufts Medical Center, and Jenna Pettinicchi of the OCA to present an update on the status of the *Rogers Project*.

### **Background**

Dr. Laurel Leslie of Tufts Medical Center presented information on the issue of psychotropic medication and children in foster care. During the last decade psychotropic medication use in pediatrics increased by a factor of 2-3, and the use of multiple psychotropic medications increased by a factor of 2.5-8. Estimated rates of medication use for children in foster care range from 13-52% as opposed to 4% in the general population. In 2010 Dr. Laurel Leslie and a team of researchers conducted a national study of 47 states to (1) examine state policies and best practices regarding psychotropic medical use, and (2) identify promising practices to disseminate to other child welfare agencies. For more information on the *Multi-State Study on Psychotropic Medication Oversight in Foster Care*, please see "Research Reports and Manuals" at: <http://160.109.101.132/icrhps/prodserv/default.asp>

Reasons for examining the *Rogers* process include:

- 1.) In Massachusetts the *Rogers* process only covers antipsychotic medications yet there has been a significant landscape change with respect to medications available and the possibilities of adverse events.

- 2.) Particular concerns have been raised as to the use of antipsychotics among young children and an increase in poly-pharmacy.
- 3.) Public Law 110-351: “Fostering Connections to Success and Increasing Adoptions Act” signed by President Bush in October 2008 requires states to develop a plan for oversight and coordination of health and mental health services for children in foster care.
- 4.) There is a growing interest among Massachusetts agencies to learn more about promising practices in other states.

### **The OCA’s *Rogers* Project**

Jenna Pettinicchi presented an update relative to the OCA’s project with Northeastern University School of Law (NUSL) Legal Skills in Social Context (LSSC) Social Justice Program.

Over the last several months the OCA has been deeply involved in a project to examine the *Rogers* process, a process for obtaining consent for the administration of antipsychotic medications for children in state custody. When a child is in the custody of the Department of Children and Families (DCF), approval must be obtained from the court before antipsychotic medications can be administered to the child. Through this process, a *Rogers* Guardian ad Litem (GAL) is appointed by the judge to gather information from relevant records, the child’s medication prescriber, the child, parents, and foster parents, and other key persons involved with the child’s care. The GAL then provides the court with a written report and recommendations. The court schedules a hearing and after considering the evidence, the judge enters findings and may or may not authorize the administration of specific medications and dosages for the involved child.

In the fall of 2010, 15 NUSL law students under faculty supervision began a project involving 2,000 hours of legal research, field interviews, and processing information in order to examine the effectiveness and efficiency of the *Rogers* process. The project goal was to clarify the legal framework, summarize stakeholder perspectives, and produce a set of thoughtful consensus-based recommendations which create a consent process that is in the best interests of the state. The project design consisted of (1) an analysis of the current legal framework of the *Rogers* process and (2) field interviews with key stakeholders involved with the *Rogers* process.

Research Findings: based on their research the NUSL students identified nine themes across stakeholder groups.

- 1.) Stakeholders acknowledge the need for oversight for effective treatment.
- 2.) Stakeholders want a process that acknowledges and compensates for the unique challenges of treating children in transitional custody.
- 3.) The *Rogers* process can be a barrier to the appropriate medical treatment and residential placement of children in DCF custody.
- 4.) Stakeholders would like increased medical input and enhanced communication between medical and legal stakeholders.

- 5.) Stakeholders want a system that ensures sufficient financial compensation for services.
- 6.) Stakeholders would like training on the *Rogers* process, antipsychotics, and psychoactive medications in general.
- 7.) Stakeholders want a consent process that is faster, more flexible, and less expensive.
- 8.) Stakeholders want a system that is consistent across the state and among the courts.
- 9.) Stakeholders want a uniform protocol for all parties and in all courts involved in the *Rogers* process.

The project vision is for every child in state custody to receive appropriate treatment for his or her behavioral and mental health needs through a process that efficiently provides proper oversight, has well-trained care providers, and bases decisions on up-to-date information supported by the involvement of knowledgeable professionals from the field of child psychiatry.

Guided by the project vision and their research findings the NUSL students developed five goals to frame their recommendations. These recommendations offer ways to reinforce the current process, alter the current process, or create a new process. The NUSL students presented these findings and recommendations to the OCA on April 7<sup>th</sup>. Details regarding the student findings and recommendations can be found in the final report titled, "Court-Ordered Consent: Revisiting the Rogers Process for Children in State Custody." This report, as well as additional information on the project, is available on the OCA website. [www.mass.gov/childadvocate/news/rogers.htm](http://www.mass.gov/childadvocate/news/rogers.htm).

With support from the Court Improvement Program (CIP), the OCA has commissioned a team of researchers led by Dr. Laurel Leslie of Tufts Medical Center to assist the OCA in examining the *Rogers* process for children in DCF custody and to build on the research and findings of the NUSL students. CIP is funded through a federal grant and administered by the Massachusetts Supreme Judicial Court.

### **Rogers Project Phase 2**

Tom Mackie of Tufts Medical Center presented the goals and project design for the second phase of the *Rogers* project.

The goals of the second phase of research are to:

- 1.) Garner feedback on the NUSL students' project;
- 2.) Enhance the diversity of the stakeholders interviewed;
- 3.) Identify and disseminate key components of four other states' models;
- 4.) Elicit shared goals among stakeholders; and
- 5.) Formulate potential solutions from findings.

In order to elicit feedback on the NUSL students' project, focus groups were conducted following the NUSL presentation on April 7, 2011. A survey link will be emailed to all of the

NUSL interviewees. The report and survey link are available to the general public on the OCA website.

Interviews and focus groups with biological family members, kin, foster children, prescribers and stakeholders from the western and cape areas of the state will be conducted in order to enhance the diversity of stakeholder input. Additionally, four to six focus groups will be conducted with judges, attorneys, agency staff, contracting agencies, families, and prescribers.

This second phase of research will also identify the key components of the informed consent processes in California, Connecticut, Illinois, and Texas.

Finally, the Tufts Medical Center research team will present their findings and suggestions to the Rogers Working Group and will submit a final report to the OCA.

## **Discussion**

- Board members offered suggestions to elicit additional youth input and feedback regarding the *Rogers* process.
- Tufts Medical Center researchers are looking to engage alumni foster children.
- The New England Youth Coalition is a group of alumni foster children. They have identified medication and over-medication as an issue of concern.
- Maine is working on the informed consent issue for psychotropic medications with the focus of adolescents in care of protective services.
- The current *Rogers* process is based on a DCF regulation requiring judicial consent for antipsychotic medication for children in DCF custody. Therefore, if any changes were to be made to the regulation, the goal would be to persuade the Commissioner of DCF that changes would result in better outcomes for children, youth, and families.