

Confirmation Memorandum

TO: Karen Spilka, Massachusetts State Senator; Erin Bradley, Policy Analyst, Mary Anne Padien, General Counsel.

CC: Susan Maze-Rothstein, Faculty Supervisor and Program Director; Dawn Ash, Winter Lawyering Fellow; Wallace Holohan, Advising Attorney; Sue Zago Research Librarian

FROM: Stacey Dippong, Fall Lawyering Fellow, Law Office #3
(617) 304-1542; staceydippong@gmail.com

RE: **Confirmation of Legal Skills in Social Context (LSSC)/The Office of Senator Karen E. Spilka – Massachusetts Children in Need of Services (CHINS) Project, 2006-2007**

This memo serves as confirmation of an agreement to collaborate the efforts of Law Office #3 and The Office of Senator Karen E. Spilka in analyzing and making recommendations regarding the reform of the Massachusetts CHINS laws. The ultimate goals of the project, the roles and responsibilities of interested parties, and potential constraints and strategies are discussed below.

BACKGROUND, GOALS and DELIVERABLES:

In November of 2005, Massachusetts State Senator, Karen E. Spilka, Senate Chair of the Joint Committee on Children and Families, convened a task force of stakeholders in the Commonwealth's Children in Need of Services (CHINS) system. This task force includes representatives from several state agencies, the juvenile court system, lawyers and bar advocates, service agencies, parents, and advocates. The task force has been meeting regularly since November and is collecting information in order to propose new legislation in 2007.

The task force is divided into four subcommittees: (1) data collection; (2) best practices/state statutory research; (3) front end; and (4) court process. The data collection subcommittee's goal is to advance the use of empirical data to inform planning and reform. It plans to use currently collected data to describe the existing CHINS population and system, and craft recommendations on future data collection, storage, and use. The best practices/research subcommittee is collecting general information to inform the reform process, such as information about the existing services, reviewing national status offender statutes, and gathering information on nation-wide best practices. The front end subcommittee plans to design a proposal for the intake process of a revised CHINS system, considering such issues as the length of service agreement, who should be providing services and referrals, the appropriate service components, etc. The court process subcommittee is analyzing the role of the court and the components of the court process. It is considering time standards for cases, representational issues, the effect a court order has on custody, the effect of contempt findings, and the termination process for court proceedings.

Students with the LSSC Social Justice program have been asked to assist the CHINS Executive Steering Committee convened by Senator Spilka's office in analyzing the proposed changes in CHINS law, and making relevant recommendations.

The Law Office's work will have both a broad focus and a narrow focus. It will explore the issue of fundamental rights in the context of children and families. In a more narrow sense, the Law Office will focus on the due process and equal protection implications arising from the current statute's provisions relating to the parental right to counsel in CHINS proceedings. The Law Office will perform in depth library research and field research culminating in a written report and oral presentation detailing their findings.

To provide the Senator's office with a fresh take on a problem that has been much studied lately, the Law Office will start by researching international law and policies on the fundamental rights of families and children. A starting point may be the United Nations Convention on the Rights of the Child. The United States treats children as property. The Law Office will explore how the rest of the world treats children and families. If they come across international CHINS-like models, they may integrate these in the final product analyzing and recommending changes in Massachusetts.

After achieving an international perspective on the rights of children, the Law Office will narrow their research to focus on certain procedural aspects of the Massachusetts CHINS law. Specifically they will analyze the following questions: (1) Does due process require that indigent parents be appointed counsel in CHINS proceedings involving the potential loss of custody of their children to the State? (2) Do principles of equal protection require that indigent parents in CHINS proceedings receive court-appointed counsel as do similarly situated parents in G.L. c. 119, §§ 23(C) and 24 proceedings? (3) Does equal protection require that post-removal hearings in G.L. c. 119, § 39 CHINS cases take place within seventy-two hours, like in § 24 and § 23(C) proceedings? Additionally, time and resources permitting, the Law Office will explore the issues relating to who has standing to participate in hearings, and who may/must prosecute once a CHINS petition has been filed. The Law Office will limit their research for this part of the project to only Massachusetts law. In addition to the CHINS law, they will look at the following analogous areas of law in Massachusetts: Care and Protection; Juvenile Delinquency; and Civil Commitment of Incapacitated Adults. As a framework for the above analysis, the Law Office will examine the draft legislation that the Senator's office will provide in the beginning of 2007.

The Senator's office has graciously offered to explore the possibility of extending the Law Office an invitation to the task force meeting which will take place sometime near the end of January, or beginning of February. This would be a great opportunity for the Law Office to observe all of the interested parties and the workings of the subcommittees. To gain a sense of the current state of CHINS in Massachusetts, students will visit juvenile courts to observe proceedings. Any request for information or access to the juvenile courts, which refer to Senator Spilka's office, will be reviewed by the Senator's staff prior to being sent out. They will also interview family law experts and practitioners who deal with CHINS cases on a daily basis. Advising Attorney Wallace Holohan has graciously offered to provide the Law Office with potential interviewees and schedule a presentation by one of his colleagues to aid in the project development.

The final deliverable to the Senator's office will be a comprehensive report detailing the Law Office's findings. It will analyze the fundamental rights of children and families on an international scale. It will additionally analyze the procedural questions dealing with, among other concepts, the right of parents to counsel. The Law Office will give an oral presentation of these findings to the Senator's office and the Northeastern Law School community in April.

ROLES AND RESPONSIBILITIES:

The Fall and Winter Lawyering Fellows (Stacey Dippong and Dawn Ash), Faculty Supervisor (Susan Maze-Rothstein), Advising Attorney (Wallace Holohan), Client Representative (Senator Spilka), and Reference Librarian (Sue Zago) all offer areas of expertise that will help make this project a success. Below is the contact information for each person, along with his/her role in completing the project.

A. Fall Lawyering Fellow: Stacey Dippong

Stacey Dippong (“Stacey”) will serve as the “project engineer” during the fall quarter by establishing contact with the client, advising attorney, faculty supervisor, and winter Lawyering Fellow (LF) in order to define, focus, and set the parameters for the project. Stacey has worked with all interested parties to develop the scope of the project, which focuses on CHINS procedural issues. Stacey has also been working with the Law Office during the fall to help them develop their critical thinking and advanced lawyering skills.

In order to lay the foundation of the project for the Law Office, Stacey will develop a research plan for the international law and policy research on fundamental family and children’s rights, and the procedural research on due process and equal protection relating to the CHINS law. Stacey, with the assistance of Dawn, will determine the extent of the investigative field research, and how this work should be divided among students. Specific duties are outlined below:

- Stacey is researching general information about the history and background of the Massachusetts CHINS law via statutes, law review articles, treatises, encyclopedias, and the American Law Reports to provide the Law Office with the background information they will need to jumpstart their own research and understanding of the project goals. This information will be included in the Orientation Packet.
- Stacey has also begun researching international law and policies relating to the rights of children and families. She will compile a research plan and an appendix of materials deemed useful to the Law Office’s research on global views of fundamental rights and the status of children.
- Stacey and Dawn will formulate interview questions for those identified as investigative field research subjects (family law practitioners, judges, and others involved in the CHINS system such as parents, teachers, and probation officers). The interview questions will focus on the goals of the interview, and Law Office members will be expected to supplement these questions with specific questions related to the interviewee.
- Stacey will blueprint how students can get from point zero to final completion of the project and the structure of the final deliverables. This will be the primary purpose of the Orientation Packet.

Stacey’s primary duty is to provide organization, coordination among interested parties, and resources for the project. Stacey can be reached via telephone at (617) 304-1542 or email at stacedippong@gmail.com.

B. Winter Lawyering Fellow: Dawn Ash

In late November, Dawn Ash (“Dawn”) will take over the role of Lawyering Fellow with the Law Office. During the fall semester, Stacey and Dawn have communicated about the goals of the project and steps to be taken along the way to final completion so that Dawn remains updated about what the needs of the project are. In January 2007, Dawn will begin implementation of the project with the Law Office. Dawn will serve as a primary resource for the Law Office while it begins its initial work researching international law, Massachusetts law, and setting up interviews with experts and practitioners. Dawn will help to frame the scope of the research with the students and help each student expand his/her role in the project. Specific duties are outlined below:

- Dawn is responsible for reviewing information submitted by Stacey, including Weekly Assessments on the Law Office, drafts of memorandums, and a draft of the Orientation Manual.
- Dawn will write a Form Letter to be sent to all potential interviewees 2-3 weeks before students would like to interview them. This letter, which is to be reviewed by all interested parties, will serve as notice to the interviewees of the project and explain consent and confidentiality. Sample questions will also be attached for their review.
- Students will begin doing their field research in the winter quarter, and they will look toward Dawn to help them analyze the information they receive. While Stacey and Dawn will have already drafted the fundamental questions to be asked, Dawn will help Law Office members draft questions specific to each interviewee’s role.
- Dawn will prepare a detailed strategic plan for implementation of the project and will troubleshoot when unexpected problems arise during the research process and to help guide students in figuring out solutions to the problems and conflicts.
- Stacey and Dawn will help the Law Office members become a self-sufficient group so they can develop their own organizational structure for completing the project in the spring.
- Through collaboration with Senator Spilka, Maze-Rothstein, Holohan, and Zago, Dawn will write a Work and Resource Plan to identify a strategy for how the students will begin work on the project, resources, and challenges the Law Office may encounter. Dawn will also create a detailed implementation plan.
- Dawn is responsible for reviewing drafts of the Law Office’s work product, subject to close oversight by Holohan and Maze-Rothstein.
- Dawn is responsible for gaining prior approval from Senator Spilka’s office, on any material that is to be distributed with the Senator’s name on it.

Dawn will serve as a primary resource during the implementation stages of the project. Dawn can be reached via telephone at (617) 921-5370 and email at ash.d@neu.edu.

C. Faculty Supervisor and Program Director: Susan Maze-Rothstein

Throughout the year, Susan Maze-Rothstein (“Maze-Rothstein”) will act as a resource for the Lawyering Fellows and the Law Office, both through the planning and implementation stages. Maze-Rothstein has been the Program Director of the Law, Culture and Difference program (now Legal Skills in Social Context), for nine years and can bring much expertise to the project in helping to resolve any conflicts that may arise and to help students achieve a rich experience in working on the project. Maze-Rothstein is responsible for primary oversight of the project and the Law Office, which includes reviewing all materials submitted by the Lawyering Fellows and the Law Office. In the spring, the students will complete the project without supervision by a Lawyering Fellow. At this stage, Maze-Rothstein will act as the primary resource for the Law Office. She can be reached via telephone at (617) 373-7609 (work) or (617) 448-6178 (cell) and email at s.maze-rothstein@neu.edu.

D. Advising Attorney: Wallace Holohan

Wallace Holohan (“Holohan”) was selected as the Advising Attorney for this project because of his expertise in Criminal and Children’s law. As a faculty member at NUSL, Holohan will work with Stacey to help articulate the pedagogic goals for students to focus on while implementing the project. Holohan will also review all drafts submitted by Stacey and Dawn during the year related to the project. He has also graciously volunteered to aid in developing part of the field research component, specifically to put the Law Office in contact with colleagues who are experts in the area. Holohan can be reached via telephone at (617) 373-3628 or email at w.holohan@neu.edu.

E. Client Representative: Senator Karen Spilka

Senator Spilka is active in the reform of the CHINS law. She has convened a task force working towards changing the law. In January, the Senator will file legislation to implement the recommendations of the CHINS Task Force. If those recommendations are not complete, some legislation will be filed and amendments will be offered by Senator Spilka at a later date to the Joint Committee with jurisdiction over this bill.

- The Senator or her aides, Erin Bradley and Mary Anne Padien, will be responsible for reading all drafts of the Confirmation Memorandum, Abstract, and Orientation Packet submitted by Stacey and submit any necessary comments within a reasonable time period.
- The Senator will contact potential interviewees and invite them to participate in the interviews to be performed by the Law Office and the Senator’s office agrees to review all communications to potential interviewees prior to distribution.
- The Senator will identify possible interview subjects (family law practitioners, experts in the field, and organizational members) for the field research portion of the project. In order to have access to a broader field of expertise, the Law Office should identify possible individuals as interviewee candidates who are not currently participants of the CHINS Task Force.

- The Senator or her aides will introduce the Law Office to the project on Monday, November 13, 2006 at 4:00pm.
- The Senator or her aides will be present during April 2007 when the Law Office members present their findings.

Both Lawyering Fellows and the Law Office should remain in close contact with the Senator, her policy analyst (Erin Bradley), and her general counsel (Mary Anne Padien) to ensure that her vision (and the vision of all other interested parties) is being accomplished through all stages of the project. Mary Anne and Erin will be the principle contacts for the Law Office in the Winter and Spring. The Senator's office can be reached via telephone at (617) 722-1640 and email at Karen.E.Spilka@state.ma.us, Erin.Bradley@state.ma.us, or Mary.Padien@state.ma.us.

F. Reference Librarian: Sue Zago

Sue Zago ("Zago"), a librarian at NUSL, will bring her expertise in research to the project by helping to frame the scope of the project based on what is possible in terms of research and to serve as a resource for the Law Office and Lawyering Fellows. Zago is knowledgeable about where to direct students when they begin their research. During the fall quarter, Zago has identified library resources for Stacey, which includes those available in the NUSL library and those that must be retrieved before December so that they are accessible to Law Office members when the time comes for them to begin their research. In assessing materials that are helpful in providing an orientation for the Law Office to the Massachusetts CHINS system, Zago has offered Stacey advice on how to scope the research, where to locate certain items, and what components of the students' research are necessary to provide the Senator's office and the CHINS Steering Committee the most accurate and thorough analyses on the CHINS system. Zago can be reached via telephone at (617) 373-3331 and email at s.zago@neu.edu.

G. Law Office Members

Law Office #3 is comprised of 13 talented individuals who all have various backgrounds and perspectives to bring to the project. While informed of the project in the Fall quarter, the Law Office will not begin working on the project until January 2007. In the first week of December they will receive the orientation packet prepared by Stacey, which they will be responsible for reading, because it lays out the project and provides a background of the problem. Dawn will guide the students through the beginning stages of implementation of the project. The work required to complete the project will be evenly divided between the students. There are two major aspects to the project:

1. International law and policy research

Because there is currently a team of highly qualified stakeholders working on different aspects of the CHINS reform (front end, state statutory research and best practices, data collection, and court process), the Law Office will explore an area of law that has not yet been examined by the steering committee – International Law. We believe that this mode of analysis, will not only require the Law Office to be more creative in their analysis of Massachusetts law, but also help them to obtain a global perspective on the fundamental rights of children and families. The Law Office will be asked to contemplate questions such as, what is the status of children? What rights do they have? How do other countries treat children who demonstrate the

behaviors of CHINS? What rights do parents have when it comes to their children? If, while researching, they find a model or several CHINS-like models that exist in other countries, comparable to what the Massachusetts CHINS reform is trying to achieve, then they will be asked to use it when examining the procedural issues discussed in the second main aspect of the project.

The United Nations Convention on the Rights of the Child has already been identified as a preliminary resource for the Law Office. Reports or findings surveying the laws of multiple countries in regards to children and families would additionally be helpful. The Law Office's findings will be written up in the final report and used as a backdrop when researching the specific questions dealing with constitutional due process and equal protection of the CHINS law.

2. Analysis of the constitutional implications of certain aspects of CHINS procedure

The Senator's office has presented Northeastern with several issues they would like analyzed. This fortunately eliminates the possibility of the Law Office running out of work in their Spring semester. Stacey, with the help of Professor Maze-Rothstein, Sue Zago, Senator Spilka, Mary Anne Padien, and Erin Bradley, has focused of the project to the following issues:

1. Deprivation of fundamental family rights

A.) i.) Because parents have a fundamental right to the care and custody of their children, due process requires that indigent parents have a right to appointed counsel in all civil actions involving the potential loss of such custody to the State. CHINS proceedings are civil actions in which the courts may remove children from their parents and place them in State custody. Does due process require that indigent parents be appointed counsel in CHINS proceedings involving potential loss of custody of their children to the State?

ii.) Indigent parents receive court-appointed counsel in care and protection cases in Juvenile Court under G.L. c. 119, § 24 and Probate & Family Court under G.L. c. 119, § 23(C). The potential due process deprivation – the loss of custody of a child to the State – is the same for parents in a CHINS proceeding under G.L. c. 119, § 39G as it is in proceedings under §§ 23(C) and 24. Do principles of equal protection require that indigent parents in CHINS proceedings receive court-appointed counsel as do similarly situated parents in §§ 23(C) and 24 proceedings?

B.) In emergency situations where custody is transferred without a hearing, G.L. c. 119, § 24 and Custody of Lori, require that courts hold post-removal hearings quickly to comport with due process. Such hearings take place within seventy-two hours after removals in § 24 and § 23(C) proceedings. Does equal protection require that post-removal hearings in § 39, CHINS cases, similarly take place within seventy-two hours?

2. Additional related issues

A.) Who has/ should have standing to participate in hearing on a petition?

B.) Who may/must prosecute once a petition is filed? This may be a conflict with the issues raised in question 2 above. On a CHINS adjudication hearing, who should act as the prosecutor?

(Currently the Probation Officer usually acts as the prosecutor, but actually is a potential witness and the court should not be in the position to ask questions and prosecute the hearing.)

These issues, for the most part, are all related to the beginning stages of CHINS procedures. There are complex constitutional law issues present here, which when combined with the international research described above, will result in an extremely challenging and rewarding project for the Law Office. To begin, the Law Office will need to research and understand the current Massachusetts CHINS statute. The statute will be in the appendix to the orientation report. Comparing this to the draft legislation the Senator's office will provide will give Law Office a sense of what the problem is with the law and what they are working towards. Additionally the Law Office will be required to perform case law research in Massachusetts as well as other jurisdictions to reach conclusions about the identified issues. They will supplement this research with secondary research, such as law reviews, treatises, ALR's, and other publications.

For the field research component of the project, the Law Office members will observe CHINS hearings, hopefully attend the task force meeting in late January/early February, and conduct interviews with experts in the field of family and children's law. These components will help the Law Office to understand the current problem, get a sense of how the process works, and provide a backdrop for finding solutions. This will be incorporated in the final report and presentation.

CONSTRAINTS AND STRATEGIES:

One of the most challenging aspects of the fall Lawyering Fellow's role is to plan a project that can be completed by 13 Law Office members in a period of 11 weeks. Numerous goals have been identified, which include a constitutional-based analysis of the Massachusetts CHINS procedures and the proposed changes, and global research on fundamental rights concerning children and families. The hope is that the workload will be sufficient to keep the Law Office members busy throughout the 11-week period and also that it will not be too much where they will not be able to sufficiently research everything planned. It is always difficult to estimate the amount of time each task will take. Therefore, in order to confront a possible situation in which students "run out of work to do," all parties should be aware that this could be a continuing project, and additional issues will be available if students are able to complete their tasks more quickly than imagined. The additional issues presented by the Senator's office that are not at this stage part of the project, will be made available to the students, should they accomplish the tasks given in a time quicker than anticipated.

An additional challenge for the Law Office will be filtering through the vast amounts of information available both in the international realm and in Massachusetts concerning the rights of children and families. Though the law office is being asked to analyze seemingly narrow questions of constitutional due process and equal protection relating to CHINS post-removal hearings and parental rights to counsel, the project's overarching theme of the fundamental rights of children and families is very broad. It is foreseeable that the Law Office may easily get sidetracked while researching. To address this, Stacey will author a research plan that will be included in the orientation report and Dawn will develop a strategic implementation plan, both of which should provide the Law Office with needed direction and focus.

With respect to the investigative research component of the project, the principle challenge will be to get each one of the 13 Law Office members to experience at least one

interview. This involves identifying a sufficient number of potential interviewees so that in the event that some are not able to be interviewed, there will be additional prospects available.

A recurring challenge in any project is to keep the lines of communication open. It will be the responsibility of Lawyering Fellows to keep all interested parties updated and informed about the status of the project, any problems that arise, and changes in the direction of the project and/or research. It is equally important for any questions, concerns, and issues to be addressed sooner rather than later.

CONCLUSION:

Law Office #3 and the resource management team are extremely excited about working with Senator Spilka's Office in analyzing and making recommendations regarding the Massachusetts CHINS law. The signatures below confirm that the Fall Lawyering Fellow and Client Representatives are prepared to adhere to the arrangement articulated above for completion of the project.

Stacey Dippong
Fall Lawyering Fellow

Senator Karen Spilka
Client Representative

Erin Bradley
Policy Analyst

Mary Anne Padien
General Counsel