

## Sonnenberg Consultants Newsletter

### Research and Media Updates

#### President Signs Bill Authorizing Funding to Combat Autism Act

The bill contains the following appropriations:

- Autism services, diagnosis and treatment at the Health Resources and Services Administration: \$36,354,000, a \$16.354 million increase over Fiscal 2007 (\$37m was the level authorized by Combating Autism Act).
- Autism surveillance and awareness at the Centers for Disease Control and Prevention: \$16.212 million, a \$1.2m increase over Fiscal 2007 (\$16.5m was the level authorized by the Combating Autism Act).
- An estimated \$108.5 million for NIH-funded autism research.
- Implementation of the Interagency Autism Coordinating Committee (IACC): \$1 million within the budget of the National Institute of Mental Health is earmarked for IACC implementation.

#### Autism Cases Rise, Even With Vaccine Change

Autism cases in California continued to climb even after a mercury-based vaccine preservative that some people blame for the neurological disorder was removed from routine childhood shots, a new study found.

Researchers from the state Dept. of Public Health found the autism rate in children rose continuously during the 12-year study from 1995 to 2007. The preservative **thimerosal** hasn't been used in childhood vaccines since 2001, but is used in some flu shots.

PALM BEACH, FL (December 27, 2007) – Autism Speaks, the nation's largest autism advocacy organization, will undertake a multi-state initiative to pass insurance coverage provisions for autism services, it was announced today by Co-Founders Bob and Suzanne Wright. Expanding on Autism Speaks' ongoing advocacy work in Pennsylvania, the 2008 initiative will extend to Florida, California and Michigan, battleground states in the effort to compel commercial insurers to cover evidence-based, medically necessary therapies and services for individuals with autism.

Tuesday, January 08, 2008

Divided 10th Circuit Affirms Dismissal of Peer Harassment Case

the 10th Circuit Court of Appeals recently affirmed a lower court decision dismissing a peer harassment case originating out of the public schools in Steamboat Springs, Colorado. Judge McConnell, who dissented from the panel's decision that the plaintiff failed to make a case under Title IX, presented this summary of the facts:

K.C., a young teenager with learning disabilities, was coerced into performing oral sex on a number of boys who were fellow students at her middle school. Although most of this activity (and all of the actual sexual contact) took place outside of school, she was mercilessly teased at school, the boys threatened to spread rumors about her and to circulate naked pictures of her around the school, and on at least one occasion she was importuned for sex on the school bus. School authorities took no effective remedial measures. Eventually, two weeks after her most explicit complaint to the school, she suffered a series of psychotic episodes, probably caused by the assaults, and on advice of her psychiatrist withdrew from school.

All three judges agreed that K.C.'s complaint to a school counselor in the spring of 2002 that boys were "bothering her" did not give the school adequate notice that she was being assaulted. Judge McConnell called it a

"close call" and chastised the counselor for not pressing K.C. for details about the manner in which she was being "bothered." Such follow-up questions would have been particularly appropriate because (1) K.C. is mildly retarded and might have had a hard time describing what was happening to her and (2) one of the boys had previously been disciplined for engaging in sexual harassment. However, even McConnell agreed that Title IX liability can only attach when a school district is deliberately indifferent to harassment of which it had actual knowledge--not harassment that it should have reasonably been able to discover.

The following school year, K.C. finally told a high school counselor that she was being assaulted by her classmates. The court agreed that the district was on adequate notice from this point forward, but disagreed whether its decision not to discipline the boys was deliberate indifference. The majority determined it was reasonable for the principal to defer to the results of a police investigation, in which the police decided not to press charges because the investigation could not conclusively determine which sexual encounters between K.C. and the boys were "consensual" and which were not. In dissent, Judge McConnell would have held the district liable for the principal's decision to do "absolutely nothing" upon receiving the police investigation report, which revealed the names of the boys and the nature and frequency of their sexual conduct with respect to K.C.: "No discipline. No counseling. No communications with the boys' parents. The principal did not even call the perpetrators into his office for an admonitory chat."

This decision helps illustrate the limited scope of Title IX's application in the peer harassment context. It emphasizes that a district does not have a responsibility to engage in efforts, however reasonable, to discover ongoing harassment, and, by absolving the district in the face of its nonresponse, highlights how truly narrow is the scope of conduct that amounts to deliberate indifference. Decision: Rost ex rel. K.C. v. Steamboat Springs RE-2 School District, 2008 WL 54772 (10th Cir. Jan. 4, 2008).

## Company Updates: (WI families)

- ✚ The incentive program is still in affect. Therapists will receive FREE gas cards for attendance. Ask your senior for details.
- ✚ Any therapy done outside of the home needs approval, contact your senior!
- ✚ Keep hours consistent; only cancel if your child is sick!!!! All hours need to be made up if the therapist cancels!
- ✚ Raises go into affect on the 25<sup>th</sup> of January. Evals must be done and all therapists must have passed their line exams. Good Luck!
- ✚ The only shifts that are excused by weather are if the schools are closed. All other cancelations must be made up if canceled by the therapist!

## Joke of the month: **New Year: Time to Diet**



Happy New Year-from Devon's team!