REPORT ON THE INJURY OF FOUR-YEAR-OLD JENNIFER Y

Dated February 9, 2015

UNIVERSITY LEGAL SERVICES, INC

Since 1996, University Legal Services, Inc (ULS), a private, non-profit legal service agency, has been the federally mandated protection and advocacy (P&A) program for individuals with disabilities in the District of Columbia. Congress vested the P&As with authority and responsibility to investigate allegations of abuse and neglect of individuals with disabilities. In addition, ULS provides legal advocacy to protect the civil rights of District residents with disabilities.

ULS staff directly serves hundreds of individual clients annually, with thousands more benefiting from the results of investigations, institutional reform litigation, outreach, education and group advocacy efforts. ULS staff address client issues relating to, among other things, abuse and neglect, community integration, accessible housing, financial exploitation, access to health care services, discharge planning, special education, and the improper use of seclusion, restraint and medication.

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1 For privacy reasons, ULS has changed the name of the individual involved.

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METHODOLOGY

Under federal law -- the Protection and Advocacy for Individuals with Developmental Disabilities ("PADD") statute, 42 U.S.C. § 15043, P&As have the authority to investigate complaints of abuse and neglect, including unexplained injuries involving children with disabilities at school. For this report, ULS reviewed St. Coletta Special Education Public Charter School records, including a video of the school entry/exit, Kaiser Permanente medical records, Children’s National Medical Center medical records, and parent notes. ULS expresses its appreciation to St. Coletta for its quick response to ULS’ record requests. ULS requested records of the Office of the State Superintendent of Education ("OSSE"), which oversees the transportation system, five times.\(^2\) Though OSSE responded to some question over the phone, ULS never received any records or investigation report from OSSE.

CHRONOLOGY OF EVENTS

I. Background

Jennifer Y is now a five-year-old, though at the time of the incident, she was only four-years-old. She is an active, cheerful child with a disability of “Developmental Delay.”\(^3\) She is considered both visually impaired and nonverbal.\(^4\) She is unable to stay seated for longer than five minutes,\(^5\) she is not toilet trained and is unaware of dangerous situations and can easily get hurt if not properly supervised.\(^6\) She has severe deficits in the areas of expressive and receptive language.\(^7\) Physically, she is active and can move around the school independently without losing her balance,\(^8\) but “needs support during transport to safely travel to/from school.”\(^9\) She requires a dedicated aide at school because “[s]he primarily communicates through cries and facial expressions [and] is unable to maintain her hygiene or complete other activities of daily living without the assistance of staff . . .”\(^10\)

At the time of the incident, she attended St. Coletta Special Education Public Charter School’s pre-school program.\(^11\) She began attending in the spring of 2012 at the age of three when she transitioned from the Early Intervention Program.\(^12\)

A. St. Coletta on March 11, 2014

Jennifer was at St. Coletta during the school day on Tuesday, March 11, 2014. According to the notes Jennifer’s mother wrote during a meeting at the school a week later,

\(^2\) Email correspondence from ULS to OSSE between March 31, 2014 and July 25, 2014.
\(^3\) Individualized Education Program ("IEP") dated 3/19/14 at 1.
\(^4\) Id. at 2.
\(^5\) Id. at 3.
\(^6\) Id. at 5.
\(^7\) Id. at 6.
\(^8\) Id. at 8.
\(^9\) Eligibility Category Worksheet dated 3/19/14 at 2.
\(^10\) Justification and Plan for Dedicated Aide dated 3/19/14 at 2.
\(^11\) IEP dated 3/19/14.
\(^12\) IPE dated 4/30/12.
Jennifer’s aide said she “was fine. Nothing out of the normal. ... [S]he led her to the bus at the bottom of stairs to the first step and then the bus aide receive[d] her. She did not see her anymore.” However, according the parent’s report, the bus driver on Route 131 told them that Jennifer was crying when she transferred care to the DCPS bus attendant and that it was “unusual for her to be crying like that.”

A security video provided by St. Coletta of the school’s student entrance, timed at 2:59 on March 11, 2014, shows Jennifer from the back. She is holding hands with the aide as she walks away from the school. She does not appear to be in any distress and is walking normally. The view cuts off just as she arrives at the bus area.

B. Treatment from Tuesday, March 11 through Thursday, March 13, 2014

Upon arriving home, Jennifer was inconsolable. Her parents took her to Kaiser Urgent Care where she was treated for a fever (99.3) and for a tooth injury. The doctor gave her Ibuprofen and Acetaminophen and ordered several tests: strep, throat culture, urinalysis. The family left Kaiser around 9:00 p.m.

Given concerns about her teeth, Kaiser sent her next to Children’s National Medical Center Emergency Room. She arrived around 9:40 p.m. There she was given instructions for a dental fracture, told to follow up with the Dentistry Clinic, and she was given more Ibuprofen. She was discharged around 2:05 a.m. on March 12th.

Nevertheless, Jennifer would not be consoled. The family returned to Kaiser Urgent Care. This time she was treated for “nursemaid’s elbow” of her left arm. Nursemaid’s elbow is a dislocation of a bone in the elbow called the radius. Dislocation means the bone slips out of its normal position at the elbow joint. The doctor manipulated her arm but no orders were placed. The family was told to return to an appointment with pediatrics, and they left around 6:00 a.m. of March 12th.

Jennifer continued to cry. Her parents returned to Kaiser Urgent Care later that day for a third visit to Kaiser. This time X-Rays of her left elbow, humerus and shoulder were ordered, and she was diagnosed with a broken arm. The next day, March 13th, she went to the Orthopedics Department at Kaiser and was diagnosed with a left humerus fracture. She was told not to return to school through the following week, causing her to miss almost two weeks of school.

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13 J’s mother’s notes dated March 18, 2014, at 10:46.
15 J’s mother’s noted dated March 19, 2014.
17 Children’s National Medical Center Records dated 3/12/14 at 2:05 a.m.
19 Kaiser Medical Records dated 3/12/14, printed at 5:57 a.m.
20 Kaiser Medical Records dated 3/12/14, printed at 9:15 p.m.
21 Kaiser Medical Records dated 3/13/14, printed at 11:17 a.m.
22 Kaiser Permanente School Status Report dated 3/13/14 at 10:30 a.m.
C. Investigations by St. Coletta’s and OSSE

On March 26, 2014, ULS sent a notice to both St. Coletta and OSSE notifying them that ULS was beginning an investigation and asked that any video recordings be maintained.23 On March 31, 2014, ULS sent a formal records’ request to St. Coletta, asking for, among other things, any unusual incident report and investigation performed by St. Coletta’s related to the event on March 11, 2014.24 St. Coletta’s provided a video recording and a Signed Statement of the Assistant Principal.25 These notes explain that Mr. Y, Jennifer’s father, called St. Coletta’s on Wednesday, March 12, 2014,26 to discuss the event. He spoke to the school’s principal, Jennifer’s teacher, and the assistant principal.27

Mr. Y stated that when Jennifer was dropped off at home on March 11, 2014, she was crying and “appeared to be in pain” so he took her to Children’s Hospital.28 Mr. Y further stated that the bus driver and the aide of the bus reported that Jennifer had been “placed on the bus crying and cried the entire ride home.”29 The Assistant Principal reported that she then “immediately spoke with Jennifer’s dedicated aide” who informed her and Ms. Sirkot that Jennifer had a typical day at school, “did not cry in pain or appear to be injured in any way,” and that “when she brought Jennifer to the bus, she was not crying, and she was not crying when the bus attendant received Jennifer.”30 The Assistant Principal further reported “Jennifer had her pacifier in her mouth during the walk from the classroom to the bus and had the pacifier in her mouth when she got onto the bus.”31 The Assistant Principal then called Mr. Y to share what she had found; Mr. Y stated that he would contact transportation.32

Further, according to St. Coletta’s statement, on March 18, 2014, Mr. Y and Jennifer’s mother met with St. Coletta staff to discuss this incident.33 At this meeting, the Assistant Principal stated that “no incidents had occurred at school” and that Jennifer was not crying when she went to the bus.34 The Assistant Principal informed the family that transportation “had not called [her] back and had not yet come out.”35 The Assistant Principal also reported that another paraprofessional had been with Jennifer and the dedicated aide while they waited for the bus who informed the Assistant Principal that “Jennifer was not crying and was behaving in a typical manner while she waited for the bus.”36

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23 Email correspondence from ULS to OSSE and St. Coletta dated March 26, 2014.
24 Records Request from ULS to St. Coletta dated March 31, 2014.
25 Statement from St. Coletta Assistant Principal Amy Warden dated March 12, March 14 and March 18, 2014.
26 Id. at 1.
27 Id.
28 Id.
29 Id.
30 Id.
31 Id. at 2.
32 Id.
33 Id. at 3.
34 Id.
35 Id.
36 Id.
St. Coletta also provided a video of Jennifer’s walk from St. Coletta to the buses on the afternoon of March 11, 2014.\footnote{St. Coletta Network Video Recorder of Student Entrance dated March 11, 2014.} In this video only her back is visible; Jennifer is seen holding the hand of her dedicated aide and walking to the bus.\footnote{St. Coletta Network Video Recorder of Student Entrance dated March 11, 2014 time stamped 2:59:21PM.} Jennifer does not appear to be crying or in pain.\footnote{St. Coletta Network Video Recorder of Student Entrance dated March 11, 2014 time stamped 2:59:33 PM.}

On March 31, 2014, ULS sent a formal records’ request to OSSE, asking for, among other things, any Unusual Incident Report or Investigation preformed by OSSE. Despite repeated requests, ULS has not, to date, received any investigation or documentation regarding this incident from OSSE. The original records’ request was sent via email to OSSE and Virginia Crisman.\footnote{Records Request from ULS to OSSE dated March 31, 2014.} On April 14, 2014, ULS sent a follow up email to OSSE again requesting, “records related to the serious injury of Jennifer Y.”\footnote{Email correspondence from ULS to OSSE dated April 14, 2014.} There was no response.

On April 18, 2014, upon receipt of the video from St. Coletta, ULS again sent an email to OSSE – this time including an e-mail address to the OSSE Department of Transportation, citing OSSE’s published policy concerning complaints and incidents related to bus transportation and again requested records.\footnote{Email correspondence from ULS to OSSE dated April 18, 2014.} That day the Director of the OSSE Division of Transportation responded via email asking a clarifying question and stating, “I will have the team conduct an immediate investigation.”\footnote{Email correspondence from OSSE to ULS dated April 18, 2014.} ULS responded to the email immediately answering the clarifying question (yes, Jennifer was crying when she arrived at home).\footnote{Email correspondence from ULS to OSSE dated April 18, 2014.}

After several attempts to connect with each other by phone, on May 23, 2014, ULS spoke to OSSE counsel from the Audit and Compliance Department within the Division of Student Transportation.\footnote{Email correspondence from ULS to OSSE dated May 23, 2014.} During this phone call, OSSE counsel reported that OSSE had not gotten any information from St. Coletta and had not seen the video of Jennifer walking to the bus.\footnote{Email correspondence from OSSE to ULS dated May 23, 2014.} OSSE counsel reported that the other students on the bus said that Jennifer got on the bus crying, and that perhaps Jennifer had been injured at St. Coletta but was not upset while walking to the bus. OSSE counsel further stated that she had not reached out to the parents because an attorney had contacted OSSE regarding this incident.\footnote{Email correspondence from ULS to Jennifer’s mother dated May 28, 2014.} ULS urged OSSE to contact St. Coletta and the family and view the video.\footnote{Email correspondence from ULS to OSSE dated June 9, 2014.} On June 9, 2014, ULS emailed OSSE to ask for an update on the investigation.\footnote{Email correspondence from ULS to OSSE dated June 9, 2014.} OSSE Counsel responded to the email via phone on June 9, 2014.\footnote{Email correspondence from ULS to ULS dated July 25, 2014.} Again on July 25, 2014, ULS sent an email to OSSE inquiring as to the status of the investigation.\footnote{Email correspondence from ULS to OSSE dated July 25, 2014.} As of the date of this report, neither ULS nor the family has received a written report or written explanation from OSSE.
OSSE’S DUTY OF CARE TO STUDENTS ON ITS BUSES

School districts have a responsibility to ensure the safety and well-being of the students they transport. Courts have held that “school districts that operate school buses owe their students the highest degree of care” and “[t]he general rule is that a School Board (and those acting for it) owe a duty of reasonable care to pupils in its custody. This common-law duty applies during the period the pupils are transported to and from school and it continues until the pupils have been safely discharged from the school bus.”

OSSE’s Division of Student Transportation has created standards which bus drivers and bus aides must follow when transporting students. Specifically, OSSE requires that “[i]n the event of an emergency, drivers and attendants first ensure the students’ safety and then contact dispatch who then contacts 911.” In addition, “[b]us attendants are responsible for ensuring that the students safely board the bus . . .” In a brochure about the Division of Student Transportation, bus attendants are tasked with ensuring “all students board and exit the bus safely.” When an issue arises, the Division of Student Transportation Office of Investigations states on their website that a “Compliance Specialists resolve concerns” and lists “issues affecting the health and safety of students” as priority concerns that “will be responded to in 24 hours or one business day.”

Moreover, the Compensation and Collective Bargaining Agreement between the District of Columbia Government Office of the State Superintendent of Education, Division of Transportation and the District Council 20 Local 1959 American Federation of State, County, and Municipal Employees resolution passed on October 7, 2014, outlines bus attendant procedures and penalties, and states that “OSSE-DOT will initially investigate each incident” and lists “driver/attendant fail[ure] to report accident/incident as required” as grounds for an investigation and potential penalty.

OSSE received a very serious allegation of possible neglect or abuse related to a nonverbal student riding on its bus; nevertheless, to date, OSSE has not provided any written report of its investigation of the incident. A small child’s family experienced almost forty eight hours of constant worry while their daughter was inconsolable. This family’s experience should be acknowledged and their concerns addressed. An important first step is completing a report that describes all steps taken and includes corrective actions to ensure no repetition.

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54 OSSE Transportation Handbook for Parents and Guardians at page 7; OSSE Division of Student Transportation Brochure.
55 OSSE Transportation Handbook for Parents and Guardians at page 7.
56 Id.
57 OSSE Division of Student Transportation Brochure.
60 Id. at 8.
Simply stating that there is no evidence to prove that Jennifer was injured on the bus cannot be the District’s only response. When a child is injured, there must be some proactive response, even if it is only to prescribe a procedure to help avoid a similar incident. One obvious response should be to ensure there are video cameras on each bus that transports young children. Moreover, the bus attendant and driver should have taken some proactive steps if, in fact, Jennifer was presented to them crying and in distress at St. Coletta. Given her inability to explain her distress, they should have responded with extra caution. They should have returned with her to the school to contact her parents, had her seen by a nurse, and/or called 911.

RECOMMENDATIONS

1. OSSE, in collaboration with St. Coletta, must conduct a thorough and formal investigation of the event on March 11, 2014. All involved staff should be interviewed, the video footage reviewed, and a detailed report written.

2. OSSE must develop clear procedures detailing steps to take when students are distressed or appear injured upon entering or while riding on the bus. The steps should, at minimum, include a written report and a documented phone call to the parents. Students with severe injuries should be taken immediately for medical treatment. Where the student enters a bus in distress and crying, a procedure should be established in which the student is taken back to the school to the nurse, the parent called, and an ambulance called if needed.

3. If a student has been injured, and there is an allegation that it occurred on the bus, in each such instance, OSSE should immediately act to investigate the incident and should be required to produce a written report to be shared with the parents, detailing each step taken and its findings.

4. OSSE Department of Transportation should install cameras on all buses transporting young children.

Had Jennifer’s parents been aware of the cause of Jennifer’s pain when she arrived home from school, the subsequent 48 hours of pain and misdiagnosis might have been prevented. OSSE must implement the above, or similar, recommendations to ensure that such an experience does not occur in the future.