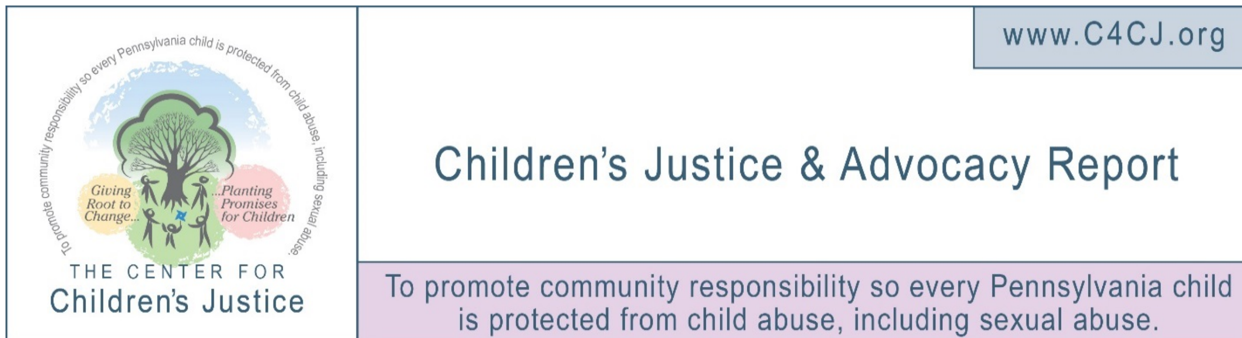

U.S. Supreme Court examines mandatory reporting of child abuse

Role of mandated reporters, collaboration between child welfare and law enforcement, and testimony options for children woven into case before SCOTUS

March 3rd - On Monday, the United States Supreme Court (SCOTUS) heard oral arguments in a case (State of Ohio v. Darius Clark) that has captured the attention (and concern) of key educational stakeholders, including the National Education Association (NEA) and the American Federation of Teachers (AFT).

At the heart of the Ohio case – the role of the mandated reporter.

In the case before SCOTUS, Ohio's top court decided that a Head Start teacher, in her role as a mandated reporter, acted as an "agent of law enforcement." The turn of events in response to the child abuse report, including the very young

To keep reading, become a subscriber.

An abused 3-year-old triggers a child abuse report

In December 2013, the Ohio Supreme Court decided a case that involved a three-year old child, who arrived at his Head Start program in 2010 with a left eye that "appeared bloodshot and bloodstained."[1] The Head State teacher asked the boy what happened and he indicated he fell. Upon further observation of the young child, the preschool teacher saw "red marks, like whips of some sort" on the child's face and the teacher then sought assistance from a lead teacher.

The lead teacher indicated the next step was to speak to the supervisor. Prior to the contact with the supervisor, the lead teacher asked the child "Who did this, what happened to you?" The child did respond with a name that was that of his mother's paramour. The court transcript indicates

To keep reading, become a subscriber.

An indictment, conviction and then the appeals

The paramour was indicted by a grand jury on one count of felonious assault relating to the 3-year-old and four counts of felonious assault related to the 2-year-old child. He was also charged with endangering the welfare of children and two counts of domestic violence.

At trial, the 3-year old was declared incompetent to testify and the court denied attempts to exclude the "out-of-court identification statements." Seven people testified at trial about the statements: a police detective, two child welfare social workers, the child's preschool teacher, the lead teacher, the maternal grandmother and a maternal great aunt.

The paramour was found guilty of all, but one, of

To keep reading, become a subscriber.

the

[1] State v. Clark, 137 Ohio St.3d 346, 2013-Ohio-4731

©2015 Permission required to share or reproduce any part of this publication

"Teachers as agents of law enforcement"
Within Ohio's Supreme Court's legal analysis and 2013 opinion, the Court said state law "imposes a duty on all school officers and employees, including administrators and employees of a child day-care centers, to report actual or suspected child abuse or neglect."

The court said state statute also requires a response to report, including that child welfare officials cooperate with law enforcement in certain cases. This demonstrates that "prosecution for criminal acts of child abuse is

To keep reading, become a subscriber.

Ohio's top court pondered "the purpose of the questions" asked of the child
In the case before it in 2013, Ohio's top court sought to ascertain "the primary purpose" for the questioning of the child.

The court notes that a teacher questioning a child about a suspected injury "is consistent with a duty to report potential abuse and arises from a concern to protect a child."

In this particular case, the court determined that the "primary purpose" of the questions of the child by the Head Start staff was not "to deal with an existing emergency, but rather to gather evidence potentially relevant to a subsequent criminal prosecution." Ohio's top court found that the

To keep reading, become a subscriber.

A dissent and caution about the "confusion" created by Ohio's Supreme Court
There was dissenting opinion in State v. Clark.

Ohio Supreme Court Justice Maureen O'Connor wrote the dissent vowing the majority's opinion would create "confusion in our case law" and "threatens the safety of our children." It also was cited as "wrong as a matter of federal constitutional law."

O'Connor noted that teachers have a duty to report child abuse and that a child's statement to a teacher should have been "scrutinized under the objective-witness test, which is applicable when the questioner is not an agent of law enforcement."

She noted that the point behind the Head Start teachers questioning the child was "to protect" the child and "possibly other students from additional

To keep reading, become a subscriber.

NEA, AFT, NSBA weigh in with SCOTUS
Before SCOTUS heard oral arguments this week they had the benefit of an Amici Curiae brief filed, in support of state of Ohio's appeal. The brief was supported by the NEA, AFT, National School Boards Association (NSBA) and Ohio School Boards Association (OSBA).

The brief opens "As organizations that represent millions of educators and school officials, amici understand the essential role of teachers and other school personnel in protecting children from abuse, neglect, and other harms, including the importance of mandatory reporting statutes that require educators in all fifty states to report

To keep reading, become a subscriber.

SCOTUS Justices hone in on "testimonial in nature" and hearsay
Ohio's Assistant Prosecuting Attorney Matthew Meyer opened oral arguments this week attempting to identify the "two fundamental ways" in which the Ohio Supreme Court got it wrong.

First, the state high court got it wrong "when it held that private parties who are acting with no police involvement by virtue of their mandatory reporter's status are transformed into law enforcement agents or agents of the government for purposes of the Confrontation Clause analysis."

Before Meyer's got to the second error, SCOTUS Justice Antonin Scalia asked, "Do you have to be an agent of the government for the Confrontation Clause to kick in?"

Justice Sonia Sotomayor pivoted to whether the "test" is related to whether the "statement is intended to be testimonial in nature." She

To keep reading, become a subscriber.

The "business" of teaching vs the "business of prosecution"

©2015 Permission required to share or reproduce any part of this publication

Ilana Eisenstein, an Assistant to the United States Solicitor General, stressed that the Ohio Supreme Court "did err by viewing the teachers here as equivalent to police." She underscored that the teachers, in this case, were "not acting as surrogates for the police, but in their normal, ordinary role as care providers for the child."

She continued, "This Court can generally presumes that when they inquire of their students as to how they got hurt, they are asking out a

To keep reading, become a subscriber.

Training of mandated reports provides "clear understanding"

Fisher said that there are four things that are important in considering the "teacher's purpose:"

1. The nature of the injuries;
2. The teacher's training;
3. The teacher's action; and
4. Ohio law

He said when all are pulled "together" it reveals that there is a "quite clear understanding" by the teacher where statements are "going to be used."

Justice Ginsburg echoed the points of Justice Alito that it seems that the teacher really is just looking, as a first "reaction" to get the "child out of harm's way." Given that focus, then the teacher is likely not "thinking about prosecution."

Fisher agreed, while noting that the child in this case had "very serious" injuries that the teacher knew had not happened in the classroom.

He also cited the training materials that Ohio utilizes to train teachers, including that they are

To keep reading, become a subscriber.

Cooperative nature of child welfare and police explored

Oral arguments this week provided an illustration that a child's safety is impacted by the timing and type of intervention that occurs when a mandated reporter files a report.

Eisenstein noted that the child was permitted to leave the preschool with the alleged perpetrator. She continued that resulted in the child being "in a far worse position when the social worker finally tracked him down." She suggested that is among the motivations to mandatory reporting – ensuring an "urgency" when there is suspected abuse.

Still there was also significant attempt by Eisenstein to focus the Justices' attention on the fact that the teacher had an obligation "to call social services, not police."

Justice Ginsburg interrupted noting mandated

To keep reading, become a subscriber.

Cross-examination in a "clinical setting" toward meeting the Confrontation Clause

This week's SCOTUS hearing led to an exchange about alternative ways in which a child can testify without eroding the right of a defendant to confront a witness.

Justice Kennedy, seizing upon a point in the Respondent's brief, invited give-and-take about permitting cross-examination of the child "in the clinical setting"

Respondent's lawyer Jeffrey Fisher noted that SCOTUS has "held that the confrontation of children can be more flexible to accommodate child's perceptions, understandings, and abilities."

Fisher argued that it is "perfectly acceptable to have testimony, if necessary, and if proper

To keep reading, become a subscriber.

©2015 Permission required to share or reproduce any part of this publication