



3490-03-01

COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF PUBLIC WELFARE**  
P.O. BOX 2675  
HARRISBURG, PENNSYLVANIA 17105-2675

MAR 11 2003

WAYNE STEVENSON  
Deputy Secretary for  
Children, Youth and Families

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Dear Children and Youth Administrator:

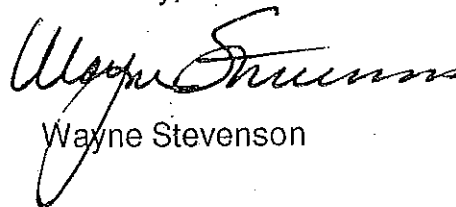
Enclosed you will find a copy of the Office of Children Youth and Families Bulletin (OCYF) 3490-03-01 entitled A.Y. v. Department of Public Welfare and Allegheny Children and Youth. This bulletin replaces and rescinds OCYF Bulletin 3490-95-01 of the same title.

The bulletin outlines guidelines to be utilized in child sexual abuse expungement hearings. The previous version of this bulletin required that upon appeal of an indicated sexual abuse report the county agency must have met certain criteria to present a case before the Bureau of Hearings and Appeals (BHA). These criteria were applied to appeals at the administrative review under the previous version of this bulletin.

The current bulletin eliminates the application of these criteria to appeals of indicated sexual abuse cases at the administrative review. The criteria set forth in the bulletin apply only to appeals of indicated sexual abuse cases heard by BHA.

Please share this bulletin with your agency solicitor and your staff. Any questions regarding this bulletin may be referred to Ms. Tina Weber of my staff. She can be reached by telephone at (717) 783-7287 or by electronic mail at [chweber@state.pa.us](mailto:chweber@state.pa.us).

Sincerely,



Wayne Stevenson

Enclosure

cc: Chuck Songer  
Barbara Robbins  
Bernadette Bianchi





# CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE:

March 10, 2003

EFFECTIVE DATE:

Immediately

NUMBER:

3490-03-01

SUBJECT: Supreme Court Decision

A.Y. v. Department of Public Welfare and  
Allegheny County Children and Youth

BY:

Wayne Stevenson  
Deputy Secretary for Children,  
Youth and Families

## SCOPE:

County Children and Youth Social Service Agencies  
County Children and Youth Advisory Committees  
Pennsylvania Children and Youth Administrators  
Pennsylvania District Attorneys Association

## PURPOSE:

The purpose of this bulletin is to revise and replace Children, Youth and Families Bulletin number 3490-95-01 issued on June 14, 1995 which provided direction on the Pennsylvania Supreme Court decision of A.Y. v. Department of Public Welfare and the Allegheny County Children and Youth Services.

## BACKGROUND:

SUMMARY OF THE CASE (Prepared by Myra Sacks, Assistant Counsel, Office of Legal Counsel.)

On May 10, 1994 the Pennsylvania Supreme Court Issued an opinion by Justice Montemuro which alters the use of hearsay in child sexual abuse cases under appeal to the Department of Public Welfare's Office of Hearings and Appeals.

The facts relate to allegations concerning a three-year-old child who was cared for on a single occasion in her home by a 23-year-old preschool aide (A.Y.) who worked at a local child care center. The morning after the babysitting arrangement, the child indicated to her mother that the babysitter and she

REFER COMMENTS AND QUESTIONS REGARDING THIS BULLETIN TO:

**Regional Children and Youth Program Directors**

The Pennsylvania Child Welfare Resource Center

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ORIGIN: Tina Weber, (717)-783-7287

had a very nice time together and further observed that A.Y. had licked parts of her body, including her vaginal and buttock areas. Thereafter, the child repeated the incident to her father. Several weeks later the child was taken to the Family Intervention Clinic at Children's Hospital of Pittsburgh (CHP) and interviewed jointly by an Allegheny County caseworker and a representative of CHP. She reiterated the allegations and demonstrated the behavior with an anatomically correct doll. A.Y. denied the allegations.

The request for expungement was denied and an administrative hearing was held. The Final Order to maintain the indicated report was upheld by the Commonwealth Court which cited that the time, content and circumstances of the reports to the professionals were adequate to meet the agency's burden. A.Y. filed a Petition for Allowance of an Appeal with the Pennsylvania Supreme Court which was granted.

The Supreme Court reviewed the rules of evidence in administrative agency proceedings and held that the hearsay rule is not a mere technical rule of evidence, but a fundamental rule of law which ought to be followed by agencies when facts crucial to the issue are sought to be placed on the record and an objection is made. The Supreme Court reviewed the Commonwealth Court decision in L.W.B. v. Sosnowski, 117, Pa. Cmwlth Ct. 120, 543 A.2d 1242 (1998). The Supreme Court reiterated that in Sosnowski the Commonwealth Court relied upon a standard set forth at 42 Pa. C.S. §5985 which permitted a child's statement describing acts and attempted acts of indecent conduct, sexual intercourse or deviate sexual intercourse as admissible if the court finds that the content and circumstances of the child's statement provide sufficient indicia of reliability. However, the Supreme Court's problem with Sosnowski was not in the admission of the hearsay evidence (the child's statement to her mother and to the child abuse professional) to an expungement proceeding, but rather the proper weight to grant it.

The agency was able to rely on its own employee's recitation of what the child stated had occurred. The Supreme Court found the existing procedure was to totally deny A.Y. the ability to review or challenge the evidence against her and went further to say "it prevented the hearing officer from having the opportunity to judge the evidence except through the prism provided by the agency." Opinion at page 10. The Supreme Court examined due process concerns and stated they are relevant to suspected child abuse inasmuch as an adjudication of child abuse provides a serious mark on a person's reputation by virtue of the existence of the individual's name on the Statewide Central Registry of Child Abuse.

Therefore, the Supreme Court announced that the following guidelines must be employed in child abuse expungement hearings:

- 1) Hearsay testimony of a child victim will be admitted in accordance with the standards set forth in 42 Pa. C.S. §5986, and this rule shall be applied to permit the testimony of the victim's parents and other family members as well

- 2) Hearsay testimony in conjunction with admissible corroborative evidence of the act(s) in question can in toto constitute substantial evidence which will satisfy the agency's burden to justify a conclusion of abuse.
- 3) However, uncorroborated hearsay cannot satisfy the agency's burden unless it comports with the following requirements:
  - a) the statement was accurately recorded by audio or video equipment;
  - b) the audio-visual record discloses the identity and at all times includes the images and or voices of all individuals present during the interview of the minor; and
  - c) the statement was not made in response to questioning calculated to lead the minor to make a particular statement and was not the product of improper suggestion.

#### ISSUES:

The previous version of this bulletin required that upon appeal of an indicated sexual abuse case the county agency must have one or more of the following criteria met in order to present a case before the Bureau of Hearings and Appeals (BHA):

- physical evidence that the child was abused;
- testimony of the child;
- testimony of a witness to the abuse; or
- an audio or a video recording of the interview(s) with the victim child.

This bulletin is rescinding that directive. In the absence of physical evidence and of an audio or a video recording, it is unfair to expect the county agency to determine if a child or a witness will be able to testify at a hearing that has yet to be scheduled. Although it is appropriate for the county agency to present corroborated hearsay evidence at a child abuse expungement hearing, the affirmation of such evidence will not be a requirement at the administrative review. The guidelines set forth in A.Y. v. Department of Public Welfare and the Allegheny County Children and Youth Services still apply to hearings conducted by BHA. However, administrative review appeal will not be granted based solely on one of these guidelines. The administrative review will be based on the merits of the case not the criteria that must be met to forward a case to BHA.

The following guidelines are provided when considering audio or visual taped statements.

- 1) The county children and youth agency should consult with the agency solicitor and the district attorney regarding the necessity of audio or video taping the statements of the child when:

- a) there is no admissible corroborating evidence that the child was abused;  
and
  - b) the child is unlikely to be able to testify at a BHA hearing or criminal trial.
- 2) A.Y. is silent regarding age; therefore, if taped statements are considered, they should be made for children who are younger than school age or are unlikely to be able to provide testimony.
  - 3) If after consultation with the children and youth agency solicitor and the district attorney, a statement of an alleged child victim or witnesses is identified as necessary, the court has enunciated its desire to preserve the integrity of the statement. While the Supreme Court did not direct when the statement must be taped, it can reasonably be interpreted as a time after the county children and youth agency worker has assured the safety of the child.
  - 4) The taping does not necessarily have to be done by the county children and youth agency, but a county children and youth agency caseworker must be present. For example, a staff member of a hospital or child advocacy center may conduct and tape the interview in his or her office, but a county children and youth agency caseworker must be present.
  - 5) It is essential that there be cooperation between the district attorney's office and the county children and youth agency, as a criminal prosecution which results in a finding of guilt, an admission of guilt or nolo contendere can change the status to a founded status.
  - 6) To ensure the integrity of the interview, it is essential to adhere to the following:
    - a) The date, the location, the start and end time of the interview should be given on tape by the interviewer.
    - b) The names and roles of everyone present should be identified and spelled.
    - c) The time should be recorded either by having a clock visible or using the clock feature in video camera.
    - d) No one should leave or enter the room during the interview.
    - e) If using a professional taping service, have signed confidentiality agreements.
  - 7) The tape of the interview should be well-identified, placed in a separate jacket or dust cover and stored in a safe place.
  - 8) Act 148 funds may be used to purchase the necessary equipment required to tape interviews.