State of Connecticut
SENATE
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

SENATOR LEONARD A. FASANO
THIRTY FOURTH SENATE DISTRICT

LEGISLATIVE OFFICE BUILDING
SUITE 3400
HARTFORD, CONNECTICUT 06106-1591

SENATE MINORITY LEADER PRO TEMPORE

CAPITOL: (860) 240-8800
TOLL FREE: 1-800-842-1421
FAX: (860) 240-8306
E-MAIL: Len.Fasano@cga.ct.gov
WEB: www.SenatorFasano.cga.ct.gov

June 30, 2014

Joette Katz, Commissioner
Commissioner's Office
Department of Children and Families
505 Hudson Street
Hartford, CT 06106

Dear Commissioner Katz:

I am writing regarding your recent implementation of an agency policy allowing individuals on the state's Child Abuse and Neglect Registry to have their names removed just two years after committing acts of abuse or neglect. The Child Abuse and Neglect Registry serves an important public purpose. Schools, day care centers, state agencies and others who provide direct services to children consult the registry to avoid hiring people with a known history of child abuse.

Fundamentally, I have serious concerns regarding your agency's unilateral adoption of a policy that directly impacts child safety and welfare with no legislative approval, no prior public notice or opportunity to be heard, and apparently no notice to the victims who may now see their abuser removed from the registry and allowed to work with children. ***Your adoption of a policy that relates to child safety and victim rights with no public involvement and apparently no consultation with victims undermines public trust and directly contradicts this administration's commitment to an "open and transparent" government.***

With that said, I would like to make the following points to which I am hoping you can respond:

THE STATUTES DO NOT AUTHORIZE THE REMOVAL OF NAMES:

By way of background, the legislature adopted a state law requiring the establishment of a Child Abuse and Neglect Registry in 1996. Thus, the registry is a creature of state statute and reflects the will of the legislature. The legislature has amended the statute a number of times since 1996, primarily to provide those accused of abuse and neglect greater due process and appeal rights before their names are placed on the registry.

Placement on the registry occurs only after a thorough investigation, including a home visit. If it is determined that (1) a child has been abused or neglected, and (2) the person responsible for such abuse and neglect poses a risk to the health and safety of children, that person may be recommended for placement on the registry. The statutes lay out a very specific process for individuals found to have committed abuse and recommended for placement on the registry to appeal those findings. As I understand it, there are three levels of review – an internal agency review, a full contested hearing, and then an appeal to Superior Court. Only after all of these administrative and legal appeals have been exhausted and the finding of abuse and neglect upheld, is the person's name actually placed on the registry. [1]

At the end of this very specific statutory appeal process, when the finding of abuse and neglect becomes final, the statute requires you to "accurately reflect the information concerning the finding in the child abuse and neglect registry … and … forward to any agency or official the information required to be disclosed pursuant to any provision of the general statutes."

The statutes also authorize you to adopt regulations regarding the process for placing individuals on the registry and, indeed, there are 16 sections of such agency regulations. ***Neither the statutes adopted by the legislature, nor your own agency regulations, establish a right to have one's name removed from the registry once a finding of abuse and neglect becomes final.***

LEGISLATIVE PROPSALS FOR REMOVING NAMES FROM THE REGISTRY HAVE FAILED TO PASS:

For the last four years, your agency has proposed legislation to adopt a removal process. ***Each year, opposition to the proposal increased.*** This year, fifteen members of the Judiciary Committee, both republicans and democrats, voted no. That bill would have allowed individuals placed on the registry to apply for removal after five years. In an effort to garner more support, the bill was amended in the House of Representatives to require a ten year waiting period. Still, 61 house members, again republicans and democrats, voted no, and the Senate chose not to take up the bill.

In each of the last four years, your agency's testimony was that the bill "establishes a removal procedure for individuals whose names have been placed on the Child Abuse and Neglect Registry .." Legal Aid and defense attorneys representing those placed on the registry also

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[1] While those placed on the registry prior to 2000 did not have the same appeal rights, the statute now allows any such individual, at any time, to appeal their original placement on the registry under the newer procedures. (See C.G.S. section 17a-101k(g)) Thus, everyone has the same appeal rights and has an opportunity to rectify an erroneous finding of abuse or neglect. Any argument that a removal process is necessary to protect the due process rights of those persons placed on the registry prior to 2000 is misguided.

repeatedly testified that there is "no mechanism" and "Connecticut law provides no opportunity" to remove a name from the registry. ***At no point did your agency, or any other person testifying on the bill, indicate that there already exists a way for individuals to seek to have their name removed, and it was certainly never made clear that your agency has, in fact, removed names from the list in the past.***

Year after year the bill was promoted as being necessary to establish a new procedure that would allow individuals to apply to have their names removed. According to supporters, the goal of the bill was to help individuals who committed abuse or neglect as very young overwhelmed parents and who, years later, could be trusted to work with children. Absent legislative action, we were told, such individuals would face a life-long impediment to certain types of employment.

Thus, you can imagine my surprise when it was reported that (1) without legislative approval or even going through the normal public regulatory approval process, you adopted a new agency policy allowing individuals who have been placed on the Child Abuse and Neglect Registry to have their names removed a ***mere two years after committing abuse***, and (2) you now claim that your agency has always had the authority to remove names from the list and do not need legislative approval.

THE NEW REMOVAL POLICY POSES A DANGER TO CHILDREN:

Individuals on the registry have committed acts of child abuse and neglect and been found to pose a risk to the health and safety of children. To allow such individuals to come back just two years later and have their names removed from the registry so that they can work in day care centers, schools or other settings with children is simply horrible and dangerous public policy that undermines the very purpose of the registry. With all due respect, I am simply at a loss as to why you, as the primary public servant tasked with protecting Connecticut's children, could support such a policy.

Moreover, given that the bills proposed to the legislature required a minimum 5 to 10 year waiting period, the unilateral adoption of a policy allowing the names of child abusers to be removed after just two years, is a slap in the face to the legislature. Again, we were told that the purpose of creating such a process was to prevent a listing on the registry from becoming a lifetime impediment and to recognize that, as people age and mature, they may no longer pose a threat. ***To go from a permanent listing to allowing people to get off the list just two years after they have committed child abuse and been found to be a danger to children is an unnecessary and risky gamble with children's health and safety.***

I am struggling to understand why you would support a policy that seems to place the employment interest of child abusers ahead of the health and safety of children. Two years is just too short a time.

ADOPTING SUCH A POLICY WITH NO LEGISALATIVE APPROVAL OR PUBLIC INPUT IS AN AFFRONT TO DEMOCRATIC PROCESSES:

Putting aside the serious policy concerns, to come before the legislature for four years asking for statutory authority to remove names from the registry and then weeks after the measure fails to pass and many democrats and republicans express their opposition, simply unilaterally announce a new agency policy with no notice to the legislature shows a disrespect for the legislative process. Furthermore, to adopt a policy that directly impacts child safety without prior public notice or input shows disrespect to the public and the victims of those who may now have their names removed, as if the abuse never happened. ***Surely the public, parents, victims of abuse and their advocates, deserved an opportunity to comment and be heard before such a policy was broadly implemented.***

I BELIEVE YOUR INTERPRETATION AND RELIANCE UPON THE UAPA TO BE MISPLACED:

In your June 19, 2014 letter to Senators McKinney and McLachlan, you argue that you have the legal authority to consider and grant requests for removal under the Uniform Administrative Procedures Act, C.G.S. Section 4-181a(b) which allows agencies to reverse or modify a final decision upon the showing of "changed conditions." While I am not an expert in administrative law and do not want to distract from what I believe to be the more important issue - not whether the policy is legal, but whether it is right – I would nevertheless like to make the following points.

By requiring your agency to maintain the Child Abuse and Neglect Registry and make information on it available to employers and state agencies that regularly care for children, the legislature has expressed its policy judgment that the registry serves an important public interest in protecting the health and welfare of children. By further enacting detailed statutes outlining a specific administrative process, including numerous appeals, the legislature has essentially "occupied the field" with regard to the maintenance of the registry and the administrative remedies available to those listed. Neither the statute not the regulations adopted pursuant to it authorize the removal of names from the registry.

Moreover, while the statute references the UAPA for specific purposes, such as requiring that the initial administrative appeal be conducted pursuant to the UAPA and that any appeal of the final decision brought to court be brought pursuant to the UAPA, the statute does not incorporate or reference the UAPA generally. Instead, it sets out a very specific administrative process and then, when the agency's decision has been upheld and becomes final, states that "the commissioner ***shall accurately reflect*** the information concerning the finding in the child abuse and neglect registry .... and ***shall ... forward*** to any agency or official the information required to be disclosed ..."

Thus, not only does the statute not authorize the removal of names from the registry, but it specifically requires you to put all findings of abuse and neglect in the registry, and the registry must accurately reflect all such findings. ***By removing names from the registry, you are violating your statutory mandate to ensure that the registry accurately reflects all abuse and neglect findings.*** Even if you were to find that an individual placed on the registry has been rehabilitated, that would not negate the fact that such person was found to have committed abuse or neglect and pose a danger to children sufficient to be placed on the registry in the first place. In deleting such a name, the registry no longer accurately reflects all findings of abuse and neglect as required by law.

I also question whether reliance on the "changed conditions" provision of the UAPA is appropriate in these circumstances. You are not really reconsidering in order to reverse or modify your agency's final decision that abuse or neglect occurred, but are instead initiating a new inquiry, i.e. whether a person has been "rehabilitated" and deserves to have their name removed. This is a substantively different inquiry than the initial abuse and neglect investigation. Even if you find that the person has been rehabilitated, such a finding would not negate the original findings of abuse and neglect and, therefore, should not alter the final decision on abuse and neglect. ***This highlights the fact that you are not truly reconsidering your final decision, as contemplated by the UAPA, but are creating a new process and new policy – policy that should be left to the legislature.***

Because (1) the legislature, by enacting detailed statutes outlining the administrative remedies available to those placed on the registry and referencing the UAPA only for specific purposes, indicated an intent to limit such remedies and not incorporate all administrative provisions of the UAPA, (2) the removal of names from the list would directly violate your statutory obligation to maintain an accurate registry of all abuse and neglect findings, and (3) you are creating a new process and policy not authorized by the UAPA, I believe your reliance on the UAPA's authority to reverse final decisions based on "changed conditions" is misplaced.

Finally, even if the UAPA provision applies in these circumstances and gives you the authority to hear requests for removal, you are not required to exercise that authority. While it is true that the UAPA allows people to request a reversal or modification of an agency decision, I do not believe you are required to hear and consider such requests. (See Fairfield v. Connecticut Siting Council, 238 Conn. 361 (1996) and Ordon v. State Dept. of Public Health, 2000 WL 33981684 (2000) – agency is free to decide whether to entertain a petition for reversal or modification based on changed conditions and a decision not to entertain such a petition is not appealable)

Thus, contrary to your statement that "DCF is still required to continue hearing requests for removal from the registry under the UAPA", ***the UAPA does not require you to grant hearings or issue final decisions on such requests***. It merely authorizes you to do so if you wish. ***If you***

choose to do so, you are making a discretionary policy decision which, as I have stated, I believe is dangerous and contrary to the intent of the legislature.

REQUEST FOR INFORMATION:

As indicated, I and many other legislators were quite surprised to hear that your agency has been considering requests for removal and apparently granting them for years. Therefore, I request the following information with regard to any request for removal or any actual removal of a name from the Child Abuse and Neglect Registry over the last five years:

1. What standards were used to decide who gets to have their name removed?
2. Were those standards in writing?
3. Was the policy available to the public?
4. Was prior public notice and opportunity to be heard provided before the policy was implemented?
5. Were all individuals on the list notified of their right to have their name removed and if so, how?
6. For each of the last five years, (1) how many names were removed, (2) how many requests for removal were received, and (3) for each person removed (i) who requested or initiated the removal (i.e. the individual, his or her legal representative, a public official, DCF staff, etc), (ii) when was the abuse or neglect that resulted in placement on the registry committed, (iv) what was the nature of the abuse or neglect, (v) what were the grounds for or evidence supporting removal, and (vi) was the removal related to the individual's effort to seek employment or to make a foster care or other child placement.

I am not asking for the names of individuals on the registry or any personally identifying information and realize that such information is not subject to disclosure. However, the number of removals, the number of requests for removal, the standards used by your agency to evaluate requests, the time between placement on the registry and removal, and general information regarding the nature of the abuse, the evidence supporting removal, and the reason removal was initiated will not result in the disclosure of personally identifying information. Moreover, given the strong public interest in protecting the health and welfare of children and in being able to evaluate agency action, disclosure of this information is in the public interest.

In addition, with regard to your newly adopted policy, I have the following questions:

1. Who was involved in its drafting?
2. Was there prior public notice and opportunity to be heard?
3. Were the victims of those on the registry notified and given an opportunity to comment prior to its adoption?
4. Was the Child Advocate consulted and given an opportunity to comment on the policy?
5. Was the Victim Advocate consulted and given an opportunity to comment on the policy?
6. Does the policy require that the victim of any person seeking to be removed from the registry be given notice and an opportunity to be heard prior to removal?

Finally, I am requesting all records from your agency regarding the policy allowing names to be removed from the Child Abuse and Neglect Registry, including but not limited to memoranda, notes, and correspondence, whether written or electronic and including any and all e-mails. This request covers records from January 1, 2013 forward.

Thank you for your time and attention. I look forward to receiving your response within ten business days.

Sincerely,

Leonard A. Fasano
Senate Minority Leader Pro Tempore
State Senator – 34th District