

Mental Health Legal Advisors Committee (MHLAC)

Providing Free Legal Assistance in Civil Matters to DYS-Involved Youth in Massachusetts



Conversations with parents and advocates reveal that DYS-involved youth face problems applying for Department of Mental Health (DMH) eligibility and returning to the public school system after discharge from DYS confinement. This newsletter addresses these two issues.

MHLAC is an independent state agency that specializes in areas including mental health, family law, and education law. We work closely with our clients -- communicating by phone or in person. We aim to serve low income families and we do not charge for our services. We are especially interested in serving youth who have been confined in DYS placements and who may not have ongoing legal assistance, or youth who are transitioning back to the community.

Questions about...

- Mental Health Care
- Special Education
- Appropriate Placement
- Rights in Facilities
- Restraint
- Disability Discrimination
- Transition to the Community

Please contact:

MHLAC DYS Project
399 Washington St, 4th Fl
Boston, MA 02108
617-338-2345 ext. 24
Fax: 617-338-2347

We welcome calls from youth, families, advocates, and clinicians.

Eligibility for Services from DMH

General Information on DMH Eligibility Determination

Determination of eligibility for the DMH continuing care services is based on an assessment of:

Whether the individual meets the clinical criteria for DMH continuing care services (see next section); whether the individual requires DMH continuing care services; whether current medical entitlements and/or insurance are available or sufficient to provide for needed continuing care services; whether other appropriate services from public or private entities are available.

Go to www.mass.gov/dmh to view DMH eligibility regulations, 104 C.M.R. 29.00, and DMH's Interpretive Guidelines for Eligibility (January 1, 2000).

DMH Clinical Criteria for Children and Adolescents

To be eligible to receive DMH continuing care services, a child or adolescent must be under 19 years of age at the time of application and have a serious emotional disturbance that:

- has lasted, or is expected to last at least one year;
- Has resulted in functional impairment that substantially interferes with or limits the child's role or functioning in family, school or community activities;
- Meets diagnostic criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders*.

104 C.M.R. 29.04(3).

Proving Diagnostic Criteria

Many disorders of emotion & behavior are not included in the DMH list of qualifying disorders, so that some persons with behavioral disturbance are not eligible for DMH care. Most neurological conditions, cognitive deficits and developmental disorders are specifically excluded from the list of qualifying diagnoses. Even having a qualifying diagnosis does not necessarily lead to DMH eligibility. As mental illness diagnoses are sometimes assigned by providers without accurate and/or adequate data to support them, it is not sufficient that a mental illness diagnosis be simply listed in the applicant's record — the application must contain sufficient clinical information to verify the accuracy of the diagnosis.

If an individual doesn't meet the criteria, a notice denying the application will be sent to the individual. This decision may be appealed. MHLAC is available to review such denial notices.

Education in the Community

DYS youth face possible difficulties as they transition from DYS confinement to a public school. Schools sometimes refuse to enroll or re-enroll a student upon discharge from DYS custody. In Massachusetts, every person has the right to attend the public schools of the town where he resides. Unless a student has been legally expelled from public school, he has a right to return to his previous school or to a different public school when he leaves DYS. Expulsion is legally possible in certain circumstances only. However, according to M.G.L. ch. 71, no other school

district in Massachusetts has to enroll or provide educational services to a student who has been expelled under certain circumstances.

If a student is expelled, it is important to find out if the expulsion is of limited duration and, if so, the length of expulsion. If a school has established a length of expulsion, this information can usually be found in the school's student code of discipline.

Many DYS youth returning to school will be transitioned through a special school program before entering regular

school classes. The schools are designed to be short-term programs to help students identify their strengths and their next educational placements. Such transition schools exist in Boston and Lynn.

If a student has problems getting back into school, attorneys and DYS education liaisons can help address such problems. In addition, parents may want to file a complaint with the Program Quality Assurances Division of the Department of Education if they believe that a public school is violating their child's rights.