

Mental Health Legal Advisors Committee (MHLAC)



399 Washington Street, 4th Floor, Boston, MA 02108
www.mass.gov/mhlac

Mental Health Legal Advisors Committee is publishing a second edition of our book "Just for Youth" and will send out notices when it is available on line and when paper copies are available for sale.

Providing Free Legal Assistance for DYS-involved Youth in Massachusetts

Second Circuit interprets IDEA as requiring a continuum of placements for incarcerated youth eligible for special education

In *Handberry v. Thompson*, the Second Circuit upheld a district court ruling in favor of a class of 16 to 21 year olds in New York City jails who had alleged that city officials had failed to provide them with educational services to which they were entitled under New York state and federal law. 446 F.3d 335 (2nd Cir. 2006). The district court had granted a declaratory judgment to the youth, concluding that the City had failed to provide such services, and ordered the City to create a plan for doing so. The district court later adopted the City's proposed plan. The district court subsequently entered an order (in the form of an injunction) requiring the defendants to comply with the terms of

their educational plan and to provide additional required services to eligible inmates. This injunction was then vacated (in order to consider whether the youth were required, before this lawsuit could be heard, to exhaust other avenues for relief, such as administrative proceedings) and then, upon a finding that there was no such exhaustion requirement, reinstated. The New York City officials then appealed, arguing that the district court erred in reinstating the injunction. In this most recent decision, the Court of Appeals affirmed in part, vacated in part, and remanded the case to the district court for further consideration. As part of this decision, the Court of Appeals had some interesting

analysis of the obligations of public officials to provide special education services to incarcerated individuals.

Significant for advocates was the Court of Appeal's analysis of the facility's obligation to provide individualized and specialized special education services. The city officials challenged the court's order as overbroad in its requirement that "[a] range of special education services shall be available . . . to meet the needs of disabled students, including but not limited to, general classroom instruction, with supplementary aids and services, skills support classes, resource rooms; and self-contained classes for students with intensive needs." 446F.3d at 351.

MHLAC's DYS PROJECT

MHLAC continues to offer free trainings in the community on legal issues affecting DYS involved youth. If you work with "at risk" youth and would like to be better informed about parents' and youths' rights within DYS, please contact:

Sandra Carter

Americorps Member/

DYS Project

scarter@mhlac.org

617-338-2345 ext.24

DYS now has a link to its policies on the DYS WEB SITE.

<http://www.mass.gov/dys>

Once you're on the site, just go to the right hand side of the page and click on the "policies" link.

DYS has policies on a range of topics, including those related to the rights of confined youth, such as policies regarding use of psychotropic medications, suicide assessments, restraint, drug testing, searches, mail, telephone and visitation.

The obligation of school districts to provide education services exists in some cases even after a student met graduation requirements

A Massachusetts BSEA decision, *In Re: Quabbin Regional School District*, provides guidance for parents of students seeking special education services as the students attain educational accomplishments. 11 MSER 146 (2005). The decision clarifies that students have a right to special education services until age 22 (even after they have re-

ceived a regular high school diploma) if they haven't made progress towards or completed their IEP goals. The BSEA hearing officer, citing federal case law, concluded that meeting state and local standards (such as meeting local school district coursework requirements and passing MCAS) is necessary for a student to graduate from high school,

but may not be sufficient grounds to terminate eligibility for special education services. In addition to meeting the general graduate requirements, students with IEPs also must make progress on or complete the IEP goals and objectives in order to graduate. 11 MSER at 153. In addition, recently released federal regulations now clarify that earning a

MBHP Protocol for DYS Youth

Youth committed to DYS are automatically enrolled in MassHealth for their period of commitment. The mental health care benefits that these youth are eligible for as MassHealth recipients are managed by a separate entity, the Massachusetts Behavioral Health Partnership (MBHP).

In November, MBHP issued a **Behavioral Healthcare Access Protocol for DYS and MBHP*** to clarify the process by which youth in DYS custody can access certain behavioral health services. The protocol first lays out communication paths between DYS and MBHP staff. The protocol then describes procedures for: 1) **crisis intervention and management**; 2) **evaluations**; 3) **accessing care**; and 4) **care management**.

Crisis management steps include:

- Early identification of youth at risk of suicide and, when appropriate, provision of basic information to the local Emergency Services Program team (who may conduct an evaluation at some future point).
- Identification of a primary hospital provider when hospital level care is needed
- Crisis planning, if needed, with assistance to DYS from the Emergency Services Program team and MBHP's regional clinical coordinator, to identify appropriate placement and avoid unnecessary hospitalization.

Evaluations (likely on site but also possibly in a hospital emergency department) by the Emergency Services Program are available to DYS youth in residential programs who pose a risk to self or others.

After an evaluation occurs, youth may **access acute inpatient care** through referral to a hospital bed. If a bed cannot be found, DYS, MBHP, the Emergency Services Program team and, if applicable, the emergency department, decide how to keep the youth safe and secure until a bed is located.

MBHP assigns administrative case managers to certain of its clients. MBHP calls this service **care management**. There are three types of care managers:

- 1) targeted outreach;
- 2) care coordination;
- 3) intensive clinical management.

Services become more involved from the first to the last type. (The protocol describes the referral process for these three levels.) Individuals with care management may be offered assessments, treatment resources and crisis planning services. For youth in the community, care management offers access to two MBHP programs:

- community support program (CSP) – which supports treatment in the community; and
- family stabilization team (FST) – which supports both the youth and the youth's family.

*The protocol is available upon request from MHLAC.

DYS Opens New Facility For Girls With Mental Health Needs

If a youth needs a high level of mental health services, DYS can, upon classification, or at some later point, send the youth to a specialized DYS program. DYS now has a new mental health treatment facility for committed girls located at the Zara Cisco Brough Center on the grounds of Westborough State Hospital. The locked facility -- called the Fay A. Rotenberg School for Girls -- is for girls who have been in trouble with DYS before and have been found delinquent of serious crimes. The facility has space for 16 girls. (The Center also houses the Pelletier Assessment Program, a 25-bed assessment unit where all girls committed to DYS will be assessed.)

DYS has a similar locked facility for boys with serious mental health needs -- the Butler Center, also located on the grounds of Westborough State Hospital.

Second Circuit Court Interprets IDEA *Continued from page 1*

In responding, the Court wrote:

The district court concluded that the City defendants' "amorphous one-size-fits-all 'skills class' either taught by a special education teacher or by a subject area teacher in consultation with a special education teacher . . . is less than what the City defendants are required to provide under the terms of the original Education Plan and falls far short of the sort of individualized services required by the IDEA." (citation omitted)

Under the IDEA, the City must provide "[a] free appropriate public education." 20 U.S.C. § 1412(a)(1)(A); see also id. § 1400(d)(1)(A) (stating that such free appropriate public education must "emphasize[] special education and related services designed to meet their unique needs"). In so doing, the City defendants must "ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services," including "instruction in regular classes [and] special classes," and the "provision for supplementary services [such as resource room." 34 C.F.R. § 300.551; see also id. §§ 300.5, 300.301.

446 F.3d at 351.

The Court of Appeals concluded that the district court was correct to order the City defendants to provide this continuum of services to students with disabilities.

Obligation of School Districts *Continued from page 1*

GED is not the same as earning a regular high school diploma, when assessing credentials of a special education student seeking to maintain eligibility. The regulation clarifies that the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, including a certificate or a general educationally development credential (GED). 34 CFR 300.102(a)(3)(iv).