



SPRING 2013

HELPING HAND

An Update from the Special Needs Practice Group

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EARLY INTERVENTION

Special Needs Planning

Medical Malpractice

SCHOOL AGE

Special Education Advocacy

Transition to Adult Services

Special Needs Planning

Guardianship and Alternatives

ADULT

Special Needs Planning

Adult Service Advocacy

Special Needs Trust Admin.

Guardianship and Alternatives

EXTENDED FAMILY

Special Needs Planning

Elder Law

MassHealth Planning

PROBATE AND FAMILY COURT PRACTICE

Estate Planning Petitions

Adult Support Petitions

Guardianship/Conservatorship

COMING OF AGE - THIRD EDITION

By Frederick M. Misilo, Jr.



Six years ago, I wrote the first edition of *Coming of Age*, a handbook outlining important legal issues affecting individuals with an intellectual or developmental disability

upon turning 18 years old. I am pleased to announce that the 3rd edition has now been published. If you would like a copy, please contact me.

An innovative transition program is highlighted in this Spring Edition. Spearheaded by Philip Campbell, Special Education Director of the Auburn Public Schools, this transition initiative also involved Horace Mann Educational Associates and Nonotuck Resources Associates. Central to this transition plan was, of course, the parents

and the student who was being transitioned. From my perspective, this type of proactive planning is far too rare. Often the planning process is late in starting without any innovativeness centered on the needs of the individual student. When I first heard about this plan, I had an epiphany – what if more special education administrators and adult service providers collaborated earlier? How many more students could benefit? I hope you will find Phil Campbell’s article as uplifting as I did and let’s hope others dare to innovate to make a positive difference. **FT**

To contact me on these or any other related issues, my direct line is 508-459-8059 and my email address is fmisilo@fletchertilton.com.

NEW ELIGIBILITY STANDARDS FOR DEPARTMENT OF DEVELOPMENTAL SERVICES

Important changes have taken place for applicants for adult services at the Department of Developmental Services. In essence, intellectual disability has been redefined as now being consistent with the standard contained in the 11th Edition of Intellectual Disability: Definition, Classification and Systems of Supports by the American Association on Intellectual and Developmental Disabilities (2010). This new definition rejects a fixed cutoff score on an intelligence test. Applicants must show significantly subaverage intellectual functioning existing concurrently with and related to significant limitations in adaptive functioning all originating before age 18. Significantly subaverage intellectual functioning can now be found by an intelligence test score of **approximately 70** or below. This now recognizes the standard error of measurement in standardized tests, which can account for a variance of up to five points in a full-scale IQ score. Applicants who were rejected under the former definition should file a new application with the Department of Developmental Services if they believe they now may meet this new definition. **FT**

LONG TERM CARE INSURANCE REFORM LEGISLATION ENACTED



By Lisa M. Neeley, Esq.

For individuals who have purchased or will purchase long term care insurance, an important reform has been enacted providing an additional level of protection. MassHealth’s right to reimbursement from the probate estate of a MassHealth recipient has been eliminated in those policies that met the minimum coverage requirements as of the date they were purchased regardless of when the recipient enters a skilled nursing facility. Prior to this enactment, the estate recovery exemption applied only to long-term care insurance policies that continued to meet the minimum level of coverage at the time an individual entered a skilled nursing facility. **FT**

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ONE WAY TO THINK ABOUT THE FUTURE

By Philip Campbell, Director of Pupil Services,
Auburn Public Schools

The entitlement of public education for students with special needs ends when they meet the graduation requirements or when they turn 22 years of age. Preparing for the inevitability of one of those two options weighs heavily on the minds of parents if they believe that their son or daughter will need supports after public education. With the reauthorization of the Individuals with Disabilities Education Act in 2007, the need to plan for this transition was emphasized, along with a recent court case, the *Dracut* case, in Massachusetts that interpreted a set of issues that should, in some cases, be part of the analysis by the Individual Education Program (IEP) team.

The example that follows is not for everyone. However, it might be for individuals who are not likely to continue an education after high school or who may not yet be ready to enter the workforce directly. For those individuals who are Medicaid eligible and will need ongoing support in their adulthood, this example may encourage creative ways of developing supports for individuals with severe disabilities. The example may also provide a bridge from the school-based supports to community-based supports when services are needed into adulthood.

It was with this backdrop that the Auburn Public Schools (APS) and the parents of an almost-20-year-old young man began to examine what supports were most likely to be needed. Approximately two years prior to the end of the entitlement, the goal was to create a solution to the dilemma of what happens when the entitlement ends. With APS and the IEP process fully engaged (i.e., parents to guide supports with the goal of both fulfilling the requirement of providing a “Free and Appropriate Public Education” and providing a smooth transition into ongoing services), we began to identify the elements needed to prepare for support after the end of public education.

The parents and school district identified two agencies best known for providing adult services, contacted the local office of the Department of Developmental Disabilities and invited all parties to a preliminary meeting to discuss defining a new set of supports for the young man and his family. Through a series of four or five meetings facilitated by the APS, a plan evolved that included one agency, Nonotuck Resource Associates, providing a shared living set of supports and the other agency, Horace Mann Educational Associates, providing educational, habilitative and vocational services. The four parties, namely the parents, the APS, Horace Mann Educational Associates and Nonotuck Resource Associates, continued to share information, review records and get to know the young man through visits and observations of his then current program. In addition, all parties reviewed an independent evaluation that had been conducted as part of the preparation for developing a new plan and services.

The array of supports included placement at a Day Hab facility for part of his day, with transportation provided by Medicaid and

a partial education and vocational program funded by the APS. The shared living arrangement created was also funded by the APS. Two separate budgets were negotiated and reflected in contracts, one with each agency. The parties agreed that the current IEP would be implemented in the new settings for 30-60 days and then a new IEP would be created that reflected any changes in the student’s needs and changes in expectations that usually exist in a more adult setting.

Once plans were developed and the contracts negotiated and signed, the parents withdrew approval of the current placement and the residential school was notified with approximately 30 days’ notice of the impending move. All parties agreed to work cooperatively through this transition.

Months before all this came to fruition, the APS contacted the Department of Elementary and Secondary Education (DESE) to outline what was being planned for the Auburn student and to determine how to obtain approval for what had been called “sole source of care approval” that was now referred to as “authorization for pricing.” The DESE staff was helpful and guided the APS through the process that led to full approval by both DESE and the Operational Services Division, whose approval was also needed.

In late October 2012, five months after the first planning meeting in May 2012 to define a new set of supports to bridge the transition from public education into adult services, the young man moved and began his new life.

Three full months have passed since this young man has moved, and some of the measurable outcomes are:

- While in his educational day settings, a 55% reduction in aggressive behaviors and a 70% reduction in self-abusive behaviors;
- While in the shared living setting, a 71% decrease in aggressive behaviors and a 90% reduction in self-abusive behaviors; and
- Anecdotally, there are increases in positive behaviors that are now beginning to be tracked and recorded.

The service and supports required, and therefore the costs, for this young man had been among the highest for the Auburn Public Schools. The motivation to create this new set of supports was dissatisfaction with the placement, based on the lack of preparation for transitioning to adult services and the poor quality of life the student experienced. An additional result of these changes has been a 24.7% reduction in the costs of serving this young man when the FY 12 and FY 13 costs are compared.

Over the next few months, adjustments in behavioral plans, scheduling of visits and community options were explored and recorded in a new IEP. Regular communication systems were established using the Internet and face-to-face meetings and continued on a regular basis to continually monitor the progress made to improve the quality of life for the student.

This situation, as is true with all of life, is a work in progress and we have confidence there will be ups and downs, but the direction we are headed is clearly in the interest of this young man and his family. They now have a brighter introduction to adulthood than they envisioned a couple of years ago. **FT**

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Send an email to bsutphen@fletcherilton.com with the subject “SNP Newsletter” and we’ll add you to our list!

UPCOMING SEMINARS

WHEN THE SCHOOL BUS STOPS COMING: TRANSITION PLANNING & SERVICES FOR STUDENTS AGES 14-22

Speaker: Hillary J. Dunn, Esq.

April 23, 2013

Location: Northeast Arc, Center for Developmental Excellence
6 Southside Road, Danvers, MA

April 25, 2013

Location: The Charles River Center, Natick Family Support Center
4 Strathmore Road, Natick, MA

TRANSITION ISSUES FOR PERSONS WITH DISABILITIES
AGING OUT OF SCHOOL

April 20, 2013

Speaker: Theresa M. Varnet, Esq.

Location: Crossroads School, Huron Drive, Natick, MA

AUTISM SPEAKS EXPO & FAMILY DAY

April 27, 2013

Fletcher Tilton Special Needs Practice Group

Location: Boston University Fitness and Recreation Center

LEGAL AND FUTURE CARE PLANNING FOR YOUR
RELATIVE WITH A DEVELOPMENTAL DISABILITY

May 3, 2013

Speaker: Theresa M. Varnet, J.D., M.S.W.

Location: Transitions CRC, 631 N. 48th Street, Quincy, IL 62306

MASSACHUSETTS EARLY INTERVENTION
CONSORTIUM CONFERENCE

May 8 & 9, 2013

Fletcher Tilton Special Needs Practice Group

Location: Best Western Royal Plaza Hotel, Marlborough, MA

ADVANCE: THE RUDERMAN JEWISH DISABILITIES
FUNDING CONFERENCE

May 8, 2013

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Scholastic Event Space, 577 Broadway, New York, NY

HOW TO AVOID GUARDIANSHIP & WHAT TO DO IF YOU CAN'T

May 8, 2013

Speaker: Elise S. Kopley, Esq.

Location: Embassy Suites Hotel, Waltham, MA

SPECIAL NEEDS PLANNING

May 11, 2013

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Edgartown School, Edgartown, MA – Martha's Vineyard

LIFELONG PLANNING FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES

May 14, 2013

Speaker: Theresa M. Varnet, Esq.

Location: The Arc of HI, Honolulu, HI

MANAGING SPECIAL NEEDS TRUSTS

May 15, 2013

Speaker: Theresa M. Varnet, Esq.

Location: Hawaii Bar Association: Elder Law Division

To arrange a seminar by a representative of the
Special Needs Practice Group, contact Fred Misilo at
508-459-8059 or fmisilo@fletcherilton.com.

EQUAL OPPORTUNITIES IN SCHOOL SPORTS FOR STUDENTS WITH DISABILITIES



By Hillary J. Dunn, Esq.

Students with disabilities are all too often denied the chance to participate in school sports at the club, intramural and interscholastic level, and as a result, students with disabilities often miss out on the many

health and social benefits of athletics. A 2010 United States Government Accountability Office report confirmed that many students with disabilities are not afforded an equal opportunity to participate in athletics. On January 25, 2013, the United States Department of Education's Office for Civil Rights issued guidance reiterating and clarifying school districts' existing legal obligations under Section 504 of the Rehabilitation Act of 1973 to provide students with disabilities an equal opportunity to participate in extracurricular athletic activities.

The guidance warns school districts not to operate their programs based upon generalizations or stereotypes about disabilities. Instead, each student should be assessed individually. School districts may require a level of skill or ability for participating in a competitive program, so long as the selection or competition criteria are not discriminatory. The provision of an equal opportunity does not mean that every student with a disability is guaranteed a spot on a team for which other students must try out.

However, a school district must allow a student with a disability an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate for the particular student. This means that a school must allow reasonable modifications when necessary, unless the requested modification would constitute a fundamental alteration of the activity. The school must engage in an "individualized inquiry" to determine if a reasonable modification is required. A modification may constitute a fundamental alteration if it would alter an essential aspect of the game or create an unfair advantage for the student with a disability. By way of example, the guidance notes as a reasonable modification a visual cue instead of a starting gun so that a student with a hearing impairment can compete on the track team. Students with disabilities must be included in existing school sports program as much as possible.

For students with disabilities who are not able to participate in the existing programs with reasonable modifications, the guidance states that school districts should offer additional athletic opportunities and that these opportunities "should be supported equally, as with a school district's other athletic activities." If the number of students with disabilities at one school is insufficient to field a team, schools can develop regional or co-ed teams or offer "allied" or "unified" teams on which students with and without disabilities participate.

We will be watching to see the impact this guidance will have on our local communities. Stay tuned! **FT**