

Setting Sail.....

Massachusetts Administrators for
Special Education
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Keeping Your Head Above Water



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Updates and Practice Tips....

- FAPE/LRE
- Transition planning
- Services for SED students
- Physical Restraint and Seclusion



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FAPE and LRE

- Emphasis on *appropriate services* first.
- Determination of delivery location second.



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What are “appropriate” services?

- “basic floor of opportunity” *Rowley*, 1982
- Evidenced by an IEP designed to ensure effectiveness of the educational services.
- Resulting in “effective and demonstrable progress”.



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Progress....

- In the “various educational and personal skills identified as special needs”...
- ***Educational.....***
- ***Personal.....***
- *Lenn v. Portland School Committee* (1993).



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And meeting State Requirements

- MGL c, 71B, s. 1: programs, etc “designed to develop the educational potential” of the student.
- Resulting in “documented growth” in knowledge and skills—including social/emotional—according to age and developmental expectations, individual potential and the state and local curriculum requirements.
603 CMR 28.02(18).
- Education Reform aimed at providing all students the opportunity to “reach their full potential”.

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So is it a Ford, or a Cadillac?

- “reasonably calculated” standard. *Burlington* (1983).
- J.L. v. Mercer Island School District (9th Cir, 2009)
 - Reiterates the *Rowley* “basic floor” standard;
 - Rejects standard to guarantee “equality of opportunity, full participation, independent living and economic self-sufficiency” endorsed by the District Court based on transition service requirements.



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Least Restrictive Environment

- Participation with non disabled students is a statutory preference, not an absolute.
- Determination of educational environment takes place *after* educational services are determined.
- Risk of over reliance on “inclusion” programming.
 - May not address needs of all students;
 - May not be adequately staffed or developed.



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Practice Tips...



- Approach the IEP from the right end: services first.
- Include both *educational* and *personal* elements as required by law.
- Then determine where to provide services.
- Review inclusion service models.



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Transition to Post Secondary Life

- Part of IDEA since 1990.
- More recent focus both Massachusetts and nationwide on transition cases. 
- *Quabbin Regional School District, BSEA, 2005*
- *Dracut Public Schools, BSEA, 2009*
- *Lessard v. Lyndeborough Coop. Dist (1st Cir.2008)*
- *J.L. v. Mercer Island S.D. (9th Cir. 2009)* 

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What?



- “coordinated set of activities designed within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities.”

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What does THAT mean??

- Results-oriented process vs. outcome.
- Seems to indicate a shift to success for the student as opposed to just an outcome.
- USDOE declined to define the standard—referring back to the language of the statute and regs.



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Defined by the First Circuit

- *Lessard v. Wilton-Lyndeborough S.D.* (1st Cir., Feb. 2008).
 - “outcome oriented process” of transition does not mean a higher standard than usual FAPE standard in determining IDEA compliance.
 - Court endorses *Rowley* standard, but...is that really what is applied in Massachusetts?

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Transition Tips

- Focus on the student's areas of special needs.
- Educational
 - Local graduation requirements
 - MCAS

–But don't stop there...



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Transition Tips

- Also address Personal skills
 - Social
 - Emotional
 - Behavioral
 - Pragmatic



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Transition Tips

- Integrate into IEP as well as a separate Transition Plan.
- Conduct assessments:
 - Thorough
 - Functional
 - Community/post graduate oriented
- Work with students and parents early and often to fashion an appropriate and realistic vision statement.
- Get the agencies on board.



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Assessments

- Assessments can include things like interest inventories, aptitude tests, observations, interviews, Functional Vocational Evaluations, and other formal and informal assessments.
- Assessments help identify the student's strengths, talents, skills, preferences and interests.



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Transition Tips

- Focus services on increasing independence.
- Focus services on generalizing skills that may be evident in the school setting, but may not be in the community.
- Maintain data.



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Serious Emotional Disturbance

- Defined by law and regulation as:
 - Exhibiting one or more of the following characteristics over a long period of time, to a marked degree:
 - Unexplainable inability to learn;
 - Inability to maintain relationships with peers, teachers;
 - Inappropriate behavior or feelings in normal situations;
 - General pervasive mood of unhappiness/depression;
 - Tendency to develop fears, physical symptoms re school issues.

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And....

- Educational progress is affected.....
 - Academic
 - Behavioral
 - Social



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Applying the standards...

- “To a marked degree” OSEP says refers to the frequency, duration or intensity of the student’s emotional difficulties in comparison to his peers...
- “Over a long period of time” OSEP says means two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that time...

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SED Does Not Include:

- Social Maladjustment;
 - Consideration of “willful behavior”?
- Just Plain Adolescence;
 - Personality conflicts
- Life Stressors.
 - Family crises such as divorce or illness



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Some Problems Are....



- The unforeseen adolescent crisis—the “sleeper” student.
- The chronic and escalating student—with early diagnoses more common.
- The student whose frustration with learning turns into behavior/emotional problems.

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Institutional Factors

- Reluctance to consider emotional issues part of the school/educational responsibility.
- Particularly where the behavior/conduct results in school discipline and/or police involvement.
- Difficulty with “case management” for hospitalized students.



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Tips...

- Continue to remind all educators of the extent of school district responsibility;
- Maintain the integrity of the special education discipline process;
- Develop process to better manage school implications of a student's crisis:
 - Not just hospital tutoring
 - Outreach to parents
 - Get a jump on discharge planning



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Tips...

- Parent outreach and education.
- Take parent concerns seriously.
- Develop an “early warning system”
 - What are likely profiles of students who develop significant emotional issues;
 - Collaboration with guidance counselors
 - 504
 - Building “Prereferral” Teams
- If you cannot control at least you can influence...



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Rosie D.: Children's Behavioral Health Initiative

- Systems Implementation:
 - November 1 start date for In-home therapy;
 - Other elements including ICC underway now;
 - 2000 children enrolled and 160 providers engaged;
 - Staffing and training underway;
 - Eligibility based upon medical necessity.
- Interagency Relations:
 - Many referrals from DMH and DCF due to funding constraints;
 - This initiative not focused on increasing school district responsibilities, but.....
- Next Steps:
 - Be patient with “roll out” bumps in the road;
 - Participate in local systems communications committees;
 - State-wide information/communication meetings for school districts planned.

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What About the Rest?

- *Worcester Public Schools*, BSEA # 09-3109
 - The Hearing Officer endorsed a plan that relied on DCF provided intensive wrap around services—and made it clear that if the agency commitment is terminated, the school district would be responsible for the services.

The implications are profound for school districts where students are not Rosie D. eligible.

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Physical Restraint and Related Topics

- National spotlight on the issue of restraints and seclusions.
- Massachusetts has had a comprehensive set of regulations for years;
 - Defining restraints, including seclusion,
 - Requiring training, including intensive training for resource personnel,
 - Reporting to DESE and parents required.

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Physical Restraint...

- Physical restraints seen as moving into the regular public school setting;
- No data/studies to show effectiveness of restraint or seclusion practices;
- Potential for abuse and misuse obvious;
- Not restricted to special education environments.
 - Council for Children With Behavioral Disorders Position Summary on Use of Physical Restraint Procedures in School Settings, May 2009.

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Legal Concerns

- Civil Rights Liability: right to bodily integrity a “liberty interest” under the Constitution,
- Discrimination claims,
- Negligent supervision claims under the Massachusetts Tort Claims Act,
- Damages, damages, damages.....



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Response...

- Train
 - All staff—including paraprofessionals
 - Make sure there is inhouse expertise
 - Debrief and analyze incident reports
- Report
 - Regulations: DESE/Parents
 - 51A
- Investigate
 - Restraint gone wrong is abuse
 - Institutional discipline depends on investigation
- Act
 - Referral for discipline
 - Referral to other agencies; police, DESE etc. may be required



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A Note on Abuse

- Abuse cases go beyond physical restraint issues.
- Someone always know it occurred before it “comes to light”.
- Sometimes the “best teachers” are involved and the reaction may be to protect them and not the children.



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Note on Abuse

- Liability:
 - Civil Rights
 - Discrimination
 - Tort Claims Act
- Forum: because of the school based claims, if a disabled student is involved, the claim must first go to the BSEA-then to federal court.

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