

Legal Consult: Teaching As Healing

“Empty is that philosopher’s argument by which no human suffering is therapeutically treated. For just as there is no use in a medical art that does not cast out the sickness of bodies, so too there is no use in philosophy, unless it casts out the suffering of the soul.” – Epicurus

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In Massachusetts, the so-called “Dover Amendment” statute exempts from certain zoning restrictions uses of land and buildings for educational purposes. McLean Hospital Corporation proposed to site in Lincoln a residential program for young males with “emotional dysregulation.” A town commissioner’s

determination that the proposed use was educational was challenged by several nearby residents before the town’s zoning board of appeals, which reversed the commissioner’s determination and ruled that the project was medical or therapeutic. Does the Dover Amendment construe “educational” so broadly that it encompasses a program addressing “emotional dysfunction”?

In *The McLean Hospital Corporation vs. Town of Lincoln & others*, the Massachusetts Supreme Judicial Court answered this question in the affirmative, ruling that the McLean Hospital program was not a conventional educational curriculum but a “skills-based curriculum” that fell within the Dover Amendment’s meaning of “educational purposes.” At the same time, the court rejected the Land Court’s analysis that the proposed program focused on “inward-facing skills” that address internal manifestations of symptoms of a mental disorder rather than “outward-facing skills” that improve individuals’ ability to engage in society. The SJC noted that the ability to cope with everyday problems is an educational process that also serves a therapeutic purpose. “We accordingly agree with McLean that, in situations of this type, an attempt to sever that which is educational from that which is therapeutic is ordinarily a rather futile exercise.”

The proposed program seeks to provide life, social and emotional skills to adolescent males who have been unable to succeed in a traditional academic setting, using a dialectical behavior therapy approach. The program involves eleven hours per day of instruction and practice in social and emotional skills, comprised of group mindfulness exercises, approximately six hours of classroom instruction, one and a half hours of structured athletic time or family therapy, more group mindfulness group exercises, then skills practice and homework worksheets. Only two percent of the weekly program hours are devoted to individual therapy. In its description of the program, the Court noted that although a registered nurse is on hand to treat any medical issues that may arise, “no medical interventions are included as part of the program.”

The Dover Amendment test is twofold: a program must have

as a goal something that is “educationally significant,” and this goal must be the primary or dominant purpose of the program. Prior case law held that “educational” includes “the process of developing and training the powers and capabilities of human beings” and incorporates the idea that “education is the process of preparing persons for activity and usefulness in life.” The concepts of “education” and “rehabilitation” are not mutually exclusive. The Court noted that the Department of Elementary and Secondary Education’s strategic plan includes as a core strategy schools’ “supporting the social, emotional, and health needs” of students.

The Court rejected defendants’ argument that a residential program could simply add an informal educational component in order to secure Dover Amendment protections. Examples of this would be adding optional coursework to a luxury condominium complex or an informal arts and crafts program to a nursing home. In contrast, the Court noted that McLean Hospital’s program was a mandatory, full-time, highly structured curriculum with a goal of returning students upon graduation to school and community.

The Court also rejected the argument that the McLean Hospital program featured educational components for the predominant purpose of offering a course of treatment for a particular psychological condition. The Court noted that just because students may be on medication or engaged in counseling does not make a school a “medical” facility. The focus should be on the nature of the program, not the nature of the students, where the program is “a specialized form of education to learn the complex emotional, social, and daily living skills necessary to participate actively and succeed in life.”

For purposes of Dover Amendment analysis, the Court in this case declines to make a significant distinction between education with a therapeutic purpose and education with a traditional academic purpose. Indeed, the Court noted that the Dover Amendment was passed in part to protect non-traditional educational programs from a locality’s desire to exclude disfavored types of educational facilities. For purposes of Dover Amendment law, the Court is defining “education” in the broadest sense of preparing individuals for life in society by helping them overcome dysfunction; by providing them concepts and training that help them deal with destructive and disabling emotions. The learning that education can provide thus leads to reduced outbursts of fear, anger or self-loathing.

Epicurean philosophy holds that destructive emotions are rooted in false beliefs, and that overcoming the resultant fear, pain and anger requires deep probing of the sources and validity of those beliefs through therapeutic argument in a highly structured learning and training environment. That sounds a lot like what McLean Hospital proposed to do in Lincoln. In that effort, Epicurus would concur.