



FEDERATION FOR CHILDREN  
WITH SPECIAL NEEDS

# NEWSLINE

VOLUME 33, NUMBER 4

INFORMING, EDUCATING, EMPOWERING FAMILIES

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## Visions of Community 2013



Keynote Speakers Brian Heffernan and Dr. Tom Hehir

On Saturday, March 9, 2013, the Federation held its annual *Visions of Community* Conference at the Seaport World Trade Center in Boston. The statewide conference was attended by more than 900 parents and professionals, making this year's event the largest gathering of its kind in the history of the organization. The day-long program offered participants a dy-

namic keynote presentation, opportunities to network with other parents and professionals, resources from more than 80 exhibitors, in addition to 44 breakout sessions with offerings on special education, health, parent support, and more presented in English, Spanish, Portuguese, Chinese, Somali, and Vietnamese.

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## Save-the-Date!



Help the Federation kick off its 40<sup>th</sup> year anniversary celebration by joining us on **Sunday, September 22<sup>nd</sup>** for our first ever fundraising walk!

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## Gala 2013 - Celebrating Every Child



The Federation honored Janet Vohs for her advocacy on behalf of children with special needs

On Friday, May 3, 2013, the Federation celebrated their 14<sup>th</sup> annual gala, "Celebrating Every Child." The evening was a wonderful success, raising over \$180,000 to support the Federation's work! Upon

arriving at the Seaport Hotel in Boston, guests were treated to the sounds of the Mike Bono Group while enjoying appetizers and cocktails and bidding on silent auction items such as Red Sox tickets, museum passes, gift certificates to restaurants and hotels, and original works of art.

The guests were then ushered into the ballroom for dinner. There, Rich Robison, the Executive Director of the Federation, thanked everyone for coming. He also reported that over the years, the gala has raised two million dollars. Robison then introduced the evening's MC; veteran journalist Ron Sanders.

Sanders told the crowd that nothing is more important than our children; and reminded everyone that while all children are special, there are some who require special attention.

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# School Discipline Law<sup>1</sup>

By Daniel T.S. Heffernan, Esquire, and Sherry L. Rajaniemi-Gregg, Esquire



School discipline looms large in the lives of many students with disabilities. At times, the student can find herself being punished for her disability or see behavioral issues arising from her disability inappropriately or ineffectively addressed by the school district. Students with special needs can also be victimized by or model another child's inappropriate conduct. During the 2010-2011 school year, more than 48,000 students received out of school suspensions, 200 students were permanently excluded from school, and 100 students were moved to alternative settings. Federal and state law provide significant procedural

and substantive safeguards to ensure that children with special needs are not punished for their disabilities and that inappropriate behaviors are properly addressed.

**Which students are entitled to protection?** The federal Individuals with Disabilities Education Act ("IDEA") accords students with special needs significant rights regarding student discipline. Students on IEPs and 504 plans are unequivocally entitled to IDEA's protection. In addition, students who are not yet eligible for special education services are covered "if the school district had knowledge that the child was a child with a disability" before the behavior precipitating the disciplinary action occurred. 34 CFR §300.534. In order for a student to be afforded the protections of IDEA *before* the behavior occurred:

- the parent must have expressed concern *in writing* to school personnel that the child is in need of special education and related services;
- a requested evaluation of the student's suspected special needs has not been completed; or,
- school personnel have expressed specific concerns to the supervisory personnel about a pattern of behavior by the child.

Despite the above, the student will not be covered if the parent refused to have the child evaluated, the parent has refused services for the child, or if the child was found ineligible for an IEP or 504 plan.

If the student is not eligible for these protections in disciplinary matters, she is to be treated the same as any other student in disciplinary matters. This does not accord the school district unfettered discretion, however. Every school district in Massachusetts is required to have a student handbook, and must adhere to its disciplinary code and procedures. In addition, the use of restraints and seclusion of students is strictly limited by statutes and regulations in Massachusetts. Lastly, anti-discrimination and civil rights laws can proscribe the selective application of discipline to certain students or groups of students.

## **Which disciplinary measures do the protections extend to - the Ten Day Rule?**

The IDEA does not prevent school districts from meting out any type of discipline for protected students. These protections "kick in" if the school district seeks to, in reality or in effect, change the student's placement. Apart from actions such as moving a student to a different program or classroom or changing the essence of a student's program, removing the student from her classroom, by suspension for example, for more than ten days is tantamount to a change in placement. This "Ten Day Rule" applies to multiple exclusions that total ten days for a given school year if one can show that the behaviors are essentially the same. Therefore, school districts may discipline students with special needs to the same extent as non-disabled students as long as it does not constitute a change in placement.

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## NEWSLINE

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### **The Federation for Children with Special Needs**

#### **Our Mission:**

To provide information, support, and assistance to parents of children with disabilities, their professional partners, and their communities. We are committed to listening to and learning from families, and encouraging full participation in community life by all people, especially those with disabilities.

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<sup>1</sup>This is the first of a two part article. This article addresses the law surrounding disciplining students with special needs. The second article will provide practical suggestions regarding school discipline issues.

## From the Executive Director: A Tale of Two Worlds . . .

The Federation seeks to empower parents and family members to advocate on behalf of their children with special needs. In my work, I see the struggles of families who are seeking to access high quality educational services and health care in a time of scarce resources. I witness their creativity, resilience and persistence, and also their vulnerability.

I am also a member of my local school committee. The School Committee is the legal body who has the responsibility for delivering public education. The School Committee is responsible for setting policy, evaluating the Superintendent and presenting the annual budget. The struggles I witness within the District are different than those at the Federation. But I can see the power of the school system and how it affects families.

Recently I testified before the Massachusetts Legislature's Joint (Senate and House) Committee on Education concerning the needs of families in special education. I spoke in favor of three bills: House 499, "An Act Relative to Provide Equity and Fairness for Students with Disabilities" and its Senate counterparts, Senate 233 and Senate 259. These bills will allow parents to obtain attorney's fees if they prevail through settlements to obtain essential services, to establish that school districts have the burden of proof, and to allow parents to obtain reimbursement for the fees of educational experts when they prevail.

They address the impact of a series of Supreme Court decisions over the past 10 years, which created what are frequently insur-

mountable barriers for families who need to utilize the due process system to try and ensure their children receive essential services. This has resulted in the creation of a two tiered system which prevents low and middle income parents from a prompt resolution of disagreements over the type of placement their child may be in or ensuring the appropriate level of service.



Rich Robison

In the midst of my testimony, I commented that I do live in two very different worlds, that of families and the other of schools. While schools face resource struggles, families are generally at a significant disadvantage. It is truly a "David and Goliath" reality. We need new legislation to level the playing field. Families are simply not in a position to afford necessary legal counsel and professional consultation when needed. They need to be able to access their due process rights without hindrance. Here's where my two worlds collide!

I believe that these bills would reinstate parents' rights as previously available prior to 2001 and would help level the playing field, reduce lengthy delays which deny children a free appropriate education as guaranteed by state and federal law. I urge you to share your own story with your state legislators to be sure everyone has a fighting chance.

*Rich*

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## Visions of Community 2013 (continued from page 1)

The day began with a welcome from the Federation's Executive Director Rich Robison, who acknowledged the large turnout less than 24 hours after a major winter storm had hit the Boston area.

He expressed hope that participants could feel, "A different atmosphere when you come through these doors, you are no longer in isolation, sometimes struggling with issues of family and access and other types of concerns, here you're among friends. You'll find that you can learn from each other, enjoy each other, and sometimes find some humor that other people don't always quite get, when you talk about some of the things that are quite special about your particular child." Dr. Robison went on to describe the history of the Federation's work with parents and families. "Generally what we find is that families are resilient and resourceful, and when we equip them with information, opportunity and a vision of what can be, they really thrive."

Federation friend, singer/songwriter Randall Kromm moved the crowd with a heartfelt performance of a song he wrote about the impact his daughter with special needs has had on his life. This was the 2<sup>nd</sup> year Mr. Kromm had performed at the conference. Randall also took time to play music in the childcare room as well as performing a lunchtime set in the Exhibition Hall.

With a standing room only gathering in the Amphitheater, and an overflow crowd in an adjacent ballroom, the attendees were inspired by a dynamic keynote presentation from Harvard professor, former Director of the US Dept. of Education's Office of Special Education Programs, and author, Dr. Thomas Hehir and student, self-advocate Mr. Brian Heffernan. The gentlemen presented on the importance and reality of systemically changing schools to be fully inclusive. The participants were entertained by the rapport and humor the duo displayed as Dr. Hehir spoke of the important principles of inclusion and Brian responded to each with his real-life implementation of those principles. As Brian completed his talk on graduating high school after writing a thesis on the Titanic, Dr. Hehir stated, "One of the principles that Brian exemplifies so much is the importance of allowing kids, whether they have disabilities or not, to pursue their interests; the things that really engage them in school, and it will be different. People often assume that those with intellectual disabilities have the same interests – they don't! Brian has pursued the things that interested him in high school, and high school should be a wonderful time for every kid." Brian's confidence and life experiences left the participants with a sense of hope and inspiration as they moved on to enjoy the remainder of the day.

The conference continues to be supported by many local and state agencies which were represented by many levels of staff. Some gave greetings to the morning assembly, others presented entire 90 minute break out sessions, and still others manned exhibit tables for participants to learn more about accessing services through programs supported by the various agencies. Federation Board member Debbie Allen brought greetings from the Boston Public Health Commission and the Project Launch/My Child program which co-sponsored the event. Ms. Allen encouraged Boston residents in the audience, to visit the Project



Special Guests included State officials (from left to right) Dr. Alan Ingram, Robert Turillo, Ron Benham, Elin Howe, Marcia Mitnacht and Angelo McClain

Launch exhibit table to become involved in advising the BPHC around areas of children with special health care needs. Deputy Commissioner for the Massachusetts Department of Elementary and Secondary Education (DESE) Dr. Alan Ingram shared his personal experience of being a parent of a child with special needs and expressed how important it is for our educational systems to be responsive to the needs of all children.

Massachusetts Department of Developmental Services Commissioner Elin Howe offered that while there is still work to do, more children than ever are receiving support through a variety of programs. She further went on to say that the Department is committed to improving its services and programs, including helping families better prepare for the transition from entitlement of educational services to the world of adult services. Outgoing Commissioner of the Massachusetts Department of Children and Families Angelo McClain expressed his sincere appreciation for the relationship his Department has enjoyed with the Federation over his years in public service and how much he values the work of the organization. Also in attendance were Asst. Commissioner of the Massachusetts Department of Youth Services Robert Turillo, and Ron Benham, Director of the Family Health and Nutrition Bureau at the Massachusetts Department of Public Health. State Director of Special Education Marcia Mitnacht presented a morning workshop which highlighted State Advisories on Suspension and Transition, while Madeline Levine, Director of the Office of Tiered Systems of Support (TSS) at DESE, provided a session focused on an overview of TSS for parents.



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## Visions of Community 2013 - Community Partnership Award Recipients

Each year at the *Visions of Community* Conference, the Federation recognizes individuals who have worked to create and support the inclusion of individuals with disabilities. This year's awardees are:

### ***Community Volunteer - Andy Garlick***



Andy, a fifth grade teacher at the Williams Elementary School and brother of an adult sister with developmental disabilities, has served as the Camp Director of Camp Echo Bridge in Newton, MA since 2008. Camp Echo Bridge is an academics-based summer day camp that serves 180 campers weekly, with abilities ranging from typical to social/emotional disabilities, Down syndrome and autism. As Camp Director, he designs and implements an academic curriculum that encompasses mathematics, language arts and social pragmatics.

### ***Inclusive Special Education Teacher - Allyson Dupuis***



Allyson has worked to create a life-skills classroom for children with special needs in a local elementary school that integrates all children into every aspect of the school. Allyson works diligently daily to help each student overcome their personal difficulties. Children flourish in Mrs. Dupuis' class; parents have seen nonverbal children grow into students who enjoy sharing their thoughts and their sense of humor with others. Allyson has gone above and beyond to help her students reach their full potential.

### ***Community Volunteer - Curtis Hartman***



Curtis has been a Special Education Surrogate Parent since 2003. He has supported seven students during his career. He has been a Mentor and supporter of the Recruitment Training and Support Center for Special Education Surrogate Parents (RTSC) since its inception in 2011 (see article on page 7). He plans on using his advocacy skills as a pro bono expert for kids at risk on Cape Cod.

### ***Self Advocacy Award - Julie Messina***



Julie, a parent of a son with Down syndrome, started the Learning Program Boston, an organization committed to the early literacy and numeracy of children with Down syndrome. LPB Boston has grown from a few family volunteers to over 100 parents and educators working together to learn best practices for teaching individuals with Down syndrome.

**Thanks to all of the sponsors and supporters who helped to make *Visions of Community 2013* a huge success!**

### ***Inclusive Recreation - Anna Wood***



Anna is a Recreation Therapist working tirelessly to promote inclusion within Massachusetts. As the Adaptive Sports and Recreation Specialist at the Sudbury, MA Parks and Recreation Department, Anna has designed and developed an Adaptive Sports and Recreation Program that provides year round adaptive and inclusive recreation programs for community members of all abilities. A member of the Sudbury Commission on Disability and the Therapeutic Recreation Representative for the Massachusetts Recreation and Park Association, Anna continues to head projects that work to not only make the community more inclusive but also to educate the public about inclusion and therapeutic recreation.

### ***Inclusive Special Education Teacher - Heidi McGilbray***



Heidi has been a preschool teacher of an integrated classroom at the Feeney Preschool in Walpole for the last 10 years. Heidi always works in a collaborative manner with families to best serve her students. Many parents reported feeling nervous and anxious as to how their children would handle being in a school setting until they saw the almost immediate improvement in their children after being in Heidi's class. Students started showing improved language and behavior at home as well as in the classroom. Her goal is to bring these extraordinary students to their fullest potential – whatever it takes.

### ***Inclusive Recreation - Karen Bernardo***



Karen was disappointed in the athletic opportunities available to children with special needs in her community. She and her husband decided to do something about it – they began the Wellesley STARS (Striving to Achieve Recreational Services). For fifteen years Karen has coached the Wellesley Stars Swim Team. She connected the STARS with youth volunteers at a local church, The Wellesley Unitarian Church, to support the swimmers. She has reached out to youth in different communities; bringing them together to help make a difference not only in their lives but in the lives of children with special needs.

View photo gallery, video of our keynote speakers, or download handouts from many of the workshops at  
**[www.fcsn.org/conferences/voc2013](http://www.fcsn.org/conferences/voc2013)**



## Civil Discipline Law<sup>1</sup> (continued from page 2)

**Manifestation Determinations.** If the school district seeks to change the student's placement, it must first convene the team to conduct a "manifestation determination" to determine if the behavior was related to, or a manifestation, of the student's disability. Underlying this requirement is the principle that a district cannot punish a student for her disability. The district may not change the student's placement if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or was the direct result of the district's failure to implement the IEP. These manifestation determinations are typically conducted like quasi-hearings, with witness testimony and various documents being considered. Parents have the burden of proof to establish the connection between the conduct and the disability or failure to implement the IEP. To do so, parents may submit reports or other documentation as well as present witnesses, including experts.

If the behavior is determined to be a manifestation of the student's disability, the school district must conduct a functional behavioral assessment ("FBA") or review a pre-existing FBA and return the student to her current placement except in situations involving "special circumstances" described below. If the behavior was not a manifestation of the student's disability, the student is subject to the same discipline as non-disabled peers.

The FBA can result in a behavior plan that delineates how certain behaviors are to be addressed. If incorporated into an IEP, this behavior plan may also proscribe the discipline the school district may mete out for it acts as a binding contract between the parents and school district. For example, if the behavior plan provides that the student will lose his computer time if he pushes another student, the district cannot suspend the student for that behavior. Similarly, if the IEP provides for certain procedures or responses to certain behaviors, they must be adhered to by the school district.

**Special Circumstances.** Concern about drugs and violence in schools has led to an exception to the above procedures in certain "special circumstances." In those situations, a school district may eschew the procedures above and immediately remove a student to an Interim Alternative Education Setting ("IAES") for up to 45 days. Those special circumstances are:

- when the student possesses a weapon at school or a school function;
- knowingly possesses, sells or solicits illegal drugs at school or a school function; or,
- has inflicted serious bodily injury to another person at school or a school function.

The exception for special circumstance is intended to be a limited one. Applicable statutes and regulations define illegal drugs, weapons and serious bodily injuries. For example, serious bodily injury means injury involving a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted impairment of the function of a bodily member, organ, or mental faculty.

Parents may challenge the disciplinary actions of the school district by filing a hearing request with the Bureau of Special Education Appeals ("BSEA"). The BSEA may review the propriety of the manifestation determination, the existence of special circumstances, the appropriateness of the IAES or other aspects of the discipline of a child with special needs.

**The end of permanent school exclusion in Massachusetts.** While students with special needs cannot be denied all forms of education regardless of their conduct, the same has not been true for students without the above procedural protections. Currently, such students who are charged with or convicted of felonies can be permanently excluded from school by their district and denied services by any new district where the student has relocated. Beginning July 1, 2014, school districts may no longer permanently exclude any student. While districts do not have to allow such students to be enrolled in regular classes or school, they must consider ways to reengage the students in the learning process and explore some non-expulsion remedies. The districts must provide some educational services to the students as well as establish procedural protections for those students. The details of these services and procedures will become clearer with the promulgation of regulations and the actual practice after July 1, 2014. In addition, school districts must collect data about suspensions and exclusions and provide that to the Department of Elementary and Secondary Education ("DESE"). DESE is mandated to investigate schools that suspend or expel a "significant" number of students for greater than 10 cumulative days, as well as make recommendations to those schools and make public the results.

School discipline can significantly impact a student's education. To properly address a student's disability, and to ensure that students with special needs receive fair, appropriate and effective discipline, it is essential to be familiar with the law in this crucial area.

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Daniel T.S. Heffernan and Sherry Rajaniemi-Gregg are attorneys with Kotin, Crabtree & Strong where they concentrate on special education and civil rights law. They have represented numerous families with children with special needs in abuse, civil rights and negligence actions. More information on special education can be found on [kcslegal.com](http://kcslegal.com) and our blog.

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# Making a Difference in A Student's Life: One SESP's Journey

By Emily Gaudette, Recruitment, Training and Support Center (RTSC)

Curtis Hartman has been a Special Education Surrogate Parent (SESP) for eleven years. "It's continually intellectually provocative," he says. Hartman is one of hundreds working to advocate for the educational needs of children whose parents are unknown or unavailable. SESP's are trained and supported by the Recruitment, Training and Support Center (RTSC) at the Federation for Children with Special Needs.

Hartman's first student, a fifth grader, asked him, "Why do you care what I think?" Federal law requires the inclusion of a student's parent(s) or guardian(s) in the special education decision-making process, but children in state custody may not have anyone to fill that role. "This kid was angry," Hartman remembers. "His foster parents had disciplined him by making him sleep in a cage. His principal and I made a commitment to help him. Every Monday morning, his IEP team discussed how he had done the week prior." As an SESP, Hartman was not required to attend each of these meetings, as the time commitment is only 10-20 hours a year. While helping his student, however, Hartman became invested. "You can't give up on a kid," Hartman smiles. "By the time he was in ninth grade, we were discussing if he still needed to be on an IEP. He went to technical school and I attended his graduation. These are things that make you cry. This boy had been dropped off at DCF with his belongings in a trash bag, and here he was with a job and an apartment."

Hartman invites parents of children with special needs to join him in representing children in Massachusetts. "Empathy is a huge part of this. These children don't come from loving homes. They've never had someone stand up for them, and you are now on their side. Your job is to make sure their needs in the classroom are being met."

SESPs spend their 10-20 hours a year telling the child's story to administrators and educators, reviewing and signing IEPs and attending quarterly meetings. They receive report cards and progress reports as any parent would. Hartman adds, "It's not your job to solve the child's problems. It's your job to make sure they get their free and appropriate education. Their need is so desperate that even the smallest amount of help has an immense effect."

If you have an interest in improving the lives of children with special needs, consider becoming a Special Education Surrogate Parent in your area. "The process is so interesting," Hartman says. "I could never learn all there is to learn. It keeps my mind agile."

To become an SESP, contact the RTSC at [rtsc@fcsn.org](mailto:rtsc@fcsn.org), call us with questions at (617) 399-8342, or check out our website at [www.fcsn.org/rtsc](http://www.fcsn.org/rtsc). Ask yourself as Curtis Hartman does, "Who's the kid I'm going to see graduate from high school? Who's the next child I'm able to help, and how can I help them?"

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Honorary Co-chairs  
Allyson and Ed DeNoble

# Gala 2013

*Celebrating Every Child*  
(continued from page 1)



Veteran Boston-based broadcast journalist  
Ron Sanders was the evening's Emcee.



Federation Board President  
James Whalen and his wife Diane



Traditional Lion Dance performed by the  
Boston Chinese Family Support Organization

The Boston Chinese Family Support Organization's Lion Dance Troupe then performed. The BCFSO is a nonprofit group in Chinatown that supports children with disabilities and their families. Their Lion Dance Troupe was formed two years ago, in response to the need for programs that provided physical activity geared towards children with special needs. The instructors teach young children to perform the Chinese dance known as the Lion Dance. Six young children wearing traditional Chinese outfits made of red satin with gold sparkles took the stage. With the help of their instructors, they demonstrated a Lion Dance, which is familiar to anyone who has attended a Chinese New Year celebration or Boston's First Night Parade.

After the children received enthusiastic applause for their demonstration, the instructors performed a Lion Dance. The crowd laughed and clapped as the "lion" came out on the floor of the ballroom, wound his way through the tables, and then went back on the stage where one by one, the children "fed" him oranges and lettuce. Appropriately enough, dinner was then served (to the humans, that is!) and Jim Whalen, the President of the Federation's Board of Directors, came forward to announce the recipients of this year's awards. The first award of the evening was the President's Award, which was given to Angela Peri. Peri is the owner and founder of Boston Casting, which has cast many productions including the Federation's PSA, which was then played on the large screen.

Peri came to the stage to accept her award, but humbly said that the award really "belongs to those who fight for our kids." Despite Peri's assertion that she isn't among those to whom the award belongs, Peri has indeed fought hard over the years for the rights of her son with autism. He is now in public school and is an actor and an avid skier.

The next award was the Patricia Blake Advocacy Award, given in honor of former Associate Executive Director Pat Blake. This year, the award was given to Janet VoHS, a highly dedicated and much appreciated long-time member of the Federation family. VoHS, who was a Federation staff member for 34 years, is the mother of Jessica VoHS, an artist who was born with cerebral palsy. A slide show of pictures of Jessica over the years was played on the big screens, accompanied by a recording of Mariah Carey's song "Hero." The message was clear to all in attendance: Jessica considers her mother to be her hero, just as all of us at the Federation appreciate the heroic efforts that Janet VoHS has done over the years to help improve the lives and education of countless children.

VoHS explained that thanks to Chapter 766 and the Federation, Jessica attended public school, graduated from high school, and became the first person with severe disabilities to complete a year of service with City Year. In doing so, Jessica and the Federation paved the way for other people with disabilities. Today, Jessica is a successful artist, painter, poet, and designer. Her work ranges from oil paintings to wall hangings to her popular hand-dyed scarves and T-shirts.

The final award of the evening was the Founders Award, presented by Martha Ziegler, founder and former Executive Director of the Federation. This year's Founders



Award went to State Representative Tom Sannicandro of Ashland. He is currently the Chair of the Joint Committee of Education, and has previously served as the Chair of the Committee of Higher Education and the Vice Chair of the Committee for Children, Families, and Persons with Disabilities. He is also the chief sponsor of several pieces of legislation aimed at improving the lives and opportunities for people with disabilities. Representative Sannicandro has a son who was the first student with severe disabilities to attend Ashland Public School. When his son was in kindergarten, the principal wanted to put him in the special education classroom. However, Sannicandro and his wife convinced the principal that their son belonged in a mainstream classroom. His son is now a successful car dealer at the age of 28. As Representative Sannicandro accepted his award, he acknowledged the importance of people with intellectual disabilities testifying before the Massachusetts Legislature, and how the number of individuals to do so has grown over the years.

After the awards were presented, Sanders welcomed Amy Robison to the stage. She thanked her dad, Rich Robison, and told Sanders that she had a great time and particularly enjoyed the Chinese dancers. She then introduced the entertainment, Tavares 3G, who she declared to be “the greatest band since the Jonas Brothers!”

The four part vocal group, who are third generation family members of the Grammy-award winning group Tavares, had the crowd clapping and tapping their feet to their harmonic renditions of classics such as “Ain’t Nobody,” “Never Had A Love Like This Before,” “Rock With You,” and “Sailing.” As the lively performance continued, many guests were up out of their seats and dancing in the aisles—making it an unforgettable evening!

Gala 2013, “Celebrating Every Child” proved to be a great night that reminded us once again of the importance of supporting the needs, challenges, and successes of all children and families.



President's Award recipient  
Boston Casting Founder Angela Peri



Patricia Blake Advocacy Award recipient  
Parent/Advocate Janet Vohs



Martha H. Ziegler Founder's Award recipient  
State Representative Tom Sannicandro

**Special thanks to all who helped make this year's Gala a rousing success, including our Honorary Co-Chairs, Ed and Allyson DeNoble; our many wonderful sponsors; our volunteers; and all who attended!**

### ***Did You Miss Gala 2013 - Celebrating Every Child?***

If you missed Gala 2013 or would like a recap of the evenings events, photos and videos visit [www.fcsn.org/gala/2013](http://www.fcsn.org/gala/2013)  
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Event photography courtesy of Allyson Joyce

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A live performance by R&B group Tavares 3G closed out the night.



# La Disciplina Escolar y la Ley<sup>1</sup>

Por Sherry L. Rajaniemi-Gregg, Esquire y Daniel T.S. Heffernan, Esquire

La disciplina escolar es un tema importante en la vida de muchos estudiantes con discapacidades. A veces, el alumno puede percibir que lo están castigando por la discapacidad o que el distrito escolar está respondiendo en forma inadecuada o poco eficaz a los problemas de conducta que surgen de la misma. Los estudiantes con necesidades especiales también pueden ser victimizados o imitar la conducta inapropiada de otros niños. Durante el año escolar 2010-2011, más de 48.000 estudiantes fueron suspendidos fuera de la escuela, 200 fueron expulsados en forma permanente y 100 fueron enviados a otros ambientes educativos. Las leyes federales y estatales ofrecen salvaguardias procesales y sustantivas importantes para garantizar que los niños con necesidades especiales no sean castigados por sus discapacidades y que se responda adecuadamente a las conductas inapropiadas.

## ¿Qué estudiantes tienen derecho a estas protecciones?

La Ley de Educación para Personas con Discapacidades (*Individuals with Disabilities Education Act, IDEA*) concede a los estudiantes con necesidades especiales derechos importantes en lo relacionado con la disciplina. Los que tienen planes educativos individualizados (IEP, por sus siglas en inglés) y planes 504 están inequívocamente amparados por las protecciones de la Ley IDEA. Además, los alumnos que no reúnen los requisitos para recibir educación especial están cubiertos “si el distrito escolar tenía conocimiento de que el niño tenía una discapacidad” antes de la conducta que dio lugar a la acción disciplinaria, 34 CFR §300.534. Para que se le concedan las protecciones de la ley IDEA a un estudiante antes de la conducta problemática, se deben cumplir las siguientes condiciones:

- uno de los padres debe haber comunicado *por escrito* al personal escolar su inquietud de que el niño necesita educación especial y los servicios relacionados,
- se ha solicitado una evaluación de las posibles necesidades especiales del estudiante pero ésta no se ha completado, o
- el personal escolar debe haber expresado preocupaciones específicas al personal de supervisión con respecto a un patrón de comportamiento del niño.

A pesar de lo anterior, el estudiante no estará cubierto si el padre se ha negado a que su hija o hijo sea evaluado, si ha rechazado servicios para su niño o si se ha determinado que no cumple las condiciones para un plan educativo individualizado o un plan 504.

Si el alumno no reúne los requisitos para estas protecciones en materia disciplinaria, se lo debe disciplinar como a cualquier otro estudiante. Sin embargo, esto no le da al distrito escolar facultades ilimitadas. Todos los distritos escolares de Massachusetts deben tener un manual del estudiante y deben cumplir su código de disciplina y procedimientos. Además, el uso de métodos de sujeción y el aislamiento de los alumnos está estrictamente limitado por los estatutos y reglamentos del estado.

<sup>1</sup>Esta es la parte uno de una serie de dos artículos acerca de la ley y la disciplina de los estudiantes con necesidades especiales. La segunda parte ofrece sugerencias prácticas con respecto a la disciplina escolar.

Por último, las leyes contra la discriminación y de derechos civiles pueden prohibir la aplicación selectiva de disciplina a estudiantes o grupos de estudiantes determinados.

**¿A qué medidas disciplinarias se aplican las protecciones? ¿Y la regla de los diez días?** La Ley IDEA no impide que los distritos escolares impongan ningún tipo de medida disciplinaria a los estudiantes protegidos. Estas protecciones entran en vigor si el distrito escolar se propone, en la realidad o en efecto, cambiar la colocación del estudiante. Aparte de medidas como colocar a un estudiante en un programa o aula diferente o modificar la esencia de su programa educativo, sacar a un alumno de su clase (por ejemplo, suspendiéndolo) por más de diez días equivale a un cambio de colocación. Este “regla de los diez días” se aplica a diferentes exclusiones que suman diez días en un año escolar dado, si se puede demostrar que las conductas son esencialmente la misma. Por lo tanto, los distritos escolares pueden disciplinar a los estudiantes con necesidades especiales en la misma medida que a los estudiantes sin discapacidades, siempre y cuando esto no constituya un cambio de colocación.

**Determinación de manifestación.** Si el distrito escolar busca cambiar la colocación de un estudiante, primero debe convocar a un equipo para llevar a cabo una “determinación de manifestación” para establecer si la conducta estaba relacionada o era una manifestación de su discapacidad. El fundamento de este requisito es el principio de que el distrito no puede castigar a un estudiante por su discapacidad. El distrito escolar no puede cambiar la colocación del estudiante si la conducta en cuestión fue causada por la discapacidad del niño o tuvo una relación directa y sustancial con la misma, o si fue una consecuencia directa de que el distrito no implementó el IEP. Estas determinaciones de manifestación se suelen realizar en forma similar a una audiencia, con testimonios de testigos y considerando documentos diversos. Los padres son los responsables de demostrar que existe una relación entre la conducta y la discapacidad o que no se ha implementado el IEP. Para ello, pueden presentar informes u otros documentos, así como testigos e incluso expertos.

Si se determina que la conducta es una manifestación de la discapacidad del estudiante, el distrito escolar debe llevar a cabo una evaluación funcional de la conducta (*Functional Behavioral Assessment* o “FBA”), o, debe revisar una FBA previa y reincorporar al alumno a su colocación actual, salvo en “circunstancias especiales”, como se describe a continuación. Si la conducta no fue una manifestación de la discapacidad del estudiante, el estudiante está sujeto a las mismas medidas disciplinarias que sus compañeros no discapacitados.

El FBA puede dar lugar a un plan de conducta que define cómo se debe responder a ciertos comportamientos. Si este plan se incorpora a un IEP, también puede limitar el tipo de medidas disciplinarias que el distrito escolar puede administrar, ya que actúa como contrato vinculante entre los padres y distrito escolar.

continúa en la página 12

# Trauma-Sensitive Team Meetings

By Janie Crecco, Training and Support Specialist - Recruitment, Training and Support Center



This is the third in a series of articles on the four opportunities to advocate for trauma-sensitive individual supports for a child: sharing information; trauma-sensitive evaluations; trauma-sensitive team meetings; and the IEP. Helping Traumatized Children Learn, written in 2005 by the Massachusetts Advocates for Children in collaboration with Harvard Law School and the Task Force on Children Affected by Domestic Violence, is the current definitive work on inculcating trauma-sensitivity into the public school system.

Recent studies on resiliency in children, especially those that have faced overwhelming life experiences in early childhood, focus on Four Domains for Success: Relationships, Self-Regulation, Academic Success, and Physical Health and Safety. IEP Team Meetings can look towards providing supports for children in these four domains in order to ensure success in both academic and non-academic achievement.

Children with extended and involved family, invested neighbors, and caring teachers and community have far fewer problems following severe trauma. The ability to “use” this support system, however, depends on the child’s ability to connect with and relate to other people. This strength develops in the early years of life in the caregiver-child interaction. On the other hand, isolated children with few social and emotional connections are very vulnerable to distress and traumatic stress. These children regress, develop dysfunctional styles of coping, and have symptoms such as impulsivity, aggression, inattention, and depression<sup>1</sup>. With this understanding, IEP Team Meeting members can provide ways to repair this relational dysfunction by providing opportunities to develop peer supports and meaningful teacher-student relationships through specific social/emotional goals.

Self-regulation describes the ability of a child to “put the brakes on” in times of emotional stress. Traumatized children are hyper-aroused; they view their world as dangerous and unpredictable and they are prepared to react in a moment’s notice, usually in inappropriate (and possibly unsafe) ways. Again, IEP Team Meeting

members can go a long way towards improving this hyper-arousal by asking for Functional Behavioral Assessments to ascertain the reason for the inappropriate reactions as well as ways to replace the behaviors with better coping skills and strategies.

Academic success can be an island of competency – one place where children can feel good about themselves. There is no better way to build self-esteem than to hear the words “Great job” from a teacher every day. Wouldn’t that be a great IEP Goal – Janie will receive positive praise at least twice a day from each of her teachers? Finally, a safe and supportive school environment ensures the physical and mental well-being of a child. There is much discussion in the media about changing school ecology or culture to be more nurturing and engaging for all children at all stages of education. This is especially true of children who have had difficult early childhood experiences. Positive Behavioral Interventions and Supports should always be included in the accommodations necessary for any student with a history of trauma.

So, what about changing the “culture” of the IEP Team Meeting? Putting a trauma lens on discussions about children, especially children with social/emotional disabilities and challenging behaviors, can quickly change the temperament of a Team Meeting. Engendering a feeling of empathy for the child and his family, many of whom are feeling overwhelmed with community interventions and provider services can go a long way towards understanding their needs. A trauma-sensitive approach can put a different spin on why behaviors are occurring or why academic success (or effective progress) seems so hard to achieve<sup>2</sup>. Imagine a Team brainstorming ways to make a student competent in the above-mentioned four domains (Relationships, Self-Regulation, Academic Success and Physical Health and Safety) and the sky’s the limit! Not just in the classroom, but throughout the school, even before and after school. Because trauma for these kids is pervasive; the symptoms don’t go away after the school bell rings. They need Team support all day, every day.

See what you can do to change the climate – for these kids, it could be a matter of life or death.

<sup>1</sup>Perry, Bruce D., “Resilience: Where Does It Come From?” Scholastic Teachers. April 2006.

<sup>2</sup>Cole, Susan, Helping Traumatized Children Learn: Supportive School Environments for Children Traumatized by Family Violence. Boston, MA: Massachusetts Advocates for Children, April 2005. PowerPoint Notes for the Federation for Children with Special Needs, September 19, 2012.

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## La Disciplina Escolar y la Ley<sup>1</sup> (continuación de la página 10)

Por ejemplo, si el plan estipula que el estudiante perderá el tiempo de computadora por empujar a un compañero, el distrito no puede suspender al estudiante por esa conducta. De igual forma, si el IEP establece determinados procedimientos o respuestas para ciertos comportamientos, el distrito escolar debe acatarlo.

**Circunstancias especiales.** La preocupación por las drogas y la violencia en las escuelas ha llevado a una excepción a los procedimientos anteriores en ciertas “circunstancias especiales”. En estas situaciones, el distrito escolar puede evitar los procedimientos anteriores y colocar inmediatamente a un estudiante en un ambiente educativo alternativo provisional (*Interim Alternative Education Setting*, “IAES”) durante un máximo de 45 días. Estas circunstancias especiales son las siguientes:

- cuando el estudiante tiene un arma en la escuela o en un evento escolar.
- a sabiendas posee, vende o solicita drogas ilegales en la escuela o en un evento escolar, o
- ha causado lesiones corporales graves a otra persona en la escuela o en un evento escolar.

La intención es que la excepción por circunstancias especiales sea de carácter limitado. Los estatutos y reglamentos aplicables definen qué se considera drogas ilegales, armas y lesiones corporales graves. Por ejemplo, por lesiones corporales graves se entiende una lesión con riesgo considerable de muerte, dolor físico extremo, desfiguración prolongada y obvia, o trastorno prolongado del funcionamiento de una parte del cuerpo, un órgano o una facultad mental.

Los padres pueden impugnar las medidas disciplinarias del distrito escolar presentando una solicitud de audiencia a la Oficina de Apelaciones de Educación Especial (*Bureau of Special Education Appeals*, “BSEA”). La BSEA puede revisar la pertinencia de la determinación de manifestación, la existencia de circunstancias especiales, la conveniencia de un ambiente educativo alternativo provisional (IAES) u otros aspectos de la disciplina del niño con necesidades especiales.

**El final de la exclusión escolar permanente en Massachusetts.** Aunque a los estudiantes con necesidades especiales no se les pueden negar todas las formas de educación pese a su conducta, lo mismo no ha sido cierto para los estudiantes sin las protecciones procesales anteriores. Actualmente, el distrito puede excluir permanentemente de la escuela a alumnos acusados o condenados por delitos graves, y los otros distritos nuevos adonde dichos estudiantes se trasladen pueden negarles sus servicios. A partir del 1 de julio de 2014, los distritos escolares no pueden excluir en forma permanente a ningún alumno. Aunque los distritos no están obligados a permitir que tales estudiantes se inscriban en las clases regulares o en la escuela, deben considerar otras formas de reincorporarlos al proceso de aprendizaje y explorar remedios diferentes de la expulsión. Los distritos deben ofrecer algunos servicios educativos y establecer

protecciones procesales para dichos estudiantes. Los detalles de estos servicios y procedimientos estarán más claros cuando se promulguen las normas y prácticas después del 1 de julio de 2014. Además, los distritos escolares deben recopilar datos sobre las suspensiones y exclusiones y comunicarlos al Departamento de Educación Primaria y Secundaria (Department of Elementary and Secondary Education, DESE). Éste tiene la obligación de investigar a las escuelas que suspenden o expulsan a un número “significativo” de estudiantes durante más de 10 días acumulativos, de hacer recomendaciones a tales escuelas y de comunicar públicamente los resultados.


La disciplina escolar puede tener un efecto considerable en la educación de un joven. Para tratar adecuadamente la discapacidad de un alumno y garantizar que las medidas disciplinarias impuestas a los estudiantes con necesidades especiales sean justas, adecuadas y efectivas, es fundamental familiarizarse con la ley en este ámbito tan importante.

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Daniel T. S. Heffernan y Sherry Rajaniemi-Gregg son abogados en la firma Kotin, Crabtree & Strong donde se dedican a la educación especial y los derechos civiles. Han representado a numerosas familias de niños con necesidades especiales en casos de derechos civiles, maltrato y abandono. Para obtener más información sobre la educación especial, los invitamos a visitar el sitio web y el blog de KC&S.

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# A Story of One Teenager's Acceptance of a Complex Medical Condition

By Gloria Klaesges, Parent-to-Parent Coordinator, Family TIES of Massachusetts

The teen years are a confusing time for every adolescent, with a great number of challenges, emerging skills, and self-exploration. Factor in a rare complex medical condition affecting practically every body system, and that can equal a Perfect Storm waiting to happen.

Let me introduce you to Tiffany, and how we helped her to understand she truly is not alone in this world. Tiffany was born with a rare genetic condition called Hurler Syndrome, also known as Mucopolysaccharidosis Type I. This metabolic disorder results from the absence or malfunctioning of lysosomal enzymes needed to break down molecules called glycosaminoglycans - long chains of sugar carbohydrates in cells that help build bone, cartilage, tendons, corneas, skin and connective tissue. People with this condition either do not produce enough enzymes to break down these sugar chains, or they produce enzymes that do not work properly. The result is permanent, progressive cellular damage which affects appearance, physical abilities, organ and system functioning, and, in most cases, mental development.

Imagine trying to explain this to a child as she is growing up, using terms that she can comprehend so that she understands her challenges? Tiffany emerged from her tween years with increased anxiety, which devolved into downright anger. We struggled in explaining to Tiffany how her condition affects her body and helping to develop coping skills she will need for adulthood. She would often

make statements to us like, "I'm a freak," "No one is like me," "I don't understand why I'm so short," "Why can't I read," and "I want to go to Heaven." These increasingly intense statements broke our hearts.

Nothing seemed to help ease her frustration or anger, until we learned that the National MPS Family Symposium was coming to Boston. This was our big chance, Tiffany's first opportunity to spend time with other teenagers who looked, talked, walked or wheeled, and shared many of her challenges and necessary medical treatments. This was the missing link for her. Tiffany needs to know others who understand this condition in the same ways that she does. She needs friends to talk about her feeling and fears, teens who understand her condition in the same ways she does. The most valuable lesson I learned that weekend was that my child, even though a teenager, has many of the same needs as I do as a parent. Talking with other parents has always been the key for me; having parents to lean on who have been in my shoes is what has helped me through all the rough times. Now, Tiffany has friends who understand her in a way that we are not capable of, and those days of heartbreak and rage have all but disappeared.

Family TIES of Massachusetts is a parent-led program that offers information and referral services through its six Regional Parent Coordinators. To find community-based programs and resources, you can make initial contact through our toll-free line, 800-905-TIES (8437), or visit us at, [www.massfamilyties.org](http://www.massfamilyties.org).

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# Lei de Disciplina Escolar<sup>1</sup>

Por Sherry L. Rajaniemi-Gregg, Esquire y Daniel T.S. Heffernan, Esquire

A disciplina escolar tem papel importante na vida de muitos estudantes com deficiência. Algumas vezes, o estudante pode encontrar-se recebendo punição pela sua deficiência ou presenciar situações de comportamento resultantes de sua deficiência sendo tratados inapropriadamente ou ineficazmente pelo distrito escolar. Os estudantes com necessidades especiais podem também ser victimizados ou usados como modelo para a conduta inapropriada de outra criança. Durante o ano letivo de 2010-2011, mais de 48.000 estudantes receberam suspensões escolares temporárias, 200 estudantes foram excluídos permanentemente da escola, e 100 estudantes foram transferidos para ambientes escolares alternativos. A lei federal e estadual fornece procedimentos significantes e proteção substantiva para assegurar que as crianças com necessidades especiais não sejam punidas por causa de suas deficiências e que comportamentos inapropriados sejam abordados de forma apropriada.

**Que estudantes têm direito à proteção?** A Lei Federal sobre Educação de Indivíduos com Deficiência (“IDEA”) está de acordo com os importantes direitos dos estudantes com necessidades especiais em relação à disciplina escolar. Os estudantes dos IEPs e planos 504 têm inequívoco direito à proteção da IDEA. Além disso, os estudantes que ainda não têm direito aos serviços de educação, receberão cobertura “caso o distrito escolar tenha tido conhecimento de que a criança era uma criança com uma deficiência” antes de que tenha ocorrido o comportamento que precipitou a ocorrida ação disciplinar. 34 CFR §300.534. A fim de que um estudante se beneficie das proteções da IDEA *antes* de que o comportamento tenha ocorrido:

- os pais têm que ter expressado preocupação *por escrito* aos funcionários da escola que a criança necessita de educação especial e dos serviços relacionados;
- uma avaliação solicitada das suspeitas de necessidades especiais do estudante não tenha sido completada ou,
- os funcionários da escola tenham expressado específicas preocupações aos funcionários da supervisão sobre um modelo de comportamento apresentado pela criança.

Apesar do acima citado, o estudante não receberá cobertura se os pais se recusarem a ter a criança avaliada, os pais tenham recusado a prestação de serviços para a criança, ou se a criança tenha sido considerada não elegível para um IEP ou plano 504.

Se o estudante não é elegível para estas projeções em questões disciplinares, deve ser tratado da mesma maneira que os outros estudantes em questões disciplinares. Entretanto, isto não está em concordância com a discricção sem restrição do distrito escolar. É exigido de cada distrito escolar de Massachusetts ter um manual do estudante, precisando aderir ao seu código e procedimentos disciplinares. Além disso, o uso de restrições e afastamento de estudantes é estritamente limitado por estatutos e regulamentos em Massachusetts. Finalmente, as leis de anti-discriminação e direitos civis podem proibir a aplicação seletiva de disciplina para certos estudantes ou grupos de estudantes.

<sup>1</sup>Esta é a primeira parte de um artigo de duas partes. Este artigo aborda a lei que envolve a disciplina de estudantes com necessidades especiais. O segundo artigo fornecerá sugestões práticas em relação a questões de disciplina escolar.

**A quais medidas disciplinares estendem-se as proteções – a Regra dos Dez Dias?** A IDEA não impede que os distritos escolares imponham qualquer tipo de disciplina para estudantes protegidos. Estas proteções “concretizam-se” caso o distrito escolar buscé-las, em realidade ou com efeito, mudar a colocação do aluno. Além das ações tais como a mudança de um estudante para um programa diferente ou sala de aula ou a mudança da essência do programa de um estudante, removendo o estudante da sala de aula, por exemplo por suspensão, por mais de dez dias, é o equivalente a um lugar de colocação. Esta “Regra dos Dez Dias” aplica-se à múltiplas exclusões que totalizam 10 dias para um dado ano letivo, caso possa ser demonstrado que os comportamentos são essencialmente os mesmos. Portanto, os distritos escolares podem disciplinar o estudante com necessidades especiais nas mesmas proporções que a dos estudantes sem deficiência, contanto que isto não constitua uma mudança de colocação.

**Determinações de Manifestação.** Se o distrito escolar busca mudança na colocação do estudante, deve primeiramente assegurar que a equipe conduza uma “determinação de manifestação” para determinar com que o comportamento estava relacionado, ou uma manifestação, da deficiência do estudante. Sujeito a esta exigência está o princípio de que um distrito não pode punir um estudante por causa de sua deficiência. O distrito não pode mudar a colocação do estudante se a conduta em questão foi resultado da causa, ou estava direta ou substancialmente relacionada, com a deficiência da criança, ou foi o resultado direto da falha do distrito em implementar o IEP. Estas determinações de manifestação são conduzidas tipicamente como quase-audiências, com o testemunho das testemunhas e a consideração de vários documentos. Os pais têm o ônus de provar para estabelecer a conexão entre a conduta e a deficiência ou falha para implementar o IEP. Para fazer isso, os pais podem submeter relatórios ou outras documentações tanto quanto apresentar testemunhas, inclusive de especialistas.

Caso o comportamento seja determinado como sendo uma manifestação da deficiência do estudante, o distrito escolar deverá conduzir uma avaliação de comportamento funcional (“FBA”), ou rever um FBA pré-existente e retornar o estudante para a sua atual colocação, exceto em situações envolvendo “circunstâncias especiais” descritas abaixo. Se o comportamento não foi uma manifestação ou a deficiência do estudante, o estudante está sujeito à mesma disciplina como a de seus colegas não deficientes.

A avaliação FBA pode resultar em um plano comportamental que delineia como certos comportamentos devem ser abordados. Caso incorporado em um IEP, este plano comportamental pode também proscrever a disciplina que o distrito escolar pode fazer justiça pelos seus atos como um contrato vinculado entre os pais e o distrito escolar. Por exemplo, se o plano comportamental provê que um estudante perderá seu tempo com o seu computador se ele/ela empurrar um outro estudante, o distrito não poderá suspender o estudante por tal comportamento. Do mesmo modo, se o IEP provê certos procedimentos ou respostas a certos comportamentos, eles devem ser aderidos pelo distrito escolar.

## Waypoint Adventure



Waypoint Adventure is a non-profit organization that provides life transforming outdoor adventure programs for people with all abilities. Our mission is to help youth and adults with disabilities discover their purpose, talents, and strengths through the transforming power of adventure. Our hope is that all people, regardless of ability, will have opportunities for adventure and through them realize their personal value, strengths and abilities. These experiences will help people become stronger individuals and community members.

Recently we had the opportunity to do some indoor rock climbing with students from Perkins School for the Blind. The next day, one of our volunteers sent us an email with a story about one of the participants, a young man named Steve. She wrote:

At the end Steve asked me if I worked at the gym, I said “No, I was with Waypoint - this was a gym open to the public.” He clarified again, “Is this a gym for blind people?” I said “No,

there are people with vision here too. They’re climbing all around us.” Then he asked if he was climbing on a special wall. I smiled because I finally knew what he was asking. I said “No, you were climbing on the same walls as everybody else!” He TOTALLY lit up and had a huge grin on his face. He couldn’t believe it!

I know he was feeling very accomplished before, but he felt SO good when he found out that he was climbing just like everyone else.

This summer we will be running the following open enrollment programs: **Teen Adventure Camp** (ages 14+): Day Hike - July 16; Rock Climbing - July 17, Kayaking - July 18. **DCR Universal Access Kayaking**: July 9, 11, 23, 25

For more information about these programs or about other program offerings please visit Waypoint's website at [www.waypointadventure.org](http://www.waypointadventure.org) or email Adam Combs at [acombs@waypointadventure.org](mailto:acombs@waypointadventure.org).

## Lei de Disciplina Escolar<sup>1</sup> (continuação da página 14)

**Circunstâncias Especiais.** Preocupação sobre as drogas e a violência nas escolas gerou uma exceção aos procedimentos acima em certas “circunstâncias especiais”. Nestas situações, um distrito escolar pode evitar os procedimentos acima e remover um estudante imediatamente para um Estabelecimento de Educação Alternativa Interina, *Interim Alternative Education Setting* (“IAES”), por até 45 dias. Estas circunstâncias especiais são:

- quando um estudante possui uma arma na escola ou em uma função escolar;
- conscientemente possui, vende ou solicita drogas ilegais na escola ou em uma função escolar; ou,
- causou lesões corporais a outra pessoa na escola ou em uma função escolar.

A exceção para a circunstância especial tem a intenção de ser limitada. Estatutos e regulamentos aplicáveis define drogas ilegais, armas de fogo e lesões corporais sérias. Por exemplo, lesões corporais sérias significa lesão envolvendo risco substancial de morte, dor física extrema, por exemplo, prolongada e desfiguração óbvias, ou incapacidade prolongada da função física ou de um membro do corpo, órgão, ou faculdade mental.

Os pais podem desafiar as ações disciplinares do distrito escolar ao requerer um pedido de audiência com o Bureau de Apelação em Educação Especial, *Bureau of Special Education Appeals* (“BSEA”). O BSEA pode rever a propriedade da determinação da manifestação, a existência de circunstâncias especiais, a adequabilidade do IAES ou outros aspectos da disciplina de uma criança com necessidades especiais.

**O fim da exclusão escolar permanente em Massachusetts.** Enquanto estudantes com necessidades especiais não podem ter negados todas as formas de educação independentemente de sua conduta, o mesmo não tem sido

verdade para os estudantes sem as proteções dos procedimentos acima citados. Atualmente, tais estudantes que são acusados de delito podem ser excluídos permanentemente da escola por seus distritos escolares e terem seus serviços negados por qualquer novo distrito para onde o estudante tenha sido transferido. Tendo início em 1º de julho de 2014, os distritos escolares talvez não possam mais excluir qualquer estudante permanentemente. Enquanto os distritos não tenham que permitir que tais estudantes sejam matriculados em turmas regulares, devem considerar maneiras de novamente engajar os estudantes no processo de aprendizado e explorar algumas medidas de não-expulsão. Os distritos devem prover alguns serviços educacionais para os estudantes, bem como estabelecer proteções de procedimento para aqueles estudantes. Os detalhes destes serviços e procedimentos se esclarecerão com a promulgação de regulamentações e a prática atual após 1º de julho de 2014. Além disso, os distritos escolares devem coletar dados sobre suspensões e exclusões e provê-los ao Departamento de Educação Elementar e Secundária (“DESE”). O DESE é obrigado a investigar as escolas que suspendem ou expulsam um número “significante” de estudantes por mais de 10 dias cumulativos, bem como fazer recomendações para aquelas escolas e tornar os resultados públicos.

A disciplina escolar pode ter impacto significativo na educação do estudante. Para abordar apropriadamente uma deficiência do estudante, e para assegurar que os estudantes com necessidades especiais recebam disciplina justa, apropriada e eficaz, é essencial estar familiarizado com a lei nesta área crucial.

Daniel T.S. Heffernan e Sherry Rajaniemi-Gregg são advogados junto a Kotin, Crabtree & Strong onde concentram-se em lei dos direitos civis e educação especial. Eles têm representado numerosas famílias com crianças com necessidades especiais em casos de ações de abuso e negligência. Mais informação sobre educação especial pode ser encontrada no website e blog KC&S.



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## SAVE-THE-DATE

Celebrate the Federation's 40<sup>th</sup> year with these upcoming Events:

### **Walk, Roll, Shobble, Stroll**

**Our first ever fundraising walk**

Massachusetts Hospital School's Nature Trail (1.5 miles) • Canton, MA

Sunday, September 22, 2013

### **2014 Visions of Community Conference**

Seaport World Trade Center • Boston, MA

Saturday, March 8, 2014

### **Gala 2014 - Celebrating Every Child**

**40<sup>th</sup> Anniversary Dinner and Silent Auction**

Westin Waterfront Hotel • Boston, MA

Friday, May 2, 2014

**Visit [fcsn.org](http://fcsn.org) for more details.**

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