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Therapeutic and Curative Training Is Not “Educational” Under the Dover Amendment

BY MARK A. BORENSTEIN • NOVEMBER 21, 2018

Deciding that the “primary and predominant” purpose of a behavioral skills program was the treatment of serious mental illness and not the teaching of “core life skills,” the Land Court rejected arguments that the program constituted an “educational” use within the meaning of the Dover Amendment in its recent decision in *The McLean Hospital Corporation v. Town of Lincoln*, Misc. 16-000694 (October 22, 2018).

The “Dover Amendment” refers to [Massachusetts General Laws Chapter 40A, Section 3](#), which provides in part that a local zoning ordinance or bylaw cannot prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes by a nonprofit educational corporation.

The *McLean* case involves the proposed relocation of a highly structured behavioral skills program for young adults suffering from mental illnesses (the “3East Boys Program”). Before *McLean* moved the 3East Boys Program to Lincoln, Massachusetts, it requested a zoning determination from the Lincoln Building Commissioner that the program was an “educational” use within the meaning of the Dover Amendment. The Building Commissioner agreed with *McLean*’s interpretation and therefore determined that the use was permitted as of right. Certain Lincoln residents appealed the Building Commissioner’s determination to the Lincoln Zoning Board of Appeals, which ultimately overturned the determination. As a result, *McLean* filed an action with the Land Court seeking a determination that the 3East Boys Program was “educational” under the Dover Amendment and an annulment of the Zoning Board of Appeals decision.

In its decision, the Land Court provides an examination of the “broad and comprehensive” definition of “educational” under the Dover Amendment, noting that Massachusetts courts have “embraced teaching in non-traditional settings, or to non-traditional learners,” which have been “characterized as ‘core life skills’ such as cooking, shopping, job-seeking, or other skills people need on a daily basis to function in society.” The Court concluded, however, that “[p]rograms more medical in nature” have been excluded from the broad definition of “educational” without citing any case law in support.

Following a review of the facts presented at trial, the Court found that the 3East Boys Program did not teach the “core life skills” recognized by the Massachusetts courts as “educational,” as asserted by McLean, and instead, focused on “developing skills which look inward and pointedly address the manifestations of the individual’s [mental health] diagnosis.”

Furthermore, the Court rejected the argument that the manner of teaching and the structure of the program makes it an “educational” use, stating that “a well-developed curriculum does not automatically make [a program] ‘educational’ within the meaning of the Dover Amendment” and “to conclude that the structure of a program essentially transforms a therapeutic program into an educational one for purposes of Dover Amendment protection would, in fact, elevate form over substance.”

Based on its “medical in nature” exclusion, the Court ultimately held that the primary and predominant purpose of the 3East Boys Program was “therapeutic and curative” and not an “educational” use entitled to benefits and protections of the Dover Amendment.

This decision may have significant implications for the future interpretation of “educational” uses under the Dover Amendment. For decades, Massachusetts Courts have interpreted “educational” in a “broad and comprehensive” manner, which have allowed non-profit educational institutions to utilize the benefits provided under the Dover Amendment to develop and use property to further their educational purposes. With this decision, the Court has created movement in the interpretation of “educational” and has cast uncertainty onto “educational” uses, which may be quasi-medical in nature. Practitioners should pay close attention to future Dover Amendment decisions to see if there is additional movement in the interpretation of “educational” under the Dover Amendment as a result of this decision.