



HELPING HAND

A Monthly Update from the
Special Needs Planning Practice Group

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How to Administer a Special Needs Trust
Saturday, October 18, 2008

March 2008

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Special Needs Planning Practice Group

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The Special Needs Planning Practice Group

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March 2008

A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Esq.

Welcome to the FTW Special Needs Planning Practice Group newsletter, *Helping Hand*. As a practice group, we are a group of attorneys, paralegals and case-managers who promote our clients' interests at all



stages of their lives by providing effective legal counseling, advocacy, and innovative solutions. We strive to provide useful and practical resources to our clients. *Helping*

Hand is meant to contain helpful information and resources. I hope you enjoy it. I encourage you to send me your comments, requests for information on specific topics and suggestions for areas of improvement.

This past month I've reflected on the many people who have made a significant contribution in the lives of people with differing abilities and their families. We, as a community, lost a dear friend and colleague in the recent passing of Don Guild. Don was a pioneer advocate. He was a founding member of South Middlesex ARC, a former President

of ARC/MA and a former director of ARC/US. He was in the White House when President John F. Kennedy signed landmark legislation advancing the interests of individuals with intellectual disabilities. He received a lifetime achievement award from ARC/MA at its recent 50th anniversary gala. He leaves his wife, Pauline, and three adult children, Valerie, Greg and Kathleen.

I met Don over twenty-five years ago when we worked together on a statewide DMR planning effort. Over the years, our paths crossed several times on a number of projects. I believe I speak for all who worked with him – we will miss him very much.

Don and Pauline's daughter, Kathleen, is supported in her residence by a committed case manager. Kathleen has worked successfully at Metro West Medical Center for over thirty years. She loves her job and is well regarded there. I learned from Don and Pauline that Kathleen literally whistles on her way to work – she loves her job so much!

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Receive this newsletter via email!

Send an email to smurphy@ftwlaw.com with the subject: SNP Newsletter and we'll add you to our list.

MESSAGE

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I can't help but celebrate Kathleen's success. Kathleen's desire to strive to be the very best she can be, to contribute through her work, and to be happy with herself, have been made possible through Don and Pauline's guidance and stewardship. In meeting with Pauline following Don's passing, I was given a poem written by Pauline about her relationship with Kathleen that was published in *Vintage Voices, An Anthology of Prose and Poetry*, by the Natick Writers Guild. I'd like to share it with you:

A LEARNER

By Pauline Guild

I learned so much from you.
 It should have been the other way around,
 But I'm not surprised that the student became the teacher.
 You taught me that success is measured by small accomplishments,
 not in great leaps and bountiful gains.
 You showed me the truth of each new day – a living symphony of sounds and sights and the joy of being part of it.
 For me, you opened doors to new ideas and experiences and taught me that we are created equal in our ability to grab onto life and stake a claim, finding our own little niche, for better or for worse.
 You taught me the joy of receiving and the thrill of giving, accepting good fortune graciously and in return giving back to the best of your potential – as you have done.
 I learned that beneath the camouflage of everyday faces, we all share the same desires and goals, and that the camouflage is worn as protection against the cynics and the judgmental.
 You proved that there is pride in doing a job and doing it well.
 You have taught me that even the wingless can fly.
 That all it takes is the courage to try and the willingness to take the flight.
 You are teaching me that there is a time to cling and a time to let go. It's a hard lesson and one I'm still struggling with, hoping to master it in the time remaining.

Thank you, Pauline, Donald, and Kathleen from another learner.

For feedback or questions, contact me at (508) 459-8059 or fmisilo@ftwlaw.com.

NEWS BRIEFS



Coming of Age Legal Resource Guide

Copies of the recently published legal resource guide "Coming of Age" by attorney Frederick M. Misilo, Jr. are now available!

After working with families for many years, Misilo noticed that the transition from special education services to adult services can be particularly bewildering for families and for an individual with developmental disabilities.

This legal resource brings together a variety of important topics including legal emancipation, options for personal, financial & healthcare decision-making, government benefits and services, special needs estate planning and person centered planning.

Download a copy of this guide by visiting Misilo's bio page at ftwlaw.com or contact Sara at (508) 459-8021 or smurphy@ftwlaw.com for copies of the booklets.

Schedule a Presentation @ Your Organization!

In effort to educate families and others, the attorneys in the SNP Group at FTW are available to present seminars on a variety of legal topics pertinent to parents of individuals with developmental disabilities such as:

- **Successful Planning for the Future**
 An essential seminar on special needs estate planning for parents of persons with developmental disabilities.
- **Coming of Age**
 An overview of the legal issues faced by persons with developmental disabilities upon attaining the age of 18 years and planning implications for their families.
- **Government Benefits Overview**
 A comprehensive seminar on getting the maximum amount of federal and state government benefits for persons with developmental disabilities.

To schedule a presentation, contact:
 Lori at (508) 459-8035, lgerber@ftwlaw.com
 Sara at (508) 459-8021, smurphy@ftwlaw.com

The FTW Special Needs Planning Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable trusted advisor committed to providing excellent service to our clients throughout their lifetimes. We recognize the importance of treating our clients with respect and dignity.



Special Education Law: An Overview of Parents' Rights

By Rosalie A. Beith, Esq.



While eligible students in Massachusetts have been guaranteed special education and related services since 1972, determining who qualifies and what those services should be is not always straightforward. To make matters worse, negotiating the special education process can be daunting for most parents, and, as evidenced by recent headlines, parents are frequently unclear about their rights. Even though the school district is initially charged with making the assessment as to whether a child should receive special education services, parents can challenge the school district's determination, and parents are exercising that right with increasing frequency.

The Bureau of Special Education Appeals (BSEA) is responsible for hearing disputes between parents and school districts in Massachusetts regarding special education services.

BSEA statistics for its last fiscal year (July 1, 2006 through June 30, 2007) indicate that 6,245 parents formally rejected a special education plan proposed by a school district, an increase of more than 10% over the last annual report. There were 592 requests for hearings filed, although only 41 cases actually resulted in a written decision. Of these 41 cases, parents prevailed in 6 (approximately 14.6%), school districts prevailed in 25 (approximately 60.9%) and 10 decisions involved either mixed relief or relief against another state agency. Notably, the parents were

represented by counsel in 5 of the 6 cases in which parents fully prevailed.

Only a fraction of the disputes between parents and school districts are referred to the BSEA, since the law requires that efforts be made to resolve disagreements more informally. Parents, therefore, need to understand the process for resolving their concerns about special education services for their children. To receive special education services, a child must have a documented disability, the disability must impede the

To receive special education services, a child must have a documented disability, the disability must impede the child's educational progress and the child must require specially designed instruction or a related service to access the general education curriculum.

child's educational progress and the child must require specially designed instruction or a related service to access the general education curriculum. Autism spectrum disorder, developmental delay, sensory impairment (such as blindness or hearing loss), emotional impairment and specified learning disabilities are all recognized disabilities under the law. If a parent requests an evaluation of his or her child for special education eligibility, the school district must perform an evaluation. A teacher or school administrator may also refer a child for evaluation, but no evaluation

will take place without the parents' written consent.

Once the evaluation has been completed, the school must meet with the parents to discuss the results of the evaluation, the child's eligibility for special education services and an Individual Education Plan (IEP) if services are needed. If parents and the school district agree on the interpretation of the evaluation and the proposed IEP, the special education services detailed in the IEP will be implemented. Of course, it's when the parents do not agree with the school's determinations that matters can become difficult, but there are some steps parents can take in these situations. First, the parents can have a second evaluation performed by a professional who is not employed by the school, and in certain situations the school can be required to pay for all or part of the cost.

A parent also has a right to reject all or part of a proposed IEP, in which case the school district must refer the matter to the BSEA. The BSEA offers several options to resolve disputes concerning IEPs, ranging from non-binding mediation to a full hearing on the merits. If the parents continue to be dissatisfied even after a BSEA appeal, they may file an action in either the state or federal court. As the statistics show, the road to resolving parents' concerns about their child's educational needs can be long and difficult. We are able to provide support, guidance and advocacy to parents who need help along the way.

