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October 9, 2009

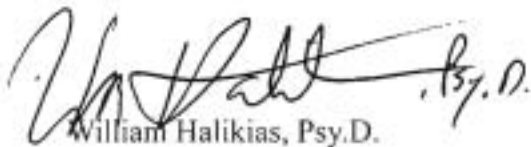
Matthew Engel, Senior Attorney
Disability Law Center
32 Industrial Drive East
Northampton, MA 01060

Re: Lynn Alternative Public School

Dear Attorney Engel:

Attached find my final report in the matter of the Lynn Alternative Public Schools along with a final billing summary. Please call me if you have questions about my report, or if I can be of further help to you in this or another mater. It was a pleasure working and collaborating with you on this case.

Yours very truly,


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A Study of Disciplinary Practices At The Lynn Alternative Public Schools

Prepared for the Disability Law Center

October 9, 2009

In April 2009, Matthew Engel, Senior Attorney at the Disability Law Center (DLC) in Northampton, Massachusetts, requested a consultation about the disciplinary practices at the Lynn Alternative Schools (LAS). Attorney Engel had become involved with LAS in October 2007, as part of an investigation into allegations of excessive and detrimental use of restraint, seclusion, suspensions, and other harmful disciplinary practices.

Since DLC began its work, LAS experienced a reorganization and building changes. Currently, the system consists of three administratively distinct programs in two buildings. The Washington Elementary School has a pre-kindergarten to grade one program on the first floor, and a two to sixth grade program on the second floor. All the students in the Washington building have an Individual Education Program (IEP) for a mental health condition (also called a severe emotional disability, emotional disability, or social-emotional disability), and many have secondary speech and language or learning disabilities. The Fecteau–Leary Junior/Senior High School is a seventh through twelfth grade program with two administrators: a principal and assistant principal. The middle school students (grade seven and eight) are on the second floor and the high school students (grade nine to twelve) are on the first floor. All the Fecteau–Leary’s seventh grade students have IEPs. The rest of the student body either have IEPs or are considered “alternative school” children, meaning their behavior or attendance made it hard for them to function in a main stream classroom. All the students at Fecteau–Leary with IEPs have a mental health condition, often with co-occurring speech and language or learning disabilities, and some may have intellectual limitations.

As part of its reorganization, and perhaps influenced by DLC’s concerns about discipline, LAS contracted with the May Institute to consult with and train staff in Positive Behavior Support (PBS), also known as Positive Behavioral Interventions and Supports (PBIS). PBS is a system that trains staff to employ positive reinforcement techniques with the goal of decreasing problem behaviors and increasing on-task behavior. May Institute conceptualizes its work as a “coaching” and “data-driven” methodology. With coaching, May wants a majority of staff, following an initial presentation, to “buy-in” to the PBS philosophy. Then they work with staff to transfer a

sense of ownership and responsibility for the PBS program. Information about “behavior incidents” or disciplinary events are compiled into a school-wide information system or SWIS. This allows staff and the May consultants to track the number of discipline events by day, month, time of day, nature of event, or by student or staff.

My initial involvement in this matter included understanding Attorney Engel’s concerns followed by an interview with Robert Putnam, Ph.D., of the May Institute. I also reviewed Dr. Putnam’s base-rate data on student discipline at LAS for 2008.

Dr. Putnam presented as optimistic about the future success of his efforts and LAS’ commitment to the PBS program. One important aspect of May’s initial data was that a relatively small number of staff and students accounted for a noteworthy proportion of disciplinary events; that is, individual students who accrued well above average referrals and staff who initiated well above average disciplinary events.

I also reviewed Attorney Engel’s initial summary of his investigation at LAS. This included case material or narratives containing allegations of mistreatment against parents and students by staff. While this material is confidential, the alleged incidents described in this case material made LAS staff appear abusive, degrading, or otherwise harmful to the educational and emotional well-being of youngsters. Attorney Engel’s report signaled concern in the areas of restraint of students by staff, suspensions, use of seclusion or time-out rooms, and assault charges by staff against students.

The second part of this consultation involved a site visit to LAS. This occurred on October 5 and 6, 2009, and included the three alternative schools: Washington Elementary School pre-kindergarten to grade one; Washington Elementary School two to sixth grade; Fecteau–Leary Junior/Senior High School. I understood that this observation and evaluation should assist in determining the extent to which the schools demonstrated requisite professional skills, philosophy, and programatic elements necessary to address DLC’s concerns about discipline.

Cheryl Meninno Ed.D., the Administrator of Special Education in Lynn, established the schedule I requested.¹ She and other Lynn staff cooperated in providing me with unrestricted

¹ *E-mail to Dr. Meninno, September 14, 2009:*

Dear Dr. Meninno:

I wanted to communicate with you about my anticipated visit and observations at the three Lynn alternative schools: Fecteau-Leary Middle School and Fecteau-Leary High School, and the Washington Elementary School. As you know, I have been retained by Matthew Engel, Senior Attorney at the Disability Law Center, to assist him with matters pertaining to discipline at these schools. The visit would occur on October 5th and 6th at the Lynn schools. I would like access to certain environments, meetings, and individuals at the schools. I appreciate your help building my schedule around the three programs and over the course of two days.

- 1) I would like unrestricted access to each of the programs including the halls and time-out and seclusion areas. I want time to observe staff, students, and events in those areas.
- 2) I want to interview staff. I would like to interview two or three staff who have, based on my review of Dr. Putnam’s data, participated in a noteworthy proportion of the disciplinary actions.
- 3) I want to interview the principals at the three alternative programs.
- 4) I want to sit in on and observe staff meetings devoted to the May Institute’s PBS approach.
- 5) I would like, near the conclusion of my visit, to interview Dr. Putnam.*

**(Due to scheduling issues, I met with Dr. Putnam at the start of rather than at the end of the site visit.)*

access to the schools. I believe the results of this assessment are a reasonably accurate snapshot of the current LAS environments.

Methods employed during this site visit included observation of classrooms and student-teacher interactions, hallway interactions, inspection of “time-out” areas, interviews of staff and May consultants, observations of PBS Leadership Team Meetings, and a review of SWIS and other school-generated data. A limitation of the site visit was not interviewing students or parents, especially parents or students who voiced grievances against LAS.

The results of observations and an assessment of the current LAS disciplinary system indicated generally humanistic, professional, and functional schools and student-teacher relationships, and in the context of a student body with significant conduct, mental health, and likely socioeconomic problems. While the PBS system is expected to improve the LAS climate and disciplinary practices, several threats exist to its success including families or consumers who may not be impacted by this system, inadequate data collection, inconsistent staff and student ownership of the program, and managing the non-sustaining effects of initial expectations. The following paragraphs detail these results.

First, the three schools I visited looked reasonably humanistic and functional. I did not observe evident staff dysfunction or incompetence. I observed no restraints and staff at the three programs said that restraints were rare events, virtually nonexistent at the Fecteau-Leary system. Staff reported that restraint will only happen when a student presents as a risk to self or other. For example, serious head-banging might be a reason to restrain a student in Washington’s pre-k to grade one program.

Only the two to sixth grade program at Washington had a seclusion-like space, called the “calm-down room.” It had mats on the floor and lower walls, a door with a view window, and no lock. Staff said that the door was usually left open and in rare cases, when an upset student refused to stay in the room, be held shut by a staff person. The two to sixth grade program at Washington also had a “time-out” space consisting of two desks in an open room where I understood students could sit and consider what to do to return to class. The pre-k to first grade program at Washington had a time-out-like space consisting of mats on the floor and wall and a large tube that children could crawl through. It looked more like a play space than a room that young children would find aversive, and I observed three children seek this room out for play.

The Fecteau-Leary School had a room with desks designated as the “time-out” room. This looked like a small classroom. It had a door that was, I understood, left open and never locked. Fecteau-Leary students used this space to calm down and, with staff support, think of ways to return to the classroom.

All the time-out or time-out-like spaces were staffed by teachers or hall monitors. For example, the Fecteau-Leary program had an aide assigned to the time-out space to talk with and help students. It was my impression that all the programs supervised (eyes-on) students when they were in time-out.

The two to sixth grade program at Washington appeared the most active program. It had several students out of the classroom and running or yelling in the large hallway. These youngsters looked very angry, agitated, or frenetic. I observed one instance of a student in the hall trying to hit another student, and a staff member got between the boys, put hands on the

instigator, and moved him away from the boy he was attacking. This looked like an appropriate intervention which did not rise to the level of a restraint. Along with the assigned hall monitor, the principal and an aide were often in the hallway to work with active students in the two to sixth grade Washington program.

All three programs had youngsters who displayed evident behavior or emotional difficulties that would make their ability to function in a mainstream school difficult or impossible. In diagnostic parlance these children would present with Pediatric Bipolar Disorder, Clinical Depression, Oppositional Defiant or Conduct Disorder, Post-Traumatic Stress Disorder, Attention Deficit/Hyperactivity Disorder, Reactive Attachment Disorder, intellectual limitations and learning disabilities, and perhaps some youngsters on the Autism Spectrum. I expect that deleterious social forces influence their social-emotional presentation and include poverty, abuse, domestic violence, substance abuse, and exposure to gangs and criminal activity. The Washington programs appeared to have children with the most severe disabilities, followed by students in the Fecteau-Leary middle school. Some of the Fecteau-Leary senior high classrooms looked functional and task-focused, others had youngsters with evident conduct or social-emotional challenges.

Second, the introduction of PBS into LAS is expected to improve the overall climate and decrease the number of disciplinary events. Research suggests that PBS and other similar programs are reasonably effective in improving school climates. However, there are important threats to the reliability of the PBS system that, without redress, will limit its efficacy.

Foremost, parents presenting with grievances to DLC or other advocacy organizations may not be the population that PBS reaches or the SWIS data reflects. These families or consumers appear to be a unique rather than representative group. Their complaints and experiences of disempowerment are unlikely to be assuaged with positive reinforcement techniques.

There are at least three ways to understand the consumers voicing grievances to DLC: (a) historical, (b) experiential, and (c) victimized. Group A comprises consumers who felt mistreated at LAS before its reorganization, including a change of buildings, program, and some staff. Group B includes consumers who feel marginalized and victimized because of mental health and social-economic hardships. They readily perceive social injustice as familiar and inadvertently misattribute ill-will to authority figures such as teachers and administrators. Finally, Group C consumers have been mistreated by specific staff at LAS.

It is difficult without further information to estimate the size of disaffected consumers at LAS. Based on my observation of the staff and schools they appear to be a minority. However, they have extraordinary power to influence perceptions and mobilize organizations such as DLC and other advocacy groups.

An example from Group B came during my interview with the pre-k to first grade principal at Washington. She showed me a handwritten letter from a parent who, evidently angry, wrote of being contacted by an individual, possibly an advocate, who told her that her young child was being “hog-tied” at the school. The principal said she met with this parent to reassure her that the school did not “hog-tie” or otherwise tie-up children. She described this mother as looking pale, frightened, and agitated around the imagery of her son tied up and struggling. The principal depicted a young mother with likely traumatic life experiences whose anxiety had been activated by the dysphoric imagery of the school abusing her child. A second example from Group B came

from the two to sixth grade principal at Washington who described a parent who was enraged over something this principal considered inaccurate but whose upset rose to a level of reportedly challenging the principal to “a fistfight.” Other staff spoke of the Massachusetts Association of Special Education Parent Advisory Councils (MASS PAC) as parents and advocates who misdirected too much anger at the school. Consumers may exist in Group A and C as well but, unlike school personnel, I did not have the opportunity to interview them and hear their perceptions.

One important element of this discussion concerns the inaccessibility of consumer complaints for remediation by the LAS system. Complaints heard by DLC or other advocacy groups have not, to my knowledge, been presented to LAS or school administrators in ways that allow them to review incidents, take corrective action, or mediate disputes.

Third, May Institute has yet to develop an adequate data collection system to record and track disciplinary events. Foremost, SWIS has not yet incorporated critical administrator-generated events including suspension, detention, expulsion, and request for police or juvenile justice interventions. Another non-classroom event that may not be adequately tracked by SWIS is attendance. Events such as suspension and detention play a critical role in the disciplinary life at LAS and ought to be incorporated into SWIS frequency data.

At the Fecteau-Leary program the SWIS data for September 2009 showed a meaningful decrease in disciplinary events over September 2008.² This data cited that no students had been referred for acts of physical aggression.³ In fact, according to the principal’s log of suspensions,⁴ seven students had been suspended for seven acts of physical aggression between September 15 and October 6, 2009. Some of these events looked significant including three incidents of an “assault on a teacher.” Other critical incidents on the principal’s suspension log but not SWIS included trespassing and possession of drugs.

It appears that the SWIS data base and LAS would benefit from tracking, analyzing, and addressing the frequency of suspension, detention, expulsion, requests for police or juvenile justice assistance, and attendance. Of import to DLC, its clients and the consumer complaints it investigates may occur within the group of students impacted by administrator-generated rather than classroom-generated events.

Fourth, the PBS system appears to have a majority of staff buying into it given interviews with teachers and administrators. However, the system has not yet had enough time to assess how many teachers may not be carrying out the PBS procedures. For example, teachers at the two to sixth grade Washington Elementary School looked more consistent in their use of PBS than teachers in the pre-k to first grade program; teachers of middle school students at Fecteau-Leary looked more invested in the program than high school teachers. I observed one high school teacher who struggled to maintain control of his classroom. He used none of the PBS techniques for encouraging on-task behavior despite also being a member of the PBS Leadership Team.

² Fecteau-Leary Corrective Procedures per Day per Month per 100 Students = 13.9 (9/08) to 5.2 (9/09)

³ SWIS Referrals by Problem Behavior, 8/1/09 to 10/2/09

⁴ Incident List, Generated 10/6/09

Fifth, another threat to the reliability of PBS is that the current reward system—for example, a soda or a free gym period for good behavior⁵—is geared toward younger children. It is less likely to prove adequate or reinforcing for more mature youngsters. It also did not appear consistent with an educational perspective. For example, a trip to a museum or a career day looked much more in synch with educational goals than a soda.

Finally, the May Institute has not yet articulated how it will control for and manage Hawthorne effects. Hawthorne effects are a type of reactivity whereby people involved in experiments or other interventions temporarily improve or otherwise change their behavior because they are being studied and observed rather than because the intervention is necessarily efficacious. For example, teachers are aware that data is being collected about their rate of discipline referrals.⁶ Staff at the positive tail of disciplinary referrals know they risk administrator intervention. Therefore, they may be less likely to generate referrals while not changing their classroom behavior.⁷ Another threat to PBS surrounding Hawthorne effects is that as the novelty of the program washes out so might its benefits.

Attorney Engel wanted this evaluation to help him with decision-making and advocacy on behalf of consumers at LAS. Decision makers should review and scrutinize this report, look for ways that it coincides with or contradicts other information, and use the information contained in this report as needed to help in this matter. The veracity of conclusions and recommendations in this report could be altered if important information had been withheld from me. Recommendations based on the foregoing observations and conclusions include:

(1) DLC and the school should consider ways to implement a method of consumer complaint resolution. This would involve a way for grievances to be heard by LAS staff or administrators in the Lynn District. The goal would be for complaints to be heard and corrective action taken. I understand that consumer complaints would have to occur in the context of respect and discretion such that concerns about retaliation are minimized.

(2) Parents and students with grievances that are not resolved through the aforementioned complaint process should be allowed the opportunity to seek an appropriate alternative educational environment. This may include a day treatment program or school that offers services to youngsters with social-emotional disabilities.

(3) LAS should have a system for addressing critical incidents. All school suspensions should be considered critical incidents along with the behaviors that resulted in suspension (physical

⁵ PBS essentially employs a “token economy” whereby a student receives a stamp from the teacher for good behavior and can exchange a quantity of stamps for a reward.

⁶ Indeed, staff review SWIS data on “frequent flyers,” or those students with the most referrals. They know, therefore, that teachers can also be classified as “frequent flyers” in the SWIS data base.

⁷ This could have been illustrated by the class I observed where students acted quite defiant, off-task, and rude but the teacher, despite threats, did not initiate any formal disciplinary action.

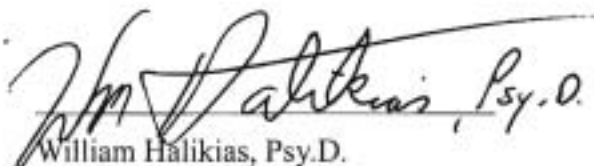
fight, drug possession, gang activity, and so forth). The administrator would share a degree of problem-solving for critical incidents with a leadership or core staff group.

(4) May Institute should include administrator-generated events into the SWIS data. This would include suspensions, detentions, expulsions, and requests for police or juvenile justice intervention. Attendance rates should also be tracked in the SWIS data.

(5) LAS should develop a meaningful in-school suspension program. Students unable to function in the classroom or other school setting would continue to receive educational or mental health services in the in-school suspension room.⁸ The act of suspension effectively eliminates students with important needs from LAS environment, falsely inflates SWIS data, and provides less than adequate ways to address student behavior problems.

(6) LAS should include at least two school social workers into its programs. The school social worker will join the PBS Leadership Team and review critical incidents. The school social workers will function as a home-school liaison and help to mediate consumer grievances. The school social workers will initiate wraparound services and other networking or social services as needed to increase the chances of student success at LAS.

I hope this information will help Attorney Engel and assist the DLC to understand and improve the disciplinary practices at the LSA. If I can be of further help in this matter please call me.



William Halikias, Psy.D.

cc: Matthew Engel, Senior Attorney
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⁸ The name for this space and program would be determined by LAS staff.