

Education Client Alert
November 2015

DESE CLARIFIES RESPONSIBILITY FOR VIRTUAL SCHOOL STUDENTS IN DYS CUSTODY

For a discussion of these and other legal issues, please visit our website at www.mhtl.com. To receive legal updates via e-mail, contact us at information@mhtl.com.

On November 16, 2015, the Department of Elementary and Secondary Education (DESE), in response to a novel situation from a virtual school, clarified the responsibility of a virtual school, for a student in the custody of the Department of Youth Services (DYS).

DESE explained that, pursuant to 603 CMR 28.10(3)(c), it is not the virtual school, but the school district where the parents reside that is programmatically and fiscally responsible for a student in DYS custody. This rule also applies to other program schools, such as vocational and charter schools, and METCO students. Accordingly, once DYS detains a program school student, the program school must unenroll the student. The school district where the parents reside then becomes fully responsible for the IEP services that a student requires, beyond those which the DYS' facility cannot provide.

The program school must notify the school district where the parents reside of its responsibility for the student and the reason for the shift in LEA responsibility. The program school should send the student's temporary records and a copy of the transcript to the resident school district. The program school should retain the student's original transcript and any records required to be retained pursuant to state student record and reporting laws. We are awaiting further clarification from DESE on the length of time that the student must be in DYS custody before the program school must unenroll the student and the resident school district must enroll the student.

Murphy, Hesse Toomey & Lehane has learned that DESE plans to revise and clarify the regulations in 603 CMR 28.10, which govern the assignment of school responsibility for special education students. During the comment period, any individual can provide feedback to DESE on the proposed regulations. School staff are encouraged to provide input as this feedback is extremely valuable as DESE amends the regulations.

This Alert was prepared by Felicia Vasudevan, an attorney in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Vasudevan, the attorney assigned to your account, or your own special education or education counsel.

Murphy, Hesse, Toomey & Lehane, LLP, is a multi-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm emphasizes education law, special education law, municipal law, labor & employment law, employee benefits law, municipal law, public sector labor law, and related litigation.

©2015 MHTL

Phone (617) 479-5000

Fax (617) 479-6469

www.mhtl.com