Judge Rotenberg Educational Center Litigation Timeline

1986

_ A New York court upholds personal jurisdiction and venue in a wrongful death suit filed against BRI. Milletich v. Behavior Research Inst., Inc., Not reported in F.Supp. (available at 1986 WL 14606) (E.D.N.Y., 1986).

1987

_ BRI and Massachusetts agencies enter into a Settlement Agreement. According to this agreement, aversive procedures must be authorized by "substituted judgment" court orders. The Settlement Agreement requires a court-appointed monitor to oversee BRI's "compliance with all applicable state regulations, except to the extent that those regulations involve treatment procedures authorized by the Court in accordance with [the substituted judgment proceedings described in the Settlement Agreement."

1988

_ Parents are denied attorney's fees for costs incurred in challenging a decision by the New York Commissioner of Education against placing two severely handicapped children at BRI. Behavior Research Inst., Inc. v. Ambach, 535 N.Y.S.2d 465 (N.Y.App. Div. 3, 1988).

_ A Wyoming School District placed a student at BRI. At the age of 21 he was denied compensatory education for a span of time when he was not at BRI, because of refusal of the school district to approve the placement. Natrona Cty. Sch. Dist. No. 1v McKnight, 764 P.2d 1039 (Wyo., 1998)

1990

_ The Massachusetts Supreme Judicial Court (SJC) granted injunctive relief to compel the DMR to provide funds to enable BRI to make aversive procedures available for David McKnight. In September 1987, a Probate Court judge used substitute judgment to issue a treatment plan for David including the use of aversives. The decision to grant an injunction was vacated and the proceedings were remanded for the Probate Court to consider entering a *temporary* injunction, and to hold a trial to prove that accepted professional practice required the DMR to provide aversive treatment to David. Matter of McKnight 550 N.E.2d 845 (Mass., 1990).

1991

_ BRI fails in its suit against Massachusetts government agencies asserting its right to receive a tuition rate of $153,351 based on its settlement agreement. Behavior Research Inst., Inc. v. Sec'y of Admin., 577 N.E.2d 297 (Mass., 1991).

_ Marc Sturtz appeals from a judgment appointing his parents as his permanent guardians and authorizing a behavior modification treatment plan at the JRC. The SJC does not answer the legal questions raised, finding that the case is moot because the guardianship was discharged before the decision. Sturtz had argued that the judge's substituted judgment standard was incorrect. Matter of Sturtz, 570 N.E.2d 1024, (Mass., 1991).

1992
_ Two wards at JRC under substitute judgment treatment plans are denied habeas corpus relief. The two asserted that they had been denied due process of law, as they were restrained of their liberty at JRC. The SJC emphasized that they sought alternate placements (as opposed to release) and that the Probate Court had found that there were other administrative remedies available to them. Petition of Kauffman, 604 N.E.2d 1010 (Mass., 1992).

1997
_ JRC obtains a preliminary injunction preventing DMR from decertifying its program, and this preliminary injunction is upheld on appeal by the SJC. Judge Rotenberg Educ. Ctr., Inc. v. Comm'r of the Dep't of Mental Retardation, 677 N.E.2d 153 (Mass., 1997).
_ Attorneys are denied appointments as next friends to residents to bring a motion to intervene in contempt proceedings against DMR. This denial is upheld on appeal, because each patient had legal guardians involved in the suit and because the residents had separate counsel to represent their interests. See Judge Rotenberg Educ. Ctr., Inc v. Comm'r of the Dept of Mental Retardation, 677 N.E.2d 156 (Mass., 1997).
_ The DMR sought to decertify the JRC citing the "Specialized Food Program," "GED Program," and failure to report death and serious injury as regulatory violations. The SJC stated that the settlement agreement did not take away the DMR's regulatory authority over JRC's programs and facilities (and that a delegation of regulatory powers would implicate serious constitutional issues related to the separation of powers). However, the DMR's unilateral interference with court-ordered treatment of a certified program would undermine the court's authority. Because there was bad faith on the part of DMR in its attempt to decertify JRC, DMR was held in contempt of the settlement agreement. Judge Rotenberg Educ. Ctr., Inc. v. Comm'r of the Dep't of Mental Retardation, 677 N.E.2d 127 (Mass., 1997).
_ The DMR moved for reconsideration of Level III aversive treatment of six JRC residents which included the GED-4 and food withholding. After a substitute judgment hearing in Brandon's case, but before a decision to allow the treatment was issued, the DMR notified JRC that it was not in compliance with DMR regulations. The probate judge denied the DMR's motion for reconsideration based on the intervening finding of violations, and the SJC affirmed. On the issue of regulatory violations, the SJC found that a judge cannot authorize the use of aversive treatments at an uncertified facility. However, because the DMR letter was rescinded by the JRC's receiver the question of whether the judge acted improperly was moot. In addition, the application of the summary judgment test and restrictions on expert witness testimony were upheld. Guardianship of Brandon, 677 N.E.2d 114 (Mass., 1997).

1998
_ JRC attempted to compel New York local and state agencies to pay for the cost of care for clients over the age of 21 that New York City originally placed at JRC pursuant to the IDEA. The Appeals Court rejected JRC's arguments and held that New York agencies could discontinue transitional care because their participation in a transitional care program was voluntary. Matter of Judge Rotenberg Educ. Ctr., v. Maul, 693 N.E.2d

200 (N.Y., 1998).

_ The Massachusetts Court of Appeals upheld the Bristol Probate Court's approval of 2 treatment plans proposed by JRC which were challenged by the attorneys for the students. In one of the cases, the Judge signed off directly on the Proposed Findings submitted by the student's lawyer, rather than drafting her own findings. The Appeals Court held that while the Judge's actions were not best practice, they did not create sufficient grounds to overturn the lower court decision. The decisions are unreported.

2004

_ The estate of a JRC resident brought a negligence action against JRC employees, physicians, psychiatrist, and psychologist after the resident jumped from a moving bus. The Court of Appeals concluded that a motion to dismiss based on personal jurisdiction was in error. Cepeda v. Kass, 819 N.E.2d 979 (Mass. App. Ct., 2004).

2006

_ The mother of Freeport, New York teenager who received GED shocks files a lawsuit against JRC and New York state agencies. The complaint alleges that JRC is not certified by the state of Massachusetts to provide treatment for persons with disabilities.

_ In September, a federal judge temporarily reinstated the use of the GED for school-aged children in New York after parents sued to reverse limits that the New York Board of Regents imposed on the use of skin shocks at the JRC.