

FAMILY CONNECTIONS

The Nemasket Group

Issue # 45

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NEWSLETTER

Fernald Ruling Supports Community First Agenda

From ArcMass.org

At last...Massachusetts can move to close its state institutions and instead support life for all people with disabilities in their communities!

In a powerful decision released on October 1, the Federal First Circuit Court of Appeals ruled that the state has the authority to close the Fernald State School and that it has met all its court-ordered obligations to provide care to class members when transferring residents to less restrictive community settings.

The ruling by a three-judge panel overturns a district court decision, allows the Patrick Administration's "Community First Agenda" to move forward and gives the administration the opportunity to set a responsible timetable for closure of several of the state schools.

"This decision will allow the Commonwealth to continue its efforts to find the least restrictive alternatives for individuals with disabilities," said Frederick Misilo, President of The Arc of Massachusetts.

The Arc of Massachusetts, an original plaintiff in the case, has been concerned about the use of the Consent Decrees to block the closure of institutions (see more on The Arc's website). Massachusetts has six of the seven public institutions remaining in New England.

In reviewing the history of the case, Judge Lynch expressed support for the rationale the legislature used in including consolidation language in past state budgets. These include the Americans with Disabilities Act, the long-standing principle of least restrictive environment held by the Commonwealth, and a history of successful transitions.

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Fernald Ruling...Cont'd

The court noted that from February 2003, when the state announced its intention to close the nation's oldest institution, to February 2006, when a court monitor was assigned to oversee the case, 49 Fernald residents were transferred to less restrictive community settings or to one of the five other institutions. The monitor, who conducted a yearlong investigation into the transfers, concluded that the state has been in full compliance with the District Court's "Disengagement Order" in EVERY respect, including:

1. certifying that individuals who are transferred received equal or better services.
2. certifying that ISP recommended services for the individual's current needs are available at the new location.
3. its procedural obligations under state law, such as the requirement it provide notice to guardians forty-five days in advance of a transfer and the requirement that it ensure guardians knew they had a right to visit and examine the proposed homes.
4. federal regulation such as 42 C.F.R. § 483.12, which governs transfer standards for skilled nursing facilities.
5. state regulations governing informed consent. See 115 Mass. Code Regs. 5.08(1)(a).

In addition, the ruling continues:

The monitor's report also inquired into guardians' assessments of their satisfaction with the resulting placement and their participation in the transfer decision. The monitor reported the results of a survey distributed to guardians of the 49 transferees. Guardians were asked to rate their satisfaction with their wards' placements on a scale of one to five, with one being the most favorable. The results showed 78% rated their satisfaction as a "1," 14% rated their satisfaction a "2," 1% rated their satisfaction a "4," and another 1% rated their satisfaction a "5." Thus, the monitor's report concluded that the DMR had complied with the Disengagement Order and state and federal law in effectuating past transfers of residents from Fernald.

Furthermore, the court noted that the monitor made no findings that DMR had prevented residents or guardians involved in transfers between 2003 and 2006 from participating meaningfully in discussions of their transfer. The findings are that there was full compliance with the Commonwealth's obligations.

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Fernald Ruling...Cont'd

Based on these facts, Judge Lynch wrote, "We conclude that the district court does not have authority to reopen the case on any permissible basis."

Finally, the court gave a nod to the societal move away from institutionalization and toward community-based living options. The court wrote:

Indeed, the law has moved in a direction disfavoring institutionalization of residents. The Commonwealth cites *Olmstead* as recognizing that federal law now favors community placement of institutionalized individuals. In addition, the Commonwealth notes that law of neighboring states, including Maine, New Hampshire, and Rhode Island, has moved away from institutionalization completely.

The 32-page ruling points out that members of the class action suit are able to use the state hearing process (including judicial review) at the State Superior Court if the class member or his/her family feels placement outside Fernald is not meeting his/her needs.

"We want families who have loved ones at Fernald to know that there are a number of groups and families including our own that stand ready to introduce them to community alternatives and to other families," Sarkissian said.

Easter Seals Massachusetts **Assistive Technology Fall 2008** **Conference and Exposition** **Four Points by Sheraton — Leominster, MA** **Wednesday, October 29, 2008**

You are invited to attend the Assistive Technology Expo hosted by Easter Seals Massachusetts and sponsored by MassMATCH. The Assistive Technology Expo is a one-day seminar designed to provide awareness around assistive technology through workshops and exhibitors.

Who should attend?

- People with disabilities and their families
 - Teachers
 - OT's, PT's, and SLP's
 - Disability Advocates
 - Paraprofessionals
 - School Administrators
 - Support Coordinators
- Assistive Technology Professionals

For more information, please contact Eileen McDonald at 508.751.6309 or emcdonald@eastersealsma.org.

Or visit <http://ma.easterseals.com>, click on Assistive Technology.

Dear Family Members,

Based on the results of our Family Support Survey we will be offering three trainings this coming spring. The trainings will include 766 Basic Rights, Stress Management, and Community Resources.

As we prepare to plan and coordinate the Community Resources training we would like you to help us determine what sort of community resources you are most interested in or need more information about.

Please forward your input to us at Family Connections by calling 508-999-0077 and speaking to Sandy, Gloria, Sherry or Jorge. You can also leave a voicemail.

Thank you for your help and cooperation. It is important to us to provide the training supports needed as opposed to offering an event that will not be useful for you and your family.

Chapter 766: Basic Rights Workshop



**The Nemasket Group
November 12, 2008
6 pm**

**Come join us for a informational meeting on
Chapter 766 Basic Rights.
Parents are invited to bring questions and concerns
regarding their children's IEP's.**

R.S.V.P. to Sandy at 508.999.4436 x128

HOME MODIFICATION LOAN PROGRAM

Providing low and no interest loans to modify the homes of elders and those with disabilities

The state-funded Home Modification Loan Program provides loans to make access modifications to the primary, permanent residence of elders, adults with disabilities, and families with children with disabilities. Such modifications allow people to remain in their homes and live more independently in their communities.

The program lends money to homeowners who wish to start new modification projects, but does not reimburse for work that has been already completed. Based on the income guidelines, from \$1,000 up to \$30,000 (inclusive of all costs) may be borrowed in either a deferred payment loan (DPL) or an amortized loan, which is secured by a promissory note and a mortgage lien, except in cases of loans that are under \$2,500 which are only secured by the promissory note. An HMLP loan may be obtained only one time per property. Borrowers may not come back for more funding for the same property once their project is complete.

Homeowners eligible for a 0% DPL will not have to repay the loan until the property is sold or has its title transferred. 3% DPL or 3% amortizing loans must be repaid in 5 to 15 years, depending on the amount of the loan, and require monthly payment schedules.

The provider information for the Southeast is as follows:

South Middlesex Opportunity Council, Inc. (SMOC)

Mary Ann Walsh

maryannw@smoc.org

508-202-5919

Fax: (Toll free) 866-284-6282 TTY/TDD: 508-872-4853

Website: <http://www.smoc.org/>

The provider will send you an application and determine initial eligibility. Homeowners hire the designer and/or the contractor of their choice to modify the home. The Provider Agencies can give you resource materials on choosing and hiring architectural, design, and contracting professionals **but cannot recommend specific contractors**. If you need assistance or reasonable accommodations during your application process, please let your local provider know.

Home Modification Loan web site: www.mass.gov/mrc/hmlp.

WHAT'S NEW IN THE NEWS!

ADA Amendments Act Passes (from The Arc US)

1. The Senate passed The ADA Amendments Act (S. 3406) by unanimous consent on September 11. The bill included over 77 bipartisan co-sponsors.

The ADA Amendments Act will correct narrow court interpretations that have restricted ADA coverage in the workplace, and weakened coverage for individuals with developmental disabilities, diabetes, epilepsy, serious heart conditions, and cancer. The act will also clarify responsibilities for employers. It enjoys wide support on both sides of the aisle, as well as among employers, civil rights and disability advocates, who have formed an uncommon alliance to support this legislation.

2. The Patrick Administration released the Commonwealth's first Olmstead Plan on September 12. The plan includes an action plan to provide community supports and access to people with disabilities and elders. Frederick Misilo, President of The Arc of Massachusetts stated, "We thank Governor Patrick for the development of a roadmap that will be a beacon of hope to individuals and families that are waiting for services".

The Massachusetts plan is timely given the fact that twenty percent of Massachusetts residents have disabilities or are elders with impairments and wish to choose community options. Some examples of important elements noted in the plan include:

- A Establishment of a Long-term Care Financing Advisory Group and development of a Financing strategy – the establishment of a financing mechanism that provides resources for long term supports to these populations is key
- B Development of strategies regarding Chapter 688 ("Turning 22") – the increasing number of students in need of adult supports has not been matched by funding; this has forced some individuals into institutional settings
- C Implementation of an 1115 demonstration waiver to serve persons with disabilities and elders – this will bring in new federal funding for unserved populations
- D Reconfiguring services - Restating the Administration's commitment to move away from our dependence on institutionalization as reflected in the Rolland – Nursing home settlement

3. Senator Kerry, along with Senator Charles Grassley of Iowa, introduced "The Empowered at Home Act" (S.3327) on July 24, 2008. This bill, if passed, would have a significant impact on expanding access to home and community services for individuals in

Massachusetts and across the country. The Arc and several other organizations are excited about a new bill which will provide easier access to home and community services. Initiated by Senator John Kerry, the bill corrects problems with existing Medicaid provisions. Senator Kerry's staff has worked on this legislation for more than a year.

4. A coalition of civic leaders, unions, and non-profit organizations led by Peter Meade has formed to oppose a ballot question to repeal the income tax. The proposal to repeal the income tax will be on the November ballot. If it passes, the binding proposal would reduce the income tax to 2.65% on January 1, 2009 and eliminate it on January 1, 2010.

Opponents say that it is an irresponsible proposal and will raise property taxes and slash services. More than 11 Billion dollars will be lost in revenue affecting disability and other human services. Individuals interested in opposing the income tax repeal are being asked to visit **VoteNoQuestion1.com** to offer support and learn more.

5. **S. 1810, the Prenatally and Postnatally Diagnosed Conditions Awareness Act, championed by Senators Brownback (R-KS) and Kennedy (D-MA)** After an expected signature by the President, this bill will amend the Public Health Service Act to increase information and support services to parents whose children receive a diagnosis of Down syndrome or other conditions. The Arc and United Cerebral Palsy strongly supported this bill.

New MassHealth Cards Being Issued - Members May Be Terminated



Within the next few months, MassHealth members will be receiving a completely new membership card. For the first time, each family member on MassHealth will have a separate card and their own identification number.

IF MASSHEALTH DOES NOT HAVE CURRENT ADDRESS INFORMATION AND A CARD IS RETURNED AS UNDELIVERABLE, THE MEMBER WILL BE TERMINATED.

Members who need to update their addresses, or who have questions about the new cards should call MassHealth Customer Service *immediately* at 1-800-841-2900 (TTY: 1-800-497-4648).

To view the new MassHealth card's accompanying notice, including a picture of the card, view MassHealth All Provider Bulletin No. 176 for more details about the card and the process, or see more info on MassHealth, copy the link below into your browser's address box: <http://www.compartners.org/news/masshealth-changing-membership-cards>.

Salvation Army Christmas Applications

The Salvation Army is accepting CHRISTMAS APPLICATIONS starting on Monday, November 10 - December 5.

Applications will be taken from 9.30 - 11.45 am.

For working individuals only, evening hours will be available Thursday, November 20 and Thursday, December 4 from 6.00 - 8.00 PM.

All applications will be taken at the office at 619 Purchase Street in New Bedford.

For more information, please call 508.997.6561. Or call Family Connections at 508.999.0077.

ROOMMATE(S) WANTED TO SHARE APARTMENT

My name is Jared and I am planning to move into an apartment in the Dartmouth/New Bedford area in the next year. I am looking for one or two roommates (male or female) who have similar interests to myself who would be interested in sharing with me. I am a baseball and football fan and enjoy watching sports on TV. I like going to concerts, movies, playing poker, and music. I also work 5 days a week. I am neat, have a calm personality and am a non-smoker. Person should be between 25-40 years old and be able to share expenses.

If you are interested, and would like more information, please call Bill Corbett at 508.992.7685 (h) or 508.824.1717 (w).

Joining Voices Conference

Joining Voices, an annual conference to support families in advocating for children & youth with special health care needs. Hosted by the Massachusetts Family-to-Family Health Information Center, a project of Mass Family Voices @ Federation for Children with Special Needs.

Wednesday, November 5, 2008
Indian Meadows
275 Turnpike Rd
Westborough, MA 01581

This is a **free** day of learning and networking for families with children and youth with special healthcare needs (including mental, behavioral, emotional needs).

Registration Deadline Friday October 24, 2008. Space is limited and registration priority is given to family members of children and youth with special health care needs. Register online @ www.massfamilyvoices.org

If you have questions or want more information, call the Massachusetts Family-to-Family Health Information Center at 1-800-331-0688, ext. 210.

**Visions of Community
Saturday, March 14, 2009
World Trade Center - Boston**



The Federation for Children with Special Needs, along with co-sponsors The Early Intervention Parent Leadership Project, Massachusetts Families Organizing for Change, Massachusetts Family TIES, Massachusetts Family Voices and the Family-to-Family Health Information Center, Massachusetts Parent Information and Resource Center, The Parent Training and Information Project, and The Parent/Professional Advocacy League, is excited to announce next year's **Visions of Community** conference. It will be held Saturday, March 14th at the Seaport/World Trade Center-Boston.

The conference features over 35 break-out sessions (many presented and/or translated into Spanish, Portuguese, and Cantonese) with topical strands and information covering Early Childhood, Special Education, No Child Left Behind (NCLB), the Individuals with Disabilities Education Act (IDEA), Health Care for Children with Special Needs, Transition, Social/Recreation Opportunities and more. Network with other parents and families and pick up free resources in our exhibit hall packed with more than 50 vendors.



Family Connections

Joint Project of The Nemasket Group and
DDS (*Greater New Bedford Department of Developmental Services*)
56 Bridge Street
Fairhaven, MA 02719
Phone: 508-999-0077
Fax: 508-997-9239



Creating a network of family support
For individuals with developmental
Disabilities and their families