

AN IMPORTANT COURT VICTORY WON BY OUR LEGAL PARTNERS

Occasionally we'll report about a legal development of interest to our community: similarly, we may share an honor received, or a victory won by a member of the community. This week it's both: an important win in the United States Court of Appeals for the Second Circuit by our long-time partner Disability Rights New York (DRNY) and our newer colleagues at Prisoners Legal Services New York (PLS). While the decision doesn't deal with SDM, it is impactful in its recognition of the ability of people with I/DD, even those incarcerated in New York's correctional system, to challenge the deprivation of their rights, and of lawyers, like those at DRNY and PLS to recover attorneys' fees when they are successful in doing so.

The case, *J.S. v. DOCCS* (the Department of Corrections and Community Supervision) began in 2016 when PLS and DRNY filed a Due Process complaint with the New York State Education Department (NYSED) against DOCCS, seeking compensatory education for J.S., then an incarcerated 18-year-old who had been deprived of the "free and appropriate public education" guaranteed him by law, the Individuals with Disabilities Education Act (IDEA) during the 3 years of his incarceration. Amazingly this was the first IDEA complaint ever filed against DOCCS, despite the very substantial number of youth with I/DD under its jurisdiction. And, as just one example of how inadequate DOCCS's "educational efforts" were, over many months, the only "lessons" J.S. received were having study materials passed to him through the bars of his cell twice a week!



PLS lawyers, Maria Pagano and Andrew Stecker, who represented J.S.

After a 2-day hearing, the NYSED Hearing Officer found that DOCCS had engaged in "numerous and gross violations" of the IDEA. The Hearing Officer awarded J.S. substantial compensatory education services (either an escrow account or a trust to cover the cost of compensatory special education of 540 modules of 45 minutes each of math and ELA instruction and 82 sessions of 30 minutes of counseling), even though he had since been released from prison.



DRNY lawyers Julie Keegan, who argued the case, Jennifer Monthie, and Benjamin Taylor after the Second Circuit argument. As you can see, it was pretty late!

As permitted by the IDEA, DRNY and PLS then filed for attorneys' fees in federal court, but were denied by the District Court on the grounds that, under the IDEA, only "parents" could bring such an action; J.S. had no living parents, having been raised by his grandmother since he was 2 years old. The Second Circuit (which is directly below the U.S. Supreme Court) reversed, finding that J.S. had that the right to sue for deprivation of rights and recover attorneys' fees because, as an adult "child with a disability" and "without representation by a guardian, natural parent or appointed individual," "he prevailed in this action on his own behalf" (to read the decision, click [here](#).)

Why is this case important? First, because the ability to recover attorneys' fees incentivizes lawyers to bring cases like J.S.'s to enforce the rights that the IDEA confers on young people with I/DD, including, but not limited to those who are incarcerated. Because of this, the decision "will have a nation-wide impact" according to DRNY Executive Director Tim Clune. But from our perspective as advocates for the human right of legal capacity, the decision also recognizes the right of even the most vulnerable and marginalized people with I/DD to participate in, and utilize available legal protections on an equal basis with all other adults.

Karen Murtaugh, Executive Director of PLS says the decision "affirms the young man's legal personhood; he is not just the "forever child" of his parents with no will or legal capacity of his own!" PLS attorney Maria Pagano adds "That is exactly what I love about the decision as well. It's unbelievable that we actually had to fight over the fact that adult students who are IDEA eligible are people too!!!" We couldn't agree more.

CONGRATULATIONS TO THE FABULOUS LAWYERS AT DRNY AND PLS, AND THANKS FOR ADVANCING THE RIGHT OF LEGAL CAPACITY FOR YOUNG ADULTS WITH I/DD!