

## The Land Court Draws a Fine Line on “Educational Use” under the Dover Amendment



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If a proposed activity is more therapeutic than educational, it not protected by the Dover Amendment and therefore may not be conducted in a zoning district where it is not permitted under the zoning ordinance or bylaw, under a recent Land Court decision. [The McLean Hospital Corp. v. Lincoln Zoning Board of Appeals](#), 16 MISC 000694(KFS) (Oct. 22, 2018).

McLean Hospital proposed a program in a residential zoning district for boys aged 15-21 with Borderline Personality Disorder or similar mental illness characterized by “emotional dysregulation”. The program would consist of a behavioral skills development involving both classroom and non-classroom sessions. It would focus on fostering the residents’ coping skills – mindfulness, emotional regulation, interpersonal relationships, distress tolerance and validation – to enable them to return to their families and communities and lead productive lives.

The Land Court held that McLean’s program would not be primarily educational for two reasons. First, unlike programs imparting “core life skills” that focus on educating the participants toward assimilation into the community, McLean’s program would focus on “developing skills which look inward and pointedly address the manifestations of the individual’s diagnosis” so the residents could return to their homes, schools or treatment centers. Second, the program’s educational approach and structure would be secondary to the primary purposes, which would be therapeutic and curative.

Accordingly, McLean’s program failed to qualify for protection under the Dover Amendment (G.L. c. 40A, § 3, 2<sup>nd</sup> par.), which protects from zoning regulation a use of land or structures for “educational purposes” (while allowing certain zoning regulation of the building). To be protected, the “primary purpose” of the use must be “educationally significant”, though it need not be in a classroom or other traditional educational setting. [Regis College v. Town of Weston](#), 462 Mass. 280 (2012).

Distinguishing primarily educational uses from primarily non-educational ones can be difficult. For example, the court found a primary educational purpose in [Gardner-Athol Area Mental Health Ass’n v. Zoning Board of Appeals of Gardner](#), 401 Mass. 12 (1987) (residential facility where adults with mental disabilities would be taught daily living, as well as vocational skills), and [Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg](#), 380 Mass. 869 (1980) (residential facility in which adults, with histories of mental difficulties, will live while being trained in skills for independent living, such as self-care, cooking, job seeking, budgeting, and making use of community resources). By contrast, it found that the purpose was not primarily educational in [Whitinsville Retirement Society, Inc. v. Northbridge](#), 394 Mass. 757, 760-761 (1985) (nursing home and other senior facilities), [Kurz v. Board of Appeals of North Reading](#), 341 Mass. 110, 111 (1960) (dance studio), [Metrowest YMCA, Inc. v. Town of Hopkinton](#), 14 LCR 378 (Land Court 2006) (YMCA), and [Julia Ruth House, Inc. v. Board of Appeals of Westwood](#), 8 LCR 451 (Land Court 2000) (adult social daycare center).

Regardless of whether *McLean Hospital* is appealed and the outcome of any such appeal, this issue will undoubtedly continue to vex the courts, local officials and landowners. The boundary of Dover Amendment protection of educational uses remains to be finally drawn.