

## DRNY Finds Neglect in Death of Young Man with Disabilities

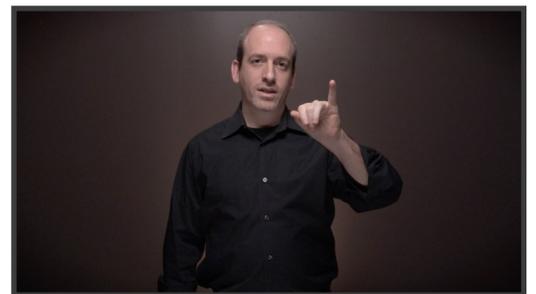
A young man with intellectual and developmental disabilities in a New York intermediate care facility was neglected in the months leading up to his death. In a public report, DRNY concluded that the young man was in excruciating pain on a regular basis for the eight months before his death. DRNY began investigating his death after receiving a complaint that he was neglected by his primary physician and the facility administrators and that the investigation of into his death by the New York State Center for the Protection of People with Special Needs ("Justice Center") was insufficient.

After conducting an investigation into this complaint, DRNY concluded that this young man was seriously neglected in the months before his death, causing him great suffering and likely contributed to his death. Furthermore, DRNY found that the Justice Center's investigation was seriously deficient. DRNY's report made recommendations to both the agency that operated this young man's residence and to the Justice Center. The Agency has agreed to work with DRNY to address these concerns and has hired a consultant to assist the agency to address DRNY's recommended corrective action. The Justice Center has refused to re-examine this death based upon DRNY's findings. The public investigation report is available at [www.drny.org/publications---reports.html](http://www.drny.org/publications---reports.html)

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## DRNY Surveys Sign Language Users in Health Care Settings

DRNY is surveying sign language users about their experiences obtaining interpreters in health care settings. Under the Americans with Disabilities Act and New York State law, doctors' offices and hospitals must provide people with hearing impairments with reasonable accommodations such as sign language interpreters, as well as pay for the interpreters. However, many people who are deaf or hard of hearing do not receive those services when they are seeking medical treatment. They may therefore be unable to communicate effectively with their medical professionals, preventing them from participating in their health care and making it difficult for them to follow medical advice.



The survey is designed to gather data on the experience of people who use sign language in healthcare settings. The survey, including in ASL with instructions on how to submit a signed response, is available on DRNY's website, <http://www.drny.org/p-a-for-individual-rights--pair-.html>. Please pass this information on to all interested parties, or contact [PAIR@DRNY.org](mailto:PAIR@DRNY.org) for more information.

The Client Assistance Program (CAP) at DRNY has come a long way since I began as its Director in June of 2013. CAP was the first of eight programs at DRNY to be exclusively staffed by DRNY staff after DRNY's designations as the Protection & Advocacy and CAP System for New York State.



The CAP staff at DRNY advocate for people with disabilities who are applying for and receiving services from the State's vocational rehabilitation (VR) agencies, tribal VR programs, and federally funded independent living centers (ILCs). Over the last two and a half years, the CAP staff have worked tirelessly to achieve positive results for our clients. The CAP team consists of six advocates located around the State who are well versed in the rights and responsibilities of our clients. In most of our work, we assist clients and applicants of State VR agencies in getting services to help them prepare for, obtain, and maintain competitive employment.

In the time since CAP became a DRNY program, it has had many successes. We have obtained tuition assistance and computers for college students; assistive technology for working individuals; transportation assistance for those attending vocational training; funding for budding entrepreneurs; and much more. This is in addition to regular advice and counsel provided to clients to help them all become better self-advocates. I am proud of what we have accomplished at CAP since 2013, and look forward to continuing our great record for DRNY.

*Erica Molina*

Director, Client Assistance Program

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## DRNY Advocates for the Rights of Nursing Home Residents

Since 2006, DRNY has advocated for the rights of nursing home residents who have mental illness and can live in more independent, less restrictive settings in the community. After investigating improper discharges to nursing home settings -- a phenomenon publicized by reporter Clifford Levy in the New York Times -- DRNY and co-counsel filed a lawsuit *Joseph S. v. Hogan, et al.* against the New York State Department of Health (DOH) and Office of Mental Health (OMH) on behalf of New Yorkers with mental illness who were inappropriately discharged from New York psychiatric hospitals to nursing homes. Many of these New Yorkers, including the named plaintiff Joseph S., were discharged to large nursing homes where they were held on locked wards, and also to out-of-state nursing homes far from their communities.

Since September 2011, DRNY and co-counsel have been monitored the settlement of the lawsuit to prevent unnecessary institutionalization of individuals with mental illness and ensure discharge of those that were inappropriately placed in nursing homes. In May 2015, Joseph S. moved to a studio apartment in Far Rockaway, Queens and is very satisfied with his new home. Joseph has told us how happy he is in his apartment. He attends programs in the community, enjoys healthy home-cooked meals prepared by his aide, and is caring for himself more independently.

By the close of 2015, 170 remedy members have moved from nursing homes to the community, and another 26 members are in the transition process. Those who have moved live in a range of settings, including their own apartments and community residences licensed by OMH with onsite supervision. All are benefitting from community-based supports and services, including mental health, case management, and personal care services. DRNY is continuing its work on behalf of those remedy members who have not yet moved out of the nursing home and into the community.

## DRNY Fights for Client to Retain Decision Making Rights

DRNY's client, a 19 year old with developmental disabilities, fought in court to retain his right to make his own decisions. Our client had recently transitioned from high school and his parent was concerned with his plan to live outside of the family home. The client's parent initiated a guardianship proceeding pursuant to Article 17-A of the Surrogate's Court Procedure Act which grants guardianships over individuals with intellectual and developmental disabilities when two medical professionals certify that the individual is unable to make decisions. A 17-A Guardianship is not tailored to those areas that the person needs assistance and if granted our client's family member would have been given authority to make all decisions over our client's person and property. With DRNY's assistance, our client filed objections to the petition. Immediately thereafter the client moved to strike the medical certifications in the petition (because client's medical information was used without his consent) and dismiss the petition. The judge for Rensselaer County Surrogate's Court partially granted DRNY's motion finding that the family member's use of our client's medical records without his permission violated our client's rights of privacy under HIPAA and the physician-patient privilege." The decision was published as In re B.M., 50 Misc. 3d 367, 19 N.Y.S.3d 393 (N.Y. Sur. 2015). The guardianship petition was withdrawn and our client moved out of the family home. Our client is now residing in supported housing and he retained his ability to select where he lives, who he lives with and to make decisions about the things he would like to do with his life.

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## DRNY Partners to Pilot Supported Decision Making in New York

DRNY has partnered with its federal partner the State's Developmental Disabilities Planning Council (DDPC), Hunter College and the Council on Quality and Leadership on a 1.9 million dollar pilot for Supported Decision Making for people with intellectual and developmental disabilities in New York State. The 5 year pilot aims to enhance self-determination for people with intellectual and developmental disabilities by promoting personal choice and decision making. People with intellectual and developmental disabilities are often affected by other's low expectations about their decision making capabilities. These low expectations often lead to people losing the right to make decisions diminishing their self-determination and leading to devalued life outcomes, such as less community integration.

Supported Decision Making is a model that provides people with disabilities the individualized supports and services necessary to make informed decisions. SDM emphasizes that the majority of individuals with disabilities, even those with significant disabilities, have the ability and the right to make important decisions impacting their lives. SDM is an alternative to the court process of appointing a guardian whereby individuals maintain the legal right and ability to make decisions impacting their lives. SDM recognizes that most individuals make decisions with the support of others and individuals with disabilities are entitled to the same consideration to assist them in understanding the potential choices and options they have so that they can make their own decisions.

The SDM Pilot grant has three components which will overlap through this 5-year project period. These components are education of SDM, assisting individuals with disability under guardianship orders to restore decision making rights, and ensuring that individuals at risk of losing these rights are able to keep making their own decisions.



## \$58,000 Debt Overturned

**D**RNY successfully represented a client after the Social Security Administration incorrectly determined that the client had been overpaid \$32,212.78 and requested that she pay back that amount. The client's minor child, who received benefits through the client, also received a similar request from SSA in the amount of \$25,854. DRNY's client was employed when she contacted DRNY but she was considering quitting her job due to the stress and anxiety that these demands for payment placed on her and her family. After advocating before SSA, DRNY obtained a full reversal of SSA's requested overpayment. SSA also repaid the client's daughter the full amount of benefits that were incorrectly withheld and reinstated the client's and the client's daughter's social security monthly benefits. The client has continued to work and is now in the process of seeking a full time job with the goal of no longer receiving social security benefits.

## NYC Schools Ordered to Permit Service Animal at School

**A**fter nearly six months of denying a student access, the NYC Department of Education was ordered to permit the student his right to his service animal in school, on the school bus, and at all school-related activities. The impartial hearing officer's interim order concluded that the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Sec. 504) provides a student an express right to have a service dog accompany him in school. The order mandated that the student have access to his service animal in school starting March 1, 2016. With his service dog in school, the child is now more effectively managing behaviors associated with his disability.



## DOJ Refutes Schools Grounds for Denying Access of Child's Service Animal In School



**A**s DRNY reported in our Fall 2015 Newsletter, DRNY filed a suit on behalf of a student with a disability who has been denied his service animal at school for the last three years. The U.S. Department of Justice (DOJ) representing the United States filed a Statement of Interest in support of our client's right to be accompanied by a service animal at school. The DOJ articulated to the Court a school districts responsibility under two anti-discrimination laws, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The DOJ makes clear that Congress specifically intended for schools permit individuals with disabilities to be accompanied by their service animals. The DOJ explains that the ADA sometimes requires modifications beyond a schools responsibilities under the Individuals with Disabilities Education Act (IDEA), the federal law that governs special education requirements. Sachem Central School District argues that because the school provides the child with a Free and Appropriate Public Education, that which is the required standard under the IDEA, they are absolved of their responsibilities to also accommodate our client pursuant to the ADA. The DOJ firmly stated that Sachem Central School District is wrong. The DOJ concluded that IDEA compliance does not automatically equate to ADA compliance, and the School's refusal to allow a student his service animal in school amounts to discrimination under the ADA.

The DOJ Statement of Interest is available at [http://www.ada.gov/enforce\\_activities.htm](http://www.ada.gov/enforce_activities.htm) under Sachem Central School District

# DRNY Monitors Long Term Care Nursing Homes

**D**RNY actively monitors long term care nursing homes and rehabilitation centers both within and outside New York State. As New York's Protection and Advocacy System DRNY actively monitors long term care nursing homes and rehabilitation centers to ensure that individuals who reside in these facilities are free from abuse and neglect and have knowledge of their rights while in these facilities.

## **Monitoring conditions in New York nursing homes:**

Over the past year, DRNY has conducted monitoring visits to several nursing homes within New York and educating residents about their rights. DRNY reviews the practices and policies of the nursing homes to ensure that residents are not unnecessarily diapered, over-medicated, or subject to unnecessary physical or chemical restraints. DRNY also investigates whether nursing homes honor the health care decisions made by a resident, and works to ensure that health care proxies are only used when an individual is incapacitated and unable to make health care decisions.

At Hempstead Park Nursing Home, DRNY identified concerns with the interpretation of health care proxies and worked with the nursing home to ensure that they were appropriately used and interpreted. DRNY also provided training to Northeast Center for Special Case, on supported decision making and the rights of residents to access and retain legal counsel. Additionally, DRNY staff have visited residents in nursing homes in Far Rockaway, Harlem, Queens, Brooklyn, Bronx, Staten Island, Long Island, and Rochester, New York in order to gather information about their cases and begin to advocate for their placement in community based settings.



## **Monitoring neurobehavioral units in Massachusetts nursing homes:**

Many New Yorkers with disabilities live in out-of-state nursing homes, discharged to these facilities from hospitals or nursing homes within New York State. These individuals can be profoundly lonely and isolated, located far away from friends and family.

DRNY has been exploring the barriers faced by New Yorkers who seek to return to New York State. DRNY visited Holyoke Healthcare Center and found that 130 of the 160 residents were New Yorkers. At CareOne at Lowell, DRNY discovered that 100 of the 160 beds were occupied by New Yorkers. DRNY found that a similar situation existed at Vibra Hospital of Western Massachusetts, with a majority of the beds in the neurobehavioral unit being occupied by New Yorkers. Many New Yorkers in these facilities were in their forties and fifties and had been at these nursing homes for several years.

DRNY will continue to monitor in and out of state facilities and will expanding the scope of visits to nursing homes in New Jersey as well as Massachusetts and will continue to provide direct advocacy to those individuals who face barriers to returning to their communities.

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