

Private Placements from a Parent's Attorney's Perspective

Micki Moran J.D.

The Child and Family Law Center of the North Shore

A Few Statistics

- Four million children and adolescents in this country suffer from a serious mental health disorder that causes significant functional impairments at home, at school, and with peers.
- Half of all lifetime cases of mental disorders begin by age 14.



Statistics (cont)

- Approximately 50% of students age 14 and older who are living with a mental illness drop out of school. This is the highest drop out rate of any disability group.



Autism

- CDC estimates that one in 50 children are diagnosed with autism.
- The more involved the student is the more likely a private placement will be suggested by either the school or the parents.



Private Placement/ Day and Residential

- ✘ Primary reason parents seek legal assistance
- ✘ Often at crisis or approaching a crisis
- ✘ Crisis takes many forms
 - ✚ School failure – many reasons
 - ✚ School refusal
 - ✚ Aggression
 - ✚ Hospitalization
 - ✚ Transition
 - ✚ Substance abuse

Fact Pattern

- Brice age 11 has been in a well staffed therapeutic day school for two years.
- Many medication trials
- Increasing aggression
- School Failure
- Possible psychosis
- PDD,NOS

Fact Pattern

- Spends at least 70% of his day out of class.
- School district recommends residential.
- Parents are opposed.



Fact Pattern

- ✘ Student attends school regularly
- ✘ Is using marijuana daily
- ✘ Failing grades
- ✘ No homework
- ✘ Parents discover that the student age 14 has been on the internet prostituting himself for money.
- ✘ Multiple hospitalizations

Complex students

- No typical student
- Co-Morbidity issues
- Severity is greater than in the past
- Age of placement is younger
- Examples



Continuum

- Most parents don't speak this language.
- Education is often the first step.
- Providing a context and language to work with is important.
- Involved with systems that are complex, difficult to navigate and slow to respond in a crisis.
- Educational Needs

Continuum

- Private Therapeutic Day Schools
- May be school or parent initiated
- Highly variable response from parents
- Not everyone is excited to have their child privately placed.
- Goal is to get the most appropriate placement with the most resources.

LRE and FaPE

- FAPE is the primary consideration
- Trumps LRE
- LRE cannot be an excuse for either parents or schools



Stakes are High

- Parents don't have resources to privately access all the help they need.
- Students aren't progressing .
- Community based supports are drying up
- District's willingness to provide additional supports is highly variable.
- Insurance not available to provide for these services.

Barrier's To Placement

- ✘ No history of Less restrictive interventions.
- ✘ No prior treatment.
- ✘ No or minimal adverse educational impact.
- ✘ No evaluations or outside professionals.
- ✘ Poorly documented history.
- ✘ Parent's ability to navigate the process and persist in the efforts to find placement.
- ✘ Funding

Walking a Family through the placement maze

- Assess the facts.
- Issues. (diagnosis)
- What are the options?
- Who is driving the placement decision?
- Educate the parents on the legal issues that will impact the result(e.g. LRE,FAPE)

What Information Do we need?

- Current IEP
- Current evaluations
- Quality of evaluations is key
- Time line of events/issues
- Treatment history
- Discipline History



Case Law

- Homewood Flossmoor
 - Student with severe OCD
 - Parents wanted psychiatric hospital placement
 - Student was very bright
 - IHO relied on Dale M.
 - “ essential distinction is between services primarily oriented toward

Homewood /Dale M. Analysis

- Enabling the child to obtain an education and services more toward enabling the child to engage in non-educational activities. The former are related services within the meaning of the statute the latter are not.



The IEP

- The first and most important inquiry is whether the IEP is appropriate.
- The IEP should be comprehensive and data driven.
- Examples- transition plan, measurable objective goals, BIP.



Requests for Private placement: FacTors in successful cases

- Is the student progressing?
- Regression?
- Is progress documented?
- Time in Class?
- Safety?
- Independent Experts who have written comprehensive reports

Other Factors

- ✘ Time Line of lack of progress/issues
- ✘ Clear diagnosis
- ✘ Recommendations for educational interventions.
- ✘ A history of interventions that have been unsuccessful
- ✘ Is the school ISBE approved. Note- school districts cannot place at a non-approved program. Hearing officers can.



The Legal standard

- The primarily oriented test is another way of determining whether the child's problems ... are primarily educational. See Dale M, 237 F.3d at 817. The court reviews the purpose of the private placement as a proxy for understanding the nature of the child's problems, along the way to determining whether the private placement is appropriate.

The test (cont)

- The second prong... is necessarily a fact intensive inquiry. Factors that courts can consider, “ include, but are not limited to: whether the child was placed at the facility for educational reasons and whether the child’s progress at the facility is primarily judged by educational achievement.



The Child and Family Law Center of the North
Shore, Ltd.

1950 Sheridan Road, Suite 206

Highland Park, IL 60035

847-926-0101

www.lawforchild.com

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