

NC CASE 2021 FALL CONFERENCE

EC Students and Mental Health

October 4, 2021

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Who is our audience?

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What is your job?

EC District Level Administrator

EC School Level Administrator

School Administrator

Teacher

None of the above

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ROAD MAP FOR TODAY'S EXCURSION

- School-Based Mental Health in NC
- State Mental Health Laws v. IDEA Obligations
- Parent Requests for Private/Residential Placement
- Fact Gathering Process for IEP Teams
- Working with the Mental Health Agency and Providers





Mental Health Crisis

- North Carolina ranks:
 - 44th among states for access to mental health care
 - 45th among states for youth mental health
 - As of December 2020, nearly 40% of ER visits involving children were for behavioral concerns

2021 State of Mental Health in America Report by Mental Health America

The NC General Assembly passed legislation in June of 2020 requiring the NC State Board of Education (SBE) to adopt and implement a policy addressing school-based mental health.





Recommendations from the Superintendent's Working Group on Student Health and Well-Being

May of 2018

Recommendations

To improve coordination and access to early intervention, treatment, Memorandums of Agreement should be established between DHHS (Division of Medical Assistance and Division of Mental Health, Developmental Disabilities and Substance Abuse Services), Department of Public Instruction, Local Management Entities and Managed Care Organizations and public schools to ensure coordination of funding and services for students with behavioral health care needs. This will serve to reduce barriers to access.

Recommendations

The Working Group recommends the General Assembly continue to work towards the goal of increasing the number of school support personnel, including school nurses, school counselors, school social workers, and school psychologists, to ensure and improve the continuum of support to meet the social and emotional needs of students and early intervention and care for students with specific social, emotional, and mental needs. Additionally, this Group supports license reciprocity for school psychologists.

School-Based Mental Health Policy

- SBE adopted **Policy SHLT-003** in November of 2020
- *Each K-12 public school unit (PSU) shall adopt and implement a plan for promoting student mental health and well-being and for assessing and improving upon the effectiveness of supports for the mental and social-emotional health and substance use needs of its students and staff by July 1, 2021.*

PLAN COMPONENTS

- A continuum of mental and social-emotional health supports/services with the following elements:
 - Curriculum that includes universal promotion of mental/social-emotional wellness and prevention;
 - Early intervention for mental and social-emotional health;
 - Referral, Treatment and Re-entry; and
 - A model training program (created by NCDPI) and suicide risk referral protocol

School Based Mental Health Summary

- **No Funding**
- **Calls for a possible MOU with LME/MCO and/or mental health & substance abuse providers to coordinate services**



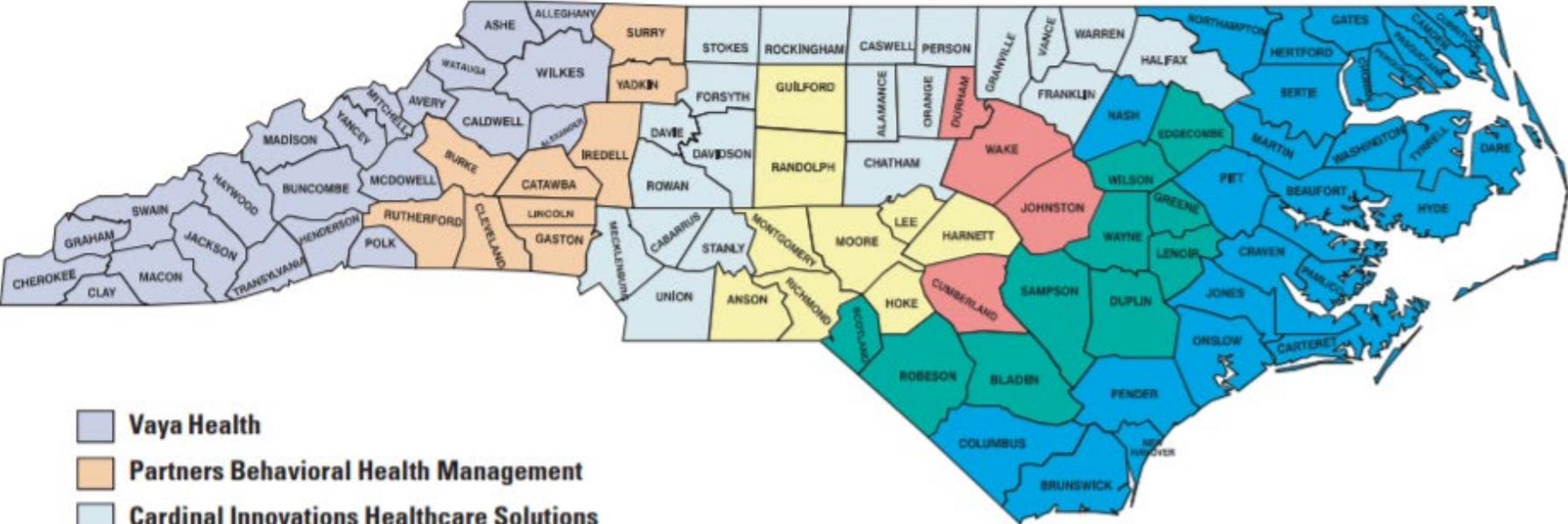
MOU with Local Health Authorities

In addition, each PSU [“Public School Unit”] shall offer to enter into a memorandum of understanding (MOU) with the Local Management Entity/Managed Care Organization (LME/MCO), and/or, to the extent deemed appropriate by the PSU, with local mental health and substance use providers serving the geographic area in which the PSU is located. The MOU should address the parties’ respective roles and relationships and how the parties will coordinate referral, treatment, and follow-up to individual students.

This requirement is not intended to impose on PSUs any obligation or responsibility to provide, or liability for failure to provide, referral, treatment, follow-up, or other services beyond those already required by state or federal law.

Local Management Entities/Managed Care Organizations

July 2019



- Vaya Health**
- Partners Behavioral Health Management**
- Cardinal Innovations Healthcare Solutions**
- Sandhills Center**
- Alliance Health**
- Eastpointe**
- Trillium Health Resources**

Is an MOU/MOA with LME/MCO Required?

- NCDPI says agreements with local mental health and substance use providers will meet the requirements of the SBE policy
- NCDPI recommends in light of Medicaid Transformation to Managed Care, to consider adding the MCO to the Consent to Release Information signed by parents. This will decrease referral time and eliminate need for a separate consent form.
See FAQ – School Mental Health Policy (NCDPI website)

MOU Recommendations

Pursuant to Session Law 2020-7 and SBE Policy SHLT-003, the parties agree to work cooperatively to serve the best interests of students as follows:

- 1) The **{school district}** may refer any student in need of an evaluation for mental health services to the **{LME}** and **{LME}** agrees to accept direct referrals from the **{school district}**.
- 2) The **{LME}** shall determine the extent of any mental health services, including initial intake and evaluation, in its sole discretion.
- 3) The parties agree to request that parents of students being evaluated and/or served by both **{school district} and {LME}** to request that the parents / guardians of the student consent to the release and/or exchange of information between the parties as permitted by existing law to best serve the child.
- 4) The parties agree to work cooperatively to the maximum extent possible to serve the needs of the child with the **{school district}** providing educational services and the **{LME}** providing mental health services as provided by existing law.

TAKEAWAY

The requirement to enter into agreements with the LME/MCO and local mental health providers represents a great opportunity for school districts to collaborate with providers in your area to formulate and agreement that best serves your EC student population.



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Our district has an Agreement with the LME/MCO

YES

NO

I don't know

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The NC School Mental Health Initiative (NC SMHI) is a partnership of concerned citizens with the collective purpose of ensuring that all children in North Carolina have access to mental health and substance use services.

STUDENT • SCHOOL • PARENT • COMMUNITY

It is the mission of this partnership to provide implementation and monitoring support to ensure that public school students in North Carolina have equitable access to a full continuum of high-quality and well-coordinated socio-emotional/behavioral health services.

NC School Mental Health Initiative (NC SMHI)

SMHI Report – Fall 2016

- Mental & behavioral health linked to positive student achievement
- Nearly 1 in 5 NC students have a mental health/substance abuse disorder
- 75% of students with mental health/substance abuse disorder will NOT receive treatment in current system
- Suicide was second leading cause of death among 10 to 24 year-olds

SMHI Recommendations

- Schools are the “natural and best” setting for mental health prevention and treatment services
- Create a Continuum of Supports and Services
- Make it Sustainable
- Engage Stakeholders



Social Emotional Learning

Governor's 2021-23 Recommended Budget

Sets aside \$120 million over the biennium for additional *recurring* funding for **Specialized Instructional Support Personnel (school counselors, nurses, social workers, and psychologists)** to support student mental and physical health.

Instructional Support Personnel Pipeline

Establishes a Specialized Instructional Support Personnel (SISP) Recruitment and Retention Coordinator at DPI; increases School Psychologist salaries by \$5,000; and implements a School Psychologist Internship Program.

NC Senate's 2021-23 Budget Proposal

Directs the SBE to establish funding allotment for school psychologist positions (based on ADM). Each local school administrative unit receives funding for at least one psychologist. This provision does not permit allotment transfers.

See below for designation of Federal COVID-19 relief funds to be used for grants to public school units to contract for mental and physical health services.

NC House's 2021-23 Budget Proposal

Provides \$7 million in funding over the biennium to increase the base pay of **school psychologists, speech pathologists, audiologists, and school counselors** by \$1,000 annually.

Provides nearly \$23 million over the biennium to tie **school counselor pay** to the salary schedule provided to school psychologists, speech pathologists, and audiologists.

Provides \$1.7 million for **signing bonuses** for school psychologists.

Directs DPI to reclassify at least one full-time equivalent position within the Department to serve as a full-time **recruitment and retention**



State Mental Health Laws vs. IDEA Obligations

State Mental Health Laws

- NC General Statutes:

§ 122C-2. Policy

*The policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. **Within available resources** it is the obligation of State and local government to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life.*

State Mental Health Laws

- NC General Statutes:
 - § 122C-115(a): A County shall provide mental health, developmental disabilities, and substance abuse services
 - § 122C- 115(b): Counties shall . . . appropriate funds for the support of [these] programs
 - § 122C- 115.2 (b)(1)g: Requires LMEs to collaborate with other agencies (PRESUMABLY INCLUDING SCHOOL DISTRICTS)

State Mental Health Laws

- NC General Statutes:
 - § 122C-146: LME & provider must make reasonable effort to collect reimbursement from private insurance (i.e., no right to deny someone just because they have insurance)
 - § 122C- 146: Indigents can't be refused and the County cannot supplant funding due to reimbursement received by the LME

Priority Populations

- NC General Statutes:
 - § 122C-143.1(b): The Secretary shall develop a payment policy that designates, within broad age/disability categories, **the priority populations**, based on their disability level and the types of service to be supported by State resources.

NC DMHDDSAS – FY22 Benefit Plan Eligibility Criteria

LME-MCOs shall ensure that limited resources are utilized for Federal and State priority populations within each Benefit Plan. (Reference 122C-143.1)

Priority populations include:



Child MH Priority Populations

Individuals at risk of harming self or others

High Risk individuals (>2 crisis, inpatient events in 12 months)

Youth who experience first episode psychosis

Individuals with co-occurring MI/SU or MI/DD

Homeless or at risk of homelessness

Individuals with TBI

Criminal or juvenile justice system involved

Deaf and hard of hearing

Dept. of Social Services involved

Individuals with complex medical disorders

Individuals living with an adult with MI or SUD

IDD Priority Populations (Adult & Child)
Homeless or at risk of homelessness
Individuals at risk of abuse, neglect or exploitation
Individuals transitioning from institutions & residential placements
Deaf and hard of hearing
Individuals transitioning from school
Individuals with complex medical disorders

Priority Populations (continued)

What Else Do We Know?

- Child/Youth mental health services are generally for Medicaid-eligible youth ages 3-20.
- The wait times for services and state-run placements is extremely long



QUESTIONS

- Does the State/County have a statutory obligation to provide mental health services?
- Is the obligation to provide mental health services limited to “available funds?”
- How do parents of minors enforce their right to mental health services?



What does IDEA
require?

IDEA Eligibility Categories

- Eligibility categories pertaining to mental health:
 - Emotional Disability;
 - Can also include Autism, Other Health Impaired and Multiple Disabilities

Related Services

- IDEA requires school districts to provide “related services” to eligible students.
- “Related Services” under IDEA include: “**counseling**, psychological, and social work services including parental counseling and training to assist parents in understanding and addressing their child’s needs.”

Definitions

*The term **“related services”** mean . . . such developmental, corrective and other supportive services (including . . . psychological services . . . social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services . . . and medical services, **except that such medical services shall be for diagnostic and evaluation purposes only**) as may be required to assist a child with a disability to benefit from special education*

20 U.S.C. 1401(26)(A)

Counseling Services

Means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

34 C.F.R. § 330.34(c)(2)

Psychological Services

*Defined to include not only psychological testing and assessment, consulting with other staff, and assisting in developing positive behavioral intervention strategies, but also include **“planning and managing a program of psychological services, including psychological counseling for children and parents.”***

34 C.F.R. § 300.34(c)(10)

IDEA Requirements – Mental Health

- A student with an impairment is not eligible for special education under IDEA unless the student has an educational need for the services. *See e.g., D.L. v. Clear Creek Indep. Sch. Dist., 70 IDELR 32 (5th Cir. 2017)* (holding that a high schooler with anxiety, depression, and ADHD did not require special education or related services under IDEA).
- If a child with a disability only needs “**related services**” and not “**special education**,” the child is not a child with a disability under IDEA unless state standards provide otherwise. 34 CFR 300.8 (a)(2)(i)

IDEA Responsibilities – Mental Health

- The IEP team is responsible for identifying “related services” that a child needs in order to benefit from special education and receive FAPE.
- Mental health services provided as a related service must be provided at no cost to the parents.
- **Districts are not responsible for funding mental health services that constitute medical treatment** for a child by a licensed physician except to the extent that the services are for diagnostic and evaluation purposes only.

See Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Revaluations (OSERS 9/1/11).

Standard for Related Service

- When is a related service “necessary?”
- *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999) – The Supreme Court articulated the standard that districts must provide health care-related services if they are supportive services that a child needs to attend school and benefit from his/her education and can be provided by a non-physician.
- Must be services necessary to support the student’s education, as opposed to other, unrelated areas of a student’s life

Educational Need vs. Medical Services

- Students must receive related services, such as counseling, psychological, and social work services where those services required for the student to benefit from special education and receive FAPE.
 - *Cerra v. Pawling Cent. Sch. Dist.*, 427 F. 3d. 186 (2nd Cir. 2005) (Overturns district court determination that the IEP failed to provide counseling services for a “stressed and overwhelmed” student).
 - *C.B. v. Smith*, 74 IDELR 230 (D. Ct. Md. 2019) (Held that the District’s proposed IEP addressed the student’s anxiety in a manner reasonably calculated to allow the student to achieve educational benefit).

Educational Need vs. Medical Services

- The District is not responsible for paying for mental health services that constitute medical treatment.
 - *See M.K. v. Sergei*, 554 F.Supp. 201 (D.Ct. Conn. 2008) (Transition services that included “psychiatric support for medication management” were not for diagnostic or evaluation purposes and not the obligation of the school district).



Interplay Between State Law and Policy/Federal IDEA Requirements Regarding Mental Health

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Payer of Last Resort?

- If State law does **NOT** provide an individual entitlement to students for mental health services beyond available funding; AND
- Federal law does **NOT** allow school districts to consider cost when providing services under IDEA; THEN
- Are school districts the “payer of last resort?” OR
- Are school districts entitled to reimbursement if it provides services that legally should have been provided by another agency?

CAUTION: ROAD UNDER CONSTRUCTION

- Court decisions are difficult to apply / fact based
- Line between “Educational Need” and “Medical Services” is very thin
- **The “greatest need” of many children, to wit, mental health services, is NOT an absolute individual right and receives little to no funding at the county level**
- State-Approved residential placements are extremely limited





Parent Requests for Private/Residential Placement

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Dear EC Director: My child is currently enrolled and eligible for special education under the category of autism. Your school district failed to provide FAPE to my child during the 2020-21 school year. This letter is to provide notice that after 10 business days, I will be removing my child from the school district and placing them in an appropriate private placement. I plan to seek reimbursement for private placement at public expense.

Dear EC Director: *My family recently moved to your school district from Boston, Massachusetts. My child is eligible under IDEA and previously received educational services at a residential facility in Boston. I am requesting that the school district place my child in a comparable private residential placement at public expense.*

Today's Agenda

- IDEA Private Residential Framework
- Case Law Examples
- Mechanics of a Private Tuition Reimbursement Lawsuit
- Specific Questions
- Best Practices

Least Restrictive Environment

- “Each public agency must ensure that—[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled and [s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

20 U.S.C. 1412(a)(5); 34 C.F.R. 300.114(a)(2)(i)(ii).

Residential Placement

- Under the IDEA, “[i]f placement in a public or private residential program is **necessary** to provide special education and related services to a child with a disability, the program, including **non-medical** care and **room and board**, must be at no cost to the parents of the child.”

20 U.S.C. 1412(a)(1), 1412(a)(10)(B)); 34 C.F.R. 300.114 (emphasis added).

What is Considered “Necessary” under IDEA?

- Only “[i]f the educational benefits which can be provided through residential care are **essential** for the child to make **any educational progress at all** [is]residential care...required under the [IDEA].” *Burke Cnty Bd. Of Educ. v. Denton*, 895 F.2d 973 (4th Cir. 1990).
- However, “[w]here **medical, social, or emotional** problems are **intertwined with educational problems**, courts recognize that the local education agency must fund residential programs if the requirements of the EHA and *Rowley* are to be met.” *Denton*, 895 F.2d 973 (citing *Kruelle v. New Castle County School Dist.*, 642 F.2d 687, 693-94 (3d Cir. 1981))

What is Considered “Necessary” under IDEA?

- On the other hand, “[t]he IDEA does not ‘authorize residential care merely to enhance an *otherwise sufficient day program*.’” *Denton*, 895 F.2d 973 (quoting *Abrahamson v. Hershman*, 701 F.2d 223, 227 (1st Cir. 1983)).
- Therefore, if a student's “medical, social, or emotional problems necessitate the residential placement, and those problems are **segregable** from the learning process, the local education agency....need not fund that placement.” *Shaw v. Weast*, 364 F.App'x 47, 53 (4th Cir. 2010)).
- “And *Rowley* makes clear that the [IDEA] requires only that the child be able to benefit from the instruction that she receives, not that she be able to **maximize her potential** commensurate with the opportunity provided nonhandicapped children. *Denton*, 895 F.2d 973

What is Considered “Necessary” under IDEA?

- “The Fourth Circuit applies a stringent standard when determining whether a student's placement in a residential facility is necessary for educational purposes.” *Y.B. v. Bd. of Educ. of Prince George's Cty.*, 895 F. Supp. 2d 689, 706 (D. Md. 2012).
- Ultimately, “[t]he determination of whether services beyond the regular school day are essential for the child to receive any educational benefit is necessarily fact and case specific.”

Summary- Legal Framework

- LEA required to fund (at least a portion) of private residential placement if it is necessary for FAPE
 - Non-medical care (i.e. educational component); and
 - Room and Board
- Intertwined:
 - If medical, social, and emotional problems intertwined w/education problems
 - **LEA MUST fund residential placement**
 - If medical, social and emotional problems are “**segregable**” from education
 - LEA **NOT** required to fund residential placement



Residential Placement Appropriate

Kruelle v. New Castle County Sch. Dist.,
642 F.2d 687 (3d Cir. 1981)

- Residential placement was appropriate when a child was unable to speak and not toilet trained, and where the Court found the child needed extensive around the clock care to receive any educational benefit at all.
- “Where basic self-help and social skills such as toilet training, dressing, feeding and communication are lacking, formal education begins at that point.”

Abrahamson v. Hershman,
701 F.2d 223, 227 (1st Cir. 1983)

- Residential placement was necessary to provide FAPE where the student could not eat, dress, go to the bathroom, or care for himself in any way.
- Court found that residential placement was appropriate for a student with developmental delays that was required to be given “continual instruction and reinforcement” in general life skills such as how to “talk, respond to words of warning, and dress and feed oneself.”

Lexington Cty. Sch. Dist. One v. Frazier, 2011
U.S. Dist. LEXIS 107813, (D.S.C. Sep. 22, 2011)

- Court found residential placement appropriate because child's education and non-education issues were not "segregable"
- Student exhibited the same aggressive behaviors at home as in school. Student had poor attendance and no evidence of any academic progress.
- Evidence in the case showed that school had a difficult time getting the student to respond at all in the educational environment.
- Evidence showed anxiety and Asperger's symptoms often accompanied educational problems.
- Court determined that residential placement was appropriate for him to make "any progress at all." was not violent and didn't pose a danger to anyone at school or in the home,



Residential Placement Inappropriate

Board of Educ. v. Brett Y, 1998 U.S. app. LEXIS 13702 (4th Cir. 1998)

- Parents not entitled to residential placement reimbursement where their son exhibited academic progress at school and was otherwise participating but was having serious mental and behavioral issues at home.
- The Fourth Circuit reasoned that despite the student's frequent absences, which they attributed to his behavioral issues at home, the student was capable of being educated at school
- Thus, his mental and behavioral issues were segregable from his educational problems.
- IDEA funding not required where "non-educational needs which necessitated a residential placement."

A.H. v. Arlington Sch. Bd., 2021 U.S. Dist. Lexis 67117 (E.D. Va. Apr. 6, 2021)

- Student suffered with mental health issues and suicidal ideations. Prior to case, student was committed to several residential facilities for mental health issues
- Parent unilaterally enrolled child into Youth Care, a private residential treatment center in Utah
- Court found that school district was not required to fund residential placement. The primary purpose of the child's enrollment at Youth Care was for mental health treatment and protection against self-harm, not education

Shaw v. Weast, 364 F. App'x 47, 53 (4th Cir. 2010)

- Residential placement not appropriate
- Parents "demand for residential placement...[was]primarily to address the safety needs of the Student as a result of her mental health issues and not her educational needs."
- Treatment for child's mental health and safety issues were distinct and segregable from her educational needs.
- Student was doing well academically in a public school environment
- Court found that the child possessed the basic self-help and social skills that the student in *Kruelle* lacked. Thus, she had sufficient abilities to proceed in her studies in a less restrictive environment than the private school placement.
- Parental placement of student in residential facility "based on their desire to ensure [she] did not hurt herself," was not for educational reasons, and school system was therefore not required under the IDEA to provide funding

M.C. v. Starr, 2014 U.S. Dist. LEXIS 177548,
2014 WL 7404576, *17 (D. Md. 2014)

- "Although [the] benefits [of social, behavioral, life skills] may be desirable, they are not all essential for M.C. to make progress in her education nor is a residential program the only place where M.C. can gain these skills."

Key Takeaways

- **Educational Progress is Key Factor**
 - Is the child making progress in the school's placement?
 - Segregable vs. Intertwined
 - Basic self-help functions (i.e. bathing, dressing, etc.)
- **Mental Health and Medical Records**
 - Private Placement Bills/Records and Purpose
 - Ask parent for consent to share with the IEP team

Mechanics of a Tuition Reimbursement Lawsuit



Summary of Context

- School Board's Obligation to provide a private, residential placement at school expense due to mental health needs may arise in 4 contexts:
 1. Parent **unilaterally** places their child in private setting and brings due process for reimbursement.
 2. Parent files due process and requests a **specific prospective private setting** as a remedy for denial of FAPE.
 3. Parent files due process and requests **an unspecified private setting** as a remedy for denial of FAPE.
 4. IEP team determines that private placement is necessary for FAPE.

Scenarios for Private/Residential Placement at District Expense

#1- Parent unilaterally places their child in private setting and brings due process for reimbursement.

- The parent has the burden of proving:
 - The LEA denied FAPE prior to withdrawal; and
 - Parent's unilateral private placement is appropriate.
- LEA Defenses:
 - Parents did not meet their burden of proof;
 - The LEA provided FAPE;
 - The parent's private placement is not appropriate; and
 - Claims for re-imbursement should be denied or reduced

Scenarios for Private/Residential Placement at District Expense

#1- Parent unilaterally places their child in private setting and brings due process for reimbursement.

- **Did the school district deny FAPE?**
 - Was the denial just a procedural violation?
 - Was there substantive harm (i.e. loss of educational opportunity)
 - Did the school district's placement provide FAPE?
 - How long was the alleged period of deprivation?

Scenarios for Private/Residential Placement at District Expense

#1- Parent unilaterally places their child in private setting and brings due process for reimbursement.

- **“Appropriateness” of a private placement**
 - Parent’s private placement does not have to be at a school that is approved by NCDPI or that otherwise meets state educational standards.
 - Unilateral private school placements might not be held to the same standards as LEAs by courts (i.e. least restrictive environment)

Scenarios for Private/Residential Placement at District Expense

#1- Parent unilaterally places their child in private setting and brings due process for reimbursement.

- **Limits on Reimbursement:**

- At the most recent IEP meeting, parents did not give notice of intent to remove child and place in private setting at public expense;
- Prior written notice at least 10 business days before removal; or
- Judicial finding of unreasonableness by the parents

Scenarios for Private/Residential Placement as District Expense

#2- Parent files due process and requests a specific prospective private setting as a remedy for denial of FAPE.

- Parents maintain the burden of proving that the school denied the child FAPE through the child's placement in their IEP, and that the private placement is appropriate for the child.

Scenarios for Private/Residential Placement as District Expense

#3- Parent files due process and requests an undetermined private setting as a remedy for denial of FAPE

- Under N.C.G.S. §115C-109.9(c), the State Board of Education has the authority to enforce an Administrative Law Judge or State Review Officer's final decision to place a child in a private school that is "approved" to provide special education and that can provide the child with an appropriate education.
- LEA Defenses:
 - The child's current placement in the school district is appropriate and provides FAPE; and
 - A lack of evidence that an "approved" private school is available or appropriate.

Scenarios for Private/Residential Placement as District Expense

#4- IEP Team places a student in private residential setting to meet FAPE & LRE

- LEAs should consider private residential setting as part of the IEP process if it is necessary for FAPE
- Under NC Policy 1501-2.2, the LEA should first exhaust all in-state residential placements before considering placing a child in an out-of-state placement.
- Out-of-District Placement Funding



Best Practices Fact Gathering: Parent Requests for Private/Residential Placement



Parent Requests for Private/Residential Placement

Don't Miss the Big Picture

- Every circumstance begins with the IEP Team determining if the student can receive FAPE/LRE in a public setting.
- Anytime a parent is requesting payment or reimbursement for private placement and/or the IEP Team is considering whether such a placement is necessary, the district should take action and gather specific information.



Parent Requests for Private/Residential Placement

Documentation/Action Checklist

Before an IEP Team can make a placement determination, several items must be considered, and certain documentation must be gathered.

For ALL such requests:

- List of any and all outside education professionals and advocates recommending residential/private placement be considered;
- List of all health care professionals recommending residential/private placement be considered; and
- Provide copies of any and all assessments, evaluations, and correspondence regarding such recommendations.

Parent Requests for Private/Residential Placement

If the student is new to the district and/or was previously in a private setting:

- When possible, initial comparable services based on an existing IEP should be offered until the district can evaluate the student's needs through the IEP Team process;
- Request all student records from the last school district;
- If the last school/setting was private, request that the parent/guardian agree to a release of all records from the private entity;
- Seek all such records from the last 3 years;
- Obtain written consent from the parents to communicate with all private educational providers in order to determine needed services for the student;
- Schedule an initial referral meeting and remember that placement decisions are made after the IEP Team determines necessary goals and related services; and
- Determine what, if any, existing evaluations are still valid and what, if any, additional evaluations need to be conducted.



Parent Requests for Private/Residential Placement

If the student is currently receiving services from a mental health provider:

- Request a release to receive all mental health records from the Local Management Entity/Managed Care Organization;
- Obtain a consent order from the parents to communicate with all mental health providers in order to determine needed services for the student; and
- Offer to meet with the Child and Family Team (CFT) to:
 - Gain a greater understanding;
 - Explore the generalization of services across contexts; and/or
 - Discuss mental health's position regarding the need for a private/residential placement.

Parent Requests for Private/Residential Placement

If the student may need mental health services:

- Suggest that the parent request a mental health evaluation;
- Make a formal referral to mental health for Screening/Triage/Referral;
- Document any parent response, including refusals to seek an evaluation;
- Strongly consider implementing counseling as a related service in the IEP for the student regarding mental health issues directly impacting the student's ability to receive FAPE.

Parent Requests for Private/Residential Placement

If the student is currently in a residential and/or private facility:

- Request all documents from the private placement; and
- Obtain written consent from the parents to communicate with all private educational providers in order to determine needed services for the student.

Consult with your Board Attorney after gathering all necessary information. Then, the IEP Team can meet to discuss an IEP providing FAPE to be implemented either in the district or in a private setting.



LEA and Mental Health Agency / Provider Cooperation



Working with the Mental Health Agency in General

Serving Students with Disabilities in Private Facilities:

- LEA Placement in Private Schools or Facilities Requirements:
 - Recognition as a private school by the Division of Non-Public Education;
 - Meeting curriculum and instructional requirements;
 - Meeting IEP development requirements; and
 - Maintaining a safe physical environment.

LEAs must be involved in the development of the IEP and must provide ongoing monitoring of the services provided.



Working with the Mental Health Agency in General

Current Status of Mental Health Services in N.C.

- State funds for residential mental health are typically limited to Medicaid eligible students or “target population” students.
- The wait time for state-run residential placements for children with mental health needs are extremely lengthy (**10+ years!**) presenting practical impediments to placement.
- Most county governments contribute very little funding to mental health services.



Working with the Mental Health Agency in General

Mental Health Services for E.C. Students

- Services **MUST** be tailored to the needs of the child;
- Services must be listed on the IEP as a related service;
- Services may be provided in the school building if mental health providers can and will provide direct services there during the school day; and
- Services may be provided across contexts (i.e., school / home / community) if parents and mental health providers can coordinate.



How can LEAs Become More Proactive?

- Include counseling as a related service individualized to the student on the IEP;
- Coordinate and generalize behavior interventions across settings (home/school/community) with mental health providers;
- Contract with and/or allow mental health providers to come into the school during non-instructional times to provide needed services; and
- Consider offering parent counseling through mental health providers or school counselors.



Where are
we headed?

IDEA requirements re: agency responsibilities

NC 1501-11 Methods of Ensuring Services

(b) Obligation of noneducational public agencies.

*(1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services . . . that are necessary for ensuring FAPE to children with disabilities within the State, **the public agency must fulfill that obligation or responsibility**, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.*

NC 1501-11(b)(2)

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner.

The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State Agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.





Thank You!

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