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## **Students Placed for Care & Treatment: What are the Legal Requirements?**

### **MASE Best Practices Conference**

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State and Federal law require school districts to provide education services to special education students who are placed, either at home or in a facility located within the district, for “care and treatment.” This presentation will discuss school districts’ legal obligations with respect to these students and how to navigate this complicated area of the law.

#### **I. STUDENTS PLACED FOR CARE AND TREATMENT**

##### **A. IDEA Requirements**

IDEA defines special education services to include “[i]nstruction conducted in the classroom, in the *home*, in hospitals and institutions, and in *other settings*.” 34 C.F.R. 300.39(a)(i) (emphasis added). Therefore, school districts have the responsibility, under the IDEA, of providing instruction to special education students irrespective of whether that instruction is provided at the student’s home, in a “day treatment” program or in a “residential treatment center.”

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NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2009 Ratwik, Roszak & Maloney, P.A.

## **B. State Law Requirements**

### **1. When is a student placed for care and treatment?**

Under state law, school districts are required to provide education services to students placed within their boundaries. *See, generally*, Minn. Stat. § 125A.515, subds. 7 and 10. The Minnesota Department of Education (“MDE”) has promulgated rules addressing the services to be provided to students “placed for care and treatment.” For the purpose of the MDE rules, a student is “considered to be placed for care and treatment” if they are placed “by someone other than the district” in one of the following types of facilities:

- chemical dependency and other substance abuse treatment centers;
- shelter care facilities;
- home, due to accident or illness;
- hospitals;
- day treatment centers;
- correctional facilities;
- residential treatment centers; and
- mental health programs.

Minn. Rule 3525.2325, subp. 1(D).

### **2. What are the requirements for short-term placements?**

“A placement for care and treatment is a short-term placement if the anticipated duration of the placement is less than 31 school days.” Minn. R. 3525.2325, subp. 2. The providing district is that district in which the care and treatment center is located. *See, generally*, Minn. R. 3525.2325, subp. 1. For students with a “short-term” placement, the school must begin to provide instruction immediately after the student is enrolled in the new program. *Id.* If the student is placed in the program without any educational record or IEP, the district must immediately contact (via telephone) the student’s home school to determine whether the student has been identified as disabled. *Id.*

If a student placed on a short-term placement has been identified as disabled and has a current IEP, the initial due process procedures may be accomplished by telephone.

However, the required written documentation, including notices, consent forms and IEPs, must follow immediately. *Id.*, subp. 2(A).

The student's school must give the agency providing the care and treatment an oral review of the IEP goals and objectives, as well as services provided. The agency providing care and treatment must then contact the parents and reach an agreement about the continuation or modification of special education services in accordance with the goals and objectives. *Id.* If the providing agency cannot reach an agreement with the parents, the "*providing district shall hold a team meeting as soon as possible.*" *Id.* (emphasis added).

The providing district must provide written notice of the meeting to: the person (or agency) placing the student, the resident district, appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the student. Minn. R. 3525.2325, subp. 2(A). A copy of all documentation, including any modified IEP, must be provided to the parents, along with a copy of their rights, including a response form. *Id.*

### **3. What are the requirements for long-term placements?**

"A placement for care and treatment is considered long term if it is anticipated to extend beyond 30 school days." Minn. R. 3525.2325, subp. 3. A student placed for long term care and treatment "must receive educational services immediately upon enrollment in the educational program." *Id.*

If a student placed for long term care and treatment has been identified as disabled and has a current IEP and if the education staff of the providing district determines that the current IEP can be implemented during the placement, the education staff "*must* contact the parents to secure an agreement to continue to provide special education services according to the IEP. If the parents do not agree with the providing district's proposal, the district shall hold a team meeting as soon as possible." Minn. R. 3525.2325, subp. 3(A).

If the providing district's education staff needs additional evaluation information, or does not believe that the IEP can be fully implemented during the placement for care and treatment, the education staff must:

- "contact the parents to secure an agreement to provide special education on an interim basis while an evaluation is completed; or
- call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional evaluation to determine the appropriate program."

*Id.* The obligation is on the providing district to make sure it has enough information to properly implement the IEP and to make sure that the IEP can be implemented during the care and treatment placement.

**4. When must a student placed for care and treatment be integrated into a regular educational setting?**

Whenever a student is required to remain “on site” to receive care and treatment services, the student must be integrated into a regular educational setting, whenever the student’s “treatment and educational needs allow.” Minn. R. 3525.2325, subp. 6(B). The parents, the staff members providing treatment, and educational staff members must jointly decide on the appropriate amount of integration. *Id.*

If possible under the circumstances, final placement decisions must be made by “the IEP team of the providing educational agency.” *Id.* If that team concludes that the student can benefit from receiving more than three hours of educational services, the team must (in conjunction with care and treatment center staff), “consider the feasibility and appropriateness of an education placement at a regular school site.” *Id.*

**5. What are the requirements when a student exits a care and treatment facility?**

Minnesota Rule 3525.2325, subp. 4, requires providing districts to prepare an exit report whenever a student leaves a facility. This report must summarize the “regular education or special education evaluation or service information.” *Id.* The report must also include a “summary of current levels of performance, progress, and any modifications made in the pupil’s IEP or services.” *Id.* The report must be sent to the student’s home district, the receiving facility, the parents, and appropriate social service agencies, if any. *Id.*

**C. Programming Requirements**

**1. What are the educational programming requirements for students placed for care and treatment for fewer than 171 school days?**

Districts must provide a minimum of one-half (1/2) of the normal school day of small group instruction, or an average of one hour of day of personal one-to-one instruction to students who have been placed for care and treatment for fewer than 171 school days. Minn. R. 3525.2325, subp. 5. Districts are not required to provide services to students outside of the regular school year unless the student has an extended year IEP.

## **2. What are the program requirements for students placed for care and treatment for more than 170 school days?**

Districts must provide a greater amount of educational programming to students whose placement for care and treatment is expected to exceed 170 regular school days. Pursuant to Rule 3525.2325, districts are required to provide “the instruction necessary for the [student] to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the [student] would have been enrolled in if the [student] were not placed for care and treatment.”

Specifically, districts are required to provide:

- “preferably a normal school day in accordance with the pupil’s IEP...;
- an average of at least two hours a day of one-to-one instruction; or
- a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil’s IEP or student’s education plan that none of these options are appropriate.”

Minn. R. 3525.2325, subp. 5. Before making any determination as to what educational program to provide a particular student, districts must make an individualized determination as to the amount and location of any education provided to a student placed for care and treatment.

## **II. STUDENTS PLACED IN RESIDENTIAL TREATMENT CENTERS**

### **A. Legal Requirements for Residential Treatment Centers**

Residential treatment centers are regulated by the Minnesota Department of Human Services (“DHS”). The DHS has promulgated Rule 2960.0080, subp. 9, which relates to the education of students placed in such centers.

Rule 2960.0080, subp. 9, requires residential treatment centers to:

- “facilitate the resident’s admission to an accredited public school or, if the resident is home-schooled or educated at a private school or *school operated by the license holder* [the facility], the school must meet applicable laws and rules.”
  - Thus, the rule allows privately operated residential treatment facilities to operate schools for the benefit of their residents.

If a residential treatment facility does operate such a school, it must:

- “arrange for educational programs that provide for instruction on a year-round basis, if required by law;
- [obtain] the approval of the education services from the Department of Education; and
- cooperate with the school district [in which the facility is located].”

Further, DHS Rule 2960.0050 states that residents of residential treatment facilities have a right to “receive a public education.”

Districts should be aware of these restrictions on privately operated residential treatment facilities. Because they are required to facilitate admission to public schools or cooperate with the district if they operate their own school, such treatment facilities should be “checking in” with the district in which they are located from time to time.

#### **B. District Liability for FAPE**

Generally, the school district in which a residential treatment facility is located has the obligation to provide FAPE to students placed at that facility. The IDEA regulations define “special education” to include services provided in “hospitals, institutions and in other settings.” 34 C.F.R. § 300.39(a)(i). This regulation includes “residential treatment facilities.”

Similarly, Minnesota law places the responsibility for providing “education services, including special education if eligible, to all students placed in a [residential treatment] facility” with the “district in which the residential facility is located.” Minn. Stat. § 125A.515, subd. 3. There is an exception to this rule for students placed in a residential treatment facility by their resident district. Minn. Stat. § 125A.05(c); Minn. Rules 3525.2325, subp. 1(D), 3525.0800, subps. 1, 7.

Because the district in which the facility is located retains the ultimate responsibility for providing FAPE to students placed in the facility, school districts can be found liable for IDEA violations and FAPE denial, even when they have no staff present at the facility. The MDE has repeatedly found districts responsible for providing FAPE to students placed at such facilities. In many, though not all, of these cases, the district in which the facility was located did not contract with the facility to provide services. *See, e.g.*, MDE Complaint 1004: Cloquet ISD #904, June 23, 1999; MDE Complaint 1115: Pipestone Cooperative, January 21, 2000; MDE Complaint 1287: Brainerd ISD #181, October 31, 2000; and MDE Complaint 1481: Wayzata ISD #284, August 1, 2001.

Note there is an exception to the above rule. Minnesota Statute, Section 125A.15(d) states that a “privately owned and operated residential facility may enter into a contract to obtain appropriate educational programs for special education children and services with a joint powers entity.” If the facility enters into such a contract, the joint powers entity (usually a special education cooperative) becomes the “district responsible for providing students placed in that facility with an appropriate educational program in place of the district in which the facility is located.” *Id.* (emphasis added).

Note that, if the facility does not enter into such a contract with a joint powers entity, the district in which the facility is located retains the responsibility for providing educational programming, irrespective of what other types of arrangements the facility might have made. For example, if a facility operates its own school, or contracts with another school district, or a private school to provide educational services, the district in which the facility is located retains responsibility for providing appropriate education.

Similarly, Section 125A.15(d) only addresses special education programming. Districts retain responsibility for providing appropriate regular education to those (non special education) students placed in a residential facility within their borders.

### **C. Recognized Types of Residential Treatment Facilities and Corresponding District Responsibilities**

The MDE has recognized three types of residential care and treatment programs, each with their own different set of requirements.

First, the MDE recognizes public facilities, operated by the state or one of its political subdivisions. For such facilities, the district is entirely responsible for providing educational programming, which is provided by district employees.

The second form of facility “contracted nonpublic” may provide its own educational program. Such programming must be overseen by the local school district under a contract.

The third type of facility “nonpublic” provides its own educational program, with no oversight by the local school district. All persons providing educational programming for such a facility are employees of that facility. Such facilities are ineligible for state aid, and all staff members (including the director of special education) providing educational programming must be appropriately licensed.

## **III. STUDENTS PLACED FOR DAY TREATMENT**

As discussed above, the IDEA definition of “special education” includes services provided at facilities providing “day treatment.” Therefore, under the IDEA, districts are required to provide FAPE to their students who have been placed at day treatment facilities.

#### **A. District Responsibility to Resident Students Placed in Day Treatment Facilities**

Students placed in day treatment centers are “entitled to regular and special education services” consistent with Section 125A.515, or Rule 3525.2325. Minn. Stat. § 125A.515, subd. 10. As discussed, Section 125A.515 places the responsibility for providing education to students with the district in which the treatment facility is located.

Similarly, Rule 3525.2325 mandates the minimum amount of instruction which districts must provide to students placed for care and treatment. In order to receive access to education “consistent” with Rule 3525.2325, districts must ensure that they are providing (at least) this minimum amount of education to students who have been placed in day treatment facilities.

“When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence,” the resident district is responsible for providing “an appropriate educational program for the child.” Minn. Stat. § 125A.15(b). Therefore, districts whose students are placed at day treatment programs outside of the district retain responsibility for providing FAPE to those students.

#### **B. District Responsibility to Non-Resident Students Placed in Day Treatment Facilities**

If a district has a day treatment facility operating within its boundaries, state law does not require it to provide FAPE to students placed at that facility. Note, however, that the resident district may elect to provide appropriate education “in the district in which the day treatment center is located by paying tuition to that district.” Minn. Stat. § 125A.15(b).

In addition to paying tuition for educational services through the district in which the day treatment center is located, districts whose students have been placed for day treatment may elect to provide educational programming at one of its own schools or in the student’s home. *Id.*

### **IV. HOMEBOUND STUDENTS**

MDE regulations require districts to “provide regular education, special education, or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility, *or in the student’s home* for care and treatment.” Minn. R. 3525.2325, subp. 1 (emphasis added). A student is considered to be placed “for care and treatment” if they are placed, by someone other than the district, in their home, *due to accident or illness*. Minn. R. 3525.2325, subp. 1(D)(3) (emphasis added). All students who are absent or “predicted to be absent” for 15 (consecutive or intermittent) days and are placed at home are entitled to regular and special education services. Minn. Stat. § 125A.515, subd. 10.

MDE rules only require school districts to provide homebound instruction to students who are:

- Prevented from attending the student’s normal school site for 15 consecutive school days;
- Predicted to be absent from school for 15 consecutive school days according to the “placing authority,” including doctors; or
- “Health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent school days”

**A. District Must Provide Homebound Services on an Individualized Basis**

Rule 3525.2325, subp. 5, generally requires districts to provide students who are predicted to be absent for more than 170 school days, exclusive of summer school, with the instruction necessary to allow those students to make progress in their appropriate grade level, as if they had been enrolled and were not placed for care and treatment outside of the school. Alternatively, districts may provide “an average of at least two hours a day of one-to-one instruction; or a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil’s IEP or student’s educational plan that none of these options are appropriate.”

For students who are predicted to be absent for *fewer* than 171 normal school days, exclusive of summer school, Rule 3525.2325, subp. 5, requires districts to provide, “at a minimum[,] either small group instruction for one-half of the normal school day or at least an average of one hour a day of one-to-one instruction.”

- While Rule 3525.2325 states the minimum amount of instruction that a district must provide, it does not state the maximum amount of instruction that a district may provide.
- Even when the minimum amount of instructional time is provided, districts may be in violation of Rule 3525.2325 if a student’s IEP team does not consider the appropriateness of additional instruction and/or related services for homebound students. MDE Complaint 07-072C: S. Washington County, ISD #833, May 15, 2007.

## **B. IEPs Must be Amended to Address Homebound Instruction**

If a special education student qualifies for homebound instruction, “[s]pecial education services must be provided *as required by a pupil’s IEP.*” Minn. R. 3525.2325, subp. 1 (emphasis added). Minnesota law requires IEPs to include “the location of the special education services, the duration of the special education services, and provisions for coordinating the care and treatment and the special education services.” Minn. R. 3525.2325, subp. 6. The MDE has interpreted this provision to mean that districts are required to develop and implement specific provisions in students’ IEPs to address homebound instruction. MDE Complaint 07-072C: S. Washington County, ISD #833, May 15, 2007.

## **C. IEP Team Considerations**

If a special education student qualifies for homebound instruction, the district should convene an IEP meeting to:

- Discuss the appropriate amount of homebound instruction and related services;
  - This discussion should focus on the student’s individual ability to tolerate such services.
- Determine how to coordinate the instruction and related services with the care and treatment being provided; and
  - This determination should focus on the individual nature of the student’s medical situation and the treatment being provided.
- Develop an IEP for homebound services reflecting the above discussion and determination.

## **V. TRANSPORTATION OF STUDENTS PLACED FOR CARE AND TREATMENT**

The resident district is responsible for providing transportation to students placed in day treatment facilities. Minn. Stat. § 125A.15(b). Therefore, if a student is placed in a day treatment center in a district other than the student’s resident district, the district in which the day treatment center is located does not have the obligation to provide transportation to the student.

The MDE has taken the position that a district’s obligation to transport resident students, including any obligation to transport students to day treatment programs, terminates if a student open enrolls in another district. In addition, MDE policy states that the enrolling

district must transport students with a disability “to and from school” if the student requires special education. If, however, the student’s IEP includes transportation as a related service (such as special transportation) the student’s resident district (which still has the responsibility to implement the IEP) must provide (or pay for) that part of the transportation that is included in the student’s IEP.

Unlike students placed in day treatment programs, the nonresident district is responsible for providing “necessary transportation” to any student placed in a residential program for care and treatment within its borders. Minn. Stat. § 125A.15(c). It is important to note that this provision applies whether or not a student has a transportation component in their IEP. If it is “necessary” to transport the student in order for the student to receive “appropriate education,” the district must provide the transportation. The MDE has opined that the transporting district is responsible for any extra costs if the student’s IEP contains a transportation component. Note that the district providing transportation may not bill the student’s resident district for the cost of such transportation. Minn. Stat. § 125A.15(c). The district is, however, eligible to receive transportation aid for transporting such non-resident students.

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