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Criteria for Making the Decision: Placement in Residence for Educational or Other Than Educational Reasons

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Under the Educational for All Handicapped Children Act,¹ parents of handicapped children may not be required to fund in whole or in part the costs of their child's special education. This seems straightforward enough, but quickly becomes complicated when one considers the necessity of residential placement for some exceptional children. At what point does the residential component of the child's placement become so educationally essential that it must be designated as such, and thus the residential costs become part of the total special education cost?

Although provision is made in the regulations under P.L. 94-142² for the placement in residence of exceptional children for educational or other than educational reasons, no criteria are spelled out for making that crucial decision, nor are state laws any more helpful in this regard. A review of the laws of 39 states reveals that only one, New Jersey, has written specifications bearing on this decision and in the case of New Jersey, the specification is the somewhat vague one that "home conditions" are sufficient justification for a residential placement of an exceptional child for other than educational reasons.³

The problem in Connecticut has recently been intensified by the results of several lawsuits,⁴ the general tenor of which seems to be

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¹ 20 U.S.C. §§ 1401 *et seq.* (1976).

² 45 C.F.R. § 121a.302 (1977).

³ N.J. Admin. Code tit. vi, § 28-1.1 *et seq.* (1978). "A local school district shall not be responsible for residential costs when the reason for placement is due to home conditions"

⁴ *Erdmann v. State of Connecticut*, Civil Action No. H80-253; *Wallingford Bd. of Educ. v. Connecticut State Bd. of Educ.*, Civil Action No. 178446.

In *Erdmann*, Judge T. Emmett Clarie ruled that the plaintiff was an emotionally disturbed child under the provisions of state and federal law and as such was "a handicapped person entitled . . . to an appropriate educational program." As all parties agreed that residential placement was the appropriate program, Clarie further ruled that the West Hartford Board of

that federal and state judges and the Office of Civil Rights⁵ have established quite clearly the criteria for making residential placements for educational reasons. The criteria used in these decisions apparently boil down to three factors: (1) The child is handicapped. (2) The child needs residential placement in order that special educational instruction may be delivered to him. (3) The parents may not be required to fund, in whole or in part, the cost of this education.

Although it may be personally annoying to many educators that the criteria for making the decision about reasons for residential placement should be coming from outside the educational establishment, it would appear that educators have nobody to blame but themselves for not having long since specified their own criteria for solving the problem. This is not to say that there have been no criteria at all for making this decision. Obviously, Planning and Placement Teams (PPTs) and hearing officers have been making decisions on this issue. The problem is that their criteria were and are unpublished and thus subject to very little scrutiny, except when they were reviewed in appeals from PPT decisions carried by parents through administrative and judicial proceedings. To say that this had led to much confusion and considerable litigation on this issue is to understate the case.⁶

A recent attempt to develop public criteria for making this important decision came about in Connecticut as a result of a lawsuit against the State's Department of Children and Youth Services, (DCYS), which had been billing parents of handicapped children in their non-committed program for part or all of the residential cost of their child's placement. In the consent decree settling the suit,⁷ the Commissioner of the DCYS was given the authority to review all cases in the non-committed program in order to sort out the handi-

Education was liable for the "entire cost including room and board, of full residential placement" for the plaintiff.

In *Wallingford*, Judge Robert I. Berdon ruled that "facts clearly indicate that the plaintiff requires . . . a residential placement for educational purposes and that this placement must be provided by Wallingford at no cost to the parents."

⁵ Bethel (Conn.) Board of Education (OCR-11/27/79), p. 257:55; EDUCATION FOR THE HANDICAPPED LAW REPORT, Supplement 16, January 25, 1980, 257:57; also 257:176 Supplement 38, December 12, 1980.

⁶ The State of Connecticut has a system of Hearing Boards which rule on disputed PPT decisions. The number of cases reviewed by these Hearing Boards increased from 32 in 1978 to 101 in 1980. In a study conducted from January 1st, 1980 to October 1st, 1981, 95 out of 171 cases concerned payment of the residential costs of the institutional placement of a handicapped child. (Personal communication, Attorney Mary Gelfand, Connecticut State Department of Education).

⁷ Michael P. v. Maloney, Civil Action No. 78-545, 1979.

capped children who had been placed in residence for educational rather than noneducational reasons. A year and some months after the signing of the consent decree, an inter-agency panel was set up to accomplish this task. The inter-agency panel consisted of a representative from the State Department of Education, a representative from DCYS, and a "neutral" member, who is the author of this article.⁸

Four main factors entered strongly into the thinking of the panel as they reviewed the cases. The first factor was the handicapping condition of the child. A child handicapped at birth or identified as handicapped in pre-school years was a strong candidate for residential placement for educational reasons. Children whose severity of handicap or behavior problems required residential placement, but who only came to light after being enrolled in school, formed a second category of children needing placement for educational reasons. A third category of children were those whose severe behavioral and educational problems manifested themselves only after a period of schooling, schooling, but who nevertheless at the time of placement required residence outside the local school system to meet their educational needs.

The local school systems' attempts to resolve the problems posed by the handicapped child represented a second factor in the panel's decisions. In cases where the school system simply did not have an educational program for the child or where the child received repeated suspensions or was placed on homebound instruction or where the school system tried one or more local special education placements without success, these factors were regarded as strong indicators favoring a residential placement for educational reasons. Similarly, school referrals of the child to other community agencies, counseling and other related services provided by the school, school personnel's active involvement with the child's family, with the child still making poor academic and behavioral progress despite these interventions, also indicated the need for outside placement for educational reasons.

The third factor which had a strong influence on the panel's decision-making process was the degree of parental involvement in the educational process. In the cases of parents who were willing and active in trying to handle the behavioral and educational problems

⁸ As the author was neither a member of the Department of Education nor the Department of Children and Youth Services, he provided the "swing" vote in cases where there was disagreement between the decisions of individual cases rendered by the members representing their departments.

their child presented and who had exhausted all community resources for help and still had a child who could not be contained in either home or school or both, the panel concluded that this represented a child with such specialized educational needs that the educational agency would then be required to purchase the necessary special education outside the community.

The fourth factor influencing the panel was the character of the residential placement itself. The present behavioral and educational problems of these children are generally so severe that the special educational programs cannot be delivered to the child unless the child is secured in residence. The residential component therefore becomes an integral part of the educational process. Residential placement is the means of ensuring that the child is available for the special educational instruction. The need for a structured, education program which is implemented by both the teaching staff and the residential staff is evident for many of these children in the area of self-help skill training and training in the performance of appropriate social behavior. These children's needs are such that consistent training by both school and residential staff are necessary to complete the educational program in order that the child can then return to his local community and successfully reenter the mainstream.

The panel's first task was to develop and justify a set of criteria by means of which they would carry out their main task, the sorting of the children into the two groups. For better or worse, the panel decided first to concentrate on the categories of children about whom it was thought it could more or less easily be said that they were placed in residence for reasons other than educational. The first of these categories were those children who, although they were handicapped and in need of special education, were the subject of such severe child abuse that their removal from their homes was deemed necessary. A second and much smaller category were those children who had a psychiatric diagnosis and were in fact in a psychiatric hospital receiving treatment. The third and perhaps largest category consisted of those children whose various anti-social acts such as alcohol and substance abuse rendered their removal from the community very desirable, if not absolutely necessary. A fourth category of children had parents who, if they were not actually abusive, were nevertheless so incompetent in their parenting skills that their children, once again, it was felt, had to be removed from their homes.

The rationale for deciding that placement of the first and fourth categories of children was for other than educational reasons reflected a perceived consensus among educators, child care workers

and the like that the primary reason for the child's institutionalization was the safety and health needs of the child, not his educational needs. The third category represented the same kind of thinking, i.e., removal from an unhealthy environment to a supposedly therapeutic one was viewed more as a community health problem than an educational one.

In the case of the second category, the three-person panel had a more formal basis for their conclusion since a letter from the Commissioner of Education had already spelled out to Connecticut School Boards that psychiatric interventions were medical rather than educational, and costs of psychiatric interventions were not the responsibility of the Boards of Education.⁹

In developing these criteria for other than educational placements, however, many complexities, conflicts and ironies soon became apparent to the panel. In the case of an autistic child there may have been a history of severe child abuse. Were his needs for a residential placement for *educational reasons* any less than another autistic child's whose parents did not abuse him? Obviously not. Yet in cases like these, the panel followed the unstated but widely pervasive rule-of-thumb that when a child had to be removed from his home, his school system did not have to pay the total cost of his residential placement. Again, this was in the face of the fact that his needs for a residential educational placement were as great, if not greater, than other handicapped children like him who were not abused. This is only one example of the complexities and conflicts that arose as the panel tried to make the "easy" decisions concerning children placed in residence for other than educational reasons.

Somewhat daunted, but still resolute, the panel next determined to write the criteria which would operate in placing the child in residence for educational reasons. The first criterion was relatively simple to establish: Had the child been legally identified as handicapped?¹⁰ The second criterion necessitated a further search of the child's records to assess the local education agency's success in providing a special educational program for the child.¹¹ In some cases the child had never darkened the door of a public school program, having been placed in public school programming but for one reason

⁹ Circular letter C-24, April 8, 1980 from Commissioner Mark Shedd to Superintendents of Schools, State of Connecticut.

¹⁰ That is, did the child's file contain a copy of a legally constituted PPT meeting, the result of which was the identification of the child as handicapped?

¹¹ All three of the panel members were experienced special educators and were thus deemed competent to judge the relative success or failure of school programs from school records.

or another the program had been unsuccessful in improving the academic and social behavior of the child.

The panel followed P.L. 94-142 which states:

That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature and severity of the handicap is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.¹²

The panel decided that in these cases the local education agency was obligated to purchase the child's special education program elsewhere, probably in a residential institution.

The panel's third and fourth criteria were closely linked and stemmed directly from the language of P.L. 94-142¹³ specifying that a handicapped child's education must be "appropriate." Many of the children whose cases were reviewed were severely handicapped and had special educational needs such as self-help skills in feeding and dressing. One need not be a special educator to see immediately that in order for these programs to be effective, (read "appropriate") there would have to be instruction throughout the child's waking day. Here the panel had to directly confront the widely held assumption of school personnel that whatever occurred in the child's residential portion of his placement was not educational. That is, many PPTs and most state hearing officers presumed that education only occurred during that four or five hour portion of the day in which the child was actually in "school."

What occurred in the rest of the child's day before and after "school" would be commonly referred to as "treatment." The premise here is based upon the dichotomy assumed to exist in handicapped children, particularly the emotionally disturbed. Naively extrapolating the medical model of mental illness into special education, this assumption maintains that "emotional needs" require "treatment" to be provided by agencies other than educational and that education is rather strictly limited to academic matters such as reading and arithmetic. How this schizoid posture can survive in the light of state and federal laws mandating *education* of the emotionally disturbed is somewhat of a mystery, but maintained it is.¹⁴ The absurd results from the application of this assumption is illustrated by the following perhaps apocryphal story: A pupil personnel director, testifying

¹² 45 C.F.R. § 121a.550 (2) (1977).

¹³ 20 U.S.C. § 1401 (18) Section 121a4 (1976).

¹⁴ 20 U.S.C. §§ 1401 *et seq.* (1976), Connecticut General Statutes, §§ 10-76a. *et seq.* (1981).

before a state hearing officer, was heard to state that a step-by-step task analyzed program of teaching a retarded child to button his coat in school was education, but that the same program used in reverse with the child in his cottage to unbutton his coat was treatment!¹⁵

In contrast to the attitude represented in the above story, the panel concluded that for a child whose handicaps were severe, the only appropriate special educational program was one which was carried out throughout the day by both teaching and residential staff. The appropriateness of continuous programming for severely handicapped children is well documented in the literature and will not be touched upon here.¹⁶ It seemed obvious that an educational program was educational regardless of the time of day it was carried out or who the personnel were who were implementing it. Thus the third criterion stated that when a child's special educational needs were so severe that interventions and instruction were necessary both in school and in residence, the residential component of the program became an integral part of the educational program and the placement in residence was therefore for educational purposes.¹⁷

The panel's fourth criterion turned out to be the most controversial of all, as it flatly contradicted the most widely and perhaps most strongly held proposition: If the parents could not manage the child's behavior at home the problem was not within the province of education but was rather the responsibility of other "human service" agencies.¹⁸ Time after time the child's record would show that PPTs would engage in lengthy attempts to show that because of "chaotic home conditions" parents were unable to manage the behavior of their exceptional child. Overlooked in most of these cases was the simple fact that far from the "chaotic home conditions" causing the behavior of the handicapped child, it was the child's severely handicapped behavior that was causing the "chaotic home conditions!" Consider one of the more severe cases the panel reviewed. This "autistic" child would perseverate for three weeks at a time with hum-

¹⁵ Personal communication with Professor Stephen Weisner, Yale University.

¹⁶ Leonard, J., 47 *EXCEPTIONAL CHILDREN* 4, 180 *Day Barrier: Issues and Concerns*, 246-255 (1981).

¹⁷ Wallingford Board of Education v. Connecticut State Bd. of Education, Civil Action No. 178446; North v. District of Columbia, 471 F. Supp. 136 (D.D.C. 1979); Kruelle v. Biggs, 489 F. Supp. 169 (D.Del. 1980).

¹⁸ In a letter to Governor Grasso, a local school superintendent put this conventional analysis in writing when he said, "and when the reason for (residential) placement is for treatment of an emotional problem, the State Department of Education has taken the position that this is *not* the responsibility of education." Letter, Vernon Board of Education to Governor Grasso, June 23, 1980.

ming, crying or screaming and would often not sleep for three days in a row. The panel concluded that any parent or parents regardless of their psychological, social or emotional stability would not be able to put up with this for any length of time before "chaotic home conditions" would result!

More important, however, was the question of what would constitute an "appropriate" special educational program for such a child. Obviously, a child whose handicapped behavior was so severe that he could not be managed at home required residential placement in order that his special educational program could be delivered to him. Thus a large factor in the "appropriateness" of a special educational program for such a child was the necessity again of providing day-long education programming. The panel did not consider these placements from the point of view of who was at "fault" for the handicapped child's behavior. Rather the panel took the position that when, despite the best efforts of the parents and the interventions by the school and other community agencies such as child guidance clinics, etc., the child's behavior was still too severe to be managed either at home or school or both, the appropriate educational program was one that was able to structure the child's special educational interventions on a day-long basis. The fact that most of these special educational programs are available only in a residential institution made the placement, in the panel's view, the only appropriate placement for educational purposes and that in consequence the local board of education was liable for the entire cost of the placement.

The panel was not unaware of the ironies inherent in placing additional educational responsibilities on an institution that was already having trouble merely teaching normal children to read and write. However, given the panel members' knowledge of P.L. 94-142, recent court decisions, in Connecticut and nationally, favoring placement of exceptional children in residence for educational reasons, and the documentation in the research literature of successful institutional interventions in the behavior of exceptional children, especially the severely handicapped, we believed that we could not do other than what we did.

In summary, the present article delineates criteria for making the decision as to whether an exceptional child is placed in residence for educational or other than educational purposes. It further delineates the process by which these criteria were developed and the rationale behind them. Whether these criteria will be generally accepted, whether they will be written into law and whether they will have a positive impact on the decision-making process at the local

education agency level remains to be seen. They are published here in the hope of furthering serious discussion of a problem that is causing anguish to many parents and frustration to many school personnel.

