EDUCATIONAL LEGAL ISSUES FOR MILITARY CHILDREN

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EFMP? EDUCATIONAL LEGAL ISSUES?

- Exceptional Family Member Program (EFMP)
- Educational Legal Issues
  - Individuals with Disabilities Education Act (IDEA)
    - 20 U.S.C. 1400
  - Rehabilitation Act of 1973 (Section 504)
    - 29 U.S.C. 794/34 C.F.R. 104
  - Interstate Compact on Education Opportunity for Military Children (www.mic3.net)
MILITARY CHILDREN...

- 2.2 million service members
- 1.9 dependent children
- Over 40% are under 5
- 37% of families live on installations
- Remainder live in 4,000+ communities
- Over 17,000 AF Families have
- an EFMP member
  - About 3.5K at JBSA!
- Move 6-9 times in a career
ISSUES THESE FAMILIES FACE

• Financial Issues
  • Special Diets, Diapers
  • Adapting Homes and Cars
  • Additional Therapies
  • Day Care

• Educational Issues
  • Schools offer different programs
  • States vary in regulation

• Social and Emotional Issues
• Logistics Nightmare of Moving
I THINK MY CHILD MAY HAVE A DISABILITY. HOW LONG DOES IT TAKE TO GET A CHILD EVALUATED?
FEDERAL LAW

• Required that an evaluation be conducted within 60 days of receiving parental consent for the evaluation
  • Parents should ask if there is a specific form for giving consent and use it
  • However, the law allows States to define the timeframe further if they decide to...
How a state defines “days” can make a huge difference!

Report on 19 Aug 19...

- 45 school days – ME, OK (23 Oct 19)
- 60 calendar days – NY, CA, OH, MD, OK, TX (17 Oct 19)
  - 60 calendar days, excluding summer – PA
- 60 business days – LA (13 Nov 19)
- 65 business days – VA (21 Nov 19)
- 60 school days – FL (13 Nov 19)
EVALUATIONS

• Timeframes do not start until parent gives written informed consent

• If the school refuses - “Prior Written Notice”
  • Consult State Procedural Safeguards Notice for the Appeals process - varies State by State
  • If you disagree - request Independent Education Evaluation (IEE)

• Military Issues
  • Do you have an evaluation from TRICARE/ECHO?
  • School Liaison Officers
Qualification under IDEA

Is the child a “child with a disability” who, by reason thereof needs special education and related services?

Qualification under Section 504

Has a physical or mental impairment that substantially limits one or more major life activity?

Individual Education Program (IEP) or 504 Plan

Services and or Accommodations Provided
WARNING – CHILDREN UNDER 3

• Covered under Part C of IDEA (IFSP)
• Requires “Child Find” to identify children with a disability
• No diagnosis required – state by state issues
• Services Vary – NOT FAPE
  • Cost Sharing in some states based on income
    • AL vs. TX/VA: Cost sharing ($5 to $800 per month)
• Military Issues
  • Tricare vs. State Services
  • Time and Location
  • Moving
WILL I GET THE SAME SERVICES IN THE NEW STATE I AM PCS-ING TO UNDER MY CHILD’S IEP?
SHORT COURSE - IDEA

• All students with a disability are entitled to a **Free Appropriate Public Education** (FAPE)
• Basic Test: Child with a disability who, by reason thereof needs special education and related services
• Special education is specially designed instruction to meet the unique needs of the child (IEP, Parent Involvement)
• **Least Restrictive Environment** (LRE)
• Notice in a reasonable amount of time to initiating or changing or refusing to initiate or change identification, evaluation or educational placement
• Disputes
  • Normally no attorneys fees for IEP meeting or mediation
  • Process varies by state – can end in State or Federal Court
  • Most resolutions are corrective measures
CHANGING SCHOOLS

• IDEA still requires new school to provide FAPE
  • What is appropriate?
  • Can revisit qualifications for IDEA

• A child should receive *comparable services* as those found in previously held IEP [See 20 USC 1414(d)(2)(C)(i)]

• Interstate Compact on Educational Opportunities for Military Children (MIC) echoes this stating a new state “shall initially provide comparable services...”
  - MIC, Section V, para C
SHORT COURSE – MILITARY COMPACT

• States enter Compact voluntarily
• Accept unofficial education records for placement (10 day rule)
• Accept previous course placement and testing (can re-test)
• Senior Year Issues (state courses, exit exams)
• Extracurricular Activities (missed try outs?)
• Deployment flexibility (absences, living out of district with no tuition)

• Disputes:
  • National or State Commission
  • ADR or State Courts
REality?

- Federally funded schools must offer services
  - Comparable is up for debate
  - School can change the IEP
  - School can offer different services
  - HINT: New IEP start before leave old school
- Don’t have to sign the IEP
- Can appeal any decision by the school
  - Appeals are RARE (less than 4,000 per year)
  - Most are in NY, DC and PR
  - THEY MAY wait you out...
REALITY? WHAT IS AN APPEAL?

- Mediation – State funds mediator
- Due Process Hearing
  - Heard by Admin Law Judge
  - Witnesses, Experts – and could win attorneys fees
- Federal Court
- Option: Stay-Put Rule
- Option: 10-day Rule from Private School
  - School will likely file a Due Process Complaint
    - 34 CFR 300.507
WHAT ABOUT 504 PLANS?

- Physical or mental impairments which substantially limits one or more of major life’s activities
- Includes everything from learning disabilities to long illness
- Transfer? Unclear – as many 504 plans are NOT in writing
- If in writing, request accommodation in writing
- This is a civil rights act and not an education act
- No funding so less developed
- Theoretically, you should request a copy of school 504 process
- Mediation? Due Process hearing? Straight to Court!
MY CHILD HAS BEHAVIOR PROBLEMS. CAN THE SCHOOL USE PHYSICAL RESTRAINTS?
FEDERAL LAW

- GAO Report (2009) – used routinely and not in emergency
- Not uncommon to see bungee cords, duct tape, ropes
- Little peer reviewed research confirming this method
- C.N. v. Willmar Public Schools, 591 F.3d 624 (8th Cir 2010)
  - Restraint in IEP but used to demean child
  - Not violation of 4th Amendment – in IEP
- Current Federal legislation efforts
- May 2012 DOE Handout
MY CHILD HAS BEHAVIOR PROBLEMS. THE SCHOOL JUST SUSPENDED HIM. CAN THEY DO THAT?
OVERVIEW

- Generally, students with disabilities are subject to the same disciplinary standards as other children.
- Except, they should not be disciplined for manifestations of their disability.

See 20 U.S.C. 1412(a)(1)
See 20 U.S.C. 1415(k)
See 34 CFR 300.530(d)(3)
OVERALL RULE

• “School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.”

• 20 U.S.C. 1415(k)(1)(A)
20 U.S.C. 1415(K)

- Child may be suspended for less than 10 days like any other student
  - Not considered a “change in placement” triggering procedural rights
- 10 days are cumulative over a school year
  - 20 U.S.C. 1415(k)(1)(B)
  - Get every suspension in writing to make it count
  - School day is defined to include a partial day per 34 CFR 300.11
TRIGGERS RIGHT TO HEARING

• Over 10 days?
  • It is a change in placement
  • 20 U.S.C. 1415
  • Manifestation of Disability Hearing
SPECIAL CIRCUMSTANCES...

• Child may be suspended for up to 45 days under special circumstances

• Special circumstances are drugs, guns or substantial bodily injury – and school district can act immediately in these cases

• If reason is “substantial likelihood of injury,” then school can suspend for 45 days if hearing officer agrees
“A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.”

- 20 U.S.C. 1414(a)(1)(A)
I AM HIRING AN ATTORNEY TO FIGHT TO SCHOOL DISTRICT. WHAT MILITARY SPECIFIC ISSUES SHOULD I CONSIDER?
FEDERAL LAW

- Request school pay for everything – then negotiate giving up what ECHO will cover
- Use ECHO therapist as experts, at IEP meetings
- Don’t disclose moving plans
- Settlement agreements – no in-district clauses
LEGAL ASSISTANCE AND DEPLOYMENT ISSUES
MY CHILD WITH A DISABILITY WILL BE LIVING WITH SOMEONE OTHER THAN A PARENT DURING MY DEPLOYMENT. ANY SPECIAL LEGAL ISSUES?
CHANGING SCHOOLS

• If a non-custodial parent will be registering the child - a special power of attorney
  – Military Interstate Compact (Art VI, Sec A)

• If new school, no tuition for military child
  – Military Interstate Compact (Art VI, Sec B)

• If new home near old school, can keep old school
  – Military Interstate Compact (Art VI, Sec C)
IEP DURING DEPLOYMENT

- Check with School on documentation
  - Parents can include “an individual acting in the place of a natural or adoptive parent (including grandparent, stepparent, or relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare” [20 USC 1401 (23)]
- Parent should notify the school of the issue
- Consider a Special Power of Attorney
  - OR
IEP MEETING OVER VTC?

• Yes – if you and the school agree
• Another option would be to do it on a conference call
• 20 USC 1414(f) states (in part): “the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.”

• NOTE: 34 CFR 300.152(a)(3)(ii) requires offer of mediation to parents but may not be offered to others – state specific issue
OTHER LEGAL ISSUES...

- Contact school, medical providers, TRICARE
- Powers of attorney
- Wallet cards??
- HIPAA waivers
ADDITIONAL SLIDES
USE ONLY IF TIME WILL ALLOW
WE GET SSI. WHAT ISSUES WILL COME UP WHEN WE MOVE?
SSI BENEFITS AND MOVING

- Moving and Promotion changes your income
- E-3 with dependants
  - Moody AFB: $1059.00
  - Los Angeles AFB: $2757.00
  - *This can change whether you are eligible!*
- Must report changes in income
- If you are moving a family (deployment or PCS), must notify SSI Office
  - Each state has its own set of rules
SSI BENEFITS AND MOVING

• Heroes Earning Assistance and Relief Tax Act of 2008 (HEART Act)
• Base Pay – Earned Income
  • BAH – Earned Income
  • BAS – Earned Income
• Housing on Base or Privatized Housing
  • In-kind support and maintenance (ISM)
  • Subject to the “One-Third Reduction”
• Hostile File Pay, etc. – Do NOT Count at all
RECEIVE SSI IF STATIONED OCONUS?

• Yes – military dependant children
• Contact local Social Security Office or 1-800-772-1213 before you leave
• Can you apply for SSI while overseas? Yes
  • Contact nearest US Embassy or Consular Office or
  • Write: Social Security Administration
    Attn: SSI Military Children Overseas Coordinator
    - 1 Frederick Street, Suite 100, Cumberland, MD 21502
MY CHILD WITH A DISABILITY WILL BE TURNING 18 IN A FEW YEARS. WHAT LEGAL ISSUES SHOULD I BE PREPARED FOR?
IDEA AND OLDER CHILDREN

• CFR 300.320(b): Beginning in the IEP at 16 “the IEP must include...transition assessments related to training, education, employment and, where appropriate, independent life skills...and transition services needed ...reaching those goals.”

• At 16 years old – child officially invited to meeting
• NLT 17 years old – child is informed of rights
• At 18 years old – Child in charge of IEP/rights
• Power of Attorney for Child to Parent
PLANNING FOR THE OLDER CHILD...

- Benefit Planning – What Legal Tools?
  - How long will your child need care?
- Dangers of Poor Planning
  - SSI and the $2,000 limit – Medicaid Impact
  - SGLI (trust)
  - Survivors Benefit Program (person) (BUT HR 4329...)
  - Dependency and Indemnification Compensation (person)
- Guardianship or not?