EFMP Family Legal Issues
An Overview

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Facts about Military Families

- 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
- And move 6-9 times in a career
Scenario A
Facts of Scenario A

- Disabled adult child (over the age of 18)
- Child receives Supplemental Security Income
  - Lives in a group home
  - Eligible for Medicaid
  - Job placement program with a mentor/coach
- Father is active duty member
  - His will, SGLI and SBP gives all to son
- What are the legal issues?
Legal Issues for Scenario A

- Property and SGLI to disabled adult/child
  - SSI benefits limit resources to $2,000 per person
  - Effect: Loss of SSI, Medicaid, group home, job placement with mentor
Legal Issues for Scenario A

- Solution: Special Needs Trust
  - 42 U.S.C. 1396p(d)(4)(A) and 42 U.S.C. 1396p(d)(4)(C)
  - Third Party Trust: TSgt Jones’ Best Option
  - First Party Trust: Matt’s Possible Remedy
- Military Benefit Problems
  - Survivor Benefit Plan: 10 U.S.C. 1447
  - Dependency & Indemnification Compensation
    - 38 U.S.C. 1314
Scenario B
Facts of Scenario B

- School field trip for all students in the 5th grade at a public middle school
- School field trip costs $5.00 for all children
- It costs $100.00 more for child in wheel chair
- Parents can’t afford additional cost
Legal Issues for Scenario B

- Free Appropriate Public Education (FAPE) as required by Section 504 of the Rehabilitation Act
- 34 CFR 104.33 explains the “Free” in FAPE as: “...the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian...”
Scenario C
Facts of Scenario C

• Military family moves
• Child is 7-years old and autistic
• Former **individualized education program (IEP)** required inclusion in a classroom with an aide – child thrived
• New school district:
  – No services for months
  – Self-contained classroom
  – Cuts OT and speech therapy from IEP
Legal Issues for Scenario C

- “Comparable services” from old IEP
  - *Individuals with Disabilities Education Improvement Act of 2004* and the Interstate Compact for Military Children
  - Hard to enforce long term [34 CFR 300.323(f)]

- Get denial in writing (Prior Written Notice letter)

- Process for Appealing IEP/Denial of FAPE
  - Note about experts and attorney fees

- Free Appropriate Public Education
  - No FAPE for “months,” consider self-help (private school)
STATE JOURNAL

SCHOOL SEGREGATION BANNED

Supreme Court Refutes Doctrine of Separate but Equal Education

By 2054 The Bill Should Be Tame

Tompkins Boasts Authorized So
Self Can Start
Supreme Court Will
Gradually Get
To Friendly Action

High Tribunal Fails to Specify When Practice of Dual Schools Must Be Ended by States

JAG CORPS
Legal Issues for Scenario C

– “Comparable services” from old IEP
  • IDEA and the Interstate Compact for Military Children
  • 20 U.S.C. 1414(d)(2)(c)(i) and http://www.mic3.net/
  • Hard to enforce long term [34 CFR 300.323(f)]

– Get denial in writing (Prior Written Notice letter)

– Free Appropriate Public Education
  • Process for Appealing IEP/Denial of FAPE
  • Experts and attorney fees
  • Self-help remedies
Scenario D
Facts of Scenario D

- Military Family moves to another state
- Developmentally delayed child for speech under the age of 3 (i.e. doesn’t talk)
- Has an **Individualized Family Service Plan (IFSP)** in sending state for delay
- New state defines eligibility differently and states child may **not** be eligible for services
Legal Issues for Scenario D

- **IDEA Act**, Part C (but after age 3...)
  - BUT it does not establish eligibility criteria
  - **States** define developmentally delayed
  - AL: 25% delayed **BUT** AZ: 50% delayed threshold
  - Who pays for early intervention varies by state

- What about overseas? DoDD Schools?
  - Educational & Developmental Intervention Service
  - See DoDI 1342.12, section E2.1.18.1
  - See [www.afspecialneeds.af.mil](http://www.afspecialneeds.af.mil)
Facts of Scenario E

• Second grader with disability is suspended from school
  – Suspension in school records
• Records state child has ADHD, sensory processing disorder, behavioral disorders and GMS
  – Parents have never been informed of GMS
• Request for copy of school records - denied
Legal Issues for Scenario E

- Manifestation of Disability?
  - 20 U.S.C. 1415(k)(E)(i)
  - 10 days cumulative = change in placement
  - FAPE still due to child with disability

- Family Education Right to Privacy Act
  - 20 U.S.C. 1232g (called FERPA)
  - Right to inspect and review student education records
  - Request correction if inaccurate or misleading
Scenario F

- A1C Smith and her spouse have two children
  - $1000 in savings, live off base at Moody AFB
- One child has Downs Syndrome
- They need extra money to pay for equipment for the child with a disability
- They apply for Supplemental Security Income
- What are the military-related issues?
Legal Issues for Scenario F

• What counts as income for SSI?
  – *Heroes Earning Assistance & Relief Tax Act of 2008*
    [122 Stat 1624 (2008); 20 CFR 416.1130(b); and 20 CFR 416.1110(a)(2)]

• What happens if they move to:
  – Los Angeles AFB? Overseas?
  – Privatized housing on a military installation?
Facts of Scenario G

• Military family with two children in school
• Cindy, who has ADHD, wants to take the SAT. and the school told her “no”
• Jim, who has intellectual disabilities, is 17
  — The school has decided to move him from a regular classroom to a self-contained classroom
• Jim’s parents object to the placement
• They also want advice on what happens legally when he turns 18?
Legal Issues in Scenario G

- Can take the SAT
  - Accommodations are available for the SAT
- Can file an appeal with school
  - Request a Due Process Hearing
  - Request “Stay-Put” [20 U.S.C. 1415(j) and 34 CFR 300.518 to hold current placement]
- Discuss transfer of IEP rights to Jim
- Discuss guardianship and special needs trusts
Documents as Alternative to Guardianship

- Living Will
- Durable Power of Attorney for Health Care
- Financial Power of Attorney
- Special Needs Trust
- Living Trust
- Representative Payee (for SSI benefits)
- General Power of Attorney
- Special Power of Attorney for Educational Decisions (IEP)
Scenario H
Facts of Scenario H

- Military family with one child in school
- Eric has intellectual and emotional disabilities
- He has wandered away from the school and been found in the playground by school officials
- His teachers are fed up with this behavior
- They propose the use of restraints and use of an isolation room to address the behavior
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 School s, 591 F.3d 624 (8th Cir 2010)
  - Restraint in IEP but used to demean child
  - Not violation of 4th Amendment – in IEP
- Federal legislation was introduced to make a federal standard to prevent methods that restrict breathing, mandate parent notification
Federal Law

- FAPE NOT Best – restrain your language
- Understand ECHO
- Due Process - no expert cost covered
  - Use ECHO therapist as experts
  - IEP meetings, hearings, etc.
- Don’t disclose moving plans
- Settlement agreements – in-district clauses?