

School Phobia and Absenteeism

Center for Technical Assistance for Excellence
in Special Education (TAESE)

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This presentation is for informational and discussion purposes only. Nothing herein should be construed as legal advice. Specific facts and circumstances can significantly impact the analysis of law and decisions outlined herein.

Compulsory Attendance at School in Montana

- Montana requires children between ages 7 through 16 (or having finished the 8th grade) to attend school. - Mont. Code Ann. 20-5-102.
- When a student has been determined to be “truant,” or persistently absent without excuse, as defined by the district’s policy, a parent may be fined up to \$100 and/or ordered to perform up to 20 hours of community service. - Mont. Code Ann. 20-5-106.
- These provisions do not apply if the child is absent because of *illness*. - Mont. Code Ann. 20-5-103.

School Phobia

- Definition of School Phobia

The Encyclopedia of Children's Health describes school phobia as a failure to attend school because attendance causes ***emotional distress*** and ***anxiety***.

- The terms “school phobia” and “school refusal” are often used interchangeably.

- Encyclopedia of Children's Health, ***School Phobia/School Refusal***

School Phobia

- Children with school phobia may avoid school because of feelings of stress, anxiety or panic.
- Children may exhibit physical symptoms such as:
 1. Stomachache
 2. Headache
 3. Dizziness
 4. Nausea
 5. Vomiting
 6. Threats to hurt themselves
- School phobia may result as a response to a traumatic event:
 1. Death of a family member
 2. Injury or illness
 3. Divorce
 4. Negative experience with peers

- Encyclopedia of Children's Health, *School Phobia/School Refusal*

School Phobia vs. Truancy

School Phobia is not the same as Truancy

- **School Phobia** is usually as a result of anxiety.
 - Students may obtain their **parent's permission** to remain home.
 - They may be **willing to make-up work** at home as long as they do not have to physically attend school.
 - Truant students are not anxious about school.
 - They often **hide absences** from parents.
 - They have **no interest** in making up work or academics.
 - Sometimes truancy may develop into other antisocial behaviors like **lying and alcohol or drug** use.
- Encyclopedia of Children's Health, **School Phobia/School Refusal**

Child Find Obligations for Truant Students

- Schools must adopt procedures for *defining and tracking* “unexcused” absences.
- Excessive unexcused absences may trigger a district’s child-find obligations.
- After every unexcused absence, a district must make a reasonable attempt to:
 1. Notify the student’s parents of the absence prior to the start of the following school day;
 2. Determine the cause of the absence;
 3. Identify, in consultation with the student’s parents, actions to address the student’s absenteeism

Child Find Obligations for Truant Students

- ***Under the IDEA***, all children with disabilities who are in need of special education and related services must be identified, located and evaluated. 34 C.F.R. 300.111(a).
- ***Under Section 504***, a public school must conduct an evaluation of any student who, because of handicap, needs or is believed to need special education or related services. 34 C.F.R. 104.35(a).

Case Study

Hawaii Department of Education v. Cari Rae

Hawaii Department of Education v. Cari Rae

158 F. Supp. 2d 1190 (2001)

Facts:

- The student had already graduated at the time of the hearing.
- Student was ranked near the bottom of her class since arriving in Hawaii FROM Colorado before her Freshman year. Her cumulative GPA was 1.243 by the 11th grade.
- The student was also absent from school many time, **159 absences in her Sophomore year.**

Case Study

Hawaii Department of Education v. Cari Rae

- She developed disciplinary issues by the 11th grade and began using drugs.
- She experienced problems related to her relationship with her mother.
- She was finally classified as disabled ***late in her Junior year.***
- She was subsequently hospitalized for psychiatric reasons after threatening to kill her mother.

- Hawaii Department of Education v. Cari Rae, 158 F. Supp. 2d 1190 (2001)

Case Study

Hawaii Department of Education v. Cari Rae

Holding:

- The Hearing Officer found a violation of the District's Child Find obligations because:
 1. The student had **79 absences** during her Freshman year.
 2. The record reflected numerous incidents or "warning signs" of an emotional impairment.
 3. There were **many behavioral referrals** by the end of Sophomore year.
 4. The student's parents asked a guidance counselor about private tutoring after she **failed** a class in Freshman year.

- Hawaii Department of Education v. Cari Rae, 158 F. Supp. 2d 1190 (2001)

Case Study

Hawaii Department of Education v. Cari Rae

Holding:

- The District argued that because the student ultimately graduated, she was provided with a FAPE.
- The Hearing Officer determined that the District violated the “child find” provisions by failing to evaluate the student at an earlier time.
- The Court ordered that the costs for the student’s hospitalization be borne by the District; approximately \$8,000.00
- The costs were necessary for the student to have a proper evaluation and diagnosis.
- The Court classified the costs as related services, especially given the “child find” violation and that the student was subsequently found to be emotionally impaired and qualified for IDEA services.

- Hawaii Department of Education v. Cari Rae, 158 F. Supp. 2d 1190 (2001)

Child Find Obligations for Truant Students

- A district determining whether a truant student is eligible under the IDEA must establish:
 1. Whether the student's truancy is caused by a ***disability***;
 2. Whether it ***adversely affects*** their educational performance; and
 3. Whether the student needs special education ***as a result of the disability***.

Case Study

Board of Education of the Syracuse City School District

- A lack of attendance **alone** does not necessarily require a student to obtain special education services.

Board of Education of the Syracuse City School District

37 IDELR 232 (NY 2002)

Facts:

- Parents had a history of mental illness and substance abuse.
- Student lived with grandparents from the age of 3.
- Through 6th grade, the student was successful academically.
- In 7th grade, the student was injured after she was pushed and threatened by another student.
- The student's educational performance began to decrease.

Case Study

Board of Education of the Syracuse City School District

- Student was evaluated by a neuropsychologist who recommended that the student be classified with a disability.
- School personnel did not refer the student to the CST.
- The district transferred the student to another school and provided her with tutoring, a behavior plan, and counseling twice a week. However, her attendance continued to suffer.
- The grandparents filed for due process and alleged that the district ***failed to classify the student*** and provide her with a FAPE. They ***sought tuition for a private placement at Discovery Academy and compensatory education.***

- Board of Education of the Syracuse City School District, 37 IDELR 232 (NY 2002)

Case Study

Board of Education of the Syracuse City School District

Holding:

- The student's failure to attend and perform did not per se mean the student has a disability.
- The SRO also disagreed that the student's problems were strictly familial.
- A student may be socially maladjusted and also have a serious emotional disturbance that would qualify her under the IDEA.

- Board of Education of the Syracuse City School District, 37 IDELR 232 (NY 2002)

Case Study

Board of Education of the Syracuse City School District

Holding:

- There were many signs that the student had an emotional disturbance that would qualify her for a disability:
 1. Sudden decline in academic performance
 2. Absenteeism
 3. Disciplinary violations
 4. Turbulent family background
 5. Cautionary notes in the Neuropsychologist's report.
 6. The student was found to have Major Depressive Disorder and Dysthymia

- Board of Education of the Syracuse City School District, 37 IDELR 232 (NY 2002)

Case Study

Board of Education of the Syracuse City School District

Holding:

- The District ***failed*** to provide the student with a FAPE.
- The District was held ***responsible*** for compensatory education and private school tuition at the Discovery Academy.

- Board of Education of the Syracuse City School District, 37 IDELR 232 (NY 2002)

Revising the IEP

- For a student who is already eligible under the IDEA, and whose attendance is ***negatively impacting their learning***, a district is obligated to address attendance in the student's IEP:
 1. Develop an attendance plan;
 - Consider a late start time
 2. Provide small-group therapy; and
 3. Institute a behavioral intervention plan.

- 34 C.F.R. 300.324

Revising the IEP

- Failure to ensure that a student receives the services listed in their IEP may amount to a ***denial of FAPE***.
 1. If a student's absenteeism is impeding their ability to receive services, the district must address the issue by ***rescheduling services*** or ***amending the student's IEP***.
 - Make sure to **document** attempts to provide services which are refused by the student

School Phobia and 504 Plans

- Where a **physical or mental impairment** substantially limits a major life activity, the student is entitled to services and accommodations under Section 504.
 1. Requires districts to **make accommodations** to ensure students receive a FAPE.
 2. May include modifications to the district's **attendance policy**:
 - Late start time
 - Excused absences

- 34 CFR 104.35

Case Study

West Lyon Community School District and Northwest Area Education Agency

West Lyon Community School District and Northwest Area Education Agency

48 IDELR 232 (2007)

Facts:

- The student was diagnosed with depression and separation anxiety disorder after the **death of an aunt**.
- She was hospitalized 3 times for suicidal ideations and diagnosed with **Bipolar Disorder and Generalized Anxiety Disorder**.
- She had been on a 504 Plan prior to moving to Iowa but the parent did not believe it provided adequate support.
- In 6th grade, the student began to experience significant attendance issues.

Case Study

West Lyon Community School District and Northwest Area Education Agency

- At the beginning of 7th grade, the parent signed consent for a full and individualized evaluation.
 - The student was provided with supports including:
 1. Front seat near the teacher
 2. 1st period study hall
 3. Small group assistance to complete current and incomplete homework
 4. Access to a paraprofessional for supervision
 5. Transportation home by a school staff member
 6. Procedures for handling panic attacks
- West Lyon Community School District and Northwest Area Education Agency, 48 IDELR 232 (2007)

Case Study

West Lyon Community School District and Northwest Area Education Agency

- The student's attendance did not improve after the implementation of the IEP. The student attended school only **3 full days and 7 half days** between August 25, 2005 and March 20, 2006.
- However, the District **failed to amend the IEP** and conduct a psychological evaluation.
- The District maintained that they were not provided with recommendations for the student's educational needs from her medical providers. However, the District also **failed to obtain independent evaluations.**

- West Lyon Community School District and Northwest Area Education Agency,
48 IDELR 232 (2007)

Case Study

West Lyon Community School District and Northwest Area Education Agency

Holding:

- The Court recognized truancy as a behavioral indication of an emotional disability that should be addressed by the educational plan.
- There is a **grey area** between normal voluntary conduct and involuntary physiological response.
- The District here **failed to secure an educationally adequate medical evaluation** of the student's mental health needs.
- They also **failed to provide minimally adequate home-based instruction** during the periods of time the student was unable to attend school.
- IEP teams have a responsibility to not only develop an IEP reasonably calculated to confer educational benefit, but must also revise an IEP where necessary.

- West Lyon Community School District and Northwest Area Education Agency, 48 IDELR 232 (2007)

Residential Placement

- The IDEA provides that placement in a public or private residential program to provide special education and related to a disabled child must be provided at **no cost to the parent**, where deemed necessary. – 34 C.F.R. 300.104.
- Room and board and non-medical care must also be provided.

Residential Placement

- Residential placement must stem from the student's educational needs.- Ashland Sch. Dist. v. Parents of Student R.J., 588 F.3d 1004, 1006 (9th Cir. 2009)
 - Oregon students placement at Copper Canyon, a private girls' facility in Arizona, was **not necessary** to provide special education and related services.
 - Substantial evidence that R.J. **did not require a residential placement** "for any educational reason."
 - Although student had difficulty turning in assignments on time, she **earned good grades when she managed to complete her work.**
 - It was R.J.'s "risky behaviors" outside of school that prompted parents to enroll her in Copper Canyon.

Case Study

Independent School District No. 284

Facts:

- A.C. moved to the Minnesota District when she was 15.
- Previous district provided her with special education services for emotional and behavioral disorders.
- IEP assigned her to a special, “self-contained” classroom.
- School-related problems included ***classroom disruption, profanity, insubordination and truancy.***
- District officials tried to allow A.C. to take her classes at an off campus day center for troubled kids, to no avail.
- She used alcohol, ***repeatedly ran away from home, attempted to commit suicide, and forged checks.***

- Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C., 258 F.3d 769 (8th Cir. 2001)

Case Study

Independent School District No. 284

- Her mother tried to get the county social services department to pay for a residential treatment program.
- They offered placement at a juvenile correctional facility which the mother declined.
- When District No. 284 took on the responsibility of educating A.C., they attempted to implement the IEP from her old district by placing her in a self-contained class for behavioral problems.
- A.C. eventually stopped coming to school.
- The parent continued to pursue a residential placement. The District provided homebound services as an alternative.
- For the long term, the District offered to return A.C. to the self-contained classroom or enroll her in a ***day treatment program through the University of Minnesota.***

- Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C., 258 F.3d 769 (8th Cir. 2001)

Case Study

Independent School District No. 284

- The District eventually agreed to enroll the student at Rocky Mountain Academy in Idaho, at District expense.
- The District ***agreed to pay the educational costs***, but not the costs related to therapy or lodging. The parent objected.
- The District ***agreed to an Independent Educational Evaluation by a neuropsychologist*** who found no major attention problems, learning disabilities or deficiencies. She found oppositional, manipulative tendencies.
- She recommended a ***secure facility to prevent truancy***.
- The parent filed for due process.

- Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C., 258 F.3d 769 (8th Cir. 2001)

Case Study

Independent School District No. 284

- An Independent Hearing Officer ordered the District to provide ***100 hours of compensatory education and convene an IEP meeting to locate an appropriate residential placement.***
- The ***District Court affirmed*** the award of compensatory education and reversed the residential placement as the Independent Evaluator testified that the day program proposed by the District would meet the student's needs.

- Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C.,
258 F.3d 769 (8th Cir. 2001)

Case Study

Independent School District No. 284

Holding:

- The U.S. Court of Appeals for the Eighth Circuit held that the ***student's truancy and defiance was a direct result of her emotional disability.***
 - Her disability affected her learning and prevented her from receiving an educational benefit.
 - The student was ***qualified for educational services under the IDEA.***
 - The Court further found that a ***residential placement was necessary*** for the student to receive education.
 - The question is not whether A.C. must attend a facility but who should pay for it.
 - The District Court holding was reversed and remanded with respect to the residential placement.
- Indep. Sch. Dist. No. 284 v. A.C., by & through her Parent, C.C., 258 F.3d 769 (8th Cir. 2001)

Home Instruction

- Numerous medical professionals have indicated that placing school phobia students on home instruction can worsen their symptoms.
- Furthermore, home instruction is not the least restrictive environment.
- Home instruction should be utilized only as a last resort.

QUESTIONS??