



EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

Bradford A. King, Attorney at Sands Anderson

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Court Rules School Division Does NOT Have to Pay For Student's Residential Placement

In some circumstances, the Individuals with Disabilities Education Act ("IDEA") requires school divisions to pay for special education students' placement in residential facilities. However, in *A.H., a minor by his Parent and Next Friend, P.H., v. Arlington School Board*, the United States District Court for the Eastern District of Virginia recently held that the Arlington (Va.) School Board ("APS") was **not** required to pay for an out-of-state residential placement for A.H. - who had a history of mental health hospitalizations - because he made sufficient academic, social and emotional progress while attending a therapeutic day school.

Parsing mental health issues from educational matters may not always be as clear cut as presented in the *A.H. v. APS* case; school administrators are encouraged to work closely with school psychologists, other IEP team members, and school counsel when faced with requests for residential placements and/or reimbursement for them.

A.H.'s mother alleged that APS failed to provide A.H. with the free appropriate public education ("FAPE") to which he was entitled under the IDEA. (A.H. is referred to as "S.H." in the Court's opinion because S.H. is a transgender male who uses he/him/his pronouns and prefers to be called by his gender appropriate name.) S.H.'s mother sought reimbursement for a portion of the costs of placing S.H. in a Utah residential program and appealed the decision issued by a special education administrative hearing officer

who upheld as appropriate the Individual Education Program ("IEP") that APS offered S.H.

S.H. was diagnosed with Major Depressive Disorder, Social Anxiety Disorder, Autism Spectrum Disorder, Parent-Child Relational Problem, Social Exclusion and Post Traumatic Stress Disorder. He experienced suicidal thoughts and attempted suicide several times, treatment for which entailed repeated hospitalizations and other programs. He was admitted to multiple residential programs over the years, including at Grafton in Virginia.

After his return to APS from one such placement, the division determined S.H. eligible for special education services as a student with an emotional disability but not autism. His team developed an IEP that included a social-emotional goal related to communicating feelings directly to a teacher, counseling as a related service, and placement in a

full-time private day special education program. The team (including S.H. and his mother) placed him at the Kellar School in Fairfax, a therapeutic day school for students with emotional disabilities, high-functioning autism, and other related disabilities who access regular high school academic curriculum. Based on his progress at Kellar, S.H.'s team amended his IEP to allow for his partial transition back to the Arlington Career Center ("ACC") during his tenth-grade year.

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During the 2018-19 school year, S.H. continued to attend Kellar and he did well academically. The Hearing Officer specifically noted that during his nine months at Kellar he had no suicidal episodes, no hospitalizations and no emotional breakdowns, his attendance was very good, and he "appeared to thrive." Based on Kellar's records, the Hearing Officer found that S.H. made very good progress academically and remained psychologically stable. The Hearing Officer gave very little weight to S.H.'s mother's testimony that he was "faking it" so he could return to APS.

In January 2019 S.H. returned full-time to APS. Initially his return was successful, but by March 2019 he experienced frustration at school, sought out counseling more often, and repeatedly asked to leave school altogether. He was hospitalized twice due to suicidal ideation and received treatment for anxiety related to gender issues. Upon his discharge, his team added supports and counseling goals to his IEP.

Additional challenges arose and S.H.'s IEP team reconvened to consider other placement options, including a return to the therapeutic day setting. S.H.'s mother strongly disagreed, believing the academics at Kellar and other private day schools were not sufficiently rigorous. S.H. was yet again hospitalized. Ultimately, S.H.'s mother agreed to his placement at the Interlude Program (a separate program operated within APS), but advised she was looking into a residential treatment center in Utah; the team believed she was referencing a short-term placement for mental health reasons. Prior Written Notices reflected APS' understanding and educators testified they understood S.H. would be returning to APS upon his release. They all believed the residential "placement" was for mental health treatment, not educational purposes. S.H.'s mother did not make any suggestion or demand that APS fund the treatment program as an educational program or that she was rejecting the Interlude Program offer.

In subsequent IEP meetings S.H.'s mother, through her counsel, argued that S.H. required residential placement. An APS school

psychologist evaluated S.H. in Utah. APS later determined S.H. also was eligible as a student with autism and his team proposed a private day placement. Alternatively, APS agreed to consider payment for the *educational* portion of the residential placement – essentially a private day placement at the Utah facility. S.H.'s mother never provided the information required to evaluate her request and instead filed for a due process hearing. Notably, S.H.'s mother represented to the family's medical insurance carrier that the services were "medically necessary" and the carrier paid a portion of them. Among the Hearing Officer's later findings were that APS offered S.H. FAPE through the IEPs developed in 2018 and 2019, his educational needs did not require residential placement, and the primary purpose of his Utah placement was for mental health treatment not educational purposes.

The Court agreed, upholding the hearing officer's ruling based on several well-established special education law principles: (1) in weighing the evidence IDEA requires courts to give "great deference to the views of the school system rather than those of even the most well-meaning parents," and (2) local placements are

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highly preferred, school systems should turn to private placements only when the student's disability is such that he or she cannot be educated in a public school setting, and the student's placement must be as close as possible to the child's home. "Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues . . . Plaintiff argues that S.H.'s emotional and social needs are intertwined with his educational needs, but multiple courts have held that students' mental health and educational needs may be parsed." The Court found that S.H. made progress academically in local school settings and his placement at the Utah residential facility was for mental health treatment, not education. Therefore, APS was not responsible for those costs.