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A DESPERATE GRAB FOR FREE REHAB: UNILATERAL PLACEMENTS UNDER IDEA FOR STUDENTS WITH DRUG AND ALCOHOL ADDICTIONS

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"This is your brain (show egg). This is your brain on drugs (show egg frying in pan)."[1]

"The term 'child with a disability' means a child—(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services."[2]

I. INTRODUCTION

Litigation under the Individuals with Disabilities Education Act[3] [hereinafter IDEA] has been, and continues to be, one of the most active areas of legal conflict in American public schools.[4] One subset of IDEA litigation that has experienced explosive growth involves parental demands for tuition reimbursement for private school placements. The number of published administrative and judicial tuition reimbursement decisions "has increased relatively steadily and steeply [from] . . . 1978 to 2000."[5]

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1. Public service television advertisement by the Partnership for a Drug-Free America.

2. *Individuals with Disabilities Education Act* (IDEA), 20 U.S.C.A. § 1401(3) (2003).

3. *Id.*

4. *See e.g.* Perry A. Zirkel, *The "Explosion" in Education Litigation: An Update*, 114 Educ. L. Rep. 341, 348 (1998); Perry A. Zirkel, *Tipping the Scales*, Am. Sch. Bd. J., Oct. 1997, at 36, 37; *What the Numbers Say About Special Education Litigation*, The Spec. Educator, May 27, 1995, at 325, 334–335.

5. Thomas A. Mayes & Perry A. Zirkel, *Special Education Tuition Reimbursement Claims: An*

Yet while several scholars have examined the volume, and outcome, of tuition reimbursement cases, there has been little written about the "nuts and bolts" of unilateral placement disputes. This paper attempts to partially fill that gap, and add to the existing literature[6] by examining unilateral placements for drug-abusing and delinquent students, placements which have the potential to be the source of great consternation for school districts if aggressive steps are not taken to prevent and establish proper defenses.

Part II of the paper will provide some background and predictions regarding private placements for students engaged in drug abuse or serious delinquency. Part III will review relevant statutes and case law on the major legal issues connected with such placements, including "child find" mandates, the definition of "disability," free, appropriate, public education (FAPE) requirements, appropriateness of private placement, notice requirements, and equitable considerations. Part IV of the paper concludes with some recommendations as to how IDEA should be rewritten by Congress as well as some practical suggestions for school officials responsible for the delivery of special education.

II. BACKGROUND

One of the most debated areas in special education involves demands for the payment of tuition costs associated with residential treatment programs for students with serious emotional or behavioral problems, particularly those requiring treatment for drug or alcohol addictions. Over the past few years, school districts across the country have faced these demands for private residential care. All demands have been disastrous regardless of the outcome because the district must expend time, money, and human capital in defense.

Tuition reimbursement demands may become more common for several reasons. First, although some progress has been made,[7] drug use among teenagers remains at unacceptably high levels. According to the World Health Organization, 41 percent of tenth graders in the United States have tried marijuana, compared with just 17 percent of tenth

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Empirical Analysis, 22 Remedial & Spec. Educ. 350, 355 (Nov./Dec. 2001).

6. *See e.g.* Cindy L. Skaruppa, Ann Boyer & Oliver Edwards, *Tuition Reimbursement for Parent's Unilateral Placement of Students in Private Institutions: Justified or Not?*, 114 Educ. L. Rep. 353 (1997); Allan G. Osborne, *Reimbursement for Unilateral Parental Placements in Unapproved Private Schools Under IDEA*, 90 Educ. L. Rep. 1 (1994); Dixie Snow Huefner, *Special Education Residential Placements for Students with Severe Emotional Disturbances: The Implications of Recent Ninth Circuit Cases*, 67 Educ. L. Rep. 397 (1991).

7. Michael Kranish, *More Students Say Schools Drug Free Yet Survey Finds Marijuana Easier to Get than Beer*, Boston Globe A6 (Aug. 21, 2002).

graders in Europe; and 23 percent of American tenth graders have used other illicit drugs, compared with just 6 percent of Europeans.[8] Other recent studies, conducted by the U.S. Department of Health and Human Services, report that more and more students are using steroids, ecstasy, and heroin.[9]

Second, it is well documented by medical professionals that adolescents who abuse illicit drugs demonstrate impaired functioning in school and other settings.[10] In one published study, two scientists concluded:

> Students who use illicit drugs show deficits in school performance, quality of family relationships, and health and increased psychological symptoms. Compared with non-users, they are more delinquent and more actively involved with their peers and live in social environments in which the perceived use of drugs by other adolescents and parents is more extensive. Delinquency and extent of perceived drug use consistently increase with each higher stage of use.[11]

Third, an increasing number of teenagers who use drugs are developing serious addictions, but few who need treatment actually receive it. According to recent data, approximately "1.1 million children 12–17 years old have problems with drugs and alcohol. Only about 122,000 of them [received] treatment in 2000."[12] Because drug treatment programs are costly and scarce, often the only students to get treatment are those whose parents have the financial means to send their children.[13]

These factors combined may very well result in more attempts by parents to use IDEA as a vehicle to obtain funding for residential

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8. *U.S. Teens Use Drugs More*, Ariz. Republic 6A (Feb. 21, 2001).

9. *Report: Teen Drug Use Unchanged; Smoking Drops, But More Students Are Taking Ecstasy*, Wash. Post A06 (Dec. 15, 2000).

10. Denise B. Kandel & Mark Davies, *High School Students Who Use Crack and Other Drugs*, 53 Archives Gen. Psych. 71 (Jan. 1996).

11. *Id.*

12. Donna Leinwand, *Youth Need More Drug Programs, Study Shows*, USA Today (Feb. 7, 2002) (available at <http://www.usatoday.com/news/washdc/2002/02/08/usat-treatment.htm> (accessed Mar. 2, 2004)). *See also* Quynh-Giang Tran, *Study Details Teens' Drug Use*, Boston Globe A18 (June 14, 2002) (noting that one out of every six teenagers in the Boston area abuses drugs or alcohol or is so dependent on these substances that in-patient treatment may be required).

13. Leinwand, *supra* n. 12. *See also* James Thalman, *Only a Fifth of Addicts Treated*, Deseret News (Salt Lake City, Utah) B01 (Aug. 13, 2002) (available at <http://www.desnews.com/cgibin/cqcgi_state/@state.env?CQ_SESSION_KEY=ZCTAURZIQELD&CQ_CUR_DOCUMENT=1&CQ_TEXT_MAIN=YES> (accessed Mar. 2, 2004)) (noting that only 22,000 of 100,000 drug addicts in Utah receive necessary treatment and that many insurance plans only cover a traditional approach, involving 30 days of in-patient hospital treatment); *All Things Considered*, "Profile: Mother Who is Trying to Get Her Daughter Drug Addiction Treatment," Melissa Block & Michele Norris, (Natl. Pub. Radio, Mar. 11, 2003) (radio broadcast) (describing one parent's difficult quest to obtain affordable drug treatment for teenage child).

treatment programs. When asked to weigh these disputes, hearing officers and courts must carefully balance the rights of students with disabilities against the rights and obligations of school officials to make accurate eligibility determinations and provide appropriate programs for students in the least restrictive environment.

III. HIGH STAKES PLACEMENTS: THE LEGAL ISSUES CONNECTED WITH UNILATERAL RESIDENTIAL PLACEMENTS

Parental demands for tuition reimbursement under IDEA present a complex array of issues. In order for parents to successfully bring a claim, they must show the private placement is proper under IDEA, and that the current individualized education plan (IEP) is inadequate.[14] Parents can challenge the sufficiency of a public placement and its accompanying IEP by claiming that their child was denied a FAPE because the State failed to comply with "child find" mandates.[15] However, there are procedural requirements with which parents must comply in order to be successful. These include giving proper notice of the intended private placement,[16] objecting to the current IEP,[17] and timely requesting due process.[18] Parents must also establish that the student's difficulties are disabilities that fall under IDEA,[19] and that educational concerns distinct from concerns that do not affect the educational process motivated the private placement.[20]

Public schools, in creating school policy and preparing defenses to tuition reimbursement demands must be aware of what the law is concerning these issues. However, the law on many issues is unsettled because there is either a lack of court precedent or a split among the courts in the decisions that have been rendered. Nevertheless, knowledge of the law as it has evolved to date will be useful to legal counselors and school leaders desiring to minimize liability.

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14. *Sch. Comm. of the Town of Burlington v. Dept. of Educ.*, 471 U.S. 359 (1985) [hereinafter *Burlington*].

15. 20 U.S.C.A.A. § 1412(a)(3)(A) (2003).

16. 34 C.F.R. § 300.403(d) (2003).

17. *Combs v. Sch. Bd. of Rockingham County*, 15 F.3d 357, 363–364 (4th Cir. 1994).

18. *Bernardsville Bd. of Educ. v. J.H.*, 42 F.3d 149, 158 (3d Cir. 1994).

19. *See* 34 C.F.R. § 300.7(c)(4) (2003); Ellen A. Callegary, *The IDEA's Promise Unfulfilled: A Second Look at Special Education & Related Services for Children with Mental Health Needs After Garrett F.*, 5 J. Health Care L. & Policy 164, 184 (2002).

20. *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990).

A. *The* Burlington-Carter *Framework*

The basic principles governing tuition reimbursement under IDEA are found in two U.S. Supreme Court cases: *School Committee of the Town of Burlington v. Department of Education*[21] and *Florence County School District Four v. Carter.*[22] In *Burlington*, the Court established a two-pronged test to be used in deciding whether parents are entitled to tuition reimbursement under IDEA. The test is as follows:

> In a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear beyond cavil that 'appropriate' relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.[23]

In *Carter*, the Court reiterated the test: the private placement must be proper and a public placement inappropriate.[24] The Carter court also emphasized that parents who "unilaterally change their child's placement . . . without the consent of . . . school officials, do so at their own financial risk,"[25] meaning that there is no guarantee of public reimbursement. Rather, any reimbursement is dependent on judicial determination. Moreover, *Carter* held that parents are not automatically barred from reimbursement if the private school in which they unilaterally place their child fails to meet state education standards.[26]

B. *Alleged Denial of FAPE by Failure to Comply with "Child Find"*

Many of the reimbursement decisions concerning children with drug abuse or delinquency problems involve allegations that school officials failed to evaluate, or identify, in a timely manner, a student's emotional disturbance [hereinafter ED]. Specifically, districts are often charged with violating IDEA's "child find" mandate, which provides that states and school districts must ensure:

> All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related

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21. *Burlington*, 471 U.S. at 359.

22. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993) [hereinafter *Carter*].

23. *Burlington*, 471 U.S. at 370.

24. *Carter*, 510 U.S. at 16 ("[parents] are entitled to reimbursement *only* if a federal court concludes both that the public placement violated the IDEA and that the private school placement was proper under the Act").

25. *Id.* (quoting *Burlington*, 471 U.S. at 374).

26. *Id.* at 14.

> services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.[27]

It is not clear from this language whether a school district owes a specific "child find" duty to each eligible child with a disability, as opposed to simply a general duty to make the public and parents aware of the services available in the district. However, most hearing officers and courts have held that the "child find" duty does run to individual children, finding that "[t]he individual right to a free appropriate public education for a child who is classified for special education purposes is meaningless if the child has no comparable right to demand classification."[28]

Despite the fact that the "child find" obligation is an affirmative duty, it is "in no way absolute."[29] School officials must at least have reasonable knowledge of the disability, which "may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation."[30]

Unfortunately, in the absence of a specific request or referral for evaluation, it is not clear how much evidence of disability school officials must observe before the duties to evaluate and classify are brought into effect. One frequently cited case in this area, *Clay T. v. Walton County School District*,[31] stands for the proposition that school officials do not violate the "child find" mandate unless they overlook "clear signs"[32] of disability and offer no rational justification for deciding not to evaluate. In *Clay T.*, the decrease in the student's marks seemed more clearly linked to the student's choices, such as not turning in assignments, than to the student's impairment, i.e., his alleged chemical imbalance.[33] A somewhat higher standard was recently articulated by a federal court in Hawaii, which stated that the duty "'is triggered when the [school] has reason to suspect a disability, and reason to suspect that special education

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27. 20 U.S.C.A.A. § 1412(a)(3)(A).

28. *Davis County Sch. Dist.*, 102 LRP 4246 (Utah 1998) [hereinafter *Davis County*] (citing *Clay T. v. Walton County Sch. Dist.*, 952 F. Supp. 817 (M.D. Ga. 1997) [hereinafter *Clay T.*]. *See also Robertson County Sch. Sys. v. King*, 99 F.3d 1139 (6th Cir. 1996); *Round Rock Indep. Sch. Dist.*, 25 IDELR 336 (Tex. 1996) [hereinafter *Round Rock*]; *Eagle Point Sch. Dist.*, 18 IDELR 1268 (Or. 1992).

29. *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002).

30. *Id.* (citing 20 U.S.C.A. § 1415(k)(8)(B)(i–iv) (2003)).

31. *Clay T.*, 952 F. Supp. at 817.

32. *Id.* at 823.

33. *Clay T.*, 952 F. Supp. at 823. The student was eventually diagnosed with ADD and treated with medication. *Id.* at 820.

services may be needed to address that disability.'"[34] Regardless of the confusion over the quantum of knowledge required, it is probably safe to say that the "child find" duty is not triggered simply by noticing that a child has a physical or mental impairment: school officials must be put on notice that a child has a disability as defined by IDEA. Furthermore, there must be evidence that the disability is causing an adverse effect on the child's education in order for the "child find" duty to arise.

School officials should thus be aware of this threshold issue, particularly if a unilateral placement dispute ends up in litigation. If there is no evidence of a child's disability, the school cannot be liable for violating the "child find" mandate. Several districts have successfully defeated reimbursement demands on grounds that school officials had no prior notice of either the student's impairment or its adverse effect on the student's school performance.[35]

On the other hand, school officials who ignore evidence of disability as it relates to poor school performance do so at their peril.[36]

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34. *Dept. of Educ., St. of Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001) (internal citations omitted) [hereinafter *Cari Rae S.*].

35. *See e.g. Katherine S. v. Umbach*, No. Civ. A. 00-T-982-E, 2002 WL 226697 (M.D. Ala. 2002) (denying reimbursement for tuition at the Elan School in Maine because school officials had no reason to suspect that the student needed special education, because despite diagnoses of ODD, ADHD, asthma, depression, and conflict with parents, student was "vivacious" and academically successful); *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175 (W.D. Wash. 2002) [hereinafter *J. S.*] (denying reimbursement where school officials, who were serving student under an IEP for ADD, were not informed by parents or child's physicians of child's home behavior problems, which included marijuana use, threatening parents, and theft); *Hoffman v. E. Troy Community Sch. Dist.*, 38 F. Supp. 2d at 750 (E.D. Wis. 1999) [hereinafter *Hoffman*] (teachers' observations that student fell asleep in class, had poor classroom performance, and failed one class did not give rise to suspicion that student was emotionally disturbed); *Montgomery County Pub. Sch.*, 102 LRP 19074 (Md. 2002) (denying reimbursement because while school officials knew student had been hospitalized prior to withdrawal from district and enrollment in residential placement, they did not know the nature of the psychotic episode or have any information that the student was depressed or had ADD); *W. Chester Area Sch. Dist.*, 32 IDELR 275 (Pa. 2000) [hereinafter *W. Chester*] (school officials had no reason to suspect that student with depression and behavior problems at home was disabled simply because her grades fluctuated and declined); *Davis County*, 102 LRP 4246 (district did not have child find duty regarding a student who, despite parental conflict and drug use outside of school, appeared emotionally stable and academically successful in the classroom).

36. *See e.g. Cari Rae S.*, 158 F. Supp. 2d at 1190 (ordering tuition reimbursement as the result of "child find" violation where school officials ignored student's dramatically declining grades and escalating disciplinary problems); *Round Rock*, 25 IDELR 336 (ordering partial reimbursement on grounds that district should have evaluated student, who exhibited various behavioral problems, including defiance of parents, truancy, car theft, running away from home, and substance abuse, to determine whether student met the criteria for serious emotional disturbance in addition to being socially maladjusted); *Lake Wash. Sch. Dist. No. 414*, 257 IDELR 611 (OCR 1985) [hereinafter *Lake Wash.*] (finding that district's blanket policy of refusing evaluations for alcohol and drug addicted students was discriminatory, because even though substance abuse does not qualify students for special education under IDEA, such students still may have disabilities under Section 504).

C. Defending the IEP

If a student with drug abuse or delinquency problems has not been classified as a student with a disability before his parents unilaterally place him in a residential setting, virtually the only way the parents can meet the second prong of the *Burlington* test (showing that the district denied FAPE) is to prove a "child find" violation. However, it sometimes occurs that a student who has been previously identified with a disability is suddenly removed from the school system and placed unilaterally by his parents in a residential facility. In that case, school officials must be prepared on both procedural and substantive grounds to defend the IEP as it existed at the time of the student's exit from the district.

1. Procedural Defense #1: Parental Failure to Provide 10-Day Prior Written Notice

Procedurally, school officials can assert that reimbursement should be denied if the parents suddenly, and without prior notice, withdrew their child from the district without objecting to the IEP. IDEA regulations explain:

> (d) Limitation on reimbursement. The cost of reimbursement [for private school placement] . . . may be reduced or denied—
>
> (1) If—
>
> (i) At the most recent IEP meeting that the parents attended prior to the removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
>
> (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section.[37]

Courts have held that this provision applies only where the student has previously been deemed eligible for special education and an IEP proposed or implemented.[38] Moreover, the plain language of this

37. 34 C.F.R. § 300.403(d).

38. *See Sandler v. Hickey*, 246 F.3d 667 (4th Cir. 2001) (Maryland equivalent of federal prior notice requirement did not apply where no IEP had been proposed before parents enrolled child in the Grove School).

regulation clearly does not require a denial of reimbursement if parents fail to provide proper prior notice of their objections to the IEP and intentions to place their child in a private school at public expense; it states only that the cost of reimbursement "*may be* reduced or denied"[39] as the result of the parents' lack of communication. Nevertheless, at least one hearing officer has ruled that similar notice provisions under Maryland law are mandatory where an IEP is in dispute, and concluded that "the Parents' failure to comply with those requirements cripples any claim to reimbursement, regardless of whether the proposed placement provided FAPE or not."[40]

Indeed, even when denying reimbursement on this basis is viewed as discretionary, most courts and hearing officers have ruled in favor of schools, dismissing or reducing reimbursement claims where parents fail to give timely notice of their intentions.[41]

2. Procedural Defense #2: Parents' Failure to Object to IEP Prior to Unilateral Placement

In addition, a number of courts, while not relying on the ten-day notice requirements in IDEA 1997, have nonetheless dismissed

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39. 34 C.F.R. 300.403(d).

40. *Prince George's Country Pub. Sch.*, 28 IDELR 680, 684 (Md. 1998).

41. *See e.g. Berger v. Medina City Sch. Dist.*, 348 F.3d 513 (6th Cir. 2003) (denying reimbursement because parents arranged to enroll student at private school before requesting due process hearing or advising the district of their specific objections and intent to remove their child from public school); *Rafferty v. Cranston Pub. Sch. Comm.*, 315 F.3d 21 (1st Cir. 2002) [hereinafter *Rafferty*] (upholding denial of tuition reimbursement where parent failed to provide school district required notice at least ten business days prior to removing the child from public school); *M.C. v. Voluntown Bd. of Educ.*, 226 F.3d 60 (2d Cir. 2000) (holding that child was barred from reimbursement for the costs of his psychological treatment, where child's parents failed to raise any issue with respect to the psychological services provided in the IEPs until after the treatment had ended); *Pollowitz v. Weast*, 34 IDELR 171 (4th Cir. 2001) (upholding dismissal of tuition reimbursement claims where parents' letter to school officials merely informed the district of the student's private placement without indicating that the proposed IEP was unsuitable); *James v. Upper Arlington City Sch. Dist.*, 228 F.3d 764 (6th Cir. 2000) (holding that parents could not recover private school tuition expenses retroactively between the initial removal of child from district and date they subsequently sought IEP, although they could pursue reimbursement claim for tuition costs after date that IEP was sought); *Nein v. Greater Clark County Sch. Corp.*, 95 F. Supp. 2d 961 (S.D. Ind. 2000) (reducing by one half the reimbursement originally ordered where parents failed to comply with prior notice requirements); *Ms. M. v. Portland Sch. Comm.*, 2003 WL 21180814 (D. Me. May 20, 2003) (upholding dismissal of tuition reimbursement claim where parent did not comply with IDEA notice requirements); *Lower Merion Sch. Dist.*, 33 IDELR 139 (Pa. 2000) (denying reimbursement because parents engaged in "unfair gamesmanship," removing the child from school without notice several months after agreeing to an IEP that "provided every detail they demanded," and then "delaying the scheduled hearing for the remainder of the school year without any overriding justification."); *Upper Darby Sch. Dist.*, 33 IDELR 22 (Pa. 2000) (rejecting reimbursement claim because parents failed to provide timely written notice, including their specific concerns, ten business days before enrolling their child in a private school).

reimbursement claims because of the parents' failure to object to the IEP and provide school officials with an opportunity to remedy concerns prior to unilaterally placing a child in a private setting. The general principle here is that "[s]chool boards must be given adequate notice of problems if they are to remedy them, and must be given sufficient time to respond to those problems before they can be held liable for failure to act."[42]

3. Procedural Defense #3: Parents' Delay in Requesting Due Process

A third procedural defense school officials may need to consider is laches, that is, the prejudicial effect of the parents' delay in pursuing due process against the district. A distinct body of case law has begun to emerge holding that parents are not entitled to an IDEA remedy when they wait long periods of time before seeking tuition reimbursement in due process proceedings. Courts reaching this conclusion have relied on the following reasoning:

> [M]ere notice of parental "dissatisfaction" does not alone put the Board on reasonable notice that the parents will challenge a particular IEP in the future and seek reimbursement for an interim unilateral placement in a private institution. Absent initiation of review proceedings within a reasonable time of a unilateral decision to transfer a child to a private

42. *Combs*, 15 F.3d at 363–364. *See also Wise v. Ohio Dept. of Educ.*, 80 F.3d 177 (6th Cir. 1996) (holding that parents were not entitled to reimbursement because they unilaterally changed their child's educational placement without ever making a formal complaint to the district or asking the district to place their child in a residential care facility); *Evans v. Dist. No. 17 of Douglas County*, 841 F.2d 824 (8th Cir. 1988) (holding that parent was not entitled to reimbursement where she expressed concerns about child's public school placement but never formally or informally asked district to make a change of placement; "school officials were never given the opportunity to make (or refuse to make) changes because the parents unilaterally removed their child from the school district."); *Mary P. v. Ill. St. Bd. of Educ.*, 934 F. Supp. 989 (N.D. Ill. 1996) (denying parents reimbursement between April 1991, when they were denied services, and January 1992, when they first registered dissatisfaction with the district); *Bd. of Educ. of Avon Lake City Sch. Dist.*, 9 F. Supp. 2d 811 (N.D. Ohio 1998) (denying $71,000 reimbursement claim for tuition at Elan School in Maine because parents "failed or neglected to take appropriate action to express their dissatisfaction with the District's programs or to inform the District that they were withdrawing [student] from school."); *Alexander K. v. Va. Bd. of Educ.*, 30 IDELR 967 (E.D. Va. 1999) (denying reimbursement where parents chose to withdraw the student rather than expressing their disagreement in a renewed IEP or requesting an administrative review or hearing at the time); *In re Student with a Disability*, 30 IDELR 97 (Del. 1999) (dismissing reimbursement claims because parent provided no notice of disagreement with student's 8th grade educational placement or his proposed high school placement prior to withdrawing student and enrolling him in private school); *Round Rock*, 25 IDELR 336 (holding that parents waived right to reimbursement between the spring of 1994, when they signed student out, without notice to the district that they wanted a different program, and January 1995, when they informed the district they wanted reimbursement for residential treatment program); *Lake Wash.*, 257 IDELR 611 (finding that district was not required to fund an out-of-district placement that the parents selected unilaterally, without consultation with the district).

> institution, a school district would not know to continue to review and revise an IEP, and the court would be left to hazard conjecture or hypothesis as to what the Board of Education might have proposed if it had been informed of the parents' continued intent to pursue an appropriate education for their child within the school district. We, of course, recognize that the school district has the duty in the first instance to provide an appropriate IEP, and moreover, to demonstrate by a preponderance at a due process hearing that the IEP it offered was indeed appropriate. With that foremost in mind, we must nevertheless also recognize that as a practical reality, and as a matter of procedural law, . . . the right of review contains a corresponding parental duty to unequivocally place in issue the appropriateness of an IEP. This is accomplished through the initiation of review proceedings within a reasonable time of the unilateral placement for which reimbursement is sought. We think more than two years, indeed, more than one year, without mitigating excuse, is an unreasonable delay.[43]

4. Substantive Defenses: Proving the Appropriateness of the IEP

Of course, whether or not school officials can rely on procedural defenses, they will almost certainly have to prove the appropriateness of the IEP in order to prevail in a tuition reimbursement case. Two points bear emphasizing here.

First, "the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date . . . . Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement."[44] In other words, "[a]n IEP is a snapshot, not a

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43. *Bernardsville*, 42 F.3d at 158. *See also Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80 (3d Cir. 1999) (holding that parents could not recover "tuition reimbursement for the period preceding the parents' request for a due process hearing."); *Phillips v. Bd. of Educ. of Hendrick Hudson Sch. Dist.*, 25 IDELR 500 (S.D.N.Y. 1997) (holding that the equitable doctrine of laches barred parents from reimbursement for the first three years of child's private placement where parents did not file a due process complaint until five years after the private placement); *L.K. v. Bd. of Educ. for Transylvania County*, 113 F. Supp. 2d 856 (W.D.N.C. 2000) [hereinafter *L.K.*] (denying reimbursement where parent did not initiate due process hearing until more than two years after unilaterally placing child in private school); *Garland Indep. Sch. Dist. v. Wilks*, 657 F. Supp. 1163 (N.D. Tex. 1987) (holding that parent was not entitled to reimbursement for expenses of residential placement incurred prior to her challenge of child's IEP); *Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 29 IDELR 143 (N.Y. 1998) (denying tuition reimbursement for the 1996–97 school year where parent waited over 15 months between unilateral placement and her request for due process); *White v. Sch. Bd. of Henrico County*, 549 S.E.2d 16 (Va. Ct. App. 2001) (holding that where parent signed and consented to IEP, her objection to its implementation one year later was untimely, and warranted denial of reimbursement).

44. *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995), *cert. denied*, 517 U.S. 1135 (1996).

retrospective."[45] Therefore, a student's IEP must be evaluated in the context of the student's needs, as well as the district's knowledge of those needs, at the time the IEP was developed.

Second, the IEP must have some meaningful effect—some benefit—on the student's educational progress. The "some benefit" standard articulated by the Supreme Court in *Rowley*[46] has been interpreted by the lower federal courts to mean that the IEP must confer more than a trivial educational benefit.[47] Courts have consistently held that an IEP does not meet the substantive requirement of FAPE unless it confers a "*meaningful* educational benefit."[48]

It is also important to note that IEPs do not have to articulate every minute detail of a child's program in order to be legally sufficient. The Tenth Circuit has observed that "there is no legal authority requiring a particular level of specificity in the statement of annual goals," and that "IEPs are not required to provide the level of detail found in monthly instructional plans."[49] In fact, the Fifth Circuit has ruled that an IEP meets the *Rowley* FAPE mandate as long as it meets a four-pronged test: "(1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key 'stakeholders;' and (4) positive academic and non-academic benefits are demonstrated."[50]

D. Is the Private Placement Proper Under the Act?

Under *Burlington-Carter*, parents seeking tuition reimbursement must do more than show that the district denied FAPE to their child. They must also show that the private placement they unilaterally selected was proper under the Act. This prong of the analysis becomes critical in cases involving students with drug and delinquency problems because the evidence often demonstrates that a residential program was pursued for reasons completely unconnected to education.

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45. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991).

46. *Bd. of Educ. of Hendrick Hudson C. Sch. Dist. v. Rowley*, 458 U.S. 176, 203–204 (1982).

47. *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 635 (4th Cir. 1985).

48. *M.A. v. Voorhees Township Bd. of Educ.*, 202 F. Supp. 2d 345, 361 (D.N.J. 2002) (citing *Polk v. C. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 181 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989)).

49. *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 706 (10th Cir. 1998).

50. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347–48 (5th Cir. 2000) (quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997), *cert. denied*, 522 U.S. 1047 (1998)).

1. Emotional Disturbance v. Conduct Disorder: A Split in the Circuits

Closely intertwined with the "child find" issue is the issue of whether a student has a disability that warrants residential placement. In many of the cases involving drug addicted students, parents allege that their children meet the criteria for serious emotional disturbance, which are set forth in IDEA's regulations. They are as follows:

> (i) The term [emotional disturbance] means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
>
> (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
>
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
>
> (C) Inappropriate types of behavior or feelings under normal circumstances.
>
> (D) A general pervasive mood of unhappiness or depression.
>
> (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
>
> (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.[51]

Unfortunately, neither IDEA nor its regulations provide an operational definition for the terms "adverse effect" or "social maladjustment." Therefore, it is not uncommon, particularly with children exhibiting "bad behavior," to have disagreement among parents and professionals, with the result often being litigation. As one author has noted:

> If the disagreement cannot be worked out through the IEP Team process, then courts are the final arbiters of whether the child receives special education and related services in the school setting. The clashes often arise when these two different sets of professionals [educators and mental health professionals], who use completely different sets of vocabularies, attempt to mesh their frameworks together to understand the child and his or her needs.[52]

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51. 34 C.F.R. § 300.7(c)(4) (emphasis added).

52. Callegary, supra n. 19, at 184.

Yet even the courts cannot agree on what the terms from IDEA mean. On the one hand, the Fourth Circuit has adopted a narrow definition of ED, concluding that where students persist in unruly behavior outside societal norms, such as substance abuse and delinquency, they are most appropriately labeled "socially maladjusted" rather than ED. In *Springer v. Fairfax County School Board*,[53] the court reasoned:

> [A] "bad conduct" definition of serious emotional disturbance might include almost as many people in special education as it excluded. Any definition that equated simple bad behavior with serious emotional disturbance would exponentially enlarge the burden IDEA places on state and local education authorities.[54]

Indeed, the weight of both court and administrative authority lines up with *Springer*, particularly where the student's difficulties occur primarily, or solely, outside of school.[55]

On the other hand, courts in the Fifth, Eighth, and Ninth Circuits have adopted broader definitions of "emotional disturbance," effectively

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53. *Springer v. Fairfax County Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998).

54. *Id.* at 664.

55. *See e.g. A.E. v. Indep. Sch. Dist. No. 25*, 936 F.2d 472 (10th Cir. 1991) (holding that student engaging in theft, fighting, tardiness, smoking, use of improper language, and suicidal gestures was not ED, but rather socially maladjusted); *Katherine S. v. Umbach*, 2002 WL 226697 (M.D. Ala. 2002) (student in conflict with parents not ED); *Blickle v. St. Charles Community Unit Sch. Dist. No. 303*, 20 IDELR 167, 179 (N.D. Ill. 1993) ("A school cannot be held responsible for all psychiatric or other medical problems (including substance abuse), particularly when these problems manifest themselves beyond the parameters of a regular school day and do not directly bear on a child's instructional needs."); *Hoffman*, 38 F. Supp. 2d at 767 (finding that student who was sleeping in class, fighting with his parents, and seeing a therapist for depression was not ED, and noting that the basic standard for ED is "commonsensical: an ED child's behavioral problems must be unusually serious as compared to the majority of his peers and must present a significant impediment to learning."); *Bonita Unified Sch. Dist.*, 32 IDELR 273 (Cal. 2000) (student with severe behavior problems at home not ED); *Capistrano Unified Sch. Dist.*, 31 IDELR 199 (Cal. 1999) (marijuana-using student with diagnosis of depression not eligible for special education under OHI category); *Williams Unified Sch. Dist.*, 26 IDELR 1198 (Cal. 1997) (drug abusing student not ED); *Mt. Diablo Unified Sch. Dist.*, 26 IDELR 338 (Cal. 1997) (holding that student was not ED where student's school difficulties were caused by other factors, including substance abuse, lack of effort, and failure to attend class); *In Re T.L.*, 26 IDELR 1374 (Ill. 1997) (drug and alcohol abusing student not ED); *Bd. of Educ. of Midland Pub. Sch.*, 25 IDELR 669 (Mich. 1996) (student who engaged in serious alcohol and drug use, got himself tattooed, pierced his ears and nose, mistreated his dog, threatened his sisters, extorted lunch money from younger students, engaged in group sex, and broke windows not ED); *DeSoto County Sch. Dist.*, 102 LRP 3846 (Miss.) (drug abusing student not ED); *W. Chester*, 32 IDELR 275 (drug abusing student not ED); *Radnor Township Sch. Dist.*, 25 IDELR 1229 (Pa. 1997) (student with long history of serious drug abuse, manipulative behaviors, theft, lying, and defiance with parents not ED); *Pflugerville Indep. Sch. Dist.*, 21 IDELR 308 (Tex. 1994) (student whose behavioral problems were attributable to his family life and drug abuse not ED); *Davis County*, 102 LRP 4246 (student who was defiant with parents and abusing drugs and alcohol not ED); *Fauquier County Pub. Sch.*, 20 IDELR 579 (Va. 1993) (student who exhibited behavioral problems outside of school not ED because her condition did not adversely affect her educational performance).

blurring the lines between a student's behavior inside and outside of school. For example, in *Independent School District No. 284 v. A.C.*,[56] the Eighth Circuit noted that it believed it "unlikely that Congress meant for IDEA to require states to provide a home away from home for students who simply make bad choices, even if those choices cause them to fail in school."[57] At the same time, the court reasoned that simply because most of the student's behavior problems, including drug abuse, sexual promiscuity, running away from home, and check forging, occurred outside of school, that did not mean residential placement was unnecessary. The court explained:

> If the problem prevents a disabled child from receiving educational benefit, then it should not matter that the problem is not cognitive in nature or that it causes the child even more trouble outside the classroom than within it. What should control our decision is not whether the problem itself is 'educational' or 'non-educational,' but whether it needs to be addressed in order for the child to learn.[58]

2. *Private Placements for Reasons Separate and Apart from the Learning Process*

Closely connected with the issue of eligibility is the issue of motive for the private placement. In the Fourth Circuit, the burden rests on the parents to show that the private placement they select is a proper placement "for their [child's] special educational needs."[59] Further, the Fourth Circuit's position is that residential care is mandated only if it is "essential for the child to make *any* educational progress at all."[60] Otherwise, "[i]f residential placement is necessitated by medical, social, or emotional problems that are segregable from the learning process,

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56. *Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769 (8th Cir. 2001).

57. *Id.* at 775.

58. *Id.* at 777. *See also County of San Diego v. Cal. Spec. Educ. Hearing Off.*, 93 F.3d 1458, 1467 (9th Cir. 1996) (in determining whether a child's impairment has an adverse effect on educational performance, courts must consider that "educational benefit [under IDEA] is not limited to academic needs but includes social and emotional needs that affect academic progress, school behavior, and socialization."); *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (explaining that the term "unique educational needs" shall be broadly construed to include the disabled child's academic, social, health, emotional, communicative, physical and vocational needs); *Venus Indep. Sch. Dist. v. Daniel S.*, 2002 WL 550455 page 10 (N.D. Tex. 2002) (holding that student was OHI and ED because, even though student's academic performance was well above average, his behavioral problems, which resulted in over 20 suspensions, had an adverse effect on his overall educational performance; "a true measure of a child's educational performance is not strictly limited to an evaluation of his performance in academics.").

59. *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1208 n.11 (4th Cir. 1990) (emphasis added).

60. *Burke*, 895 F.2d at 980.

then the local education agency need not fund the residential placement."[61]

Thus, numerous courts and hearing officers have denied reimbursement where the placement was made for reasons unrelated to education. For example, parents are not entitled to reimbursement where the child is placed in a residential setting for medical or psychiatric treatment.[62]

Likewise, parents have not been successful with reimbursement demands where they unilaterally placed their children in residential programs for treatment necessitated by family conflict, drug abuse, or delinquent behavior.[63]

E. Equitable Considerations

Finally, school officials should remember arguments of basic fairness in reimbursement cases.[64] IDEA regulations stipulate that reimbursement may be denied upon "a judicial finding of unreasonableness with respect to actions taken by the parents,"[65] and hearing officers and courts "look harshly upon *any party's* failure to reasonably cooperate with another's diligent execution of their rights and

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61. *Id. See also Tenn. Dept. of Mental Health & Mental Retardation v. Paul B.*, 88 F.3d 1466, 1471 (6th Cir. 1996).

62. *See e.g. Butler v. Evans*, 225 F.3d 887 (7th Cir. 2000); *Gladstone Sch. Dist. v. A.M.*, 25 IDELR 131 (9th Cir. 1996); *Clovis Unified Sch. Dist. v. Cal. Off. of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990); *Daugherty v. Hamilton County Sch.*, 21 F. Supp. 2d 765 (E.D. Tenn. 1998); *San Juan Unified Sch. Dist.*, 28 IDELR 47 (Cal. 1997); *U. of Iowa Hosp. & Clinics*, 34 IDELR 169 (Iowa 2001); *Tredyffrin/Easttown Sch. Dist.*, 33 IDELR 254 (Pa. 2000); *Round Rock*, 25 IDELR 336; *McKenzie v. Jefferson*, 566 F. Supp. 404 (D.D.C. 1983).

63. *See e.g. Bd. of Educ. of Montgomery County v. Brett Y.*, 155 F.3d 557 (4th Cir. 1998) (student placed in a private program, the Grove School, for significant behavior problems at home); *Dale M. v. Bd. of Educ. of Bradley Bourbonnais High Sch. Dist. No. 307*, 237 F.3d 813 (7th Cir. 2001) (student involved with drug abuse and juvenile delinquency); *Armstrong v. Alicante Sch.*, 44 F. Supp. 2d 1087 (E.D. Cal. 1999) (holding that drug prevention or intervention are not supportive services required by IDEA); *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Ill. St. Bd. of Educ.*, 21 F. Supp. 2d 862 (N.D. Ill. 1998) (student placed in psychiatric facility for "out-of-control" behavior, including running away, drug abuse, and defiance of home rules); *Field v. Haddonfield Bd. of Educ.*, 769 F. Supp. 1313 (D.N.J. 1991) (parents were responsible for the cost of student's enrollment in private drug treatment program); *Indian River County Sch. Bd.*, 36 IDELR 47 (Fla. 2002) (student engaged in drug abuse and sexual promiscuity); *Pleasant Valley Community Sch. Dist.*, 28 IDELR 1295 (Iowa 1998) (students' private psychotherapy prompted by home issues, including threats against her parents); *Brian M. v. Boston Pub. Sch.*, 401 IDELR 341 (Mass. 1989) (ED student who abused drugs and alcohol); *W. Linn-Wilsonville Sch. Dist.*, 102 LRP 2443 (Or. 2000) (student drug abuser who engaged in uncontrollable anger and destruction of objects at home).

64. *See Burlington*, 471 U.S. at 374 ("equitable considerations are relevant in fashioning relief").

65. 34 C.F.R. § 300.403(d)(3).

obligations under the IDEA."[66]

Thus, schools can defeat reimbursement claims if parents have, among other things, negotiated in bad faith, concealed information, or refused to make their child available to school officials for evaluation.[67]

IV. RECOMMENDATIONS

As Congress contemplates reauthorization of IDEA, Congress needs to rewrite some of the provisions on emotional disturbance and unilateral placements in order to eliminate the controversy surrounding residential placements for students with addictions. For example, Congress should provide a more narrow definition of ED, with an accompanying definition of "social maladjustment, to make it clear that a student's voluntary, irresponsible behavior does not equate with involuntary or uncontrollable poor behavior." In addition, given school districts' tight budgets and the failure of Congress to provide full funding of IDEA, Congress should revise the parental notice provisions so that parents' failure to comply would result in an automatic, rather than a discretionary, denial of reimbursement.

In the meantime, school officials can still reduce their potential exposure for tuition reimbursement claims by taking a number of steps, including the following five suggestions.

A. 10-Day Prior Notice

Ensure that all parents and staff are aware of the 10-day prior notice requirement with respect to removing a child from public school and

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66. *Patricia P. v. Bd. of Educ. of Oak Park*, 203 F.3d 462, 469 (7th Cir. 2000). *See also W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992) ("The conduct of both parties must be reviewed to determine whether relief is appropriate").

67. *See e.g. Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379 (8th Cir. 1998) (denying reimbursement where parents enrolled child in private school without conferring with school officials or providing them with opportunity to evaluate and formulate a plan); *Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp. 2d 1093 (C.D. Cal. 2000) (reducing reimbursement award where parent withheld information from school officials which impaired their ability to make decisions about the child's program); *L.K.*, 113 F. Supp. 2d at 856 (denying reimbursement where parent unilaterally withdrew child without providing district opportunity to evaluate his needs); *J.S.*, 220 F. Supp. 2d at 1175 (rejecting parents' claim of "child find" violation, and tuition reimbursement claim, where parents "actively concealed" child's home behavioral problems until his eighth grade year, and "even then muted the seriousness and extent of the episodes"); *Montgomery County Pub. Sch.*, 31 IDELR 223 (Md. 2000) (parents continually delayed proposed meeting times and refused to submit information; parents "appeared more interested in the district as a funding source rather than as an educational source."); *Montgomery County Pub. Sch.*, 24 IDELR 400 (Md. 1996) (parents denied reimbursement for refusal to cooperate with the district in evaluating the child); *N.Y.C. Bd. of Educ.*, EHLR 508:119 (N.Y. 1986) (parents failed to cooperate in good faith with the district by refusing to make information available and refusing to attend IEP meeting).

placing him or her in a residential setting. Even if they did not comply with the notice requirement, parents can still recover if they can prove they did not receive notice of the notice requirement.[68]

B. Full Disclosure

Upon learning that parents are withdrawing their child and pursuing a private residential program, insist on full disclosure of all information and request parents' consent for further evaluation, particularly if there is any concern at all that behavioral, emotional, and/or medical problems outside of school have adversely affected the child's behavior or academic performance at school. Schools have the right, under the IDEA, to evaluate students with their own personnel, even in the face of allegations that further evaluations might result in medical or psychological harm to the student.[69]

C. Good Faith and Willingness to Work

Demonstrate good faith and a willingness to work with the parents toward a return of the student to public school. This approach should include, for students who still have more than one year of school left after withdrawal, inviting the parents to an IEP meeting to develop a new IEP for the ensuing school year, although it is not clear whether school officials are legally obligated to do so.[70]

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68. 34 C.F.R. § 300.403(e)(4).

69. *See e.g. Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176 (5th Cir. 1995); *Chester Sch. Dist.*, 23 IDELR 588 (N.H. 1995) (ordering an evaluation of student with seizures where parents had failed to produce "sufficient medical information to substantiate that comprehensive evaluations have been conducted, ruling out all potential diagnoses").

70. The regulations state only that each public agency must ensure that "an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility *by the public agency*." 34 C.F.R. § 300.341(a)(2) (2003) (emphasis added). *See also Amann v. Stow Sch. Sys.*, 982 F.2d 644 (1st Cir. 1992); *MM v. Sch. Dist. of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *Carl D. v. Spec. Sch. Dist. of St. Louis County*, 21 F. Supp. 2d 1042 (E.D. Mo. 1998); *J.S.*, 220 F. Supp. 2d at 1175; *Questions and Answers on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools*, OSEP Memo. 00-14 (May 4, 2000) (all holding that IDEA does not impose a continuing duty upon school districts to develop and implement IEPs for students unilaterally placed in private school by their parents). *But see Knable v. Bexley City Sch. Dist.*, 238 F.3d 755 (6th Cir. 2001); *Redding Elementary Sch. Dist. v. Goyne*, 34 IDELR 118 (E.D. Cal. 2001); *Justin G. v. Bd. of Educ. of Montgomery County*, 148 F. Supp. 2d 576 (D. Md. 2001); *Upland Unified Sch. Dist.*, 102 LRP 7623 (Cal. 2000); *Doolittle v. Meridian Joint Sch. Dist. No. 2*, 24 IDELR 357 (Idaho 1996) (all holding that school officials have an ongoing duty to annually update a student's IEP and to provide FAPE once they are on notice that a student has been unilaterally placed by his parents in a private school).

D. Private Placement Programs and Services

Carefully scrutinize the program and services delivered to the child in the private placement. Many of the residential treatment programs in which drug abusing students enroll are nothing more than behavior modification programs, which are inappropriate under the Act for a number of reasons, including the fact that they may not deliver any educational services, much less an individualized program, and may, because of their restrictive nature, violate IDEA's least restrictive environment (LRE) mandate.[71]

Where parents seek reimbursement for placements at wilderness programs or "boot camps" located in remote parts of the United States or foreign countries, schools should be particularly thorough with their investigation. Some of these so-called behavior modification programs are unlicensed, provide very little in the way of formal education, and have come under recent scrutiny for alleged physical abuse and other misconduct, including immigration and licensure violations.[72]

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71. *See e.g. Rafferty*, 315 F.3d at 21 (holding that private placement was not appropriate because, while child spent four to five hours per day working on reading alone with a tutor, she did not study any other subjects, such as social studies, math, English, or science); *M.S. on behalf of S.S. v. Bd. of Educ. of City Sch. Dist. of City of Yonkers*, 231 F.3d 96 (2nd Cir. 2000) (holding that private placement at Stephen Gaynor Schools was inappropriate because of its restrictive nature); *Linda W. v. Ind. Dept. of Educ.*, 200 F.3d 504 (7th Cir. 1999) (denying reimbursement, in part, because IDEA "prefers a 'mainstreaming' approach, while Landmark's program separates its pupils from their non-disabled peers."); *Indep. Sch. Dist. No. 283 v. S.D.*, 984 F. Supp. 860 (D. Minn. 1995) (noting that "segregation for segregation's sake is anathema under the IDEA," and therefore holding that student's placement at Groves Learning Center, a private school, was not proper, "particularly with its wholly segregated class structure."); *Reese v. Bd. of Educ. of Bismarck R-V Sch. Dist.*, 225 F. Supp. 2d 1149 (E.D. Mo. 2002) ("The overwhelming evidence showed that Edgewood [private placement] was clearly a more restrictive placement than necessary, failed to provide Spencer with the opportunity to interact with nondisabled peers and benefit from exposure to positive behaviors, emphasized improvement in social skills over academic progress, and removed Spencer from his home, family, and friends which bolstered Spencer's separation anxiety and manifested itself in an increase of aggressive and violent behavior by Spencer."); *J.B. and M.B. on behalf of E.B. v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 2001 WL 546963 (S.D. N.Y. 2001) (finding that private placement at York Prep was not appropriate because student did not receive special education there); *Sylvie M. v. Bd. of Educ. of Dripping Springs Indep. Sch. Dist.*, 48 F. Supp. 2d 681 (W.D. Tex. 1999), *aff'd*, 214 F.3d 1351 (5th Cir. 2000), *cert. denied*, 531 U.S. 879 (2000) (holding that Elan School in Maine was not least restrictive environment for student with emotional disabilities).

72. *See* John-Thor Dahlburg, *Troubled Times for 'Tough Love'*, L.A. Times A1 (July 13, 2003) (available at <http://pqasb.pqarchiver.com/latimes/358107151.html?did=358107151&FMT=ABS&FMTS=FT&date=Jul+13,+2003&desc=Troubled+Times+for+%27Tough+Love%27%3b+A+group+of+schools+for+wayward+youth+touts+its+successes,+but+some+parents+allege+abuse,+and+some+facilities+have+been+shut+down. > (accessed Mar. 4, 2004)) (discussing allegations of abusive discipline and filthy living conditions in behavior-modification programs operated by World Wide Association of Specialty Programs and Schools in Jamaica, Mexico, the Czech Republic, and Costa Rica); Tim Weiner, *Parents, Shopping for Discipline, Turn to Harsh Programs Abroad*, N.Y. Times A1 (May 9, 2003) (discussing problems with behavior-modification programs run by the Utah-based World Wide Association of Specialty Programs and Schools in the Czech Republic, Mexico, Costa

E. School Responsibility

Remember that drug addiction itself is not a disabling condition under IDEA, and therefore, if psychiatric treatment is required solely to treat the child's addiction, and is not required to provide FAPE, the school is not required to provide the treatment or to provide it at no cost.[73] In short, IDEA "is not a panacea for all of life's ills,"[74] and school officials cannot be held responsible under the Act for failing to remedy "adolescence."[75]

Rica, Jamaica, Samoa, Montana, New York, and South Carolina).

73. *Letter to Woodson*, 213 IDELR 224 (OSEP 1989).

74. *Maricus W. v. Lanett City Bd. of Educ.*, 141 F. Supp. 2d 1064, 1069 (M.D. Ala. 2001).

75. *Socorro Indep. Sch. Dist. v. Angelic Y*, 107 F. Supp. 2d 761, 767 n. 8 (W.D. Tex. 2000).