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M.S. v. LOS ANGELES UNIFIED SCHOOL DISTRICT **SHOW YOUR WORK: LIKE STUDENTS SOLVING MATH EQUATIONS, DISTRICTS DETERMINING FAPE MUST ALSO JUSTIFY THEIR CONCLUSIONS**

In *M.S. v. Los Angeles Unified School District*, the Ninth Circuit Court of Appeals affirmed the District Court's conclusion that M.S. ("M.S." or "Student") was denied a free appropriate public education ("FAPE") because the Los Angeles Unified School District ("District") had an independent obligation to consider whether a residential placement should be offered for educational purposes as part of the Individualized Education Program ("IEP"). The Ninth Circuit Court of Appeals further determined that District's obligation was independent of Department of Children and Family Services ("DCFS"), who placed Student in a residential facility pursuant to a juvenile court order, due to mental health issues.

In this case, M.S. experienced severe emotional trauma at four years old after witnessing her mother die from a brain aneurysm. With no father in her life, M.S. went to live with her maternal grandparents. At age 11 in 2010, M.S. was removed from her grandparents, due to allegations of child abuse, and became a ward of the state. As a result, an educational rights holder was appointed to M.S. During this same year, M.S. experienced the first of five mental health hospitalizations for episodes of violence against others. By 2012, M.S. had been hospitalized six times and had been in eight out-of-home placements, including foster homes and locked residential centers. In 2012, while at a locked facility, Student broke a peer's nose and assaulted a staff member, which led to a seven-month detainment in Juvenile Hall. During the February 28, 2013 IEP meeting, M.S. was offered counseling, special day class, and behavioral support. Although several of M.S.'s goals were unmet, the general education program was deemed appropriate. M.S.'s educational rights holder signed the IEP but disagreed that the offer was FAPE as she believed that M.S. required residential placement.

On March 14, 2013, Los Angeles Superior Court Juvenile Division ordered M.S. to remain a ward and ordered DCFS to provide Student with permanent placement services. Upon M.S.'s release from Juvenile Hall in April 2013, M.S. was placed in Vista Del Mar Community Treatment Facility ("Vista"), a Level 14 locked residential facility, due to intensive psychiatric care needs. During the time Student was at Vista, District provided Special Education and services by paying for her attendance at the non-public school located within Vista. Several IEP meetings were held in 2013, and at the June 4, 2013, IEP meeting, the IEP team noted that M.S. had made progress

but had not met her goals. No residential placement for educational purposes was offered during the IEP meeting, but Student was already in a residential facility due to the DCFS placement. M.S.'s educational rights holder disagreed with District's offer of FAPE and requested an "educationally related mental health assessment for residential."

In 2014, M.S. was referred to an attorney who in turn referred Student for a comprehensive neuropsychological assessment. An IEP meeting was held in May 2014, and the team did not discuss or review the assessment. Due to M.S.'s increased academic and behavioral improvement, DCFS wanted to move M.S. to a less restrictive unlocked facility. Again, M.S. was not offered a residential placement as part of her IEP. Ultimately, it was decided that Student would remain at Vista until DCFS moved Student. In 2015, DCFS placed Student in an unlocked facility and she ran away. Student was located by the police and returned to the care of DCFS. DCFS then made an emergency placement for M.S. in Delilu Achievement Home, a temporary facility, and then transferred her into Diamondale, a less restrictive residential facility than Vista. M.S.'s attorneys filed a stay put motion noting that while the IEP called for educational placement at Vista, it did not call for a residential treatment component. In fact, none of M.S.'s IEPs reflected any need for a residential treatment facility similar to Vista.

On November 21, 2014, M.S. initiated a Due Process Hearing before the Office of Administrative Hearings ("OAH") alleging 12 issues in which District failed to provide her with FAPE. After a seven-day hearing with numerous witnesses, the Administrative Law Judge ("ALJ") found in favor of Student with regard to one issue—District's failure during the October 21, 2014 IEP meeting to consider the neuropsychological assessment, which amounted to a procedural violation. Of the remaining 11 issues, the ALJ ruled in favor of District. Specifically, the ALJ concluded that only DCFS was "legally responsible to provide an appropriate placement for [M.S.'s] mental health needs, and the evidence was undisputed that placement in the locked Vista residence was appropriate." As a result, the ALJ determined that District "had no obligation to offer the locked Vista residence as part of its FAPE offer to [M.S.], because [DCFS] had already placed [her] there, in compliance with the court order that it provide a residential placement to [M.S.] and further in compliance with its own legal obligation to provide a placement that was appropriate for [M.S.'s] mental health needs."

M.S. subsequently filed an appeal in Federal Court. The issues that Federal Court considered were, 1) whether District was required, at the IEP meetings on February 26, 2014 and October 21, 2014, to consider and offer M.S. an educational residential placement as part of her IEP when she was already placed in a residential treatment by DCFS, and 2) whether M.S.'s placement was predetermined. The District Court reversed the ALJ's decision holding that when residential placement is considered necessary for educational purposes, and not merely necessary quite apart from the learning process, it is appropriate for Student's IEP to reflect the need for residential placement. In addition, the District Court held that District's failure to discuss residential placement for educational purposes constituted a procedural error under the IDEA. District subsequently filed an appeal with the Ninth Circuit Court of Appeals. Ultimately, Student prevailed.

In this case, M.S.'s educational placement decision was based solely on placement with DCFS pursuant to the Juvenile Court Order. District should have at least had a discussion of whether the placement was appropriate for educational purposes. Decisions about placement are

to be made after Student's IEP is developed. Although the placement may have been correct, it was not enough to relieve District from its independent obligation to determine M.S.'s appropriate educational placement within the context of an IEP meeting. Until there is further case law on this issue, it remains uncertain what obligation a district has when the IEP team disagrees with placement decisions pursuant to a Juvenile Court Order.

Under the IDEA, to determine whether a residential placement is necessary to provide a student with FAPE, a district must discuss and document whether the residential placement is necessary for educational purposes, or whether the placement is due to medical, social, or emotional issues apart from the learning process.

As a general rule, a district should explain the reasoning behind a student's placement and whether placement is due to educational reasons. In addition, the IEP team should consider a student's unique needs and determine the least restrictive placement based upon those needs.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

~ Christina J. Oleson

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