How Texas Schools Are Failing Students – Again

Children Routinely Denied All Education Services During Psychiatric Hospitalizations

An Investigative Report by Disability Rights Texas

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Disability Rights TEXAS

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EXECUTIVE SUMMARY

As the federally designated legal protection and advocacy agency for people with disabilities in Texas, Disability Rights Texas (DRTx) serves people with disabilities, including those in psychiatric hospitals. DRTx is also the organization that first identified the Texas Education Agency's (TEA) illegal 8.5 percent cap on special education services. During visits to facilities, we uncovered a troubling trend – the state is failing to meet the needs of a vast majority of special education-eligible children in psychiatric hospitals.

Current law relating to the provision of education in psychiatric facilities is relatively strong, but local school districts still fail to comply by providing services. Although TEA has a duty to proactively monitor the provision of special education to all eligible children in the state, the agency only reactively enforces the laws and regulations requiring school districts to educate children in psychiatric hospitals.

As a result, over the course of DRTx's year of monitoring education in psychiatric hospitals, we discovered that almost no hospitals and schools maintained the ongoing partnerships required by state law to ensure children in psychiatric hospitals receive education services. Furthermore, this problem disproportionately impacts foster youth who are grossly overrepresented among those in the hospitals and stay for longer periods of time. In a separate report, *Warehoused: Inappropriate Institutionalization of Texas Foster Youth*, DRTx explores the problem of hospitalization for youth in the Texas foster care system.

Duty to Provide Homebound and Special Education Services to Hospitalized Children

For over 40 years the Individuals with Disabilities Education Act (IDEA) has mandated that children eligible for special education services receive a free and appropriate public education (FAPE) at all times, including upon admission to and during placement at psychiatric hospitals.[1] In addition, children who are not yet eligible for special education are still entitled to homebound instruction if they are expected to be in the hospital for over 20 days throughout the year.[2]

While homebound services are usually limited to four hours of instruction per week, they serve to provide some continuation of the student in the curriculum and make sure there is not a lapse in school enrollment and credit accumulation. [3] While some might suspect that a child in the hospital might not be able to participate in education because of their extensive treatment regime, the reality is usually quite different. Psychiatric hospitals vary in their scheduling and activity offerings, but often include significant amounts of unstructured time in day rooms. For this reason, many children and

[1] 34 C.F.R. § 300.39 (a)(1)(i). *See also Letter to Power*, 211 IDELR 31 (OSEP 1978).
[2] 19 Tex. Admin. Code § 89.63(c)(2).
[3] TEX. EDUC. AGENCY, 2018-2019 STUDENT ATTENDANCE ACCOUNT HANDBOOK (2018).

young adults are eager to receive instruction to help them pass the time while in the hospital and make progress towards their goals following discharge.

Legal Requirements for Collaboration Between School Districts and Hospitals

TheTexas Administrative Code (TAC) Section 89.1115(d) lays out specific requirements for local school districts and hospitals to develop a local Memorandum of Understanding (MOU). The rule mandates the following:

- Hospitals to notify local school district within three days of admission of anyone age 3-22.
- School district to provide special education and related services to students with disabilities in hospitals within their geographic area.
- Hospitals and school districts to agree on staffing levels.
- Hospitals and school districts to agree on how relevant information will be shared and what information will be shared.
- Hospitals and school districts to specify facility and school contact positions and policies to notify other entities of changes to these positions.
- School districts to utilize the special education admission, review, and dismissal (ARD) process to determine specifics of the individualized special education services to be delivered to each student.
- School districts to designate surrogate parents for hospitalized youth who have no parents or guardians to make special education decisions. [4]
- Hospitals to train school staff on safety.

[4] Tex. Educ. Code § 29.0151.

FINDINGS

Overview

Over the past 18 months, DRTx monitored 14 psychiatric hospitals around the state focusing on the provision of education. DRTx found that children were being deprived of all educational services from the area school district in nine hospitals. Children were receiving educational services from the local school districts in only two hospitals– Austin Oaks Hospital and Austin State Hospital. Another hospital, Millwood, was providing education services at its own expense through a contract with a charter school which offered the most robust schooling we identified during our monitoring. In that hospital there were classes with teachers, curriculum, and course credit being awarded. This stood in marked contrast to what existed in the remaining eleven hospitals, where there were no ongoing partnerships between hospitals and school districts.

In those hospitals, it was common for the daily schedule to allocate time for completion of school work that may be sent from a prior school, but no course credit, and often no active instruction or teacher, was provided. In two hospitals, an arrangement for homebound services to be offered after 20 days was later made, but these services are typically only four hours a week. Special education and related services were not provided immediately to those who qualified. DRTx began sending notices to school districts and hospitals reminding them of their obligations, but many still delayed putting any meaningful services in place.

DRTx filed nine systemic complaints with TEA against school districts who were not identifying and serving children in psychiatric hospitals. Representative findings from the TEA include the following:

- School districts were not meeting their Child Find duties to identify and evaluate children suspected of having disabilities.
- School districts were not meeting their duties to provide a free appropriate public education (FAPE).
- School districts were not appointing educational surrogates for foster youth.

Unfortunately, despite its willingness to investigate complaints filed by DRTx and to require corrective action reactively, TEA has, thus far, still not proactively addressed the lack of special education services offered at hospitals throughout the state.

Finding 1: Neglect of Child Find Duty and Duty to Hospitalized Children

Commonly referred to as Child Find, school districts have an affirmative obligation to find, evaluate and serve all children who require special education services. [5] This duty also applies to those children in hospitals who may need special education services due to mental health disabilities.[6] Children hospitalized in psychiatric facilities will almost always have a mental health diagnosis, but a majority of those DRTx interviewed in our monitoring were not identified as being eligible for special education services.

[5] 34 C.F.R. § 300.111(a).
[6] 34 C.F.R. § 300.39(a)(1)(i).

Occasionally, a youth may have been hospitalized for an incident outside of school and may have been performing fairly well academically and behaviorally at school. However, in many cases, DRTx met children with a long history of academic and behavioral challenges at school who had not been evaluated for special education services prior to or during their hospitalization.

Despite the *Houston Chronicle* groundbreaking 2017 *Denied* series, the Department of Education's 2018 findings against Texas, and the corrective action plan meant to address the statewide problem of Texas school districts' not identifying and serving children who need special education, the issue continues to this day. In *Krawietz v. Galveston Independent School District* (2018), the Fifth Circuit Court of Appeals recently held that hospitalization can be a factor that should lead a school to evaluate for special education, especially when accompanied by other evidence of academic and behavioral decline. [7]

Finding 2: Disproportionate Impact on Foster Youth

Children in foster care make up a majority of the children DRTx encountered in its monitoring visits in psychiatric hospitals. Children in foster care are sometimes placed in facilities when other placements deteriorate, and they often remain in psychiatric hospitals for extended periods of time because of delays in identifying the next placement. As a result of their long stays, not receiving educational services during a hospitalization can lead to youth in foster care not receiving academic credit for an entire semester or school year. Lapses in school enrollment and services provided to foster youth make it difficult for them to catch up when they eventually return to school.

Compared to 30.2 percent of the general population in Texas, an estimated 1.5 percent of foster care alumni in Texas earn a bachelor's degree.[8] Disruptions in academic services during their primary and secondary education contribute to these outcomes.

As a result of DRTx's work over the past 18 months, the Texas Department of Family and Protective Services (DFPS) has created new training and policies for case workers to request educational services when children are placed in psychiatric hospitals. Unfortunately, many hospitals still have no active partnership with their local school district, so services are not readily available even when the foster youth's case worker makes a request.

Special education services are developed by a team that includes the parent. For youth in foster care who are residing in residential facilities, there is often a need for a child protection court or school district to appoint an educational surrogate to participate in the special education meetings in the role of parent. According to IDEA, neither DFPS caseworkers nor employees of psychiatric hospitals can serve in the capacity of a surrogate parent.[9] When the DFPS court system fails to appoint a surrogate

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[7] *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673 (5th Cir. 2018).

[8] Watt, T., et al., *Foster Care Alumni and Higher Education: A Descriptive Study of Post-secondary Achievements of Foster Youth in Texas*, CHILD & ADOLESCENT SOC. WORK J., Aug. 6, 2018, at 1.; TEX. HIGHER EDUC. COORDINATING BOARD, 2018 TEXAS PUBLIC HIGHER EDUCATION ALMANAC, (2018).

[9] 34 C.F.R. § 300.519.

parent prior to or upon admission to a psychiatric hospital, school districts are required to do so for foster youth receiving special education services.[10]

School districts that fail to provide education services for foster youth in psychiatric facilities do not, in turn, appoint educational surrogates, leaving foster youth without an advocate who can take action to ensure the provision of FAPE. Unfortunately, few children DRTx encountered in psychiatric hospitals had anyone in this role. A majority of the children had no court-appointed educational surrogate. The local school districts had not even enrolled the youth, much less appointed special education surrogate decision makers. Without a surrogate parent to follow up on their behalf, foster youth are unlikely to receive appropriate special education services, or even any education services at all.

The following is an example of a foster youth who encountered particularly bad obstacles to education while hospitalized:

J.V.'s Story

J.V. is a child in foster care who missed school often and ran away from placements, resulting in frequent moves when she was found. Although J.V. exhibited behavior challenges and other difficulties in school that would cause a suspicion of a disability, her schools failed to evaluate her for special education services. She was placed in a psychiatric facility and stayed for three months. Not only did the local school district fail to provide educational services during her stay, but it also refused to evaluate her for services when her caseworker requested an evaluation. The district denied the request instead, citing IDEA's definition of "parent" that does not allow DFPS employees to fill this role.[11] In addition, the school stated that she was "not registered" so they could not evaluate her.

After DRTx cited state law that foster children are entitled to register without paperwork, the school countered that they could not evaluate J.V. without "parental" consent, although there are exceptions to the requirement for parental consent for initial evaluations that J.V. met. [12] The school insisted upon unnecessary parental consent, which could not be provided because of the school's own neglect of its duty to appoint a surrogate parent to fill that role for J.V. After her hospital placement, DFPS moved J.V. to another state, and she returned to school without an evaluation or plan for services. DRTx won a complaint on her behalf and is working with her court-appointed educational surrogate to make sure the original school district is required to provide compensatory services for J.V. for the time she was not identified and denied an appropriate education.

Finding 3: Continued Impact Following Hospitalization

DRTx obtained and reviewed policies from 17 Texas School Districts addressing reentry from school after a hospitalization. Some school districts maintain strong policies focused on supporting the child in returning to the school environment successfully. Those policies address the involvement of counselors

[10] Tex. Educ. Code § 29.0151.
[11] 34 C.F.R. § 300.30(a)(4).
[12] 34 C.F.R. § 300.300(a)(2).

or campus social workers, the need to convene an ARD or 504 meeting to review educational programing and supports, as well as the need to consider special education or 504 evaluation for children not previously identified. These policies would usually require scheduled follow up with a counselor during a specified period of time to make sure the child appeared to be adjusting well.

Unfortunately, some school policies appear to erect barriers to enrollment itself, requiring a family to obtain doctor completion of a form for reentry after a hospitalization. While this may appear reasonable, the reality is that the student would not have been released from the hospital if the doctors and treatment staff believed they were a danger to themselves or others.

Following is the story of a foster youth who met obstacles in returning to school due to additional requirements that unnecessarily prolonged the process.

E.B.'s Story

When E.B.'s educational surrogate attempted to register her for school with all required documents listed on the school website, a school district staff member refused to enroll the child. The school representative asked for additional documents that were not required for other students. The surrogate had already travelled from another city to register the child, and the school expected the surrogate to travel across the large school district to obtain additional paperwork. Although DFPS placed E.B. in a psychiatric hospital within the school district's jurisdiction, inadequate communication between school district personnel present at the hospital and personnel on the school campus during registration disrupted her enrollment upon release. The hurdles that the surrogate experienced contextualize the issues created by miscommunication and non-communication between placements even within a school district, as well as following "school policies and procedures" at the expense of adherence to the law.

Conclusions

Education is the lodestar for ensuring after-care success for all students, including foster youth who leave or age out of the child welfare system in Texas. As one of the most vulnerable populations in the state, the agencies who serve these youth must fortify their commitment to ensuring all foster children receive quality education that can serve them for the rest of their lives.

DFPS should ensure that every youth they place in psychiatric facilities is surrounded by a system of support that emphasizes the importance of academics.

TEA must create protocols and implement measures to embolden school districts to serve the needs of foster youth at critical moments in their lives. School districts cannot lose sight of their duty to provide FAPE (and beyond) to all students in their catchment area no matter the weight or burden that effort may cause administrators and personnel.

To address the trauma of involvement in the foster care DFPS system, case workers must also place an equal amount of importance on the impact of education. Working together, child-serving agencies and organizations can help foster youth see a future of possibilities unclouded by trauma. Just as with any child, when foster youth feel supported and encouraged they have the opportunity to purposefully discover who they are.

RECOMMENDATIONS

Based on the above findings and its work reviewing MOUs and assisting in establishing new partnerships to begin providing educational services in hospital settings, DRTx recommends implementation of the following practices by the agencies that serve these youth:

Texas Education Agency

- Send letters to all school administrators in the state reminding them of the duty to serve children in psychiatric hospitals including practical guidance on identifying hospitals in their region and setting up MOUs.
- Inform school districts of the opening, closing, expansion, or reduction of capacity of psychiatric facilities where children with special needs, particularly foster children, may reside within their geographic areas promptly when the TEA is informed of any of these changes by other agencies, as currently required by law. [13]
- Require school districts to have appropriate MOUs with each psychiatric hospital located within their geographic areas.
- Require school districts to share all appropriate records with psychiatric hospitals, including the contact information for educational surrogates, as currently required by law. [14]
- Require school districts to share contact information for a designated hospital representative to educational surrogates, as currently required by law. [15]
- Set up meetings and facilitate negotiations between school districts and psychiatric facilities when disputes are referred to the TEA, as required by law. [16]
- Improve district support by providing technical assistance through the Office for Special Populations.
- Provide trainings for relevant district staff including foster care liaisons and special education directors.
- Monitor compliance as part of on-site special education review.
- Proactively seek out and address non-compliance and hold school districts accountable for lack of data and lack of education in facilities rather than passively waiting for complaints to be filed.
- Enforce the surrogate-parent mandate throughout the state.

Texas Department of Family and Protective Services

- Notify TEA and local school districts regularly of all psychiatric facilities where foster children reside.
- Require all psychiatric facilities with contracts with DFPS to have an MOU in place with the local school district that ensures appropriate educational services are provided promptly as condition of contract.
- Require DFPS caseworkers to provide a copy of the child's most recent IEP prior to admission to a psychiatric facility (although the school district may not deny or delay enrollment for foster

[13] 19 Tex. Admin. Code § 89.1115(d)(2)(C)(i).
[14] 19 Tex. Admin. Code § 89.1115(d)(2)(B)(ii).
[15] 19 Tex. Admin. Code § 89.1115(d)(2)(B)(i).
[16] 19 Tex. Admin. Code § 89.1115(d)(6)(A).

children due to the failure to provide any document, even if otherwise required for enrollment).

- Continue to provide training and implement education oversight processes for youth placed in psychiatric hospitals.
- Provide training and resources for foster care liaisons to carry out their duty to "facilitate the enrollment in or transfer to a public school" as this duty relates to enrollment and provision of services without delay while foster youth are hospitalized. [17]

Health and Human Services Commission (HHSC)

- Notify TEA of the opening, closing, expansion, or reduction of capacity of psychiatric facilities, as required by law. [18]
- Prior to licensing any inpatient psychiatric facility, ensure that the facility has an MOU in place that complies with state regulations.

Local School Districts

- Ensure there is an MOU in place with every psychiatric facility in the school district that adequately addresses homebound services, Child Find, the provision of special education and related services, the prompt enrollment of students, the appointment and training of educational surrogates, input of facility staff at ARD meetings, the provision of school supplies, and any other necessary exchange of information required by law.
- Ensure foster care liaisons, special education directors, and administrators of departments providing homebound instruction understand their responsibility to serve students in the hospital.
- Establish polices and contracts for resident school districts to reimburse other school districts as necessary for providing educational services. These provisions would ensure instruction is provided to youth during short hospitalizations when disenrollment is not practical and for longer periods of intensive outpatient treatment where the student's residency may not change but he or she is spending the school day in the non-resident district.
- Establish policies that require notification of special education departments of psychiatric hospitalizations reported by families, even if no psychiatric facilities are located within the particular school district, so that evaluation teams can consider the potential need to evaluate children for special education or 504 services upon return from the hospital. Begin or continue the evaluation process for those students suspected of having disabilities by seeking out informed consent from educational surrogates, foster parents, or other "individual(s) appointed" to represent those students. [19] Expedited evaluations could often be completed because attendance issues would likely not interfere as they might in a typical school environment. Provide all protections and educational services reasonably appropriate for the student until the evaluation is complete and an ARD meeting convened.

[17] Tex. Educ. Code § 33.904(a)(1).
[18] 19 Tex. Admin. Code § 89.1115(d)(2)(C)(ii).
[19] 34 C.F.R. § 300.300(a)(2)-(3).

Psychiatric Hospitals

- Seek MOU with local school district special education departments to ensure immediate provision of special education services to those eligible and homebound services to those who are not eligible for special education but expected to remain in the hospital for 20 days or longer.
- Designate an educational liaison to serve as a point of contact for academic services for foster youth with duties that include arranging an academic space for instruction, materials, transportation to local campuses, as well as other supportive arrangements.

DRTx endorses enacting these procedures to ensure youth in psychiatric hospitals receive the services they are entitled to by law and that they need to successfully return to school and life.