

A SPECIAL EDUCATION CASE: WORKING WITH YOUR LEGISLATORS TO CHANGE LAW

**IASBO 2023 Annual Conference
May 3, 2023**

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THE “BERMUDA TRIANGLE” OF SPECIAL EDUCATION RESIDENTIAL PLACEMENT ISSUES AT THE TIME (2021-2022)

- Significant increase in student behavioral and mental health issues
- Shortage of ISBE-approved residential placements
- State law/regulations prohibiting placement in non-approved facilities, coupled with ISBE internal policy prohibiting reimbursement to districts if non-approved placement is ordered by hearing officers in due process cases

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CASE EVENTS LEADING TO DISTRICT'S INVOLVEMENT IN LEGISLATIVE CHANGE

- 19-year-old student with autism and intellectual disabilities attending public alternative special education day school
- History of severe/dangerous behaviors and hospitalizations
- May 2021 student violently attacked parent, resulting in emergency hospitalization (and then attack on hospital personnel)
- June 2021 District convened IEP conference and team agreed that the student required residential placement

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CASE EVENTS LEADING TO DISTRICT'S INVOLVEMENT IN LEGISLATIVE CHANGE

- Per Article 14 of *School Code* and Parts 226 and 401 of ISBE special education regulations, District was prohibited from considering residential placements that were not approved by the ISBE to serve students with disabilities.
- District applied to over a dozen approved residential programs, but none accepted student.
- Student remained hospitalized until late August 2021, then placed at ISBE-approved residential program in Tennessee.

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CASE EVENTS LEADING TO DISTRICT'S INVOLVEMENT IN LEGISLATIVE CHANGE

- After a few weeks, in late September student was discharged by Tennessee residential program due to series of elopements and episodes of major aggression towards staff.
- District immediately resumed search for another ISBE-approved residential program. Parents brought student home and re-hospitalized him shortly thereafter.
- In the end, nearly 60 residential programs had been contacted and did not have openings or would not accept student.

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CASE EVENTS LEADING TO DISTRICT'S INVOLVEMENT IN LEGISLATIVE CHANGE

- Parents notified District that they found private residential treatment program in New York that would accept student and requested District placement/funding.
- District explained that *School Code* and ISBE regulations prohibited it from placing student at non-approved facility and declined payment.
- Due process litigation ensued in November. Hearing Officer ordered District to make/pay for the non-approved placement. Hearing Officer declined to order ISBE to approve or reimburse the District for the placement. Said non-approved, non-refundable placement was, to say the least, pricier than most.

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ISBE & STAKEHOLDER EFFORTS TO ADDRESS THE RESIDENTIAL PLACEMENT ISSUES PRIOR TO THIS CASE AND THIS DISTRICT'S INVOLVEMENT

- ISBE efforts to expand list of approved residential facilities
- ISBE workgroup addressing the residential placement crisis
- IAASE and IASB/ICSA lobbying (mostly of ISBE)
- Individual negotiations with ISBE in individual cases

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THE TIPPING POINT: DIRECT SCHOOL DISTRICT EFFORTS TO ADDRESS THE STATE LAW/REGULATION PIECE OF THE RESIDENTIAL PLACEMENT CRISIS

- District 125 CSBO reaches out to other Lake County school districts with similar cases pending, and District 125 attorney reaches out to the attorney for these districts.
- District 125 CSBO initiates outreach to State Representative Daniel Didech regarding potential sponsorship of legislative fix.
- Calls and meetings with Representative Didech ensue.

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THE TIPPING POINT: DIRECT SCHOOL DISTRICT EFFORTS TO ADDRESS THE STATE LAW/REGULATION PIECE OF THE RESIDENTIAL PLACEMENT CRISIS

- Representative Didech is connected with other State legislators, as well as IAASE and IASB/ICSA lobbyists.
- District 125 CSBO brings issue to CLIC Board and encourages additional local lobbying of State legislators by CLIC member districts.
- IASB/ICSA leads development of draft legislation.

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PUBLIC ACT 102-703 (effective 4/22/22)

Amended Section 14-7.02 of the *School Code*:

District financial responsibility and reimbursement for nonpublic facility placements applies for both ISBE-approved special ed facilities and, in certain situations, for emergency placements in non-approved facilities.

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PUBLIC ACT 102-703 (effective 4/22/22)

Districts may place special ed students in non-approved nonpublic facilities if ISBE provides “emergency and student-specific approval” ~

- 5 criteria must be met:
 1. Facility demonstrates appropriate licensure for teachers
 2. Facility demonstrates age-appropriate curriculum
 3. Facility provides enrollment and attendance data
 4. Facility demonstrates ability to implement IEP
 5. District demonstrates good faith efforts to place in an approved facility, but no appropriate and available approved facility has accepted student for immediate placement
- ISBE must approve request within 10 days if criteria met.

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PUBLIC ACT 102-703 (effective 4/22/22)

- If placement in a non-approved facility is ordered by a due process hearing officer, facility is deemed approved.
- Emergency placement in a non-approved facility under these provisions may continue if:
 - The IEP team determines annually that it is appropriate to meet the student’s needs
 - At least every 3 years following the placement, the IEP team reviews appropriate ISBE-approved placement options to determine if any can meet the student’s needs, have accepted the student, and have availability

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PUBLIC ACT 102-703 (effective 4/22/22)

- Conforming revisions to ISBE rules (23 Ill. Admin. Code §226.330 and portions of 23 Ill. Admin. Code Part 401) followed and became effective on 7/13/22.

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QUESTIONS?



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