

Juvenile Sex Offender Needs vs Education

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Caregivers for foster youth, who are wards of the court, find themselves increasingly in conflict with public education over the educational and placement needs for the wards they serve. Problems include attempts by school districts to exclude students from appropriate public school placements referring instead into “home instruction” or court and community school. Both of these options are frequently inadequate for wards that have compliance and control problems, are not self motivated and lack basic skills in reading and math.

Even more, extreme conflicts arise when a ward is a “special needs student” qualifying for special education services. Federal Special Education Law (IDEA97) and the corresponding State Special Education Statutes contained in the Education Code have extensive approval, appeal and review procedures that focus on the “parent”. These laws and their protections were enacted due to long standing abuses of the rights of “special needs” students and their parents by public educators. Historical abuses included the improper limitation in offered services, inappropriate school placements, and refusal to assess and qualify a student residential treatment program social worker or administrator.

The power of the Juvenile Court is even limited in many ways by current laws or more precisely by the lack of appropriate and applicable laws. Federal law does grant broad authority to the courts to enforce laws relating to how it deals with its created problems in many “wardship” situations. “Parent” as defined by law includes the natural or adoptive parent, a relative caregiver serving as the parent and in some situations as foster parent. Note that this does not include a party who holds only physical custody – such as a residential treatment program social worker or administrator.

The power of the Juvenile Court is even limited in many ways by current laws or more precisely by the lack of appropriate and applicable laws. Federal law does grant broad authority to the courts to enforce laws relating to how it deals with its criminals (wards adjudicated under W&I Code Section 602 for the commission of a crime) who are also children with special education needs. The United States Supreme Court in Honig vs. Doe (1988, a California Based Case) did affirm the power of the state court to deal with its criminals. The educational powers affirmed included the right of the court to take the most extreme educational action possible, and the power to make a direct special education placement.

You would think this broad affirmation of authority would be all that the Juvenile Courts would need to exercise greater power over educational decisions related to its wards who also fall under Federal and state special ed. laws, but it is NOT. There are so many specific provisions and instructions covered by special ed. law, which are not offset or supplemented by W&I Code provisions, that the Juvenile Courts are reluctant to “make law.”

Since IDEA97 empowers state courts to enforce state laws relative to its criminals (wards), the solution to these problems is simple – we just need a few more laws. The new laws should specifically empower the Juvenile Court to issue and enforce orders covering the unique educational needs of wards of the court; and to insure that all actions taken regarding its wards are in full compliance with the mandates contained in W&I Code Section 202(b): “...Juvenile courts and

other public agencies charged with enforcing, interpreting and administering the Juvenile Court Law shall consider the safety and protection of the public and the best interest of the minor in all deliberations pursuant to this chapter.”

Recommended Powers To Be Given To Juvenile Court:

The Juvenile Court needs to be empowered to issue educational orders for its wards relating to many aspects of special education. Specific needs include the following situations:

1. The power to order the school district to include the probation officer and residential program staff as IEP team members with or without the “parents” approval.
2. The power to order the IEP team to comply with court ordered terms of probation and suggested placements, when such placements are in the best interest of the community and of the ward.
3. The power to the Court to appoint any person to serve as the “parent” for education purposes. This “court designated educational representative” would serve instead of the natural parent and would preclude the need for a school district to appoint a surrogate parent in the absence of the natural parent. A court-designated ed. rep. is especially needed where mental health, emotional disturbance, and/or severe high-risk behaviors, such as sexual acting out and sexual offending, are present. The power of the court to appoint any person would allow the court to appoint a person knowledgeable with the particular needs of the ward and a person who has frequent and professional contact with the ward. Such a person could be a treatment social worker or LCI administrator who is serving as the “foster parent”. For this narrow group of high-risk wards, the most appropriate candidates for appointment by the court would NOT be excluded due to the potential conflicts of interest that their closeness to the wards’ treatment, care or education may present. All educational actions and decisions would be under the supervision of the assigned probation officer and of the Juvenile Court.
4. Orders that require offense related behavior and community safety concerns to be factored into educational placement decisions.
5. Changes to state law that grants full “parent” status and authority to a court designed ed. rep. This authority includes the power to initiate and approve an educational assessment, the power to approve IEP results and placements, and the right to be a direct party to any action initiated within the special education protections and due process rights offered under state law to “parents” of a child with special needs.

***Feedback and an exchange of ideas related to getting these laws on the books are solicited. Craig Fredericks can be reached at craig95219@aol.com.

