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# **Exceptional Family Member Issues**

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# EXCEPTIONAL FAMILY MEMBER LEGAL ISSUES

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## EXCEPTIONAL FAMILY MEMBER PROGRAM MCO 1754.4

- ◆ Purpose – ensure continuum of care for eligible MC family members
- ◆ Mission – improve MC readiness and the quality of life of families that support a member with a disability
- ◆ Enrollment – mandatory (medical and/or educational)
- ◆ Installation EFMP Resources
  - ◆ Program Manager
  - ◆ Family Case Workers
  - ◆ Training, Education and Outreach Specialist
  - ◆ Attorney (belongs to legal assistance)

## EFMP LEGAL SUPPORT

- ◆ Present Status
  - ◆ 2 EFM Attorneys Marine Corps wide
    - MCI EAST- Vickie O'Brien (Camp Lejeune)
    - MCI WEST– Karen Taylor (Camp Pendleton)

## EFMP LEGAL SUPPORT

- ◆ Special Notes:
  - ◆ Attorneys are not part of EFMP!
  - ◆ Housed where legal assistance is provided
    - Office space and basic supplies provided by local installation.
    - All other funding comes from HQMC
    - Supervision from HQMC and from local Director of Legal Assistance of MCI EAST
  - ◆ Provide support to Exceptional Family Members and to the Program as needed (legal trainings, forums, etc)
  - ◆ Do NOT advise the Exceptional Family Member Program on any matter- that is the job of MCCS counsel
  - ◆ Provide representation to individual Exceptional Family Members only

## EFMP LEGAL SUPPORT

- ◆ Advise EFMP families on IDEA, state education and related disability laws
- ◆ Advocate and litigate procedural and substantive education and related disability law issues before schools, administrative forums, and courts
- ◆ Provide periodic presentations on special education and related disability law issues to EFMP staff and families
- ◆ Coordinate access to pro bono legal representation as necessary

(See Chapter 4, Marine Corps Order 1754.4B)

(See also 2017 MCLAP Manual 9001)

## FREQUENT LEGAL ISSUES

- ◆ Special Education (60-75%)
- ◆ Guardianships/Incompetency (20%)
- ◆ ADA issues- accessibility, housing, accommodations, discrimination, service animals
- ◆ Social Security/Medicaid questions
- ◆ Special Needs Trusts (see Mr. Archer)
- ◆ Other items:
  - ◆ School enrollment
  - ◆ School discipline
  - ◆ Juvenile Delinquency or adult criminal court questions
  - ◆ Department of Social Services

## SPECIAL EDUCATION

- ◆ Provide consultation and advice on issues regarding special education/accommodations in the school system.
- ◆ Assist with obtaining educational files (FERPA requests)
- ◆ Communicate with county officials and school board attorneys regarding issues.
- ◆ Represent families at IEP team meetings and other school related meetings
- ◆ If unable to resolve at school/county level, file due process (litigation) or state complaint or seek mediation or file complaint with the Office of Civil Rights (OCR).
- ◆ Represent families during resolution sessions or mediations
- ◆ Represent families at due process hearings.
- ◆ If you hear “IEP” send it to ME!

### What does a special education case look like?

- ◆ Example: Least Restrictive Environment
  - ◆ Autistic student has below grade level abilities in reading and math. Student is about one grade level below his peers. The student needs special education to work on his reading and math but still needs to be exposed to grade level content. The school wants the student to spend 2 hours a day in a separate setting to work on reading and math. Parents want child to remain in general ed classroom with an inclusion teacher to help student catch up without missing out on being educated with his peers.

## GUARDIANSHIPS/INCOMPETENCY

- ◆ Provide consultation and representation in the State of NC.
  - ◆ Provide Affidavit for physician
  - ◆ Ensure family has appropriate and timely evaluations for evidentiary purposes
  - ◆ Draft petition and notice of hearing
  - ◆ File and Serve Documents
  - ◆ Represent family at hearing
  - ◆ Prepare all documents for the Estate File
    - Family usually leaves court with all needed documents
  - ◆ Also can assist with \*Restoration of Competency\* in specific circumstances.

## AMERICANS WITH DISABILITIES ACT (ADA) ISSUES

- ◆ Housing accommodations
- ◆ Service Animal/ESA issues
- ◆ Employment discrimination
- ◆ Discrimination in school or daycare
- ◆ Public accessibility

(for more information see [ADA.gov](http://ADA.gov))

## **SOCIAL SECURITY/MEDICAID**

- ◆ **ADVISE ON REASONS FOR DENIAL**
- ◆ **DETERMINE IF ALL INFORMATION WAS CONSIDERED**
- ◆ **REQUESTS FOR RECONSIDERATION**
- ◆ **OVERPAYMENTS**
- ◆ **REFER TO LOCAL LEGAL RESOURCES IF CASE NEEDS TO BE FORMALLY APPEALED.**

**QUESTIONS???**