Access to Records – “Noncustodial Parent”

written by Richard Leslie | May 24, 2016

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… It is important for therapists and counselors to know the law with respect to parental access to a minor patient’s mental health records. Most state laws allow (or require) practitioners to deny access to the complete records under specified circumstances. Some states allow for preparation of a summary of the records in lieu of providing the actual records – again under specified circumstances. These laws vary widely and they must be thoroughly understood.

One controversial aspect of this topic involves the question of whether or not a parent can be denied access to the minor’s mental health records solely for the reason that the parent is not the “custodial parent” (the parent with whom the child resides). Non-custodial parents generally cannot be denied access solely because the child does not reside with them. A more troublesome question arises when the non-custodial parent also does not have legal custody of the child (e.g., the other parent has sole legal and physical custody).

I have recently done some research in this regard (in relation to proposed legislation I am involved with) and the only thing that is clear is that there exists great diversity in the way this issue is addressed in the various states.

Some states hold to the proposition that a parent who does not possess any form of legal custody (sole or joint) can be denied access to the child’s mental health records. Other states do not allow access by the parent only if the loss of legal custody was the result of child abuse, domestic violence, or other “bad” behavior. In other words, access to the minor’s records cannot be denied in those latter states solely because the demanding parent does not possess any form of physical or legal custody. It must always be remembered, however, that access to the records may be able to be denied for a variety of other appropriate reasons.