



By Daniel Pollack

Psycho-Legal Considerations of Placing Children in Foster Care

A healthy three-year-old is placed in a foster home. A month later, a 16-year-old with a history of borderline personality disorder is placed in the same home. Without permission, the 16-year old decides to give the three-year old a bath. Tragically, the three-year old drowns. Whatever the exact circumstances, and the foster parents' behavior and liability aside, was it negligent of the agency initially to place the teenager in the same home as the young child?

When a child is placed in a foster home it is the responsibility of the placing agency to evaluate the prospective home by considering its environmental, physical, emotional, medical, and educational benefits and hazards. Finding a compatible foster home is not just a question of finding the right foster parents. If there are other children in the home they are also crucial to the selection process.

The placement process is a very personal and intentional one. Some variables can be controlled; others cannot. For instance, one controllable variable is the maximum number of foster children that can be placed in a foster home. For most states, it is usually no more than six. Other variables may include limiting the number of very young children; capping the total number of children in a home; limiting the number of special needs or medically fragile children. Among the exceptions to the above limits may be those instances in which the placement of a sibling group in a family foster home with no other children in the home would exceed the mandated limit.

It is axiomatic that the behavior of a child is affected by its peers. To detect, measure, and predict such peer effects is a daunting task. In the foster care


context, relatively little is known about how other children in the home—be they other foster children, their own siblings, or the biological children of the foster parents—actually affect a particular foster child. So, back to our original query: From a psychological, legal, and financial risk perspective are there certain children who should not be placed in a foster home that houses other children with specific psychological diagnoses? Assuredly. A teenage boy with a history of being a sexual abuser of young girls should not be placed in a foster home comprised of potential victims. Quite simply, it is not good public policy to have the fox living in the hen house.

But we need to move beyond the obvious. If we had greater insight into the nature of peer influences in the foster home context it would have important policy and legal placement implications. As Wichita, KS, attorney James A. Thompson poignantly asserts:

Despite explicit policies stating that the needs and safety of the child are to be the foremost consideration when considering placement, the reality is that child placement is too often based only on the availability of a foster home. Rather than protecting children, workers herd children into the first available home. The needs of the child become only a talking point at a meeting or a box to be checked on a report rather than contemplating why the child is in foster care and what effect the other children in the home will have on the child. Workers often lack a fundamental understanding of how peer relationships inside the foster home will affect the newly placed child because they have not received sufficient training in this area. This failure can devolve into a game of Russian

Roulette where the child will eventually be harmed or killed. Any action, or inaction, that leads to a child being harmed or killed will also lead down the road to litigation and all the resulting costs and expenses associated therewith. Failing to understand foster peer relationships not only affects the bottom line in a cost/benefit analysis, but more importantly, this lack of understanding fails the children we as a society are tasked with protecting.

In any camp or college application there always seems to be a disclaimer that "Assignment with a roommate that matches lifestyle preferences or compatibility cannot be guaranteed." But foster care is not camp or college. Whether it's racial, cultural, or behavioral, there still needs to be a fundamental personality compatibility with others in the foster home. Toward this end, compatibility is important for purposes of basic safety and to maximize the potential of the overall placement.

Formal research into this understudied area may yield valuable new approaches to placement of foster children. Just as the quality of a child's schoolmates is an important determinant of academic performance so, too, the quality of a foster family can have life changing effects on a foster child. A good placement will reduce the necessity of replacement, resulting in less work for placement staff, higher occupancy of available foster homes, more satisfied foster parents, and better outcomes for children. 

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