

Special Education Update

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WASA

Child Find

- WAC 392-172A-02040

(1) School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education services, even though they are advancing from grade to grade.

(emphasis added). Second paragraph = “two-factor test” for Child Find

Child Find re Dyslexia

- RCW 28A.320.260
 - (3)(a) If a student shows indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia, **the school district must provide interventions** using evidence-based multitiered systems of support, consistent with the recommendations of the dyslexia advisory council under RCW **28A.300.710** and as required under this subsection.
 - (b) The **interventions must be evidence-based multisensory structured literacy interventions** and must be provided by an educator trained in instructional methods specifically targeting students' areas of weakness.
 - (c) Whenever possible, a school district must begin by providing student supports in the general education classroom. If screening tools and resources indicate that, after receiving the initial tier of student support, a student requires interventions, the school district may provide the interventions in either the general education classroom or a learning assistance program setting. **If after receiving interventions**, further screening tools and resources indicate that a student continues to have indications of, or areas of weakness associated with, dyslexia, the **school district must recommend** to the student's parents and family that **the student be evaluated for dyslexia or a specific learning disability.**

Child Find (cont'd)

- ***In re Mercer Island School District***, (SEA WA, 2021)
 - 3rd and 4th grade male, general education student
 - Parents have concern in 3rd grade about Student's writing abilities at school. They obtain private neuropsych eval of Student by Dr. Dunbar-Mayer. He diagnosed Student with a specific learning disorder in the area of written expression, based upon discrepancy between 137 FSIQ and 98 SS on Written Expression composite, as well as 2.5/4 grades from school. But, he only recommended 504 accommodations at school.
 - Staff met with Parents to discuss potential 504 plan.
 - Parent did not ask to and staff did not refer Student for consideration of a special education evaluation.
 - The ALJ nonetheless concluded that the District violated Child Find obligation by not referring Student for consideration of a special education evaluation, based upon private report and Parent concern raising a non-frivolous suspicion of disability.
 - But concluded procedural violation was harmless, due to ALJ's determination that Parents failed to show that an evaluation team would have qualified Student if timely referred.

Child Find (cont'd)

- ***In re Northshore School District, (SEA WA, 2021)***

- 8th grade transfer student with straight A grades, no attendance or discipline problems and no 504/IEP in place
 - Staff learned Student had engaged in cutting in December 2019. Parents aware.
 - Student ingested a number of OTC painkillers at home, after school, and was hospitalized for one week in January of 2020. Upon discharge, Parent returned Student to school and during a safety meeting with principal, school counselor, and school counselor intern, Parent reported Student had been diagnosed w/ depression.
 - Parent did not ask that and **staff did not refer Student for consideration of a special education evaluation.**
- The ALJ concluded that the District violated Child Find obligation by not referring Student for consideration of a special education evaluation
 - But concluded violation was harmless due to lack of information that would have led a team to qualify Student at that time.

Child Find (cont'd)

- ***In re Sumner-Bonney Lake School District, (SEA WA, 2021)***
 - Parent raised Child Find claims after unilaterally placing Student in a residential facility in another state
 - The ALJ concluded that the District violated Child Find obligation by not referring Student for consideration of a special education evaluation
 - **Single-Factor Test = A disability is suspected, and must therefore be evaluated,** when a school district has notice that a student has displayed the symptoms of a disability.
 - Notice of disability in this case = identification of ADHD upon enrollment; discussions of anxiety and depression and childhood trauma; struggles at school
 - Procedural violation = a denial of FAPE?
 - **“By failing to evaluate the Student, the District effectively short-circuited the entire process under the IDEA to identify, evaluate, craft an appropriate IEP, and select a Least Restrictive Environment (LRE).”**

Child Find for PPPSS

- WAC 392-172A-04005
 - (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district
- *Letter to Eig* (OSEP 2009)
 - If a parent requests that the LEA responsible for providing FAPE to the child evaluate their child for the purpose of having a program of FAPE made available to the child, the LEA cannot refuse to conduct the evaluation and determine the child's eligibility for FAPE because the child attends a private school in another LEA.

Child Find for Unenrolled Students

- *Letter to Wayne* (OSEP 2019)
 - If a determination is made through IDEA's child find process that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private school, the LEA where the child's parent resides, is not required to make FAPE available to the child. . . .
 - However, the LEA where the child's parents reside must make FAPE available and be prepared to develop an IEP if the parent enrolls the child in public school.
- Application to non-resident transfer or homeschooled students
 - *In re Port Angeles Sch. Dist.*, (SEA WA, 2021) (“So, all that needs to be shown to trigger the duty for a district to develop an IEP for an un-enrolled student is that a request demonstrate that the parent is ‘at least nominally seeking a public education for the student.’”) (emphasis added).

Comparable Services Obligation

(5) If a student eligible for special education services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and

(b) Develops and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

WAC 392-172A-03105 (emphasis added).

Comparable Services (cont'd)

- What is “comparable”?
 - *In re Mercer Island Sch. Dist.*, (SEA WA, 2021)
 - “The IDEA does not define the term “comparable services.” The federal Department of Education (DOE) explained it was not necessary to provide a definition in the IDEA, as it interpreted comparable to mean “similar” or “equivalent.” 71 Fed Reg. 46,681 (2006). There is not an abundant amount of case law going to what constitutes comparable services. Similar to the DOE, courts have held that the IDEA does not require the new school district to provide an exact replica of the services a student received from their former school district. See, e.g., *Sterling A. v. Washoe County Sch. Dist.*, 51 IDELR 152 (D. Nev. 2008) (holding that a Nevada district could provide school-based services to a child with a cochlear implant who received home-based services from his former district).”
- What should districts do in response to IEP services not typically offered in WA?
 - Vision therapy
 - Auditory processing
 - Others?
- Conduct a District evaluation?
 - What does that look like and who is involved?

Methodology Issues

- Identification of Specific Curriculum in an IEP
 - *J.L. v. Mercer Island Sch. Dist.*, (9th Cir., 2010)
 - “Although school districts should specify a teaching methodology for some students, for other students ‘IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education.’ See 64 Fed. Reg. 12,552. We accord deference to the District's determination and the ALJ's finding that **K.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective.** We hold that the District did not commit a procedural violation of the Individuals with Disabilities Education Act by not specifying teaching methodologies in K.L.'s individualized educational programs, and reverse the district court.”
 - Thus, a case-by-case determination

Methodology Issues (cont'd)

- *Crofts v. Issaquah Sch. Dist.*, (9th Cir. 2022)
 - Court rejected claim that district required to specifically evaluate for “dyslexia” where the district completed a comprehensive evaluation in the area of reading and student found eligible for SDI in reading under the SLD category
 - This evaluation included data/opinions from parent’s private evaluation of student
 - Court further rejected claim that district required to use a specific methodology where record established student had benefited from school district’s educational program
 - This included testimony of use of multi-sensory and other effective reading instructional strategies and approaches

Methodology Issues (cont'd)

- “Consideration” of Private Evaluation Data
 - ***Rogich v. Clark County Sch. Dist., (D. Nev., 2021)***
 - Federal court reversed lower administrative decision in favor of the school district and found a denial of FAPE by the district in not fully adopting private evaluation recommendations on how to implement a specific reading curriculum (O-G)
 - Court found that two IEE reports recommended **consistent and exclusive use of O-G reading methodology** for student with multiple disabilities in order to benefit, and because the proposed IEPs **only** identified use of a “multi-sensory approach to instruction” that could potentially confuse Student if used inconsistently, the proposed IEPs denied Student a FAPE
 - District was never able to implement its proposed IEPs due to unilateral parent placements
 - Parents awarded almost \$500,000 in reimbursement for unilateral private placements

Methodology Issues (cont'd)

- ***In re Peninsula School District***, (SEA WA, 2022)
 - Later elementary student – eligible for special education since 2nd grade with SLD in reading
 - Parents had concerns beginning in 4th grade (2019-20 school year) about Student’s reading. Parents suspected dyslexia and had Student privately evaluated. At start of 5th grade, Parents provided District copy of the report.
 - The private evaluator identified Student as having dyslexia, and made following recommendation:
 - “The current state of dyslexia research indicates that for children who are having difficulties learning to read, they require a comprehensive evidence-based approach that emphasizes both the phonological aspects of the sounds of language and the orthographic aspects, which is the appearance of words. That instruction has to be explicit, multisensory, so you have to be hearing it and reading it and seeing it and even demonstrating it.”
 - The school team did not change the instructional methodology despite Parents’ concerns.
 - The ALJ concluded:
 - “As in *Rogich*, the District failed to acknowledge the outside evaluation and the Parents’ request to utilize the recommended curriculum by stating that the District’s curriculum was evidence-based, without providing any further information to support this claim, and that the Student was making progress. It is clear from the Student’s January 6, 2021 IEP alone, that she was not making progress toward her annual goals. She had, in fact, regressed.”

Five Components of Effective Reading Instruction

- Phonemic awareness
- Phonics
- Fluency
- Vocabulary
- Comprehension

See [National Reading Panel results](https://www.nichd.nih.gov/publications/pubs/nrp/findings), April 13, 2000, available at <https://www.nichd.nih.gov/publications/pubs/nrp/findings>

See also <https://www.readnaturally.com/research/5-components-of-reading>
and <https://ortongillinghamonlinetutor.com/the-national-reading-panel-and-the-big-five/#:~:text=They%20concluded%20that%20there%20were%20five%20essential%20components,vo%20cabulary%20words%20or%20Vocabulary%20Development.%205%20Reading%20Comprehension>

O-G Methodology

- Leading dyslexia treatment isn't a magic bullet, studies find, while other options show promise - MindShift (kqed.org)

“But two recent academic papers, synthesizing dozens of reading studies, are raising questions about the effectiveness of these expensive education policies. A review of 24 studies on the Orton-Gillingham method, published in the July 2021 issue of the peer-reviewed journal *Exceptional Children*, found no statistically significant benefit for children with dyslexia. Instead, suggesting a way forward, a review of 53 reading studies, led by University of Virginia researcher Colby Hall and published online September 2022 in *Reading Research Quarterly*, found that much cheaper reading interventions for children with a variety of reading difficulties were also quite effective for children with dyslexia.”

“Over the past decade, parent advocacy groups led a grass-roots movement resulting in most states adopting dyslexia-specific legislation, with many states mandating the use of the Orton-Gillingham approach to reading instruction.

Orton-Gillingham is a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive approach to reading for students with or at risk for word-level reading disabilities (WLRD). **Evidence from a prior synthesis (Ritchey & Goeke, 2006) and What Works Clearinghouse reports (WWC, 2010) yielded findings lacking support for the effectiveness of Orton-Gillingham interventions.** We conducted a meta-analysis to examine the effects of Orton-Gillingham reading interventions on the reading outcomes of Students with or at risk for WLRD.

Findings suggested **Orton-Gillingham reading interventions do not statistically significantly improve foundational skill outcomes** (i.e., phonological awareness, phonics, fluency, spelling; $ES = 0.22$, $p = .40$); though the mean effect size was positive in favor of Orton-Gillingham-based approaches. **Similarly, there were not significant differences for vocabulary and comprehension outcomes ($ES = 0.14$; $p = .59$) for students with or at-risk for WLRD.** More high quality, rigorous research with larger samples of students with WLRD is needed to fully understand the effects of Orton-Gillingham interventions on the reading outcomes for this population.” (emphasis added)

“The effects of interventions that were explicitly described as multisensory ($g = 0.20$) did not differ from interventions not characterized as multisensory ($g = 0.34$; $p = .25$). Our analysis was underpowered, and this is certainly a variable that deserves further study.

Still, it seems evident, based on this and other research (e.g., Al Otaiba et al., 2018; Stevens et al., 2020) that **there is not sufficient evidence for the benefit of reading instructional programs that describe themselves as multisensory to require that school districts use them in place of other evidence-based instructional approaches** (i.e., other explicit, systematic approaches to foundational skills instruction) that do not describe themselves as multisensory.” (emphasis added)

IEP Team Composition

- Required Participants for IEP Team meetings
 - ***R.P. v. Prescott Unified Sch. Dist., (9th Cir., 2011)***
 - School districts are **not obligated to include “experts” in a particular disability at an IEP team meeting**
 - WAC 392-172A-03095(1) only requires the following participants:
 - The parents of the student;
 - Not less than one gen ed teacher of the student if the student is, or may be, participating in the gen ed environment;
 - Not less than one special ed teacher of the student, or where appropriate, not less than one special ed provider;
 - A representative of the public agency who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the school district.
 - An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above;
 - **At the discretion** of the parent or the school district, **other individuals who have knowledge or special expertise** regarding the student, including related services personnel as appropriate; and
 - Whenever appropriate, the student.
 - But, should districts consider inviting other personnel to contested team meetings where methodology is at issue?

Questions?