

Special Education: Hot Topics

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WASA

Agenda

- SPED Attorney Top Ten List
 - Non-exhaustive, subjective impressions
- Child Find
 - Two-factor → single-factor test
- Dyslexia screening legislation
 - Impacts on Child Find, methodology and staff training
- Evaluation issues
 - “Consideration” of outside data
 - Eligibility for 2E
- IEP issues
 - Methodology
- HIB & IEPs
 - Convene IEP team?

SPED Attorney Top 10 List

1. That kid is a [INSERT]; he is not a special ed kid, right?
2. I'm pretty sure the case manager is on top of the paperwork.
3. Our gen ed teacher is busy . . . Let's keep going.
4. Parents told me they are looking at a private school, so I suggested a couple that might be better fits.
5. Boy, she really missed the mark on her goals this fall; let's talk about that at her June IEP meeting.

Top Ten List (cont'd)

6. Well, that meeting didn't go so well. Dad sure kept pushing for Orton Gillingham. Good thing we don't have to deal with him until next year.
7. Her behaviors have really escalated. We need to suspend her because staff don't feel safe serving her.
8. Mom says the goals are the same, but what does she expect.
9. Yes, his behaviors really are becoming too disruptive. He is not going to be able to stay at this building.
10. Of course the kids tease him . . . He is autistic.

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 (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).”**

WA legislative requirements 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.

Evaluation Issues

- “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

Evaluation Issues (cont'd)

- ***In re Northshore School District***, (SEA WA, 2023)
 - 2nd grade student – not previously eligible for special education
 - Parents suspected dyslexia and had Student privately evaluated **at end of 1st grade**.
 - Evaluator recommended GAI of +125 and need for SPED in reading and writing based upon severe discrepancy and professional judgment
 - Student did virtual Kindergarten in dual language program (90/10); 1st and 2nd grade within in-person dual-language (50/50)
 - Parents also required private vision therapy services as a related service
 - District team conceded severe discrepancy and ADHD, but found under 3-prong test, no adverse educational impact or need for SDI
 - Parents retained another private evaluator who concluded Student was 2E and needed SDI in multiple areas
 - The ALJ concluded that:
 - Team not required to use GAI, rather than FSIQ
 - Team appropriately declined to qualify Student under 3 prong test
 - Further rejected request for vision therapy services due to lack of evidence of need

IEP 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

IEP Issues (cont'd)

- ***In re Peninsula School District***, (SEA WA, 2023)
 - 3rd grade student – eligible for special education since start of 2nd grade with SLD in reading
 - Parents suspected dyslexia and had Student privately evaluated at end of 2nd grade.
 - The private evaluator identified Student as having dyslexia, and made following recommendation:
 - Given [Student's] processing differences she will need an evidence-based intervention program designed for individuals with dyslexia. In determining the appropriateness for children with dyslexia, it is important that there is peer reviewed independent research showing its efficacy with children identified as dyslexic. Training and adherence to program components with fidelity is integral to achieving similar levels of efficacy as those evidenced in the research supporting each program. Evidence-based interventions rely heavily on a structured literacy learning approach.
 - The school team did not identify that instructional methodology in the IEP for 3rd grade despite Parents' concerns.
 - The ALJ concluded that the school team erred and denied Student a FAPE and ordered as a remedy:
 - Two years of compensatory education for Student,
 - Reimbursement to Parents for the private evaluation, a separate private consultant, and curricular purchases made by Parents,
 - A new private evaluation of Student and
 - District-wide staff training on iReady and RCW 28A.320.260

HIB & IEPs

Dear Colleague Letter: Responding to Bullying of Students with Disabilities (OCR 2014)

- Bullying of a student with a disability on any basis can result in a denial of FAPE under the IDEA.
- School districts should promptly hold an IEP team meeting if a student with a disability has been bullied and is experiencing adverse changes in academic performance or behavior.
 - Per OCR, an IEP team meeting should be held unless it is clear that there was no effect on the student.

Questions?