

# The WJ and Beyond: Evaluation and Eligibility Issues

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## Objectives

- Understand when to provide a comprehensive evaluation for special education eligibility
- Understand Written Prior Notice (WPN) requirements related to evaluation and eligibility
- Understand the requirement to assess in all areas related to the suspected disability
- Understand who is qualified to be an evaluator
- Understand what is the role of the required IEP team member, “who can interpret the instructional implications of evaluation results”

## Case Study

- You are the special education teacher at a charter school. During a team meeting, Mrs. Anderson (3<sup>rd</sup> grade teacher) shares that Olivia seems to be very far behind in her reading skills. She is probably reading on a first grade level. Interventions focused on reading fluency do not seem to be helping. Olivia is also extremely shy and withdrawn; she often cries at the beginning of each school day when she leaves her mother.
- What do you do?
  - ⊗ Special education evaluation?
  - ⊗ Conference with parents?
  - ⊗ Who can complete the evaluation, should you decide that's needed?
  - ⊗ What must be included in the evaluation?

**What are the purposes of a special education evaluation?**

# When to Evaluate

- Understand when to provide a comprehensive evaluation for special education eligibility
  - ⊕ USBE SER II.B. and II.E.
- Guiding Principles
  - ⊕ An LEA or a parent may refer a student for an eligibility evaluation.
  - ⊕ The LEA must obtain informed consent from the parent and provide a copy of the procedural safeguards to the parent upon initial "referral" for an evaluation.
  - ⊕ A referral can be verbal or written. Child Find is the LEA's "affirmative" responsibility, thus schools must explicitly explain a parent's right to request and evaluation and also work to understand if a parent wants an evaluation when discussing concerns about the student.
  - ⊕ While an eligibility evaluation includes procedures that are used selectively with an individual child to assess the need for special education and related services, a screening consists of basic tests administered to or procedures used for all children in a school, grade or class. A screening is not an evaluation.
  - ⊕ The 2006 IDEA Part B regulations clarify that if a child suspected of having a specific learning disability has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made.

# Cases

- *Robertson County School System v. King*, 24 IDELR 1036, 6th Circuit 1996).
  - ⊕ Because the child find obligation is an affirmative one, a parent is not required to request that a district identify and evaluate a child
- *Pasatiempo v. Aizawa*, 25 IDELR 64, 9th Circuit, 1996.
  - ⊕ Neither IDEA nor Section 504 requires that educational agencies test all children for whom evaluations are requested. Consequently, if an LEA has no reasonable basis for suspecting that the student has such a disability, it may refuse to conduct an evaluation. [The LEA must provide the parent with Written Prior Notice of Refusal].

## Case Study (Continued)

- What reasonable basis is there to consider a special education evaluation for Olivia?
- What additional information would be helpful?
- What information is required?

## Written Prior Notice

- Understand the written prior notice requirements for evaluation and eligibility
  - (USBE SER §IV.D.)
- Guiding principles
  - A district must provide parents with "prior written notice" whenever it proposes or refuses "to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child."
  - Written notice must provide sufficient detail to allow parents to participate in their child's educational services decisions in an informed way
  - Eligibility is not a one time decision—it can be revisited

# Cases

- *Pikes Peak Bd. of Cooperative Educ. Services*, 9 ECLPR 15, Colorado SEA, 2011.
  - ⊕ Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements of the IDEA, regardless of whether the verbal notice is substantively proper.
- *Adams County SD 55 IDELR 210, Colorado SEA, 2010.*
  - ⊕ Prior written notice must be provided in a language that is understandable to the general public and also in the native language of the parent unless it is clearly not feasible to do so
- *Chicopee (MA) Public Schools, 51 IDELR 138, OCR 2008.*
  - ⊕ The IDEA does not require that districts invite parents to acknowledge the receipt of notice. However, given the potential ramifications for not sending notice, districts should consider how to document the fact that notice was sent.

# Case Study (Continued)

- What messages need to be sent and received in a meeting with Olivia's parents?

# Who is Qualified to Evaluate?

- Understand who is qualified to be an evaluator
  - ⊗ USBE SER §II.F.1.d., §IX.H.5. and §IX.H.7
- Guiding principles
  - ⊗ An LEA may provide a qualified examiner by having its own personnel evaluate the student, or by arranging a third-party evaluation at no cost to the parents.
  - ⊗ An LEA must ensure the evaluator has proper training and credentials to administer the required assessments.
  - ⊗ The LEA must ensure that a variety of assessment tools are used.
  - ⊗ The evaluator must use assessment tools appropriate to the student's suspected areas of disability and administer them according to the provisions outlined by the authors/publishers.

# Cases

- 111 LRP 56936, *Lower Merion SD, Pennsylvania SEA, 2011*
  - ⊗ The district operated within the precincts of the IDEA in having a state certified school psychologist with 13 years of experience review the vast, relevant information available in deducing that no further testing for autism was essential. Based on this, and other reasons, the Pennsylvania IHO announced that the district's evaluation was appropriate and it did not need to provide an IEE at public expense.
- 111 LRP 48184, *Adams County SD 50, Colorado SEA, 2011*
  - ⊗ The Colorado ED described the district's IEP as "nothing more than a rough draft IEP that remains a work in progress" as the district did not base the IEP on a FBA and BIP properly conducted and created, respectively, by a qualified behavioral specialist. The IDEA mandates that trained and knowledgeable personnel conduct evaluations. The Colorado ED decided that the district should have promptly found a qualified individual to conduct the necessary evaluation in order to confront the student's behavioral problems and sensitivity to transportation that barred access to educational placement and instruction.

## Cases (Continued)

- 56 IDELR 130, 111 LRP 19099, *Jenn-Ching LUO, Plaintiff, v. Baldwin Union Free SD, U.S. District Court, Eastern District of New York, 2011*
  - ⊕ The parent alleged that the district regularly engaged in what he dubbed a "hitman practice" by seeking out evaluators who would recommend the lowest, and least expensive, level of services. The parent sued the district **and the psychologist** under Section 1983 for violating his IDEA rights. He claimed that he was shut out of meaningful discussions because the evaluator's conclusions, and the district's proposals, were a *fait accompli*.
- 8 ECLPR 78, 111 LRP 6033, *Child Development Services - York County, Maine SEA, 2010*
  - ⊕ The Maine ED found that a district used unreliable data to evaluate the needs and shape the educational program of a preschooler with a cortical visual impairment. Observing that none of its assessments were adapted to children with visual impairments, the ED concluded that the district conducted an inappropriate evaluation. The district reportedly cancelled an assessment by an expert on CVIs, and instead relied on three assessments that were not adapted for students with visual impairments. Moreover, the expert, who would have interpreted the results in light of the student's sensory limitations, was not utilized. "Without that perspective, those evaluations were, by themselves, inadequate," the ED wrote.

## Cases (Continued)

- 110 LRP 36310, *Anaheim City SD, California SEA, 2010*
  - ⊕ The evaluator failed to follow the test publisher's instructions regarding selection and application of theoretical models. As a result, she used a test model that was ill-suited to assess the student's present levels of functioning in academics. In addition, errors made by the evaluator raised questions about the integrity and validity of the assessment as a whole. Although the evaluator argued that the errors she committed were not statistically significant and did not affect the outcome of the evaluation, the ALJ disagreed, noting the sheer volume of errors and the fact that she was not aware of them until they were pointed out to her at the hearing.
- 50 IDELR 241, *N.B. and C.B. v. Hellgate Elementary SD, 9<sup>th</sup> Circuit, 2008.*
  - ⊕ The LEA cannot require the parents to obtain their own evaluation simply because they do not have a qualified evaluator on staff or contract. A Montana district denied FAPE to a preschooler with autism by referring the parents to a child development center instead of arranging an evaluation

## Cases (Continued)

- 51 IDELR 253, 108 LRP 65830, *Letter to Janssen, OSERS, 2008*
  - ⊕ OSERS noted there is no requirement that a board certified behavior analyst, or any other specific individual, conduct an FBA unless state law requires it. The IDEA and Part B regulations do not specifically state which individuals are to conduct FBAs. However, LEAs must ensure that those who do conduct FBAs are adequately trained. LEAs must provide training and technical help to their staff members who are necessary to carry out Part B requirements, including those who conduct FBAs. In addition, states must establish and maintain qualifications for those personnel.
  
- 43 IDELR 173, 104 LRP 38136, *Santa Rosa County School Board, Florida SEA, 2004*
  - ⊕ The psychologist was board-certified in school psychology and neuropsychology and federal regulations. There was "no persuasive evidence" that would call into question the validity or reliability of the psychologist's evaluation and therefore [the ALJ] determined it met IDEA requirements.

## Case Study (Continued)

- What educators or other professionals must be involved in the evaluation process for Olivia?
- What are the roles of those involved?

## Assess in All Areas of Suspected Disability

- Understand the requirement to assess in all areas related to the suspected disability
  - ⊗ USBE SER §II.F.1.e. and §II.J.
- Guiding Principles
  - ⊗ LEAs must assess a student in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities
  - ⊗ The evaluation must be sufficiently comprehensive to identify all the student's special education and related services needs, whether or not commonly linked to the disability category in which the child is classified
  - ⊗ The evaluation must include information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).
  - ⊗ Problem solving model helps you decide what data you need

## Cases

- *110 LRP 24090, Compton Unified SD v. Starvenia Addison and Gloria Allen, U.S. Supreme Court, 2011*
  - ⊗ Student prevailed to the extent that the District failed to comply with its child-find obligations from the fall of 2003 until January 26, 2005, the District's assessment was inappropriate for failing to assess in all areas of suspected disability, namely the social and emotional domain, and the January 26, 2005 IEP denied Student a FAPE.
- *110 LRP 33085, Antelope Valley Union High SD, California SEA, 2010*
  - ⊗ District failed to assess the student for assistive technology and had thus failed to assess in all areas of suspected disability. This procedural violation amounted to the denial of a FAPE because it significantly impeded the parents' opportunity to participate in the decision-making process regarding the assistive technology-related services and caused a deprivation of educational benefit to the student.
- *111 LRP 15918, San Diego Unified SD, California SEA, 2011*
  - ⊗ A special education case manager's belief that a 6-year-old with a speech language impairment who was unable to effectively interact with his peers "might grow out of it" was a poor reason for not assessing his social-emotional needs. The case manager recommended deferring an assessment until the following year. The ALJ determined that the district had sufficient reason to evaluate the student's social-emotional needs and had the district assessed the student, it would have had enough information to determine whether he required additional services and supports.

## Case Study (Continued)

- What needs to be included in Olivia's evaluation?

## IEP Role of evaluation interpreter

- Understand the role of the required IEP team member, "who can interpret the instructional implications of evaluation results"
  - (USBE SER §III.E.5.)
- Guiding principles
  - An individual who can interpret the instructional implications of evaluation results must be included on the IEP team in all cases.
  - Another member of the IEP team may serve in this capacity, if qualified, meaning the general education teacher, special education teacher, district representative, or another individual with knowledge and special expertise regarding the child may fulfill this role.
  - An individual who is qualified to conduct a particular assessment does not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary in order for the child to receive FAPE.

# Cases

- 51 IDELR 230, *Anchorage SD, Alaska, SEA 2008*.
  - ⊕ Because an IEP team did not include an individual qualified to interpret the educational implications of two independent evaluations, the team could not have understood or considered those evaluations when developing an IEP for a child with autism and cerebral palsy. The district's procedural violation, coupled with the substantive defects in the child's program, amounted to a denial of FAPE.
  
- 38 IDELR 62, 103 LRP 1697, *N.L. v. KNOX COUNTY SCHOOLS*, 315 F.3d 688, U.S. Court of Appeals, Sixth Circuit, 2003
  - ⊕ Evaluators may prepare reports and come to the meeting with opinions regarding the best course of action for the child, "as long as they are willing to listen to the parents and the parents have the opportunity to make objections and suggestions."

# Thought Question

- What skills and knowledge are needed to interpret test scores?

## Guiding Principles

- A test score is just a number
- Interpreting test scores gives meaning to the number
- Interpretation is decision making
  - Decision making has consequences
- Interpretation is a process of information gathering

## Guiding Principles

- Understand the purpose of the test and stay within the guidelines for interpretation as stated in the test manual.
- Understand the standardized administration requirements and consider how administration adaptations may influence test interpretation.
- Understand the psychometric properties of the instrument.
- Understand how the norming group and how it compares to your student.
- Look for and document other evidence that supports test scores.
- Look for and document other evidence that does NOT support test scores.
- Look for multiple sources of data to confirm/disconfirm conclusions
  - Selectively considering data generally leads to inaccurate decisions
- Be aware of confirmatory bias and the implications for decision making

## Summary

- What did you learn?
- What is your team doing well?
- How could your team improve?
- How can you implement those changes?