

Special Education Staff Meeting  
February 27, 2009

## Compliance Issues:

Extent of comprehensive reevaluations; Informed consent;  
New low-functioning immigrant student; NMAA eligibility;  
Goals and objectives; "Flawed referrals"

### VOLUME 1, ISSUE 3

1. Question: 1) "When it is a full comprehensive [reevaluation] for eligibility purposes, ...you must have *all* areas tested. Is this correct? 2) Is having the parent initial *all* of those areas [on the consent form] okay? ...Then we would only test those specific areas requested at the IEP. Is this correct?"

Answer: 1) This is not correct. A full [reevaluation] comprehensive means you must assess in all areas in which the student is **receiving services** AND/OR in areas where we **suspect** the student has a disability and is therefore in need of special education and related services. 2) Having the parent initial areas on the consent form where there is no anticipated evaluation is NOT an acceptable practice because the parent would not have known at the time he or she initialed the form whether the area was to be included or not. Therefore it would have been impossible for the parent to have given informed consent to the evaluation.

2. Question: (Paraphrased): "Even though \_\_\_\_\_ is receiving several related services including psych services, psych services is not required to be a part of the reevaluation comprehensive evaluation because it was not specifically requested by the IEP team. Is that right?"

Answer: No. When a new evaluation has been requested as part of a reevaluation, the evaluation is to be comprehensive, that is, "full and individual" and cover "all areas of suspected disability". This means that, in addition to the academic evaluation conducted by the diagnostician, the evaluation is required to include a new evaluation in each related service area in which the student is receiving services. Therefore, it follows that these (related service) areas must also be addressed on the Consent for Evaluation form.

**The whole point of requesting, and conducting, a new evaluation is to provide the IEP team with a complete and current picture of the student's functioning in all areas. Only then will the team have all the information necessary to write an IEP addressing all areas of need arising from the student's disability. To write an IEP based on *partially* new and *partially* old, out-dated, or incomplete information, leaves the district vulnerable to a *denial of FAPE charge* that would be difficult to defend.**

3. Question: "We have a new student at \_\_\_\_\_. He came from Mexico and was placed in the fourth grade because, according to mom, he was in fourth grade in Mexico.

Mom stated that he has not been in school since kinder, and he was retained in the first grade. This student does not have any academic skills. He does not know letters, numbers, or how to write his own name. Mom says that he is able to take care of his needs (eat, bathing, dressing) but is very immature. According to mom, he does not have a known disability. Mom stated that, advised by the school in Mexico, she was trying to get him an appointment with a neurologist, but had to move to the U.S. and was not able to. What are our options?"

Answer: Because we are located on an international border, this is not an uncommon situation. First, we must obtain as many records from previous district as possible, then **have the bilingual team assess the student for language dominance; especially language proficiency**

If the student is proficient in Spanish, it will be [more] difficult to “suspect” that he is a student with a disability and in need of a comprehensive evaluation to determine eligibility for special education – regardless of his lack of skills.

If he has limited or very limited Spanish proficiency, you (the SAT team) will have to make a judgment-call on whether you (the district) “suspects” he may be disabled. In making this decision, the following should be considered:

- The fact that he has no academic skills may be *solely* the result of not having had any formal schooling. If this is the case – he should not be referred, and he cannot be placed in special education.
- The fact that he has no academic skills may be the result of his actually having a disabling condition (whether or not it was previously identified) – *and the issue of the extent of previous formal schooling becomes a secondary issue.*

In summary, address language proficiency first, and then use your best collective judgment to determine if you suspect he is really a child with learning problems as a result of a disability, in which case he should be referred to special education. But, if you think he is a child with learning problems that are solely a result of a lack of previous schooling, he should not. (It is then the responsibility of general education, via a SAT plan, to design a suitable program for this student.)

HOWEVER, if a health/medically-based disability is suspected (as opposed to learning *per se*), and/or there is a **clear and obvious disability or serious and urgent problem**, the SAT process is followed, BUT it can be *condensed* (possibly to one day) while still addressing all the requirements on the new Suspected Medical, Physical or Developmental Disabilities referral form.

IF a child is suspected of a medically-based disability, and no confirming documentation can be obtained from the parent, it is permissible to request a medical-diagnostic evaluation, at public expense (IDEA-B is the payor of last resort), as part of the initial comprehensive evaluation, provided it is believed

that, without the information, the IEP team cannot design an appropriate program from which this student can benefit. If it is decided to go this route, the special education district office must be notified as it will have a budget impact.

4. Question: “According to 34 CFR 300.320, objectives are not required except for students with disabilities who take alternate assessments. Who exactly are the students who take alternate assessments?”

Answer: Eligibility requirements for the NMAA (New Mexico Alternate Assessment) include language to the effect that it is intended for students with a "significant cognitive disability" and/or "significant emotional disability." In other words, it is designed for students with moderate to severe mental retardation and/or psychological/psychiatric disabilities so severe that they cannot participate in the standard administration of the state standards-based assessment (SBA) even with the provision of allowable accommodations.

**The language in the IDEA Regulations states that objectives are not *required except for students who take alternate assessments*. It does not prevent anyone from writing objectives when it is thought to be appropriate.** (Many of our teachers/related service providers prefer to write a goal with several objectives rather than trying to write a goal alone with enough specificity to drive instruction for a year.)

Early childhood students do not fall under this regulation since they do not participate in the state-wide assessment program; therefore whether or not they have goals with objectives would depend on what is necessary to adequately drive instruction/ services for the child for a year.

5. Question: “We have a letter brought by a parent, written by \_\_\_\_\_ agency, recommending Homebound services. The student [general education] is diagnosed with an anxiety disorder. Should we proceed with a 504 meeting in order to place her/him on homebound?”

Answer: For a student with a diagnosed anxiety disorder, or any other obvious basis for a *suspected* IDEA–eligible category, the district should proceed **FIRST** with a referral to special education using the new special education referral form for Suspected Learning Disabilities or Emotional Disturbance. (All required referral documents are clearly listed on this form.) In cases where there is an obvious disability or a serious and urgent problem, the SAT process can be expedited (as quickly as one day) but the process can not be circumvented.

For the purpose of clarification, some examples of diagnosed disorders wherein the district might NOT suspect an IDEA-eligible category and may therefore proceed directly to a 504 meeting, include MCS (multiple chemical sensitivity); asthma; HIV-positive; diabetes; and rheumatoid arthritis. In each of these cases, there would have to be no evidence of any problems that might require special education and related services, but clear evidence that the student may need

accommodations to the environment, class schedule, etc. in order to access his/her educational program.

6. Question: “Are rights to be reviewed with the parents at all types of IEP meeting? Someone at \_\_\_\_\_ school said we are not required to review rights at reevaluation meetings.”

Answer: A copy of procedural safeguards must be given to the parents “only one time a school year” *in addition to* upon initial referral or parent request for an evaluation. Other circumstances requiring the provision of “rights” include upon the district being notified that the parent has filed an official complaint; in accordance with discipline/manifestation determination procedures; and any other time the parent requests a copy.

In this district we have interpreted the word “given” in the regulations to mean a physical copy as well as a verbal summary of rights. If the parent refuses an additional physical copy, and/or a verbal summary (which can happen with parent of students in special education for an extended period), this may be so-noted on the WNPA.

7. Question: “Under what circumstances must speech therapy be made up?”

Answer: *Generally* speaking, therapy of any sort must be “made up” when the reason for the missed therapy is the non-availability of the therapist (e.g., therapist absent, therapist position vacant, etc.) When the reason for the missed therapy is the absence of the student, the therapy is not required to be made up. However, frequent absences, or a pattern of absences, places an obligation on the district to convene an IEP meeting to address the absences and develop an alternative plan that will likely result in the student receiving the needed services. When the reason is the non-availability of the student due to school events, it depends on whether or not the school event was *foreseeable*. If it was (foreseeable), the therapy time should be adjusted, whenever possible, to ensure the student receives the needed services. If the event was not (foreseeable), and if this is a relatively rare occurrence, the therapy would *generally* not be required to be made up; nevertheless, individual circumstances must be taken into consideration.

8. Question: “An SLI-only student is ready to be exited from services. But at the exit IEP meeting, an IEP team member brings up additional problems that indicate the student may have a learning disability. What do we do?”

Answer: It is highly probable that this was a flawed referral in the first place (i.e., referring the student for speech-only and not a possible learning disability). That having been said, the district is now compelled to take certain unconventional actions:

- The student may NOT be exited from special education when it is suspected that he/she may still have a disability requiring special education and related services.
- The current eligibility category will remain until the team determines that the student is or is not eligible under a different category based on additional evaluations.
- Whether or not the student continues to receive direct therapy during the period the student's eligibility is being reevaluated is a decision left to the IEP team. The level and setting of *any* special education services provided during the interim is also an IEP team decision based on the student's unique educational needs.
- **Since the student is already in special education, the IEP team (not the SAT team) has the authority to make educational decisions on behalf of this student.**
- **The RtI requirements (academic and/or behavioral interventions) with respect to determining SLD eligibility are not mitigated because the student is already receiving special education services.**
- **The IEP team becomes the *de facto* SAT team** and therefore must identify, and ensure the implementation of all available and appropriate general education interventions prior to asking for parent consent to conduct a comprehensive evaluation for the purpose of determining SLD eligibility. All documents listed on the Suspected Learning Disability referral form are still required prior to conducting an evaluation for SLD.
- It is of the utmost importance that this process be explained clearly in the (each) WNPA so that current and future IEP teams, and especially the parents, have a clear understanding of the steps taken.

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