



1

Agenda

- **Child Find & RTI/MTSS**
 - DOE Guidance
 - Attendance & ML status considerations
- **Evaluation Processes & TAP 5**
 - Evaluating Newly Suspected Areas
 - Trauma vs. Disability
- **Inclusion & TAP 6**
 - 1:1 Paraeducators
 - 1:1 Instructional Models
- BREAK ---
- **Student Discipline**
 - Suspensions & MDRs
- **School Avoidance & Attendance**
 - Elementary, Middle & High School
 - When to intervene?
- **Post-Secondary Transition & Graduation**
 - Policy and practice changes



2

Child Find & RTI/MTSS



3

Child Find

- ***In re Mercer Island School District*, (SEA WA, 2021)**
 - 3rd and 4th grade male, gen ed student
 - Parents concerned in 3rd grade about Student's writing. They get private eval by Dr. Dunbar-Mayer. He diagnosed a SLD in written expression, based upon discrepancy between 137 FSIQ and 98 SS on Written Expression, as well as 2.5/4 grades.
 - But **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 SPED eval.**
 - The ALJ concluded that the District **violated Child Find obligation** by not referring Student for consideration of a SPED eval, based upon private report and Parent concern raising a non-frivolous suspicion of disability.
 - But concluded **procedural violation was harmless** because Parents failed to show that an evaluation team would have qualified Student if timely referred.



4

4

RTI & Child Find

• Response to Intervention?

- Before using a process based on a student's response to scientific, research-based interventions in the determination if a student has a specific learning disability, **the district must adopt policy and procedure to ensure the process includes these elements:**
 - Universal screening and/or benchmarking assessments **at least three times** per year.
 - High-quality core curriculum within the context of a **multi-tiered instructional system**.
 - **Research-based interventions** as defined in WAC 392-172A-01165 implemented with fidelity for students identified as at-risk for learning.
 - A **multi-tiered model** developed for **delivering both the core curriculum and** strategic, intensive scientific **research-based interventions** in the general education setting.
 - **Frequent progress monitoring** in accordance with the constructs of the multi-tiered delivery system implemented in the school.
 - Instructional decisions based on student data that may include curriculum based measures, available standardized assessment data, intensive interventions, and instructional performance level.
 - Provide data demonstrating a **student's failure to respond to two or more research-based interventions** that were **implemented with fidelity and sufficient duration** to determine effectiveness.
See https://ospi.k12.wa.us/sites/default/files/2022-12/sld_guide.pdf

5

RTI & Child Find (cont'd)

• Letter to Ferrara (OSEP 2012)

"Pursuant to OSEP Memorandum 11-07, **the implementation of an RTI process cannot be used to delay or deny the full and individual evaluation of a child suspected of having a disability under 34 CFR § 300.8**, whether the disability is suspected by school personnel or the child's parent. Nothing in Texas Education Code section 89.1011 prohibits school personnel or the child's parent from referring a child suspected of having a disability for an initial evaluation prior to completion of the RTI process.

Additionally, whether or not the local educational agency (LEA) is implementing an RTI process, **if a parent requests such an evaluation and the LEA does not suspect the child has a disability and therefore believes that an evaluation is not necessary, it must provide the parent with prior written notice, under 34 CFR § 300.503**, that it is refusing the parent's proposal of a full and individual evaluation. Under 34 CFR § 300.503(b), the written notice must include, among other things, an explanation of why the LEA refuses to conduct an initial evaluation and the information that was used as the basis to make that decision."

6

MTSS & Child Find (cont'd)

- *Dear Colleague (OSERS 2015)*

“For those students who may need additional academic and behavioral supports to succeed in a general education environment, schools may choose to implement a multi-tiered system of supports (MTSS), such as response to intervention (RTI) or positive behavioral interventions and supports (PBIS). MTSS is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. . . .

Children who do not, or minimally, respond to interventions must be referred for an evaluation to determine if they are eligible for special education and related services (34 CFR § 300.309(c)(1)); and those children who simply need intense short-term interventions may continue to receive those interventions. OSERS reminds SEAs and LEAs about previous guidance regarding the use of MTSS, including RTI, and timely evaluations, specifically that a parent may request an initial evaluation at any time to determine if a child is a child with a disability under IDEA (34 CFR § 300.301(b)), and the use of MTSS, such as RTI, may not be used to delay or deny a full and individual evaluation under 34 CFR §§ 300.304-300.311 of a child suspected of having a disability.”

Attendance & ELL

- *In re Sumner-Bonney Lake Sch. Dist., (SEA WA, 2021)*

- Parent raised **Child Find** after unilaterally placing Student in residential facility
- ALJ agreed that District failed to refer Student for consideration of SPED eval
 - **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, including not regularly attending 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).”
 - **Ordered reimbursement & an initial SPED eval, to be done out-of-state facility**

Attendance & ELL (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
 - Student did virtual Kindergarten in dual language program (90/10); 1st and 2nd grade within in-person dual-language (50/50)
 - Parents also requested vision therapy services as a related service
 - District team conceded severe discrepancy and ADHD, but found under 3-prong test, no aversive educational impact or need for SDI
 - Parents then got another private eval that said Student was 2E and needed SDI
 - The ALJ concluded that:
 - Team not required to use GAI, rather than FSIQ
 - Team appropriately DNQ'd Student under 3-prong test
 - Further rejected request for vision therapy services due to lack of evidence of need

9

Evaluations & TAP 5

10

Evaluation Fundamentals

- Duty to complete **comprehensive** evaluations
 - Extent of that obligation?
 - **Minimal v. maximal examples**
- Are the right people there in planning & reviewing assembled data?
 - E.g., think of SLD determinations for reading fluency & parent/gen ed teacher
- Did we follow through on eval plan?
 - Are all areas consented to assessed?
 - Document areas **not** able to be assessed and reasons for moving forward
- Have we answered eval questions?
 - Eligibility, service recommendations, and/or **potential for changes** in either (for reevals)

11

Other Eval Considerations

- When are we over-evaluating, e.g., cognitive or all academics?
 - Considering prior district evals vs. **private reports**
 - Impact on student
- How to factor in **mental health and/or trauma** backgrounds?
 - Impact on both Child Find and sufficiency of SPED evals
- Must we provide draft eval reports?
 - Timeline?
 - Anything to **not** include in a draft?
- Other considerations?
 - **Home-schooled** students & other exclusionary factors?

12

Comprehensive Evals, Including Newly Suspected Areas

- ***D.S. and P.S. v. Bainbridge Island Sch. Dist.***, (W.D. WA, 2021)
 - Parents' appeal of ALJ decision in favor of the District
 - ALJ had concluded private reading instruction was not needed for FAPE
 - Federal Court overturned ALJ on separate issue
 - Issue on appeal – whether the District should have evaluated Student in writing (dysgraphia) as part of District's reevaluation
 - Team had agreed and Parents consented only to reeval in reading and cognition
 - Court focused on internal staff comments of potential academic need to second-guess the scope given District's affirmative duty to comprehensively evaluate
 - Noted that Parents were unaware of these internal concerns prior to due process

13

Adding or removing IEP services?

- **TAP # 5**
 - When to reevaluate?
 - Examples of when a district should conduct a reevaluation include: 1) a student is not progressing and minor adjustments to the program have not resolved the student's lack of progress; 2) teachers or parents believe the student needs additional services, or no longer needs services in a particular area; and 3) districts or parents believe the student no longer qualifies for special education and related services.
 - Evaluate in order to change placement?
 - the following are examples of when to consider whether the student needs a reevaluation: (1) substantially increasing or decreasing the amount or type of services provided to the student because the student's needs have changed; or (2) considering whether the student's needs are not being served in the current setting, and the information contained in the current evaluation does not provide the team with enough information to address the student's changed needs.
 - A proposal to change only the location of services, without materially changing the actual services or a student's access to typically developing peers, is not considered a change in placement.
 - Available at https://ospi.k12.wa.us/sites/default/files/2022-12/tap_5.pdf

14

Inclusion & TAP 6



15

Inclusion

- ***D.R. v. Redondo Beach Unified Sch. Dist.***, (9th Cir. 2022)
 - Overturning decision to move student with autism in 5th grade from 75% gen ed service model (as done from 2-4th grade) to 46% gen ed service model.
 - The district's rationale - "D.R. spent most of his time working one-on-one with his aide using a heavily modified curriculum and that he lagged so far behind his non-disabled peers that he could rarely participate in activities with the rest of the class."
 - The 9th Circuit's bases for rejecting that rationale:
 - Only disputed *Holland* factor was academic benefit – all others favored gen ed inclusion
 - "The IEP's academic goals therefore provide the relevant yardstick for assessing a child's academic progress . . . by the end of his fourth-grade year, D.R. had met four of his six academic goals and had made progress on the remaining two."
 - "But just as the IDEA is clear that a school district may not penalize a child for relying on the supplementary aids and services he receives, the law is also clear that a school district may not remove a child from the regular classroom "solely because of needed modifications in the general education curriculum."



16

16

Inclusion (cont'd)

- **Technical Assistance Paper (TAP) No. 6**

- For the **commitment of services to be clear**, the IEP must be specific about the type, frequency, and setting of the paraeducator support: special education setting, general education setting, all day, specific classes, 1:1, or assigned to a small group of students, etc. The IEP should **clearly outline specific activities** where the student requires the support of a paraeducator and those activities in which the student is able to engage without paraeducator support (e.g., what activities does the paraeducator need to remain within close physical proximity at all times vs. within line of sight).
- [T]he specific [1:1] paraeducator providing support may change throughout the day, as long as the ratio identified in the IEP remains consistent.
- Paraeducator support is an example of a **supplementary aid and service that may be necessary** to ensure a student has more access to a general education (less restrictive) setting. Paraeducator support is **not a placement option** on the continuum of alternative placements.
- Available at https://ospi.k12.wa.us/sites/default/files/2022-12/tap_6.pdf

17

BREAK

18

Inclusion (cont'd)

- ***P.J. v. Northshore Sch. Dist.*, (W.D. WA, 2025)**
 - Parents unilaterally placed Student at a 1:1 tutoring center, arguing that Student was not making sufficient reading progress and thus required private, 1:1 ELA services.
 - The ALJ agreed and ordered reimbursement for 1:1 tutoring but did not conclude 1:1 tutoring was Student's prospective IEP placement.
 - The ALJ was overturned by the federal court, based in part upon the Court's determination that the ALJ:
 - Failed to properly analyze under the four-factor *Rachel H.* test whether Student was offered services within LRE
 - Academic benefit; non-academic benefit; effect of student on classroom and staff; and cost
 - ALSO, failed to determine whether the 1:1 tutoring center was a "proper" placement for purposes of reimbursement
 - No certificated teacher; untrained tutor; contrary to Parents' own private provider recommendations; and no credible evidence that Student did better with 1:1 services
 - Note – this case was decided by the ALJ prior to SB 5883 being in effect

Inclusion (cont'd)

- ***In re Issaquah Sch. Dist.*, (SEA WA, 2025)**
 - Parents' allegations
 - District failed to provide 1:1 academic instruction, based upon uncontested recommendations of private psych
 - 1:1 academic instruction was more appropriate given Student's "cognitive profile" and a comprehensive middle school setting was not Student's LRE because too fast-paced & not enough individualization
 - District's responses
 - Private psych did not obtain input from school staff; parents did not specifically ask for 1:1 academic instruction citing to private recommendation; district data indicated student was benefited academically without need for 1:1
 - Student's cognitive profile was not outside the norm of others within comprehensive school; Student was making academic benefit; Student requires social interaction and peer models; no adverse impact of being in gen ed setting; cost less to be in gen ed setting than in a 1:1 instructional model
 - ALJ's determination
 - Student was benefiting (academically and socially from comprehensive school setting); no *Holland* factor favored 1:1; even if 1:1 model provided better instructional benefit, that was irrelevant if district was providing appropriate benefit
 - NOTE: Parents did not seek a 1:1 or increased paraeducator support at the comprehensive school – if they had?

Student Discipline & MDRs



21

Student Discipline (cont'd)

What is “change of placement” because of exclusionary discipline?

- (1) For purposes of removals of a student eligible for special education services from the student's current educational placement, because of disciplinary removals, a change of placement occurs **if**:
- (a) The removal is for more than **ten consecutive school days**; **or**
 - (b) **The student has been subjected to a series of removals that constitute a pattern:**
 - (i) **Because the series of removals total more than ten school days in a school year;**
 - (ii) **Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and**
 - (iii) **Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.**

WAC 392-172A05155

So, 10 consecutive school days + 1 school day = change of placement?



22

22

MDR (cont'd)

Manifestation Determination (cont'd)

- 1) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or
- 2) If the conduct in question was the direct result of a district's failure to implement the IEP.

Id.



23

MDR (cont'd)

Manifestation determination (cont'd)

The district must also return the student to the placement from which he was removed (meaning that the disciplinary exclusion must also end), unless:

- 1) the parent and district agree to a change in placement as part of the modification of the BIP, or
- 2) the student's conduct warrants an IAES.

WAC 392-172A-05147

How to document an agreed-upon placement change reached at the MDR?



24

School Avoidance & Attendance



25

School Avoidance

- ***P.H. v. Seattle Sch. Dist., (W.D. WA, 2024)***
 - Parents unilaterally placed 4th grade student at residential program, arguing that Student was refusing to attend school. The ALJ agreed, concluding:
 - . . . by the end of the 2021-22 school year, the need for residential placement as the Student's LRE was quite clear. By then, the Student had almost entirely stopped attending school. He was isolated from his peers. He could not succeed at basic first steps to attend school. . . . From March through June, the Student attended school on 10 out of 69 available days.
 - The ALJ was overturned by federal court, based in part upon the Court's determination that ALJ:
 - Failed to give the District credit for engaging experts to develop an appropriate FBA and BIP, and second-guessed whether the new FBA and BIP would help improve Student's behavior
 - BIP not implemented until 16 days before end of school and Student attended 4 of those days
 - Failed to properly analyze under the four-factor *Rachel H.* test whether residential placement was Student's LRE
 - Academic benefit; non-academic benefit; effect of student on classroom and staff; and cost



26

26

Non-attendance at Middle School

- ***In re Sumner-Bonney Lake Sch. Dist.*, (SEA WA, 2021)**
 - Parent raised **Child Find** after unilaterally placing Student in residential facility
 - Student was new to the District and in-person learning still being impacted by COVID
 - Nonetheless, the ALJ agreed that District failed to refer Student for consideration of SPED eval
 - Notice of disability = identification of ADHD upon enrollment; discussions of anxiety and depression and childhood trauma; **struggles at school, including not regularly attending 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).”

Non-attendance at High School

- ***In re Everett Sch. Dist.*, (SEA WA, 2023)**
 - Parent unilaterally placed Student, a high school senior, in three residential facilities based upon **non-attendance (and resulting failing grades)**, drug use, and other high-risk behaviors
 - District believed that Student was making sufficient progress in high school program and did **not** require a residential placement
 - Nonetheless, it offered a District reevaluation of Student to consider a requested change of placement, but parents “paused” the proposed reevaluation
 - ALJ concluded that District had not failed to implement IEP or denied a FAPE
 - “Here, as in *L.J.*, **the District cannot be faulted for the Student’s absences.** . . . The record does not support a conclusion that the Student’s school avoidance stemmed from a failure on the part of the District. Rather, a preponderance of the evidence indicates that the **Student skipped school because he preferred to hang out with friends** and thought that since he already knew what he wanted to do and knew the basics for that career, there was little benefit to school. This is consistent with evidence that even after the Student left the District, his school refusal continued throughout most of his time at Spark Academy.”
 - However, **burden of proof was on Parent** at the time of this hearing & on appeal

Responses to Attendance Issues?

- Social worker/community support referrals?
 - The road to hell is paved with
- Truancy?
 - Effectiveness v. compliance
- SPED evaluation?
 - Educational equity issues
- Others?
 - ???

Post-Secondary Transition & Graduation

Post-Secondary Transition

- ***In re Franklin-Pierce Sch. Dist.*, (SEA WA, 2025)**
 - Parents unilaterally placed adult student at a residential program in NY, arguing that adult student required intensive reading instruction to be able to achieve their post-secondary goals.
 - The ALJ disagreed, concluding:
 - IEP developed/offered prior to unilateral placement was “reasonably calculated” to confer educational benefit upon adult student, including progress towards post-secondary goals
 - Student was in a vocational program and on track to graduate that spring prior to unilateral placement
 - Private evaluator’s opinions to the contrary were explicitly given less weight than school district staff and expert witnesses
 - Because FAPE was offered, parents were not entitled to reimbursement for unilateral residential placement decision

31

Exiting from SPED based upon Age

- OSPI has not yet adopted new SPED regulations regarding age 22
 - WAC 392-172A-02000 remains in effect
- OSPI has continued to update its written guidance document, e.g.,
 - “After the passage of SSB 5253, beginning with the 2025–26 school year, students who are age 21 at the beginning of the school year and are eligible and receiving special education services can be claimed for state special education funding on both Form P-223 and P-223H for the entire school year. Note: Federal IDEA Part B funds can only be allocated for students up to age 21; meaning, the day before the student’s 22nd birthday. Importantly, per SSB 5253, districts can claim state funding in the count for the entire school year a student turns 22, for students who turned 22 after August 31.”
 - See Q&A, B-1; see also *id.*, B-2 (confirming that Safety Net reimbursement funds will also be available beginning with the 2025-26 school year).
 - It has also continued to provide informal, non-written guidance to school districts
 - Examples?

32

Exiting based upon Age (cont'd)

- From OSPI's current written guidance:
 - How do determine continued eligibility?
 - “For a student receiving special education services, the student’s IEP team determines the student’s graduation plan and date based on what is in the best interest of the student for continuing their secondary education. Students who receive special education services graduate with a diploma when they have satisfied graduation requirements AND the IEP team determines that no additional special education or transition services are needed.” (emphasis added).

See Q&A, A-2.

33

Age of Eligibility Disputes

- “Improper” exit from SPED eligibility prior to *Reykdal* injunction
 - See *S.P. v. Seattle Sch. Dist.*, 2:25-cv-00286-BJR (W.D. WA, 2025)
 - Administrative Law Judge (ALJ) agreed that individual school districts were not responsible for a denial of FAPE for following Washington law and regulations prior to the *Reykdal* litigation
 - Class members should instead follow the IEP team process set forth in *Reykdal* settlement to address requests for comp ed or reimbursement
 - Federal district court upheld the ALJ’s decision, concluding that Local Educational Agencies (LEAs), i.e., school districts, are not responsible for interpreting federal law in a manner contrary to OSPI, the State Educational Agency (SEA)
 - BUT, the district court’s decision is now on appeal to the Ninth Circuit

34

Graduation

- What is a regular diploma?
 - See WAC 392-172A-02000(2)(b) (“A regular high school diploma **does not include** a certificate of high school completion, or a general educational development credential”).
- May be a disputed issue going forward
 - See, e.g., *In re Edmonds Sch. Dist.*, 2023-SE-0173 (Dec. 12, 2024) (rejecting claim that district **inappropriately issued adult student a “regular” diploma** and that adult student was entitled to additional services from the district)
 - Note Burden of Proof issue re: courses **“fully aligned with State standards”**
available at: <https://ospi.k12.wa.us/sites/default/files/2025-01/2023se0173fof.pdf>

35

Questions?

36