Part II: Making Mental Health Decisions in a Time of Change

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Agenda

- A Review: Child Find and Assessment
- Eligibility: Qualifying Disability vs Related Service
- Least Restrictive Environment: Placement & Services
- Emerging Issues: Answered and Unanswered Questions
Before We Begin

- What is mental illness?

  “Mental illnesses are medical conditions that disrupt a person’s thinking, feeling, mood, ability to relate to others, and daily functioning. Just as diabetes is a disorder of the pancreas, mental illnesses are medical conditions that often result in the diminished capacity for coping with the ordinary demands of life.”

- Who can diagnose a mental illness?

- Examples: Bipolar Disorder, Schizophrenia, Depression, Anxiety, Eating Disorders

Quote Source: National Institute of Mental Health
Before We Begin

- Mental illness is not directly related to any one special education category, including ED, and may or may not play a role in decisions regarding whether student has a qualifying disability or needs a related services.
Before We Begin

- What is an emotional disturbance ("ED")?
  - (1) An emotional disturbance (2) that results in a student exhibiting one or more of the following characteristics (3) over a long period of time and (4) to a marked degree that (5) adversely affects a child’s educational performance:
    - An inability to learn that cannot be explained by intellectual, sensory or health factors;
    - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
    - Inappropriate types of behavior or feelings under normal circumstances;
    - A general pervasive mood of unhappiness or depression; or
    - A tendency to develop physical symptoms or fears associated with personal or school problems.

34 CFR § 300.8(c)(4)(ii).
The Child Find Mandate

- Requires all school districts to identify, locate and evaluate all children with disabilities, regardless of the severity of their disabilities.
- This obligation to identify all children who may need special education services exists even if the school is not providing special education services to the child.

20 U.S.C. 1412(a)(3)
Child Find

- The Child Find Mandate
  - Applies to **all** qualifying disabilities identified by the IDEA
  - Does not rest upon probable or likely eligibility.
  - An individual referral is triggered when there is a reason to believe the student *may require special education* and related services to benefit from their education *because of the disability*.

20 U.S.C. 1412(a)(3)
Child Find

- **How is a District to know?**
  - Evaluate the situation as a whole.
  - Use contextual clues to assess the situation.

- **Triggers Include:**
  - Declining Grades (Maybe).
    - But Consider Possible Transition?
    - But Consider Possible Teacher Issues?
  - Prescription Medication (Alone, No).
  - Diagnosis (Alone, No).
  - Substance Abuse (Maybe).
  - Disciplinary Infractions (It Depends).
    - What Type of Infraction?
    - Disciplinary history? Repeated?
  - Psychiatric Hospitalization & Suicide Attempt (Yes).
  - Request from a Parent (Yes, But…)
  - Exhibited Characteristics of any Emotional Disturbance Criteria (Absolutely!)
  - Exhibited Characteristics of Mental Illness (Maybe).
Child Find

- In addition to individual referrals, what else can a District do to reach these children?
  - As required, conduct comprehensive “Child Find” activities such as placing advertisements in general circulation newspapers.
  - Conduct further outreach to doctor’s offices, mental and behavioral health providers, and Regional Center contacts.
Assessment

- Once the child is “found,” now what?
- District must assess in all areas related to the suspected disability or disabilities
- How do we “assess” for ED?
  - Diagnosis Alone is INSUFFICIENT.
  - Diagnosis is NOT Eligibility.
  - Rely on ED Eligibility Criteria.
Assessment

The Golden Rule
Gather the data necessary to determine
if the student meets eligibility criteria and/or needs related services

- **Health Background** – Developmental history, emotional history, hospitalizations, major illnesses, medications, and current health status
- **Functioning in Home and Community** – Socio-economic background, language, cultural expectations, family experiences, losses, stresses
- **Functioning in School** – Attendance, achievement, adjustment, behavior in academic and non-academic settings
- **Behavior** – Assessment of student’s behavior in the context in which it occurs, exact definition and description of the problem, function of the behavior, analysis of what happens before and after the behavior
- **Social-Emotional Status** – Specific tests and techniques to determine the extent of conditions such as depression
Assessment

- **Previous Evaluations** – Record review, parent report, information from other treating agencies
- **Interviews and Self-Reports** – Interview or structured self-report instrument completed by parents, teachers or student, observation of the student in a different setting
- **Pervasive Nature of the Condition** – Presence of condition and its pervasiveness in the student’s environment as cross-validated by observation and interviews with parents and staff
- **Educational Performance** – Assessment of child’s ability to function in the learning environment to determine whether the condition adversely affects educational performance
- **Cultural Differences** – Determination that child’s conduct is *not* due to cultural, language or ethnic differences

Source: the handbook on assessment and evaluation in early childhood special education programs, Special education division, California department of education, 2000
Eligibility: Qualifying Disability

- A student has a qualifying disability if he or she:
  - Meets eligibility criteria and
  - Needs special education and related services as a result of that disability
  - Eligibility Criteria are found at Title 5 of the California Code of Regulations § 3030
Placement (LRE)

The IEP team must consider the full continuum of placement options.
Placement (LRE)

Each public agency must ensure that—

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114
Placement (LRE)

Each public agency must ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services.

The required continuum must—

(1) Include the alternative placements: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

34 C.F.R. § 300.115
Related Services

- A student qualifies for a related service if he or she:
  - Needs that related services
  - In order to benefit from special education (i.e., his or her IEP)
  - Eligibility Criteria are found at California Education Code § 56363(a)
Emerging Issues

- The provision of mental health services are now the responsibility of “education”
  - For placement, the LRE standard applies
  - For related services, the related services standard applies
- Many school districts refer to mental health services as “educationally related mental health services” or ERMHS
- A student’s IEP team determines the need for mental health placements and/or services
Emerging Issues: Who

According to the CDE:

- All entities providing related services providers (including mental health service providers) must be qualified under Title CCR § 3060-6065. These include:
  - Licensed Educational Psychologists
  - Licensed Marriage and Family Therapists
  - Licensed Clinical Social Workers
  - Licensed Psychologists (Counseling Psychology/Clinical Psychology)
  - Credentialed School Psychologists (CASP Supported)
Emerging Issues: What

- EHRMS Placements include:
  - General Education Classroom
    - Behavior Goals
    - Social/Emotional Goals
    - Social Skills Goals
  - Special Education Classroom
    - Part-Day
    - Full-Day
    - Therapeutic Milieu
    - Therapeutic Day Program
  - CDE-Certified Non-Public, Non-Sectarian School
  - Day Treatment
  - Residential Placement
  - Home or Hospital Instruction
Emerging Issues: What

- EHRMS Related Services include:
  - Specialized Academic Instruction (Push-In or Pull-Out)
  - DIS counseling
  - ERMHS therapeutic intervention
    - Individual therapy
    - Group therapy
    - Collateral therapy (with parent, guardian, family)
    - In vivo therapy
  - Behavior Interventions
    - Behavior Goals
    - BSP
    - BIP
    - In-Home Behavior Intervention
  - Supplementary Aids & Services or Related Services (LRE Requirement)
Emerging Issues: Where

- Placement: Use LRE Analysis
- Related Service: Use Related Services Analysis

- Locations:
  - School
  - Home
  - Vendor Facility
  - Mental Health Agency Facility
Emerging Issues: Where

- According to the CDE, Wrap-Around
  - Is NOT a related service
  - Is NOT a required to be provided by as a related service
  - Is a planning process yielding a “wrap around” plan
  - Contains services, as needed, to support children and their families (i.e., to maintain the family unit such that residential placement is not necessary)
  - “[P]rovides intensive, individualized services and supports to families that will allow children to live and grow up in a safe, stable, permanent family environment”
  - Is administered by the California Department of Social Services

- Some districts offer Wrap-Around – Why?
Emerging Issues: When

When the IEP team identifies needs that are supported through goals that are addressed through individualized placement and services.

The IEP team determines if a student requires a ERMHS placement and/or ERMHS related services.
Emerging Issues: Why

Toughest Question

- Is there a standard?
  - Who determines the standard?
  - On what is the standard based?
  - Do we follow the assessor’s recommendations?

- How do we determine that the student needs a ERMHS placement?

- How do we determine that the student needs ERMHS related services?
Emerging Issues: How

- According to the CDE:
  - District Provides ERMHS
  - District Contracts with Vendor to Provide ERMHS
  - District Contracts with County Mental Health Agency to Provide ERMHS
- Creative Arrangements
Residential Placement

- When is residential placement appropriate?
  - Only when necessary for educational benefit
  - When emotional needs are inseparable from educational needs.
- Don’t “jump” to residential without trying other strategies first:
  - Continuum of placement options.
  - Related services: counseling and mental health services.
  - Holistic approach to educational programming.
Residential Placement

- When behaviors are only at home:
  - No responsibility on district.
  - But when behaviors at home impact education in school, residential may be appropriate:
    - “AWOL” and running away behaviors.
    - “Masking” (co-morbid) drug abuse that impacts student in school setting
    - Eating or sleep disorders that impacts student in school setting.
    - Poor attendance at school impacts educational performance.
Residential Placement

- When “home life” is the problem:
  - Must a district place an eligible child in a residential facility when a day program fails because parents exacerbate the emotional disturbance?
    - Consider: violence in the home.
    - Consider: parents who allow drug use or foster anxiety.
    - Consider: children who go “awol”.
  - Ask: Based on the data, is a residential placement necessary for the student to benefit from his/her education?
Residential Placement

- When drugs are the problem:
  - No obligation to pay for a private substance abuse residential rehabilitation.
  - Where a student’s drug or alcohol abuse is inextricably intertwined with disability.
Behaviors Are Generalized and Pervasive Across Settings (Home & School)

Risk of Danger, Flight, Disruption or Behaviors Beyond Control Of School Staff

Attempts Have Been Made To Use Supports in Lesser Restrictive Settings With No Success

Medical, Social, Emotional or Behavioral Problems That Cannot Be Segregated From Educational Process

Requires Therapeutic Treatment During School Day to Receive Educational Benefit

Hospitalizations Medication Management Needs

Residential Placement

Attempts Have Been Made To Use Supports in Lesser Restrictive Settings With No Success

Hospitalizations Medication Management Needs
Stop! Consider Carefully When…

- Child’s Issues Solely Are Related to Interpersonal Conflicts with Parents
- The Child Has or Can Make Meaningful Educational Progress in a Day Program
- The Child Is Exhibiting Solely Substance Abuse Issues
- Behaviors Exhibited In Home Only
- 24 Hour Care in Residential Placement Is Mostly for Respite for Parents

Strong Family and Community Ties Are Beneficial For Child
Placement: Hospitalization

- What about psychiatric hospitalization?
- Is a district required to pay?
- No clear consensus among circuits
- 9th Circuit takes a hard line: psychiatric services are excludable medical services under the idea.
- *Clovis Unified Sch. Dist. V. California OAH* 16 IDELR 944 (9th Circuit 1990))
  - It’s a “crisis” response, not an educational necessity.
  - “While the child's hospitalization may have been necessary for her continued mental health, such a confinement was not essential for the child to receive an educational benefit.”
Thank You!

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