

Assessment and the Law

Assessment

- Collecting information for the purpose of making **instructional decisions**
 - As opposed to testing, which is just collecting the data
 - **IEP process** modeled after instructional assessment process of **assess-instruct-assess ...**
 - With additional concern of initial eligibility/ identification

Pre-referral Decisions

- **Pre-referral interventions** considered part of general education
 - Assessments and process **not subject to IDEA**
- **Screening**
 - Typically done with **all students** to identify those at-risk; **not subject to IDEA**
 - If conducted individually or in small groups to determine special education interventions or placements, requires parental consent

Pre-referral Decisions

- Pre-referral services may be attempted prior to evaluation, but **should not delay evaluation**
- Federal District Court found that parent requesting evaluation overrides district policy of pre-referral interventions (*El Paso Independent School District v. Richard R., 2008*)

Referral Decisions

- Request can be initiated by **parent; district, state, or other educational agency**
- School-level **multi-disciplinary team (MDT)** determines if student identification assessment is warranted
 - MDT typically composed of administrator, general ed teacher, special ed teacher, school psychologist

Identification Decisions

- Primary focus of IDEA regulations regarding assessment
- Involves assessing student to determine **presence of disability** and whether student will **benefit from special education**

Programming Decisions

- Evaluations used as basis for
 - Planning individualized instruction
 - **Writing goals**
 - **Monitoring student progress** (on IEP goals)

Accountability Decisions

- Used to assess outcomes of students, schools, districts, and states
 - **Proficiency** tests

Procedural Requirements

- Developed primarily **in reaction to history** of school personnel identifying students on basis of **IQ test**
- Procedural errors bring great scrutiny on substantive adherence and can be considered in determining appropriateness of IEP and FAPE

Procedural Requirements

- **Parental consent** for initial assessment and reevaluations
- **Parental participation** in initial assessment and reevaluations if desired

Procedural Requirements

- **Tools**

- **Various** tools to assess all areas of suspected disability
- No single procedure
- **Technically sound**
- **Non-discriminatory**
- Administered in **native language** or **mode of communication** if feasible

Procedural Requirements

- **Standardized tests**
 - **Validated** for specific purpose intended
 - Administered by **trained personnel**
 - Administered in accordance with **instructions**
- **Process**
 - In **all areas** of suspected disability
 - Comprehensive

Procedural Requirements

- Statewide **proficiency** tests
 - **Participation** (how not whether)
 - **Accommodations** or alternative assessment determined
- **IEP team**
 - Include **parent(s)**, **gen ed teacher(s)**, sp ed teacher(s), representative of LEA, child (if appropriate), **someone qualified to interpret instructional implications of assessments**,
 - Attendance of member **excused** if
 - Parents and district agree **unnecessary**
 - Parent agree in writing that member can submit **input in writing**

Procedural Requirements

- Reevaluation
 - Identification process repeated **every 3 years**
 - Or data **reviewed** if school team and parents **agree** that reevaluation not necessary

Substantive Requirements

- **Full and individualized assessment**
 - Individualized, and including interviews, direct observations, curriculum-based assessments
 - Assists in determining program, related services, supplementary aids and services
- **Team decision-making**
 - Team includes professionals with expertise in disability area and parents
 - **Parents** participate
 - Team makes **decisions as a whole**

Substantive Requirements

- **Assessment linked to intervention**
 - Assessment results lead directly to intervention
 - Areas of need identified in **PLAAPF** addressed in IEP goal and services
- **Data collection**
 - Specifies procedures for determining progress on IEP goals
 - **Progress** assessed and reported to parents at least **as often as report cards** received in gen education

Protections in Procedures

- **Child Find**
 - Districts must make **proactive efforts** to find students with disabilities
 - Might include
 - Public awareness programs
 - Mailings to parents
 - Advertisements
 - Coordinating with other agencies (e.g., hospitals, clinics)

Protections in Procedures

- **Parental consent**
 - Must be **notified in writing** of intent to evaluate and consent given for initial assessment
 - If parents do not consent, school can take them to fair hearing trial

Protections in Procedures

- **Identification evaluation**

- If school does not assess after parental referral, parents can take school to **fair hearing trial**
 - Notification of declining to evaluate and due process options must be provided to parents in writing
- Schools have **60 days from parental consent to complete evaluation**

Protections in Procedures

- **Comprehensiveness of evaluation**
 - Includes **all suspected areas of need**, including, when appropriate, health, vision, hearing, social and emotional status, general intelligence, and academic performance
 - Includes relevant functional and developmental info, info from parents, info on access to/ progress in gen ed curriculum, classroom based assessments and observations

Protections in Procedures

- Qualifications of Evaluators
 - **Expert in disability area**
 - For students suspected of LD, person qualified to give an individual diagnostic exam
 - Typically a **school psychologist**

Protections in Procedures

- **Materials and Procedures**
 - Provided and administered in child's **native language**
 - To reflect ability rather than English fluency
 - Native language typically interpreted as **language normally used by parents**
 - If student is fluent/ at grade-level proficiency in English, **can be tested in English**
 - **Mode of communication**
 - Braille, sign language, technologically enhanced communication
 - **Test validity**
 - No specific rules or regulations

Protections in Procedures

- **RTI**
 - Districts do not have to use discrepancy approach
- **Nondiscriminatory** evaluations
 - Not racially or culturally discriminating
 - No specific guidelines
 - Whether and the degree to which **IQ tests** are discriminatory is a complex, unsettled question
 - **Larry P.** (1979), PASE (1980), and Crawford (1994)

Interpreting Evaluation Data

- When not eligible under IDEA, schools should consider eligibility for 504
- Eligibility decision made in writing and disagreements can be attached
- **Eligibility decision by majority vote**
 - Unanimity not required
- Medical diagnosis can't be sole basis of determination

Reevaluation

- Every 3 years unless team and parents agree it is not needed
- Must be done at **parents' request**, unless school goes to fair hearing trial
- May be warranted if substantial change in performance, disability, or placement
- Informed parental consent not necessary if parents **fail to respond to reasonable attempts**

Independent Educational Evaluations (IEEs)

- Parents can request if they disagree with results of district evaluation
 - Parents can have IEE done and pay for it for whatever reason
 - **School can pay** for IEE if they believe their evaluation was not adequate
 - **Or take parents to fair hearing** trial to show why their eval was adequate
 - If district eval found to be appropriate, parents can still obtain IEE to be considered, but at own cost

Independent Educational Evaluations (IEEs)

- MDTs **do not have to accept** findings of IEE, but they **must consider** them
 - No clear guidelines on what consider means
 - 2nd Circuit Court found that not all MDT members must read IEE

Accountability Assessments

- **Minimum competency graduation tests**
 - HI doesn't have one, 25 other states do
 - Courts have held that these tests **do not violate IDEA or 504** just because many students with disabilities do not pass them
 - **Reasonable accommodations**, not significant modifications, required

Accountability Assessments

- State accountability (proficiency) tests
 - IDEA requires that students with disabilities **participate**
 - **with or without accommodations**
 - IEP team determines whether and what accommodations

Response to Intervention

- In essence, **RTI** provides more intensive instruction when ongoing progress monitoring indicates student is not making adequate progress when given effective instruction/ interventions
 - Usually **3-tiers** of supports

RTI

- In reaction to “wait and fail” discrepancy approach for identifying LD
 - Requires significant discrepancy between scores on IQ test and achievement test (e.g., reading)
- When used for identification, if student does not respond to high quality, intensive instruction = LD

RTI

- State education agencies (**SEAs**) **cannot prohibit** local education agencies (**LEAs**; e.g., districts) from using **RTI** to identify LD
- SEAs can, though, prohibit LEAs from using discrepancy approach
 - In essence mandating use of RTI to identify LD
- **Complicated in HI** where SEA = LEA
 - In Michael P. v. Dept. of Education (2011) ruled that HI SEA could not choose to use only discrepancy formula approach

RTI

- **RTI can take many months** to determine that student is not responding to multiple tiers of intervention
- But IDEA requires that evaluation be completed within **60 days** of parental consent
- Schools occasionally used RTI to delay evaluation

RTI

- 2011 memo from Office of Special Education Programs (OSEP) clearly states that **RTI cannot be used to get around 60 day timeline**
- Schools should not refer students for evaluation and get parent support unless LD is highly likely
 - e.g., don't refer students until they are well into 2nd tier if school is using RTI