Interfacing Pediatric Neuropsychology with Special Education: How to Best Negotiate the Special Education Environment

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Overview

- Interface Issues
- Barriers to Efficient Interface
- Solutions for Breaking Barriers
- Culture Clashes
- Laws, Regulations, & Rules
- Individualized Educational Programs
- Independent Educational Evaluations
- Resources
- Acknowledgements
Main Entry: Interface
Pronunciation: 'in-tər-fās
Function: noun
1 : a surface forming a common boundary of two bodies, spaces, or phases <an oil-water interface>
2 a : the place at which independent and often unrelated systems meet and act on or communicate with each other <the man-machine interface>
b : the means by which interaction or communication is achieved at an interface
Professional Identities

• School Psychologist + Neuropsychologist
  = School Neuropsychologist
  = Neurosophologypychologist

• Territory and turf issues
  – Consultation (the experts role) versus collaboration on a team level
Best outcome for our patients?

• Neuropsychological findings integrated into a child’s educational program to enhance their functioning.
The Traditional Interface of Pediatric Neuropsychology in Clinical Practice

• Inpatient
  – Acute Care/Rehabilitation
  – Psychiatric wards
  – General pediatrics and subspecialty wards

• Outpatient treating Practitioners
  – Primary care pediatrics
  – Development/Behavioral Pediatrics
  – Neurology
  – Psychiatry
  – Family practice
  – Genetics
  – Rheumatology
  – etc.
Where do all the children eventually go?

- Home/community
- Schools
  - Most of these children (5 million) are in Special Education under the Individual with Disabilities Education Act (IDEA)
  - Section 504 of the Rehabilitation Act protects millions more from discrimination
Barriers to Efficient/Effective Interface
Training Issues

• Post-doctoral residency/fellowship in Pediatric Neuropsychology
  – Clinical Psychology graduates
  – Counseling Psychology graduates
  – School Psychology graduates
Barriers to Collaborative Assessment Partnerships with Schools

• Neuropsychology knowledge gap
  – Advance training neuropsychology may not include didactics and clinical experience working with or in a school system.

• Special educators may be unaware of the benefits of neuropsychological assessment and expertise

• Previous experience with neuropsychology has been unsatisfactory
Financial Barriers

• Third party payer determined
  – May not be paid:
    • To interview educators
    • Review records
    • For in-school observations
    • To attend IEP meetings
Institution/Practice Barriers

• Neuropsychology services are typically busy - can be months for first available appointment.
• Some neuropsychology services limit their scope of practice to children with confirmed neurological disease.
The Hazy Boundary of Medical Necessity Criteria

• Testing customarily not covered in circumstances where:
  – Testing results are intended for predominantly academic purposes.
  – The testing is part of a disability determination.
  – The testing is solely the result of litigation or a court order.
• The same or equivalent type of testing can, or is mandated to, be provided by another organization or institution with which the individual is involved
  – school
  – employer
  – government organization
Some Solutions for Breaking Barriers
Training

• Providing structured opportunities for didactic and clinical experience interfacing with special education
  – Invited lectures from directors of special education and attorneys specializing in special education law:
    • *Issues and Controversies in Special Education*
    • *No Child Left Behind Act*
    • *President’s Commission on Special Education*
    • *School District’s Perspective on the Role of Experts in the Independent Educational Evaluation*
    • *Mental Health Issues in Special Education*
• Providing a diverse faculty and trainee mix
  – Neuropsychology faculty who are also School Psychologists
  – Fellows who are also School Psychologists
  – Practicum students from the School Psychology Program
Developing Collaborative Assessment Partnerships with Schools

- Respecting their expertise by requesting assistance and collaboration.
  - Providing observational data
  - Speaking directly with educators
  - Listening to educators
  - Observing in the classroom when appropriate
  - Teaming an evaluation

- School completes cognitive, academic, school-based behavioral ratings
• Allowing and actively encouraging educators access for consultation, formal and informal.
• Streamlining the scheduling process.
• Losing the “I’m the expert, and I know more about ______ than you do” attitude.
• Understanding the cultural differences between professions.
Easing The Burden on Teacher’s Time

• Developing web-based methods to transfer information between special educators and outside provider
  – Web-based school history forms
  – Web-based behavioral ratings and observations
Easing the Burden on the Neuropsychologist’s Time

- In-school observations may be difficult due to reimbursement and geographical issues
- Solution: video taped observations
  - Can be reimbursed for reviewing a tape as part of an evaluation
- School Conferences - IEP team meetings
  - Conference calls
  - Web-based methodologies
  - Interactive television
Report Writing

• Reports that not only address diagnostic issues, but reports that include an analysis possible special educational eligibility and programming.
• Easy on the jargon
• Recommendations that are not too prescriptive when possible.
  – A tendency to pit parents against the school
Developing Clinical Research Programs and Integrative Service Delivery to Schools

- A Novel Model to Integrate Psychology Specialties into a School-based Health Center (Jordan & Christensen)
Culture Clashes
Special Education Culture

- Significant administrative hierarchy
  - Special education teachers - the front line
  - Related service specialists
  - School Psychologists
  - Social Workers
  - Case Managers
  - Coordinators per disability areas
  - Assistant Directors
  - Directors
• Rule and Procedure Bound
  – Specific timelines for all aspects from evaluation to service delivery
  – Adherence to strict criteria for eligibility for special education classification
  – Eligibility categories, not DSM/ICD diagnoses

• Decisions regarding eligibility and specific service delivery based on team (IEP) consensus, not the recommendation of an outside provider.
Challenges Facing Special Education

- Funding
  - Increasing needs – decreasing funds
- Teacher shortage in general (depends on the state economy)
- Special education teacher shortage is epidemic.
- The problem of teacher burnout
- Implementation of federal and state policy
  - No Child Left Behind (untested)
- Interagency challenges
Persistent Knowledge Gap

• At the last IDEA reauthorization in 1997 Congress found that special education “has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.”
Analysis of Prevalence Trends of Autism Spectrum Disorder in Minnesota
James Gurney, Melissa Fritz, Kirsten Ness, Phil Sievers, Craig Newschaffer, and Elsa Shapiro

Figure 1. Number of children classified as having an autism spectrum disorder (ASD) special educational disability in Minnesota from 1981-1982 through 2001-2002.
• We have an increasing incidence of children with developmental difficulties in learning and behavior
  – due to our better diagnostic sensitivity to neurodevelopmental problems
  – due to residual central nervous system problems that result from success in life-saving treatments in infancy and childhood.
Neuropsychology Culture

• Scientific Methodology
  – Hypothesis driven
  – Focus on data
  – Analysis and criticism is part of peer review and the training experience.

• Medical Model
  – Focus on differential diagnosis
    • Etiology
    • Anatomy
    • Process
Pediatric Neuropsychological Evaluation

- Combines all evaluation processes including Psychoeducational
  - cognition, achievement, language, memory, visuospatial, fine motor, executive/attention, behavioral and emotional functioning
- More interested in what underlies a child’s disabling condition than its mere identification
- Notion that underlying processing deficits inform treatment and programming directions
Purpose of a Neuropsychological Evaluation

- diagnosis of neurological, neurodevelopmental, or neurobehavioral disorder
- identification of functional cognitive/behavioral deficits
- identification of effects of functional deficits on academic performance and social/emotional adjustment
- identification of strengths to develop compensatory skills
- education of parents and school
- recommendations for appropriate interventions (medication, psychotherapy, other educational/vocational treatments)
- baseline evaluation to monitor disease progression and treatment outcomes
- evaluation of intervention/treatment efficacy
Example: Neuropsychological Approach to Reading Disability

- Moving beyond the obvious
- Evaluation
  - phonologic/auditory processing
  - attention/executive
  - language
  - memory
  - behavioral and emotional functioning
- Purpose
  - To establish the underlying processing deficits that result in the disabling condition
How can neuropsychology be of value to regular and special educators?
Knowledge-base of neuropsychology bridges and integrates multiple disciplines.

- Pediatric Neuropsychologists are in a unique position to provide advanced assessment and treatment recommendations to children with disabling conditions based on:
  - knowledge of brain-behavior relationships
  - knowledge of psychopharmacology
  - knowledge of rehabilitation
  - knowledge of developmental trajectories
  - Issues of tracking development using raw score comparisons
Comprehensive Evaluation Process

• School-based evaluations tend to be more focused on the school-based issues, when problems and issues that occur outside the school may be driving a particular problem affecting academic, behavioral and social skill development.
Access and Referral to Other Behavioral and Medical Specialists

• Facilitation with the IDEA-mandate for interagency collaboration
  – Pediatric Neurology
  – Child and Adolescent Psychiatry
  – Development/Behavioral Pediatrics
  – Clinical Psychology/Psychotherapy
  – Behavior Analysis
  – Treatment facilities - day treatment & residential
The Hand of Neuropsychology in Test Development

WISC
WJ
NEPSY
CPT
BRIEF
BASC

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A basic foundation for being effective in collaborating with educators and special educators is a knowledge of the laws, regulations and rules governing the provision of special education.
Statutes, Regulations, & Rules

• Law = IDEA, 97
• Regulation = Department of Education, Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitation Services (OSERS)
• Rules = Promulgated by each State
Overview of IDEA of 1997

Part A: General Provisions, Definitions and Other Issues
- “Congressional Findings and Purpose”
- Discusses the purpose of special education law

Part B: Assistance of Education of All Children with Disabilities
- Funding, state plans, evaluation, eligibility, due process, IEPs, procedural safeguards for children and their parents

Part C: Infants and Toddlers with Disabilities
- “at-risk infant” defined as child under 3 years of age at risk of experiencing a substantial developmental delay without early intervention – requires a comprehensive child find system and individual family service plan (ISFP)

Part D: National Activities to Improve Education of Children with Disabilities
- Focuses on the need to improve special education programs, preparing personnel, disseminating information, supporting research, and applying research findings to education.
Six Principles of IDEA
1) Free Appropriate Public Education (FAPE)

The term 'free appropriate public education' means special education and related services that
(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
(D) are provided in conformity with the individualized education program.

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Related Services

• Such developmental, corrective and other supportive services, including psychological and counseling services as may be required to assist a child with a disability to benefit from special education, including early identification and assessment of disabling conditions.
2) Appropriate Evaluations

- Appropriate Evaluation
  - One of the most significant changes in IDEA 97 relates to how the evaluation process should be viewed. "The committee believes that a child should not be subjected to unnecessary tests and assessments... and the LEA should not be saddled with associated expenses unnecessarily."

  - Evaluation activities should include gathering information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities.
• Furthermore, under IDEA 97, children with disabilities must be included in general State and district-wide assessment programs, with appropriate accommodations where necessary.
Requirements for Evaluating Students

- parental consent for the initial evaluation of a child
- nondiscriminatory evaluation
- evaluation by a team
- evaluating the child in all areas of suspected disability
- using more than one procedure to determine the child's educational program
- testing in the native language or mode of communication of the child, unless it clearly is not feasible to do so.
- The law also requires that every three years the student be reevaluated to see if he or she continues to have a disability and remains eligible for special education. Along the way, as part of monitoring the student's performance and the effectiveness of the educational program, evaluation is also necessary.
3) Individualized Education Program (I.E.P.)

- "The term ‘individualized education program' or ‘IEP' means a written statement for each child with a disability that is developed and reviewed.
- Student involvement in the general curriculum
- Involvement of the regular education teacher
• Special factors (such as language needs for students with limited English proficiency, behavior and communication needs, assistive technology) must be considered.
• Transition planning begins at age 14
• Reporting of student progress to parents as least as often as reporting to parents of children without disabilities
• Parental involvement in placement decisions
4) Least Restrictive Environment (LRE)

• The presumption that children with disabilities are most appropriately educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when 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.
• IDEA '97 emphasizes student involvement in the general curriculum. The IEP of each student must contain, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular class" and in extracurricular and nonacademic activities.
Federal Settings

I. **Regular Class**
   - majority of special education and related service in the general education with no more 21% of the school day for pull-out services

II. **Resource Room**
   - special education and related services in a resource room for at least 21% but no more than 60%

III. **Separate Class**
   - special education and related services in a separate class for more than 60% of the school day

IV. **Public Separate Day School**
   - special education and related services greater than 50% of the school day

V. **Private Separate Day School**

VI. **Public Residential**

VII. **Private Residential**

VIII. **Homebased/Homebound/Hospital**
5) Parent Participation, Notice, and Consent

• Parent and Student Participation in Decision Making

*Parents can participate by:*

• giving consent for evaluation and initial placement of their child
• helping design the IEP
• helping the school understand their child
Students can participate by:

- helping design the IEP
- expressing preferences and interests, particularly during transition planning
6) Procedural Safeguards

- Safeguards to ensure that the rights of children with disabilities and their parents are protected, that students with disabilities and their parents are provided with the information they need to make decisions about the provision of FAPE, and that procedures and mechanisms are in place to resolve disagreements between parties.
A child with a disability is a child who needs special education with related services because of any of the following conditions:

- Orthopedic Disability
- Specific Learning Disabilities
- Cognitive Disabilities
- Hearing Impaired
- Speech/Language Impaired
- Autism

- Traumatic Brain Injury
- Emotional Disturbance
- Other Health Disabled
- Visually Impaired
- Significant Developmental Delay
- Multi-handicapped
Early Intervention (0-2)

- Established an Early Intervention Grant program to serve handicapped infants and toddlers from birth through two years old that have high probability of resulting in a developmental delay including:
  - cognitive, physical, language and speech, psycho-social, or self-help skill development, or have a diagnosed physical or mental condition
• Preschool age (3 - 5).
• Expanded coverage of 94-142 to mandate a preschool program to serve children three through five years old.
• Children in this age group will not need to be labeled with a specific disability.
• Programs can range from part-day, home-based, or full-day, center-based, depending on child's unique needs.
• Though administered through state and local agencies, may be contracted out to other public and private programs.
Early Intervention Services include:

- Family training, counseling, and home visits
- Special instruction
- Speech pathology and audiology
- Occupational therapy
- Physical therapy
- Psychological services
- Case management
- Medical Services only for diagnosis/evaluation
- Early identification, screening, and assessment
- Health services
Summary of Parent Rights

- Your rights and those of your handicapped child may be summed up in the following key terms:
  - **Notice** - Before your child is tested or placed in a special educational program, you have a right to be notified of what the school plans to do.
  - **Consent** - You must give your consent before special tests are conducted and before your child is placed in a special educational program.
  - **Evaluation** - You have a right to have a full evaluation of your child's individual educational needs.
  - **Records** - You have a right to know what records are kept on your child and a right to see them.
• **Confidentiality of Information** - With the exception of certain individuals (school officials, for example, and teachers with legitimate educational interests,) no one may see your child's records unless you give your written permission.

• **Least Restrictive Environment** - You have a right to have your child educated with non-handicapped children to the maximum extent appropriate.

• **Hearings** - If at any point along the way you do not agree with the way the school is dealing with your child, you have the right to request a hearing. This means that you may seek a formal review if you and the school cannot reach an agreement concerning the identification, evaluation, or placement, or educational program of your child.
The Rehabilitation Act of 1973
Section 504

- Section 504 is a civil rights law. Section 504 prohibits discrimination against individuals with disabilities. Section 504 ensures that the child with a disability has equal access to an education. The child may receive accommodations and modifications.

- Unlike IDEA, Section 504 does not require the school to provide an individualized educational program (IEP) that is designed to meet the child's unique needs and provides the child with educational benefit.

- Fewer procedural safeguards are available for disabled children and their parents under Section 504 than under IDEA.
• Section 504 requires accommodations, modifications, special education (if qualified) and supplementary aids and services for students whose disability significantly impairs their learning.
Board of Education v. Rowley (1982)

• Supreme Court defined the terms “Special Education” and “appropriate” as follows:

• “Special education means specifically designed instruction, at no cost to the parents or guardians to meet the unique needs of a handicapped child.
• **Appropriate education** - “provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction … and if the child is being educated in the regular classrooms of the public education system, (it) should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.
Implications of Rowley

- Terms like “maximizing” and “self-sufficiency were stricken.
- Parents were not entitled to the “best” education or an education that would “maximize their child’s potential.”

- Services that enable a disabled child to remain in school during the day provide the student with the meaningful access to education was envisioned under the IDEA.
- Medical services are excluded as a related service only if they must be performed by a physician.
- Undue burden and cost factors rejected.
- Lack of resources is no defense to lack of meaningful access to school.
Interagency Coordination

- States must ensure interagency coordination among public agencies, timely and appropriate delivery of services, and procedures to determine financial responsibility and to resolve interagency disputes.
- School districts are providers of first resort and payers of last resort.
Important Special Services Terminology Often Used and Confused

• Accommodations
• Strategies
• Modifications
Accommodations refer to the actual teaching supports and services that the student may require to successfully demonstrate learning. Accommodations should not change expectations to the curriculum grade levels.

Examples: taped books, math charts, additional time, oral tests, preferred seating, study carrel, amplified system, Braille writer, adapted keyboard, specialized software.
Modifications

- **Modifications** refer to changes made to curriculum expectations in order to meet the needs of the student. Modifications are made when the expectations are beyond the student’s level of ability.

- Examples: second language exemptions, withdrawal from specific skills, include student in same activity by individualizing the expectations and materials, student is involved in same theme/unit but provide different task and expectations.
Strategies

• Strategies refer to skills or techniques used to assist in learning. Strategies are individualized to suit the student learning style and developmental level.

• Examples: highlighting, rehearsal, color coding, memory joggers, visual cues, number lines, alphabet strips, flip charts, organization/transition cards
IEP

- PLEP/PLOP
- GOALS
- OBJECTIVES
- GRAD STANDARDS
- ADAPTATIONS
- LEAST RESTRICTIVE ENVIRONMENT
- SERVICE
- EXTENDED SCHOOL YEAR
Present Levels of Performance (PLEP)

- Use *Instructional* level, not grade level.
- Data on student’s skills
- Impact of disability on progress in general education curriculum
• Use “instructional/functional level” rather than grade level

• Grade Level
  – Jane orally reads a third grade selection at a rate of ___ words per minute.
  – Jane answers comprehension questions on a third grade selection at ___% accuracy.

• Instructional Level
  – Jane computes addition and subtraction with regrouping; she knows her multiplication facts up to 7’s. She can multiply and divide by one-digit problems with 90% accuracy. She is unable to multiply/divide by 2 digits. She can identify addition and subtraction processes in story problems, but she does not identify the multiplication and division process.
Goals

• Direction of change
  - Increase, decrease, maintain, improve
• Skill/Behavior to be changed
  - written language
  - talking out in class
• PLEP – Starting Point
  - from writing only phrases
  - from talking out 5 times per class
• Expected Ending Level
  - to writing complex sentences
  - to talking only with permission
• NO GRADE LEVELS
Jim will increase his math skills from a fifth grade level to a sixth grade level.

• …his skills in completing fractions from understanding basic fractions to adding / subtracting fractions with common and uncommon denominators.

• …his skills in dividing from 80% accuracy using 1-digit divisors to 80% using 2-digit divisors.
Objectives

“Building Blocks to Achieve Goal”

• Conditions
• Skill / Behavior
• Criteria
• Evaluation Method
Objective **Conditions** under which behavior is to be performed

- Given a...
- Presented with...
- When asked to...
- When in the general education classroom...
Skill / Behavior

- observable, measurable, specific
- use action verbs- “nothing a dead man can do”
- list skill
Criteria

- Accuracy
- Frequency
- Duration
- Rate
- Speed
Evaluation Method

• As measured by…
  - standardized measures (achievement test, CBM
  - behavior checklist
  - teacher made test
  - observation
  - unit tests
  - progress reports
  - not teacher judgment
Goals and Objectives Check

S  *Specific / Straightforward
M  *Measurable
A  *Action Words
R  *Realistic
T  *Time limited / Teachable

*Easily understood by non-educators
Transition Goals and Objectives

Five Areas
• Job and Job Training
• Home Living / Daily Living Skills
• Recreation / Leisure
• Community Participation
• Post-Secondary Education and Training

Timeline
• Assessment of 5 transition areas is required before age 14
• Program planning begins at age 14
Transition Plus - Continued secondary special education services at an age-appropriate setting; until age 21

• How will I know if students need support?

• Consider whether the student will be able to:
  – Independently find employment
  – Live independently or plans to in the future
  – Continue onto a 2-year or 4-year school, or training program (i.e. cosmetology)
  – Access his/her community independently
  – Partake in recreation/leisure activities independently

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Adaptations

• Supplemental Aids/Services in general education and special education
  1) Consultation
  2) Para
  3) Transportation

• Program Modifications/Supports
  - Behavior Intervention
  - Spelling will not count on essays – someone will proofread essay before graded
  - Extended time
  - Shortened assignments
  - Balancing load of assignments
  - Chunking assignments
• Assistive Technology
  “Assistive technology was addressed and the student has the following needs”
  -or-
  “The student does not require any A.T. beyond that provided to all students”
• Program Modifications or Supports for school personnel that will be provided to meet the students’ identified needs:
  - interpreter
  - training on specific programs or disabilities
  - in-service training
Least Restrictive Environment

• Indicate the setting where the student can get his/her goals/objectives met
• No longer need to address settings not considered.
• When removing the student from the general education setting, provide justification:
  – “The student needs specially designed instruction that cannot be provided through supplementary aids and services in the general education classroom.”
Service Providers

- Instruction or Service Provided
  - One of 13 disability areas
- Location – General Education
  - SLD Inclusion Reading
- Location – Special Education
  - SLD Pull-out Reading
- Anticipated Frequency
  - Times per week/month/term
- Total minutes per Session
  - Indirect/Direct
- Service – start date-end date
  - Do not all have to be the same
Extended School Year

Three ways to show eligibility:

• Regression – Recoupment

• Self-Sufficiency

• Given the student’s unique needs, the IEP team determines that ESY services are necessary.
Regression-Recoupment

- Regression – Recoupment
  - Usually related to academic goals
  - requires more than the length of the break to recoup the skill
  > June 2002 – November 2002
  > Winter or Spring Break
  - data driven
  - look for significant regression and lack of recoupment
Self-Sufficiency

• Student must maintain functional skills over a break, with no time to recoup.
• 8 functional areas:
  – Basic self help
  – Muscular control
  – Physical mobility
  – Impulse control
  – Personal hygiene
  – Development of stable relationships
  – Basic communication
  – Functional academic competency
ESY Determination Process

• Pupil’s regression/recoupment over summer
• Pupil’s tendency to regress over breaks in service
• Experience with other pupils with similar needs
• Considerations:
  – Progress & maintenance of skills during regular year
  – Degree of impairment
  – Pupil’s rate of progress
  – Pupil’s behavior or physical problems
  – Availability of alternate resources
  – Pupil’s ability & need to interact with non-disabled peers
  – The areas of the pupil’s curriculum which needs continuous attention
  – Pupil’s vocational needs
Problems with the IEP

• Dependent variable driven
  – Goals are based on the direction of change (Increase, decrease, maintain, improve) and Skill/Behavior to be changed.

• Methodology need not be documented
  – Student will receive reading instruction using the Lindamood Bell program.

• Parents often do not understand.
Observations of the interaction between parents, special education and procedural safeguards

• Parents are often “in the dark.”
The IEE is a part of the Procedural Safeguards for Due Process Procedures for Parents and Children

- The parents of a child with a disability have the right to obtain an independent educational evaluation of the child.

- School districts provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district criteria applicable for IEEs.
Definitions of IEE and Public Expense

- **Independent Educational Evaluation**
  - evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question

- **Public Expense**
  - school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent
Parent Right to an IEE at Public Expense

- The parent disagrees with an evaluation conducted by the school district.
- If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either—
  - initiate a hearing to show that its evaluation is appropriate; or
  - ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.
• If the final decision is that the agency's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.

• If a parent requests an IEE, the school district may ask for the parent's reason why they object to the public evaluation, but explanation by the parent may not be required and the school district may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.
Parent-Initiated Evaluations

• If the parent obtains an IEE at private expense, the results of the evaluation:
  – must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
  – may be presented as evidence at a hearing
Requests for Evaluations by Hearing Officers

• If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense.
Agency Criteria

- If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an IEE.

- The school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
Components of IEE: IDEA ’97 and State of MN

- instruments used
  - meets acceptable standards
- results obtained and reported in reliable terms
- procedures used to ensure against bias due to ethnic or linguistic differences
- interpretation of results
- summary of eligibility based on eligibility criteria
- recommendations for programming
IEE Types

- LD
- Psychodiagnostic
- Functional Behavioral Assessment
- Physical Therapy
- Occupational Therapy
- Speech and Language
- Medical
Sticker Shock

• Cost of hearing for school district to defend their evaluation = $50,000.00
  – Hearing Officer = $100.00/hr.
  – Court Reporter = $50.00/hr.
  – Districts’ Attorney = $150.00/hr.
  • assembly of exhibits
  • review of exhibits
  • witness preparation
  • hiring experts
  – Other costs
    • taking administrators out of work for days
    • substitute teachers
    • relationships
Cost of a Neuropsychological IEE

• Cost of an evaluation = $240.00/hr. (clinical hourly rate) = $3 to 5,000.00
  – includes payment for record review
  – includes payment of in-school observations
  – includes payment for outside interviews
  – includes payment for travel and attendance at IEP meetings
  – When attorney’s are involved hourly cost increases.
Who Has the Advantage in the Process

- plaintiff perspective
  - defense (district) advantage
    - deep pockets – they can afford the cost of attorneys and hearings

- defense perspective
  - plaintiff advantage
    - cost of litigation is so exorbitant that districts are often forced to settle
Referral Sources for IEEs

- attorney for the plaintiff
- attorney for the district
- districts without attorney
- parents without attorney
- hearing officers
- county social services
How to Proceed Depends on the Referral Source

- plaintiff referred and district agrees
  - may require a formal evaluation proposal to assure evaluation meets district criteria
- district referred
  - proceed
Request for Proposal for IEE

- statement of referral question and possible differential diagnosis
- assessment procedures to be used
  - be thorough and note that this is a proposal
- time commitment
- estimated cost
Knowing Your Role as an Independent Evaluator

• the law requires:
  – the evaluator can not be an employee of the district
  – the evaluation meets district criteria

• the overarching role of independence:
  – objectivity
  – fairness
  – the capacity and willingness to take multiple perspectives (parent, student, educator)
  – you are not the child’s advocate
  – you are the advocate for the data
You are the advocate for the data.

- Must be capable of suspending the patient-provider relationship and its tendency toward advocacy
What are the goals of an IEE?

- assist in the determination of special educational eligibility
- identification of effects of functional deficits on academic performance in the educational setting
- identification of effects of functional deficits on behavioral, social/emotional functioning (especially self-regulation within the educational setting)
- recommendations for appropriate special educational interventions
• analyze and critique special educational programming to determine:
  – educational progress (benefit)
  – educational harm
• manifestation determinations of prohibited behaviors leading to possible educational exclusion (suspension, expulsion, etc.)
• referral recommendations for outside evaluations and treatments
  – determine ways other agencies can respond (IDEA and state requirements for interagency collaborations)
Limiting the Scope of an IEE

• If the parties agree the scope may be limited to not analyzing or critiquing past special educational programming.
• In this case the IEE is used for prospective placement and planning only.
Manifestation Determination

- Required when disciplinary exclusions total ten cumulative days in a year
- Review of relationship between disability and behavior subject to discipline
- Related if: 1) IEP and placement not appropriate or not implemented; 2) disability impairs ability to understand impact and consequences of behavior; or 3) disability impairs ability to control behavior
• If behavior is not manifestation of disability, standard disciplinary procedures apply
• If behavior is manifestation of disability, educational, not punitive, response is appropriate
A.C., 258 F.3d 769 (8th Cir. 2001)

- Residential placement must be provided by public schools if educationally necessary because of disability.
- Student’s behavioral and emotional problems needed to be addressed for school success.
- No stark distinction between unwillingness and inability to behave appropriately, but a grey area between normal, voluntary conduct and involuntary physiological response, that the IDEA addresses as an emotional disturbance.
• Disruptive conduct that is a manifestation of a disability is exempted from normal discipline.
• IEP team should address behavior first, using discipline only if appropriate in context of IEP.
• What looks like simple misbehavior may actually be a more complicated problem whose remedy should be integrated into the IEP.
• Truancy and defiance result from genuine emotional disturbance rather than from a purely moral failing.
Goals of IEE when a Due Process Hearing is Eminent

- IEE tends to support one side over the other.
- Cold hard view of the facts may lead the litigants to settlement.
- Inform and educate the hearing officer both by written report and direct testimony at hearing.
What skills are required?

- knowledge of the laws (IDEA and Section 504), regulations (OPEP) and rules (state-specific) governing special education
- ability to work with educators and attorneys
- knowledge of the “state-of-the-art” and “best practices” in special education in terms of evaluation and treatment
- knowledge of interagency collaborations
- feeling comfortable in your role
Less Important but Helpful in Bolstering Credibility

• understanding the administrative structure of special education at the state level:
  – Department of Education
  – Division of Special Education
  – Division of Accountability and Compliance

• being prepared to lend your expertise and opinions when there are requests for comments on proposed rule changes in special education
Many IEEs are Forensic Evaluations

• Based on the following:
  – attorney involvement
  – possibility of testifying at a hearing
  – assigning cause or blame

• IEEs are different from independent medical evaluations (IME)
  – Deposition procedures are rare
  – No competing experts
    • Districts do not have the right to its own IEE.
Proceeding with an IEE

- Understanding the timelines – often a 30 day rule
- Nailing down reimbursement
  - Completely district funded
  - Funded by a combination of 3rd party payer and school district
- Obtaining records
  - Educational, medical, mental health
- Who provides the records?
  - School District, attorney, parents, outside providers
- Obtaining and critically reviewing all the educational and medical records
  - records can come organized and cross referenced.
  - records can come disorganized.
  - often seen as an attempt to “make life difficult” in an adversarial condition
What are Educational Records?

• Everything that is produced by the school district and the student and can include:
  – evaluations (group and individually administered)
  – testing protocols
  – IEPs
  – IEP progress reports
  – behavioral intervention plans
  – grading reports
  – attendance records
  – disciplinary referrals
  – documentation of the use of conditional procedures
  – work samples
  – correspondence between parties (teachers, parents, administrators)
The Smoking Gun is Often Found in the Records

• Smoking guns:
  – same IEP recycled year after year
  – no, inappropriate, or incomplete evaluations
  – failure to document progress
  – failure to appropriately identify
  – excessive use of conditional procedures
  – errors in test administration and scoring
  – clear acts of bad faith (lying)
  – overreaching parents
Testifying at a Due Process Hearing

- Due process hearings are trials.
- Hearing officers are judges.
- Being prepared is critical.
  - Attorney prep can be important in both directions
  - Check your reports for inaccuracies and data protocols for scoring errors (credibility)
- Things to anticipate
  - Your knowledge of state rules.
  - Your knowledge of test psychometric properties.
  - Your knowledge of educational and diagnostic nomenclature.
  - Recent research findings
  - Position outside the educational system
Record Review Tidbits

• Finally, according to the IEP, Samuel was given social work for the anticipated frequency of one (did not specify weekly) for five minutes indirect time and thirty minutes direct time for one school year to help manage his behaviors. Given that Samuel had 44 reported disruptions, truancies, suspensions, dismissals, warnings, ISS, Saturday School, bus problems, profanity violations, disorderly conduct, sexual harassment, and fighting complaints during his junior year, and reported 112 tardies, and 129 days of unexcused absences, and 18 days of in-school suspension (ISS), the multidisciplinary team should have realized that Samuel's limited direct and indirect time with social work in addition to his discipline plan was not advantageous to Samuel's overall educational needs. When the ratio was calculated by total minutes of time spent not receiving an education due to the aforementioned infractions, and the time for social work intervention as per his IEP's, the ratio is 330:1.
• While during the previous school year the school district did not qualify Frank for special educational services based on the previous psychoeducational evaluation, the provision of a full time aide was a tacit admission on the part of the district that he needed a more restrictive educational setting. He was incapable of functioning in the mainstream, and there was significant concern for the safety of other students in the school.
Unfortunately, upon detailed review of the submitted protocols, I have significant concern about the validity of intellectual assessments conducted by Dr. Wrong, as evidenced by a combination of scoring and administration errors (10 errors in total). My ultimate conclusion is that Edward will need to have a reevaluation of his intellectual functioning, so that I can conclude my evaluation. While it is common practice to rely on previous intelligence testing data in the integration of a child’s neuropsychological functioning and educational needs, this is based on the assumption that the previous testing has been administered and scored in a standardized manner. Based on my review of Dr. Wrong’s product, I cannot rely on its validity.
Lastly in reviewing the records there was no clear documentation of the 15 to 20 instances in which Stephen reportedly threatened to harm himself. It may be that his suicidal thoughts are considered more manipulative than a sincere reflection of his depression. Educators are not equipped to handle the evaluation process to assess dangerousness. Any instance suicidal ideation must prompt educators to contact Stephen’s mental health providers and his grandmother, so appropriate steps can be taken to ensure the safety of himself and others.
• Upon receiving David’s special educational file from the No Problem School District we were distressed to find meager assessment data. In fact, the data that we received from the school district did not meet the minimum standards set forth for qualifying students for services under the EBD label. Specifically, the “assessment” that was provided did not have the following measures as required by State of Minnesota rules: nationally normed behavior rating scales, individually administered, standardized, nationally normed tests of intellectual ability and academic achievement, three systematic observations in the classroom or other learning environment (two were performed), and a record review.
Resources for Parents in Need of Information, Assistance and Advocacy

• National Dissemination Center for Children with Disabilities (funded by OSEP)
  – serves the nation as a central source of information on:
  – disabilities in infants, toddlers, children, and youth, IDEA, No Child Left Behind (as it relates to children with disabilities), and research-based information on effective educational practices.
  – (http://www.nichcy.org/index.html)
State Level

• Protection and Advocacy Agency
  – Funded on the state level, but independent (aka, Disability Law Center)
• State Vocational Rehabilitation Agency
• State Mental Health Agency
• State Developmental Disabilities Program
• State Department of Human Rights
• Programs for Children with Special Health Care Needs
Parent Specific Programs

- Parent Advocacy Coalition for Educational Rights (PACER)
- Parent Teacher Association
Disability Specific Programs

- Children and Adults with Attention-Deficit/Hyperactivity Disorder (CHADD)
- Brain Injury Association
- Autism Society
- Epilepsy Foundation
- Tourette Syndrome Association
- The Arc
- Etc.
Assistance with Accommodations
http://www.jan.wvu.edu/portals/ed.htm

• Job Accommodation Network (JAN's) Web Site Portal for Educational Settings, U.S. Department of Labor, Office of Disability Employment Policy
  – JAN provides basic educational and training instructional strategies that facilitate learning among students with disabilities in the classroom or training sessions.
• Covers a wide array of disabling conditions from muscular dystrophy to ADHD
IEP Resources

Writing Measurable IEP Goal and Objective
(Bateman & Herr, 2003)

How Well Does Your IEP Measure Up?
(Twachtman-Cullen & Twachtman-Reilly, 2002)
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