

Interventions vs. Evaluations: When to Move On— Modern Child-Find Questions in the Rtl Era

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Child-Find vs. Rtl

- What is IDEA “child-find”?
- What triggers child-find?

Suspicion of: (1) disability, and (2) need for sp. ed.

- How do courts know if a school complied with child-find? See *El Paso ISD v. R.R.*

If school evaluated within a reasonable time after trigger (suspect disability + need)

Child-Find Meets Rtl

- **Enter the Rtl era:**

IDEA '04 allows use of IDEA funds for early intervening services

It also allowed use of Rtl data for use in LD evaluations

And, regular ed interventions and assistance programs began to expand and multiply

- **Tension—Child-Find duty vs. Push to Implement Rtl (provide reg ed interventions)**

What prevails?

2011 OSEP Letter—Rtl programs cannot be used to deny or delay an IDEA evaluation if the child is suspected of having a disability

Letter to Ferrara (OSEP 2012)—State Rtl regs cannot prohibit referral prior to Rtl, nor impose Rtl as a prerequisite

So, Lots of New Questions

How can schools avoid failure-to-identify cases *and* make use of RtI programs?

At what point in RtI process does suspicion of LD arise? How long to try interventions?...

- **The real underlying legislative issue**—While IDEA included RtI in 2005, Congress did not modernize child-find or the definition of sp ed

The Federal Regulation

- 34 C.F.R. §300.309(c)
- Child must be referred, and parent consent promptly sought, if:
 - (1) Child does not make progress with appropriate instruction, **and**
 - (2) Whenever the child is referred

- Thus, the Federal rule respect a parent's right to refer the child at any time (schools can formally refuse referral—but denial requires PWN, notice of rights, creates possible DP)
- And, the Federal rule does not *mandate* or *require* RtI interventions as a prerequisite to referral (only allow consideration of RtI option)
- But, many districts *act* like it does (and it's creating child-find disputes and cases)

Parent Requests for Evaluation

- Because parents can request IDEA evaluation, and can sue if school refuses or fails to act, this is inherently different than an internal staff referral
- Parent-request situations can easily lead to misunderstandings and legal disputes...
- Hardest parent question for campuses to answer: “How do I go about having my child tested?”

Parent Requests for Evaluation

- Parent referral requests can be denied

But, school must provide prior written notice explaining the bases for denial

And, parent must be provided with notice of procedural safeguards

And, parent has right to file due process to challenge denial of referral

Interesting recent example—*Student v. Austin ISD*, 110 LRP 49317(SEA TX 2010)—p. 5

- Boy is diagnosed with ADHD at 3, grandma is concerned about various issues
- School is concerned about his reading, involves reading specialist, provides small-group support
- Grandma consults neurosurgeon, who contacts school principal about OHI eligibility and provides prescription for neuropsych testing
- No follow up on those requests
- Grandma talks to 4th grade teacher about testing

- Teacher explains Rtl process, refers child to “IMPACT team,” which meets (teacher thinks Rtl interventions are “absolute” requirement)
- Reading specialist kicks up interventions, fluency seems to improve
- Grandma gets own testing, which finds ADHD, dyslexia, LD reading, dysgraphia, LD writing
- Student is now failing three subjects
- IMPACT team refers to §504 (same mods)

- Grandma is confused about the 504 consent form
- 504 team finds student working below grade level, making slow progress, although he had responded to interventions
- Grandma provides team copy of private eval
- Nobody tells her of right to request IDEA eval
- Diag says testing could happen, but also says it can't happen before "a lot" of interventions
- No referral happens, although diag agrees in an internal email that he'd qualify *if tested*

Student v. Austin ISD

- Confused grandma talks to attorney, who promptly files failure-to-identify claim
- District offers eval, and student qualifies LD/OHI
- IEP contains only mods from 504, consult OT, monitoring by sp ed teacher
- By now, student has actually improved in reading, and passes 4th grade state test (good intervention response)

Student v. Austin ISD

- HO finds:

Child-find triggered when Dr called school

Grandma requested testing, District refused

IDEA Duty to evaluate overrides local Rtl policy

District acted with more intensive help

Student was responding to interventions

Thus, 5-mo. delay in eval was not unreasonable

No notice-of-refusal was procedural violation

Student v. Austin ISD

- Thoughts and questions about the case:

Refusals of evals aren't just when you say NO

What about the failure to provide IDEA rights?

Notice mixed messages to parent caused dispute

Why did the student qualify?...

Why did the student need sp ed?...

More Modern Child-Find Cases

- ***City of Chicago Sch. Dist. (SEA III 2009)***

Third-grader is retained due to failing classes

But, had missed a year of school

School felt performance data was insufficient

School denies eval request

HOLDING—Court finds child-find violation,
school failed to provide PWN or notice of rights;
student failing despite intervention attempts

More Modern Child-Find Cases

- ***Scott v. Dist. of Columbia* (D.D.C. 2006)**

Mom contacts school about ADHD diagnosis

But, she agrees to “alternative strategies”

Then, she files failure-to-ID case

HOLDING—Court says agreeing to interventions did not affect the schools child-find duties, so there was a child-find violation

QUESTION—Why is this not seen as the parent withdrawing the referral request?...

- ***El Paso ISD v. R. R.* (W.D.Tex. 2008)(p. 11)**

Mom contacts school about referral

School proposes “STAT” interventions instead

Parent agrees, but later sues on child-find

HOLDING—Court says school refused testing but didn’t provide notice of refusal or of IDEA rights

QUESTION—Why is *this* not seen as a parent withdrawing a referral request?...

- ***Meridian Sch. Dist. (SEA III 2010)***

School insists on interventions for student

Refuses parent eval request

Implements “RTI Plans”

But, student struggling, no data collection

HOLDING—HO finds child-find violation

QUESTION—How can you insist on pursuing Rtl,
but then not collect Rtl data?...

- ***Upper Arlington City Sch. Dist. (SEA Ohio 2011)***

School policy requires lengthy RtI trials

Some students in RtI for 2-4 years

And, while they struggled with academics

No referrals even with no progress in RtI

HOLDING—HO finds child-find violation

QUESTION—Is this a proper balancing of RtI vs. parental right to request IDEA evaluation?...

- ***Salado ISD (Tex HO Decision 2008)—p. 13***

Parent and school agree to interventions

It doesn't work, student is evaluated, qualifies

Parent alleges failure-to-ID

HOLDING—HO says stakeholders collaboratively agreed to interventions

NOTE—Intervention programs won't work in every situation...That doesn't mean Rtl process was abused

- **Current practice case—Another variant**

2nd-grade sped student with speech impairments

Struggles academically at end of 2nd grade

Campus Assistance Team (CAT) meets

CAT puts interventions into place

Interventions continue in 3rd grade

Student's problems intensify

CAT recommends "referral"

Testing reveals student is LD

What are the legal issues?...

Minimizing Child-Find Disputes

1. Provide parents all intervention info up front
2. Meet to collaboratively discuss options
3. Make clear right to request IDEA evaluation
4. Reach consensus on course of action
5. Share program/progress data with parents
6. Follow-up on progress or lack thereof
7. Have review meetings
8. Document steps, consensus

- **Watch for misconceptions or rigid attitudes**

Misconception—RtI interventions are a mandatory prerequisite to evaluation, even in cases of parent request

Reality—RtI interventions are an option to explore and consider with parents

Misconception—RtI data is a mandatory component of LD evaluation

Reality—RtI data *may* be used in LD evaluation

- **2011 OSEP Memo to State Directors of Sp Ed (p. 16)**

Use of Rtl strategies cannot be used to delay evaluation of child suspected of having disability

IDEA *allows* use of Rtl data (but doesn't mandate the use)

It would be inconsistent with evaluation provisions to reject a referral and delay an FIE “on the basis that a child did not participate in an Rtl framework”

- **SLD Eval—34 CFR 300.309**

4-part process:

1. Child not achieving
2. Lack of progress in Rtl **OR** strength-and-weaknesses assessment-based finding of LD
3. Exclusionary clauses rule-out
4. Determination that LD finding is not due to lack of appropriate instruction

- **SLD Eval—34 CFR 300.309**

Notice step 2 includes RtI as an analytical *option*

Step 4 requires that team rule out lack of “appropriate instruction,” not lack of high-quality research-based interventions

Let’s think, could IDEA really *require* regular ed interventions that are entirely the business of regular education?... And, in 2005, how many schools had RtI programs in place?

- **Watch for unilateral decisions by school**

Schools are much more likely to lose child-find disputes if they decide unilaterally on course of action

- **How good and effective is your Rtl program?**

There are wide variances in quality

Are you keeping and studying data?

Key Data Question—How many less students are winding up getting referred that would have been referred before you put the Rtl program in place?

- **Ultimate “takeaway”**

Schools have to **balance** making effective use of regular ed/Rtl interventions with the need to avoid child-find due process claims

Thus, apply Rtl with moderation, flexibility, and in partnership with parents