RESPONSE TO INTERVENTION, MULTI-TIERED SYSTEMS OF SUPPORT, & FEDERAL LAW

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OUTLINE

• RTI/MTSS in federal law
• The Every Student Succeeds Act of 2015
• Endrew F. v. Douglas County School District (2017)

WHERE DOES RTI/MTSS COME FROM IN FEDERAL LAW?

• The Individuals with Disabilities Education Act Amendments of 1997
• The Individuals with Disabilities Education Improvement Act of 2004
• The Every Student Succeeds Act of 2015
THE IDEA AMENDMENTS OF 1997

PBIS & IDEA

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

IDEA requires that a student’s IEP team “consider the use of positive behavioral interventions and supports for any student whose behavior impedes his or her learning or the learning of others” (IDEA, 20 U.S.C. § 1414(d)(3)(b)(i))
PBIS, IDEA, & PROFESSIONAL DEVELOPMENT

- IDEA provides indirect financial support to PBIS by authorizing States to spend professional development funds to “provide training in the methods…positive behavioral interventions and supports to improve student behavior in the classroom” (IDEA, 20 U.S.C. §1454(a)(3)(B)(iii)(I)).

THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

TWO INFLUENTIAL REPORTS

- Rethinking Special Education for a New Century (2001)
- Thomas Fordham Foundation & Progressive Policy Institute
- Recommendations
  - Identify and address students’ preventable and remediable learning and behavior problems with research-based strategies before the problems became intractable
  - Eliminate the discrepancy model to identify students with learning disabilities
  - Allow school based teams to consider a student’s response to research-based instruction when determining eligibility
TWO INFLUENTIAL REPORTS

- President’s Commission on Excellence in Special Education
- Recommendations
  - Adopt a new model for identifying students with learning disabilities
  - Screen all students for learning and behavior problems in early grades
  - Intervene early in student’s careers with research-based strategies to prevent the development of learning & behavior problems

IDEA 2004

- Identification of students as having learning disabilities
  - States were prohibited from requiring that school districts use a discrepancy model when determining if a student had a learning disability

In determining if a student has a learning disability, the school district may use a system in which a school-based team “considers a child’s response to scientific, research-based intervention as part of the SLD determination process.” (IDEA Regulations, 34 C.F.R. § 300.307(a)(2)
IDEA 2004

- Coordinated Early Intervening Services (CEIS)
- States were allowed to spend up to 15% of the IDEA funds on CEIS.
- Coordinated, structured, academic and behavioral supports provided to at-risk students.

The purpose of EIS is to identify students who are at risk for developing academic and behavioral problems while they are still in general education settings, and then to address these problems by delivering research-based academic and behavioral interventions in conjunction with progress monitoring systems.

OFFICE OF SPECIAL EDUCATION PROGRAMS

- Questions and Answers on RTI and EIS,” (U.S. Department of Education, 2007)
- CEIS can be used to support RTI/MTSS systems
- Although OSEP did not endorse any particular RTI/MTSS system, certain core characteristics were present
PURPOSE OF RTI/MTSS

- RTI/MTSS strategies are tools that enable educators to target instructional interventions to students’ areas of specific need as soon as those needs become apparent.
- From a special education perspective, the philosophy behind RTI/MTSS is that children who are at risk of school failure should be identified and provided interventions early in their school careers.
- Additionally, students should not be misclassified as having a disability if they haven’t received effective, research-based instruction through general education.

Questions and Answers on RTI and EIS,” (U.S. Department of Education, 2007)

CORE CHARACTERISTICS

- Students receive high quality research-based instruction in their general education setting;
- Continuous monitoring of student performance;
- All students are screened for academic and behavioral problems; and
- Multiple levels (tiers) of instruction that are progressively more intense, based on the student’s response to instruction

Questions and Answers on RTI and EIS,” (U.S. Department of Education, 2007)

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

- Dear Colleague Letter (U.S. Department of Education, 2007)
- “Implementing evidence-based, multi-tiered behavioral frameworks can help improve overall school climate, school safety, and academic achievement for all children, including children with disabilities”
- Support via funding PBIS center
Behavioral supports are most effectively organized within a **multi-tiered behavioral framework** that provides instruction and **clear behavioral expectations** for all children, **targeted intervention for small groups** not experiencing success, and **individualized supports and services** for those needing the **most intensive support**.

**WARNINGS!!**

**OFFICE OF SPECIAL EDUCATION PROGRAMS**

- Dear Colleague Letter, 2011
- RTI/MTSS systems cannot be used to *delay or deny* a special education evaluation of a student suspected of having a disability
- **Child find requirements** of the IDEA
  - Under the IDEA, schools have an affirmative duty to identify, locate, and evaluate students who they suspect may be disabled, in order to evaluate them for potential eligibility for special education services. 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.111.
WHAT TRIGGERS CHILD FIND?

- The child-find obligation to evaluate a student is triggered when and school district has reason to suspect that:
  1. The student has a disability
  2. The student has a resulting need for special education services

EVALUATION FOR SPECIAL EDUCATION

- If school personnel believe that a student has a disability is in need of special education services, parental consent should be promptly requested to conduct an evaluation
- If a student has not made adequate progress after an appropriate period of time, a referral for a special education evaluation must be made (IDEA Regulation 300.309 (c)).

EVALUATION FOR SPECIAL EDUCATION

- When a student’s parents request a special education evaluation there are only two acceptable responses:
  1. Here are your procedural safeguards. We’ll conduct the evaluation.
  2. Here are your procedural safeguards and a written explanation of the reasons for refusing to conduct an evaluation (i.e., Prior Written Notice).
EL PASO ISD v. RICHARD R. (2008)

- When school personnel have reason to suspect a student has a disability, they must refer a student for an evaluation.
- The court found that when a parent requests a special education evaluation, the IDEA gives the parent a right to the evaluation and overrides local district policy which would require a general education intervention team to first consider interventions before conducting the evaluation.

567 F. Supp. 2d 918 (United States District Court, Western District, Texas (2008))

EL PASO ISD v. RICHARD R. (2008)

- The court announced a two-step analysis to review whether a school has complied with its child-find responsibilities.
- A court examines whether the school had reason to suspect that the student had a disability and a consequent need for special education services.
- The court addresses whether school personnel evaluated the child within a reasonable time after they had reason to suspect a disability that needed special education services arose.

567 F. Supp. 2d 918 (United States District Court, Western District, Texas (2008))

LETTER TO FERRERA (2012)

- OSEP, however, does not disapprove of state regulations advising schools to explore or consider RTI programs prior to deciding to evaluate the student, as long as the regulation does not prohibit a parent from referring a child prior to the completion of the RTI program, or require the program as a prerequisite to evaluation.
FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

• If a student’s IEP team determines that the student has behavioral or mental health needs, these needs must be addressed in his/her IEP to provide a FAPE.

• To confer a FAPE, a school district’s progress must confer academic and/or functional progress in light of the student’s circumstances.

THE EVERY STUDENT SUCCEEDS ACT OF 2015

RTI/MTSS & ESSA

• ESSA recognizes that student learning is directly affected by school climate and the supports and services to all students.

• SEA & LEAs have greater flexibility in serving needs of all children.

• ESSA allows LEAs to use federal monies to support PBIS and MTSS.

• The law does not require that LEAs implement RTI/MTSS systems, they have given SEAs & LEAs great flexibility to use such systems.
REFERENCES TO MTSS IN ESSA

• MULTI-TIER SYSTEM OF SUPPORTS
  • The term ‘multi-tier system of supports’ means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students’ needs, with regular observation to facilitate data-based instructional decisionmaking.

REFERENCES TO MTSS IN ESSA

• Professional development
  • PD is designed to give teachers the knowledge and skills to provide instruction and academics support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports…?

REFERENCES TO MTSS IN ESSA

• Local use of funds
  • A local educational agency that "receives a subgrant under section 2102 shall use the funds made available through the subgrant to develop, implement, and evaluate comprehensive programs and activities…which may include the use of multi-tier system of supports and positive behavioral interventions and supports…"
REFERENCES TO MTSS IN ESSA

• Activities to support safe & healthy students
  • Implementation of schoolwide positive behavioral interventions and supports, including through coordination with similar activities carried out under the Individuals with Disabilities Education Act, in order to improve academic outcomes and school conditions for student learning;

• Targeted assistance to schools
  • TA can include “a schoolwide tiered model to prevent and address behavior problems, and early intervening services, coordinated with similar activities and services carried out under the Individuals with Disabilities Education Act…”

FUNDING OPPORTUNITIES IN ESSA

• SEA & LEAs have greater flexibility in best serving needs of all children
• ESSA recognizes that student learning is directly affected by school climate and the supports and services to all students
FUNDING OPPORTUNITIES IN ESSA

- Title I - Improving the Academic Achievement of the Disadvantaged
- Part A - Improving basic programs operated by LEAs
- Assistance to schools with high percentages of students from low income families
- Title 1 subgrant funds to LEAs can be used for school wide programs designed to improve the education of all students
- LEA submits a Title 1 plan

FUNDING OPPORTUNITIES IN ESSA

- Title II - Preparing, Training, and Recruiting High Quality Teachers, Principals, or Other School Leaders
- Part A - Supporting Effective Instruction
- Title II subgrant funds to LEAs can be used to improve the quality & effectiveness of teachers, principals, and other school leaders
- Funds can be used for inservice training

FUNDING OPPORTUNITIES IN ESSA

- Title IV - 21st Century Schools
- Part A - Student Support & Academic Enrichment Gains
- Improve school conditions for student learning
- LEAs apply to SEA for funding
- LEAs have great latitude to implement programs to improve school climate
SUPREME COURT OF THE UNITED STATES


THE ESSENCE OF SPECIAL EDUCATION

To provide eligible students special education and related services that confer a Free Appropriate Public Education (FAPE)

Board of Education v. Rowley (1982)
THE ROWLEY TWO-PART TEST

- Has the state complied with the procedures set forth in IDEA?
- Is the IEP reasonably calculated to enable the student to receive educational benefits?

SPLIT IN THE CIRCUIT COURTS

- **Lower Standards:** Some benefit, merely more than trivial or *de minimis*
- **Higher standard:** Meaningful benefit
- **Confused standard:** Different panels of the circuit court rule differently

FAPE TESTS
ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT

U.S. Court of Appeals for the 10th Circuit and the “merely more than de minimis” standard

APPEAL TO THE U.S. SUPREME COURT

On December 22, 2015 the parents appealed to the U.S. Supreme Court

**Question Presented:** What is the level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act?

ORAL ARGUMENTS: JANUARY 11, 2017
ORAL ARGUMENTS: JANUARY 11, 2017

“STANDARD WITH A BITE!”

“SOME BENEFIT,” OR “SOME BENEFIT?”
“IDEA provides a clear standard. The problem is coming up with the right words.”

The high court rejected the “merely more than de minimis” standard of the 10th Circuit Court, ruling in favor of the parents.

Chief Justice John Roberts wrote the unanimous opinion on behalf of all eight justices.

“The Court Tackles Educational Benefit!”

“In Board of Education v. Rowley (1982) “We declined... to endorse any one standard for determining when students with disabilities are receiving sufficient educational benefits to satisfy the requirements of the Act”

“That more difficult problem is before us today”
“When all is said and done, a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.”

“A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.”

THE DEMISE OF DE MINIMIS!

- “But whatever else can be said about it, this standard is markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.”
- “A child’s education program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” … “The goals may differ, but every child should have the chance to meet challenging objectives.” … “This statement is more demanding than the merely more than de minimis.”

THE IMPORTANCE PARENTAL PARTICIPATION

“this fact-intensive exercise (the IEP process) will be informed not only by the expertise of school officials, but also by the input of the child’s parents,”

“Judicial deference to school authorities will depend on their having provided parents in the IEP process with the opportunity to ‘fully air their … opinion on the requisite degree of progress’”
THE IMPORTANCE OF THE IEP

"An IEP is not a form document."

"The IEP must aim to enable the child to make progress."

"It is through the IEP that a free appropriate public education is tailored to the unique needs of the (student)."

THE IMPORTANCE OF THE IEP

"The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement."

THE ROLE OF THE COURTS

"A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances."

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THE ROWLEY/ENDREW STANDARD

- Has the state complied with the procedures set forth in IDEA?
- Is the IEP reasonably calculated to enable the student to make progress appropriate in light of the student’s circumstances?

NOW WHAT??

- It will take time and increased litigation to see exactly what this new standard will mean for special education
- We can definitely say that de minimis education and merely more than trivial benefit is dead!!
- It will mean that courts will look more at student progress and it may mean more pro-parent outcomes in FAPE litigation

SUPREME COURT OF THE UNITED STATES

Read More About the Case
REFERENCES

- U.S. Department of Education, Office of Special Education Programs, Memorandum to Chief State School Officers and State Directors of Special Education, 51 IDELR 49 (2008).

OBJECTIVES

- 1. Acquire an understanding of the role of MTSS in the IDEA.
- 2. Acquire an understanding of implementing MTSS systems in conformity with the child find provisions of the IDEA.
- 3. Acquire an understanding of how the U.S. Department of Education anticipates that MTSS systems be implemented in schools.