

# How to Successfully Address the Needs of Students with Learning Disabilities on a Systemic Basis

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# LDA Webinar Series

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- # Eligibility and RTI
- # Role of Clinical Data & Outside Evals
- # Violations of Parents' Right to Eval & Notice
- # Interplay of IDEA and 504
- # FAPE and Methodology
- # Remedies
  - Due Process
  - OCR Complaints
  - SEA complaints
  - Other Strategies

# Areas of Concern- Evaluation & Eligibility

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- Child Find
- Evaluation
- Role of independent evaluations
- Eligibility Criteria
- Interplay with 504 Eligibility
- Impact of Response To Intervention (RTI)
- Schools' Working to Reduce # Eligible

# Observations on Some of the Systemic Problems

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- # Schools often neglecting child find responsibilities – creates opportunities for individual and systemic advocacy
  - Missing kids new to system
  - Missing kids in private schools
  - Missing kids with behavior or less visible disabilities
  - Identifying kids, but missing key parts of their disability

# IDEA – 504 Interplay

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- # Even if child not eligible under IDEA, school should still automatically consider eligibility under 504 – often ignore this.
- # Any system-wide rule or practice defining, limiting or excluding services violates “individualized” requirement of IDEA and likely violates Section 504 as discrimination based on nature or severity of disability

# RTI and IDEA/504 Eligibility

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- # Schools now deflecting many children based on perceived need to use RTI first and/or to terminate services to use RTI instead
- # Many school policies are inconsistent with intent of RTI and violate other IDEA/504 requirements
- # RTI resulting in delays in evaluation & service and premature discharge from Sp Ed

# Some RTI Counterpoints

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- # RTI requires that data be collected weekly and shared with parents
- # RTI best practice limits time in RTI to 8-12 weeks
- # Parents retain right to request evaluation for special ed or 504 at any time.
- # Nothing in 504 precludes eligibility based on failure to use RTI first

# FAPE and Methodology

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- # IDEA 2004 requires schools to use research based practices to extent practicable
- # Most schools are either not using research based practices or not implementing practice consistent with the research
- # Specialized methods can be required is school's program not research based or child not making progress
  - Many school programs are not research based- may support systemic complaint



# Refusal of Timely Evaluation

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- # Under IDEA, parents may request evaluation even while RTI is in process
- # Interplay of RTI data gathering and IDEA LD criteria and eligibility process complex
- # However, if district has policy or blanket practice of deferring evaluation or long-term RTI status, may be a basis for denial of Child Find under IDEA or 504

# Failure to give proper notice of refusal of timely request for eval

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- # Schools are required to provide parents written notice if they refuse a request for eval, including the reason for the refusal and the right to request a hearing.
- # Often, schools respond informally or not at all, violating the parents' procedural rights
- # Again, if systemic, this is a basis for SEA or OCR complaint

# Clinical Data and IEEs

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- ✦ Consistent with the shift in emphasis to RTI data in IDEA, many schools are deemphasizing or eliminating the use of clinical data for eligibility decisions and minimizing or ignoring role of school or private psychological evals
- ✦ IDEA LD definition still refers to processing deficits
- ✦ IDEA still requires schools to consider all relevant information, including info provided by the parents
- ✦ Systemic refusal to do so violates IDEA requirements and 504 testing rules

# Areas of Concern – FAPE/IEP

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- # Legal standard for FAPE arguably higher, but operational standard substantially lower
- # Schools increasingly using cross-categorical and one size fits all programs
- # Schools adopting research-based methodologies in name, but not per design
- # Schools increasingly incorporating vague goals and discretionary services to avoid greater responsibility.

# Other FAPE Concerns

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## # Special Ed and Related Services Being Diluted

- Larger classes, increasing variation of needs and ages
- More standardized programming
- Increasing reliance on group vs. 1-1 and in-class vs. pull out services
- Increased use of consult vs. direct service
- Increased reliance on Para-pros vs. Teachers

# Money, money, money

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- # Financial crisis is impacting reg and sp ed
- # Schools often reducing services for \$ reasons, sometimes openly, but often cloaked in some other rationale
- # Entitlement to FAPE is not driven by cost, should not be a factor, but will be in real world
- # Disproportionate cuts to special ed may be 504 violation

# Politics and Personality is All

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- # What are the financial and program resources of the District?
- # Who is in charge?
- # Would they rather fight or switch?
- # Who is the lawyer?
- # What is the District's prior litigation history?

# Options

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- # Informal problem solving
- # IEP meeting
- # Formal Mediation
- # Due Process Hearing
- # Mediation and Due Process Hearing
- # SEA Complaint
- # OCR/DOJ Complaints



# Informal Problem Solving

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- # May be most efficient means of problem solving
- # Saving face is important to the District and staff
- # May help to advise school of their vulnerability and scope of likely relief if no informal solution
- # Saves the client money and gets the child help
- # Individual vs. systemic relief – who are you representing?

# Mediation

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- # Quicker, cheaper than a hearing
- # May produce better buy-in from District Staff than Due Process Decision
- # Provides free discovery
- # May allow for creative solutions not feasible otherwise
- # Relief may be more attainable in mediation than in a hearing.

# Mediation and Due Process Combined

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- # Request Mediation and Due Process for Maximum Leverage in Mediation
- # Hearing Request Moot if Mediation Successful
- # Fees More Likely to be in Play if Hearing Request Pending

# Do Not Pass Go – Go Straight to Hearing

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- # Child's Situation Requires Solution ASAP  
Due to health, safety or exclusion from school
- # School District is Acting in Bad Faith
- # A Clearly Enforceable Decision is Needed
- # There is no middle ground to mediate, e.g.,  
paying for private placement

# Other Alternatives to Due Process

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# Other complaint procedures

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- # File a complaint with the State Dept. of Ed. (and then hold your breath)
- # File a complaint with OCR (and then monitor the status of the complaint and withdraw it if it seems to be going in the wrong direction)
- # File a human rights complaint with your state Human Rights Authority
- # File a complaint with DOJ for ADA violations (and then hold your breath)

# OCR Complaints

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- # OCR responds better to systemic or policy problems than complaints over quality of service or subjective disagreements as to needs
- # Can file systemic complaints with OCR
- # Preferable to have specific children as examples
- # Desirable to develop full rationale for systemic complaint with documentation

# OCR Procedures/Forms

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General OCR URL with all links:

<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>

OCR Complaint Process

<http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

OCR Complaint form (pdf)

<http://www2.ed.gov/about/offices/list/ocr/complaintform.pdf>

OCR Complaint form (online)

<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/complaintform.cfm>



# IDEA Regs for State Complaints

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Requirement for procedures 34 CFR 300.151

<http://www.law.cornell.edu/cfr/text/34/300.151>

Minimum State Requirements: 34 CFR 300.152

<http://www.law.cornell.edu/cfr/text/34/300.152>

Filing a State Complaint: 34 CFR 300.153

<http://www.law.cornell.edu/cfr/text/34/300.153>

# Special Education is political

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- # Have the client go up the ladder, up to and including contacting the school board
- # Have the client activate political connections that they have to contact the Supt. Or Board President
- # Seek out favorable media coverage (be careful with this one)
- # Seek pressure from the State Dept. of Ed.

# Power in numbers

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- # Set up a parent support/advocacy group
- # Have parents favorable to disability rights run for school board
- # Have parents pack school board meetings and make a ruckus
- # Convene a town meeting to discuss the district's failure to meet the needs of its students and its waste of taxpayers' money

# Knowledge is power

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- # FOIA the SEA's monitoring reports for the district and the District's reports to the State and any prior due process decisions against the district
- # FOIA the District's Special Education, 504 and ADA policies
- # FOIA the District's budget and analyze how much is really being spent on special ed vs. elective activities like football (Just to win friends and influence people)

# More information

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- # “A Guide to Special Education Advocacy – What Parents, Advocates and Clinicians Need to Know,” by Matt Cohen, Jessica Kingsley Publications (2009) – order at [www.mattcohenandassociates.com](http://www.mattcohenandassociates.com)
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