November 16–19, 2009

Special Education Hearing Officer and Mediator Training

Irvine, California

Organized and Presented by the National Academy for IDEA Administrative Law Judges and Hearing Officers
# 2009 Special Education Administrative Law Judge and Mediator Training

November 16-19, 2009  
Hyatt Regency Irvine Hotel, Irvine, California

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| Monday  
Nov. 16      | 9:00 – 9:15|           | Welcome; overview                                   | Rosenfeld  |
|                | 9:15 - Noon| Session 1 | Examination and Review of Major Tests Used in Special Education Assessments | Marlowe    |
|                | Noon - 1:15| Lunch     | Lunch on your own                                   |            |
|                | 1:15 - 4:30| Session 2 | How Test Results Are Used to Prepare Assessments    | Marlowe    |
| Tuesday  
Nov. 17      | 9:00 - Noon| Session 3 | Review and Discussion of Major Case Law Developments | Weber      |
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|                | 1:15 - 4:30| Session 4 | The Status of FAPE After Mercer Island              | Weber      |
| Wednesday  
Nov. 18      | 9:00 – Noon| Session 5 | Juvenile Misconduct and Special Education            | Fabrizio   |
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|                | 1:15 - 4:30| Session 6 | FBAs: Quality Components Demystified                 | Almon-Morris|
| Thursday  
Nov. 19      | 9:00 - Noon| Session 7 | Mediation: What Do I Bring Into the Room?           | Abell      |
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|                | 1:15 – 4:30| Session 8 | Mediation: Theories, Models, Facts                  | Abell      |
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**Nov. 16**
- Examination and Review of Major Tests Used in Special Education Assessments (Marlowe)
  - Session 1
- How Test Results Are Used to Prepare Assessments (Marlowe)
  - Session 2

### Tuesday

**Nov. 17**
- Review and Discussion of Major Case Law Developments (Weber)
  - Session 3
- The Status of FAPE After Mercer Island (Weber)
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### Wednesday

**Nov. 18**
- Juvenile Misconduct and Special Education (Fabrizio)
  - Session 5
- FBAs: Quality Components Demystified (Almon-Morris)
  - Session 6

### Thursday

**Nov. 19**
- Mediation: What Do I Bring Into the Room? (Abell)
  - Session 7

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Faculty Biographies

Greg Abell

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As the senior partner of Sound Options, Greg coordinates the design, implementation and delivery of all services. His particular area of expertise is in assisting agencies, organizations and communities in designing and implementing systems for more effectively managing conflict, and facilitating productive and collaborative work environments. He is experienced in mediating highly contentious, multi-party community and institutional disputes.

Greg’s practice as a conflict resolution professional is driven by a core belief that everything of importance happens within the context of interpersonal relationships. He believes that one of his strengths is his ability to weave his experience into his consulting and teaching as he assists individuals and organizations in reducing the costs of conflict. His background in psychology led to an interest in mediation, and in the late 1980s he served as a founding member and the first Board President of the Kitsap County Dispute Resolution Center. During the last 10 years, he has been a senior consultant to the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and Board President for the Washington Mediation Association.

Holly Almon-Morris

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Holly Almon-Morris is a Board Certified Behavior Analyst who received a Bachelor of Music Degree from Florida State University, and her Master's degree in Behavior Analysis from the University of North Texas. In her Master's Degree program, Holly specialized in the behavior analytic treatment of autism. Her areas of research have focused on staff training procedures, precision teaching, program development, observation and measurement systems, and social and play skills for persons with autism and other special needs. Her current areas of interest include pragmatic language development and programming, teaching appropriate assent withdrawal/self-advocacy skills to children with autism, instructional design, programming for non-
vocal students using speech-generating devices, and designing functional assessments/analyses and behavior support plans.

Holly has enjoyed working with children with autism and related disabilities since 1996. She has served as an instructor and data analyst at the Martin C. Barrel School in Levittown, New York, a zone leader at the Dallas/Fort Worth Center for Autism, and a precision teaching instructor at the FEAT of Washington Summer Academic Program. She has also served as a teaching fellow for behavior analysis classes at the University of North Texas, and as a representative for Behavior Analysis Technology Support Systems, which focused on teacher training and implementation of functional analyses in public schools.

In 2002, during her last year of graduate school in Texas, Holly joined O.R.L.’s staff (formerly Fabrizio/Moors Consulting) as a Program Manager. She moved to the state of Washington to serve as a Consultant/Program Manager in June of 2003.

Holly has presented her applied work with children with autism since 2002 at the local, state, and national levels at such professional conferences as the Association for Behavior Analysis, the Texas Association for Behavior Analysis, and the International Precision Teaching Conferences. She has served as a member of the Peer Review Committee at the University of North Texas, and is currently a member of the Association for Behavior Analysis, the Standard Celeration Society, and the Association for Behavior Analysis Autism Special Interest Group.

Michael A. Fabrizio

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Michael Fabrizio is a Board Certified Behavior Analyst who received his Bachelor's Degree in Psychology and Master's Degree in Educational Psychology/Applied Behavior Analysis from West Virginia University. He is currently a doctoral candidate in the University of Washington's Department of Special Education where he is specializing in behavior analysis, instructional design, autism, and technical communication. He has worked with children with disabilities throughout his more than fifteen-year career, serving as a Senior Educational Specialist for the West Virginia Autism Training Center at Marshall University, an autism Program Specialist for the Spectrum Center for Educational and Behavioral Development in Berkeley, California, Head Teacher for Morningside Academy, a private school for children with learning differences, and later as the Lead Trainer in Morningside's Public School Improvement Project.

Michael resides in Seattle, Washington where he serves as a partner and Clinical Services Supervisor within the Organization for Research and Learning (O.R.L.) a behavior analytic private practice that works with learners with autism, and as the Clinical Services Director Families for Effective Autism Treatment (FEAT) of Washington. He is also an adjunct professor of behavior
analysis in the University of North Texas Department of Behavior Analysis, an adjunct professor in the Applied Behavior Analysis master's degree program at the Chicago School of Professional Psychology, and the past president of the Standard Celeration Society, a special interest group within the Association for Behavior Analysis. Michael serves on the editorial board of the Journal of Precision Teaching and Celeration and the Journal of Early Intensive Behavioral Intervention, and has served as a guest reviewer for the Journal of Applied Behavior Analysis.

Michael has presented more than 100 data-based papers related to his clinical work with children with autism and other disabilities at a range of state, regional, and national professional conferences including the Autism Society of America, the West Coast Special Education Conference, the Association for Behavior Analysis, the Association for the Severely Handicapped, the Association for Science in Autism Treatment, and the International Precision Teaching Conference. Michael has published his work in such professional journals as the Journal of Precision Teaching and Celeration, the Behavior Analysis Digest, the European Journal of Behavior Analysis, the Behavior Analyst Today, and the Journal of Speech Language Pathology and Applied Behavior Analysis. For a list of Michael's publications, please click here.

Michael is a Supporting Member of both the Cambridge Center for Behavioral Studies and the Association for Behavior Analysis, and a Sustaining Member of the Standard Celeration Society. He received the 2000 New Contributor's Award presented by the Standard Celeration Society for his applied research work, and serves as a member of the scientific advisory council.

Wendy B. Marlowe, Ph.D., ABPP

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Dr. Marlowe has been engaged in the private practice of clinical neuropsychology and language pathology since 1979. She received her B.A. (Speech Pathology and Audiology) from Boston University, her M.A. (Language Pathology/Learning Disabilities) from Northwestern University and her Ph.D. (Neurological Psychology) from the University of Victoria, British Columbia. She has served as the Supervisor of the Speech/Language Services and Learning Abilities Unit of the Seattle Hearing and Speech Center, and as Clinical Assistant Professor of the University of Washington Health Sciences Center.

Dr. Marlowe is a member of numerous learned and professional societies, such as the Association for Children and Adults with Learning Disabilities, the International Neuropsychology Society, the American Psychological Association, the National Academy of Neuropsychology, and the American Board of Clinical Neuropsychology, as well as being a frequent author and lecturer. She has also testified in many special education due process hearings.
Mark C. Weber

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Professor Weber's main professional interests are disability rights and complex tort litigation. He is the author of Disability Harassment (NYU Press 2007), Understanding Disability Law (Lexis-Nexis 2007), Special Education Law Cases and Material (Lexis-Nexis 2d ed. 2007) (with Sarah Redfield and Ralph Mawdsley), and Special Education Law and Litigation Treatise (LRP Pubs. 3d ed. 2008). He frequently speaks on disability law issues at national and international programs. He has presented testimony on the implementation of the ADA to the U.S. Civil Rights Commission, and is active in community service and legislative initiatives on disability matters. Professor Weber's work on complex tort litigation includes both scholarship and law reform efforts. He has appeared at programs on mass tort issues conducted by the Indiana court system, the Illinois court system, and the Federal Judicial Center, and at various academic symposia. He began his career as a staff attorney at the Legal Assistance Foundation of Chicago and then worked as a clinical fellow at University of Chicago Law School. At DePaul, he has served as Associate Dean and Acting Dean of the College of Law. He has received the College of Law Outstanding Teaching Award, the DePaul University Excellence in Public Service Award, the College of Law Excellence in Scholarship Award, the DePaul Spirit of Inquiry Award, and the Center for Disability and Elder Law Distinguished Service Award. He was named Vincent dePaul Professor of Law in 2004.
The Goal of Assessment Is Appropriate Remediation

Wendy B. Marlowe, Ph.D., ABPP-CN
Diplomate in Clinical Neuropsychology

The goal of education is to transform children into competent, knowledgeable and successful adults who can navigate their worlds and engage in meaningful endeavors to be self-sufficient and productive.

The process of education involves:

- Adaptation / understanding of rules
- Problem solving
- Reasoning and logical analysis
- Academic skills
- Social skills and behaviors

“Special Education....a service, not a place”
OSPI, Title Page, Washington State Regulations

A meaningful assessment does not just open the door. It guides the route through special education.

I. IDEA requirements

A. Comprehensive assessment (34CFR300, 530-536, 540-543)
   1. Native language
   2. Valid for specific purpose used
   3. Administered by trained professional (implies interpretation)
   4. Tailored to assess specific areas of education needs
   5. Measure what purports to measure
   6. Not used as single procedure/sole criterion
   7. Functional/developmental information regarding progress in general
B. **Assessment plan required based upon review of existing evaluation data determination of need for additional data**

C. **Purpose of assessment** (34 CFR 300, 500, 532, 533) (Per Lyn Beekman, Special Education Solutions, IDEA: The Basics, 5th National Academy)

1. Eligibility
2. Present levels of performance and educational need
3. Nature/extent of all special education/related service needs
4. Not just needs linked to disability category
5. Additions/modifications to meet IEP goals and participate in general curriculum

**II. Overview of Assessment**

A. **Purpose of Assessment** is not simply qualification for special education or identifying “how far behind” a student is.

1. Normal learners learn *in spite of how* we teach them. Disabled learners learn *because of how* we teach them.

B. **Purpose of Assessment**

1. Presence / absence of disability
2. Impact of disability on educational performance
3. Need for *specially designed instruction*
4. Recommendations regarding services, particularly *specially designed instruction*

C. **Specially Designed Instruction**

1. *Specially designed instruction* is not simply using the same techniques and strategies one uses for normal learners, with the addition of repetition or reduced rate of instruction.
2. The concept of *specially designed instruction* is based upon the premise that disabled learners learn differently than normal learners. Learners with special needs require different strategies in order to learn effectively.
3. Extensive research in the areas of cognitive psychology, neuropsychology, education and special education has consistently demonstrated that not all individuals in a specific funding category learn in the same way.
4. Therefore, the *specific techniques and strategies by which an individual student will learn most effectively should be identified as part of the assessment process for special education.*
III. **There is a difference between testing and assessment.**

A. Tests are a series of observations or behavioral samples that are standardized in terms of administration, scoring and interpretation.

1. Standardization is important because it insures that a test is administered in exactly the same way every time it is administered. Because of that sameness, it is possible for the examiner to compare behavioral samples between individuals over time, or with expected performance levels.

2. The weakness of testing relates to the fact that the psychological test observations are limited to the behaviors measured by the test.

B. Tests are an indirect method of understanding real world behavior.

C. The behavior sampled relates to constructs measured, like intelligence, language and memory, or academics, such as reading, math and written language.

D. Tests do not answer questions. Test data must be interpreted in order to be meaningful.

E. Tests are tools, not answers. By analogy, if you want to build a house, you use tools. You live in the end product of the tool utility, not the tools per se.

F. Because test scores can confirm a self-fulfilling prophecy, how one tests can determine the conclusions.

G. Criteria for tests are determined by the *Standards for Educational and Psychological Testing* published by the American Education Research Association, American Psychological Association and the National Council on Measurement in Education. The *Standards* are modified periodically in order to maintain up-to-date criteria regarding test construction.

H. The *Standards* indicate what constitutes appropriate standardization, validity and reliability.

I. Tests that do not meet the criteria established by the *Standards* should not be administered because the information they provide is misleading.
IV. The Nature of Prediction

A. Testing.

1. Tests are used to predict behavior from the test setting to the classroom, and from what the student knows to what he / she need to learn. However, tests rarely explain the how of learning.

2. Prediction depends on the examiner understanding the cognitive skills required for the task and the actual relationship between the test scores and the skill in question.

3. In order to fully measure the skill it is necessary to sample enough behavior. Behavior sampling of a skill often required multiple tests because many tests sample only a small segment of the required skills.

B. Test interpretation, a critical aspect of the assessment process, is highly dependent upon the use of statistics.

1. One cannot understand the scores obtained in the absence of statistics.

2. In order to render conclusions, build generalizations and provide recommendations, the individual interpreting the scores must have an up-to-date working knowledge of statistical concepts to (1) select appropriate tests, (2) administer, and (3) interpret tests within recognized and accepted current guidelines.

3. All teachers, school psychologists, SLPs, OT/PTs, etc., have taken statistics as part of their training. Unfortunately, many professionals fail to fully understand statistical concepts and fail to update their knowledge over the course of time.

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Artificial Nature of Testing Situation: Behavior samples in controlled situations.

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<thead>
<tr>
<th>Testing setting</th>
<th>Everyday life</th>
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<tr>
<td>Structured by examiner</td>
<td>Unstructured</td>
</tr>
<tr>
<td>Assisted in task focus by examiner</td>
<td>Little task focus provided</td>
</tr>
<tr>
<td>Nonpunitive setting</td>
<td>Negative feedback on errors</td>
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<tr>
<td>Planning aided by examiner</td>
<td>Planning by individual</td>
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<td>Motivation aided by examiner</td>
<td>Self-motivation necessary</td>
</tr>
<tr>
<td>Persistence encouraged</td>
<td>Persistence up to individual</td>
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<tr>
<td>Failure not emphasized</td>
<td>Fear of failure</td>
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<tr>
<td>Protected environment</td>
<td>Minimally protective milieu</td>
</tr>
<tr>
<td>Inadequacies not exposed</td>
<td>Inadequacies visible to others</td>
</tr>
<tr>
<td>Competition absent</td>
<td>Competition present</td>
</tr>
</tbody>
</table>

(Modified from Archer, 1990)
V. **Statistics (Do not be afraid)**

A. Statistical procedures are used to reduce large amounts of data to a manageable and understandable form in order to enable us to make valid and reliable inferences from the data.

B. Statistics communicate information about the test scores to enable examiners to draw conclusions.

C. Prediction regarding future needs or abilities is based upon statistical and clinical inferences.

D. **Quantitative vs. Qualitative Procedures**
   1. Quantitative procedures: Standardized tests and inventories
   2. Qualitative procedures: Do not meet criteria for standardization
      a) Informal inventories
      b) Screening instruments
      c) Structured observations
      d) Informal observations
      e) Diagnostic teaching
      f) Test analysis

E. **Statistics are measurement tools to help us to understand the relationship between scores (quantitative procedures). We use statistics to compare / contrast tests, scores and abilities.**
   1. Whether the difference between two scores is meaningful
      a) **Standard scores** - permit comparisons between subtests, global/index scores within a test or between tests. Standard scores also permit comparison with test results obtained at a different time in order to determine the presence / absence of change.
      b) **Standard deviations** - define the numerical amount of difference between two scores that is not likely to occur on the basis of chance.
      c) **Base rates** - tell how common a score is (i.e. its frequency in a particular population) so that the clinical significance of the score can be determined. Differences that are uncommon have greater clinical significance than scores that reflect normal variability within or between students.
   2. The extent to which two different tests measure the same function.
      a) **Correlations** - measure the amount of overlap between two tests or subtests. The higher the correlation, the greater the overlap.
3. The significance of “outlier” scores.
   a) Defined as those scores which are extremely discrepant from the majority of scores.
   b) Provide information that enables appropriate interpretation of extreme scores.
   c) Clinical and statistical information should be combined to determine whether an outlier score is a fluke or reflects an important deficit.

4. Determine the amount of error.
   a) Tests are not perfect instruments.
   b) There is a certain amount of error involved in testing.
   c) Statistical analysis determines the amount of error present in a test score.

F. Critical issues in test standardization
1. Reliability
   a) Reproducibility of scores
   b) Measured over time
   c) Statistical correlations
   d) Determines value of the test

2. Validity
   a) Determines usefulness of tests
   b) What the test measures
   c) How well it measures

3. Types of Validity (not discussed but useful to know)
   a) “Face” Validity
      (1) What the test seems to measure
      (2) Does not relate to actual measurement
      (3) “Appearance” only
   b) Content Validity
      (1) Domain of interest often academic
      (2) Appropriateness of test items
      (3) Sufficient information to cover appropriately
      (4) Level of mastery
   c) Criterion Related Validity
(1) Refers to relationship between test scores and a specific outcome.
(2) Adequate psychometric properties (measurable, relevant, bias free).
(3) Complementary relationship
d) Criterion Validity - Concurrent
(1) Criterion is immediately available
(2) Relationship of one test to another, recognized measure
(3) Determined by test score correlation
e) Criterion Validity - Predictive
(1) Criterion will be available in future
(2) Relationship of test to future behavior or performance
(3) Accuracy of test score to predict future behavior or performance
(4) Give test now and correlate in future
f) Construct Validity
(1) Measures specific characteristic or theoretical construct
(2) Includes intelligence, self-esteem, personality, information processing speed, etc.
g) Techniques for Construct Validity
(1) Correlation between the test and behavior
(2) Correlation between test scores and related measure
(3) Correlation of test scores with other measures of same construct
(4) Factor analysis (mathematical procedures to analyze intercorrelations).
h) Predictive Utility
(1) Accuracy of assignment of an individual to a particular group
(2) Examples: Preschool screening and later reading ability, SATs and college performance
(3) Determined by percent correct classification (correct, false negatives, false positives.)
(4) Evaluated in four cell matrix

4. Reliability: Statistical vs. Clinical
(1) Statistical reliability between two measures
(2) The difference is real, not chance
(3) Relates to standard error of measurement

Clinical significance
- Dependent on base rates
- Frequency of occurrence in the normal population

5. Base Rates
(1) Frequency with which scores occur in a specific population
(2) Used to determine clinical significance of differences between scores

6. Clinical Significance
The frequency of the score in the normal population determines the likelihood that the individual belongs to a normal vs. other population.

VI. Critical Issues in Test Interpretation

A. Test scores are summary statements about observed behavior.
   1. Scores may be obtained from any set of behavioral samples.
   2. The numerical score may be a reduction of many very complex behaviors into a single symbol.
   3. However, the test score may or may not accurately reflect the behavior.

B. The utility of the test score is highly dependent upon the extent to which it measures an important behavior.
   1. It is important to look at the behavior, not merely the score.
   2. If the score is over inclusive, it becomes impossible to know what behavioral or cognitive characteristic it represents.
   3. Understanding the underlying behavior is critical to sensitive and sophisticated test interpretation.
   4. Understanding what constitutes normal and abnormal behavior in the specific domain under investigation is also essential in order to interpret test data appropriately.

C. Human beings demonstrate a high degree of variability.
   1. This variability occurs between people and between functions or cognitive domains.
   2. A skilled interpreter of test results needs to have both a clinical and statistical understanding of normal variability and how much variability falls beyond the normal range.
   3. When the variability relates to the method of obtaining the answer, clinical judgment may be required in order to determine the need for specially designed instruction.

D. Subtest scores attempt to summarize all of the behaviors from the individual items into a single number.
   1. That number may be meaningful or misleading. How a student obtained a score is as important or more important than the score itself.

E. Index or global scores are even further removed from the behavior under investigation.
   1. Often (particularly in language and/or academic tests) index scores can be extremely misleading.
   2. Many tests use summary scores based upon subtests that measure significantly different aspects of abilities or behaviors.
3. If each of two subtests produces a different score pattern or normative distribution or is sensitive to a different aspect of behavior, the summary score obscures those differences.

VII. Commonly Used Cognitive Measures

Cognition refers to mental processes including perception, memory, language, organization, reasoning, learning, etc., by which children acquire knowledge, make plans and solve problems. Cognitive functions are assessed using a combination of subjective and objective measures.

A. Intelligence Tests

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<td>Digit Span</td>
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<td>Letter Number Sequencing</td>
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<td>(Arithmetic)</td>
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<td><strong>Processing Speed</strong></td>
</tr>
<tr>
<td>Coding</td>
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<tr>
<td>Symbol Search</td>
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</tbody>
</table>

Comments:

1. The fourth (current) version of the WISC has discontinued the statistically invalid concept of verbal and performance IQ scores

2. Based upon factor analytic research, four index or standard scores have been identified which provide the most robust information regarding cognitive functions on the WISC-IV. These indices include verbal comprehension, perceptual reasoning, working memory and processing speed.

3. Most commonly used measure of intelligence
4. Has extremely large amount of research related to prior as well and current version
5. Excellent standardization (re: ethnicity, SES), validity and reliability (psychometrically supported by factor analysis)
6. Has been validated on a wide range of disability groups
7. Preschool (Wechsler Preschool and Primary Scale of Intelligence-II) and adult (Wechsler Adult Intelligence Scale-III) versions exist for students younger than six and older than 16 years 11 months of age
8. Large practice effects can occur from readministration
9. Some confusion re: scoring of verbal items
10. Less useful at extremes of intelligence
11. Less “user friendly” to language impaired children

**Kaufman Assessment Battery for Children-II**

**Sequential Processing**
- Number Recall
- Word Order
  (Hand Movements)

**Planning**
- Story Completion
- Pattern Reasoning

**Learning**
- Atlantis
- Rebus
  (Atlantis Delayed)
  (Rebus Delayed)

**Simultaneous Processing**
- Rover
- Triangles
- Block Counting

**Knowledge**
- Verbal Knowledge
- Riddles
Comments:

1. Provides a comprehensive assessment of a student’s strengths and limitations based on the clinical and neuropsychological framework of A.R. Luria’s explanation of brain-behavior relationships.

2. At the younger age levels it has three different index or standard scores (learning ability, sequential processing, and simultaneous processing) that are equivalent to IQ scores when using the Luria neuropsychological model. Learning ability reflects an ability to learn from systematic practice with emphasis on the integration of attention/concentration, encoding, storage and sensory integration. The sequential processing domain involves arranging and reproducing input in a strictly defined order to form a chain-like progression. Simultaneous processing requires simultaneous spatial integration of stimuli in order to solve problems as a conceptualized whole. At the young child level it measures analysis, reasoning, organization and prioritization for problem solving short duration tasks. An additional index score, knowledge, does not contribute to the mental processing index under the Lurian model. Nevertheless, the knowledge subtests are frequently administered as a supplement in order to measure the student’s acquired knowledge content.

3. The adolescent battery has four different index or standard scores (learning ability, sequential processing, simultaneous processing and planning ability) that are also equivalent to IQ scores when using a Lurian neuropsychological model. The planning domain, not present in the younger children’s battery, measures decision making and executive functions for short duration visuospatial tasks. It involves short term analysis, reasoning, organization and prioritization.

4. Tends to correlate highly with the Wechsler Intelligence Scale for Children-IV. The mental processing index correlates highly with full-scale IQ score, as does the nonverbal index. As indicated above, the WISC-IV verbal comprehension index correlates very highly with the KABC-II knowledge scale. The WISC-IV perceptual reasoning index has its highest correlations with the KABC-II simultaneous processing score. The WISC-IV working memory index has a substantial correlation with the sequential processing scale as both measure short term memory.

5. Has excellent standardization with good validity and reliability

6. Measurement is good at the extremes as well as for more typical learners

7. Information regarding diverse populations

8. Has been validated on multiple disability populations

9. Non-Verbal Index useful for special needs individuals
10. Labels of processing indices are broader than behaviors sampled

**Differential Abilities Scale - II**

**Comments:**

1. Really multiple batteries, dependent on age


3. Flexibility of administration: Core and Extended batteries

4. Choice of subtests for different children / needs

5. Extended norms for very bright or limited children

6. Useful diagnostic information

7. Excellent standardization with good validity and reliability as well as co-normed achievement tests

8. Lack of a comparable battery throughout the age ranges covered so that preschool and school-age levels are based on different combinations of subtests

9. The same cluster scores and subtest scores are not present throughout, resulting in misleading profile analysis

10. Only two subtests per cluster at the school age levels

11. Limited coverage of abilities at pre-school level

12. Complicated test administration

**Reynolds Individual Abilities Scale**

**Verbal Intelligence**

*Guess What*

Riddles test: Measures verbal reasoning, vocabulary knowledge, sentence completion format

**Verbal Reasoning**

*Verbal Analogies*

- Younger: “an elephant is big, a mouse is ________”
- 10+ years: “carrot is to vegetable as orange is to _____”
Non-Verbal Reasoning

*Odd Item Out*
What does not belong? Based on analogical thinking

*What’s Missing?*
Picture Completion

Composite Memory

*Verbal Memory*
Repeating sentences or stories

*Non-Verbal Memory*
Brief encoding and storage of visual stimuli, pictures and abstract symbols

Comments

1. Ages 3 - 93 years
2. Brief test 20 - 30 minutes
3. Estimates general intellectual abilities
4. Well normed
5. Different items at different ages
6. Some studies show no separate factors associated with domains, no verbal / non-verbal factors

<table>
<thead>
<tr>
<th>Stanford-Binet Intelligence Scale-V</th>
</tr>
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<tbody>
<tr>
<td>Fluid Reasoning</td>
</tr>
<tr>
<td>Knowledge</td>
</tr>
<tr>
<td>Quantitative Reasoning</td>
</tr>
<tr>
<td>Visual Spatial</td>
</tr>
<tr>
<td>Working Memory</td>
</tr>
</tbody>
</table>

Comments:

1. Verbal and non-verbal subtest for each domain of cognitive abilities
2. Although it is designed to measure 5 factors or domains, factor analysis only measures general intelligence.
3. Does not even measure 2 factors: verbal and non-verbal
4. Excellent standardization with good concurrent validity and reliability (other aspects of validity problematic as indicated above)

5. Lack of comparable battery throughout the age ranges covered so that scores obtained at different ages are based on different combinations of subtests

6. Fails to provide the same range of composite scores, factor scores and subtest scores throughout the scale at different ages so that changes in test performance may reflect changes in the test rather than the student

7. Difficulty in interpreting the norms for subtests that have estimated scales or values at some ages

8. Overly long and complex administration and procedures

B. Language Tests

1. Some commonly used tests provide an insufficient assessment of language because they measure only one function. Instruments that permit rapid screening fail to widely sample the language domain. Tests that only require the use of pictures and either recognition of vocabulary or production of a single word answer provide an insufficient basis for generalization regarding language functions. Examples include:
   - Peabody Picture Vocabulary Test-4 (PPVT-4)
   - Test of Language Comprehension-3 (TACL-3)
   - Oral and Written Language Scales (OWLS)
   - Expressive One-Word Vocabulary Test (EOWVT)

2. Different tests evaluate language skills in different ways. It is important that language tasks used for evaluation measure language in the way it is used in various daily situations. Tasks that isolate the language functions artificially often fail to identify special needs.

3. Two examples of tests that permit a broad sampling of language functions include Comprehensive Assessment of Spoken Language (CASL) and Clinical Evaluation of Language Fundamentals - 4 (CELF-4). Both tests measure such a wide range of language functions that their index scores mask meaningful differences between language functions. However, both tests also fail to measure some meaningful aspects of language.

4. Sometimes the significance of a subtle language disorder, particularly in the area of auditory processing, has greater impact on the acquisition of other skills and abilities. For example, disorders of auditory awareness and auditory memory, as assessed by the Comprehensive Test of Phono-


greater extent than oral language per se. Deficits in the ability to manipulate speech sounds for analysis, blending or phonological (sound) sequencing interfere with learning to decode for reading or learning to spell. Other associated problems may include difficulty retaining multiplication tables or multi step tasks such as long division.

C. Academic Tests

1. The problems in the use of index scores described above are reflected in academic tests. Using global scores to evaluate competence in reading may mask differences between the ability to sound out words, recognize sight vocabulary words or comprehend what one reads. In the area of mathematics, differences between calculation problems and story problems will be masked by the use of index scores. If the examiner does not watch the student perform the mathematics, difficulty with determining the process to use, finger counting versus automatic number facts and other problems reflective of limited skill development will not be apparent.

The most commonly used academic tests are the Woodcock Johnson - III and the Wechsler Individual Achievement Test-II.

2. In the area of reading, speed and accuracy are critical variables. Unless the student is able to read fluently, s/he will be unable to read for information and learning.

   a) There are a number of well standardized and extremely useful tests to assess aspects of fluency. Although they are excellent for the niche for which they were developed, they are not sufficient measures of all aspects of reading. They should supplement the more comprehensive batteries.

   b) The test most commonly used to measure speed of word recognition, comparing sight vocabulary and phonetic decoding is the Test of Word Reading Efficiency (TOWRE).

   c) The test most commonly used to evaluate oral reading fluency with comprehension is the Gray Oral Reading Test - 4 (GORT-4).

D. Screening Instruments

1. Screening instruments provide insufficient information about the student’s skills or abilities to enable planning specially designed instruction or to evaluate skill development. Their scores provide very limited information. Their utility is rapid administration for overworked school personnel. Although they appear to benefit the IEP process in providing scores quickly and easily, their benefit to evaluate meaningful student learning is questionable.
2. Commonly used screening tests include the Wide Range Achievement Test-4 (WRAT-4), as well as the Woodcock McGrew Werder Mini Battery of Achievement.

E. Rating Scales for Behavior

1. Behavior rating scales are commonly used in order to obtain an overview of a student’s behavior.

2. Many rating scales have forms for teachers, parents, and the student to complete.

3. Some rating scales are more generalized. These include:
   - Child Behavior Checklist (CBC)
   - Behavior Assessment System for Children (BASC)
   - Personality Inventory for Children, Second Edition (PIA-2)
   - Child Symptom Inventory (CSI)
   - Home Situations Questionnaire
   - School Situations Questionnaire
   - ACTeRS - 2nd Edition

4. Specialized scales for sampling behaviors related to executive functions and/or attention focusing disorders include:
   - Behavior Rating Inventory of Executive Functions (BRIEF)
   - Conners’ Rating Scales - Revised (CRS-R)
   - ADHD Rating Scales IV
   - Attention Deficit Disorders Evaluations Scale - Second Edition
   - Brown Attention Deficit Disorder Scales
   - ADD Questionnaire
   - Personality Inventories (adolescents only)
     - Minnesota Multiphasic Personality Inventory-Adolescent
     - Millon Adolescent Clinical Inventory

VIII. Sources of information about tests.


For questions we did not have time to answer, please feel free to contact me at:

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901 Boren Avenue, Suite 610  
Seattle, WA 98104  
(206) 623-5217  Fax (206) 623-2337
Neuropsychologists always show brain diagrams

THE GOAL OF ASSESSMENT IS
APPROPRIATE REMEDIATION

Wendy B. Marlowe, Ph.D., ABPP-CN
Diplomate in Clinical Neuropsychology

SPECIAL EDUCATION HEARING OFFICER
AND MEDIATOR TRAINING

November 2009

Preview of Coming Attractions
1. Special education
2. The purpose of testing
3. General principles regarding testing and assessment
4. Demonstration of specific tests
5. How we move from testing to meaningful interventions
The goal of education is to transform children into competent, knowledgeable and successful adults who can navigate their worlds and engage in meaningful endeavors to be self-sufficient and productive.

The process of education involves:

- Adaptation / understanding of rules
- Problem solving
- Reasoning and logical analysis
- Academic skills
- Social skills and behaviors
“Special Education…a service, not a place”
OSPI, Title Page, Washington State Regulations

A meaningful assessment does not just open the door.
It guides the route through special education.

IDEA Requirements

A. Comprehensive assessment (34CFR300.330-336, 140-543)
   Native language
   Valid for specific purpose used
   Administered by trained professional (implies interpretation)
   Tailored to assess specific areas of education needs
   Measure what purports to measure
   Not used as single procedure/sole criterion
   Functional/developmental information regarding progress
   in general

   From Lyn Beekman, Special Education Solutions, IDEA: The Basics, 5th National Academy

IDEA Requirements (continued)

B. Assessment plan required based upon review of existing evaluation data determination of need for additional data

C. Purpose of assessment (34CFR300.500, 532, 533)
   Eligibility
   Present levels of performance and educational needs
   Nature/extent of all special education/related service needs
   Not just needs linked to disability category
   Additions/modifications to meet IEP goals and participate in general curriculum

   From Lyn Beekman, Special Education Solutions, IDEA: The Basics, 5th National Academy
Overview of Assessment

A. Purpose of Assessment is not simply qualification for special education or identifying “how far behind” a student is.

Normal learners learn in spite of how we teach them. Disabled learners learn because of how we teach them.

B. Purpose of Assessment

1. Presence / absence of disability
2. Impact of disability on educational performance
3. Need for specially designed instruction
4. Recommendations regarding services, particularly specially designed instruction

C. Specially Designed Instruction

1. Specially designed instruction is not simply using the same techniques and strategies one uses for normal learners, with the addition of repetition or reduced rate of instruction.

2. The concept of specially designed instruction is based upon the premise that disabled learners learn differently than normal learners. Learners with special needs require different strategies in order to learn effectively.
Specially Designed Instruction (continued)

3. Extensive research in the areas of cognitive psychology, neuropsychology, education and special education has consistently demonstrated that not all individuals in a specific funding category learn in the same way.

4. Therefore, the specific techniques and strategies by which an individual student will learn most effectively should be identified as part of the assessment process for special education.

Tests

Major source of information for school performance
Tests are an indirect method of understanding real world behavior
Series of observations or behavioral samples.
Standardized administration, score, interpretation
Influenced by many factors

Behavioral Samples

Relate to constructs measured

<table>
<thead>
<tr>
<th>Intelligence</th>
<th>Reading</th>
</tr>
</thead>
<tbody>
<tr>
<td>Language</td>
<td>Math</td>
</tr>
<tr>
<td>Memory</td>
<td>Written Language</td>
</tr>
</tbody>
</table>
Strengths of Standardized Tests

Sameness
Enables Comparison
   Between individuals
   Related to expectations (norms)
   Re-assess over time

Weakness of Standardized Tests

Tools, not answers
Limited to behavior measured
May be misleading
Only as good as the underlying statistics
Require skilled interpretation

Artificial Nature of Testing Situation:
Behavior samples in controlled situations

<table>
<thead>
<tr>
<th>Testing setting:</th>
<th>Everyday life:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structured by examiner</td>
<td>Unstructured</td>
</tr>
<tr>
<td>Assisted in task focus by examiner</td>
<td>Little task focus provided</td>
</tr>
<tr>
<td>Nonpunitive setting</td>
<td>Negative feedback on errors</td>
</tr>
<tr>
<td>Planning aided by examiner</td>
<td>Planning by individual</td>
</tr>
<tr>
<td>Motivation aided by examiner</td>
<td>Self-motivation necessary</td>
</tr>
<tr>
<td>Persistence encouraged</td>
<td>Persistence up to individual</td>
</tr>
<tr>
<td>Failure not emphasized</td>
<td>Fear of failure</td>
</tr>
<tr>
<td>Protected environment</td>
<td>Minimally protective milieu</td>
</tr>
<tr>
<td>Inadequacies not exposed</td>
<td>Inadequacies visible to others</td>
</tr>
<tr>
<td>Competition absent</td>
<td>Competition present</td>
</tr>
</tbody>
</table>

(Modified from Archer, 1998)
Tests used to predict behavior

From test setting to classroom

From what student knows to what will be learned

Rarely explain the how of learning

Prediction dependent on

Understanding of cognitive skills required for task

Sampling enough behavior to fully measure the skill (often requires multiple tests)

Actual relationship between the test scores and skill in question
Standards for Educational and Psychological Testing

Criteria for tests used in education and psychology

Standardization, validity, reliability

Experts / school personnel should follow

Part of ethical codes of educators, psychologists

All professionals who administer tests have taken courses in statistics, test construction and administration.

Therefore, all teachers, school psychologists and SLPs should be knowledgeable about the tests they rely on.

Statistics: Critical for Test Interpretation

A. Purpose

• Reduce/systemize large amounts of data
• Communicate test score information
• Enable predictions
• May be subject to misinterpretation
B. Normal Curve

![Normal Curve Diagram](image)

C. Quantitative vs. Qualitative Procedures

1. Quantitative procedures: Standardized tests and inventories
2. Qualitative procedures: Do not meet criteria for standardization
   - Informal inventories
   - Screening instruments
   - Structured observations
   - Informal observations
   - Diagnostic teaching
   - Test analysis

D. Statistics definition

1. Measurement tools
2. Explain relationships
3. Compare / Contrast
Statistics definition (continued)

4. Determine amount of error
   • Tests are not perfect instruments
   • There is a certain amount of error involved in testing
   • Statistical analysis determines the amount of error present in a test score

Statistics definition (continued)

5. The significance of “outlier” scores
   • Defined as those scores which are extremely discrepant from the majority of scores
   • Provide information that enables appropriate interpretation of extreme scores
   • Clinical and statistical information should be combined to determine whether an outlier score is a fluke or reflects an important deficit

E. Statistics reveal meaningful score differences

1. Standard scores - permit comparisons between subtests, global/index scores within a test or between tests. Standard scores also permit comparison with test results obtained at a different time in order to determine the presence / absence of change.

2. Standard deviations - define the numerical amount of difference between two scores that is not likely to occur on the basis of chance.
Statistics reveal meaningful score differences (continued)

3. **Base Rates** – tell how common a score is (i.e. its frequency in a particular population) so that the clinical significance of the score can be determined. Differences that are uncommon have greater clinical significance than scores that reflect normal variability within or between students.

Statistics reveal meaningful score differences (continued)

4. **Correlations**
   - The extent to which two different tests measure the same function.
   - Measure the amount of overlap between two tests or subtests.
   - The higher the correlation, the greater the overlap.

Critical issues in test standardization

A. **Reliability**
   - Reproducibility of scores
   - Measured over time
   - Statistical correlations
   - Determines value of the test
Critical issues in test standardization (continued)

B. Statistical vs. Clinical Significance

Statistical reliability between two measures
• The difference is real, not chance
• Relates to standard error of measurement

Clinical significance
• Dependent on base rates
• Frequency of occurrence in the normal population

C. Base Rates

• Frequency with which scores occur in a specific population
• Used to determine clinical significance
• The frequency of the score in the normal population
• Determines the likelihood that the individual belongs to a normal vs. other population.

D. Validity

• Determines usefulness of tests
• What the test measures
• How well it measures
“Those who select tests and draw inferences from test scores should be familiar with the relevant evidence of validity and reliability for tests and inventories used and should be prepared to articulate a logical analysis that supports all facets of the assessment and the inferences made from the assessment.”

*Standards for Educational & Psychological Testing*, p. 133

**When we test, how do we know what we are testing?**

Constructs to be measured are identified by labels

- Intelligence
- Language
- Memory
- Reading
- Mathematics
- Written Language

**Label Accuracy: “Construct Validity”**

Look at relationship of new test with existing tests
(Statistical process is correlation)

How highly should the new test correlate?

What should comparison standard be?

- Previous version of same test
- Another existing test
Critical Issues in Test Interpretation

1. Test scores
   a. Summary statements / observed behavior
   b. Complex behavior reduced to single score
   c. May / may not accurately reflect behavior

2. Utility of test scores
   a. Extent it measures important behavior
   b. Look at behavior not just the score
   c. May mask critical behavior
   d. Many ways to achieve same score

Critical Issues in Test Interpretation (continued)

3. Human variability
   a. Normal variability
   b. Score variability
   c. “Strategy” variability

4. Variability
   a. Subtest scores
   b. Index, IQ or global scores
   c. Importance depends on what is measured
Intelligence Questions

Is intelligence IQ?

What is IQ?

Can we tell what it is by looking at intelligence tests?

I.Q.

A standard score measuring overall general abilities.

Used to encompass the ability to learn and adapt

First measures of intelligence used mental age

MA/CA x 100

Mental Age / I.Q.

Suggest all abilities can be reduced to a single score

Nice concept

Too simplistic

Invalid
Most measures of intelligence

Use multiple standard scores

Measure multiple domains

Cognition (broader than intelligence)

Mental processes used for learning, planning, problem solving and adapting.

Include:

- Perception
- Memory
- Organization
- Language
- Reasoning
- Visual Processing

Commonly used tests of intelligence

- Wechsler Intelligence Scale for Children – IV
- Kaufman Assessment Battery for Children – II
- Differential Abilities Scale – II
- Reynolds Individual Abilities Scale
- Stanford Binet - V
WISC–IV
No longer uses IQ scores
4 Index Scores – Based on Factor Analysis
   Verbal Comprehension
   Perceptual Reasoning
   Working Memory
   Processing Speed

WISC–IV Verbal Comprehension Index
   Similarities
   Vocabulary
   Comprehension
   (Information)
   (Word Reasoning)

WISC–IV Perceptual Reasoning Index
   Block Design
   Picture Concepts
   Matrix Reasoning
   (Picture Completion)
Multiple Examples

WISC-IV Working Memory Index

Digit Span
Letter – Number Sequencing
(Arithmetic)

WISC-IV Processing Speed Index

Coding
Symbol Search
(Cancellation)
Kaufman Assessment Battery for Children – II

<table>
<thead>
<tr>
<th>Sequential Processing:</th>
<th>Number Recall</th>
<th>(Hand Movements)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Word Order</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning:</td>
<td>Story Completion</td>
<td>Pattern Reasoning</td>
</tr>
<tr>
<td>Learning:</td>
<td>Atlantis</td>
<td>(Delayed)</td>
</tr>
<tr>
<td></td>
<td>Rebus</td>
<td>(Delayed)</td>
</tr>
<tr>
<td>Simultaneous Processing:</td>
<td>Rover</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Triangles</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Block Counting</td>
<td></td>
</tr>
<tr>
<td>Non Verbal Index</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Multiple Examples
### DAS – II Domains (selected levels)

- Verbal
- Nonverbal
- Nonverbal Reasoning
- Spatial
- School Readiness
- Working Memory
- Processing Speed

(see Sattler, p. 614 for subtest list)

### Labeling Accuracy

Most tests measure different “domains” via subtests

How do we know they are measuring what they say?

### Stanford Binet Intelligence Scale – V

5 Domains:  
- Fluid Reasoning
- Knowledge
- Quantitative Reasoning
- Visual Spatial Processing
- Working Memory

10 Subtests:  
- Verbal
- Non Verbal
Stanford Binet Factor Analysis

Only measures one factor

General Intelligence

Does not differentiate

Verbal
Nonverbal

Assessment

Assessment is defined as the systematic collection, organization and interpretation of information geared to developing an understanding of the student’s abilities and needs in order to generate valid predictions for new settings and circumstances.

Prediction based upon:

1. Test factors
   Statistical properties
   Ecological validity

2. Skills and knowledge of evaluator
Ecological Validity

The extent to which the tests administered accurately predict daily life functions.

Ecological validity for one group does not mean ecological validity for another group.

Many tests are good predictors of classroom and basic skills for normal, but not special needs students.

When test scores overestimate classroom performance

Rarely a “motivational” issue

Look at structure

Behaviors sampled
Essentials of Assessment

Understand the strengths and weaknesses of test instruments
Understand the methodology of standardization
Determine what the scores actually mean
Determine whether the difference between scores is meaningful
Rectify inconsistencies

Interpretation of Test Data

Consistent with psychometric properties
Integrate clinical observations, test data and other aspects of student
Consensus does not mean accuracy
Base generalizations on sound scientific principals and data.

Tests measure More / Less Than They Say

More:
- Attention
- Concentration
- Working Memory
- Sequencing
- Fund of Knowledge

Less:
- Life Experience
- Problem Solving
- Task Persistence
- Planning
- Verbal Fluency
Tests measure More / Less Than They Say (continued)

Less:  Example: Language

   PPVT-4
   Widely used
   Fast, cheap, easy
   Controlled measure of vocabulary
   Said to measure “receptive language”

Example

Test of Semantic Skills – Primary

   “Overall picture of your student’s flexibility,
   diversity, and richness of language.”
Example

Relationship Between Assessments and Remediation

What is an IEP?
Whose needs should be met?
Benchmarks vs strategies

Students With Special Needs

Do not benefit sufficiently from regular classroom instruction
Need and are entitled to specially designed instruction
**Diagnosis or Category Classification**

- Does not specify intervention per se
- Should identify core areas of need
- Identifies categories of intervention
- Test further to identify specific areas for specially designed instruction

**Special education assessment should define special needs, not just areas of instruction**

**National Reading Panel**

5 Areas Essential

1. Phonemic Awareness
2. Phonics
3. Fluency
4. Vocabulary Comprehension
5. Text Comprehension
Assessment of Reading

Should assess all 5 areas

Usually requires multiple tests

Should translate into specific IEP goals and objectives for all 5 areas

Mathematics


Focused – preparation for algebra

Coherent – effective logical progression to increasing sophistication

Proficiency

Key Concepts

Achieve automatically

Flexible, accurate, competent

II. National Research Council (2001)

1. Conceptual understanding – concepts, operation, relations

2. Procedural fluency – skills to carry out procedures flexibly, fluently and appropriately

3. Strategic competence – ability to formulate, represent and solve mathematical problems

4. Adoptive reasoning – capacity for logical thought, reflection, explanation, justification

5. Productive disposition – habitual inclination to see math as sensible, useful, worthwhile and self as diligent and efficacious
Use of the DSM in Special Education

Diagnostic and Statistical Manual – IV

Used for insurance reimbursement

Touted by attorneys in Special Education Hearings

Lack of conceptual basis / highly political

Agreement re: symptoms

Small group of psychiatrists

“Sword to secrecy”

Based on “research” funded by drug companies

Not required in Federal Law

Keep Your Eyes On The Prize

The goal of education is to enable each student to become a productive and successful member of the community, able to earn and contribute to society.
Major IDEA Caselaw and Other Developments

Mark C. Weber
Vincent dePaul Professor of Law, DePaul University

Substantive Issues

I. Evaluation and Eligibility

A. Ninth Circuit

1. *J.G. v. Douglas County Sch. Dist.*, 552 F.3d 786 (9th Cir. 2008). Overturning decision to decrease reimbursement of private evaluations of twins with autism when parents refused to share private evaluations; ruling that Nevada’s 45-school-day timeline for evaluation permissible interprets IDEA’s timeliness requirements but does not establish safe harbor for school districts; determining that delay over summer was permissible delay in light of absence of notice that twins potentially had autism and holding that failure to evaluate for autism before initial IEP did not deny appropriate education; also holding that IEPs were adequate and capable of implementation; further requiring dismissal of section 504 claim for failure to exhaust.

2. *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008). Ruling that school district failed to evaluate child in all areas of disability, depriving child of appropriate education, by not evaluating child for autism after having notice child potentially had autism, but referring parents to child development center instead; requiring reimbursement for services and associated attorneys’ fees; holding that school district did not violate IDEA by failing to provide child summer services; also stating that 1997 IDEA Amendments obligated schools to provide children with disabilities with meaningful benefit, more than some educational benefit as prescribed by *Rowley* case.

3. *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir. 2007). Holding that child did not meet standard for seriously emotionally disturbed when child had satisfactory interpersonal relationships, child’s inappropriate behavior was not pervasive and ongoing and did not have adverse effect on educational performance, and depression was not to marked degree and did not have adverse effect on educational performance; holding that procedural violation of failing to have child’s special education teacher on IEP team was harmless error.

B. Other Circuits

1. *A.C. v. Board of Educ.*, 553 F.3d 165 (2d Cir. 2009). Holding that failure to conduct functional behavioral assessment did not deny appropriate edu-
cation when strategies for behavior applied by district adequately addressed behavior of child; also finding IEP substantively adequate despite argument that reliance on one-to-one aide furthered helplessness, when child made progress toward independence in previous year with aide services and IEP established other means to promote independence.

2. *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). Ruling that when parents ended IEP development process because of concerns about school district’s plan to place autistic child with in integrated classroom, lack of final proposed IEP from district did not deny appropriate education; reversing district court’s reimbursement decision and remanding to determine whether draft IEP met substantive adequacy standard, but considering only draft IEP as written rather than subsequent offers of services; affirming decision that later year’s proposed IEP was appropriate.

C. District Courts

1. *W.H. v. Clovis Unified Sch. Dist.*, No. CV F 08-0374 LJO DLB, 2009 WL 1605356 (E.D. Cal. June 8, 2009). Ruling that school district should not have ignored evidence that writing was area of suspected disability and that district inadequately assessed child in writing by ignoring difficulty in getting student to write; further holding that error deprived child of educational benefits; ruling that child was properly assessed in visual-motor integration, working memory, and behavior; further overturning hearing officer decision and determining that child with ADHD was eligible under IDEA on basis of Other Health Impairment, despite passing grades and adequate test scores, reasoning that grades and scores resulted from accommodations allowing reduced grade level work load in writing assignments, and noting that section 504 plan and behavior plan had limited success and reduced classroom time; upholding denial of eligibility on basis of learning disability, *motion to stay denied*, 2009 WL 2959849 (E.D. Cal. Sept. 10, 2009).

2. *J.P. v. Ripon Unified Sch. Dist.*, No. 2:07-cv-02084-MCE-DAD, 2009 WL 1034993 (E.D. Cal. Apr. 15, 2009). Upholding determination of administrative law judge that district’s evaluation of child for autism was appropriate and employed more than single modality, that functional behavior assessment and speech and language assessment were adequate, and that request for due process filed by district more than two months after parent’s request for independent evaluation at public expense was not untimely given discussion through series of letters up to less than three weeks before hearing request.

D. Other Sources

1. *Zirkel*, 52 IDELR 77 (OSEP 2008). Stating that parent who disagrees with response-to-intervention approach is not entitled to reimbursement for independent evaluation procured before school completes its evaluation, and that school may deny reimbursement without requesting due process hear-
ing; also stating: “The public agency may not use any single measure or assessment, including RTI, as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.”

2. Combs, 52 IDELR 46 (OSEP 2008). Opining that expedited evaluation must be given when request for evaluation of child is made when child is subjected to discipline, even though response-to-intervention process has not finished, stating “following the request for the evaluation, and once parental consent has been obtained, a local educational agency (LEA) may not refuse to conduct the evaluation of a child during the time period in which disciplinary measures are used because the RTI process is ongoing.”


II. Consent

A. 34 C.F.R. § 300.300(b)(4) (2009)

1. When, “subsequent to initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services,” the school district: (a) “May not continue to provide special education and related services but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;” (b) “May not use the procedures in subpart E of this part (including the mediation procedures . . . or the due process procedures . . .) in order to obtain agreement or a ruling that the services may be provided to the child;” (c) Will not be considered to be in violation of the requirement to make” appropriate education “available to the child because of failure to provide the child with further special education and related services; and” (d) “Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.”

III. IEPs

A. Ninth Circuit

1. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811 (9th Cir. Sept. 6, 2007). In case concerning child with severe autism, ruling that school district does not violate IDEA unless district materially failed to implement child’s IEP, and that material failure occurs when there is more than minor discrepancy between services provided and those called for in IEP; also ruling that burden falls on party objecting to method of IEP’s implementation, even if parent made no challenge to content of IEP; also ruling that material failure standard does not necessitate demonstrable educational
harm, though child’s progress or absence of progress may be probative on whether material shortfall occurred; holding that failure to provide five hours of math instruction per week constituted material failure of implementation, but that failures to implement aspects of behavior management plan, of additional instruction, and of educational setting were not material.

B. Other Circuits

1. *Miller v. Board of Educ.*, 565 F.3d 1232 (10th Cir. 2009). Affirming district court affirmation of reimbursement for outside services for child with severe reading disabilities not given services called for in IEP; further affirming summary judgment against parent on section 504 and ADA claims for injunctive relief based on failure to provide books on tape, stating that denial of appropriate education under IDEA does not necessarily constitute section 504 violation.

2. *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247 (2d Cir. 2009). Ruling that pre-IEP meeting discussions by school staff did not keep parents from meaningful participation in IEP process when witness denied existence of any pre-meeting agreement and committee adopted some parent suggestions in IEP; finding program with ten hours of weekly in-school ABA and various additional services substantively adequate.

3. *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18 (1st Cir. 2008). Holding that IEP of child with mental retardation and other disabilities was not so deficient as to deny appropriate education despite incomplete transition plan and missing behavior plan, and that transition and behavioral plans are not required if adequate services are provided; further determining that absence of signed IEP at start of school year did not violate IDEA when it was caused by parents’ unreasonable delay and failure to give notice of deficiencies of proposed IEP; also rejecting argument that 1997 IDEA Amendments raised appropriate education standard; holding that district’s reading program and transition services afforded child educational benefit.

4. *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279 (1st Cir. 2008). Ruling that when parents unreasonably frustrate completion of IEP process, no actionable violation of IDEA occurs and award of tuition reimbursement is not justified; further affirming ruling that public, non-residential placement was least restrictive environment for child.

C. District Courts

1. *S.B. v. Pomona Unified Sch. Dist.*, No. CV 06-4874 AHM (RCx), 2008 WL 1766953 (C.D. Cal. Apr. 15, 2008). In case of child with speech-language disorder and autistic behavior, ruling that failure to have regular education teacher at IEP meeting was procedural violation and in light of inadequacy of initial IEP that violation resulted in loss of educational opportunity; awarding reimbursement for independent evaluation and ap-
plied behavior analysis services provided at home, not to exceed 15 hours each week of direct therapy and 8 hours per month of supervision.

2. *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008). Ruling that assistant superintendent’s statements at IEP meeting that meeting was to discuss transition plan and that placement at private school was not at issue supported conclusion that district was unwilling to consider alternative placements, thus constituting violation of IDEA.

### IV. ADA and Section 504 Eligibility


1. Disapproving *Sutton* and *Williams* as to mitigation and interpretation of substantial limit on major life activity, also stating that determination of individual’s disability should not be “primary object of attention;” adopting bodily systems provision for major life activities; expanding coverage of persons regarded as having disabilities, but excepting transitory and minor impairments; establishing broad coverage of impairments, including those episodic or in remission; requiring consideration of impairments in non-mitigated state except generally for visual impairment requiring glasses; providing that persons covered solely for being regarded as disabled are not entitled to accommodations.

### V. LRE and Related Services

#### A. Other Circuits

1. *P. v. Newington Bd. of Educ.*, 546 F.3d 111 (2d Cir. 2008). Adopting proper test for least restrictive environment of *Oberti v. Clementon Sch. Dist.*, 995 F.3d 1204, 1217-18 (3d Cir. 1993), that is, (a) whether education in regular classroom using supplemental aids and services can be achieved satisfactorily for child, and if not, (b) whether school district has mainstreamed child to maximum extent appropriate; considering with regard to (a), whether district has made reasonable efforts to accommodate child in regular classroom, what educational benefits are available to child in regular class with supplemental aids and services compared to benefits of special education class, and possible negative effects of inclusion on other students; rejecting any presumption that all children should spend 80% of day with nondisabled students; affirming conclusion that mainstreaming of child for 73% of day was appropriate for child; affirming determination that hiring of inclusion consultant and completion of behavioral assessment constituted adequate remedy for past failure to mainstream child.

#### B. District Court Cases

not preclude arguing at hearing that placement was not appropriate, it is relevant to determination of placement’s appropriateness; further upholding district’s mainstream placement for child with severe hearing impairment under Ninth Circuit approach and stating that supportive services were sufficient.

VI. Autism Programs

A. Other Circuits

1. *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247 (2d Cir. 2009). Finding program providing ten hours of in-school ABA per week and various additional services substantively adequate.

2. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008). Ruling that child with autism was offered appropriate education in program at public school even though program failed adequately to address child’s inability to generalize functional behavior learned in school to other environments; denying reimbursement for tuition at residential school, *cert. denied*, 129 S. Ct. 1356 (2009).

3. *J.P. v. County Sch. Bd.*, 516 F.3d 254 (4th Cir. 2008). In case in which district court ordered reimbursement for private school employing ABA therapy on grounds that (a) public school inadequately implemented Applied Behavioral Analysis methodology provided for in IEP, (b) child with autism made only slight progress in some areas and regressed in others in public school program, and (c) proposed IEP similar to prior one used by public school failed to offer appropriate education, vacating judgment on basis that district court improperly gave no deference to hearing officer’s factual findings; remanding for reconsideration whether IEP was adequate while giving deference to hearing officer’s decision and explaining any decision that the IEP was not appropriate.

VI. Behavior Intervention and Student Discipline

A. Other Circuits

1. *A.C. v. Board of Educ.*, 553 F.3d 165 (2d Cir. 2009). Holding that failure to conduct functional behavioral assessment did not violate appropriate education standard when behavior strategies used by district sufficiently addressed child’s behavior; also finding IEP adequate substantively despite claim that reliance on one-to-one aide promoted helplessness, when child made progress toward independence during previous year with aide and IEP established other means to promote independence.

2. *M.M. v. Special Sch. Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008). Holding that series of suspensions totaling more than ten days during subsequent school year did not violate maintenance of placement requirement by changing placement without parent’s consent, when parties had agreed change of placement was needed but failed to agree on interim placement,
current placement could not control child’s dangerous behavior, and home services were refused; further finding proposed public school placement appropriate even though boy classmates constituted majority of students and child had history of provocative sexual behavior toward boys, when child also had history of violent behavior toward girls and other settings were not available), cert. denied, 129 S. Ct. 452 (2008).

B. Other Sources

1. Combs, 52 IDELR 46 (OSEP 2008). Expedited evaluation must be given when request for evaluation of child is made when child is subjected to discipline, even though response-to-intervention process has not finished, stating “following the request for the evaluation, and once parental consent has been obtained, a local educational agency (LEA) may not refuse to conduct the evaluation of a child during the time period in which disciplinary measures are used because the RTI process is ongoing.”

2. Gerl, 52 IDELR 166 (OSEP 2008). 15-calendar-day period for resolution process is part of 20-school-day time period for expedited due process hearing established in 34 C.F.R. § 300.532(c).

Procedural and Remedial Issues

I. Mediation and Settlement

A. District Court Cases

1. Hayden C. v. Western Placer Unified Sch. Dist., No. 208-CV-03089, 2009 WL 1325945 (E.D. Cal. May 12, 2009). Dismissing action to enforce settlement agreement reached before due process hearing for want of administrative exhaustion, even though term of settlement agreement said it could be enforced in district court.

B. Other Sources


II. Limitations and Laches

1. Somoza v. New York City Dep’t of Educ., 538 F.3d 106 (2d Cir. 2008). Overturning preliminary injunction that had maintain child’s private placement, reasoning that due process complaint failed two-year statute of limitations given that parent should have been aware of alleged denials of appropriate education when child made rapid improvement in private program and when parent received information from expert that child’s previous programs were inadequate; holding that district’s voluntary providing of requested services past age-eligibility of child did not change accrual date.
2. *School Union No. 37 v. Ms. C.*, 518 F.3d 31 (1st Cir. 2008). Holding that district court did not abuse discretion in reversing reimbursement for four years of transportation and room of board at private, out-of-state school for which district paid tuition for educational services, reasoning that laches barred claim when parent was aware of rights and school district lost chance to find and propose less costly alternative.

### III. Fact Investigation, Discovery and Documents Exchange

#### A. Ninth Circuit

1. *L.M. v. Capistrano Unified School Dist.*, 556 F.3d 900 (9th Cir. 2009). Reversing district court’s reimbursement order, ruling that court erred in determining that procedural violation of not providing equivalent time for parents’ expert to observe child as school district’s expert, but limiting parents’ expert to 20 minutes, deprived parents of meaningful opportunity to participate in due process hearing, when no evidence was showed that more time would have altered hearing officer’s decision; also ruling that private placement unilaterally chosen by parents was not current educational placement for stay-put when neither district court nor administrative law judge ruled on merits of contention that school district placement was not appropriate), *cert. denied*, 78 U.S.L.W. 3012 (U.S. Oct. 5, 2009) (No. 08-1414).

### IV. Admitting Evidence and Conducting the Hearing

#### A. Ninth Circuit

1. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). Ruling that burden of proof falls on party that objects to IEP’s implementation, even if party does not challenge content of IEP), *amending and superseding* 481 F.3d 770 (9th Cir. 2007).

#### B. Other Circuits

1. *Schaffer v. Weast*, 554 F.3d 470 (4th Cir. 2009). Affirming district court’s determination not to assign dispositive weight to tenth grade IEP, which placed child in small special education classes for nearly all courses and set out additional disabling conditions, in dispute concerning eighth grade IEP; reasoning that IEP review is prospective and would be undercut by giving major weight to evidence arising after IEP’s creation; also noting potential disincentive for updating of IEPs of adopting contrary rule; ruling that eighth grade IEP provided appropriate education.

#### C. District Court Cases

eliciting testimony on section 504 plan, thus affording less deference to hearing officer’s findings and conclusions on issue), motion to stay denied, 2009 WL 2959849 (E.D. Cal. Sept. 10, 2009).

2. K.S. v. Fremont Unified Sch. Dist., 545 F. Supp. 2d 995 (N.D. Cal. 2008). Regarding child with autism, determining that psychologist testifying for school district lacked qualifications to make assessment that child was cognitively incapable of making much educational progress and ruling that other credible evidence contradicted psychologist’s testimony; ruling that on issue whether child made educational progress, administrative law judge made error in finding parent’s witnesses not credible simply because they contradicted school district witnesses and had less personal contact with child; determining that parents participated meaningfully in IEP process; remanding case to ALJ.

D. Other Sources

1. 34 C.F.R. § 300.512(a)(1) (2009), stating that right to be accompanied and advised at hearing by counsel and by individuals with special knowledge or training applies “except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law.”

V. Tuition Reimbursement

A. Supreme Court

1. Forest Grove Sch. Dist. v. T.A., 129 S. Ct. 2484 (2009). Holding that hearing officer or court may order tuition reimbursement as remedy for failure to provide appropriate education to child who was found not eligible for special education and never previously received special education or related services under the school district’s authority; finding provision codifying tuition reimbursement remedy not to be exclusive.

B. Other Circuits

1. Houston Indep. Sch. Dist. v. V.P., 582 F.3d 576 (5th Cir. 2009). In action over services for child with auditory and speech impairments, affirming district court ruling that school district’s program failed to provide appropriate education, reasoning that program lacked sufficient individualization, failed to provide sufficient supplemental services to permit success in regular classroom placement, encountered interference in implementation due to poor communication and collaboration, and failed to lead to more than minimal progress despite child’s passing grades and advancement from year to year; also reversing denial of reimbursement for stay-put placement for school year after favorable due process hearing decision, despite parent’s failure to amend pleadings to request reimbursement for that year), superseding on denial of reh’g 566 F.3d 459 (5th Cir. 2009).

2. Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286 (5th Cir. 2009). Holding that district court did not err in finding that IEP calling for public
school placement was not appropriate, given child’s pattern of regression under similar IEPs and inability of school district to keep child in classroom in past; further holding that residential facility with private and public components, including public charter school, may qualify for parental reimbursement; but adopting approach to reimbursement for parentally chosen placement that relies on whether residential placement was essential for child to receive meaningful educational benefit and whether particular placement was primarily oriented to enabling child to obtain education, rather than asking if child’s needs were inextricably intertwined, and remanding for determination if this child’s placement at Texas NeuroRehab Center was primarily oriented toward child’s achieving educational benefit; stating that not all treatments at residential placement are reimbursable, but only those that are related services under IDEA; also ruling that district did not abuse discretion in awarding reimbursement despite lack of parental notice to school district.

3. *Miller v. Board of Educ.*, 565 F.3d 1232 (10th Cir. 2009). Affirming affirmance of award of reimbursement for outside reading-related services for child with severe reading disabilities who was not provided services listed in IEP; further affirming summary judgment against parent on section 504 and ADA claims for injunctive relief based on failure to provide books on tape, reasoning that denial of appropriate education under IDEA does not necessarily establish section 504 violation.

4. *M.S. v. Fairfax County Sch. Bd.*, 553 F.3d 315 (4th Cir. 2009). Affirming determination that later IEP was appropriate, but holding that appropriateness of parental placement during period of inadequate previous IEPs should be evaluated on year-to-year basis regarding tuition reimbursement, and that partial reimbursement must be considered; also holding that district court properly considered child’s limited progress at private placement and restrictiveness of private placement, but only as factor in reimbursement determination.

5. *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279 (1st Cir. 2008). Affirming district court’s ruling that district did not violate IDEA, reasoning that when parents unreasonably frustrate completion of IEP process, there is no actionable violation of IDEA and denial of reimbursement is justified.

C. District Court Cases

1. *C.B. v. Garden Grove Unified Sch. Dist.*, No. SA CV 08-1047 RSWL, 2009 WL 2849036 (C.D. Cal. Sept. 1, 2009). Overturning decision of administrative law judge and ordering full, rather than half, reimbursement for parentally chosen placement at facility that offered only language-based services and was not certified nonpublic school, reasoning that student received educational benefits from services obtained there
VI. Compensatory Education and Other Remedies Issues

A. Other Circuits

1. *Garcia v. Board of Educ.*, 520 F.3d 1116 (10th Cir. 2008). In action for compensatory education for school year in which district failed to develop IEP for child who was now 19 and had history of truancy, ruling that case was not moot in that child had not graduated and was seeking remedy for past wrongdoing; but also ruling that district court did not abuse discretion in denying compensatory education when child could return to school but at present showed no interest in obtaining education.

2. *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (11th Cir. Mar. 6, 2008). Affirming district court decision holding that school district failed to provide appropriate education when child made little or no progress in reading over three years following inaccurate assessment by district that he had mental retardation rather than dyslexia, then district continued inadequate reading program and provided insufficient services in math and failed to document achievement of math goals despite passing grades; denying reimbursement for undocumented outside service expenses but ordering compensatory private schooling at cost of $34,150 per year until obtaining of high school diploma or June 2011; holding that district court’s award for private schooling was not abuse of discretion even though hearing officer would have permitted option of public school placement; rejecting limitations argument when parents would not have been aware of misdiagnosis before subsequent assessment; finding compensatory education award proportionate to denial of appropriate education.

B. District Court Cases

1. *Alexis R. v. High Tech Middle Media Arts Sch.*, No. 07cv830 BTM, 2009 WL 2382492 (S.D. Cal. Aug. 3, 2009). Stating that compensatory education may be a proper remedy for violation for stay-put provision and may be ordered even though child has moved out of district.
Major Caselaw and Other Developments
Mark C. Weber
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November, 2009

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- Consent
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- Garcia v. Board of Educ.
- Alexis R. v. High Tech Middle Media Arts Sch.
The Status of FAPE After *Mercer Island*

Mark C. Weber
Vincent dePaul Professor of Law, DePaul University

I. Rowley and Its Sequels

A. Rowley Itself

B. Subsequent Ninth Circuit Caselaw
   2. *Taylor v. Honig*, 910 F.2d 627 (9th Cir. 1990)
   3. *Union Sch. Dist. v. Smith*, 15 F.3d 1519 (9th Cir. 1994)
   5. *Seattle Sch. Dist. No. 1 v. B.S.*, (9th Cir. 1996)

II. Legislative Developments

A. 1997 IDEA Amendments
B. 2004 IDEA Amendments

III. Recent Ninth Circuit Caselaw

A. *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008)
   1. Holding that school district failed to fulfill obligation to evaluate child in all areas of disability thus depriving child of appropriate education, by failing to evaluate child for autism upon notice child might be autistic, but instead referring parents to child development center; holding parents to be entitled to costs of services incurred in relevant school year and associated attorneys’ fees; also holding that school district did not violate IDEA by failing to provide child extended school year services; further stating that 1997 IDEA Amendments obliged schools to provide children with disabilities with meaningful benefit, more than some educational benefit as prescribed by i.

B. *J.L. v. Mercer Island Sch. Dist.*, 575 F.3d 1025, 1037 n. 9 (9th Cir. Aug. 6, 2009)
   1. Holding that 1997 Amendments did not supersede *Rowley*; reversing and remanding district court decision on ground that its “analysis was clearly
infected by its interpretation of the 1997 Individuals with Disabilities Education Act amendment.”

IV. Other Noteworthy FAPE Decisions

A. Circuit Courts

1. *Houston Indep. Sch. Dist. v. V.P.*, 582 F.3d 576 (5th Cir. 2009). In action over services for child with auditory and speech impairments, affirming decision by district court that school district’s program failed appropriate education standard because services lacked sufficient individualization, did not offer sufficient supplemental services to allow success in regular classroom placement, encountered interference in implementation due to poor communication and collaboration, and failed to cause more than minimal progress despite child’s passing grades and advancement from year to year; also reversing denial of reimbursement for stay-put placement for school year after favorable due process hearing decision despite failure to amend pleadings, superseding on denial of reh’g 566 F.3d 459 (5th Cir. 2009).

2. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286 (5th Cir. 2009). Holding that district court did not make error in finding that IEP providing public school placement was not appropriate, given child’s pattern of regression under similar IEPs and past inability of school district to keep child in classroom; also holding that residential facility with private and public aspects, including public charter school, may qualify for parental reimbursement; but adopting approach to reimbursement for parentally chosen placement that asks whether residential placement was essential for child to receive meaningful educational benefit and whether particular placement was primarily oriented to enabling child to obtain education, and not asking if child’s needs were inextricably intertwined; remanding for determination whether child’s placement at Texas NeuroRehab Center was primarily oriented toward achieving educational benefit; opining that not all treatments at residential placement are reimbursable, but only those that constitute related services under IDEA; also holding that district court did not abuse discretion in awarding reimbursement despite absence of parental notice to school district.

3. *Mary T. v. School Dist.*, 575 F.3d 235, 248 (3d Cir. 2009). Denying reimbursement for costs of psychiatric residential treatment center, reasoning that placement did not provide appropriate education subject to reimbursement and stating “the facility is far more similar to a hospital than a school or even a residential educational facility”; additionally ruling that compensatory education remedy should not be provided for period child was at facility, on ground that school district promptly convened IEP team after finding out about admission, but was unable to evaluate child until child’s condition stabilized, and district provided tutor and evaluated child
after child’s condition improved; further, three hours per week of tutoring was reasonable in light of tolerance of child.

4. *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (11th Cir. 2008). Affirming decision holding that school district did not provide appropriate education when child made little or no progress in reading over three years following inaccurate assessment of mental retardation rather than dyslexia, then district continued inadequate reading program and provided insufficient services in math and failed to document achievement of math goals despite passing grades; denying reimbursement for undocumented outside services but ordering compensatory private schooling at cost of $34,150 every year until obtaining of high school diploma or June, 2011; finding that private schooling award was not abuse of discretion even though hearing officer would have permitted public school placement; rejecting limitations argument when parents would not have been aware of misdiagnosis before reassessment; finding compensatory education award proportionate to appropriate education denial.

B. District Courts

1. *Marcotte v. Palos Verdes Peninsula Unified Sch. Dist.*, No. CV 08-1671 PSG, 2009 WL 1873024, *11 (C.D. Cal. June 29, 2009). Stating that since child’s obsessive-compulsive disorder symptoms failed to “disrupt[]” her ability to participate educationally or socially to such a degree that services are needed to assist her,” IEP was not deficient for failing to address disorder; also holding that IEP responded areas of weakness identified in evaluation and provided child appropriate education.

2. *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. Mar. 26, 2008). Holding that assistant superintendent’s statements at IEP meeting that purpose of meeting was to discuss transition plan and that private school was not at issue supported conclusion that district manifested unwillingness to consider alternative placements, in violation of IDEA.

3. *Marple Newtown Sch. Dist. v. Rafael N.*, No. CIV.A. 07-0558, 2007 WL 2458076 (E.D. Pa. Aug. 23, 2007) (in case of teen with mental retardation and epilepsy, affirming decision of appeals panel that district had to provide child instruction from bilingual teacher to address child’s language needs, perform speech-language evaluation using bilingual evaluator, perform occupational therapy evaluation, provide translator for communications with parent, and give child three years of compensatory education and transition services, reasoning that IDEA incorporates state law requirements regarding English-as-second-language instruction, that child failed to make sufficient progress on language in English-only classroom, that district did not conduct evaluations in native language, and that district did not accommodate medical disability.
V. Other Noteworthy Developments Affecting FAPE Determinations

A. Least Restrictive Environment Reasoning

B. NCLB and State Learning Standards

C. Requirement for Services in IEP Based on Peer Reviewed Research
   1. *Waukee Cmty. Sch. Dist. v. Douglas L.*, 51 IDELR 15 (S.D. Iowa 2008). Affirming hearing officer decision that school district educating child with cognitive impairment and multiple disabilities did not give sufficient consideration to supplementary aids and services to permit core academic instruction in general education, and that it failed to provide appropriate education by using hand-over-hand interventions and breaks in situations of noncompliance, contrary to research-based practices, by using restraint contrary to provisions of IEP and research-based practice, and giving child time-outs frequently and for extensive periods, contrary to research-based practice; also holding that failure to include regular education teacher in IEP meetings did not cause loss of educational benefit, but that failure to provide adequate notice of changes to child’s education by using restraint regularly when not called for in IEP impeded parents’ opportunity to participate in decision-making process.

The Status of FAPE After *Mercer Island*

Mark C. Weber
DePaul Univ. College of Law
November, 2009

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Introduction

- *Rowley* and Its Sequels
- Legislative Developments
- Recent Ninth Circuit Cases
- Other Noteworthy FAPE Cases
- Other Noteworthy Developments

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*Rowley* and Sequels

- *Rowley*
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Later Ninth Circuit Cases

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- *NCLB & State Learning Stds.*
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Materials to come for "Juvenile Misconduct and Special Education"
FBAs: QUALITY COMPONENTS DEMYSTIFIED

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Private Practice
Organization for Research and Learning
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Seattle, WA

TODAY’S AGENDA
- Some basic definitions
- Components of FBAs:
  - WHAT is a FBA?
  - WHY should you conduct a FBA?
  - WHEN should you conduct a FBA?
  - WHERE should it take place?
  - WHO should be involved?
  - HOW is a FBA completed?
- Embedded activities in some sections

FIRST, A REVIEW...
- Functions of problem behavior
  - Sensory
  - Access to tangible
  - Escape from demand
  - To gain attention
- Positive/negative reinforcement
SOME PRELIMINARY DEFINITIONS
- Functional Behavior Assessment
- Behavior Support Plan
- Behavior Analysis
- Applied Behavior Analysis
- BCBA (Board Certified Behavior Analyst)

WHAT IS A FUNCTIONAL BEHAVIOR ASSESSMENT (FBA)?
- "A system of direct and indirect means of information gathering that leads to a hypothesis of function, and consequently a behavior support plan"
  - Also known as Functional Assessment or Functional Behavioral Assessment
  - Alberto & Troutman, 2003

WHAT IS A BEHAVIOR SUPPORT PLAN (BSP)?
- A Behavior Support Plan should contain the following components:
  - Operational definition of problem behavior
  - Results from Functional Behavior Assessment
  - Intervention strategies to be used
  - Behavioral objectives (IEP)
  - Also known as Behavior Intervention Plans (BIPs) or Positive Behavior Support Plans
WHAT IS BEHAVIOR ANALYSIS?

- "A natural science approach to the study of behavior, and the application and analysis of science-based interventions to problems of individual, social, and cultural importance"

  - Edward K. Morris of the Department of Human Development at the University of Kansas, Lawrence, Kansas

WHAT IS APPLIED BEHAVIOR ANALYSIS?

- "Systematic application of behavioral principles to change socially significant behavior to a meaningful degree. Research tools enable users of these principles to verify a functional relationship between a behavior and an intervention."

  - Alberto & Troutman, 2003

WHAT IS A BOARD CERTIFIED BEHAVIOR ANALYST?

- Requirements:
  - At least a Master’s degree
  - At least 225 hours of graduate-level coursework
  - At least 1,500 hours of Supervised Independent Fieldwork in behavior analysis
  - Pass Behavior Analyst Certification Exam
  - Must complete at least 36 hours of Continuing Education Units every 3 years after certified

  - Behavior Analyst Certification Board, www.bacb.com
IMPORTANCE OF HAVING A BCBA CONDUCT A FBA

- Extensive training in behavior analysis and conducting FBAs
- A BCBA will be able to:
  - Conduct systematic and descriptive behavioral assessments
  - Provide behavior analytic interpretations of results
  - Design and supervise behavior analytic interventions
  - Effectively develop and implement appropriate assessment and intervention methods for use in unfamiliar situations and for a range of cases
  - Teach others to carry out ethical and effective behavior analytic interventions based on published research
  - Design and deliver instruction in behavior analysis

ALL BEHAVIOR SERVES A PURPOSE...

- Behavior usually occurs for one of these reasons:
  - To obtain something
  - To escape from or avoid something
  - To provide self-stimulation/“because it feels good”

EXAMPLES...

- Johnny hits his aide every time he is asked to begin working on his reading assignments.
- Kate sings during class in a disruptive way, but there are no specific times where the singing occurs at higher frequencies than other times.
- Every time Ali asks to see a video and her request is rejected, she screams.
- When Matt gets to the “word problem” section of his math worksheets, he begins tapping his pencil on his desk and looking around the classroom.
WHAT IS A FBA?

WHAT?

- **Common Misconceptions**
  - FBAs (Functional Behavior Assessments) and FAs (Functional Analyses) are the same...
  - A FBA is just a form
  - A FBA only determines the function of the problem behavior...

DIFFERENCE BETWEEN FBA AND FA

<table>
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<tr>
<th>Functional Behavior Assessment (FBA)</th>
<th>Functional Analysis (FA)</th>
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<tr>
<td>• Provides direct and indirect means of information gathering that leads to a hypothesis of function, and consequently a behavior support plan</td>
<td>• Provides for the manipulation of environmental variables that leads to a hypothesis of function, and consequently a behavior support plan</td>
</tr>
</tbody>
</table>
A FBA IS A PROCESS...
- ...not just a form
- ...and involves several steps

BASIC PARTS OF A FBA
- Records collection/observation/data collection for problem behavior
- Identify function of problem behavior
- Develop Behavior Support Plan (BSP) for problem behavior
- Implement and evaluate Behavior Support Plan

A SCARY THOUGHT...
- Scotti, et al. (1991)
  - Meta-analysis was completed to evaluate standards of practice and validity of treatment outcomes in studies designed to remediate behavior problems
  - Found that many of the generally accepted treatment principles of behavior intervention are often neglected in practice
    - Only 22% of studies used any form of Functional Behavior Assessment/Analysis to determine most effective intervention
WHY CONDUCT A FBA?

WHY?

- Common Misconceptions
  - Misbehavior only occurs due to skill deficits
  - The child should “want to be good”

WHY?

- Misbehavior occurs due to skill deficits and/or motivational deficits
  - Think “can’t do” vs. “won’t do”
- The child’s misbehavior is “paying off” somehow, otherwise he/she would not be engaging in that misbehavior
  - Why would they necessarily “want” to change that behavior?
WHY?
• All behavior occurs for a reason...
• Failing to determine the true function of the behavior may result in ineffective or overly restrictive interventions that may maintain or even exacerbate the problem behavior

WHEN TO CONDUCT A FBA

WHEN?
• Common Misconceptions
  • A FBA/BSP only needs to be conducted when the child is heading toward suspension or is otherwise in "crisis mode"...
WHEN?

- BSPs (therefore, FBAs) needed when:
  - Student’s behavior is such that it may result in a suspension up to 10 days or a change of educational placement
  - When a pattern of behavior impedes the learning of the student or of another student

  --IDEA, 2004

WHEN?

- However...
  - “Functional behavioral assessment is not intended solely as a reaction to behavior problems that have reached a crisis point. Functional behavioral assessment is most effective when problem behaviors are first exhibited.”

  --Scott & Nelson, 1999

Steps involved in FBA Process

Teacher identifies problem behavior

Screening

Initial interventions attempted

Conduct functional behavior assessment

Conduct functional analysis

Develop and implement behavior support plan

Problem behavior does not terminate

Problem behavior terminates

Problem behavior does not terminate

Problem behavior terminates
WHERE SHOULD IT TAKE PLACE?

WHERE?
- Common Misconceptions
  - You only need to observe the misbehavior in the setting where it takes place...

WHERE?
- Problem Behavior should be observed across multiple settings
  - Where the problem occurs at the highest frequency
  - Settings similar to the setting where it occurs most often
  - Other similar settings where problem behavior does not occur, to compare/contrast environmental supports
WHO SHOULD BE INVOLVED?

WHO?

- Common Misconceptions
  - FBAs are only for the "severely impacted kids"
  - Just the teacher needs to provide input

- Children involved
  - Any child whose behavior impedes learning of themselves or others
  - Range of all disabilities, mildly to severely impacted

- Adults involved (IEP Team)
  - Parents
  - Teachers
  - Behavior Analyst
  - Any other support staff
WHO?
- Why it’s difficult for teachers to run FBAs alone...
  - Only one source of input
  - Source of input is heavily involved in day-to-day interactions with student
  - Balancing FBA with other demands of classroom

HOW IS IT DONE?

HOW?
- Common Misconceptions
  - Just need to punish the misbehavior...
  - Aversive techniques are never okay...
  - “I am not reinforcing this problem behavior!”
  - The BSP must not be working...the misbehavior is escalating...
HOW?

- Information gathering/Determining the function of problem behavior
  - Direct means
  - Indirect means
- The more sources, the more reliable the information is likely to be

HOW?

- Hypothesis of function of problem behavior is determined
  - Should include variables occasioning and maintaining problem behavior
  - If these variables are unclear, a Functional Analysis should be conducted

O’neill, et al., 1997
HOW?

- Summary statements are developed, including:
  - The situations in which the behavior occurs (context/setting event)
  - What happens right before the behavior occurs (antecedent/trigger)
  - Description of problem behavior
  - The reinforcers/consequences that maintain that behavior

**SUMMARY STATEMENTS**

<table>
<thead>
<tr>
<th>Setting Event</th>
<th>Antecedent/Trigger</th>
<th>Problem Behavior</th>
<th>Maintaining Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>When Lauren doesn’t receive her after-lunch medication dosage, her teacher asks her to complete her afternoon independent work packet, Lauren will repeatedly play with school supplies in her desk, Her teacher will then repeatedly give her directions to “get back to work”</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ACTIVITY 1**
WHAT IS THE PROBABLE FUNCTION?

At lunch recess, Heidi's peers are engaged in group games without her. Heidi will grab her peers' hands and kiss them repeatedly. Her peers will then shout, "Eww, stop it Heidi!!"

WHAT IS THE PROBABLE FUNCTION?

In Juan's 2nd grade general education classroom, when his teacher asks him to work with peers on a project, Juan will verbally taunt his peers using obscene words. His teacher will send him back to his resource room to complete the assignment with his resource room teacher.

WHAT IS THE PROBABLE FUNCTION?

In Arianne's 4th grade math class, when her teacher asks the class to complete their daily math exercise, she shouts, "I can't do this!!" Her teacher then comes over and provides 1:1 assistance for the math exercise.
HOW?

- Competing Behavior Pathway is developed, including:
  - Summary Statement
    - What is currently happening?
  - Acceptable Alternative Behavior
    - What is an acceptable alternative/replacement behavior?
  - Desired Behavior
    - What is the desired behavior?
  - Desired Outcome
    - What would be the likely outcome of the desired behavior?

  - O’Neill, et al., 1997

COMPETING BEHAVIOR PATHWAY

ACTIVITY 2
HOW?

Behavior Support Plan is developed, including these important components:
- Antecedent Strategies
- Preventative Strategies
- Instructional Strategies (for teaching replacement behavior)
- Consequence Strategies
- Problem Behavior
- Positive Behavior

HOW?

A note on teaching alternative replacement behavior...
- Response should already be in behavioral repertoire
- Response should be easily accessible

HOW?

Behavior Support Plan is implemented
- Data collection throughout
- Consistent monitoring of progress
- Revisions as necessary
- Generalization of results to other environments
- Fading of interventions as necessary
- If the BSP is not effective, consider conducting a Functional Analysis
How?

- Important measures to track
  - Problem behavior
    - Frequency of occurrence
  - Replacement behavior
    - Frequency of occurrence
  - Components of Behavior Support Plan implemented
    - Number of steps implemented daily (checklist)

How?

- Punishing misbehavior is never enough...
  - Punishment only suppresses the behavior in the short-term
  - Does not teach an appropriate, alternative behavior in alignment with the function of the problem behavior
- Always include a plan to reinforce appropriate, alternative behavior!

How?

- Every behavior is maintained due to reinforcement...whether positive or negative

   David talks loudly during seatwork
   Teacher says, "Shhhhh!!!"
   David continues to talk loudly during seatwork
   Dad yells at Jamie to clean room
   Jamie cleans room
   Dad yells at Jamie next time her room needs cleaning
   Mom picks up baby when he cries
   Baby stops crying
   Mom picks up baby next time he cries
A note on aversive procedures...
- Aversive intervention: “systematic use of stimuli or other treatment which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student”
- Aversive interventions should always be the last option
- IEP team must approve these interventions

If used, the following documentation should be present:
- Data validating aversive procedure
- Data documenting need for use of aversive procedure
- Data documenting training of staff in delivery of aversive procedure

A note on “extinction” and “extinction bursts”...
- Extinction: “withholding the reinforcement for a previously reinforced behavior to reduce the occurrence of the behavior”
- Extinction burst: “an increase in the rate, duration, and/or intensity of the behavior before significant reduction occurs”
- Problem behavior will likely get worse before it gets better
- Problem behavior will probably become more intense and more variable, and will probably occur at a higher frequency until the new appropriate behavior is learned and reinforced
HOW?
- Everyday examples of extinction... what do you do?
  - You put money in a soda machine and press the button, but the machine will not dispense your drink
  - Your car will not start
  - You press the button in an elevator to take you to the 7th floor, but the elevator does not move

HOW?
- Phenomenon of "extinction-induced resurgence"
  - Recurrence of previously-reinforced (problem) behavior when another behavior is placed on extinction
  - Problem behavior may reemerge if reinforcement is not provided consistently for alternative responses during treatment

HOW?
- Phenomenon of "extinction-induced resurgence"
  - For example:
    - Screaming to obtain candy: Extinguished
    - Screaming to obtain candy: Reinforced
    - Requesting candy using picture: Extinguished
    - Requesting candy using picture: Reinforced
    - Screaming to obtain candy: Extinguished
ACTIVITY 3

ACTIVITY 4

THANK YOU!
- Any further questions, please contact me at hollymorris@comcast.net
REFERENCES

- Behavior Analyst Certification Board, www.bacb.com
Breakdown of Steps in Functional Behavioral Assessment (FBA) Process

Holly Almon Morris, M.S., BCBA
Seattle, Washington

- Teacher identifies problem behavior
- Teacher formulates operational definition of that behavior
- Teacher begins taking initial data and graphs those data
- Teacher notifies IEP team members of problem behavior/initial steps
- IEP team (and/or another designated behavior management team) reviews data and confirms that behavior is of a nature and frequency that will require preparation of a Behavior Support Plan
- IEP team reviews records to make sure screening measures are up to date (vision/hearing/etc.)
- Changes based on screening data are implemented, and/or additional screening measures are conducted
- Other information-gathering processes begin (both direct and indirect measures)
  - Direct measures should be documented in an “A-B-C” (“Antecedent-Behavior-Consequence”) format
  - Indirect measures should include a behavioral interview with multiple respondents, including the student if appropriate
- Hypothesis of function of problem behavior is developed
  - Should include variables occasioning and maintaining problem behavior
- If these variables are unclear, a functional analysis should be conducted
- Behavior Support Plan is developed given findings from data collection during information-gathering stages
- Behavior Support Plan is implemented, collecting data throughout
  - Interventions in the BSP should be based on function of problem behavior
- Data are used to evaluate and revise Behavior Support Plan as necessary
- Results are maintained and generalized across necessary environments
- Interventions are faded as needed
Steps Involved in FBA Process

Teacher identifies problem behavior

Screening

Initial Interventions attempted

Conduct functional behavior assessment

Conduct functional analysis

Develop and implement behavior support plan

Problem behavior terminates

Problem behavior does not terminate

Problem behavior terminates

Problem behavior does not terminate

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2009 California OAH & Mediators Training

November 16-19, 2009
**Important Components of FBAs: What should good FBAs include?**

_Holly Almon Morris, M.S., BCBA_

_Seaattle, WA_

**“Beyond the Basics” Checklist:**

<table>
<thead>
<tr>
<th>Multiple sources of information (interviews, observations, assessments, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interviews contain multiple respondents</td>
</tr>
<tr>
<td>Direct observation information is included in addition to interviews</td>
</tr>
<tr>
<td>Behavior in question is clearly defined</td>
</tr>
<tr>
<td>Behavior is measured with appropriate dimension (frequency, duration, etc.)</td>
</tr>
<tr>
<td>Functional Analysis procedure should be conducted if variables maintaining problem behavior are not clear</td>
</tr>
<tr>
<td>More weight placed on preventative strategies than consequence strategies</td>
</tr>
<tr>
<td>BSP should always contain a strategy for teaching the appropriate, alternative behavior to the problem behavior</td>
</tr>
<tr>
<td>Functional reinforcers must be identified to use while teaching these appropriate, alternative behaviors</td>
</tr>
<tr>
<td>Aversive procedures only used as a last resort</td>
</tr>
</tbody>
</table>
Identify the alternative behaviors, desired behaviors, and desired outcomes for the competing behavior pathways below.

1.

- **In Ms. Marshall's 9th grade science lab, (Setting Event)**
- **when she asks the class to work in groups to complete a lab project, (Antecedent/Trigger)**
- **Adam will continuously tap his pencil and whistle, (Problem Behavior)**
- **Ms. Marshall will then verbally redirect Adam to focus on the lab project, (Maintaining Consequence)**
- **(Alternative Behavior)**

2.

- **In Mr. Hall's writing class, (Setting Event)**
- **when asked to begin an expressive writing assignment, (Antecedent/Trigger)**
- **Joel will make silly gestures and faces toward his friends, (Problem Behavior)**
- **Mr. Hall will then send Joel to the principal's office, (Maintaining Consequence)**
- **(Alternative Behavior)**
3. During 1:1 work time in her special education classroom, (Setting Event) when Samantha's teacher asks her to read sight words, (Antecedent/Trigger) Samantha will sing songs and hum to herself. (Problem Behavior) Her teacher will then give her a brief time-out. (Maintaining Consequence) (Alternative Behavior)

4. NA (Setting Event) When an adult has not given Courtney direct adult attention for over 15 minutes, (Antecedent/Trigger) Courtney will leave her area and hit the nearest adult. (Problem Behavior) Her teacher will then ask her, "What is wrong, Courtney? We don't do that!" (Maintaining Consequence) (Alternative Behavior)
Activity #3

*Identify if the excerpt from the FBA/BSP matches the function of the child’s problem behavior.*

<table>
<thead>
<tr>
<th>Partial Summary Statement/Function</th>
<th>Portion of FBA/BSP</th>
<th>Does this portion of the FBA/BSP appear to match the function? (Yes/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jacob screams when given an instructional demand that is novel. (Avoidance of new tasks)</td>
<td>Teacher will warn Jacob with a visual signal that represents “something new” is occurring during instructional tasks.</td>
<td>Yes</td>
</tr>
<tr>
<td>When the teacher asks Rachel to read a passage out of the social studies book, she makes inappropriate comments that cause her peers to laugh. (To gain attention from peers)</td>
<td>Teacher institutes a “joke-telling” portion of the school day so that Rachel and her peers can take turns telling appropriate jokes in front of their peers.</td>
<td>Yes</td>
</tr>
<tr>
<td>When the teacher gives the cue that free choice time is over, Katherine throws the toys into the middle of the play area. (Avoidance of clean-up activity)</td>
<td>Teacher gives Katherine a time out every time she throws the toys.</td>
<td>Yes</td>
</tr>
<tr>
<td>Every time the teacher administers a reading test, Ezra will ask to go to the bathroom, and will stay in the bathroom for long periods of time, up to 15 minutes if left alone. (Escape from demand)</td>
<td>Teacher provides extra time during “silent reading time” for Ezra to complete his reading tests.</td>
<td>Yes</td>
</tr>
<tr>
<td>During “downtime” in the classroom, Gage dumps out containers of toys and blocks. This happens throughout the day, but occurs most frequently during unstructured time. (Self-stimulatory)</td>
<td>Teacher provides appropriate “dumping” activities (sandbox, dried bean containers, etc.) for Gage to play with during free choice.</td>
<td>Yes</td>
</tr>
<tr>
<td>When the teacher takes Sam’s favorite musical toy away upon the start of seatwork, he aggressively tries to swipe the object from the teacher. (To gain access to tangible)</td>
<td>Teacher allows Sam to have access to his musical toy whenever he asks for it.</td>
<td>Yes</td>
</tr>
<tr>
<td>Collin leaves the instructional area when he sees the teacher take out materials related to math instruction, which has been identified as a non-preferred</td>
<td>Teacher begins a point system with Collin where he can earn an extra minute of free time for every math</td>
<td>Yes</td>
</tr>
<tr>
<td>Activity</td>
<td>Problem he completes</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>----------------------</td>
<td></td>
</tr>
<tr>
<td>When Kayla’s classmates approach her at recess to invite her to play softball, she runs in the opposite direction when she sees them approaching. (To avoid social interaction)</td>
<td>Teacher teaches appropriate direction following skills, using peers as models.</td>
<td></td>
</tr>
<tr>
<td>When the teacher turns to talk to or help another student in small group reading instruction, Matthew will make inappropriate noises with his mouth. (To gain attention from teacher)</td>
<td>Teacher scolds, “we don’t make noises like that” each time Matthew makes the noise.</td>
<td></td>
</tr>
<tr>
<td>Evan often flaps her hands, but does this more so during transition times consisting of increased movement of people in a concentrated space. (Self-stimulatory)</td>
<td>Teacher provides Evan more structured expectations during transitions where hand-flapping occurs at higher levels.</td>
<td></td>
</tr>
</tbody>
</table>
Activity #4

What would you change?

Excerpts from FBAs/BSPs:

1. Jackson responds to frustrating situations with verbally and/or physically aggressive and, at times, explosive behaviors. This sometimes consists of inappropriate language.

2. Strategies that will be used to decrease Charlie’s screaming behavior include: instructional strategies to teach an appropriate replacement behavior (Strategies A/B), consequence strategies for this appropriate replacement behavior (Strategies C/D), and consequence strategies for inappropriate behavior (Strategies E/F).

3. In order to formally assess whether the current supports are sufficient enough to promote Rita’s success as she transitions into ninth grade, the team completed a functional behavioral assessment. Members of the team included the assistant principal, the behavioral consultant, the special educator/behavioral support specialist, and both the eighth and ninth grade teachers.

4. Beau engages in verbally and/or physically aggressive behavior when he encounters situations he feels he has little or no control over. He engages in these behaviors to 1) avoid difficult tasks and/or 2) to gain attention.

5. Kendall’s misbehavior was determined using the following measures: records review, parent interview, student interview, and student report cards.

6. Strategies used to decrease Jeremy’s pinching behavior will include: antecedent/environmental manipulation strategies (Strategies A/B/C), and consequence strategies for the pinching behavior (Strategies X/Y/Z).

7. Zoey seeks peer and teacher attention inappropriately during her academic classes (Reading, Math, Science, Spelling). She does not engage in these behaviors during her enrichment classes (PE, Library, Art, Music).
Mediation:
What Do I Bring Into the Room?

The Academy for IDEA Administrative Law Judges and Hearing Officers

Greg Abell, Senior Partner
grega@somtg.com
www.soundoptionsgroup.com

Objectives

- Create a conversation in support of shared learning,
- Explore frameworks for assessing our Professional Development,
- Review our growth as mediators in the context of these frameworks,
- Share examples of current learning’s in the context of the frameworks, and
- Expand our thinking

Quadrants of Mastery
(Strandgaard, 1981)

Unconscious incompetence
Conscious incompetence
Conscious Competence
Unconscious Competence
Three “Stages” of Development

Bringing Peace into the Room: The Personal Qualities of the Mediator and Their Impact on the Mediation

Daniel Bowling and David Hoffman
Negotiation Journal, January 2000

First Stage

“First, as beginning mediators we studied technique. We learned among other things, active listening, reframing, focusing on interests, prioritizing issues, and helping the parties to generate options. We learned to demonstrate empathy as well as impartiality, how to diagnose settlement barriers, and how, with any luck, to bring a case to closure. We looked for opportunities to practice these skills.”

Second Stage

“The second stage of our development involved working toward a deeper understanding of how and why mediation works. In seeking an intellectual grasp of the mediation process, we hoped to find the tools with which to assess the effectiveness of various techniques, identify appropriate professional and ethical boundaries, and better understand what we were doing, why we were doing it, and the meaning of the process for our clients.”
Third Stage

"the third aspect begins with the mediator’s growing awareness of how his or her personal qualities – for better or worse – influence the mediation process. It is at this stage that we begin to focus on, and take responsibility for, our own personal development as mediators. It is about being a mediator, rather than simply doing certain prescribed steps dictated by a particular mediation school or theory."

Creating A Context

- Briefly describe your most satisfying mediation. What contributed to your assessment of the case?
- Briefly describe your most challenging or puzzling mediation. What contributed to your assessment of the case?
- Where are you most challenged as a mediator?

Model of Professional Development: The Dynamic Four Stages

- The Novice
- The Apprentice
- The Practitioner
- The Artist

The Making of a Mediator: Developing Artistry In Practice
Michael D. Lang and Alison Taylor
Your Constellation of Theories: Adopting a Framework for Reflection

1. Central Core Beliefs and Values
2. Theories and Abstracts
3. Models and Approaches
4. Facts and Information

Central Core Beliefs and Values

Who am I? Why am I here?

- Theories that help to explain complex abstract ideas such as:
  - Truth
  - Justice
  - Love
  - Fairness
  - Trust
- A person’s view of life
- A person’s orientation to humankind
Questions to prompt discussion:

- What core beliefs and values attracted me to, and keep me engaged in mediation?
- Are people here to meet their own needs, or to serve others?
- Are people inherently weak and bad needing correction or are they inherently good and able to respond positively?
- What is the relationship of individuals to the larger system in which they exist?
- Where did I learn about conflict? What did I learn in my family and community about conflict?
- In what do I put my trust and faith?
- What are my beliefs about justice and fairness?
- What are my moral values and what are their sources?
- How does this conversation inform me as a mediator?
Theories and Abstracts

- Theories of intervention
- Theories of justice
- Theories of power
- Theories of dispute formation/resolution
- Theories of behavior
- Theories of interpersonal interaction/behavior

Questions for Reflection:

- What theories do you find inform my practice as a mediator?
- What is my view about how conflict emerges and is dealt with?
- Can individuals make up their own rules and fairness concepts, or should society and government make up the rules?
- What do I think demonstrates fairness?
- What forms the basis of personal and group authority? Is that the same as power?
- Is coercion ever justifiable? Is violence? Is war ever just?
- What are the sources of personal, organizational, national and international power?
- How does this conversation inform me as a mediator?

Models and Approaches

Developing a Full Palette
Models and Approaches

- Models of Negotiation
- Interest-Based Approach
- Transformative Approach
- Facilitative Approach
- Evaluative Approach
- Narrative Approach
- Models of Style/Pace

Mediator Styles

Leonard L. Riskin

Questions for Reflection:

- What models and conceptual frameworks did I bring from my background or prior profession(s)?
- What was the name of the model of mediation, negotiation, or facilitation you first learned?
- What does this model say about the role of the intervener?
- What is the stated goal of the model?
- Identify your current “palette” of models and approaches? What are you finding is effective in IDEA mediation?
- When I am working as a mediator I must . . .
- When I am working as a mediator I cannot . . .
- Where have you found your current model(s) insufficient to the situation?
Facts and Information

How much about Special Education do I need to know?

Questions for Reflection:

- What does the IDEA mediator need to know to be effective?
- What is an appropriate use of this information?
- What is an inappropriate use of this information?
- What do participants need to know to effectively participate in mediation?
- What standards of practice do I follow?
- What ethical issues must I be aware of?
- What are the controversial issues in my field?

Doing and Being

"In addition to what a mediator does, there is the matter of what a mediator is. Spirit emanates from being, just as articulately as it does from doing. More specifically, it is the mediator’s being, as experienced by the parties that sends the message."

The Hope of Mediation, Matz D., 1999
Personal Qualities of the Mediator

Simkin and Fidandis

- The patience of Job
- The sincerity and bulldog characteristics of the English
- The wit of the Irish
- The physical endurance of a marathon runner
- The broken field-dodging abilities of a halfback
- The guile of Machiavelli
- The personality-probing skills of a good psychiatrist
- The hide of a rhinoceros; and
- The wisdom of Solomon

Personal Qualities of the Mediator

Mediation: Principle, process, practice, Boulie

- Empathetic
- Non-judgmental
- Patient
- Persuasive
- Optimistic
- Persistent
- Trustworthy
- Intelligent
- Creative
- Flexible; and
- That they have a good sense of humor and common sense

The “Third Stage” of Development

- Self-Awareness
- Presence
- Authenticity
- Congruence
- Integration
Essentials of Mastery

- Discipline and Endless Repetition
- Great Passion and Curiosity
- Fearless in the Face of Complexity
- Ruthless in Self-Examination

Wrap-up

- What personal qualities or characteristics do you bring to the role of mediator that enhances your effectiveness?
- What personal qualities or characteristics do you bring to the role of mediator that potentially inhibits your effectiveness?
- How will you use this increased awareness to improve your effectiveness as a mediator?
- What action will you commit to in support of your on-going development as a mediator?