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*Mental Health
Challenges*

Mental Health Challenges

- Importance of Schools/Districts Supporting Students' Social Emotional Learning, Behavioral and Mental Health
- Possible consideration: Chapter 688 Referral Process
 - Transition agencies such as Dept. of Mental Health
- Resources:
 - DESE's Behavioral and Mental Health team from the Office of Student and Family Support as a resource
 - DESE offers professional development resources
- Referral for Special Education Services may be an option (evaluation with parental consent and opportunity for parent to express concerns and provide information)



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COVID Issues

COVID compensatory services

- Not as big of a deal
- Statute of limitations

COVID-19 Challenges

- *Letter to Educators and Parents* 122 LRP 9335 (EDU 03/24/22)
 - Students with IEPs or Section 504 plans may have school-related health needs. A team should include a person who knows about the health needs of the student, including whether COVID-19 prevention and risk prevention strategies may be needed. The team could include staff members, such as school health service staff, school nurses, and the student's healthcare professionals, as appropriate, if they may have knowledge or special expertise regarding the student. Because eligible students with disabilities who need school-related health services are entitled to them as part of FAPE, teams should consider school-related health or medical information for students with disabilities who receive services under the IDEA or are eligible for Section 504 services.

COVID-19 Challenges

- Health plans may be included as part of the student's IEP or Section 504 plan to ensure the district properly addresses the health and safety of the student in the school environment with appropriate privacy protections in place, Cardona wrote. For example the provision of FAPE in the LRE for some students with disabilities may require that the IEP or Section 504 plan addresses appropriate preventive and risk-reducing strategies, such as sanitizing or avoiding shared use of personal and classroom items.

Masks

- *Central Bucks Sch. Dist.*, 122 LRP 21740 (SEA PA 04/05/22) --The district discriminated against the child on the basis of disability by failing to make reasonable accommodations, including that the child's 1:1 paraprofessional and nursing staff be required to wear a mask when working with the child and that other students be required to maintain social distance in the nursing office while the student is present.

Because immunocompromised students are at greater risk for serious illness if exposed to COVID-19, failing to make appropriate and reasonable accommodations for students who are immunocompromised, including the wearing of masks around such students, violates Section 504.

Vaccination status

- What to do if parents want their child only around vaccinated staff...
 - Confidential personnel information
 - Ask parents for any documentation they may have that supports their request for vaccinated staff to work with their child
 - Discuss other potential accommodations, such as enhanced air systems, social distancing, and hygiene measures or requiring students and the staff members to wear masks



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Program Schools

Program Schools

- For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.
- Upon a determination as in 603 CMR 28.10(6)(a), the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
- The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
- If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).



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*Case and Legislative
Update*

Cases

Student v. Swansea Public Schools - BSEA # 2205000 - People Incorporated, Student's Early Intervention provider, sent its referral to Swansea on February 2, 2021, well in advance of Student's third birthday (July 25, 2021). Upon receipt of the referral, Dr. Garell sent Parents residency forms for them to complete. Parents returned the residency forms some time in April. Parents then requested an evaluation in July 2021. Swansea did not send the consent to evaluate form to Parents until after school started on August 31, 2021. The Hearing Officer concluded that Swansea failed to send a timely evaluation when it did not send it in February 2021. The Hearing Officer concluded additionally that the Team erred in finding the student not eligible for special education. All of the Team members with expertise in providing services to students who are hard of hearing believed that Student was eligible for special education and made similar recommendations for the kinds of services he required. The Hearing Officer explained that: "Perhaps the most striking findings from the reports submitted for the Team's consideration was Ms. Rankin's determination that even when Student was provided with auditory breaks, visual support and was alerted to listen by his name being called, Student's performance was not above 60%. Ms. Vale explained that he is missing 40% of the available auditory information at any given time in a sentence or a phrase or a story. It is difficult to imagine how the Team could have reasonably concluded that he was making effective progress or was able to access the general curriculum when Ms. Rankin's un rebutted functional listening evaluation results demonstrated that Student missed such a significant amount of information even when using his hearing aids and with accommodations provided." Finally, the Hearing Officer concluded that the district did not have to provide equipment to the student when she is at the private school because students who are unilaterally placed by parents in a private school do not have an individual right to special education and related services under the IDEA.

Cases

- Student v. Swansea Public Schools - BSEA # 2202178 - Hearing Officer concluded that the substantially separate program at Joseph Case High School is not a specialized language-based program. The Joseph Case High School Program of Studies does not state that the program is “language-based.” While some methodologies are mentioned (e.g., “multi-sensory” instruction) that may be used in language-based programs, there is nothing in the program description to suggest that it provides cohesive, specialized language-based programming. The Hearing Officer concluded that Landmark was appropriate. She said “While the day program at Landmark is reasonably calculated to provide Student with FAPE, and therefore appropriate, it is located over 70 miles from Student’s home, and would require at least 1.5 hours of transportation in each direction, contrary to 603 CMR 28,08(6)(a).” As a result, she ordered a residential program if an appropriate day program could not be located less than an hour away.

Cases

- Belchertown Public Schools – Parents were not entitled to placement at BHMA – an unapproved special education school as the in-district program was appropriate. The District program could address all of the student’s needs. BHMA was unable to address the student’s needs as could not provide related services or one-to-one support that the student required.

Legislation

- Chapter 177 of Acts of 2022, “An Act Addressing Barriers to Care for Mental Health” - establishes an interagency review team to collaborate on complex cases for when there is a lack of consensus or resolution between state agencies (such as Department of Children and Families and Department of Mental Health) about current service needs or placement of an individual who: (i) is under the age of 22; (ii) is disabled or has complex behavioral health or special needs; and (iii) qualifies or may qualify for services from 1 or more state agencies, or special education services through the individual’s school district.
- The team will be composed of the secretary of health and human services or a designee, who shall serve as co-chair; the commissioner of elementary and secondary education or a designee, who shall serve as co-chair; the assistant secretary of MassHealth or a designee; the commissioner of mental health or a designee; the commissioner of children and families or a designee; the commissioner of developmental services or a designee; the commissioner of youth services or a designee; the commissioner of early education and care or a designee; the secretary of the executive office of education or a designee; a representative from the office of the child advocate; and a representative from the school district or districts responsible for any aspect of an individual’s education.

Legislation

- An individual may be referred to the team by the individual themselves if the individual is age 16 years or older, a state agency including a representative from the agency's ombudsman's office, the juvenile court, a hospital or emergency service provider, a school district, an attorney representing the individual or the individual's parent or guardian, a physician or behavioral health care provider authorized to act on behalf of a parent or guardian who is seeking access to services for the individual or the individual's parent or guardian.
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- Within five (5) business days after referral, the team will convene. If the student is waiting in an emergency department or at home for not less than five (5) days to be placed in an appropriate therapeutic setting, the team must convene within one (1) business day after receiving the referral. The team will determine if additional services are needed to meet the current needs of the individual, which agencies shall provide said services, including location or placement where appropriate and ongoing case management services, and which agencies have fiscal responsibilities to pay for such services. The team may order expedited eligibility determinations by a state agency or an extended evaluation at a special education residential school.

Legislation

- The team will complete its review within thirty (30) business days, except for the emergency circumstance described above in which the team shall complete its review within five (5) business days. The co-chairs can utilize funds from the Liability Management and Reduction Fund to pay for the services that the team authorizes. If the team does not come to resolution regarding which agency or agencies have fiscal responsibility, the co-chairs shall assume joint fiscal responsibility to avoid any delay in an individual receiving needed services. Individuals can appeal the team's determination to the division of administrative law appeals.
- This section may aid school districts in providing services to students as it will bring agencies to the table and offers funding. However, although the law states that individuals retain all their rights, it is unclear how this process interacts with the team process under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. It appears there may be an inherent conflict between the new interagency team process established in this legislation and the already-existing Section 504 or special education team process. The Commissioner needs to issue regulations pursuant to the statute, but whether the Commissioner will issue regulations, resolving the potential conflict remains to be seen

Questions?



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