DENIED: WHAT TO MAKE OF THAT HOUSTON CHRONICLE STORY

We are a bit late with the September issue of this publication, but that turned out to be a good thing. The subject of This Just In for September was going to be about the Houston Chronicle article, T.E.A.’s 8.5% target for special education, and the ensuing controversy. Then, lo and behold, the Department of Education stepped in with a letter to T.E.A. dated October 3rd. So I’m grateful to be a little late. We would not want to omit the latest development.

BACKGROUND. The Houston Chronicle has published a story accusing Texas of intentionally and systematically denying special education services to students who need them. According to the newspaper, this was done to save money. The story has made a big splash, both in Texas and beyond.

The newspaper story correctly notes that the number of students receiving special education services in Texas has gone down pretty dramatically over the past five years. The story ties this to the standard adopted by the Texas Education Agency—that no more than 8.5% of our students should be identified as having disabilities under IDEA. This standard is incorporated into the PBMAS (Performance Based Monitoring Analysis System). The staff at T.E.A. will tell you that this 8.5 figure is not a cap, nor a quota, and is not supposed to influence individual decisions.

But the Chronicle says that it has influenced individual decisions to the detriment of students who should be receiving special education services. The newspaper cites multiple sources stating that districts have felt pressure from the Agency to get the numbers down. Those same sources confirm that this pressure has filtered right down to individual cases.

The latest development is the letter to Commissioner Morath from the Department of Education, ordering the Agency to justify the 8.5% standard within the next 30 days, or drop it. Among other things, T.E.A. has been ordered to identify the districts that may have “discouraged or refused to act upon referrals for evaluations” of students who may need special education services.

SOME OBSERVATIONS. First, I give credit to the Chronicle for unearthing a story that most people in Texas did not know about. I give credit for some good investigative journalism. This little episode illustrates the power of the media in our society. The feds received a complaint about this 8.5% standard two years ago, but apparently did very little about it. They contacted T.E.A. and were satisfied with the explanation they heard. But now, our state’s largest newspaper writes a story on the front page of the Sunday paper—the one with the largest circulation—and within a month the feds have ordered T.E.A. to change a longstanding practice. That’s how things work.

Second, the Chronicle omitted a major part of the story. T.E.A. did not adopt that 8.5% standard in a vacuum. This was a response to a Congressional effort to reduce the numbers of kids in special education. In the 2004 re-authorization of IDEA, Congress made some
factual findings. Among those findings was that we could improve services to students with disabilities by providing better services to the general education population, rather than slapping a “disabled” label on them. By 2004, the law we now call IDEA had been in effect for 29 years. Congress noted that we had a surprisingly large number of kids served under that law; that it appeared that this was particularly the case with kids identified as having a "learning disability”; that many of those "LD" kids had not been taught to read in an effective, sustained manner; and that we had a disproportionate percentage of racial minority students and English Language Learners identified as "disabled."

All of this led to RTI–Response to Intervention. The Department of Education followed up on the 2004 changes to IDEA with regulations that went into effect in 2006. Those regulations made it very clear that schools had to engage in a process we now call RTI prior to identifying a student as having a learning disability. The LD category was the largest single category of eligibility. Thus, if we wanted to focus on kids who had not been taught to read properly, if we wanted to avoid improperly labeling those kids, we needed to have an effective and systematic method of teaching reading, collecting data, and measuring progress. That’s what RTI does, and contrary to what the story in the Chronicle says, RTI is required.

Third, we should acknowledge that there remains a lot of confusion among teachers and service providers about the natural tension that exists between the Child Find duty and RTI. Our duty to find kids who need services pulls us toward a special education referral. But with the 2004 version of IDEA and the advent of RTI, we were told to slow down. Teachers are confused and sometimes give incorrect information to parents. I don’t think that’s evidence of any improper motive. It’s just a natural result of the confusion.

To sort out that confusion, I would put it this way: RTI was designed to slow down referrals by the school staff, particularly when we suspect a learning disability. It was not designed to slow down a parent’s referral. Thus, when a parent expresses a desire to have a child evaluated for special education eligibility, we should not put that parent off. We should either begin the process of evaluating (which can be done as we provide RTI services simultaneously), or we should provide a proper Prior Written Notice with a copy of the Procedural Safeguards explaining exactly why we are not going to do an evaluation right now.

Texas regulations make it clear that RTI is to be provided prior to a referral. Read this regulation carefully:

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district’s overall, general education referral or screening system. PRIOR TO REFERRAL [to special education] students EXPERIENCING DIFFICULTY in the general education classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; RESPONSE TO SCIENTIFIC, RESEARCH-BASED INTERVENTION; and other academic and behavioral support services. 19 T.A.C. 89.1011.

Apparently, however, some educators have interpreted “prior to referral” to also refer to a parent referral. That is wrong. The parent referral is a trump card.

This regulation is speaking of referrals by school staff—not by parents. This regulation tells us that a referral should not be initiated by school staff, even though the student is “experiencing difficulty,” until other support services, such as RTI, have been considered. When interpreted and implemented properly, this regulation should prevent an over-identification of students, without any specific numeric goal being provided.

Apparently, however, some educators have interpreted “prior to referral” to also refer to a parent referral. That is wrong. The parent referral is a trump card. If a parent makes the referral, the district must accept that referral, even if not a single day of RTI has been provided. By “accept the referral,” we do not necessarily mean that the district will immediately conduct a full, individual evaluation. But the district must either do that or provide a proper Prior Written Notice along with the Procedural Safeguards.

THE PRACTICAL EFFECT. Let’s use this Chronicle story as a teachable moment. Let’s redouble our efforts to make sure that direct service staff understand the proper interplay between RTI and Child Find. Let’s examine practices at the campus level. Let’s make sure we are making proper decisions on an individual basis.

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