

TEA, PBMAS, 8.5%, OSEP AND THE CORRECTIVE ACTION PLAN:

Presented by:

CHRISTINA L. GARCIA



WALSH GALLEGOS
TREVINO RUSSO & KYLE P.C.

OSEP Slaps Texas Around

- OSEP has concluded that “TEA did not ensure that all ISDs in the State properly identified, located, and evaluated all children with disabilities....who were in need of special education and related services.”
- “Consequently, TEA failed to make a FAPE available to all eligible children with disabilities residing in the State, as required by 34 CFR 300.101.”

How Did This Happen?

- The percentage of kids receiving special education services in Texas has dropped from 11.6 in 2004 to 8.6 in 2016.
- The Houston Chronicle ran a series of articles claiming that the drop in the numbers was deliberate—an effort to deny services to kids who needed them.
- Let's talk about PBMAS.

PBMAS

- Adopted in 2004. Designed to save money by monitoring via data rather than in-person reviews.
- One indicator measured the percentage of kids in special education. The ideal was set at 8.5%.
- The Chronicle blamed the decline in numbers on this PBMAS indicator.
- TEA dropped the indicator. Legislature prohibited any such indicator in the future.

Blame Game

- OSEP visited the state, investigated, and released a critical report.
- Governor Abbott accused local districts of a “dereliction of duty.”
- TEA floated draft Corrective Action Plan.
- That’s where we are....
- How did we get here?

Let's Remember Why This Happened



- “The current model guiding special education focuses on waiting for a child to fail, not on early intervention to prevent failure. Reforms must move the system toward early identification and swift intervention, using scientifically based instruction and teaching methods.”
- President’s Commission on Excellence in Special Education.



Congress Finds....

- “Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by:
Providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services....”
- For what purpose? SEE NEXT SLIDE!

The Purpose of All That

- “...to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.”



In Other Words....

- The word from Washington was to beef up the quality of services in general education so that fewer kids would be identified as “special education” students.
- So this did not begin in your district.
- It did not begin at TEA.
- It did not begin with PBMAS.
- It began with Congress.

Our State Regulations

“PRIOR TO REFERRAL, students experiencing difficulty in the general 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 or behavior support services. If the student CONTINUES to experience difficulty in the general classroom AFTER THE PROVISION OF INTERVENTIONS, district personnel must refer the student for a FIIE.” 19 T.A.C. 89.1011(a).

Notice What That Requires

- A student is having trouble in the general classroom.
- We consider all of the services and interventions that are available through general education.
- We do more than consider them—we provide them.
- And if the student continues to have trouble, we make a referral for special education testing.

What About the Parent?

- This state regulation applies to school staff and should not be used to refuse to appropriately respond to a parent request for special education testing.
- “Appropriately respond” means we respond in one of two ways. We either do the FIE; or we provide a Prior Written Notice explaining why we are not doing that. Either way, we provide the Procedural Safeguards document.

The Future: the CAP Draft

- TEA's Draft CAP calls for four Corrective Actions.
- One: Beef up monitoring. The plan calls for a return to on-site monitoring, once every six years.
- Two: Outreach and corrective action by ISDs.
- Three: Lifting the fog—resources and training to clarify the distinctions among all the special programs.
- Four: The Escalation Team for districts in need.

Corrective Action #2

- The plan calls for each ISD to identify kids who were 1) in RTI for more than six months; 2) had a 504 plan only; or 3) received services for dyslexia outside of IDEA services.
- The plan does not tell us how far back you have to go with this.
- ISDs must contact the parents of each child and let them know of the plan, and the opportunity for a special education evaluation.

More on CAP #2

- “The cost of identifying and conducting assessments for students suspected of having a disability has always been the responsibility of the district, which will continue.”
- If compensatory services are needed, this will be the district’s financial responsibility also.
- However, TEA will “create a fund to support some of these efforts.” \$25,000,000 over five years.

What Next?

- Look for a second draft of the CAP after comments are made and focus groups are held.
- Many unresolved issues. How far back is the school supposed to go? Will parents be able to access due process hearings, even though the statute of limitations has passed? If the student has done well with the general education services provided, does the school still have to do an evaluation?
- Stay tuned!

CHRISTINA L. GARCIA

Houston Office

10375 Richmond Ave., Suite 1357

Houston, Texas 77042

Phone: 713-789-6864

Fax: 713-789-9318

Email: cgarcia@wabsa.com

Web: www.WalshGallegos.com

The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

