Medical Legal Assistance for Families: How to Help Your Patients with Their Special Educational Needs

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Learning Objectives

After attending this presentation, the participants will be able to:

1. Describe the current status of medical legal partnerships in the U.S. and Texas.
2. List the steps involved in making a referral to the MLAF Program.
3. Explain the differences between the following programs for children with school difficulties: Response to Intervention, Section 504 and IDEA.
4. Describe the services and instructional accommodations that may be available to students with disabilities.
5. Explain the physician's role in helping patients to fully access appropriate special education services.

MLPs: History

1993: First Medical Legal Partnership for Children at Boston Medical Center (MLPC)

2005: National Center for Medical Legal Partnership opens

2009: MLPC separates into Medical-Legal Partnership/Boston and the National Center for Medical-Legal Partnership

Now: 83 MLP sites partner with more than 235 health care institutions in the U.S.

MLP Core Components and Activities

Texas MLPs

Active Programs:
- San Antonio – First Program in Texas – October 1, 2008
- Brownsville 10/2008
- El Paso 08/2009
- Waco 04/2010
- Dallas 06/2010

In Development:
- Houston
- Austin
Texas MLP Priorities

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Statewide MLP Activities

- MLAF hosted first statewide meeting October 2011 in San Antonio with a follow-up meeting in March 2012 in conjunction with the National MLP Meeting
- Creation of listserv and use of Texas Lawyers Help website for sharing resources
- Work on Special Education Toolkit
- Preliminary work on potential for data sharing

Medical-Legal Assistance for Families

Key Partners:
- Texas Rio Grande Legal Aid, Inc.
- UTHSCSA Department of Pediatrics
- City of San Antonio/Department of Human Services

Primary areas for legal aid:
- Housing
- Education
- Benefits (Medicaid, food stamps, Social Security, utilities assistance)

MLAF - Subject of Cases

MLAF - Level of Service

Referring to Medical-Legal Assistance for Families

Refer families with problems involving housing, education or public benefits, guardianship and/or need for utility assistance.

Goldsbury 3rd Floor by Exit of Walk-In Clinic

Goldsbury Lower Level/ Behind Reception Desk
Fill out a referral form with patient-family name and address and include a brief description of the problem. If you do not have referral form, use a sheet of paper. Provide a copy of the face sheet.

Walk your patient-family and paperwork to the MLAF Intake Office near the exit of the Walk-In Clinic. This may not work if you are not in the Clinic. If an intake appointment is available, the MLAF staff may be able to meet with the family right away. Some families prefer to meet later; this is fine, too.

Alternate Ways to Refer
1. Fax the paperwork to MLAF at 704-8743 and direct the family to the offices near the exit of the Walk-In Clinic.
2. Give the family a fact sheet about MLAF with the phone number to call: 704-8730.

What is Special Education under the IDEA?
- Specialized instruction and services that are necessary for a child with a disability to have a “free appropriate public education” (FAPE). 20 U.S.C § 1412(a)(1)
- May or may not include instruction outside of the regular classroom.
- Least Restrictive Environment (LRE)

GUIDE TO SPECIAL EDUCATION
Kathryn Newell, JD

Supplementary Aids/Services
- “...aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate...”
- Examples:
  - Preferential seating
  - Instructional materials (e.g. taped lectures, Braille)
  - Testing adaptations
  - One-on-one assistance
  - Staff training
  - Assistive technology (e.g. wheelchair, communication device) – only exception is a medical device that is surgically implanted

Related Services
- Transportation
- Speech language pathology and audiology
- Interpreting
- Psychological services
- Physical therapy
- Occupational therapy
- Therapeutic recreation
- Rehabilitation counseling
- Mobility services
- Medical services for diagnostic or evaluation purposes.
- Health services
- Social work services
- Parent counseling and training
- Community-based training
- Other 34 C.F.R. § 300.34
### Other Benefits
- **Autism supplement**
  - In-home and community-based training, extended educational programming, behavior support, etc.
- **Transition Services**
  - Services designed to facilitate the student’s movement from school to post-school activities.
- **Extended School Year Services**
  - For children who are likely to regress during school breaks.
- **Protection in Disciplinary Matters**
  - Requirement for a Manifestation Determination Review (MDR) before a disciplinary change of placement.

### Eligible Categories
- Eligible disabilities include:
  - Intellectual disability
  - Hearing impairments
  - Speech or language impairments
  - Visual impairments
  - Serious emotional disturbance
  - Orthopedic impairments
  - Autism
  - Traumatic brain injury
  - Other health impairments (such as a terminal or chronic disorder – e.g. ADHD)
  - Specific learning disabilities
  - Non-Categorical (ages 3 – 5)

### What Does FAPE Really Mean?*
- Program must be:
  - based on the student’s unique individual needs.
  - be designed to enable the student to benefit from education.
  - the student must be making progress.
- More than a minimal benefit is required for program to be appropriate.
- Does not mean a district must provide the “best” education or one designed to maximize a student’s potential.

### Compare with RTI and Section 504
#### RTI
- General education program for children who are struggling in school
- Created by the individual school district – not IDEA or Section 504.
- Often a three-tier model of services ranging in intensity.
- Services depend on the district and vary widely.

#### Section 504
- Disability discrimination law that requires FAPE for students with disabilities – broader range of students than IDEA.
- Many similarities with IDEA – but not as well defined and different enforcement mechanisms (e.g. MDR).
- Often appropriate for conditions like asthma and diabetes that generally don’t impact academics/behavior (formal evaluation probably not necessary = faster way to get services)

### How are children identified?
- School may request that a child be evaluated (“Child Find” requirement).
  - State must identify and evaluate ALL children with disabilities who are in need of special education and related services, including children with disabilities who are homeless or are wards of the state and children with disabilities attending private schools.
  - Parent/guardian/adult student may request a Full Individual Evaluation (IEE)
  - IEE must be completed within 60 days of written consent for evaluation.
  - Generally, ARD Committee meeting must be held within 30 days of the completion of the IEE.
- Independent Education Evaluation (IEE)

### Compare with RTI and Section 504
#### RTI
- Student does not have to have a disability.
- School district determines eligibility criteria.
- School district determines type of RTI services (usually in consultation with parent).
- Student may not be entitled to RTI services.

#### Section 504
- Students with disabilities may be protected by Section 504 even if they don't have a "Section 504 Plan."
- Child Find obligation and parent must consent to evaluation.
- "Section 504 Committee" conducts “evaluation" – unlike an ARD committee, personnel aren't specified and parents aren't members.
- Section 504 Committee gathers enough info to determine the disability and how to serve the student – formal evaluation may not be needed.
- Medical diagnosis often useful but not required if other info is sufficient. If district thinks diagnosis is necessary, it should pay for a medical evaluation.
REMEMBER!
A parent/guardian/adult student can request a Full Individual Evaluation (FIE) AT ANY TIME… even if their child is receiving services through RTI or Section 504. KEEP PROOF OF WRITTEN REQUEST!

How does the child get services?
- An Admission, Review and Dismissal (ARD) Committee meeting is held. The ARD Committee includes:
  - Parents and student, if appropriate
  - School district representative
  - Special education teacher
  - General education teacher
  - Someone qualified to interpret evaluations
  - Others invited by parent, student or school

34 C.F.R. § 300.501

Individualized Education Plan (IEP)
- ARD Committee decides on Individualized Education Program (IEP).
- IEP is a document that includes:
  - Child's present level of performance
  - Annual goals and short term benchmarks
  - Placement
  - Accommodations and modifications
  - Related services
  - Supplementary aids and services
  - Transition services (16+ years old)
  - Deliberations
  - Signature Page (If parent/guardian disagrees, they should check "Disagree")

Resolving Disagreements- IDEA
- ARD Process — parent may exercise right to a 10 day recess
- Mediation - Texas Education Agency (TEA) provides this for free
- TEA Complaint — must be filed within 1 year of the legal violation
- Due Process Hearing — must be requested within 1 year when parent knew or should have known of the legal violation
- Civil Action — if you lose the due process hearing

Compare with RTI and Section 504
RTI
- Perhaps the school district's grievance policy.

Section 504
- Hearing at the school district level
- File a complaint with the federal Office of Civil Rights – 180 deadline
- File a lawsuit – in Texas, 2 year statute of limitations
  - Don't need to exhaust the previous steps before filing a lawsuit.
  - May need to exhaust IDEA due process hearing if there's an overlap.
  - Unlike IDEA, monetary damages for non-educational expenses are available.

Final Thoughts
- Many laws may apply to the child (e.g. IDEA, Section 504, Americans with Disabilities Act, Constitutional rights, state education laws, etc.)
- Parents should review the school district's Parent Handbook and Student Code of Conduct for information about administrative grievances and disciplinary procedures.
- TRLA also represents kids facing charges in Justice of the Peace (J.P.), municipal and juvenile court.
- Some common charges are arising from school are:
  - Failure To Attend School
  - Simple Assault
  - Disorderly Conduct
  - Disruption of Class