



Massachusetts Department of Elementary and Secondary Education

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Special Education Planning and Policy Development Office
Marcia Mittnacht, Director

May 17, 2013

Mr. Bob Babigian, President
Massachusetts School Psychologists Association
575 Washington Street
Braintree, MA 02184

Dear Mr. Babigian:

I am in receipt of your request of April 16, 2013 asking for my review and comment on medical evaluations used for special education eligibility. I remember us discussing this subject at a meeting in 2010 and I am pleased to provide written confirmation of my response.

You ask three questions, I will respond in order:

1. A. Must a school district have a medical evaluation on record in order to make a determination of OHI/ADHD eligibility, or is this a determination to be made by the Team? and
B. If a Team determination, is it appropriate for a school district to establish a policy of always requiring a medical evaluation?

The determination of eligibility in MA requires identification of a primary disability and thirteen categories are given. One category is "Health Impairment." There is no subcategory nor specific diagnosis required by the Team, only that the student's "physiological capacity to function is significantly limited or impaired and results in one or more of the following...including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment...if such health impairment adversely affects a student's educational performance." (See 603 CMR 28.02(7)(i) for the full definition). Then, in our regulations at 28.05(2)(a) it says: "The Team shall examine the evaluative data, including information provided by the parent, and make {an eligibility determination}..." Nowhere in our regulations does it require a medical evaluation to make this determination, nor is a diagnosis of ADHD required. The determination is made by the Team based on the student's functioning in relationship to the educational environment. So, in brief, the answer to 1A is no, that is a determination made by the Team. Further, it is not appropriate for a school district to establish a policy of always requiring a medical evaluation. Here too our regulations are

clear. At 28.04(2)(b) a “health assessment by a physician” is an optional assessment and thus should be determined on a case by case basis if it is necessary. The district may “recommend” such an assessment and the parent may “request” such an assessment. I believe this makes clear that a school district may not require such an assessment.

2. What obligation does a school district have to inform parents of their right to a medical evaluation for diagnostic purposes at public expense when the request for such an evaluation is initiated by the district?

Since any initiation by a school district of an optional assessment is only a “recommendation” according to the regulations, that suggests, at the least, that a discussion would take place as to why such a recommendation is being made. I note that regulation 28.04(1)(c) specifically requires that school districts provide parents with an opportunity to discuss, among other things, the content of the evaluation. Under those circumstances it should be very clear that the school district does not intend any cost to the parent. While this particular juncture is not specifically regulated, the overall concept of special education being a “Free” program is clearly germane and MA has a longstanding policy of interpreting this to mean there is no cost to the parent. However, the school district may request voluntary information from the parent on the parent’s insurance benefits and the parties may agree that the parent can and will use insurance benefits to obtain such an evaluation as long as there is no additional cost to the parent or loss of benefits to the parent for such use.

3. What obligation does a school district have to inform parents that provision of financial information to determine eligibility for public funding of an independent education evaluation (IEE) on a sliding fee scale is voluntary, and that failure to provide this information does not limit the right of parents to request public funding in accordance with federal law?

I note that this question is related to IEEs and not to medical evaluations, per se. The obligation that a school district has in this instance is to provide the “Parent’s Notice of Procedural Safeguards” at least once every year. The information on IEEs is included in section 4 of the Notice and specifically responds to the question you raise. No additional communication is necessary beyond responding to any questions the parent may raise. I hope this information is helpful.

Sincerely,

Marcia Mitnacht
State Director of Special Education

C: Darlene Lynch
Administrator, Program Quality Assurance