



Review of Legal Issues Related to OT & PT Best Practices

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OVERVIEW

- Defensible OT/PT Assessments
- OT/PT Service Delivery Models
- Terminating OT/PT Services
- Section 504 and OT/PT Services



Best Practices for Defensible OT/PT Assessments



Best Practices for Defensible OT/PT Assessments

SCREENINGS: THE LAW

- ❖ Parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children.
- ❖ The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Cal. Educ. Code § 56321(e))

(34 C.F.R. § 300.302)

Best Practices for Defensible OT/PT Assessments

SCREENING

- Usually simple and quick
- Used with groups of students or all students
- Requires no parental consent
- No timeline requirements (e.g. observation)
- ***Used for determining instructional strategies***

ASSESSMENT

- Individually administered
- Requires an assessment plan and parental consent
- Strict timelines (e.g. 15 days & 60 days)
- More intrusive (e.g. direct testing)
- ***Used for determining eligibility, special education and related services***

Best Practices for Defensible OT/PT Assessments

- ❖ Tests, assessment materials, and procedures must meet all of the requirements in Ed. Code § 56320 and the IDEA 34 C.F.R. § 300.304:
 - Selected and administered so not to be racially, culturally or sexually discriminatory
 - Provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally unless otherwise infeasible
 - Used for purposes for which the assessments or measures are valid and reliable
 - Administered by trained and knowledgeable personnel
 - Assessment must be conducted by person knowledgeable of the disability and competent to perform the assessment

Best Practices for Defensible OT/PT Assessments

- Administered in accordance with any instructions provided by the test-maker
- Test and other assessment materials to include those tailored to assess specific areas of educational need – not merely those designed to provide a single IQ score
- Selected and administered so not to be racially, culturally or sexually discriminatory
- Provided in the student's native language or mode of communication, unless clearly not feasible to do so



Best Practices for Defensible OT/PT Assessments

- ❖ Tests administered to a pupil with impaired sensory, manual, or speaking skills must produce test results that accurately reflect the student's aptitude, achievement level, or any other factor the test purports to measure
 - Not the student's impairment, unless those skills are those being measured
 - No single measure, procedures or assessment can be used as the sole criterion for determining eligibility or an appropriate educational program

- ❖ Assess in all areas related to suspected disability
 - Gross motor
 - Fine Motor
 - Visual Motor
 - Sensory Processing

Best Practices for Defensible OT/PT Assessments

❖ PREPARE A WRITTEN REPORT THAT INCLUDES:

- Determination of whether the student may need special education and related services
- Meets eligibility criteria
- Explanation of the basis for making the determination
- Relevant behavior noted during observation of the student in an appropriate setting
- Relationship of the student's behavior to his/her academic and social functioning
- Educationally relevant health and development, and medical findings, if any
- A determination concerning the effects of environmental, cultural or economic disadvantage, where appropriate
- The need for specialized services, materials and equipment for students with low incident disabilities, consistent with Ed. Code § 56136

(Cal. Educ. Code § 56327)
*Guidelines for OT and PT in
California Public Schools, 2nd Ed., pp. 82-86*

Best Practices for Defensible OT/PT Assessments

- ❖ Utilize a variety of assessment tools and sources to gather relevant functional, developmental, and academic information:
 - Review of prior assessment reports/IEE
 - Observations in school (in class, during DIS, therapy, playground)
 - Observations at home
 - Interviews with teachers
 - Interviews with parents
 - Interviews with CCS therapists
 - Information regarding physical condition, social or cultural background and adaptive behavior
 - Standardized testing = just a snap shot

OT/PT Service Delivery Models and Writing it in the IEP



OT/PT Service Delivery Models and Writing it in the IEP

- ❖ OTs and PTs work with the educational team to support a child's ability to:
 - Gain access to the general education curriculum
 - Meet State standards
 - Make adequate yearly progress
 - Participate in postsecondary education
 - Become functional independent citizens upon graduation

- ❖ Need for OT/PT as Related Services
 - Based on assessment results
 - Based on student's needs and goals
 - Based on therapist's professional judgement and IEP team input
 - As may be required to assist an individual with exceptional needs to benefit from special ed (Ed. Code § 56363)

- ❖ Service Delivery Models May Include:
 - Direct Service
 - Collaboration
 - Consultation
 - Accommodations

*Guidelines for OT and PT in
California Public Schools, 2nd Ed., pp. 2, 89-90*

OT/PT Service Delivery Models and Writing it in the IEP

| | |
|--|---|
| <p>Area of Need: Organization of behavior</p> | <p>Measurable Annual Goal# _____</p> |
| <p>Baseline: ██████ is demonstrating improvement with initiating familiar sensory motor activities and is able to participate in the specific task such as seeking vestibular input, climbing through the large climbing structure etc. When he is asked to complete a novel sensory motor activity for 5 minutes, he attempts to hit himself, scream, cry, etc. and requires approximately 6-7 verbal and gestural cues to complete the task.</p> | <p>Goal: By 5/19, to demonstrate improvement with organization of behavior, ██████ will participate in a non-preferred developmentally appropriate sensory motor activity for 10 minutes with 4 verbal and gestural cues in 3 out 4 opportunities as measured by observation and charting.</p> <p><input type="checkbox"/> Enables student to be involved/progress in general curriculum/state standard _____</p> <p><input checked="" type="checkbox"/> Addresses other educational needs resulting from the disability</p> <p><input type="checkbox"/> Linguistically appropriate</p> <p><input type="checkbox"/> Transition</p> <p>Goal: <input type="checkbox"/> Education/Training <input type="checkbox"/> Employment <input type="checkbox"/> Independent Living</p> <p>Person(s) Responsible <u>OTR, COTA</u></p> |

Should COTAs be listed on goals?
 What about services?

OT/PT Service Delivery Models and Writing it in the IEP

CONSULTATION OCCURS BETWEEN THE SUBJECT AREA EXPERT – OT OR PT – AND THE OTHER EDUCATORS WORKING WITH STUDENT.

- Student does *not* need to be directly involved with consultation.
- Consultation can be used to support implementation of accommodations, training on specialized equipment or procedures, or development of instructional strategies.
- Consultation is not required to support a specific goal.

The IEP team discussed and determined other supports for school personnel, or for student, or on behalf of the student are not needed.

The IEP team discussed and determined the following other supports for school personnel, or for student, or on behalf of the student are needed.

| Other Supports for School Personnel, Or for Student, Or on Behalf of Student | Start Date | End Date | Frequency | Duration | Location |
|--|------------|----------|-----------|----------|----------|
| | | | | | |

OT/PT Service Delivery Models and Writing it in the IEP

COLLABORATION IS A DIRECT SERVICE TO STUDENT, WHICH IS PROVIDED BY THE OT OR PT IN CONJUNCTION WITH OTHER EDUCATORS.

- Student receives direct services during collaboration.
- Collaboration is most often used to demonstrate effective techniques, strategies, and interventions to help other educators generalize implementation for the student.
- Collaboration services should be offered to support student in attaining one or more of his/her IEP goals, especially goals for generalization, or that have multiple people responsible, such as legible handwriting in the classroom.

| | | |
|---|--|--------------------|
| Service: Occupational therapy | Start Date: 3/2/2018 | End Date: 3/1/2019 |
| Provider: Nonpublic agency (NPA) under contract with SELPA or district | <input checked="" type="checkbox"/> Ind <input type="checkbox"/> Grp <input type="checkbox"/> Sec Transition | |
| Duration/Freq: 60 min x 1 Totaling: 60 min served Monthly | Location: Separate classroom in public integrated facility | |
| Comments: Services to be provided on a collaboration model which includes both direct treatment and collaboration with the classroom teacher. | | |

Terminating OT/PT Services



Terminating OT/PT Services

CONSIDERATION OF REDUCING OR DISCHARGING FROM OT/PT OCCURS WHEN:

- the student is accessing her current educational curriculum and program;
- other educational personnel are able to implement OT/PT techniques to assist the student in areas of need;
- student performance remains unchanged despite multiple efforts by the OT/PT to remediate the concerns or help student develop compensatory techniques;
- student continues to make progress on goals despite a decrease in OT/PT services;
- therapy is contraindicated because of a change in medical or physical status.

*Guidelines for OT and PT in
California Public Schools, 2nd Ed., p. 90*

Terminating OT/PT Services

SUBSTANTIVE CONSIDERATIONS

- Assessment Results
- Progress Reports
- Data on Progress
- Work Samples

PROCEDURAL CONSIDERATIONS

- IEP Team Meeting Determination
- Prior Written Notice
- Notice of Procedural Safeguards



Section 504 and OT/PT Services



Section 504 and OT/PT Services

SECTION 504 ELIGIBILITY

- Individual with a disability is any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities

34 C.F.R. § 104.36(j)

IDEA ELIGIBILITY

- A child shall qualify as an individual with exceptional needs if results of the assessment demonstrate that the degree of the child's impairment requires special education as determined by the IEP team
- Meets one of 13 defined eligibility categories

5 C.C.R. § 3030
Cal. Educ. Code § 56026

Section 504 and OT/PT Services

SECTION 504

- FAPE is the provision of regular or special education ***and related aids and services*** designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons.
- Antidiscrimination law

IDEA

- FAPE is the provision of an Individualized Education Program (“IEP”) that is:
 - Designed to meet the child’s unique educational needs; and
 - Reasonably calculated to enable the child to receive either *some* or *meaningful* educational benefit.
- Funding statute with substantive right to FAPE



Legal Panel Q & A