

Spring, 2014

Let Your Voice be Heard!

by Kim Gibbons

MASE President and Executive Director
St. Croix River Education District

As this legislative session kicks into full gear, I would like to urge all MASE members to become involved! The MASE day at the Capitol is scheduled for March 6th and is an opportunity for all us to take time to meet with our local legislators as well as key legislators that are influencing educational policy. The MASE website (www.mnase.org) has a wealth of information that can help you prepare for meetings. There are brochures and fact sheets on a variety of topics, links to education committee members, and other quick links to assist you in tracking bills and general House and Senate information.

It is so important that our voice is heard! I've talked to some people who wonder if it even makes a difference to make contact with legislators. I think it does. I had an experience a few years ago where my husband ran for our local school board. He ended up winning by one vote. A recount was requested, and the

race ended up in a tie. Ultimately, my husband lost to a card draw. I think about that situation because I think it is a great example of the fact that every vote counts. In fact, after this situation, many people came up to us in the community to say that this experience made them realize that their individual vote did matter. Just like every vote counts, I believe every voice is heard.



Kim Gibbons

My vision for this year has been to work toward a culture of establishing shared leadership around instruction to improve outcomes for all students. I want to work toward translating the words "all students are all teachers' responsibility" into ACTION. The MASE Legislative platform has three key areas: (1) To increase educational efficiency, (2) to improve student outcomes through evidence-based practices, and (3) to support equity in special education funding. Two areas of the platform directly address the importance of a shared culture around improving instruction. First, in the area of increasing educational efficiency, we need to move toward a system where we serve students based on need, not by a label. To that end, we need flexibility with teacher licensing so that licensure is not a barrier to effective instruction. We also need to move to a system that values outcomes for students with disabilities as much (or even more) than compliance standards that often are

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Anti-bullying, Licensure & Teacher Evaluation

by Brad Lundell
MASE Lobbyist

The 2014 legislative session started on February 25 and as this is a non-budget year, the action won't be as hot and heavy as it was during last year's proceedings. That doesn't mean there won't be issues of importance being discussed. Of all the education issues on the docket, the anti-bullying bill will probably receive the most attention. The bill passed the House last session, but time ran out before the Senate could take a vote on final passage. The bill is now in the Senate Finance Committee, where it will again be discussed and perhaps amended before it returns to the Senate floor for a final vote.

There are two issues that will be of special importance to the special education community. Whether they are addressed remains to be seen, but they should be discussed. The first deals with special education administrative licensure. Over the past couple of years, there has been some confusion in the field as to whether or not a candidate for licensure needs three years of teaching experience to be granted a special education administrative license. While there is an alternative path to the administrative license and candidates can petition the Board of School Administrators (BOSA) for a variance, the fact that the license for a special education administrator is in the same section of Minnesota Rules as that for principal and superintendent has caused more than a bit of confusion for individuals who are not generally considered as "teachers," namely school psychologists, social workers, and speech/language pathologists, who would like to become special education administrators.

Last session, there was an effort to circumvent the BOSA and establish a policy through legislation that would have largely exempted school psychologists, school social workers, and speech/language pathologists from having three years of classroom teaching experience in order to pursue a license as a special education

administrator. This effort was abandoned after conversations with members of BOSA, who pledged to work with the special education community to find a way through the confusion. While it is too early to know how this can be done, it is heartening that the BOSA has a new Executive Director, Dr.

Janet Mohr, and I have been discussing possible options with her. I will keep you posted as this issue moves forward.



Brad Lundell

Another issue that has recently cropped up is how the teacher evaluation law, first passed in 2011 and amended in 2013, will be applied to special education staff. While the evaluation process is relatively straightforward for regular education teachers, the many - and distinct - roles that are played by special education staff makes it more difficult to apply the evaluation process to them. I have had initial conversations with several legislators about this issue and hopefully some clarification will be forthcoming.

Lastly, I'd like to mention a statistical table I saw in a recent issue of Education Week. Minnesota's special education "graduation gap" ranks 35th out of the 48 states reporting their graduation rates to the United States Department of Education. Minnesota's special education graduation rate for 2012 was 56%, which ranks 33rd in that nation, and its graduation rate for regular education students was 78%. Starting in 2015, the United States Department of Education will be using graduation statistics along with a battery of other measurements to gauge how states are doing in the education of special education students. While the statistics are sobering, I believe and I'm sure you do as

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John Klaber

Your Voice ... Continued from Cover

not associated with improvements in outcomes for students. Our Minnesota legislators need to hear from us that we value and promote a system where we are monitored on student outcomes!

Second, improving student outcomes through the implementation of evidence-based practice requires a working knowledge of what constitutes an evidence-based practice. Most legislators are not educators, so we need to inform them of the educational research in easily understood terms. We need to continue linking evidence-based practices such as the Response to Intervention (RtI) framework to critical issues such as achievement gap reduction and reduction of special education cross-subsidy.

So, let your voice be heard this legislative session and keep the focus on improving instruction through evidence-based practices! We are continuing a dialogue around instruction with a multi-organization event on March 5th with MASA, Elementary and Secondary Principal associations, and Curriculum Leaders. The hope will be that we can collaborate around the area of instruction and have a unified voice in Minnesota around this issue!

Anti-bullying ... Continued from Page 2

well, that improvement can and will be made. I look forward to serving MASE again during the legislative session. I welcome your questions and can always be reached by cell phone at (612) 220-7459.

IMPACT is your newsletter and we encourage your input! If you have ideas or an article to share, please contact us at the MASE offices—651/645-6272 or email us at aranallo@mnasa.org.

Strengthening Common Goals

by Jeremy D. Braun, President;
Sarah Angerman, Past Co-President;
Marilyn Fairchild, Past Co-President; and
Minnesota Speech Language Hearing Association

The Minnesota Speech Language Hearing Association (MSHA) is proposing two pieces of legislation. The reasons for proposing the pieces of legislation are to meet our common goals of ensuring that students/clients in Minnesota receive speech therapy from trained professionals and addressing the shortage of Speech-Language Pathologists.

The first is dealing with the use of the Temporary Limited License (TLL) to fill vacancies in school districts when a licensed Speech-Language Pathologist (SLP) is not available. Currently, according to Minnesota Statute 8710.1250, an individual can apply for a TLL with a bachelors degree in speech-language pathology, speech and hearing sciences, communication disorders or in a related field. As a result, individuals who have limited or no clinical training may be working with children with communication disorders. While the idea of that "we all use language we all should be able to teach language" is one viewpoint, the reality is that out there this approach may only work if the individual has a language system that is not in some way delayed or disordered. Individuals with communication disorders do not acquire language like those with typically developing language systems. The other areas of communication such as articulation, voice, fluency, dysphagia (swallowing), and social communication also require specialized training in order to positively affect the outcomes in individuals with communication disorders. Lack of proper training may lead to therapy approaches that produce more harm than good. MSHA is proposing this change in legislation in order to ensure that the students in Minnesota schools who meet the criteria for special education services in the area of speech language impairment receive services from the highest qualified professional.

In the area of identification and evaluation, most



undergraduate programs do not thoroughly train their students on psychometric processes, the use of and the interpretation of evaluation results. This can result in the under- and over-identification of students with communication disorders if the individual completing the assessment does not understand these principles, which, in turn, affects caseloads.

MSHA is proposing that the state statute governing the granting of a TLL in speech-language pathology be changed to require that an individual must have at least 100 supervised clinical hours prior to receiving the license. This will assist in ensuring that the students are being properly served. Individuals who are enrolled in a master's degree program and have obtained the requisite clinical hours would be eligible for a temporary limited license, which would allow them to fill a vacant SLP position while completing their master's degree.

The second piece of legislation deals with licensing the Speech-Language Pathology Assistant. The primary reasons for seeking a license for the SLP Assistant has to do with ensuring the highest quality of services for those receiving speech-language pathology services from the emerging group of professionals who are serving as assistants to SLPs. This will also bring us in line with other professional groups offering licensure to assistants, including physical therapist assistants and certified occupational therapist assistants.

Information regarding the proper role, duties, and restrictions for a the SLP Assistant can be found below and is based on Minnesota Statute 148.5192, which mirrors the recommendations from the American Speech Language Hearing Association (ASHA).

**Common Goals ...
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Common Goals ...

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SLP Assistants Can:

- assist with speech-language and hearing screenings
- implement documented treatment plans developed by the SLP
- document client/student performance
- assist with assessments
- assist with preparing materials and scheduling activities as directed
- perform checks and maintain equipment
- support the SLP in research projects, inservice training, and public relations programs
- collect data

SLP Assistants Cannot:

- perform any standardized diagnostic tests, perform formal or informal evaluations or interpret test results
- screen or diagnose clients for feeding or swallowing disorders, including a checklist or tabulating results of feeding or swallowing evaluations, or demonstrate swallowing strategies or precautions to clients or the clients families
- participate in parent conferences, or any interdisciplinary team without the presence of the supervising SLP or other licensed SLP as authorized by the supervising SLP
- provide client or family counseling or consult with the client or family regarding the client status or service
- select clients for service
- dismiss or discharge clients
- disclose clinical or confidential information either orally or in writing to anyone other than the supervising SLP
- make referrals for additional service
- sign any formal documents, including treatment plans, educational plans, reimbursement forms, or reports

MSHA is grateful for your support of the TLL and SLP Assistant legislation. These proposed laws strengthen our common goal to protect students and clients with communication needs, as well as the professionals who serve them. Please contact MSHA with any questions at (651) 290-6292.

Online Resources Related to SLP Assistants

MN State Law re: SLP Assistants: SLP Assistants are not currently licensed in Minnesota, although their role is defined by state statute 148.5192. This statute is available for review online. <www.revisor.mn.gov/statutes/?id=148.5192>

Scope of Practice: The link below provides information regarding ASHA's guidelines for SLP Assistant scope of practice. <www.asha.org/policy/SP2013-00337/>

Frequently Asked Questions: ASHA provides answers to a variety of questions pertaining to SLP Assistants. <<http://www.asha.org/associates/SLPA-FAQs/>>

ASHA Associates: SLP Assistants are currently not regulated, licensed, or certified by ASHA. Regulations regarding the hiring of SLP Assistants vary from state-to-state. However, ASHA has developed an Associates level of membership. <www.asha.org/associates/>

SLP Assistant Overview: ASHA provides information regarding key issues, resources, and references re: SLP Assistants. <www.asha.org/PRPSpecificTopic.aspx?folderid=8589934664§ion=References>

Specific State-by-State information re: SLP Assistants: This document examines current licensure, registration, and minimum qualifications for SLP Assistants across the 50 states. <www.asha.org/uploadedFiles/SupportPersonnelTrends.pdf>

Licensure Information: The following links provide licensure information state-to-state; this information is not necessarily specific to SLP Assistants (i.e.: covers SLP licensure as well) <www.asha.org/advocacy/state/StateLicensureTrends/>

Reimbursement for SLP Assistant services: The use of assistants can improve access to and reduce costs of quality services. Billing, reimbursement and policy information is available online. <www.asha.org/PRPSpecificTopic.aspx?folderid=8589934664§ion=Key_Issue>

Advocacy Update

by John Klaber
MASE Executive Director

It's time for the spring newsletter and depending on where you live, you are either seeing trees beginning to leaf out and flowers beginning to show or the snow at the end of your driveway is now low enough that you can see cross traffic as you back out on to the street. You will either be pulling your boat out of storage or consider it time to get the icehouse off of the lake. As I write this message, your leadership is meeting with other organizations to see where we might find common ground as the legislature begins its 2014 session. By contrast, we are also considering what issues or bills might require our active opposition. MASE members have worked diligently to support the goals of our organization and I would like to highlight some of their efforts here.

The Special Education Caseloads Committee created by MDE has met a number of times with stakeholders ranging from advocacy groups to teachers to MASE. Recommendations that appear to have some traction range from the use of testing coordinators that removes that responsibility from the case managers to a restructuring of the monitoring process. In the case of the latter, we continue to emphasize a move toward monitoring of outcomes versus due process documentation. Our committee members will continue to advocate for common-sense practices that do not tie the hands of our directors as they balance the delivery of required student services with limited resources, including qualified competent staff, facilities and finances.

Our MASE representatives on the MDE Restrictive Procedures work group have also been actively working to support the interests of students and staff. They continue to try to bring a balanced perspective on this issue, recognizing that there are many individuals impacted by how the school is able to respond to the actions of students with challenging behaviors, including the student, his or her classmates and staff

members. In the process we have been respectful of the individual behavioral and emotional needs of students with disabilities, while at the same time recognizing the growing number of reported staff injuries.



John Klaber

Under the "hope springs eternal" category, you are all aware that there has been a change in the leadership of the Division of Compliance and Assistance. We have appreciated the efforts made by MDE leadership to better understand the challenges we and our staff members face in coping with the due process monitoring structure. They have actively sought to meet with special education directors, coordinators and teachers. Throughout those conversations we have emphasized our desire to maximize the amount of time that we can spend in direct instruction and support to our students. We have also attempted to accurately convey the frustration that we and our staff experience with the current emphasis on compliance with due process procedures and paperwork. I must also give MDE credit for seeking out individuals to lead the division who have had training and experience in education, as well as school law.

Finally, I have a request to make of you as it is spring and you are actively engaged in seeking and employing the most competent staff to serve your students with disabilities. Please share with me the challenges (and successes) that you are experiencing as you seek to fill open special educator positions. I would like to share that information with individuals who can have an impact on the special education system in Minnesota.

I contend that this is the single greatest challenge that we face in public education and

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the challenge will only become greater as the number of educators reaching retirement age increases. It is certainly common knowledge in my circle of professional friends that many of those individuals who are retiring are doing so earlier than they might otherwise choose if it were not for the paperwork burdens. We can also expect a decrease in the number of individuals seeking to be teachers, let alone special education teachers as other professions seek to fill the positions left open by those entering retirement.

So what do I anticipate will happen? There will be a smaller number of special educator candidates for an increasing number of open positions. We will rely on variances and other machinations to fill positions. We will even create a cross-categorical teaching license because of the challenge of finding qualified and appropriately licensed individuals (wait a minute....we've already done that). Individuals who are mobile (the typical twenty-something) will migrate to districts that have the financial resources to allow for reduced caseload numbers or specialized positions, such as assessment specialists or due process coordinators. Providing those reduced caseloads and positions will add to the cost of special education and all that is implied by those increasing costs.

On a broader level these same teacher candidates will migrate further to states where salary, benefits and working conditions are more positive (for a moment let's not think about the winter weather in Minnesota). Unless there is a change away from an emphasis on due process paperwork and towards provision of quality instruction, Minnesota will not be able to compete for that group of qualified individuals. We hear from our counterparts in surrounding states that the due process and paperwork burdens in Minnesota are far greater than what they face in their states (gasp...we may even begin losing staff to North Dakota and their oil revenues). What about those who do choose to remain here? I believe that those individuals who are gifted educational interventionists will seek non-special education teaching positions such as regular education reading, writing and mathematics intervention teacher positions.

Why will they do so? For the same reason that any number of speech and language pathologist candidates have chosen upon graduation to move into the medical field versus working within public education....the paperwork.

It's a simple question.... are students with disabilities served best by individuals who are masters of due process or by individuals who are masters of specialized curriculum and instruction? It is the increasingly rare individual who is a master of both. To many it would appear to be an easy choice....but don't get me started on which of these individuals is most likely to get their special education director into due process trouble. Even if you can find one, can you risk the district's resources and reputation on the gifted interventionist?

I'm always available to you and appreciate hearing your thoughts... jpklaber@ gmail.com or (507) 469-9096.



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Distance Makes a District's Work Stronger

by Reggie Engebritson
Executive Director
Northland Special Education Cooperative

I am having a great year.

I am the executive director of a school district. I am also the director of special education for eleven school districts in northeastern Minnesota. Our special education cooperative covers approximately 5000 square miles. Because of the large distance between districts, I have had to think of different ways to keep in touch and involve the special education staff within those districts. A little over two years ago, I started a video blog. I use this blog to create short, five minute videos on different topics in special education. Then I email the link out to all staff. Special education coordinators, supervisors and principals have used them for additional training for both special and general education teachers.

Besides finding ways to reach special education staff, this year I joined with members of my board to create some powerful learning opportunities for all licensed staff. My board consists of the superintendents for the ten other districts we serve, besides mine. This is a huge geographic region of the state with hours, not minutes, between districts. Our board meets once a month. While we take care of business, we also manage to have some laughs. We work well together and can freely share opinions and ideas.

Last spring, seven superintendents and I decided to offer the very first regional staff development day to the licensed staff in our districts. We surveyed staff for topics of interest and found that technology, student behavior and strategies for reading and math were the top vote getters. We spent the summer planning a "Back-to-School" workshop that we hoped would knock their socks off. Our objective was to make them "think, laugh and cry," because we figured that would make it memorable. We reached out to both the school and general community to find people willing to present on a

topic for 45 minutes. The response was incredible. We had social workers, police officers, college instructors, mental health professionals, teachers and agency providers speak on a variety of topics. We created an online registration site where teachers could choose four different break-out sessions to attend, out of 100-plus possible options. We had a speaker to kick off the day and a motivational speaker to end the day. On August 28, 2013, we had our first Professional Development Summit (PDS) for 600 licensed staff. It was an incredible day and the responses from our follow-up survey showed that we had hit a home run. Teachers DID think, laugh and cry.



Reggie Engebritson

In late August, we decided to hire a consultant as we created a Regional Teacher Evaluation Project (RTEP). This project was to look at a teacher evaluation model before the law goes into effect July 1, 2014. We brought together two teachers and one principal from 12 districts across the region to create a Work Group. This Work Group was charged with recommending a regional teacher evaluation model. They had three months to work on this and report back to my board. They were able to create a modified-MDE model, using the Charlotte Danielson framework.

From this work, we planned and implemented a second PDS day, this past January, to introduce the basics regarding the Danielson framework. Teachers were able to cross their district boundary lines and meet new colleagues and share ideas, under the same roof. It was a successful day and teachers are asking for more.

Working collaboratively and involving districts within and outside the cooperative has been

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MDE Profile: Meet Patricia Templin

by Patricia Templin

*Director, Compliance and Assistance Division
Minnesota Department of Education*

I am honored to have the privilege to serve as the Director of the Compliance and Assistance Division for the Minnesota Department of Education (MDE)! The Division works to assure a free appropriate public education for students with disabilities, and to support their families and schools in that endeavor. Our vision is to provide responsive leadership to support schools and families and to protect the rights of all students. The Division manages the federally mandated monitoring activities of both program and fiscal special education, as well as implementation of the special education dispute resolution system. Additionally, the Division administers the maltreatment of minors program, and provides technical assistance and training regarding compliance with applicable state and federal laws.

Prior to coming to Minnesota and MDE, I served as an Assistant Deputy County Attorney representing public school districts throughout Pinal County, Arizona. I also worked in private practice serving as legal counsel for school districts in both Arizona and Texas. My representation of client school districts involved a multitude of issues including, but not limited to, personnel matters, student issues, school board concerns, and special education matters. I truly enjoyed the practice of law as every day brought a new challenge, and it was both professionally and personally gratifying to provide legal advice and assistance to my fellow educators.

I am not new to state service, as I served as a consultant for the Arizona Department of Education, Division of Exceptional Student Services, upon moving to Arizona from Texas. It was while serving as a Special Education Director in Texas that I decided to attend law school. As a Director, I worked closely with legal counsel on various special education matters, and discovered to my surprise that I enjoyed the law! Before becoming a Director, I worked as a special education supervisor, diagnostician and teacher in Texas. I started my teaching career at W.B.

Ray High School in Corpus Christi, Texas. My J.D. is from the South Texas College of Law in Houston. I have a M.S. in Curriculum and Instruction and a B.A. in History.



Patricia Templin

By the way, I'm frequently asked about moving from Arizona to Minnesota, and shouldn't it be the other way around! My husband was offered a position as a Deputy Director of Contracting with the Veteran's Administration in Minneapolis and the rest of the story you know. I truly look forward to collaborating with MASE!

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a fun and rewarding experience. I'm not just reaching special education staff. WE are reaching EVERY EDUCATION staff member. I don't think I'll ever forget how exhausted, yet exhilarated, I felt after our first PDS day ended, last August. The text messages were flying between me and the seven superintendents, as we gave each other virtual pats on the back and high fives for putting on such a powerful day. You wouldn't know that many miles separate our districts from each other. That day we were one. That momentum has carried us forward as we continue to involve districts and share regional resources to plan for the future.

**MASE builds strong leaders
who work on behalf of
students with disabilities.**

**— Mission approved by the MASE
Board of Directors, June 2008**

Introducing Your 2014 President-Elect Candidate

by Todd Travis
 Director of Special Education
 Midwest Special Education Cooperative

I am honored to be nominated for the position of President-Elect for the Minnesota Administrators for Special Education. I am excited about the possibility of serving as MASE president. I have had the privilege of serving on the MASE Board for the past several years. In addition, I am currently serving as a co-chair for Special Education Caseload Task Force which was commissioned by the legislature to make recommendations regarding special education teacher caseloads. Through these opportunities I have gained valuable insight regarding the critical role MASE serves in not only supporting its members but also in working with the Minnesota Department of Education and the Minnesota Legislature.

My priorities:

- Continue MASE's tradition of providing exceptional professional development opportunities for both new and veteran school leaders.
- Strengthen collaboration with partner organizations in an effort to provide quality programming to students with special needs.
- Partner with the Minnesota Department of Education advocacy groups and other educational organizations to recognize the tremendous efforts of special education teachers and work collaboratively to reduce burdensome and unnecessary paperwork.
- Work collaboratively with our education partners to promote the movement away from traditional accountability measures which are tied heavily to due process requirements and move toward results driven accountability which would promote better educational outcomes for students with special needs.

I cannot stress enough the positive professional experiences that I have gained through my MASE membership. The MASE association and my fellow MASE members have been critical in my development as an educational leader. It is my sincere hope that as your next MASE President-Elect I will be able to help continue on tradition of excellence and add some small contribution of my own. It would truly be an honor to serve as your next President-Elect.



Todd Travis

**Watch your email
 for the 2014
 Election Ballots!**

**Once again this
 year's elections will
 be conducted online.
 Electronic ballots
 will be emailed
 during the week of
 March 17th. Be sure
 to watch your email for your login information!
 Ballots need to be completed by Monday, April 14th.**



Visit the MASE Website!

**The MASE Website is a resource for you! You'll
 find many member resources including the
 MASE calendar, publications, model contracts,
 legislative hot topics and more...**

www.mnase.org



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Conference Highlights!

There's an app for this! Once again our spring conference is going green and will be using a conference app. This app features a complete conference schedule with general session & breakout session details, handouts, participant list, maps, exhibitor information, conference event reminders and more to allow participants to create their own professional development experience.

Don't miss the Tech Cafe. MASA's partner TIES will host a multipurpose area that will include presentations, displays, and hands-on opportunities for exploring technology resources, best practices and emerging technology.

New this year! Retirees - join us for the **Retiree's Breakfast**, Thursday, from 7 - 8:30 am. Hosted by MASA Board of Director's Retiree Representative Mary Ann Nelson, the breakfast is a chance to visit with old friends and get an update on association news. All retirees are welcome but you must register to attend!

Our **Exhibit Fair** is a great way to visit with representatives of companies offering the latest products and services. You don't want to miss your chance to win the door prize - ASUS Transformer Book, 2-in-1 laptop and tablet!

Don't forget to shop the Silent Auction. Profits support the programs of the MASA Foundation. And, it's not too late to make your own donation to the auction!

Throughout the conference, we will celebrate the accomplishments of your colleagues. Congratulations to our award recipients!

Meet Our Keynote Speakers



Alan Coulter has a passion for data around student performance and a commitment to support administrators in the use of those data. Join us for Thursday's general session entitled, *Success in Instructional Leadership: What does the research SAY, and what do practitioners DO?*



Valerie Greenhill will explore *The Role of Leaders in 21st Century Education*. Our Friday general session will include the latest ideas in leadership and teambuilding and a workshop-style session where participants can reflect on their own practice and go home with ideas for implementation in their own setting.

Schedule At-a-Glance

Thursday, March 13

(Registration open 7 am - 4:30 pm)

- | | |
|--------------------|-------------------------------------|
| 7:30 - 8:30 am | • Retiree Breakfast |
| 8:30 - 10:30 am | • Awards & Keynote: W. Alan Coulter |
| 10:30 am - 5:30 pm | • Exhibits Open |
| 11 am - 12 pm | • Breakout Sessions I |
| 12 - 1:30 pm | • Lunch & Dessert Reception |
| 1:30 - 2:30 pm | • Breakout Sessions II |
| 3 - 3:30 pm | • Exhibit Hall Break & Drawings |
| 3 - 4 pm | • Breakout Sessions III |
| 4 - 5:30 pm | • Reception |

Friday, March 12

(Registration open 8 - 11 am)

- | | |
|------------------|---|
| 8:30 - 10:30 am | • Awards & Keynote Part 1:
Valerie Greenhill |
| 10:30 - 10:45 am | • Break |
| 10:45 am - 12 pm | • Awards & Keynote Part 2:
Valerie Greenhill |

The Legal Status Special Education Students' Medical, Emotional and Mental Health Records

by Nancy E. Blumstein, Attorney and
Christian R. Shafer, Attorney
Ratwik, Roszak & Maloney, P.A.

"I can't share my records with the team because of HIPAA."

"I'm sorry, my file is privileged."

"I promised the parents I wouldn't show my notes to anyone."

"I'd lose my license if I gave my nursing documents to the teacher."

"My psychology notes fall under the "desk drawer" exception. They aren't student data."

Does this sound familiar? If so, then you are one of the many special education administrators who has met with resistance when requesting student records from a school nurse, social worker, psychologist, or other licensed health professional employed by the school district. There is a widespread misconception that the records created or maintained by these individuals are "confidential," "privileged," or otherwise cannot be shared with a student's educators, including the members of the IEP team, or the school district's legal counsel. That is simply not the case. If an educator has a legitimate job-related need to access the student's nursing file, social work notes, psychologist's file, or any similar document, then there is no basis for withholding that record.

As a general rule, the Minnesota Government Data Practices Act ("MGDPA") classifies all "data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to students" as "educational data." Minn. Stat. § 13.32, subd. 1(a) (emphasis added). The MGDPA specifically provides that educational data can be released pursuant to the United States Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations.

Minn. Stat. § 13.32, subd. (3)(e). The FERPA, in turn, allows release of student educational records to "other school officials, including teachers, within the [school district] whom the [school district] has determined to have legitimate educational interests." 34 C.F.R. § 99.31(a)(1)(i)(A) (emphasis added). In other words, if a student's teacher or other educator has a "legitimate educational interest" in seeing any record on a student that is maintained by any "person acting" for the school district, then the educator can access those records without permission from the student's parents.

The MGDPA does except medical records or mental health data that have been generated by any school district employee or provided to the district from this rule. To the contrary, the MGDPA specifically provides that "health data concerning students, including but not limited to, data concerning immunizations, notations of special physical or mental problems, *and records of school nurses* are educational data." Minn. Stat. § 13.32, subd. 2(a) (emphasis added). Like all other "educational data," a school district employee who has a legitimate educational interest may access a student's nursing file, or any other data concerning the student's physical or mental health without parental permission. Minn. Stat. § 13.32, subd. (3)(e), 34 C.F.R. § 99.31(a)(1)(i)(A).

Some school nurses, social workers, or psychologists may also believe that "their" files are not "educational data" because they



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constitute “treatment records” under Minnesota Rule 1205.0500. This is not the case either. Rule 1205.0500 does exempt records that are: “(i) created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity; (ii) created, maintained, or used only in connection with the provision of treatment to the student; and (iii) not disclosed to anyone other than individuals providing the treatment; provided that the records can be personally reviewed by a physician or other appropriate professional of the student’s choice” from the definition of “educational data.” Minn. R. 1205.0500, subp. 4. It also expressly provides that, in this context, the term “treatment *does not include* remedial educational activities or activities which are part of the instruction at the educational agency or institution.” *Id* (emphasis added) (internal quotation marks omitted).

School nursing, mental health, and social work services are “activities which are part of” a school district’s instruction. They are typically also directly part of a special education student’s IEP or a student with a disability’s 504 plan. Accordingly, any records created or maintained by any school district employee in connection with those services are not “treatment” records. Minn. R. 1205.0500, subp. 4. Instead, such records are “educational data” which can be shared with other employees who have any legitimate educational interest in viewing them. Minn. Stat. § 13.32, subd. (3)(e), 34 C.F.R. § 99.31(a)(1)(i)(A).

Other school nurses, social workers, and psychologists may believe that the records they produce fall under the “desk drawer” exception to the definition of “educational data.” As you know, the MGDPA provides that records created by “instructional personnel” that are not disclosed to anyone else other than a substitute and are destroyed at the end of the school year” are not “government data” subject to the MGDPA. Minn. Stat. § 13.32, subd. 1(a). School nurses, social workers, psychologists, and other health professionals, however, are not “instructional personnel.” Thus, this exception does not apply to the records they create,

regardless of whether they keep the records in their sole possession and do not disclose them. Moreover, because they are not “instructional personnel,” destroying their records at the end of the year may violate the Minnesota Records Retention Act.

School health employees also commonly respond to teachers’ requests for medical records by saying that the HIPAA prohibits them from disclosing the records without parental permission. This is generally not true for at least two reasons. First, a school district may or may not be subject to the HIPAA, depending on whether it engages in certain types of activities. See 45 C.F.R. § 160.102. Second, and more importantly, even if it applies to a school district, the HIPAAA specifically exempts records that are subject to the FERPA from its so-called privacy rule. 45 C.F.R. § 160.103(2)(i). As discussed above, virtually every student record, including records created and maintained by school nurses or other health officials, is subject to the FERPA. See 34 C.F.R. § 99.3. Thus, those records are not subject to the HIPAA.

At least one school nurse has refused to provide nursing records to teachers out of fear that the Board of Nursing would discipline him/her for doing so. This is another misinterpretation of the applicable law. Under the Minnesota Nurse Practices Act, the Board of Nursing may discipline a nurse for “[r]evealing a privileged communication from or relating to a patient *except when otherwise required or permitted by law.*” Minn. Stat. § 148.261, subd. (14). However, as discussed above, school nursing records are “educational data” under the MGDPA. Minn. Stat. § 13.32, subd. 2(a). The MGDPA and the FERPA specifically permit the disclosure of school nursing records to other school employees who have a legitimate educational interest in the records without parental permission. Minn. Stat. § 13.32, subd. (3)(e), 34 C.F.R. § 99.31(a)(1)(i)(A). Thus, releasing student records to other school employees is not grounds for discipline by the Board of Nursing.

The same analysis generally applies to records created or held by school psychologists, social

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workers, or other licensed personnel in their capacity as school employees. Such records are educational data governed by the MGDPA and the FERPA. Both of those statutes authorize the release of those records to other school district employees who have a legitimate educational interest in those documents. Because such disclosure is authorized by law, it generally does not constitute a violation of a licensed professional's obligations regarding record privacy.

It is important to note that records generated by school district employees are district property. School employees do not have a right to take such records with them when their employment with the district ends. To the contrary, once an employee leaves the district's employment, that individual generally has no ability to access student records because he or she does not have a "legitimate educational need" to do so. Thus, allowing a former employee to take student records upon separation from the school district could constitute a violation of the MGDPA or the FERPA.

Another issue that arises commonly is the notion that a student's medical records only belong in the nurse's office, or that documents from a student's outside mental health provider go directly to a school psychologist or social worker. Once they are received by any school district employee, such records become "educational data" that should be disclosed to all relevant members of a student's special education team, including the case manager.

The IDEA provides that students' educators must "consider" all records provided to the school district when making special education decisions. 20 U.S.C. § 1414(d)(3)(A)(iii); see also 34 C.F.R. § 300.502(c)(1). There is no exception to this requirement for records given to a school nurse, social worker, or psychologist. See *id.* Educators may satisfy this obligation by reading and discussing the relevant documents at a team meeting. *K.E. v. Independent School District No. 15*, 647 F.3d 795, 805-806 (8th Cir. 2011); see also *T.S. v. Board of Educ. of Town of Ridgefield*, 10 F.3d 87, 90 (2nd Cir. 1993), *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942

(1st Cir. 1991). Conversely, it would be difficult for a school district to demonstrate compliance with this requirement if the documents in question were not shared with the team at a team meeting. Parents' advocates are aware of this potential argument. In one case, a parent's attorney cross examined a school nurse at length about the fact that she stored the only copy of a student's outside medical records in her office. In that case, the school district was able to prevail because the nurse and all other team members testified that the medical records were provided to all team members and discussed during the IEP meetings.

Finally, school districts are assumed to have knowledge of records provided to their employees. See *Day Masonry v. Independent School Dist.* 347, 781 N.W.2d 321, 334 (Minn. 2010). Thus, if a parent provides a school nurse, psychologist, social worker, or any other district employee with information that may raise concerns about the need for an accommodation, a special education evaluation, or a 504 plan, the school district will be assumed to have such information. Failing to pass that information along to the individual responsible for initiating the accommodation process or evaluation in a timely manner may result in liability under the ADA, the IDEA, Section 504, or the Minnesota Human Rights Act.

It is important for all school district employees to understand that "their" records on a particular student can, and should, be shared with the student's other educators. It is also important for school nurses, psychologists, social workers, and other health professionals to understand that parents consider them to be part of the school district and expect them to pass along pertinent information to other school employees as appropriate. By clarifying the misconceptions discussed above, school districts can hopefully avoid potential liability, improve the consistency of its special education services, and foster a more positive relationship with students' parents.

Minnesota SW-PBIS North Region Partners with Infinetec to Host Training Videos

Winter is upon us and best laid plans are often deterred. Don't despair. New opportunities await you. The Minnesota SW-PBIS North region implementation project has produced five training videos to meet your needs. The videos are now available for all Minnesota schools on the MyInfinetec.org website <<http://www.myinfinetec.org>>. Infinetec membership is not required to view these videos. Navigate to the Online Classroom in the menu at the top of the screen. Then select the Behavior category from the Resource drop-down below the black flowplayer. The videos will be viewed in the flowplayer or can be viewed full-screen.

The presenters chosen for these videos include Cheryl Glad, PBIS Coordinator for St. Cloud Area Schools, Charlie Eisenreich, Principal for Apollo High School in St. Cloud, statewide presenter and lead trainer in the North region for new schools implementing PBIS and Steve Wagner, teacher at Apollo High School in St. Cloud.

Two videos are useful at the Tier 1 stage:

Tier 1 Individual Student

PBIS has 5 systems of support – school-wide, non-classroom, classroom, individual and families/community. This video explores the Tier 1 Individual Student systems of support for prevention, which is possible through the predictability provided by a common vision, common expectations and common language of PBIS.

Engaging Youth in PBIS Individual Student Tier 1

Engaging youth in PBIS is based on the focus of giving all youth the chance to form relationships with caring adults, building skills, exercising leadership and helping their communities. This video provides examples of engaging students at all age levels.

For Tier 2, this video is posted:

Managing Escalating Behaviors Individual Tier 2

The assumptions of PBIS include: behavior is learned and serves a function, behavior is lawful and serves a function, behavior is escalated through successive interactions or practice and behavior can be changed through an instructional approach. In this video you will understand how the behavior escalation cycle works, understand best practice and learn when we should intervene.

Tier 3 is addressed with this video:

Tier 3 and Function Based Assessments

A function based assessment (fba) is a process for identifying the events that reliably predict and maintain problem behavior. The fba leads teams to why a behavior is happening and the answer helps teams create effective interventions. This video describes the ABC approach when identifying undesirable behaviors and provides examples of problem behaviors for discussion.

Lastly, the topic of sustainability is addressed with this video:

SW-PBIS Sustainability

There are two key features of PBIS sustainability: a student behavior reinforcement plan and teaching behavior expectations. The strategies that support these two key features and contribute to sustaining a school-wide PBIS initiative are presented.

Congratulations!

Lisa Backer,
2014 MASE
Distinguished
Service Award

Melissa Schaller,
2014 MASE
Special Education
Administrator of the
Year

Diane McCarron, 2014 New Special
Education Leader Award



These individuals are representatives of the leadership excellence found in MASE members: the willingness to risk, strong communication skills, a progressive change agent with high expectations for self and others, and their commitment to shaping policies and practices which impact the quality of education for children with disabilities.

Lisa, Melissa and Diane will be honored during the 2014 MASA/MASE Spring Conference.

STENSWICK-BENSON SCHOLARSHIP PROGRAM

Applications are due April 1.

Do you know an exceptional emerging special education leader who might benefit from some financial assistance to support their studies? The Stenswick-Benson Scholarship Fund began in 1991 in memory of two Directors of Special Education: Ellsworth Stenswick from Bloomington and Loren Benson from Hopkins, who were considered pioneers in the field of special education. Throughout the years, MASE has sponsored fundraisers in the fall to support this effort and we are pleased to be able to offer scholarships each year to aspiring special education leaders. 2014 applications have been sent to Directors; if you need an additional copy, please visit the MASE website.

MASE Calendar

2014

Wednesday, March 12
MASE New Leaders Cohort, Brooklyn Park

Wednesday, March 12
At Ruth's Table, Brooklyn Park

Wednesday, March 12
MASE Board of Directors Meeting, Brooklyn Park

Thursday - Friday, March 13 - 14
MASE/MASA Spring Conference, Brooklyn Park

Wednesday, May 7
MASE New Leaders Cohort, Madden's

Wednesday - Friday, May 7 - 9
MASE Best Practices Conference, Madden's

Friday, May 16
MDE Directors' Forum, St. Paul

June 19 - 20
MASE Board of Directors Retreat, Madden's

Friday, September 5
MDE Directors' Forum, St. Paul



Minnesota

2014 State Conference
March 28, 2014 • TIES, Roseville

Celebrating 50 years in Minnesota!
More information and registration is available
online at www.mncec.org.



Plan to attend the
2014 Best Practices Conference
May 7-9, 2014 at
Madden's Lodge, Brainerd