Beyond the Surface:
Child Find & Identifying Students with Mental Health Needs

Presented by:

Jennifer Baldassari and Kyle Raney

Association of California School Administrators
Every Child Counts Symposium

February 5, 2020
Jennifer Baldassari is Senior Counsel in Lozano Smith’s Walnut Creek office. She represents public school districts, county offices of education and special education local plan areas, focusing on various aspects of education law with a concentration on student issues and special education. Ms. Baldassari works to proactively develop preventive practices to help avoid costly disputes, including reviewing current policies, practices, and procedures for systemic issues and legal compliance.

EXPERIENCE
Ms. Baldassari has represented school districts in Civil Rights Litigation before California administrative courts in issues regarding Americans with Disabilities Act, Individuals with Disabilities Education Act, and Section 504 of the Federal Rehabilitation Act of 1973. She has represented school districts at IEP meetings, resolution sessions, mediation, due process hearings, and OCR investigations as well as presented on various special education topics across the state. While attending undergraduate school she gained hands-on experience in the classroom employed as a teacher’s aide and was able to focus on her writing skills as a summer associate with the California Department of Education Legal Office while attending law school.

EDUCATION
Ms. Baldassari received her Juris Doctor degree from the University of the Pacific, McGeorge School of Law, where she was awarded Pro Bono Honors in 2011-2012. While in law school, she also worked as a Graduate Student Assistant, Judicial Extern and Certified Legal intern where she gained invaluable experience in multiple areas of the law including education, special education and civil litigation. She earned her Bachelor of Science degree from the University of California, Davis, where she graduated with a degree in Managerial Economics and Statistics and received Honors Internship recognition in Education.
OVERVIEW
Kyle A. Raney is senior counsel in Lozano Smith’s Sacramento Office. Mr. Raney focuses on special education and student issues faced by education agencies in California. Mr. Raney regularly provides counsel and support to school districts, county offices of education, and charter schools on all phases of special education litigation, including resolution sessions, mediation, informal negotiations, witness preparation and due process hearings.

EXPERIENCE
Mr. Raney is experienced in developing strategies and providing practical guidance with respect to all special education-related matters, including IEP team meeting attendance. He represents and advises school district, county office of education, charter school and SELPA clients on various issues involving governance, labor and employment matters, personnel issues, Uniform Complaints, CDE/OCR complaints, PERB and EEOC matters, charter start-up, renewal, and revocation, and Section 504, ADA, and FERPA compliance. In addition, he regularly conducts investigations of school employee misconduct including allegations of sexual harassment and child abuse. He is experienced in coordinating and prosecuting student expulsion proceedings on behalf of school district clients, and serving as procedural advisor to county boards of education on expulsion appeals.

PRESENTER EXPERIENCE
Mr. Raney is regularly invited to speak on student and special education topics for statewide organizations, such as the Association of California School Administrators (ACSA) at the annual Every Child Counts Symposium, and the California Charter Schools Association (CCSA) Conference. Mr. Raney also frequently presents workshops for school district, county office of education clients on such topics as Conflicts of Interest, Confidentiality of Pupil Records, Student Discipline Procedures, and Section 504.

EDUCATION
Mr. Raney received his Juris Doctor degree from the University of the Pacific, McGeorge School of Law. During Law School, Mr. Raney was the recipient of the Public Service Scholarship, and was awarded an internship with the California Department of Managed Health Care. He earned his Bachelor of Arts in Political Science, with a minor in Communication, from the University of California, Davis.
WHO WE ARE & WHAT WE DO
Lozano Smith is a full-service education and public agency law firm serving hundreds of California’s K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, Los Angeles, Mission Viejo, and San Diego.

AREAS OF EXPERTISE
- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.
Beyond the Surface:
Child Find & Identifying Students with Mental Health Needs

Presented by: Jennifer Baldassari and Kyle Raney

Association of California School Administrators
Every Child Counts Symposium
February 5, 2020

Presenter

Jennifer Baldassari
AT LOZANO SMITH
Senior Counsel in Lozano Smith’s Walnut Creek office. Ms. Baldassari works to proactively develop preventive practices to help avoid costly disputes, including reviewing current policies, practices, and procedures for systemic issues and legal compliance.

OUTSIDE OF WORK
Jennifer enjoys spending time with family and her African Grey Parrot. She also enjoys hiking and taking weekend trips to Truckee, CA.

CONNECT
jbaldassari@lozanosmith.com
925-953-1620

Presenter

Kyle Raney
AT LOZANO SMITH
Kyle A. Raney is senior counsel in Lozano Smith’s Sacramento Office. Mr. Raney focuses on special education and student issues faced by education agencies throughout California. Mr. Raney regularly provides counsel and support to school districts, county offices of education, and charter schools on all phases of special education litigation, including resolution sessions, mediation, informal negotiations, witness preparation and due process hearings.

OUTSIDE OF WORK
In his spare time, Kyle enjoys playing golf (badly), playing music and going to concerts, and spending time with his wife and dog, Joey.

CONNECT
kraney@lozanosmith.com
916.329.7433
Bird’s Eye View of Today’s Topics

- Mental Health Matters
- Child Find Red Flags
- Lessons from Case Law
- The ERMHS Assessment
- Note on Services
- Private Mental Health Reports

Mental Health Matters

800-Pound Gorilla: The Truth About Mental Health in Youth

Fact: 1 in 5 children ages 13-18 have, or will have a serious mental illness.

- 20% of youth ages 13-18 live with a mental health condition
- 11% of youth have a mood disorder
- 10% of youth have a behavior or conduct disorder
- 8% of youth have an anxiety disorder

Source: National Alliance for Mental Illness
Mental Health Challenges Impact Young Children

1 in 6 children aged 2-8 years has a mental, behavioral, or developmental disorder.

Source: Center for Disease Control and Prevention

More Mental Health Statistics

2016 National Survey of Children’s Health
Depression, Anxiety, Behavior Disorders, by Age

- Depression
- Anxiety
- Behavior Disorders

At-Risk Youth

- Youth exposed to trauma
- Youth with disabilities
- Youth with substance use disorders
- Homeless/ Foster youth
- LGBTQ+
Child Find and Mental Health Red Flags

Child Find: The Elephant in the Room

- Affirmative and ongoing
- Identify, locate, and evaluate
- Residing in your jurisdiction

When Does your child find obligation end?

Pause on Public Policy: Why is Child Find Required?

- Ensures FAPE
- Connects families to support
- Reaches those who might otherwise go undetected
Child Find:
A Wild Goose Chase?

- Suspicions of disability include emotional status:
  - Depression/Anxiety
  - OCD
  - Bipolar
  - Eating disorders
- Child find does not guarantee eligibility.

Child Find:
Triggers - OAH Let The Cat Out Of The Bag

- Private reports
- Bullying
- Disciplinary code violations
- Absenteeism and difficulty remaining in class
- Difficulty with the social relationships
- Suicide attempts
- Inappropriate behavior in classroom
- Decline in grades

Child Find:
Counselor’s Role

A district’s failure to evaluate a high schooler with anorexia in conjunction with providing the student counseling that focused on her calorie intake raised Section 504 compliance concerns.
Busy as a Bee: Identifying Mental Needs

- Public perception of mental illness
- Parents and children may hide mental illness
- Symptoms active at home
- School staff unfamiliar with symptoms of mental illness

Eagle Eyes: When “home” behaviors

- Impact attendance
- Are due to school
- Impact academics
- Impact peer relations
- Impact social/emotional state at school
- Others ...?!

Child Find & Section 504: Getting Your Ducks in a Row

Districts must annually undertake to identify and locate every qualified individual with a disability in its jurisdiction who is not receiving public education.

- Who, because of a handicap, need or are believed to need special education or related services.
- Mental illness is included within the definition of “mental impairment” for Section 504 eligibility purposes.
Child Find & Section 504: Getting Your Ducks in a Row

Have procedures/process in place:
- Year-round, on-going
- Get the word out
  - Interagency collaboration
  - Communication with community

Lessons From the Front Lines

- Student with history of school anxiety, depression, and school refusal.
- Student attended private school during 14-15 school year, father diagnosed with cancer and dies, mother diagnosed with chronic illness.
- Student loses a significant amount of weight, grades begin to fall; panic attacks and school refusal ensue.
- Student developed somatic symptoms to avoid school, developed an eating disorder, begins running away from home for one to two nights at a time.
- Scholarship rescinded; Student enrolls in public high school in Jan. 2016.

Berkeley Unified Sch. Dist., OAH Case No. 2018030517
Berkeley Unified Sch. Dist., OAH Case No. 2018030517

- Upon enrollment, Parent presents letter to District citing history of school refusal, anxiety, depression, recent discharge from outpatient counseling.
- Asked for assessment and 504 plan during assessment period.
- Parent gives copies of private assessments to District.
- District claimed not to have received letter, assessment plan provided in March 2016.
- Parent revokes consent for assessment, school counselor independently develops 504 plan.
- Student again starts refusing school, exhibits severe depression.
- Kaiser recommends two-week inpatient hospitalization.
- Parent gives 10-day notice of unilateral placement, which District denied.

Berkeley Unified Sch. Dist., OAH Case No. 2018030517

- Held:
  - “Once it realized that Mother was not being responsive to its emails and telephone calls, Berkeley should have made more vigorous efforts to inform Mother that in fact it was obligated to assess Student, and was making a serious effort to do so, and should have documented those efforts.”
  - District should have utilized certified mail when it had difficulty communicating with Parent, or asked to meet with Parent.
  - District did not establish that it made a reasonable effort to engage Mother and educate her as to the importance of assessing Student as required by state and federal special education law.

Berkeley Unified Sch. Dist., OAH Case No. 2018030517

- Held:
  - If Student had been timely assessed by the District, she would have been found eligible for special ed under the category of ED.
  - Lack of attendance led to her failing most private school classes, although previously found to be gifted.
  - Could not learn because not attending school and completing work.
  - This was the first characteristic of a child eligible under ED.
- Remedy:
  - Parent awarded $86,458 residential placement and wrap around reimbursement.
  - One hour child find training.
  - One hour parent communication training.
In 2011, Student found eligible for special ed under SLD.

District in possession of letter documenting outside diagnosis related to early trauma and loss which caused Student to lose focus, become unduly reactive to criticism, and experience being forced to work harder than he feels he is able.

Fall 2013, Student often under the influence of marijuana at school.

District did not find substance abuse issues to be related to Student’s special ed needs.

District argued that drug use relieved District from duty to explore further source of “self-defeating” behaviors.

District admitted at hearing that an assessment was necessary to determine whether Student had first been diagnosed with depression and later began using drugs.

Experts testified that drug use was a symptom of underlying psychological distress – Student was self-medicating.

Because it had knowledge of Student’s mental health conditions, District had sufficient notice that it likely contributed to his self-defeating behavior and marijuana use.

OAH not persuaded by referral to “Coordination of Services Team.”

Held:

Student required mental health services in order to benefit from his education, due to the interplay of his learning, attention, attendance, and engagement issues, stemming from his emotional difficulties.

District ordered to reimburse Parent in the amount of $44,449.91 for enrollment fee and tuition at unilateral residential placement.
Student v. Golden Plains USD, OAH Case No. 2019040042

- Student eligible for academics
- Student is bullied, becomes withdrawn, suicidal ideation, grades plummet
- Student’s demeanor changes, he has a breakdown at school, and he is bullied by other students
- Student was receiving informal individual counseling

Assessment plan offered “social/emotional” and “behavioral” assessment.

If the box is checked, you are committing to formal assessment.

No assessment data also meant IEP team did not have present levels. However, no FBA/BIP was required, because behaviors were internalizing.

2019 Case: Rose Tree Media SD

Student had a history of receiving top grades for years and regularly scored in the superior range on various cognitive assessments.

Grades began to drop due to significant absences from school.

District proposed assessing for special education under SLD and ED.

During evaluation, School psychologist reviewed extensive medical and personal history, conducted interviews, standardized assessments, and rating scales.

Student was unable to complete some subtests due to elevated levels of anxiety and fatigue. No observations were conducted because student was unavailable.
District found Student had disability but did not need special education services because she had history of strong academic performance, even when absent.

Parent disagreed with evaluation results, and requested an IEE. District filed for due process.

**Held:** District's evaluation was inappropriate. The District's evaluation failed to consider whether there was a causal link between the child's underlying emotional condition and her attendance issues.

Instead, the District inappropriately overemphasized the student's past academic performance in finding her not eligible under IDEA.

**A Bird Walk: School Avoidance Considerations**

- Look at absences.
- Consider breaking the feedback system increasing anxiety.
- Change or progressively increase interventions.
- Home instruction is more restrictive than residential.
OAH Perspective

If attendance is not prosecuted, OAH takes this as a sign that school officials believe absences are disability-related.

The ERMHS Assessment

Purpose of an ERMHS

To determine whether mental health issues impede ability to access education.
The Cat's Meow: A Comprehensive ERMHS Assessment

- Records review
- Interviews
- Observations
- Standardized measures

If we are focused on social/emotional health, which of the above are most important?

---

Watching Like a Hawk: Observations and Interviews

Observations & interviews are mandatory

Who should observe?
- Where?
- How long?
- How many?

Who should be interviewed?

---

Lion's Den: Defensibility in Due Process

- Timely
  - provide assessment plan
  - complete assessment
  - respond to IEE request
  - File for due process
Lion’s Den:
Defensibility in Due Process

• Assessment report contains
  • All areas of suspected mental health issues
  • Variety of tools
  • Procedural requirements
  • Logical analysis

A Bird Walk:
Test Protocols

[Image of a child and a bird]

Have personally identifiable information and should be retained and produced to families

Who Conducts the ERMHS Assessment?

• A trained school psychologist, or other qualified personnel.
  • Such as an LCSW.
Quick Note on Mental Health Services

Student v. Irvine USD, OAH Case No. 2016110472
- Observations of student in class
- Interview of student, mother, teachers, school psychologist, behavior specialist, and private psychiatrist
- Review of prior psycho-educational assessments and behavior intervention plans

Student v. Huntington Sch. Dist., OAH Case No. 2014010095
- Review of school records and prior assessments
- Interview with Student and input from Student’s mother, teachers, and educational service providers
- Several assessment instruments including questionnaires and rating scales

Loaded for Bear: A Comparison of OAH Cases

Telehealth Technology

By July 1, 2020, CDE may issue guidelines addressing public use of telehealth technology to provide mental health services to students on campus, including the qualifications of those authorized to provide such services, and those authorized to assist students in accessing such services.
Notice to Parents

Notification of Mental Health Services
• As of the 2019-2020 SY, schools must disseminate at least twice per year information on how to access student mental health services on campus and in the community.

Consideration of Private Mental Health Assessments

Have a Dog in the Hunt: A Look at Private Reports

Before IEP meeting:
• Analyze report
• Ask questions
• Prepare staff
Thank you from Lozano Smith.
Together with you, we’re impacting communities and lives through:
- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships
#BlueHatProject
#LozanoSmithFoundation
Disclaimer:
These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2020 Lozano Smith
All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sublicense be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.