Part II: Mental Health & Student Services – Legal and Practical Perspectives for Developing Effective Programs Now

Presented by:
Aimee Perry, Esq. & Paul Warren, MFT, Coordinator of Mental Health Services

ACSA Every Child Counts Symposium
Thursday, February 6, 2020
OVERVIEW
Aimee Perry is a partner in Lozano Smith’s Sacramento office. She is co-chair of the firm’s Student Practice Group and is an active member of the firm’s Special Education and Charter School Practice Groups. Ms. Perry’s practice is focused on special education, and she assists clients with difficult IEP team meetings, settling cases at resolution sessions and mediations, as well as ensuring compliance with Section 504. Her expertise also extends to a myriad of student issues, including inter- and intra-district transfers, student fees, bullying, student discipline, student records, and mandatory reporting, as well as advising districts with charter school issues.

PRESENTER EXPERIENCE
Ms. Perry has presented on a variety of topics before the Association of California School Administrators (ACSA), California Association of Supervisors of Child Welfare and Attendance (CASCWA), California Association of Latino Superintendents and Administrators (CALSA), and the Small School District’s Association (SSDA).

ARTICLES
Ms. Perry’s article “Cancer Awareness Slogans Pose Tough Challenges for Schools” was published in the Daily Journal in March 2012.

EDUCATION
Ms. Perry earned her law degree from the University of the Pacific, McGeorge School of Law. She earned her undergraduate degree from San Diego State University, where she majored in International Business. Ms. Perry is fluent in Spanish and gained a certificate to do business in Spanish as part of her major at San Diego State.
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

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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.
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Topics

Overview of Mental Health
General Education Mental Health
Special Education Mental Health
Confidentiality & Consent
Programmatic Considerations

Overview of Mental Health
Mental Health Services Act—Proposition 63 (Nov. 2004)

Vision:
- Easier access
- More effective services
- Reduce out-of-home care
- Eliminate stigma

$5 to county mental health programs
1% tax on income > $1 million

AB 114—Effective July 2011

October 2010: veto of funding for services provided by CMH
Prior to July 1, 2011: CMH & LEA Responsible
June 30, 2011: AB 114 repealed laws that required CMH to provide IEP mental health services
Now LEAs solely responsible

AB 2246—Suicide Prevention—Effective 2017-2018 School Year

"...because children and teens spend a significant amount of their young lives in school, the personnel who interact with them on a daily basis are in a prime position to recognize the warning signs of suicide and make the appropriate referrals for help."
AB 2246—Suicide Prevention—Effective 2017-2018 School Year

LEAs serving grades 7-12
Policy on pupil suicide prevention
- Develop in consultation
- Suicide prevention, intervention, and post intervention
- Address “high-risk groups”
- Teacher training

General Education Mental Health

General Education Mental Health Services
MTSS/PBIS/RTI Mental Health Factors
Pre-intervention
- School Counseling
- General Education mental health counseling
- PBIS Behavioral interventions
Child Find Considerations When Using MTSS/PBIS/RTI Mental Health Factors

- Mental health symptoms/behaviors
- Monitoring duration and intensity of mental health issues
- Frequency of significant mental health behaviors (suicidal threats/gestures, emotional outbursts, etc.)

Child Find—OAH Cases

Cori Rae S.:
- Reason to suspect a disability and that special education services may be needed.
Third Circuit:
- Child find does not require “formal evaluation of every struggling student.”
Sixth Circuit:
- Overlook clear signs of disability
- Negligent in not testing
- No rational justification for not evaluating

Child Find Considerations

Child Find – Contributing factors?

- Behavior/discipline
- Significant absences
- Parent/teacher concerns
- Substance abuse
- Medical diagnosis
- Psychiatric hospitalizations
- Suicide attempts
Child Find Considerations

- Educational impact
- Adversely affects child’s education
  - "For an extended period of time"
  - "To a marked degree"
- NOT exclusively due to Social Maladjustment
- NOT primarily or exclusively due to conditions that require medical treatment
- Mental health services are “needed” for a student receive educational benefit and make growth and progress on an area of need and goals

Mental Health Service Considerations for: Autism, ADHD, ID, and Medical Conditions

- Can they benefit from services?
- Is medical treatment the primary service need?
- Are behavioral supports, environmental modifications, sensory accommodations more appropriate to reduce emotional symptoms?
Is Counseling Appropriate?

- Too low cognitively to benefit
- Too impulsive, inattentive, or hyperactive to meet and have meaningful sessions
- When issues exclusively occur outside of school and have no school impact
- Issues are exclusively medical
- Too resistant to meeting with Counselor/Therapist/Psychologist
- Too many service providers involved, creating service confusion
- No student or parental consent

If Counseling isn’t Appropriate, then What?

- Environmental changes (i.e. increase classroom supports, token economy, CICO, accommodations, etc.)
- Behavior data collection
- BIP (PBIS or SPED)
- FBA (PBIS or SPED)
- Progressive Discipline

Confidentiality & Consent
FERPA vs. HIPAA

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FERPA vs. HIPAA—Generally

<table>
<thead>
<tr>
<th>Family Educational Rights and Privacy Act (FERPA)</th>
<th>Health Insurance Portability and Accountability Act (HIPAA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Education Records&quot;</td>
<td>&quot;Protected Health Information&quot;</td>
</tr>
<tr>
<td>US Department of Education</td>
<td>US Department of Health and Human Services</td>
</tr>
<tr>
<td>1. Directly related to a student</td>
<td>1. Health care standards for managing electronic health transactions and protection of privacy and security of individual identifiable health information</td>
</tr>
<tr>
<td>2. Maintained by an educational agency or institution/party acting for agency</td>
<td></td>
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What about Counselor/Psychologist/Mental Health Therapist Notes?

Exclusion for notes in the sole possession of the maker.

20 U.S.C. §1232g(a)(4)(B)(i)
FERPA with Ethical HIPAA Considerations

- Share list of clients with appropriate school staff
- Provide helpful information to staff with "legitimate educational interest" without oversharng or violating client trust/relationship
- Inform administrators and other support staff of crisis issues
- Collaborative services within educational setting

Tracking Mental Health Services

Educational Tracking - FERPA
- Needed to document services occurred
- SEIS
- District Database (i.e. Aries)
- Service logs
- How much information should be in them?

Consent to Treat

- For counseling in an IEP
- What about for other school based Mental Health services?
  - Need “Informed Consent to Treat”
Who is Qualified to be a “Mental Health” Therapist?

Mental Health - Board of Behavioral Science (BBS) Licensure Process
• BBS graduate level required coursework and Field Study from an accredited university
• 3,000 direct and indirect clinical hours under the direction of a clinical supervisor
• Pass Law/Ethics Exam
• Pass Clinical Exam
• 36 hours of CEUs every 2 years

Who is Qualified to be a “Mental Health” Therapist?

School Psychologist/School Counselor Pupil Personnel Services (PPS) Credential - CTC
• Complete PPS graduate level required coursework and Field Study from an accredited university in Counseling and/or School Psychology
• Pass CBEST
### Who is Qualified to be a “Mental Health” Therapist?

#### School Psychologist Course Schedule – Sacramento State

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
<th>Units</th>
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</thead>
<tbody>
<tr>
<td>EDC 210</td>
<td>Multicultural/Ethnic Counseling</td>
<td>3</td>
</tr>
<tr>
<td>EDS 231</td>
<td>Group Process in School Psychology</td>
<td>3</td>
</tr>
<tr>
<td>EDS 245</td>
<td>Multicultural Counseling and Psychotherapy for School Psychologists</td>
<td>3</td>
</tr>
<tr>
<td>EDS 248</td>
<td>Counseling and Psychotherapy for School Psychologists</td>
<td>3</td>
</tr>
<tr>
<td>EDS 249</td>
<td>Cognitive Assessment</td>
<td>3</td>
</tr>
<tr>
<td>EDS 241</td>
<td>School Counseling and Psychotherapy for School Psychologists</td>
<td>3</td>
</tr>
<tr>
<td>EDS 242</td>
<td>Social Emotional and Behavioral Assessment</td>
<td>3</td>
</tr>
<tr>
<td>EDS 243</td>
<td>Prevention and Academic Interventions</td>
<td>3</td>
</tr>
<tr>
<td>EDS 246B</td>
<td>Assessment of Special Needs</td>
<td>3</td>
</tr>
<tr>
<td>EDS 247</td>
<td>School Psychology</td>
<td>3</td>
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<tr>
<td>EDS 440</td>
<td>or Master's Project: Education/School Psychology (Plan B)</td>
<td>1-6</td>
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### Who is Qualified to be a “Mental Health” Therapist?

#### School Counselor/Marriage Family Therapist – Sacramento State (Same Core Classes)

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<td>EDC 214</td>
<td>Dynamics of Human Development</td>
<td>3</td>
</tr>
<tr>
<td>EDC 216</td>
<td>Counseling Theory</td>
<td>3</td>
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<tr>
<td>EDC 218</td>
<td>Assessment in Counseling</td>
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<td>Group Processes in Counseling</td>
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</tr>
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<td>EDC 231</td>
<td>Diagnosis and Treatment Planning</td>
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<tr>
<td>EDC 233</td>
<td>Substance Abuse and Addictions</td>
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<td>EDC 244</td>
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</tr>
<tr>
<td>EDC 250</td>
<td>Education Research</td>
<td>3</td>
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<tr>
<td>EDC 252</td>
<td>Legal and Ethical Issues in Professional Counseling</td>
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</tr>
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<td>EDC 254</td>
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<td>3</td>
</tr>
<tr>
<td>EDC 270</td>
<td>Career Development</td>
<td>3</td>
</tr>
<tr>
<td>EDC 272</td>
<td>Counseling Children and Youth</td>
<td>3</td>
</tr>
<tr>
<td>EDC 274</td>
<td>Guidance and Consultation in School Counseling</td>
<td>3</td>
</tr>
<tr>
<td>EDC 476</td>
<td>Practicum in Marriage, Family and Child Counseling</td>
<td>1</td>
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### Who is Qualified to be a “Mental Health” Therapist?

#### School Counselor/Marriage Family Therapist – Sacramento State (Specialization Requirements)

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## Scope of Practice

Your "scope of practice" sets the outside parameters permitted by licensure.

<table>
<thead>
<tr>
<th>License</th>
<th>Licensed Marriage Family Therapist (LMFT)</th>
<th>Licensed Clinical Social Worker (LCSW)</th>
<th>Licensed Professional Clinical Counselor (LPCC)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of Practice defined</strong></td>
<td>&quot;... service performed with individuals, couples, or groups ... [using] Psychotherapeutic techniques, to enable individuals to mature and grow within marriage and the family ...&quot; CA B&amp;P code 4980.02</td>
<td>&quot;... Counseling and using applied psychotherapy of a non-medical nature with individuals, families, or groups ...&quot; CA B&amp;P code 4986.9</td>
<td>&quot;... the application of counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues ...&quot; CA B&amp;P code 4990.30</td>
</tr>
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<table>
<thead>
<tr>
<th>License</th>
<th>Licensed Clinical Psychologist</th>
<th>Psychiatrist (MD)</th>
<th>Licensed Educational Psychologist (LEP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of Practice defined</strong></td>
<td>&quot;... Psychotherapy [using] psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are ... maladaptive&quot; CA B&amp;P code 2003</td>
<td>Physicians who specialize in prevention, diagnosis and treatment of mental disorders and prescription of psychopharmacology. MDs have the broader scope of practice</td>
<td>&quot;... professional functions pertaining to academic learning processes or the education system or both. Providing psychological counseling for individuals, groups, and families&quot; CA B&amp;P code 4988.14</td>
</tr>
</tbody>
</table>

**NOT LICENSED TO PROVIDE MENTAL HEALTH THERAPY OR PSYCHOTHERAPY**
Scope of Practice Application

“No person may engage in the practice of [Psycho-therapy] as defined by [B&P Code] section 4980.02 unless he or she holds a valid license . . . nor may any person advertise himself or herself as performing the services . . . or in any way use these or similar titles . . .”

Scope of Competency

Your scope of competence is a subset of your scope of practice based on those aspects of which you are competent.
Scope of Competency

- Competence is based on the application of knowledge, performance, skills, based on specialized training.
- It is your ethical responsibility to limit your practice to areas in which you have been trained and educated, and with which you are familiar and competent.
- A professional's scope of competence changes over time.

Scope of Competence Examples

- Eye Movement Desensitization and Reprocessing (EMDR)
- Hypnotherapy
- Trauma Focused CBT

Scope of Practice vs. Scope of Competence
Remember—“First do no harm”

Untrained Education Professionals . . .

- Struggle to know what, when, how and how much mental health services are needed or appropriate;
- Over pathologize behaviors;
- Attribute too many behaviors to a diagnosis when one is discovered, while minimizing developmentally appropriate behaviors exhibited by typically developing peers;
- Don’t realize that untrained or inappropriate or unnecessary services can do harm; and
- IEP Mental Health Services are not set up to be therapeutic.

Takeaways

- Make sure you know what “general education” mental health services are versus “special education” mental health services, and when “child find” is triggered.
- Ensure your staff are appropriately trained and knowledgeable about their role, and when they should consult or refer the student to another professional.
- Design your program so that there are different levels of support, with staff holding different credentials, so you have a program with layers of support.
- Recognize that counseling and mental health services are not always the appropriate remedy, and be prepared to discuss alternatives.

Questions
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

For more information, questions and comments about the presentation, please feel free to contact:

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aperry@lozanosmith.com

Or any of the attorneys in one of our 8 offices.
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