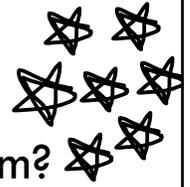


How is OHI Eligibility Determined and by Whom?

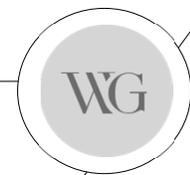


The Legal Perspective

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Why is this an important topic?



In the spring of 2022, TEA adopted new requirements allowing for a Physician Assistant or Advanced Practice Nurse to participate as members of a student's multidisciplinary team, under certain circumstances, in the identification of an Other Health Impairment eligibility.

2

Who specifically has been added to the MDT?



Previously, the Commissioner's Rule provided that a "licensed physician" must serve as a member of the multidisciplinary team when eligibility is being considered for OHI. That rule now has been expanded to include a Physician Assistant or an Advanced Practice Nurse with authority delegated under state law.

3

What does the new rule say?



A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). **The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.**

4

Meaning the rules expand the list of people who can now sign off on our OHI form?

WG

- If they have the correct credentials, yes, the rule broadens the qualified professionals who can participate on the MDT.
- But they have to hold the right credentials. Let's look at that in more detail.

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Who is a Physician Assistant?

WG

- In addition to a license, physician assistants in Texas must practice under the supervision of one or more supervising physicians, and if prescribing drugs, must have a prescriptive delegation agreement with their supervising physician(s).
- These individuals are licensed. Someone who is simply "assisting" the physician in the physician's practice doesn't count.
- How do you get a license to be a PA? See next slide for the requirements listed in Chapter 204 of the Texas Occupations Code.

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Are there other requirements to be a Physician Assistant in Texas?



Sec. 204.153. ELIGIBILITY REQUIREMENTS.

(a) To be eligible for a license under this chapter, an applicant must:

- (1) **successfully complete an educational program for physician assistants or surgeon assistants accredited** by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;
- (2) **pass the Physician Assistant National Certifying Examination** administered by the National Commission on Certification of Physician Assistants;
- (3) **hold a certificate** issued by the National Commission on Certification of Physician Assistants;
- (4) meet any other requirement established by physician assistant board rule; and
- (5) **pass a jurisprudence examination** approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a)(6) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

(b) In addition to the requirements of Subsection (a), an applicant is not eligible for a license, unless the physician assistant board takes the fact into consideration in determining whether to issue the license, if the applicant:

- (1) has been issued a license, certificate, or registration as a physician assistant in this state or from a licensing authority in another state that is **revoked or suspended**; or
- (2) is subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant.

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Who is an Advanced Practice Registered Nurse?



Here is how Chapter 301 of the Texas Occupations Code defines an APRN:

In this section, "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

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What does the rule mean by the “Delegation of Authority”^{WG} under the Texas Occupations Code?

In Texas, physicians can delegate certain medical acts to nurses or other trained individuals provided that they have the required training and experience. The Texas Medical Board sets forth rules on the types of medical acts that can be safely delegated and to whom.

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How do we know if an Advanced Nurse Practitioner has the authority to sign an OHI form?^{WG}

Under the law, the delegating physician remains responsible for any delegated acts, many of which are set forth in law and address prescriptive practices.

For OHI determinations, you should ask the ANP if they specifically have the delegated authority to diagnose or identify conditions that might lead to an OHI eligibility decision.

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Does this mean that a student is automatically eligible as having an OHI if a PA says so?

WG

No. Remember that in Texas, only the ARD committee can make the determination of whether a student is eligible for special education and related services. The new language simply expands the list of “a licensed or certified professional for a specific eligibility category (OHI)” required to serve on the multidisciplinary team. The MDT is defined in the rules as the group of people who “collects or reviews evaluation data in connection with the determination of a student's eligibility.” So, the definition of that group has been expanded under the new rule as relates to OHI.

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How did the community respond to these rules when they were proposed?

WG

The new rules were released at the same time as the new rules regarding FBAs, BIPs, and restraint – so the majority of comments received related to those areas.

However, the Texas Nurse Practitioners supported the rule change. TASP also supported the change. The Texas Medical Association had reservations about the change.

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Any hints from TEA on other things we might see in the future?

WG

Several commenters, in response to the proposed rules, suggested that a licensed psychologist in or out of the school setting should be given authority to diagnose ADHD for purposes of an OHI eligibility.

The agency disagreed, noting that eligibility for other health impairment (OHI) requires a physician or physician assistant or advanced practice nurse to also be included on the student's multidisciplinary team in determining eligibility under OHI. They did say to watch for guidance in the future on this topic.

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Does this impact the decision on eligibility from the federal requirements?

No—only the membership of the MDT. The federal definition of Other Health Impairment still applies and means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.

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Recent OHI Case Examples

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G.M. v. Martirano, 78 IDELR 68 (D. Md. 2021)

The court affirmed the ALJ decision that the student was not eligible despite having both dyslexia and ADHD. The IEP Team determined that this student's dyslexia did not meet the criteria for a learning disability, and the ADHD did not require specially designed instruction. This was largely based on the student's grade-level performance in the classroom and on standardized tests.

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Ashley G. v. Copperas Cove ISD, 80 IDELR 179 (5th Cir. 2022)

The 5th Circuit summarily affirmed a district court decision in favor of the district. One of the issues addressed by the district court was the parents' complaint that they had to pay for the doctor's diagnosis of the student with ADHD so that he could qualify as OHI. But the district court held that the district was not obligated to pay for it because it had been completed and paid for long before the district had a duty to evaluate:

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As for the cost of the ADHD testing, parents' right to evaluation at the public expense is only once the Child Find obligations have been triggered. M.G.'s parents obtained the ADHD diagnosis long before CCISD's Child Find Obligation was triggered.

Nor did the district's reliance on the doctor's diagnosis cause delay:

Here, the ADHD diagnosis was already voluntarily completed at the expense of the parents, and the parents have submitted its information to the school. Thus, in using this diagnosis, CCISD has not caused an unreasonable delay in diagnosing.

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Comment:

At long last, a direct answer to a special education legal issue that is rarely addressed. Parents go to the doctor and get an ADHD diagnosis at a time when the student is in general education. They do not share it with the school. Then six months or a year later, when problems pop up at school, they inform the school of the diagnosis and seek special education services. If the district relies on the doctor's diagnosis in its evaluation, does it owe the parents reimbursement for the doctor's fee? This court says no. This summary is from the district court decision which was summarily affirmed by the 5th Circuit.

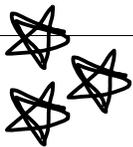
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Thank You!

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