The NASP Ethical and Professional Practices Committee was asked for an opinion regarding the following issue: A state department of education has suggested that Response to Intervention (RTI) and Positive Behavior Support (PBS) teams compile student developmental, social, medical and academic histories while developing Tier I and II interventions. The state department has stated that background information "forms" could be completed by having teachers interview parents and that no informed consent would be needed for such procedures. When the lack of informed consent was questioned, the state department suggested that parents’ participation in interviews implied their consent for the assessment. However, the department suggested that school districts could develop a consent form for use in background interviews. Getting consent would permit the use of the background information in any subsequent evaluations for special education eligibility. Committee members (all credentialed school psychologists employed in schools, private practice or universities) responded to three aspects of this issue: the necessity for background histories, personnel competencies, and ethical and legal implications.

**Necessity.** Committee members question the need for RTI/PBS teams to routinely assess individual students with background histories during Tier I. Members were not aware of any RTI/PBS model that involves compiling such histories until individual assessment is necessary (usually at Tier III). Tier I usually involves developing school-wide programs to support the academic and behavioral progress of all students. Assessment is usually informal and curriculum based and is intended for progress monitoring and screening to determine the need for Tier II programs. The intention of Tier I is to create an environment that supports healthy and productive behaviors by all students and not prematurely single out individual students for assessment.

In most RTI/PBS models, Tier II begins to focus on individual students and their need for more intensive academic and/or behavioral programs. However, committee members pointed out that screening and progress monitoring data regarding current academic and social functioning is usually sufficient to determine appropriate Tier II services. Detailed individual histories would be unnecessary and might even distract teams into focusing on intra-child factors rather than on provision of appropriate behavioral and academic support, which is, after all, the purpose of RTI and PBS programs.

In Tier III, however, RTI/PBS models usually involve intensive intervention with individual students, referral to community agencies, and sometimes, consideration of special education services. In Tier III, especially with behavior concerns, individual assessment measures might need to include background histories. However, the Committee advises against routinely compiling background histories for all students, even in Tier III. As with Tier II, in most cases, progress monitoring data will suffice for determining appropriate Tier III programming. If a team is using a problem-solving model to develop behavioral interventions, compilation of a background history could be helpful. However, collecting such information involves significant legal risks and
responsibilities for the school district and this work should only be done by those with appropriate training and experience.

**Personnel Competence.** Student background histories often include sensitive and potentially embarrassing information about medical, developmental, social, educational, and family issues. Committee members recommend that any such histories requested by RTI/PBS teams be compiled by student support professionals including school psychologists, school counselors, school social workers and school nurses. These health and mental health professionals have the clinical training and experience to compile accurate, reliable and valid background histories and, most importantly, to interpret those histories for RTI/PBS teams. Most teachers have not been trained as interviewers or in the collection and interpretation of behavioral and medical information. It is likely that requiring teachers to interview parents about sensitive background information would place them in an awkward dual role with parents--one that is not compatible with their primary role as instructional specialists. Parents may not be comfortable discussing sensitive information with someone in a teacher role rather than someone they view as a health care or mental health specialist.

**Ethical and Legal Considerations.** Besides their clinical skills, student support professionals have training in the ethical and legal aspects of assessment and student record keeping. They understand that interviewing parents and compiling student histories comprises a psychoeducational assessment procedure. Professional standards and IDEA both require an informed consent agreement before such assessment occurs. “Implied consent” is not recognized by either professional standards or IDEA. As discussed in detail by Jacob, Decker and Hartshorne (2011), a consent agreement is not merely a form. It requires that parents be informed about the reason for assessment, the type of procedures to be used, what the results will be used for, types of records that will be created, and who will have access to those records. This information must be provided in a parent’s native language and parents must be informed that their consent is voluntary and may be revoked. The Committee acknowledges that a consent agreement obtained as part of an RTI/PBS procedure could carefully specify possible use of a background history as part of a future assessment for special education eligibility. However, to avoid misunderstandings with parents and to ensure currency, it would be better to postpone assessment of student background information until a special education evaluation begins.

Student support professionals are also experienced in compliance with the Federal Family Educational Rights and Privacy Act (FERPA). Compiling a student background history creates a confidential educational record which is covered by this law. An RTI/PBS team compiling student histories would be required to develop procedures to provide long-term secure storage of records, ensure confidentiality of the records, provide parents their rights to inspect and review the records, keep a listing of educational personnel who access the records, and in some cases, obtain parental consent for the release of the records. Although special education programs usually have procedures in place to comply with FERPA, general education personnel may not be familiar with its requirements.

Although FERPA is intended in part to safeguard the privacy of students and their families, it is regarded by many as not sufficiently protective of sensitive physical and mental health information in school records (Jacob, et al., 2010). It permits, for example, the disclosure of educational records, without parent consent, to any school employee
(including teachers) who have “legitimate educational interests” in the records. This means that any sensitive information about a parent or student which is disclosed in a background history interview potentially becomes accessible by any school staff member. The American School Health Association, which represents school nurses, recommends that schools develop record keeping policies which make a distinction between sensitive physical and mental health information and other less sensitive information and provide a higher level of protection to the former. (Schwab, et al., 2005). Relatedly, the National Association of School Psychologists Principles for Professional Ethics (2010) recommends that confidential information in student records be shared only with “persons who have a legitimate need to know” (NASP-PPE I.2.5). Student support professionals are better qualified to protect family privacy while compiling information needed to provide services to students.

Finally, the Committee advises that the proposed compilation of background information by RTI/PBS teams creates increased legal risks for school districts for two reasons. First, a parent disclosure such as "My child’s preschool teacher said he is dyslexic and may need special help at school," could trigger "child find" procedures (i.e., a suspected disability) under IDEA or Section 504/ADAA. It’s not likely that RTI teams have the capability to consider whether a disability is suspected every time a parent discloses that their child may have previously exhibited a possible learning or behavior problem or a mental or physical impairment. Second, if teams fail to tell parents about their right to an evaluation under IDEA or Section 504 after such disclosures, the district may be in violation of those laws. If the child is later found to have a disability, but the school did not previously inform parents of their rights to an evaluation at the time the information was disclosed by the parent, the parents will have written documentation that they notified the school of a possible disability at Tier I but the school failed to follow up.

So, the Committee concludes that:

1. In most cases, detailed medical, social, developmental and academic histories are not needed by teams developing increasingly intensive academic and behavioral programs for students, and may even be detrimental to those efforts.

2. When detailed histories become necessary--usually at Tier III--they should be compiled by student support professionals rather than a school’s instructional staff.

3. When developing procedures to assess students’ background history, school personnel must consider their ethical and legal responsibilities associated with compiling and maintaining confidential student records which may contain sensitive family as well as student information.

References


