

**Testimony before the Senate Education Committee on June 16, 2010:  
Interim Charge 6:**

Hello, my name is Mara LaViola and I am deeply appreciative of this opportunity to speak to you today. I am the parent of two children with Special Needs and I also work as a special education advocate. I will be providing testimony in a variety of capacities. First, I am here today speaking on behalf of my son, a beautiful, but severely challenged little boy with disabilities. As a Board member of the National Autism Association of North Texas, I have been given the authorization to speak on its behalf. In addition, I am speaking on behalf of the Law Office of Myrna Silver and the over 25 parents, whose written testimony I bring with me today or who have expressly agreed to add their names to mine.

From my experience as a parent and advocate I am here today to state that the educational system, particularly as it applies to children in special education, is completely and utterly broken. Special Education in Texas has such systemic failures that it is too difficult to articulate all of them here. Consequently, since I know that I will be following a lot of other people who are far more articulate than myself, I will attempt to be brief and only highlight items perhaps not touched upon by the testimony of others. Consequently, I want to first state that I agree with the testimony of others that refer to the inequities of the Dispute resolution Process, the Lack of Teacher Training and Certification, Post-Secondary Readiness, fictitious ARD committees, as well as the problems associated with the delivery of related services and how through such creative devices like "integrated models" or legal fictions like "educational vs medical model," severely curtail the meaningful provision of these services; to the point where they are virtually nonexistent in this state.

Instead, I would like to address a disturbing trend emerging in both my case load and the inquiries brought to the organizations on behalf of which I am speaking today; the misuse of Response to Intervention, better known as RTI.

An increasing and alarming number of families are seeking assistance from either myself, or the organizations I represent, because their children are being denied access to special education under the guise that they are receiving services through RTI. Instead, these children are forced to languish for months, even years, receiving little or no appropriate intervention or support, as school districts refuse to evaluate for special education, claiming instead that needs are being met through RTI. Making matters worse, RTI is being misused to allegedly handle behavioral challenges that are manifestations of disability, without the supports and protections these children are entitled to under federal law.

Under federal law, RTI is a methodology to be used only for the purposes of identifying and remediating those students who are not achieving academic success due to Specific Learning Disabilities. It is a process designed to gather data and apply teaching strategies to improve academic outcomes only.

The Elizabeth Birt Center for Autism Law and Advocacy

Transition from MS Horton

Lawyer makes the decisions

However, IDEA requires that students receive educational benefit that is far broader in scope than mere academics. Educational benefit refers to developmental, social, adaptive skills, communication, recreation and leisure and so much more. RTI, by itself, does not address all aspects of educational need for the vast majority of children eligible for services under IDEA.

RTI is entirely encompassed in the Federal Regulations under a Section titled "Additional Procedures for Identifying Children with Specific Learning Disabilities." Nowhere else in IDEA or the Federal Regulations is RTI found. Furthermore, the subsections devoted to RTI make no reference to the utilization of RTI for behavior management, but *only* refers to RTI addressing behavior when it is a result of learning difficulties. IDEA and the Federal Regulations are void of any discussion of the use of RTI as a means to promote discipline in schools or to address behavioral problems that are not associated with a specific learning disability. Although behavior requiring discipline or that which is associated with disability **MUST BE** appropriately addressed, RTI is not the correct process to do so.

Yet, school districts, with the complicity of TEA, are inappropriately expanding the scope of RTI, very much to the detriment of children with disabilities who should be receiving individually designed services through special education.

In short, Schools misuse RTI as a tool to escape helping kids under IDEA. It allows Schools to cheat children out of special education for their disabilities by trapping them in the RTI system.

How do they do this?

- First, TEA is allowing Districts to inappropriately utilize RTI as a process of first resort even in cases where the district knows or should reasonably suspect that the child meets the eligibility criteria for special education and related services. This results in the deliberate delay of access to special education, related services, and the meeting of individual educational need.
- Secondly, TEA is allowing districts to inappropriately extend RTI to behavioral issues when there is no suspicion of a specific learning disability. Instead, Districts are impermissibly using RTI to place children with special needs in a kind of holding pattern, where their individual needs are ignored and they are left to succumb to the challenges and dangers presented by their disabilities without the protections and supports afforded them under federal law. This poses a great danger for the children caught up in this process as it allows school districts the opportunity to delay evaluating them under the guise of RTI, impede access to much needed services and supports, while allowing the districts, in many circumstances, to inappropriately develop discipline records

despite suspicion of disability. THIS BECAME CLEAR IN A RECENT DUE PROCESS HEARING DECISION IN WHICH THE HEARING OFFICER FOUND NO DENIAL OF A FREE, APPROPRIATE PUBLIC EDUCATION WHERE THE DISTRICT FAILED TO TIMELY EVALUATE AND PROVIDE SERVICES TO A CHILD WITH BEHAVIOR PROBLEMS, STATING THAT IT WAS USING "RTI PROCEDURES" INSTEAD.

- This situation is also exacerbated by the ability of schools to shirk their notice responsibilities by simply burying the right to request an evaluation in the district's student handbook. Under TEC §26.0081, District's are *only* required to give notice of this important parental right in the Student Handbooks typically accessible only in electronic form on the district's website. This legal loophole allows districts to readily rely on this ineffective means of informing parents of their right to request special education evaluations as a way to delay access to services. In my experience, few parents are aware of their right to request a full individual evaluation at any time, and rarely directly informed by school districts upon the initiation of the RTI process or any time throughout its duration. In fact, many districts misrepresent to parents that RTI is actually the initial step in the special education process, despite knowledge of a disability or reasonable suspicion that a disability exists and in complete abrogation of their child find obligations and duty to evaluate.

An example of this alarming trend is exemplified by a family I recently began to assist whose kindergartener had accumulated so many discipline reports – his educational records began to look like a rap sheet – Despite arriving at school with a diagnosis of severe ADHD and a pragmatic language disorder, this Kindergartner was given both in school and out of school suspensions, was deliberately isolated from peers for extended periods of time, and as a result of behaviors that were clearly manifestations of his disorders, inappropriately disciplined without any intervention nor protections afforded children who are suspected of disabilities.

The parents came to me distraught because their child was beginning to experience severe anxiety about going to school and was beginning to express alarming statements of self loathing. The district's only response from the time this child entered Kindergarten until several weeks ago, was to claim the child was in their RTI program while they did nothing to address his needs and his discipline issues continued to escalate. The situation became so severe that the parents were forced to heavily medicate their child just so they could keep him safely in school. The parents made numerous requests for an evaluation, which the district delayed and stalled under the pretense of RTI and while unequivocally stating, ironically, that there was no "academic need," precisely the prerequisite for RTI to address. It was not until we filed a TEA complaint that the district finally succumbed and agreed to conduct the evaluation. In the meantime, this child's educational needs went unmet for an entire school year and has resulted in

psychological harm and a discipline record that is concerning to both myself and his parents.

This case, unfortunately, is representative of a large majority of the cases in which I am assisting parents: Children, as young as five, caught up in the RTI process to both delay access to special education (at the most critical time of development and need for intervention) and, even more alarmingly, to establish a record of disciplinary infractions to be used against them later, as will be demonstrated by another case.

This is simply unacceptable and so easily remedied. Each and every time a child is referred to RTI or SST or whatever name the district is calling this service, the district should be required to inform parents that they are entitled, at any time, to request evaluations for special education services and that the District must respond within a reasonable period of time. Furthermore, in cases where it can be determined that RTI was utilized to delay access to access to special education, or the district should have reasonably known that there was a suspected disability requiring special education, compensatory services should be made mandatory and based on independent evaluator reports.

As mentioned earlier, another abuse of the RTI process is its deliberate use to document children with behavioral challenges in order to build a discipline record so that as that child approaches the age of 10, the age in which the penal code is then applied, schools USE the discipline record, inappropriately created, to place children in alternative educational settings, or worse yet, in the criminal justice system.

An example of what I am beginning to see is the following, a middle school boy whose adoptive parent, immediately upon entering a new district, began inquiring about special education services. His child had been in RTI in his previous district despite their knowledge of disabilities falling under IDEA and his resultant educational need. The new school district, piggybacking on this delay of access to special education, insisted that his child would still have to be served through RTI despite educational records that clearly indicated that this child had a medical diagnosis of severe ADHD along with numerous teachers' reports that this child had limited eye contact, no peer interaction, inattentiveness, difficulty communicating and fecal incontinence as a result of a terrible history of physical and sexual abuse.

As the year went on and this child's needs were ignored, this child was repeatedly taunted and bullied by his classmates, which resulted in his skipping classes to avoid the torment. These absences resulting in repeated in-school suspensions, without the district addressing the reason for this new behavior. In addition, he, too, began to be disciplined for behaviors that were clearly manifestations of his disorders, including criminal citations, ISS and OSS, and the school did nothing to address the bullying or evaluate him to help address his disabilities and

educational needs. The torment and isolation became so severe; this child had a breakdown which resulted in his being admitted to a mental health facility. Upon his admittance the child revealed that he has had suicidal ideation and was, thereafter, diagnosed with bi-polar disorder and depression.

Upon his return to school, the district still refused to evaluate for special education and only offered 504 accommodations that consisted of only the same 3 ineffective strategies in his RTI plan. The child had another breakdown and, finally, a year and a half after his arrival at school he was finally admitted to special education, not based on the original diagnoses, which were ignored, but eligibility based on Emotional Disturbance, which was completely self-serving for the school district. The most disturbing thing about this is that the district placed this label on him because they claimed he had deluded perceptions of his environment. This child did not have delusional perceptions of his environment, he was fully aware of his own challenges, isolation, as well as the taunting, teasing and bullying. However, the school, instead of addressing the real disabilities, labeled this child ED, ignoring the neurological disorders he had been diagnosed with previously and the educational needs arising therefrom, and heinously used his accurate expressions of isolation, fear, and loneliness against him by labeling him emotional disturbed. In addition, the district established two behavioral goals: First, he will respond when first asked to do something and, most egregious of all, student will change his perception of school and those in the school environment. Furthermore, fifteen minutes of counseling is all that was offered to address these two goals, with a counselor that had no experience in any of the real disabilities this child actually has.

For years, this child was caught up in RTI, by two different school districts, as a way to delay access to much needed services and enabling the district to inappropriately document challenging behaviors which led to improper discipline measures; police involvement and changes to his educational placement without protections afforded under IDEA. Without appropriate interventions, this label of ED and the resultant discipline record the district has inappropriately established will eventually insure that this child will become victim to what is becoming far too infamous: the school to prison pipeline.

It is unimaginable to me, yet I see this all too often, children isolated and bullied as a result of their disabilities, AND then labeled emotionally disturbed because they are deemed as misperceiving the torment and isolation they are experiencing. This results in the majority of these children ending up in the most vulnerable place a child with disabilities could possibly end up: alternative educational placements or, worse yet, facing criminal proceedings as more and more Districts ALLOW resident police officers to arrest children in school without consideration of their disabilities.

It is imperative that this Committee address this issue. Provide clearer and more appropriate guidelines for the use of RTI. Curtail the inappropriate use of RTI to

address discipline or behavior that is not related to a suspected learning disability as TEA is allowing districts to do. Define what a “reasonable time” is for lack of progress, and make it imperative that Districts inform parents immediately upon the initiation of intervention of their right to request evaluations.

Lastly, RTI’s impact on the dispute resolution process is significant and inequitable. Texas has a one year statute of limitations, a time frame that is less than the minimum recommended under IDEA. RTI allows school districts to manipulate and delay the process, under the pretext of RTI, thereby running the statute of limitations and effectively precluding parents from comprehensive recourse through the dispute resolution process by time-barring their action. In addition to increasing the statute of limitations for bringing a due process proceeding to at least the federal minimum of two years, a specific exception should be added when districts inappropriately utilize RTI to delay access when they reasonably should have suspected that a child had a disability other than a specific learning disability.

With respect to the review of the range of needs for special education students, this I can simply state is hindered by fictitious legal standards that districts continue to promulgate in each and every training or ARD meeting that I attend. These fictitious standards are: 1) school district are only responsible for academic needs, as opposed to children’s educational and Functional needs, and 2) school districts deny the range of needs they are obligated to address through the continuous assertion that they are only responsible for conduct in the “educational setting.”

By so doing, they are successfully eliminating or limiting the scope of related service provision or the development of goals necessary for functioning outside of a classroom setting. These two fictitious standards are severely limiting the range of services being offered and inadequately meeting the range of needs of special education students. In addition, these fictitious legal standards have become urban legend, much to the point that obtaining Independent Educational Evaluations are virtually impossible because even many professionals are unaware of what their requirements are or the standards to be utilized.

This problem extends to transition services as well, because if districts are not addressing all areas of educational need, they are failing to develop these children’s ability to function independently in all aspects of adult living and post school readiness. Furthermore, transition planning needs to be started far earlier than age 14. There needs to be more training for transition specialists and meaningful collaboration with DARS to help find these students secure employment or employment training as soon as they get into high school.

Research shows that students who graduate from HS with jobs keep those jobs 5 years out as opposed to sitting home and not doing anything. Our schools must work with DARS and get an IWRP (individualized written rehabilitation plan) or Job placement plan in place well before they are ready to graduate. Districts

should be supplying rehabilitation counselors/job placement specialists to work with the young adults in aiding their transition planning.

This could be remedied by providing clarity on the definition of educational need – as encompassing all aspects of living and development, academic, social, emotional, adaptive, and functional.

A specific statement that educational need is not restricted to the classroom is also essential, under IDEA, schools are required to meet the unique needs of disabled children, and prepare them for further education, employment and independent living. Under the TEC 4.001, “the mission of the public education system of this state is to ensure that **all** Texas children have access to a quality education **that enables them to achieve their potential** and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation. Unfortunately, this mission statement does not apply to disabled Texan Children as the courts in our circuit have repeatedly stated that only some educational benefit equates to a free appropriate public education. In some states, as a result of these low expectations, legislatures have specifically defined educational need and meaningful benefit to be in line with the mission statement for all children as well as the Findings and Purposes of IDEA. I think it is time that our state legislature does so as well.

**Other items not addressed in my oral testimony but are worthy of addressing:**

1. Tying school performance ratings to complaints lodged and how well they are doing with respect to special populations.
2. Heavy punitive consequences for loosing at due process etc...or not providing adequate services.
3. Highly Qualified Teachers and Paraprofessionals – need vastly more training, higher standards, and higher pay.
4. Ratios – other states like New Jersey, provide legal minimal ratios for children with Autism. School districts are not even applying NAEYC ratio's for typically developing children. In fact, my district touts a preschool for employee children that complies with NAEYC ratios, yet they will not apply these same ratios to their children in PPCD!
5. Transition training should begin early – in elementary school. It takes time to develop community relationships, develop splinter skills or talents and this should start to occur as early as possible and applying ingenuity and creativity so that many of our children can play in a band or orchestra

child wallpaper hanging – independent skill. We need to start early and develop real interests and talents and not lower our expectations.

6. Continuum's of alternative placements need to be developed. Resource is not a placement, but a service and all too often that is where our children end up – a placement that has transitions every twenty minutes with no meaningful opportunities to develop relationships since children are continually coming in and out. So many problems with this...
7. Evaluations – need to make sure they are done timely and that IEP's are based on the results. My son when he was 2.5 already was diagnosed with Autism and stroke, my school district was aware of this, yet they did not conduct their own evaluations into these areas until he was well over three.
8. Continuity of services from ECI to School District's is vital. Many parent's are successfully obtaining better services through ECI – like ABA, developmental services, OT, PT etc...but these are being eliminated once they enter the district.
9. **The wrongful use of FERPA To deny access to the classroom entirely. These are children who have a core deficit in communication, none verbal and parents are being denied total access to the classroom.**

Thank you for your time.

The following people have provided explicit agreement with this testimony:

Nagla Moussa, Kelly Barnes, Julie Lieberman, Nicole Wallace, Julie Hornok, MariAnn Gattelaró and Judith Jolly – The Board of Directors of the National Autism Association of North Texas

Bill LaViola, Tracy Lewis, Tonya Hettler, Tim Boyles, Laurel and Kurt Wallace, Elloise Sweetser, Archana Dhurka, Laurel and Kurt Reheiser, Paul Colton, Jennifer Cocks, Angela Danyluk, Kevin Goodnight, Missy Rachuig, and Jennifer Keefe; Amy Stout



Hello, My name is Mara LaViola and I am deeply appreciative of this opportunity to speak before this committee. I am the parent of two children in special education in Texas. My oldest was a High School Senior this year who just graduated several weeks ago and will be going off to college at the end of the summer. My youngest, who is five, had a stroke, has Autism, Cerebral Palsy and other significant challenges. As a result of the journey our family has undertaken as a result of these two beautiful children, I feel that I do have some valuable insight to share with this committee and I appreciate this opportunity to do so.

First, let me begin by saying that I do feel that what I say might resonate with some dissonance with some of you simply by virtue of the charge of this committee with respect to special education. As I read it, the charge has something inherently wrong with it. The charge incorrectly assumes that the special education system, as it currently exists in the state of Texas, is operating at some level of competency and effectiveness and because we are merely focusing on transition issues, implies that the system merely needs some intense focus or some tweaking in certain areas. The underlying assumption, however, is that the system is operating. I came all the way here today to tell this committee that there is nothing further from the truth. The educational system, particularly as it applies to children with special needs in special education, is completely and utterly broken. Special Education in Texas has such systemic failures that are designed to inhibit the implementation of IDEA 2004, rather than promote its obligations and protections. Special Education wholly fails, for most children, to operate as it should to provide an appropriate education to “meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible.” (Section 1400(c)(5)(A)).

### **Related Services:**

I know that I will be following a lot of other people who are far more articulate than myself, so I will attempt to be brief and only highlight items perhaps not touched upon by the testimony of others. Consequently, I would like to begin with the federal requirement of the delivery of Related Services, such as occupational, speech, physical therapies, social groups, leisure training etc....As far as I am concerned, Related Services are the crux of an individualized educational program that are specifically designed to ameliorate the challenges that are holding back many of our children in the state of Texas. Most school districts, through the ingenuity of their attorneys, have somehow created a mistaken assumption among employees and parents alike that somehow these vital services are some kind of bonus that you may be lucky to receive if you push hard enough. Nothing can be further from the truth, related services, more often than not, are the vital components of an individualized education program that can either insure success if given in the frequency and duration needed to ameliorate challenges, but if not provided, can be the sole reason why the vast

majority of children do not achieve the level of success needed for independent living.

There was a study conducted fairly recently, and I will provide it shortly, that demonstrates that even among those few individuals that graduate college who are on the Autism Spectrum, only about 2% are able to live independently. This demonstrates just how essential related services are for insuring successful outcomes for our children. As we all know, many of our children can succeed in a classroom setting, but it is the social components, or the motor planning components of the disorder that are holding them back and not being adequately addressed. But the truth is, related services are designed to address these very core deficits of Autism – relating and communicating, motor planning and ideation – that can really determine the difference between success and failure. IDEA 2004, puts to rest any prior claims, that success in educational outcomes alone is the only criteria to which we hold schools accountable and that children's developmental goals must be addressed – and principally, this is done through the delivery of Related Services.

So, how are Texas schools getting away with not providing these services. I believe the issue is threefold: First, moving service delivery to a consultative basis rather than an individual basis; second, and very much related to the first is that districts are telling parents that they are now instituting an integrative approach to the delivery of these services and; third; school districts, through the ingenuity once again of their lawyers and the complicity of TEA, have been successful at disseminating erroneous legal standards.

Let me touch on these briefly: First, moving service delivery to a consultative basis means that districts are no longer providing individualized services but rather relying on the classroom teacher to seize opportunities through out the day to provide isolated and brief opportunities to work on a particular skill. This has so many problems I do not even know where to begin. First, it is placing policy over individual need, in complete contradiction to federal law. Furthermore, this assumes that effective therapy can be delivered in brief, isolated and inconsistent timeframes to improve developmental progress that often times is delayed by years rather than months. Any reasonable person knows that this makes absolutely no inherent sense. In addition, it addresses only isolated skills rather than improving the actual deficit. For example, focusing on correct pencil grip during table time opportunities without direct services that focus on the development of core strength, which is the essential prerequisite for holding writing utensils correctly and maintaining proper posture to sit for extended periods of time at a desk.

Second, is this idea of “integrating” services. Districts are telling parents that they are instituting an integrative approach rather than delivering services directly and in sufficient frequencies and duration. Integrating these services for the purposes of consistency, practice and reinforcement is good policy, utilizing

integration as a means to ameliorate challenges is a fallacy and in direct contradiction to the individualized approach required under federal law and once again, placing policy over individual need. In addition, by utilizing this approach combined with the first one, teachers are now becoming responsible for academic goals, occupational therapy goals, physical therapy goals, speech therapy goals etc... This requires that the classroom teacher be provided appropriate training to deliver these services, develop the expertise to successfully integrate them, and be able to do so effectively with case loads of over 20 children in many cases. No matter how talented the teacher, I do not believe that there is a single teacher who can do this effectively given the numbers of students in their classrooms and the level of training it requires.

Third, and most importantly, is how school districts are getting away with this in this state. The few large firms that represent the vast majority of school districts in Texas have been quite adept at promulgating erroneous legal standards and then effectively disseminating them with the complicity of TEA. The wholly erroneous standard of "medical need vs. educational need" is all too often imposed on children to deny much needed related services. Another related and equally erroneous standard applied is "academic versus developmental need." Whereby schools repeatedly deny services that children need based on their assertion that they are only responsible for academic/education needs rather than developmental need or that these needs are "medical" in nature and, therefore, not the district's responsibility. IDEA 2004 is absolutely clear that these standards have no merit yet children each and every day are denied much needed services based on their imposition. When you read the Findings and Purposes of IDEA 2004, you will see that Congress raised the bar for a free appropriate public education (FAPE).

In "Findings" of IDEA 2004 (Section 1400(c)), Congress found that "30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children," educating them in the regular classroom so they can "meet **developmental goals** and, to the **maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives, to the maximum extent possible.**" (Section 1400(c)(5)(A))

In "Purposes" of IDEA 2004 (Section 1400(d)), Congress describes what they intend the law to accomplish. In IDEA 2004, Congress added "further education" as a purpose of the law: "The purposes of this title are to ensure that all children with disabilities have available to them a free appropriate public education that

I can speak with conviction on all the above because it has happened to me. Here is just one example among far too many. My son who is 2.5 years behind developmentally in gross and fine motor abilities did not qualify for occupational therapy in my school district and only qualified to receive 10 minutes of physical therapy every other week. My district gave me all three of the arguments advanced above and, nevertheless, assured me that my son would make meaningful progress in these areas.

How could this happen, you might ask as this child is more than two years behind developmentally. Well, this leads me to several other concerns that need to be addressed with respect to related services and which may be the biggest problem of all. How did these erroneous standards get so entrenched and how do we remedy the problem. Simply, these effective strategies to deny services began in the law offices of the few large firms in the state that represent school districts as a way to help district's save money by denying federally mandated services. Then TEA, through its Regional service centers, hires these large firms to dispense parent training and related service providers training as to the legal parameters to be applied. This hiring of school district attorneys by TEA to provide trainings comes with it the inherent assumption that these firms are dispensing legitimate legal advice, legitimate legal parameters, and working collaboratively with both the district's and parents to insure that children are receiving FAPE in LRE's with appropriate related services. Nothing could be further from the truth. Furthermore, this collusion between TEA and School District attorneys has resulted in what I call a "poisoned pool" of related services providers who are misinformed as to their obligation with respect to evaluations and recommendations.

After three years of fictitious "functional" evaluations from my school district, I finally was able to get my school district to agree to an Independent Educational Evaluation (even this term is misleading) yet it took me almost a full year to find independent related service providers to conduct the evaluations because they all had been misinformed that this evaluation to establish need, present levels of performance etc was somehow different than an assessment that a parent would ordinarily obtain in a private setting and, consequently, the recommendations for services are tainted because of this mistaken belief system they have been taught as a result of the collusion between TEA and these law firms. (Collusion that I believe is worthy of investigation – these law firms are paid through public tax dollars and they should have an obligation to seek truth, serve the children, and not help school district's deny services...something has to be done. I would urge this committee to look into this situation. I believe these law firms have a fiduciary obligation to seek truth. not save schools dollars. when they are being

So confronted with all of this, I began to ask myself, how can we resolve this and how can I effectively advocate for the services my child so desperately needs. While researching I came across objective criteria for the delivery of related services in the states of New York and New Jersey. When I called TEA and did the research myself, I found that TEA and the state of Texas has absolutely no objective criteria that districts, parents and ARD committees can utilize to determine the delivery of these services in terms of frequency and duration, once need has been established. Consequently, children are subject to ad hoc policies, biased notions of ARD committees unduly influenced by recalcitrant administrators and school boards or the cost saving motives of the attorney's who represent the districts. Other states have objective criteria to determine, for example, how much occupational therapy is needed per week in order to achieve meaningful progress.

I believe that if this committee could legislate objective criteria as other states have done, this would eliminate the school district's ability to continue the present tactic of denying related services based either on absurd delivery models outlined above or fictitious legal standards designed to limit the delivery of these vital services. . This would help parents and related service providers adequately advocate for these services for children without having to fight the roadblocks mentioned above.

### **Statute of Limitations:**

The Statute of Limitations desperately needs to be addressed. The present statute of limitations of one year is unconscionable. IDEA is a collaborative statute and it takes time to institute when working with reluctant and intractable school districts – the one year statute of limitations only enables schools to do what they continue to do so well, delay deny and delay and deny and, thereby, denying parents legal recourse as they try to negotiate and be the collaborative parent attempting to avoid litigation. The one year statute of limitations that currently exists in this state only serves to perpetuate the cycle of delay and deny that school districts have become all too adept at and willingly utilize to their advantage each and every day, very much to the detriment of our children. District's knowingly and effectively string parents along with more ARD meetings, more evaluations, more investigations etc...and the parent that attempts to act in good faith and collaborate with the school district is all too often left without any legal recourse because they have run out of time. I strongly urge this committee to, at a minimum; align our state statute of limitations with the federal one of two years so that the playing field in which parents are operating under can be equalized to a degree. Currently, the one year statute of limitations only serves to

Due Process must be removed from the auspices of the Texas Education Agency. The Texas Education Agency has wholly failed our children with special education and the agencies continued collusion with the large law firms representing school districts as well as their relationship with the hearing offices taints the whole process and continuously denies FAPE to our children. I will not go into this too much, as others are going to do so. I will simply say that our children deserve better than the system that currently exists in this state.

### **Access to school boards and decision/policy makers:**

Obtaining access to the school board, the policy makers and decision makers, in school districts is often times nonexistent. I believe it is vitally important for this committee to legislate that District Improvement Task Forces must have representation of various disabilities so the needs and concerns of this special population can be heard and addressed in the context of the local school districts. In my school district, which is a large district in Senator Shapiro's district, special education children have absolutely no access to the school board and appropriate administrators. The two committees that report directly to the school board, the District Improvement Team and the Diversity Task force, have absolutely no representation of special education students. To make matters worse, the Assistant Superintendent responsible for special education has no educational degree associated with special education and lists absolutely no professional affiliations with special needs groups on her published resume. At the recommendation of OSEP and Region 10, I approached the school board during the public input session of a school board meeting in order to address, broadly, my concerns with special education in our district for example, a lack of a true continuum of alternative placements, preschool LRE and ratio, related services being dispensed on a consultative basis only etc....After my address, I received an e-mail from the superintendent of the district informing me that the public input session of the board meeting was not the appropriate forum to address the concerns, refusing to discuss my concerns with me and directing me only to the due process complaint strategy if I wanted to be heard. The Superintendent copied each and every board member as well as all administrators responsible for special education children. Thereby, effectively and efficiently eliminating any discourse to address concerns of special needs parents other than litigation. Consequently, special education parents in our district have absolutely no way to get their concerns heard and discussed. This is unacceptable, I would say in violation of IDEA, ADA and section 1983, but more importantly, demonstrates the need to legislate mandatory access on school board committees so these issues can be addressed without having to resort to costly and timely litigation, that typically results in closed settlement agreements, thereby allowing districts to continue the course most currently do: to delay and deny.

District Improvement task forces are a requirement of TEC section 11.251 which states that:

§ 11.251. PLANNING AND DECISION-MAKING PROCESS.

(a) The board of trustees of each independent school district shall ensure that a district improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students.

Apparently, in my school district and many others, “all students” still does not include students with special needs. I urge this committee to draft legislation to address this issue directly and mandate that special education children be effectively represented on these committees and that this representation reflect the same level of diversity and complexity that typically developing children are represented at on these committees – in terms of various abilities, ages, specific condition, etc...

**Legislate a definition of “educational benefit”;**

Legislate a definition of academic benefit so that parents will not have to resort to courts to do what IDEA 2004 has already done, align the lofty goals of No Child Left Behind with IDEA. The *Rowley* standard of “some educational benefit” being applied by many federal circuits around the country, the fifth circuit included, is no longer applicable and Congress has made that abundantly clear in its unambiguous language throughout the new IDEA statute and it’s accompanying regulations. A tremendous service would be done for all children in special education if this new standard of maximizing potential that is stated throughout IDEA 2004 is legislated at the state level and made abundantly clear, as I have little doubt that due process hearing officers or the fifth circuit is going to do so easily on their own. By Legislating a legal definition of academic benefit the children in this state will have not have to wait for that one parent who can financially and emotionally afford the long journey to litigate this out in the courts. If we could legislate such a definition, then more children can get the help they need in a far more expeditious manner. What the last decade has proven, with Autism in particular, that these children are capable of tremendous progress when the right intervention strategies are implemented with the sufficient intensity and frequency.

**Committee reliance on data provided from TEA:**

Although I completely understand the need to rely on data in order for effective decision making, I am concerned about the committee’s reliance on data from TEA in order to determine parents’ satisfaction with the special education system in Texas. Relying on how many complaints or due process proceedings have been initiated assumes to many false suppositions; First, that parents are aware of the complaint and/or due process proceedings, Secondly, that parents of special education students have the time and resources (both economic and

emotional) to pursue these processes, and third, that they have enough confidence in the system and the process to pursue the complaint or due process proceedings. I wholeheartedly believe that these three assumptions are inaccurate and, therefore, relying on the number of complaints or due process initiations in order to assess satisfaction is not an accurate indicator of parental satisfaction.

### **Collective outcry transcending party lines:**

I believe that Senator Zaffirini recently sent a request to our governor and State Board of Education Commissioner requesting that they seek assistance from the federal government, OSEP in particular, and seek out several grants and training opportunities offered by the Department of Education. I sent a letter to both the governor and commissioner in support of this request and received a letter from both asserting that they believed that it was unnecessary as the State of Texas had the requisite knowledge to improve their system and that the system in place in Texas was adequately meeting the needs of children. Well, last week I believe OSEP once again downgraded the State of Texas when it assessed how well special education programming was being conducted in the state of Texas. I would hope that now that OSEP has down graded Texas, particularly in light of the fact that Easter Seals has listed Texas as the 50<sup>th</sup> out of 51 states (district of Columbia is included) as the worst provider of services for special needs children, this committee would collectively and publicly call both the governor and the commissioner to task for repeatedly refusing to seek assistance and grant money from the federal government and to TEA for failing our children miserably.

A collective and public outcry is needed by this committee to insure that something gets done and the children of this state start receiving the educational services that they are legally entitled to. We have a 10 billion dollar surplus in this state and yet our school district's are tightening budgets, cutting programs and denying services that are vitally needed. It is inexcusable that our state is not providing a free and appropriate education to all our children in a manner that fosters independent living and post-secondary opportunities for all children. We need a stronger, collective public outcry and response than what we have currently received and I believe it is up to this committee to lead the way. Autism is a public health crisis – regardless of what you attribute the rise to, there is absolutely no doubt that the numbers are increasing and if we do not act now to help children now, our state will never be able to support these children in the future. Harvard University recently published a study which found that it will take about 3.2 million dollars to take care of each individual person with Autism throughout their life. This is in today's dollars and the studies authors acknowledged that their estimate was a conservative one, if we do not act now to foster the skills and provide the interventions necessary to achieve independence for many of these individuals, our society will never be able to care for the vast numbers coming up the line. The tide is rising and though it may, initially, cost more to provide the needed services, it will prove to be both an enormous



economic savings in the future, not to mention the achievement of the moral imperative of providing a quality of life for these wonderful children who really do have much so potential and abilities to contribute.

I am almost reluctant to say this because I do not want this misconstrued or utilized as a rationale for not providing services, as my oldest accomplished so much only because she received the services she desperately needed. However, as I stated at the beginning, my oldest child just graduated from High School. Although she was not the first child to apply to Yale University, she was the first child in our school district to ever be accepted. Consequently, at the end of this summer, I will be sending my daughter, a special education student, to Yale University as the first student in our district ever to achieve this. She did so, not because of Frisco ISD, but in spite of FISD. Although my oldest does not have Autism, she does have numerous and difficult challenges that she worked hard to overcome or accommodate. As a result of her own determination and the support she received from a school overseas, she was able to attain a level of success we never would have imagined in elementary school or middle school. These children are capable of so much, please take strong action to insure that they can all achieve success. They all may not achieve the same level of success as my oldest, but they are all capable of so much progress and it is our obligation to see that they are afforded the Free and Appropriate Public Education they are entitled to under Federal Law.

**Other items not addressed in my oral testimony but are worthy of addressing:**

1. Tying school performance ratings to complaints lodged and how well they are doing with respect to special populations.
2. Heavy punitive consequences for loosing at due process etc...or not providing adequate services.
3. Highly Qualified Teachers and Paraprofessionals – need vastly more training, higher standards, and higher pay.
4. Ratios – other states like New Jersey, provide legal minimal ratios for children with Autism. School districts are not even applying NAEYC ratio's for typically developing children. In fact, my district touts a preschool for employee children that complies with NAEYC ratios, yet they will not apply these same ratios to their children in PPCD!
5. Transition training should begin early – in elementary school. It takes time to develop community relationships, develop splinter skills or talents and this should start to occur as early as possible and applying ingenuity and creativity so that many of our children can play in a band or orchestra

child wallpaper hanging – independent skill. We need to start early and develop real interests and talents and not lower our expectations.

6. Continuum's of alternative placements need to be developed. Resource is not a placement, but a service and all too often that is where our children end up – a placement that has transitions every twenty minutes with no meaningful opportunities to develop relationships since children are continually coming in and out. So many problems with this...
7. Evaluations – need to make sure they are done timely and that IEP's are based on the results. My son when he was 2.5 already was diagnosed with Autism and stroke, my school district was aware of this, yet they did not conduct their own evaluations into these areas until he was well over three.
8. Continuity of services from ECI to School District's is vital. Many parent's are successfully obtaining better services through ECI – like ABA, developmental services, OT, PT etc...but these are being eliminated once they enter the district.

Redact the  
names please

16 June 2010

Dear Madame Chair and Honorable Members of the Senate Education Committee,

My name is [REDACTED], originally from [REDACTED] and had been given a US permanent residency 3 years ago and now living in Irving, Texas. We have an only child who is a 7-year-old boy with special needs receiving special education through Coppell ISD.

As a first time mom who is just starting to learn all about special education here in Texas, I am extremely grateful for the attention the Committee has given special education. Though I have seen some good implementations of IDEA 2004, with the 3 years journey that we had with our district, I still felt that there are lots of room for improvement.

I am particularly seeking help in the investigation and in the verification process of the provision of LRE and continuum of program and placement, related services such as Speech, OT, AT, IHT/Parent Training etc., extended school day/extended school year services, individualized teaching methodologies and strategies that focusing on remediation as opposed to compensatory education and validation of the trainings received by all staff providing services to all our kids.

From the experiences of the majority of us, though we may have good intentioned teachers that we may meet along the way, it has been with deep sadness that majority of the problems we are facing right now are systemic and administrative in nature. For instance, we had been requesting our district for a **hybrid type of placement where special needs kid/s will be educated in the general education class with a lower ratio and will just be pulled out from the time within the day where he/she will receive a direct intensive teaching opportunity with the special needs teacher or related services provider.** Unfortunately, our district does not have this type of placement/program. Another option is to provide an extended day services if they feel that the child needs priming and preparation for the next school day. The advantage of this is that the child will be educated along with his/her typically developing peers in the general education setting as mandated by IDEA 2004 provision on LRE. I believe we owe all of these kids the opportunity they deserve to try and exhaust all supports and accommodations first in their LRE than to push them to be in the self-contained classes specially if these kids have proven themselves that they can be educated in the gen ed setting and they did not pose any disruptive behaviors.

Another issues that we are currently facing and which had been the issues of other parents for years, are the provision of related services despite the fact that the independent evaluators had recommended that these kids need intensive 1-on-1 direct related services, our school district would deny the services or will just provide consultative services instead of what was recommended by the IEE. IEEs are also a very complicated process where the majority of it are being controlled by the district. There are even instances where IEE providers were not allowed to send copies of their reports unless

the school district had read it first and they prohibit the evaluators to send reports directly to parents. This just happened in our recently concluded IEE where majority of the recommendations of the evaluators were ignored and the district is providing excuses, saying that our kids does not need it. This is contrary to the reports of the independent evaluators.

Parental involvement are also an issue since parents had limited access to classroom observations and parent-teacher conference. There were instances in the past that we were denied access to observe our kids in the classroom as well as in the direct 1-on-1 therapy session. There were instances that no parent-teacher conference were held even if the parents requested for it. If there will be a conference, the special education director should be present. Parents are not allowed to talk or send direct communication to the teacher as the director wants all communication be directed to her. The reason that the district use is that we send or we request too much information. I was under the impression that sharing information is a valuable process for them to get to know our kids well but it seems that the district is not fond of this open communication strategy.

A lot of other issues are at play but I will just refer you to the testimony of other parents since they have articulated those issues more than I. I personally would like to express my agreement to all the parents who made their individual testimony especially to the testimony of Mara LaViola and Emily Hill.

Thank you for your time in reading this testimony. We appreciate all your efforts and dedication to serve those who need your help the most.

Respectfully,



June 15, 2010

To Whom it May Concern:

I agree with testimony written by Mara LaViola to be presented before the Senate Education Committee on June 16, 2010. I am a parent of a child with Special Needs and strongly support this testimony.

Thank you,

A handwritten signature in cursive script that reads "Angela Charette". The ink is dark and the handwriting is fluid and legible.

Angela Charette

214-733-0364

I agree to the testimony written by Mara Laviola to be presented before the Senate Education Committee on June 16, 2010. I am a parent of a child with Special Needs and strongly support this testimony.

Thank you,  
Archana Dhurka

A handwritten signature in cursive script that reads "Archana Dhurka".

972-312-9795

~~June~~ June 12, 2010



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# Send a fax for free

## Recipient Information

**To: Mara Laviola**  
**Company: Sp.Ed Advocate**  
**Fax #: 2143650052**

## Sender Information

**From: Archana Dhurka**  
**Company: Mom To: ANKUSH**  
**Email address: [adhurka@yahoo.com](mailto:adhurka@yahoo.com)**  
**Sent on: Monday, June 14 2010 at 10:42 PM CDT**

June 14, 2010

Senate Education Committee

TO: Senate Education Committee/ Public Input for Interim Charge 6

Hello, my name is Kathy Berney, and I am sending this statement in agreement and in support of Mara LaViola's testimony that she will make before your committee.

I am the single mother of a 7 year old child with special needs. Two years ago during an ARD meeting, the school psychiatrist informed me that my high-functioning child with autism was "stealing" services from other more-challenged students. I informed him that, as her mother, it was my responsibility to seek to meet the needs of my child, and that it was the school's responsibility to provide the services that would address her needs. (Thankfully, the school principal agreed to have the district's "autism team" independently evaluate her; their conclusion was that she, indeed, had autism, and was in need of the services I was requesting.)

I find it inexcusable that a school psychiatrist would have the audacity to speak to a parent of a special needs child in that manner. Unfortunately, it would seem that this attitude is pervasive across school districts around the state.

I find it reprehensible that we, as parents, have to "fight" to receive services that our children need. It is my hope and prayer that the committee will heed the testimony of Ms. LaViola - and the other parents who have children with special needs. Our challenges are unique, and we are keenly aware of our responsibility to give them the best life they can possibly have.

Sincerely,



Kathy Berney  
217 W. Louella Drive  
Hurst, TX 76054



## **Supplement to Testimony Provided by Mara Laviola:**

*By MariAnn Gattelaró*

**As a parent of a child with Autism Spectrum Disorder and a Certified Rehabilitation Counselor, I agree with the testimonial provided by Mara Laviola and would like to add the following:**

*Excerpts taken from the 32<sup>nd</sup> IRI 2007 Institute on Rehabilitation Issues for Individuals with Autism Spectrum Disorders are highlighted below: These statements are supported by the The Rehabilitation Services Administration, the US Department of Education, The Council of State Administrators of Vocational Rehabilitation, The George Washington University, and Center for Rehabilitation Counseling Research and Education. Dew, D.W., & Ala, G.M. (Eds). (2007). Rehabilitation of individuals with autism spectrum disorders.*

**“It is generally accepted that an education for all children in the U.S. is designed to maximize their capacities in adult life.”**

**“It has been noted that if adults with autism do not transition into employment after their education years, they have a 70% chance of NOT being gainfully employed throughout their lives (Roebuck, 2006).”**

**“Given both the significance of work and the inherent difficulties for those with ASD to successfully navigate the requirements for employment, schools and post education agencies should focus on this critical goal of employment.”**

**Gainful employment for those with Autism Spectrum Disorders encompass transition planning in many different areas that both directly and indirectly contribute to post secondary employment success.**

**Areas of consideration in transition planning include:**

- \*Independent living**
- \*Recreation/leisure opportunities**
- \*Physical Capacities**
- \*Spiritual Health**
- \*Nutritional Balance**
- \*Medical and Behavioral Health Care**
- \*Behavioral Issues**

**“Better Early Than Late. It is best to begin transition planning for the adult world earlier rather than later for those on the Autism Spectrum (Holmes, 2005).**

Senate Education Committee

June 15, 2010

TO: Senator Florence Shapiro, Chair, Education Committee

Dear Senators,

I agree with the testimony of Mara LaViola on schools in Texas relying on the use of "education benefit" when that is not the federal law. I also agree with her testimony about related services, smaller ratios for autism children, teacher and aide training, less reliance on testing to measure an autism child's performance and an increase in the

My son has thrived until third grade in the Texas special education system. However, now that the work is becoming more independent and a higher level of thinking, they are increasing his ratios in the classroom. This only sets him up for failure. The school district claims its a budget issue, but the funds are federal. They should be in place to continue to help my son succeed and stay on grade level. In addition to academics, he needs teachers who have the social and behavioral training to really help a child succeed and reach their full potential with the struggles of autism.

I urge you to consider the points outlined by Mara LaViola.

Sincerely,

Sharisa Lewis

Testimony before the Senate Education Committee on June 16, 2010:  
Interim Charge 6: Comments from Elloise Sweetser.

Why am I here today to talk to you?

The State of Texas got an an F on Special Ed.

As you are all probably aware, OSEP's Determination Letters on State Implementation of IDEA was recently released and once again, Texas has been determined to be in "Need Assistance." For the three years that OSEP has provided these letters, Texas has either fallen into the Needs Assistance category or Needs Intervention Category. This alone speaks volumes as to the effectiveness special education in Texas Public Schools.

I know as a parent and an advocate that there are big problems with the special ed system in Texas. I see the problems that others have testified to about the inequities in the Dispute Resolution Process; the lack of Teacher Training and Certification; and Post Secondary Readiness, Fictitious ARD committees etc. I second the statements of those who have spoken before and will speak after me today about these problems.

Today I will talk to you about the problem of RTI

Instead, I would like to address a disturbing trend in both my case load and the inquiries brought to the agencies I represent; the misuse of Response to Intervention, better known as RTI. An increasing and alarming number of families are seeking assistance because their children are being denied access to special education under the guise that they are receiving services through RTI. Instead these children are forced to languish for months, even years, receiving very little intervention or support, as school districts refuse to evaluate for special education claiming needs are being met through RTI. Making matter worse, RTI is being misused to allegedly handle behavioral challenges that are manifestations of disability, without the supports and protections these children are entitled to under federal law.

RTI is just a tool under federal law to be used to ID and remediate ...

Schools misuse RTI as a tool to escape helping kids under idea. They cheat children out of special education for their disabilities by trapping them in the RTI system.

Under federal law, RTI is a methodology to be used only for the purposes of identifying and remediating those students who are not achieving academic success due to Specific Learning Disabilities. It is a process designed to gather data and apply teaching strategies to improve academic outcomes only. However, special education requires that students receive educational benefit that is far broader in scope than mere academics. RTI does not address all aspects of educational need for the vast majority of children eligible for services under IDEA.

RDI is just a foot note in th e federal regs. But its being used as big escape hatch from providing special ed services under IDEA.

RTI is entirely encompassed in the Federal Regulations under a Section titled “Additional Procedures for Identifying Children with Specific Learning Disabilities.” No where else in IDEA or the Federal Regulations is RTI found. Furthermore, the subsections devoted to RTI make no reference to the utilization of RTI for behavior management alone, but only refers to RTI addressing behavior when it is a result of learning difficulties. IDEA and the Federal Regulations are void of any discussion of the use of RTI as a means to promote discipline in schools or to address behavioral problems that are not associated with a specific learning disability. Although behavior requiring discipline or that which is associated with disability should be appropriately addressed, RTI is not the correct process to do so.

Schools are misusing RID in two ways.

Yet, school districts, with the complicity of TEA, are inappropriately expanding the scope of RTI, very much to the detriment of children with disabilities who should be receiving individually designed services through special education.

First, TEA is allowing Districts to inappropriately utilize RTI as a process of first resort even in cases where the district knows or should reasonably suspect that the child meets the eligibility criteria for special education and related services. Thereby, resulting in the deliberate delay of access to special education, related services, and the meeting of individual educational need.

Secondly, TEA is allowing districts to inappropriately extend RTI to behavioral issues when there is no suspicion of a specific learning disability. Instead, Districts are impermissibly using RTI to place children with special needs in a kind of holding pattern, where their individual needs are ignored and they are left to succumb to the challenges and dangers presented by their disabilities without the protections and supports afforded them under federal law. This poses a great danger for the children caught up in this process as it allows school districts the opportunity to delay evaluating them under the guise of RTI, impede access to much needed services and supports, while allowing the districts, in many circumstances, to inappropriately develop discipline records despite suspicion of disability.

Families have no real access to the evaluation process. Schools hide the right to ask for an evaluation in the ONLINE school students handbook.

This situation is exacerbated by the ability of schools to shirk their notice responsibilities by simply burying the right to request an evaluation in the district’s student handbook. Under TEC §26.0081, District’s are only required to give notice of this important parental right in the Student Handbooks typically accessible only in electronic form on the district’s website. This legal loophole allows districts to readily rely on this ineffective means of informing parents of their right to request special education evaluations as a way to delay access to services. In my experience, few parents are aware of their right to request a full individual evaluation at any time, and rarely directly informed by school districts upon the initiation of the RTI process or any time throughout its duration. In fact, many districts misrepresent to parents that RTI is actually the initial step in the special education process, despite knowledge of a disability or reasonable

suspicion that a disability exists and in complete abrogation of their child find obligations and duty to evaluate.

Let me put faces on this problem. I'll share with you the stories of two little boys I have worked with.

The first is a kindergardener. The second is 10 years old.

First the kidnergardener.

The school spends its time and recources compiling a rap sheet using rdi. the kid by now is practically suicidal. He's been denied special ed services for an entire year. His issues in school are caused by his disability. But he's punished because of his disability instead of given the help he needs.

Take the passive verbs out.

An example of this alarming trend is exemplified by a family I recently began to assist whose kindergartener had accumulated so many discipline reports – his educational records began to look like a rap sheet – Despite arriving at school with a diagnosis of severe ADHD and a pragmatic language disorder, this Kindergartner was given both in school and out of school suspensions, was deliberately isolated from peers for extended periods of time, and as a result of behaviors that were clearly manifestations of his disorders, inappropriately disciplined without any intervention nor protections afforded children who are suspected of disabilities.

The parents came to me distraught because their child was beginning to experience severe anxiety about going to school and was beginning to express alarming statements of self loathing. The district's only response from the time this child entered Kindergarten until several weeks ago, was to claim the child was in their RTI program while they did nothing to address his needs and his discipline issues continued to escalate. The situation became so severe that the parents were forced to heavily medicate their child just so they could keep him safely in school. The parents made numerous requests for an evaluation, which the district delayed and stalled under the pretense of RTI and no, ironically, no "academic need," precisely the need RTI is to address. It was not until we filed a TEA complaint that the district finally succumbed and agreed to conduct the evaluation. In the meantime, this child's educational needs went unmet for an entire school year and has resulted in psychological harm and a discipline record that is concerning to both myself and his parents.

This case, unfortunately, is representative of the majority of cases I am beginning to assist in – children, as young as five, caught up in the RTI process to both delay access to special education (at the most critical time of development and need for intervention) and, even more alarmingly, to establish a record of disciplinary infractions to be used against them later, as will be demonstrated by another case.

How to fix this abuse of RDI

Schools must be specifically required to tell parents that they are entitled to an eval EVERY time a child is referred to RTI or SST or whatever name the school tries to hide under.

This is simply unacceptable and so easily remedied. Each and every time a child is referred to RTI or SST or whatever name the district is calling this service, the district should be required to inform parents that they are entitled, at any time, to request evaluations for special education services and that the District must respond within a reasonable period of time. Furthermore, in cases where it can be determined that RTI was utilized to delay access to access to special education, or the district should have reasonably known that there was a suspected disability requiring special education, compensatory services should be made mandatory and based on independent evaluator reports.

So here's another boy who has been abused by the school under the RDI escape hatch instead of receiving the special ed services he is entitled to under IDEA.

As mentioned earlier, another abuse of the RTI process is its deliberate use to document children with behavioral challenges in order to build a discipline record so that as that child approaches the age of 10, the age in which the penal code is then applied, schools can use the discipline record, inappropriately created, to place children in alternative educational settings, or worse yet, in the criminal justice system.

An example of what I am beginning to see is the following, a middle school boy whose adoptive parent, immediately upon entering a new district, began inquiring about special education services. His child had been in RTI in his previous district despite their knowledge of disabilities falling under IDEA and his resultant educational need. The new school district, piggybacking on this delay of access to special education, insisted that his child would still have to be served through RTI despite educational records that clearly indicated that this child had a medical diagnosis of severe ADHD along with numerous teachers' reports that this child had limited eye contact, no peer interaction, inattentiveness, difficulty communicating and fecal incontinence as a result of a terrible history of physical and sexual abuse.

As the year went on and this child's needs ignored, this child was repeatedly taunted and bullied by his classmates, which resulted in his skipping classes to avoid the torment. These absences resulting in repeated in-school suspensions, without the district addressing the reason for this new behavior. In addition, he, too, began to be disciplined for behaviors that were clearly manifestations of his disorders, including criminal citations, ISS and OSS, and the school did nothing to address the bullying or evaluate him to help address his disabilities and resultant educational needs. The torment and isolation became so severe; this child had a breakdown which resulted in his being admitted to a mental health facility. Upon his admittance the child revealed that he has had suicidal ideation and was, thereafter, diagnosed with bi-polar disorder and

Upon his return to school, the district still refused to evaluate for special education and only offered 504 accommodations, which merely reflected the 3 ineffective strategies in his RTI plan. The child had another breakdown and, finally, a year and a half after his arrival at school he was finally admitted to special education, not due to the original diagnoses that were ignored, but a self-serving eligibility criteria of Emotional Disturbance for the school district. The most disturbing thing about this is that the district placed this label on him because they claimed he had deluded perceptions of his environment. This child did not have delusional perceptions of his environment, he was fully aware of his own isolation, the taunting, teasing and bullying. However, the school, instead of addressing the real disabilities, labeled this child ED, ignoring the neurological disorders he had been diagnosed with previously and the educational needs arising there from, and heinously used his accurate expressions of isolation, fear, and loneliness against him by labeling him emotional disturbed. In addition, the district established two behavioral goals: First, he will respond when first asked to do something and, most egregious of all, student will change his perception of school and those in the school environment. Furthermore, fifteen minutes of counseling is all that was offered to address these two goals, with a counselor that had no experience in any of the real disabilities this child actually has.

For years, this child was caught up in RTI, by two different school districts, as a way to delay access to much needed services and enabling the district to inappropriately document challenging behaviors which led to improper discipline measures; police involvement and changes to his educational placement without protections afforded under IDEA. Without appropriate interventions, this label of ED and the resultant discipline record the district has inappropriately established will eventually insure that this child will become victim to what is becoming far too infamous: the school to prison pipeline.

They slap an ED label on the kid. After the child is abused in the system, isolated, bullied, there is psychological trauma and the school district caused it. How sad to spend the school budget on trapping kids up in the RDI system rather than providing them with the special education services they are entitled to under IDEA.

It is unimaginable to me, yet I see this all too often, children isolated and bullied as a result of their disabilities. Then labeled emotional disturbed because they are deemed as misperceiving the torment and isolation they are experiencing. Resulting in the majority of these children ending up in the most vulnerable place a child with disabilities could possibly end up: alternative educational placements or, worse yet, facing criminal proceedings as more and more District's allow resident police officers to arrest children in school without consideration of their disabilities.

It is imperative that this Committee address this issue. Provide clearer and more appropriate guidelines for the use of RTI. Curtail the inappropriate use of RTI to address discipline or behavior that is not related to a suspected learning disability as TEA is allowing districts to do. Define what a "reasonable time" is for lack of progress, and make it imperative that Districts inform parents immediately upon the initiation of intervention of their right to request evaluations.

Texas has a one year statute of limitations, a time frame that is less than the minimum recommended under IDEA. RTI allows school districts to manipulate and delay the process, under the pretext of RTI, thereby running the statute of limitations and effectively precluding parents from comprehensive recourse through the dispute resolution process by time-barring their action. In addition to increasing the statute of limitations for bringing a due process proceeding to at least the federal minimum of two years, a specific exception should be added when districts inappropriately utilize RTI to delay access when they reasonably should have suspected that a child had a disability.

Every ARD I attend, I hear schools state fake legal standards....examples of the misrpls are #1, #2.

With respect to the review of the range of needs for special education students, this I can simply state is hindered by fictitious legal standards that districts continue to promulgate in each and every training or ARD meeting that I attend. These fictitious standards are: 1) school district are only responsible for academic needs, as opposed to children's educational needs, and 2) school districts deny the range of needs they are obligated to address through the continuous assertion that they are only responsible for conduct in the "educational setting."

By so doing, they are successfully eliminating or limiting the scope of related service provision or the development of goals necessary for functioning outside of a classroom setting. These two fictitious standards are severely limiting the range of services being offered and inadequately meeting the range of needs of special education students. In addition, these fictitious legal standards have become urban legend, much to the point that obtaining Independent Educational Evaluations are virtually impossible because professionals are unaware of what their requirements are or the standards to be utilized. By making these misrpls, they also cheat students out of transition services...

This problem extends to transition services as well, because if districts are not addressing all areas of educational need, they are failing to develop these children's ability to function independently in all aspects of adult living and post school readiness.

Furthermore, transition planning needs to be started far earlier than age 14. There needs to be more training for transition specialists and meaningful collaboration with DARS to help find these students secure employment or employment training as soon as they get into high school. Research shows that students who graduate from HS with jobs keep those jobs 5 years out as opposed to sitting home and not doing anything. Our schools must work with DARS and get an IWRP (individualized written rehabilitation plan) or Job placement plan in place well before they are ready to graduate. Districts should be supplying rehabilitation counselors/job placement specialists to work with the young adults in aiding their transition planning.