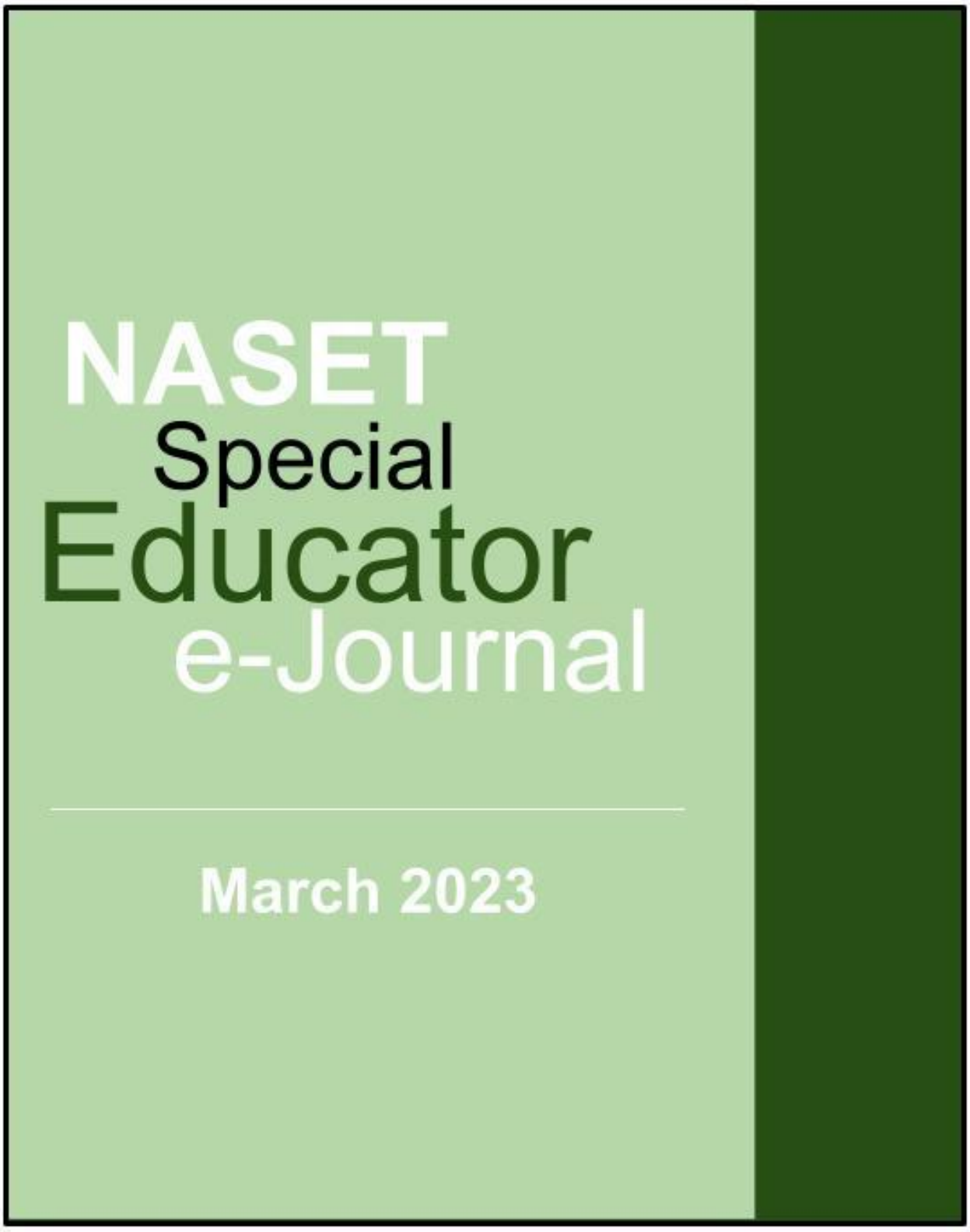
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Special Education Legal Alert

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This month's update identifies recent major court decisions that illustrate applications of Section 504 and the Americans with Disabilities Act (ADA) to relatively novel situations. For related publications and earlier monthly updates, see **perryzirkel.com**.

On December 16, 2022, the Eleventh Circuit Court of Appeals issued an officially published decision in *L.E. v. Superintendent of Cobb County School District,* addressing the Section 504/ADA lawsuit of parents of children with respiratory illnesses upon their Georgia district's reopening of the schools after the pandemic. Upon the return to in-person instruction for the 2021–22 school year, the district ended its mandatory masking and vaccination requirements. These parents sought a preliminary injunction to restore these safety safeguards so that their children could participate in in-person instruction. The district filed a motion for dismissal, arguing that the parents' claims were moot because the CDC no longer recommended mandatory masking for communities, like the district, that are at a low (or moderate) risk level. The trial court denied the district's dismissal motion. It also rejected the parents' requested preliminary injunction because they had not shown the requisite substantial likelihood of success on the merits of their Section 504/ADA claim. The parties filed an appeal with the Eleventh Circuit, which encompasses Alabama, Florida, and Georgia.	
The appeals court affirmed the denial of dismissal, concluding that the case was not moot (i.e., still represents a live controversy).	The reason was that the parents sought not only mandatory masking but also the CDC's remaining COVID-19 recommendations for accommodating students with disabilities.
Next, the appeals court vacated the denial of the motion for dismissal, sending the case back to the lower court to address two flaws with the reasoning that the district's offering of the option of virtual instruction met the requirements of Section 504/ADA.	The Sixth Circuit ordered the lower court to analyze (1) "whether virtual schooling is a reasonable accommodation for *in-person* schooling, not education in general"; and (2) whether virtual schooling for these students with disabilities resulted in unjustified isolation per the Supreme Court's deinstitutionalization decision in *Olmstead* (1999).
Although the majority of other courts have disposed of such suits on various threshold grounds, including mootness, this decision shows the particular leverage that Section 504/ADA provides, in contrast with other legal bases, such as the IDEA, for challenges to state and district policies in the wake of COVID-19. Depending on infection rates and political shifts, such litigation may not be at an end. Moreover, the case illustrates the difficulty of harmonizing competing interests at the collective and individual levels.	

On January 4, 2023, the Sixth Circuit Court of Appeals issued an officially published decision in *Doe v. Knox County Board of Education*, addressing the lawsuit under Section 504 and the ADA on behalf of a high school student with "misophonia," which is a physical impairment of decreased tolerance to specific sounds. For this student, her hypersensitivity to the everyday sounds of eating food and chewing gum cause fear and anxiety, resulting in escape/avoidance actions and recurring migraines. She previously attended a private school that prohibited students from eating food and chewing gum outside of the cafeteria. She excelled academically, including straight As and National Junior Honor Society membership. For high school, she enrolled in this large public school system in Tennessee. Most of the district's high schools barred students from chewing gum and eating food outside the cafeteria. However, she chose and qualified for the school district's magnet STEM academy. Its policy was to leave this issue to the discretion of each teacher on a class-by-class basis based on both the school's college-like culture, which emphasizes individualized teaching methods, and its particular facility, which has gathering spaces for 70–90 students and no designated cafeteria. Coming from nine counties, some students travel a long distance and remain for extracurricular activities, thus being at the school for as much as 12 hours and requiring snacks beyond the two scheduled lunch periods. Some teachers, like the student's math teacher, prohibited food and gum in class, but others, like her history teacher and the teacher for an 80-minute elective that the student would like to take, were openly permissive about food and gum. The school provided the student with a 504 plan, which includes preferential seating, use of noise-cancelling headphones, testing in isolation, and a "break" system that she stopped using based on perceived insufficiency. Her parents allege that she missed about 50% of her academic classes and was "physically and emotionally exhausted" by the end of each school day. When the permissive teachers refused the parents' repeated requests to ban food and gum in their classes (with a reasonable exception for other students with medical needs), her parents asked the school's administration to change the school policy. The principal denied their request, although offering them the opportunity to appeal to the district's central office. Instead, they filed suit in federal court, seeking a preliminary injunction for their requested accommodation under Section 504. The court granted the school district's motion for dismissal because the parents had failed to first file for and complete a due process hearing per the IDEA's exhaustion provision. The parents immediately filed an appeal at the Sixth Circuit (which covers Kentucky, Michigan, Ohio, and Tennessee).	
The appeals court reversed the lower court's dismissal of the suit because the student did not seek any instructional change, which triggers the exhaustion requirement.	Ducking the issue of whether the student arguably fit under the coverage of the IDEA based on the alleged academic effect of the school's policy, the Sixth Circuit reasoned: "Because no ordinary English speaker would describe a ban on eating and chewing as 'instruction,' her parents did not have to go through the review process of the IDEA…."
Additionally, the appeals court rejected the parents' requested preliminary injunction, sending the case back to the lower court to address the two missed aspects.	The parents will have to prove that (1) the district's neutral policy, including the 504 plan for the student, was not a reasonable accommodation/modification and (2) their preferred alternative was reasonable (i.e., a moderate, not significant, change in policy).

Similar to the Eleventh Circuit case on the previous page, this suit illustrates the emerging applications of Section 504 and the ADA, which extend beyond the IDEA, that may survive the threshold adjudicative barriers but still face an uphill slope for judicial success.

P.S. In a separate communication, the parents' attorney, Justin Gilbert, reported that the parents have unilaterally placed the student at a private school during the prolonged court proceedings and will seek to add tuition reimbursement as a remedy.

Buzz from the Hub

All articles below can be accessed through the following links:

https://www.parentcenterhub.org/buzz-feb2023-issue1/

https://www.parentcenterhub.org/buzz-jan2023-issue2/

https://www.parentcenterhub.org/buzz-nov2022-issue1/

https://www.parentcenterhub.org/buzz-oct2022-issue2/

https://www.parentcenterhub.org/buzz-oct2022-issue1/

Frequently Asked Questions (FAQs) on Pre-Employment Transition Services
The account you create at NTACT will give you access to a wide range of transition-related materials, such as this FAQ on pre-employment transition services. The questions and answers are organized into categories for easy browsing and include: administrative, allowable costs, definitions, service delivery, and RSA FAQs.

Talking to Kids About Sex and Dating
Check out this suite of stand-alone articles from the Child Mind Institute, which rounds up resources on why it matters to talk to teens about sex and romantic relationships, and how to approach this sensitive topic. Dive into consent and how kids can confidently set and respect boundaries. The suite includes tips on how to help teens deal with unwanted attention, as well as warning signs of sexual behaviors that are concerning. Some DOs and DON'Ts are outlined to help teens make good choices as they enter their first relationships. ***Each article in the suite is also available in Spanish.***
Balloons lifting a winning ribbon.

Sexual Health and Wellness
PEATC, Virginia's PTI, has developed a toolkit to help guide parents through discussing sexual health and wellness with their child with disabilities. The toolkit covers topics such as sexuality, self-care, relationships, social skills, and boundaries. Many additional factsheets and resource documents (including YouTube videos) are also available.

Sexuality & Disability | 6 videos and articles to explore and share, as befits the person and the circumstances

Sex education for students with disabilities | A more scholarly article from *Law & Order,* from 2006

Dating and disabilities | Exploring love in many forms with first-hand accounts from the frontlines of dating, marriage, intimacy and friendship, all with people living—and loving—with disabilities.

Love Because, Never Despite, Disability
"I want a world where disabled people learn how to have healthy relationships alongside their abled peers, where disabled people are seen as valuable friends, lovers, partners, spouses not in spite of their disability but because disability adds to the fullness and beauty of their being. I want a society that teaches disabled people, through media portrayals, through accessible building design, and so many other avenues, that their bodymind, their personhood is valuable and worthy of love just the way they are." Direct quote. Need we say more?

In My Own Voice: Sexual Self-Advocacy
30 people with intellectual and developmental disabilities talk about what sexual self-advocacy means to them.

RAISE the Standard
Culturally competent transition practices can play a significant role in improving post-school outcomes for youth with disabilities. The November issue of *RAISE The Standard* explores what it means to bring a culturally competent approach to transition planning and why it is vital to do so. Be sure to check out the great list of resources in the newsletter, such as the one listed below.

Life after High School: A Guide for Culturally and Linguistically Diverse Families of Youth with Disabilities
This guide is offered in nine languages: English, Arabic, Chinese, Korean, Russian, Somali, Spanish, Tagalog, and Vietnamese. Wow, eh? From Open Doors for Multicultural Families.

Addressing the Impacts of Parent and Caregiver Loss on Children
(Also available in Spanish: Cómo afrontar el impacto de la pérdida de padres y cuidadores en los niños)
This Dear Colleague Letter from the Administration for Children and Families (ACF) discusses the urgent need to support children and youth who've experienced the traumatic loss of a parent or caregiver. It also includes an astoundingly thorough list of programs and resources available to address the spectrum of needs a child or family might have, from economic supports to behavioral health, to kinship and family supports, and more.

How to Work With Your Child's School
Children with emotional or learning challenges are entitled to support from their schools. Who should parents talk to? This suite of articles from the Child Mind Institute can sure help! It includes 6 separate briefs, with titles such as Building Your Education Team, Supporting Trans and Nonbinary Kids at School, How to Get Assistive Technology for Your Child in School, How to Make the Most of Your IEP Meeting, and About Section 504 Plans. All are also available in Spanish.

Treating Symptoms of Trauma in Children and Teenagers
(Available in Spanish: Tratar los síntomas de trauma en niños y adolescentes)

The 2022 Children's Mental Health Report looks at the effects of psychological trauma on children and reviews the evidence for treatments aimed at helping them recover. From the Child Mind Institute, 15 pages.

Children's Mental Health: A National Family Guide
This 26-page guide from the RAISE Center is packed with helpful info about mental health and a multitude of resources for families. Topics discussed include what parents and professionals need to know about mental health, when to get help, diagnosis, medication, supports and services, schools and mental health, state agencies, and much more.

Sensory Processing Issues Explained
(Available in Spanish: Los problemas de procesamiento sensorial explicados)
This series from the Child Mind Institute delves into the many aspects of sensory processing issues in children, and can come in handy as we approach the chaotic holidays and social gatherings. The series includes such articles as Treating Sensory Processing Issues; How Sensory Processing Issues Affect Kids in School; Sensory-Friendly Party Ideas; and Tips for Going Places With Sensory-Challenged Kids. All are available in English and Spanish.

Food Allergies in Children
(Similar info in Spanish: Alergias a los alimentos en niños)
Holiday and everyday feasting can be very tricky if your child has a food intolerance or allergy. This article from Johns Hopkins Medicine describes the most common types of such allergies, how to find out if and what types of allergies your child has, symptoms, and treatment, including tips for dining out with food allergies.

Navigating Food Allergies During the Holidays
Food allergies don't have to dampen the spirit of the holidays. See tips for celebrating with allergy-free foods, so everyone has a place at the table.

Responding to Your Child's Bite
(Available in Spanish: Maneras de tratar las mordidas de su hijo)
Many toddlers and young children bite. Developmentally, most toddlers don't have enough words to express how they are feeling. Biting is one of the ways toddlers express their needs, desires, or feelings. This handout provides information on why children bite, what to do and what not to do, and when to seek professional help. From the National Center for Pyramid Model Innovations.

IEP Tip Sheet Series
Parents and family members are critical members of the IEP team and the IEP development process. It's important that parents understand the IEP and its parts, why the IEP is important, and the valuable role that parents play in creating the IEP. This series begins with IEP Tip Sheet for Parents: An Overview of the IEP and then offers 7 fact sheets about specific components of the IEP. From the Progress Center.

Related Services Providers: Important Contributors to the Accommodations Decision-making Process

This 4-page brief from the National Center on Educational Outcomes suggests strategies for supporting related services providers so that they can participate more confidently as members of IEP teams when decisions are made about instructional and assessment accommodations.

Five Required Pre-ETS Services

For students with disabilities who are eligible or potentially eligible for VR services, pre-employment transition services includes a specific set of activities by law: job exploration counseling, work-based learning experiences, counseling on postsecondary education opportunities, workplace readiness training, and instruction in self-advocacy. Want to learn more about each of these activities? Take advantage of this series from the National Technical Assistance Center on Transition: The Collaborative.

Webinar | The Transformative Power of Engaging Parents as Partners

This hour-long webinar was held in September 2022, and explores how one unified school district completely transformed its relationships with families, re-established trust, and even more importantly, improved students' learning experiences. Their intentional efforts to engage parents as partners also helped save the district millions of dollars in attorney fees and settlement costs. From CADRE, the TA&D's expert on dispute resolution.

U.S. Department of Education Announces More Than $188 Million from the Bipartisan Safer Communities Act to Support Mental Health and Student Wellness

The U.S. Department of Education (Department) is announcing awards of more than $188 million across 170 grantees in over 30 states to increase access to school-based mental health services and to strengthen the pipeline of mental health professionals in high-needs districts. With funding provided by the Bipartisan Safer Communities Act (BSCA), these investments help advance the President's Mental Health Strategy, which directly implements his Unity Agenda priority to tackle the mental health crisis in our school communities. These grants will enable communities to hire approximately 5,400 school-based mental health professionals and train an estimated 5,500 more to build a diverse pipeline of mental health providers in schools. These investments will begin the important work of broadening access to critical mental health supports by increasing the number of health care providers in schools. These funds also will help with strengthening the pipeline of certified mental health providers who are ready to work in schools with the greatest needs. These competitive grants are the first in a series of awards the Department will make over several years and constitute the largest investment in school-based mental health this country has ever made.

Even before the pandemic, the wellbeing of many students was unmet due to insufficient access to high-quality mental health care. For years, schools have struggled to meet the recommended ratios for school-based mental health professionals, and this is especially true in schools with more underserved students. Now, the mental health crisis facing students has reached a critical point with more than one in three high school students reported experiencing poor mental health during the height of the pandemic. Research shows that children and young people learn more, report feeling safer, and develop more trusting relationships with their peers and teachers when their social and emotional needs are met with certified and accessible mental health professionals.

"As the President outlined in his State of the Union address, we must do more to tackle our nation's growing mental health crisis, which is particularly acute among our youth," said Domestic Policy Advisor to the President Susan Rice. "These new awards will help connect more students in need to school-based mental health services now and ensure a pipeline of trained professionals to support students in the future. Integrating mental health services into our schools is a key component of the President's Mental Health Strategy and will help fulfill a key component of the President's Unity Agenda."

"Even before the disruption, isolation, and trauma of the pandemic, youth rates of anxiety and depression, and other mental health challenges were on the rise, and too many students suffered in silence," said U.S. Secretary of Education Miguel Cardona. "Mental health and wellness have profound implications for our students, their academic success, and their overall outcomes, and we know that youth facing mental health challenges are more likely to receive services in a school-based setting. The Bipartisan Safer Communities Act represents an unprecedented

opportunity to raise the bar for our support of our students, to improve learning conditions in our schools, to expand access to school-based mental health care, and to supercharge efforts across the country to train and hire a pipeline of professionals committed to the wellbeing of our students."

To learn more, click here
https://www.ed.gov/news/press-releases/us-department-education-announces-more-188-million-bipartisan-safer-communities-act-support-mental-health-and-student-wellness

U.S. Department of Education Announces First-Ever Augustus F. Hawkins Centers of Excellence Program Grants to Strengthen Teachers of Color Pipeline and Address Teacher Shortage

The U.S. Department of Education (Department) announced first-ever awards, totaling over $18 million, for the Augustus F. Hawkins Centers of Excellence Program grants to increase high-quality teacher preparation programs for teachers of color, strengthen the diversity of our teacher pipeline, and address teacher shortages.

The Augustus F. Hawkins Centers of Excellence Program (Hawkins Program), named for Augustus F. Hawkins, the first Black politician elected to the U.S. House of Representatives from west of the Mississippi River, supports comprehensive, high-quality teacher preparation programs at Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and Minority Serving Institutions (MSIs). A priority in President Biden's FY 22 budget proposal, this year marks the first time the Hawkins Program has received funding since its creation in 2008. From the FY 2022 appropriation for the Fund for the Improvement of Postsecondary Education, Congress allocated $8 million for the Hawkins program. The Department is also using funds appropriated for the Hawkins Program in FY 2023 to bring the total for these grants to over $18 million.

"Thanks to President Biden's leadership, I'm incredibly proud to announce the first-ever Hawkins Centers of Excellence Program grants, which will help Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and Minority-Serving Institutions recruit and prepare a new generation of diverse and talented individuals into the teaching profession," said U.S. Secretary of Education Miguel Cardona. "Today, more than half of our learners nationwide are students of color, and yet fewer than 1 in 5 educators come from communities of color. I'll never forget the impact that my first teacher of color had on me as a student, and my experience tracks closely with years of research suggesting the profound, positive influence that educators of color have on students of all backgrounds."

Recently, Secretary Cardona laid out his vision to promote academic excellence, improve learning conditions, and prepare our students for a world where global engagement is critical to our nation's standing. A key focus in his "Raise the Bar" agenda is to boldly strengthen the teacher pipeline to eliminate the educator shortage for every school. Across the country, school districts – particularly in underserved communities– are working to address longstanding educator shortages which have been exacerbated by the pandemic. As of October 2022, 27 percent of public schools had multiple teaching vacancies. These shortages were particularly acute for schools in high-poverty neighborhoods and schools with large portions of students of color where more than half of schools had multiple teaching vacancies (57 percent and 60 percent, respectively).

To learn more, click here

https://www.ed.gov/news/press-releases/us-department-education-announces-first-ever-augustus-f-hawkins-centers-excellence-program-grants-strengthen-teachers-color-pipeline-and-address-teacher-shortage

Middle School Teacher and Support Staff Perceptions of Multi-Tiered Systems of Support

Emily Mazzant, Ed.D.

Abstract

This paper focuses on teacher and staff perceptions of Multi-Tiered Systems of Support (MTSS) implementation. MTSS implementation at the secondary level is a daunting task which includes many complex facets. Ensuring that teacher and staff insights are sought out and taken into account when implementing school-wide programming can increase program success and fidelity. Specifically, this study examines three research questions: (1) How do middle school teachers and school support staff perceive implementation of a Multi-Tiered System of Support? (2) How do these perceptions impact the buy-in and level of understanding of MTSS implementation? (3) In what ways do middle school teachers understand the MTSS framework? Utilizing a qualitative, single subject case study design methodology, this study sought to explore how teacher and staff understanding of MTSS can impact implementation. Results of this study indicate that districts should seek input from staff regarding program implementation and highlight the importance of professional development focused on MTSS.

Key words: Mulitiered Systems of Support (MTSS), teacher perceptions, middle school, Response to Intervention (RTI), implementation

Research indicates that as many as half of secondary students are unable to read basic text (King, Lemons & Hill, 2012). Labeled as a public health crisis, this lack of ability to read has astounding implications on students. A Multi-Tiered System of Support (MTSS) is a comprehensive method to ensure all students receive the academic, behavioral, and social-emotional learning services that they need in order to be successful, prevent failure for students at risk, and combat this crisis (Bohanon, Gilman, Parker, Amell & Sortino, 2016).

Through this research I explored middle school teacher and support staff perceptions of MTSS implementation. Taking place within a suburban, western Pennsylvania middle school, a qualitative, single descriptive case study approach was utilized to conduct this study. Implementing MTSS at the secondary level proposes a number of issues such as scheduling, school personnel, identifying age-appropriate research-based interventions and ensuring a team-based approach. Within the middle school in which this study took place, MTSS has been implemented for one full school year. Within the first year of implementation, teacher knowledge of MTSS was the main focus in order to ensure that the framework was being implemented as planned. Moving forward, ensuring teacher and staff buy-in through gaining teacher and staff perspective on the initiative became a focus, as well ensuring communication with off-team teachers regarding MTSS. This study collected and analyzed data received by

teachers and staff in interview responses in order to present the importance of teacher and staff perspective in relation to MTSS implementation.

Those who work in the field of education would likely agree that improvement in the area of student academic achievement, behavior and social-emotional learning is needed. Response to Intervention (RTI), later transitioned to MTSS, is a widely adopted initiative put into place to ensure improvement for students in various areas and to address the overrepresentation of students who receive special education services (Shapiro, Zigmond, Wallace, & Marston, 2011). RTI consists of providing a three-tiered approach to increase academic success, designed based upon student need (McIntosh & Goodman, 2016). Positive Behavioral Interventions and Supports (PBIS) is another school-wide initiative focused mainly on behavior and social development of students (Harn, Basaraba, Chard, & Fritz, 2015, McIntosh & Goodman, 2016). MTSS works to combine these initiatives into a more comprehensive system in an effort to streamline practices for students to ensure a preventative approach to the areas of behavior, academics, and social-emotional learning for all students.

Combining approaches within school systems is widely supported by research (Nelson, Benner, Lane, & Smith, 2004 & Bohanon et al., 2016). McIntosh & Goodman (2016) support combining educational initiatives based on three assumptions. First, focusing on academics, behavior, and social-emotional learning is supported by research relating to the historic connection between problem behavior and academics (McIntosh & Goodman, 2016, Nelson et al., 2004 & Bohanon et al., 2016). By looking at student information consisting of more than just test scores or other academic data, educators can ensure that a wide range of information is being taken into account when determining the needs of individual students. Second, the commonalities between PBIS and RTI allow for teachers and staff to become proficient and familiar with one initiative and apply that knowledge to the other. These commonalities teach the basics of effective service and intervention delivery, no matter the focus of the intervention or need. Third, instead of having teachers and staff become familiar with multiple, similar systems, combining these similar systems into MTSS allows educators to build capacity within one common system (Batsche, 2019, McIntosh & Goodman, 2016).

MTSS can be implemented as a three-tiered system across all grade spans; however, differences exist when implementing in an elementary setting as compared to a secondary setting (King, Lemons & Hill, 2012). Often in the elementary school setting the focus of MTSS consists of identifying struggling readers based on student scores on benchmark assessments with the goal being to identify struggling learners early in order to provide appropriate interventions before the learning gap widens and intervening becomes more difficult (Batsche, Kavale & Kovaleski, 2006). Additionally, MTSS at the elementary level typically focuses on level of intervention with level and area of need determined by universal screeners. Research relating to MTSS implementation at the secondary level is limited as compared to the elementary level (Sansosti, Noltemeyer, & Goss, 2010). Fuchs, Fuchs & Compton (2010) note that researchers may tend to avoid secondary schools altogether due to complicated schedules and compliance issues. Assumptions that work to form the MTSS model at the elementary level do not necessary apply at the secondary level, such as the need for screening to identify deficits as these areas of need are typically already known by the time students make it to the secondary level. Additionally, determining student responsiveness to less intensive interventions prior to implementing more intensive methods is no longer relevant at the secondary level as most students with intensive

needs would have already been identified and be receiving more intensive interventions (Fuchs, Fuchs & Compton, 2010). Johnson, Smith and Harris (2009) define the primary purposes of MTSS at the secondary level as:

> …to build the capacity of the school to meet the increasing demands for a diverse student population to meet rigorous standards for graduation; to ensure appropriate instruction and intervention is provided to all students; to provide a system that will support continuous school improvement to improve outcomes for all students (p. 3).

The proper implementation of MTSS is equally as important as the methods and practices used within the model. Successful implementation of MTSS involves ensuring a comprehensive approach to district initiatives through strategic planning, including all relevant stakeholders in the implementation, and utilizing a science-based implementation process (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005, Bohanon et al., 2016, Von der Embse, 2018). School districts can increase MTSS implementation success by ensuring school teams represent diverse areas of expertise, having a comprehensive plan regarding data usage, ensuring connections to evidence-based practices (EBPs), and an overall district-level commitment (Bohanon et al., 2016).

Organizational leadership, professional development and establishing systems to ensure sustainability are also key drivers related to successful implementation (Fixsen et al., 2005).

Soliciting stakeholder perspectives, especially from teachers, must be encouraged in order to increase success for implementation and sustainability. Castro-Villarreal et al. (2014) state "…General education teachers are fundamental in the RTI process. Given teachers' integral role, it is important to examine teachers' attitudes, beliefs, perceptions, and challenges with respect to RTI to identify the appropriate actions, interventions, and sustainability of RTI" (p. 2). Utilizing a collaborative approach for implementation, including gaining stakeholder perspectives, feelings and ideas can increase the overall success of implementation (Bean & Lillenstein, 2012, Dulaney, et al., 2013).

Method

Understanding teacher perspective related to implementing a school-wide framework such as MTSS is imperative. Teacher buy-in and willingness to participate directly impacts the success of the initiative. This study focused on teacher perceptions of Multi-Tiered Systems of Support implementation at the middle school level and utilizes already existing data, new data compiled from an MTSS needs assessment completed by the building-based MTSS team, and asynchronous, open-ended, confidential online interview responses by teacher and staff members of a suburban, western Pennsylvania middle school. A qualitative approach to this study was the most appropriate because the study subject requires interpretation and conceptualization as well as personal involvement in understanding peoples' perceptions and feelings (Brown, Stevens, Troiano & Schneider, 2002).

An asynchronous, confidential, on-line, open-ended interview was conducted as one data collection method for this study. The interview questions for this study were developed to ensure an open-ended response to each question. Participants were informed of the purpose of the study and research questions during the consent process. All participants were sent a link to complete a

confidential, asynchronous online interview with instructions on how to complete the form. The online interview questions were designed based on the research questions and all questions aligned with at least one of the research questions in order to ensure focus on the research. The Bailey Tarver SST (Student Support Team)/RTI Survey (2010) was utilized as a reference when creating the online interview questions for this study. The Bailey Tarver SST Survey is quantitative in nature and utilizes a Likert Scale in order to quantify teacher perceptions and understanding of SST and RTI. Although this survey was not edited to create the online interview questions within this dissertation, this already established instrument was informative in creating the interview questions. In this study, I developed the questions in order to increase credibility and relevance to the subject matter. As an employee of the school district in which this study took place, I was able to create the questions to allow a more personalized approach to the district and school participating in the study.

Creating original interview questions for this case study allowed for taking into consideration the school professionals as well as the current state of MTSS implementation within the building. This approach allowed for personalization of the questions in order to align specifically with the MTSS approaches utilized by the school. For example, building-based and team-based MTSS teams are utilized, so both of these approaches were captured in the interview questions in order to gain perspective on both approaches. The online interview questions are included in table 1 below.

Table 1

Asynchronous Online Interview Questions

	Mazzant Online Interview Questions	**Aligned to research question #**
1.	What does MTSS mean to you?	1, 3
2.	What does the MTSS team(s) process look like at your school? What is its purpose?	1, 3
3.	Who is responsible for MTSS in your school and what does this responsibility entail? How do you contribute to this implementation?	1, 2, 3
4.	What is the purpose and operation of the MTSS team(s) within your school?	1, 3
5.	What paperwork and/or documentation are required as a part of the MTSS process in your school? How would you describe this required documentation?	2
6.	What reading and math interventions are implemented in your school? Describe how these are provided as a part of the tiered framework of MTSS.	3
7.	Do you feel the MTSS framework is effective in your school building? In what ways is it effective or not effective?	2

8.	How do you collaborate with parents and fellow colleagues regarding the implementation of MTSS?	2
9.	In what ways are MTSS team meetings used to benefit students?	1
10.	How do you feel about the success of the MTSS process within your school?	2
11.	In what ways do you feel the MTSS process in your building can improve?	1, 2, 3

Prior to participation, an email was sent to all potential participations requesting participation in the study. All participants were asked to read a consent form which informed potential participants of the purpose of the study, who is eligible to participate, where the study will take place, the time commitment of the study and what the study entails, any potential risks, how personal information would be protected, who to contact with questions, and how to end participation in the study.

The first set of data collected for this study were based on benchmark assessments on MTSS knowledge of middle school employees, completed in August 2019, December 2020, and May 2020. The benchmark assessments were created by building administration in an effort to gauge teacher understanding of MTSS. This information was not collected in order to quantify the data, but rather to share additional information regarding the current understanding of MTSS by school employees.

The second set of data collection consisted of results from the MTSS Needs Assessment, Secondary Version (McIntosh & Goodman, 2016). This needs assessment was completed in October 2020 by the MTSS building-based team at the school district in which the study was completed. Members of the building-based team who participated in the completion of the needs assessment were the building principal, assistant principal, school psychologist, and intervention specialist. Similar to the teacher benchmark assessments, this assessment was not completed in order to collect quantitative data, but rather to paint a picture of the current level of implementation of MTSS at the middle school.

Lastly, an online, confidential, asynchronous interview using self-created questions was the method of new data collection for this study. Participation in the online interviews was voluntary and participants were kept confidential. The interview was used to gather qualitative data to inform the research questions. Through an online interview format, participants are able to write their responses and reflect on their answers prior to submitting. Written responses in interviews, as compared to synchronous interviewing, can allow study participants time to consider the questions being asked, thus encouraging more in-depth responses (Lewis, 2006).

Data Analysis

Coding was used to determine themes within the collected data. The constant comparative method was utilized to compare the data with the existing codes to determine whether or not it fits or should be divided to fit a new code. When coding data in a qualitative study, researchers can use a variety of methods, including manual coding or computer coding programs. In this study, manual coding was utilized. Upon the initial data collection and coding phase, I worked to

identify codes or phrases that were common among the interview responses, known as the primary-cycle coding phase (Tracy, 2013). Through utilization of the Grounded Theory Approach, I utilized an iterative approach to research and data analysis in which theories were built upon throughout the data collection process and data was visited and revisited throughout the research process. After several cycles of coding the collected interview data, several common phrases were identified from the participant responses. After this initial phase of coding, I compared and contrasted the responses and coded phrases based upon the job categories of the participants. From here, themes emerged in the data which were then connected back to the original research questions for this study.

Participants

The school district in which this study was completed is a suburban school district in western Pennsylvania. The district itself consists of approximately 4,500 students, 715 of whom were enrolled at the middle school building in which the study was conducted during the 2020-2021 school year. The middle school consists of grades seven and eight. Staffing demographics for the middle school building consist of the following: one building principal and one assistant principal, 63 teachers, 10 paraprofessionals, two school counselors, one social worker, one school psychologist who oversees grades seven through twelve, and one intervention specialist who works with grades seven through twelve. Table 2 includes data related to study participants.

Table 2

Study Participants

	Number Requested to Participate in Study	**Number Participated in Study**	**Percentage of Participation out of total teachers**	**Percentage of participation out of total participants**
General Education Teachers	24	11	44%	42%
Special Education Teachers	6	4	66.6%	15%
Special Area Teachers/ Off Team	25	3	12%	11.5%
Paraprofessionals	9	3	33.3%	11.5%
Other	6	5	83%	19%
Totals	70	26	37%	n/a

A sampling plan was constructed in order to identify proper participants for this study. Careful consideration of participants for interviews is an important step in conducting qualitative research; purposeful sampling, in particular, was used in this study in order to identify professionals who could aid in capturing the realm of thoughts on MTSS for all members of the

building. Tracy (2013) recommends purposeful sampling in order to ensure that the data collected aligns with the research questions being sought. In this study, participants were requested based on their job identification in the school in which the study took place. Participants were categorized into four groups based upon their job classification with a goal of at least five participants from each group to be interviewed. A total of 26 participants completed the interview, including five participants who indicated their role as "other". Participants who indicated their role as "other" were not included in the data analysis of this dissertation, as the study included the following job categories: classroom teachers, special education teachers, special area teachers, and paraprofessionals. The "other" category could have consisted of building secretaries, school counselors, school social worker, or building administrators. For the purposes of this study, only responses provided by teachers and support staff were analyzed. Purposeful sampling utilizing the specified groups was used in order to capture the full spectrum of teacher and staff understanding and perspective related to the implementation of MTSS. Participant amount was not pre-determined, rather it was determined when saturation of data was reached. Saturation was used to determine when a sufficient number of participants completed the interview. In this study, 26 total participants completed the interview process.

Results

MTSS Teacher Benchmark

A benchmark assessment focusing on knowledge of MTSS was given to all teachers and staff during the 2019-2020 school year in an effort to measure growth based upon MTSS professional development sessions and overall implementation experience. The questions on these benchmarks corresponded with professional development provided to staff as well as areas of focus of MTSS throughout the school year. These assessments highlight the focus of MTSS implementation at the beginning, middle and end of year one of implementation of MTSS at the middle school in which the study took place. This data was analyzed not with the intention of quantifying MTSS knowledge, but in an effort to share MTSS implementation focal points and progress of implementation. 72 staff members participated in the beginning of year benchmark, 67 participated in the middle of the year teacher benchmark, and 62 participated in the end of year teacher benchmark. The tables below include the benchmark questions and teacher responses (Pine-Richland Middle School, MTSS Teacher Benchmark Assessments, 2019-2020).

Table 3

Beginning of Year Teacher Benchmark

Questions	Results
1. A Multi-Tiered System of Supports (MTSS) is a systematic framework that utilizes a data-based problem-solving process to provide multiple tiers of instruction and intervention to ensure successful outcomes for who?	100% correct (all students)
2. True or False: Multi-tiered Systems of Supports (MTSS) are used as an umbrella	96.1% correct (True)

term that encompasses both response to intervention (RTI) and positive behavioral interventions and supports (PBIS).	
3. 3. Tiers are differentiated by the _____ of the services provided.	92% correct (intensity)
4. A student with very intense instructional needs would typically receive:	96% correct (tier 3 interventions)
5. Check all the information below that is needed to identify a problem about a Tier 1 student.	76% correct (goal statements, what students should know and be able to do, written in concrete, observable and measurable terms) 71% correct (data on student current performance, on expected performance, and on peer performance) 77% correct (a gap analysis to determine the difference between a. current and expected performance, b. peer and expected performance, and c. student and peer performance

Table 4

Middle of Year Teacher Benchmark

Questions	Results
1. True or False: You need IEP, 504 or GIEP information to bring a student up at an MTSS meeting.	95% correct (False)
2. Which of the following can be the focus of an intervention for a student? Check all that apply.	100% correct (Academic) 94% (Behavioral) 92.5% (Social-Emotional)
3. Programs for which type of student deficit are currently being implemented at both grade levels?	79% correct (Reading) 91% correct (Executive Functioning)
4. What is used to determine whether a student needs a tier 2 or 3 intervention? Check all that apply.	97% correct (Teacher observation) 89% correct (Standardized test scores) 65% correct (Parent input) 91% correct (Grades)
5. True or False: RAMS Way is a part of MTSS.	67% correct (True)

Table 5

End of Year Teacher Benchmark

Questions	Results
1. MTSS addresses which of the following needs of students? Check all that apply.	95% correct (Academic) 95% correct (Social-Emotional) 95% correct (Behavioral)
2. Why would a student be brought up at an MTSS meeting? Check all that apply.	95% correct (Standardized testing data indicates they are struggling in reading) 96% correct (Parents and teachers have noticed a change in the student's behavior)
3. What is the point of having an MTSS referral for a student?	96% correct (to make sure that a student's deficits and interventions are documented for parents and future teachers to see)
4. True or False: RAMS Way is a part of MTSS.	87% correct (True)
5. Which tier most directly applies to all teachers and students at the middle school?	95% correct (Tier 1)

MTSS Needs Assessment overview

Element one of the MTSS Needs Assessment (McIntosh & Goodman, 2016) explores staff knowledge of MTSS implementation and utilization of a systematic approach to resolving system-level and student-level issues within the model. In this area, the school-wide MTSS team rated the building an average score of 1.7, which indicates the building is between the partially implementing and mostly implementing levels. The mode score within this element was two, mostly implementing. Areas of improvement identified by the building-based MTSS team within this element include ensuring that staff understand how MTSS relates to a problem-based model and ensuring that this model drives practices within MTSS. Approaching MTSS through a problem-solving model allows MTSS teams to work more efficiently toward actually solving problems, rather than spending time trying to figure out what process to follow when working toward solving problems (McIntosh & Goodman, 2016).

Element two discusses the use of universal screeners in order to gain information on all students in the areas of performance and growth achievement from fall, winter and spring, as well as throughout multiple years. This element also discusses the utilization of a specific, reliable tool for screening students in the areas of reading and math, mental health (social-emotional learning), and behavior. Within the assessment data collected, data should also be separated in order to assess subgroups of students consisting of, but not limited to, special education, English Learners, females and males, and others (McIntosh & Goodman, 2016). In this element, the building was scored at an average level of 1.4, partially implementing to mostly implementing. The mode score in this element was one, partially implementing. Element two of the needs assessment encompasses many aspects. Due to the wide scope of element two, scores within this element ranged from zero to three, with most action items for the school building being in the

area of improving practices relating to problem behavior. Although this area shows as an area of need, it is important to note that problem behavior may not be a main area of focus for the building due to few behavioral infractions and very few behavioral infractions resulting in suspensions.

Element three discusses the use of evidence-based practices in the areas of academics, including math and reading, social-emotional learning, and behavior. In this element of the needs assessment, the building was scored at an average level of 1.8, partially implementing to mostly implementing. The mode score in element three was one, partially implementing. During year one of implementing, the building worked to implement tier two research-based interventions in the areas of reading comprehension and executive functioning. Like many districts across the United States, the school building closed in March 2020 due to the COVID-19 pandemic. Virtual learning was implemented; however, this had an impact on the school's ability to continue research-based intervention implementation. This, as well as other impacts that COVID-19 had on the school's ability to implement MTSS in year one, were discussed as the building-based team completed the MTSS needs assessment. This example serves as a reminder that although schools can work to have all elements in place, at times there are unanticipated events that can have an impact on a school's ability to follow a specific timeline for implementation. Flexibility in implementation planning is key.

Element four of the needs assessment discusses the use of data-based decision making and the utilization of benchmark assessments and Functional Behavior Assessments (FBA) for decision making. The use of screening assessments to determine individual student needs in the areas of academics, social-emotional learning and behavior are discussed, as well as diagnostic assessments and progress monitoring in an effort to determine student growth and need, as well as program fidelity. Parental involvement in the MTSS process is also discussed in this element. In this element the building received an average score of 1.9, partially implementing to mostly implementing, with the mode score being 1, partially implementing. Element four discussed the school's implementation level of various assessments in order to inform MTSS. Screening assessments in the areas of literacy, math, social-emotional learning and problem behavior are frequently used at the tiers two and three levels, but screeners in the areas of literacy and math are currently the only universal screeners given to all students throughout the school year. Threes (fully and consistently implementing) were awarded to the school in the areas of screening and diagnostic assessments, but ones were given in the area of progress monitoring. Progress monitoring is essential following diagnostic assessments or universal screeners, to determine whether or not a student is making progress with an implemented intervention. Progress monitoring should be implemented more frequently than screeners, typically on a monthly or weekly basis. This data should then be used to make instructional decisions (McIntosh & Goodman, 2016).

The fifth element of the needs assessment promotes a shared responsibility among all staff, including general education and special education teachers, support staff, administration, and non-teaching staff. All staff members should work collaboratively toward problem solving in the areas of academics, social-emotional learning, and behavior. Involving students and parents as problem solving partners is also recommended (McIntosh & Goodman, 2016). In this element the building was scored at an average level of .7, not implementing to implementing, with the mode score being a 1, partially implementing. This low-scoring element serves as the area of the

needs assessment in need of the most improvement, which aligns with the building's 2020-2021 building goal, "strengthen team and off team staff to support all students' needs through interventions and enrichment program" (Pine-Richland Middle School, PRMS Building Action Plan, 2020). This building goal serves as a priority action item for administrators and MTSS building-based team members to work toward implementing, as well an involving all teaching staff in the process. Steps toward meeting this goal are documented in a building action plan, complete with information regarding when action items should be completed, who is responsible for completing the item, and when the item should be or was completed (Pine-Richland Middle School, PRMS Building Action Plan, 2020).

Element six discusses the use of a team-based problem-solving approach at all tiers of the MTSS framework, including the use of problem-solving meetings at the building and team (grade) level, communication of student information during transition years, delegation of roles within teams, cross-grade and cross-curricular collaboration, and engaging parents in the problem-solving progress (McIntosh & Goodman, 2016). The building was scored at an average level of 2, mostly implementing, in element six. The mode of this element was a 2, mostly implementing. Team-based problem solving is something that the building is moving toward during the 2020-2021 school year. Through the implementation of a building-based MTSS team, the building hopes for individual teams, comprised of content area general education teachers, and in some cases, one special education teacher, to begin to implement MTSS discussions at the team-level, and then when needed, involve the build-based MTSS team.

Element seven considers contextual factors related to MTSS implementation. Factors such as scheduling, funding, curriculum, community factors, and teacher union-related factors are discussed as a part of this element. These factors are considered prevention factors as implementing these factors can improve MTSS implementation from the start. The building was scored at an average level of 2, mostly implementing, with a mode level also of 2. Element seven captures problem-solving elements related to a variety of factors, mentioned above. A potential area of improvement identified within this element is ensuring that community factors are considered when working toward problem solving efforts within MTSS.

A systematic approach to identifying students with specific learning disabilities (SLD) is discussed in element eight. Discussion related to a duel-discrepancy approach to identifying SLD as well as utilizing research-bases strategies and interventions as a part of intervening due to issues in the areas of academic achievement, social-emotional needs, and behavior, is also discussed. In this element the building was scored at an average level of 1.1, partially implementing to mostly implementing, with a mode of zero. The district currently utilizes the duel-discrepancy model approach to identifying students with SLD. Although the MTSS framework is encouraged, since the district is newly implementing MTSS at the grades seven through twelve level, use of MTSS and intervention performance is not yet utilized as a method of identifying SLD.

Element nine discusses leadership in the area of MTSS, including administrative leadership and ensuring that staff receive appropriate professional development and training. The leadership team should ensure that appropriate funding and resources are provided to teams in order to successfully implement MTSS. Adequate technology, curriculum, and interventions must also be provided. Staff development opportunities, as well as opportunities to engage parents in the process, should also be priorities of implementation. The building was scored at an average level

of 1.25, partially implementing to mostly implementing, in element nine. The mode of this data was 1, partially implementing. Although many aspects of MTSS implementation included in this element, such as organizing assessments, staff training, technology integration, coordination of resources, and ensuring an appropriate budget, are implemented or being actively worked on, an MTSS leadership team is only newly implemented this school year and this element will likely improve through current efforts being made to differentiate between team-based and building-based MTSS teams. Leadership serves as a key driver for MTSS implementation, encompassing vision, management and coordination, and facilitative administration. Effective leadership within MTSS implementation helps to ensure that schools are provided with direction to guide the process. McIntosh & Goodman (2016) emphasize that within the leadership driver it is important to recognize that "the term leadership refers to the function of leadership rather than an individual's position within the organization" (p. 208).

Overall, the MTSS Needs Assessment—Secondary Version (McIntosh & Goodman, 2016) serves as an effective tool to help districts and schools identify areas of success and need within MTSS implementation and can also help to identify areas to prioritize. Based upon the findings of this needs assessment, logical next steps in the implementation process for MTSS within this school building include continuing to work toward including all staff in the MTSS process and to solidify the functions of an MTSS leadership team. Although a needs assessment is an effective tool to help schools and districts organize and prioritize, the real work comes when this information is applied to MTSS practices.

The online, asynchronous staff interviews yielded themes which aligned to each of the research questions for this study. Research question one in this study focused on how middle school teachers and school support staff perceive implementation of a multi-tiered system of support. Theme one which emerged from the responses of participants was that participants identified that support for all students and addressing individual student needs was a part of the MTSS process, as well as the need for all staff to be involved. The second theme identified in connection to research question one was that communication with off-team teachers regarding the MTSS process is insufficient.

Research question two in this study related to how staff perceptions impact the buy-in and level of understanding of MTSS implementation. Themes from interview responses which aligned to research question two were identified. The first theme identified that all students are involved in the MTSS process and collaboration between all staff is needed for the MTSS process to be effective. Additionally, forms were discussed as a documentation method for MTSS. A third identified theme is that parental involvement was not discussed as a priority in the responses by participants.

Research question three discusses ways in which middle school teachers understand the MTSS framework. Staff understanding of the MTSS process is one measure that can help schools to identify areas of need or success within the implementation process. Based upon the analysis of participants' responses to these questions, two themes emerged. The first theme was that participants understand that collaboration between staff is needed as a part of the MTSS process. The second theme identified was that procedures and logistics were discussed in relation to MTSS rather than the day-to-day implementation through working with students.

Discussion

Themes which emerged from the online, asynchronous interviews were analyzed as a part of this study. The first theme identified within responses from participants relates to the need for all staff to be involved in MTSS and the idea that MTSS supports all individual students in some way. The MTSS Needs Assessment—Secondary Version includes a sense of shared responsibility and collaboration among all staff members as a key element of MTSS (McIntosh & Goodman, 2016). Responses from all participants (general education teachers, special education teachers, special area teachers, and paraprofessionals) were analyzed to determine how responses relate to answer the first research question for this dissertation.

In response to what MTSS means, as well as the purpose of MTSS, to general education content area teachers, teachers responded that MTSS works to support all students and one teacher referenced Response to Intervention (RTI), demonstrating a connection between the RTI system and MTSS. Nine out of ten content area teachers discussed the MTSS framework being in place to help students and to provide some sort of intervention or enrichment in order to support students. Additionally, two content area teachers referenced aspects of MTSS such as providing a safe environment within the school setting, additional opportunities for students and a focus on behavior and social-emotional learning in addition to academics, all of which points to a deeper understanding of the MTSS framework. Support for all students and the need for collaboration between individuals was also an identified theme in the responses to the interview question regarding the MTSS process within the school One content area teacher described the process as "watch, evaluate, discussion, intervention, support" (participant number 22), which suggests an aerial-view understanding of the MTSS process, but does not support a connection to or detailed understanding of the MTSS process within the building. Overall, content area teachers did not address the building-level MTSS team, which is not unexpected, due to this team being new for the 2020-2021 school year, but this does point to a need to clarify functioning of MTSS teams within the building. Teacher responses continue to support the need for additional communication and clarification regarding the MTSS process as a whole.

Special area teachers have been a focus of additional involvement in MTSS for the middle school in which this study took place. In year two of implementation, a building-level goal for the 2020-2021 school year focused on the effort to involve special area teachers in MTSS: "strengthen team and off team staff to support all students' needs through interventions and enrichment program" (Pine-Richland Middle School, PRMS Building Action Plan, 2020). In their response, two special area teachers referenced interventions and support for all students with one also including enrichment as an aspect of MTSS. The third special area teacher who participated in the study defined the acronym in response to what MTSS means to the participant. The sheer number of on-line interview participants from the special area teacher group may point to a need to increase these staff members' participation in and understanding of MTSS, as only three staff members from this job category participated in the interview.

Special education teachers referenced weekly meetings as a part of the MTSS process and highlighted that MTSS works toward meeting the needs of all students. The importance of collaborating with teams, general education teachers, principals, intervention specialist, and school counselors was discussed. In addition, in response to the purpose of MTSS teams, collective input and discussion involving strategies, intervention and enrichment to assist

students were mentioned. Paraprofessionals have had little involvement in MTSS as a whole within the building in which this study took place; however, this group works directly with students, including implementing needed accommodations and interventions, many of which are determined necessary through the MTSS process. Working toward a level of understanding for all staff involved in MTSS in some way is beneficial to the process as well as the school culture as a whole. Three paraprofessionals participated in the study and all were able to demonstrate a fundamental understanding of MTSS in response to the question discussing what MTSS means to the participant. Each included some level of a need for support in his or her response.

Overall, theme one was identified in connection to four interview questions which also align to research question one in this dissertation. The connection of MTSS to the need for supporting all students and the need for collaboration is a positive theme identified through participant responses and shows that there is an overall understanding by staff of the need for these two areas within the MTSS framework.

Theme two, in connection with research question one, discusses that communication with off-team teachers within the building is insufficient and this insufficiency may impact how these staff members perceive MTSS. As identified by Castro-Villarreal (2014), teachers often do not receive effective communication regarding implementation of school-wide systems such as MTSS and may not receive proper training on implementing programming, resulting in a lack of buy-in and negative perception of the program. This lack of communication impacts staff perception, which makes communication and transparency of programming imperative.

Content area teachers referenced a need for additional time for collaboration and planning as well as a need for additional resources to improve the MTSS process, although the type of resources needed was not specified. Five content area teachers referenced the need for additional communication with off-team teachers, with one referencing that the burden of work associated with MTSS should be shared among staff in the building. Two special area teachers referenced the need for increased communication with those not typically involved with the MTSS process, with an emphasis on the benefits that this increased communication could have for students.

Special education teachers referenced the need for consistency and continuation of processes, including utilizing data for decision making, in order to improve the MTSS process within the building. The difficulty of consistency with MTSS during the 2020-2021 school year due to the hybrid and full-virtual models of instruction in response to the COVID-19 global pandemic. This teacher compared the process this school year to the 2019-2020 MTSS process and recognized that some shortcomings of the program in relation to consistency and programming are likely in response to the instructional models (hybrid and fully virtual) currently in place. Two paraprofessionals responded that they were unsure of what could be done to improve MTSS processes within the building which could point to a lack of understanding of MTSS. Additional support and interventions for students in the area of math as an area needed for improvement were also discussed.

Theme two discusses a need for additional communication with off-team teachers who are not typically involved in the MTSS process. This theme was consistent with a previously identified area of need by the building MTSS team and is an MTSS building goal for the 2020-2021 school year. Continued improvement in this area is recommended.

Research question two relates to how staff perceptions impact the buy-in and level of understanding of MTSS implementation. This research question specifically explores the impact these two areas can have on MTSS implementation. The themes identified within research question two include the following:

1. All students, all staff, and collaboration between teams
2. Discussion of forms as a part of the MTSS process
3. Parental involvement was not discussed as a priority in responses

The first theme related to research question two is the idea that all students and staff are involved in MTSS and that collaboration between teams is necessary. Teacher and staff perceptions and buy-in of program operation can have an impact on the level of efficacy of implementation by teachers and staff (Castro-Villarreal et al, 2014 & Donnell and Gettinger, 2015). For this reason, teacher and staff responses to the online, open-ended survey were analyzed in order to determine if there is a connection between the participants' perceptions of MTSS and their buy-in and level of understanding of the initiative. Responses from all those who participated in the online, open-ended survey were analyzed to determine how responses relate to the second research question for this dissertation.

In relation to theme one, content area teachers identified that all students and staff should be involved in the MTSS process in some way and that collaboration between teams is imperative. Content area teachers overwhelmingly noted that "everyone" is involved in the MTSS process with five content area teachers noting that classroom teachers are the key players in MTSS as they provide the most information about students and often times implement accommodations or interventions recommended by the MTSS team.

Two special area teachers noted that general education teachers and administrators are involved with and are responsible for MTSS, with one demonstrating understanding that MTSS involves everyone. Special Education teachers noted that everyone is involved in and responsible for the MTSS process. These teachers' responses indicated that they may have a higher level of buy-in and understanding than the special area teachers as their responses explained more about the responsibilities involved in MTSS rather than just naming team members involved. Paraprofessionals who participated in the study may benefit from additional understanding of MTSS in order to increase their buy-in of the initiative. One paraprofessional named the assistant principal as the sole person responsible for MTSS, one was unsure, and the third indicated that he or she did not know who was "in charge" of MTSS and noted that he or she has never been asked to attend MTSS meetings and noted that he or she does not contribute to MTSS (Participant 15).

The second theme identified in relation to the second research question was that forms were frequently discussed as a part of the MTSS process. The idea that forms that must be filled out was discussed by teachers and staff in relation to MTSS shows that overall, the teachers and staff may perceive MTSS as another task or item on their to-do list for documentation purposes, rather than a framework put into place to combine educational initiatives related to academics, behavior, and social-emotional learning in an effort to benefit all students. MTSS must be seen as an overarching framework to assist teachers in identifying and providing appropriate services for students rather than a nuisance or another "to-do" in order for buy-in to be achieved. This

understanding can be achieved through consistent program implementation paired with quality professional development focused on areas and current level of implementation.

Content area teachers discussed forms, paperwork, and documentation related to MTSS in response to an online interview question. Three content area teachers stated that data collection is an important part of the MTSS process; however, some others discussed a documentation sheet that is used by teams to discuss current student performance and updates on strengths and needs throughout the school year. This documentation sheet is also used to document supports (interventions, accommodations) put into place to assist students and to document how the student responds to these supports.

Off-team teachers yielded inconsistent responses in relation to paperwork and documentation required for MTSS. One off-team teacher identified, "data, grades, tests, quizzes, classwork, standardized testing, and STAR (STAR360)" (Participant 7) as documentation or paperwork required as a part of MTSS; these pieces of data may be useful for decision making in MTSS, but this teacher does not mention what type of documentation or paperwork is required for MTSS, such as a referral form, progress monitoring information, or intervention documentation. Special education teachers were able to identify spreadsheets for data collection as well as the referral form as required documentation for MTSS. One teacher discussed that the documentation was used to collect information on discussions regarding students and another noted that data collection tools such as test scores are utilized as well. One special education teacher noted that a spreadsheet with student information is updated regularly, but specific information regarding the type of information collected or why it is important was not provided in any response.

Paraprofessionals indicated that they are not involved in any paperwork or documentation related to MTSS and therefore could not provide any input regarding this interview question. In a typical day in the school in which this study took place, a paraprofessional may keep behavioral documentation on a student, read a test or a quiz to a student, provide a reading intervention to a small group of students, support a student in numerous content area classes and report back to the special education teacher regarding student performance, and assist in various way in the general education and special education classroom. Paraprofessionals are very much a part the everyday work that is done to support students and therefore contribute to MTSS in numerous ways, although the responses to the online, open-ended interview as a part of this study would indicate that they are unaware of their impact and involvement in MTSS. Additional training and collaboration with paraprofessionals related to MTSS within the school building is advisable. Additional training and understanding of MTSS could increase buy-in and improve perceptions of MTSS, therefore increasing efficacy related to daily work and implementation.

Overall, teachers and staff were able to articulate that documentation and forms are required for MTSS, but little detail was given regarding the reason for the forms, why they are important, or how they connect to the bigger picture of MTSS. The information gathered through analysis of this theme shows that additional professional development is needed related to not only MTSS as a whole, but to the 'why' behind documentation and data collection and how these processes can be utilized to benefit students over time.

The third theme related to the second research question is that parental involvement was not discussed as a priority in responses. Parental involvement in MTSS is noted as a priority in the MTSS Needs Assessment—Secondary Version, in two separate elements. The importance of informing and including parents in problem solving and decision making as well as strategically

engaging families in the MTSS process are both discussed as areas of importance when working toward full implementation of MTSS (McIntosh & Goodman, 2016).

In the online, open-ended interview, one question specifically asked for input regarding parental involvement in MTSS. Parental involvement was not indicated in a response by any participant outside of this one question. Content area teachers mentioned typical communication methods such as email, phone calls, and parent/teacher meetings in response to how do staff collaborate with parents regarding MTSS. Content area teachers mentioned that they inform parents of plans put into place via email, and another mentioned that he or she does not communicate with parents regarding MTSS as this is something that administration should do. This response may indicate a lack of buy-in to MTSS as well as a lack of understanding of how MTSS relates to and includes everyday instruction for all students.

Special Education teachers mentioned regular communication, email, parent meetings and IEP meetings as methods of collaboration with parents. Similar to other teacher responses, special education teachers did not specify parent collaboration in relation to MTSS as a priority.

Paraprofessionals stated that they do not communicate or collaborate with parents in regard to MTSS. Overall, although communication and informing parents was discussed in collaboration with parents was not identified as a priority by teachers and staff.

Research question three relates to how middle school teachers understand the MTSS framework. The themes identified within this research question include the following:

1. All students, all staff, and collaboration between teams
2. Procedures and logistics are discussed in relation to MTSS rather than the day-to-day implementation through working with students

The first theme identified within responses from participants relates to the level of collaboration between teams and the idea that MTSS supports all students in some way. This theme was identified in relation to all three research questions within this study which shows that there is a strong indication that overall teachers and staff understand and buy into the idea that the MTSS framework operates best when colleagues collaborate and that MTSS is a system which supports all students.

Theme one, in relation to research question three, which investigates teacher and staff understanding of the framework, was prevalent throughout the responses received from the online, open-ended interview questions. Responses to interview questions in relation to research question three in particular indicate that teachers and staff feel that collaboration and support for all students is an important contributor to the success of MTSS, which leads to the conclusion that there is a healthy level of understanding of the framework in relation to collaboration and purpose.

When discussing how MTSS meetings benefit students, content area teachers indicated that time to collaborate and plan with team members was beneficial to students. One content area teacher indicated that it is helpful to discuss techniques that work with certain students. Another indicated that during MTSS meetings, “I hear good ideas from colleagues who share similar struggles with kids. There may be a strategy that works in another class that I can use in my own” (Participant number 24).

Off-team teachers were able to communicate the purpose of MTSS meetings, which indicates a level of understanding of the process, but were not able to speak to experience in participating in MTSS meetings and how those meetings may be beneficial to students. These teachers are not included in weekly MTSS meetings at the school in which this study took place and therefore may not have personal experience with attending MTSS meetings. Special Education teachers who participated in the interview gave varied responses related to how MTSS meetings are used to benefit students. While Special Education teacher participants were able to give a high-level explanation of MTSS, these surface level responses may indicate that a deeper level of understanding is needed. Paraprofessionals' responses indicate that additional training and collaboration is needed in relation to the purpose of MTSS meetings and MTSS as a whole and that additional training on the MTSS framework and the purpose and benefits of the framework.

Overall, some participants were able to demonstrate a high-level understanding of MTSS based on the responses received by the online, open-ended interview. Although participants demonstrated an understanding of collaboration being a key aspect of MTSS, MTSS supporting all students, and MTSS benefitting students who are demonstrating some sort of academic struggle, there is little indication of an in-depth understanding of the MTSS process the inclusion of social-emotional and behavioral aspects for students, and the idea that students who may be in need of enrichment can also benefit from MTSS.

Theme two, in relation to research question three, is that teachers and staff communicate their understanding of MTSS through discussions of procedures and logistics rather than in relation to the day-to-day implementation of working with students. The MTSS process involves logistics related to planning, meetings, and staff in order for the process to be successful; however, the actual implementation, teaching, and work done with students is truly the core of what makes MTSS a successful system for schools to implement. The responses received in the online, open-ended interview in relation to research question three indicate that teachers and staff interviewed view MTSS as a series of meetings, documentation, and procedures rather than the actual act of intervening and enriching students in the areas of academics, social-emotional learning, and behavior. This misconception can have an impact on the level of staff buy-in necessary for the framework's success. It is difficult to see the overall purpose and success in an initiative if one is viewing it from a procedural standpoint rather than from the perspective of seeing student success from the initiative.

Content area teachers indicated that time is needed in order to successfully implement MTSS, including additional meeting time. Overall, most content area teachers did not indicate an understanding of the ability to implement pieces of MTSS within the general education classroom. One content area teacher did indicate the importance of working with students in relation to MTSS by responding, "I feel that teachers who care make the most difference by adapting their work and reinforcing concepts. Differentiation in the classroom by the teacher is what's most important" (Participant 3). Discussion of meetings, forms, and documentation were common throughout the responses from content area teachers, rather than discussions of implementing strategies, interventions, and enrichment for students who would benefit.

Off-team teachers generally discussed meeting time as a major part of the MTSS process and the participants in this job category did not discuss how MTSS could be implemented day-to-day in the regular education classroom to benefit students. Responses indicate a misconception that MTSS is procedural, rather than a framework to implement in order to benefit students. Special

Education teachers also indicated that meetings are a key piece of the MTSS process. This response indicates that this participant may view necessary collaboration related to MTSS as procedural rather than actionable, relating to working with students. It is important to note that this online, open-ended interview took place during the 2020 COVID-19 global pandemic during which many schools experienced a necessary shift in educational models which interrupted typical progress in school initiatives and programming, including MTSS. One Special Education teacher's response took this into account when responding, indicating that the MTSS framework was implemented more so during the 2019-2020 school year. Similar to other teacher and staff responses, paraprofessional responses indicate procedural work and logistics as a major part of the MTSS process rather than working with students. Paraprofessional responses continue to support a need for additional training related to the purpose of the MTSS framework, including the importance of intentional work with students.

The discussion of logistics and procedures related to MTSS indicates a need for additional training related to implementing research-based strategies, interventions, and enrichment for students within the general education classroom. Few teachers and staff mentioned these pertinent areas of MTSS in their responses which is cause for concern as these areas being implemented in the classroom are how schools are able to see true success from MTSS implementation.

Limitations & Future Research

Although this case study allows for a narrowed focus on teachers and staff perceptions of MTSS within one middle school, the narrow scope can cause limitations within the research. One limitation within this study includes a small sample size. In-depth and focused questioning was used to gather teacher and staff perceptions and feelings, rather than gathering less in-depth information from more participants. A 'quality over quantity' approach was favored in this study. Additionally, since all of the participants from this study work in the same building, the perspectives could be more limited than if multiple buildings were explored. The online asynchronous format of the interview process could also contribute to limitations. Although some participants may be more effective writers than speakers and prefer this format, it is also possible that some may be more comfortable with providing input through conversation due to not being effective writers (Meho, 2006). Response errors are also possible throughout the interview process, contributing to possible limitations. Throughout the interview process, participants are "required to interpret the question, assess, retrieve and organize relevant information in their memory, then evaluate whether this information is relevant to the interview question, as well as evaluating the information in terms of its threat to their personal goals (for example, self-esteem). Response errors could occur at any of these stages." (Stacey & Vincent, 2011).

Another possible limitation is the time period during which the study was implemented. This study took place during the COVID-19 global pandemic of 2020. Due to this large-scale risk, the district in which this study took place was operating on a hybrid model of instruction where students with last names A-K attended school one day, and students with last names L-Z attended on the next day. Additionally, some students attended school virtually and teachers were responsible for providing live-streamed instruction. This teaching schedule and technology change, among other changes, likely caused distraction and anxiety for teachers and school

employees during this study. It should be noted that these feelings and disturbances may have an impact on the data that was received during the online interview.

The results and findings validate that teacher perceptions can be valuable when working toward implementation of school-wide initiatives such as MTSS. Future researchers should work toward exploring teacher perceptions in other schools and districts, using similar techniques and study design. Additionally, the findings of this study could be utilized for future practice related to MTSS implementation.

This study discussed middle school teacher and staff perceptions on MTSS implementation. The findings address the need for additional research on MTSS at the secondary level as well as information related to considering teacher and staff perceptions when implementing school-wide programming. Utilizing a single descriptive case study design, this study included one middle school in western Pennsylvania, including 26 teachers who chose to participate in a confidential, online open-ended interview. Additionally, data was gathered from a teacher benchmark assessment completed during year one of MTSS implementation as well as a needs assessment completed by the MTSS building team, in order to provide current levels of MTSS implementation for the school in which the study took place. A future study attempting to replicate the current research could include more than one school in the study, in an attempt to increase the sample size. A larger sample size would allow for additional input and perhaps additional job categories of school employees, such as school administrators.

Additionally, a future study could include MTSS implementation at the high school level. Including high school level MTSS data and interview participants would contribute to the lack of research of MTSS at the secondary level. Shinn (2020) notes that MTSS implementation at the high school level is difficult when compared to elementary level implementation, especially due to scheduling and course credit. These are key aspects to consider when planning to implement MTSS at the high school level; therefore, a study focusing on high school implementation would be valuable. Any further input from interview participants, especially from a different school setting, would be a valuable contribution to research relating to MTSS implementation at the secondary level.

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Education Law Into Practice

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LONGITUDINAL TRENDS OF JUDICIAL RULINGS IN K–12 EDUCATION: THE LATEST LOOK*

by

Perry A. Zirkel & Benjamin H. Frisch**

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Previous issues of WEST'S EDUCATION LAW REPORTER provided successive longitudinal analyses of the volume of litigation in the public elementary and secondary school context (hereinafter referred to as "K–12") respectively ending in each of the prior three decades.[1] These trend studies, like other such tabulations,[2] were based on the West's Key Number System.

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[1] Perry A. Zirkel & Brent Johnson, *The "Explosion" in Education Litigation: The Next Update*, 265 EDUC. L. REP. 1 (2011); Perry A. Zirkel, *The "Explosion" in Education Litigation: An Update*, 114 EDUC. L. REP. 341 (1997); Perry A. Zirkel & Sharon Richardson, *The "Explosion" in Education Litigation*, 53 EDUC. L. REP. 767 (1989). For parallel analyses for postsecondary education, see Lee Dalton, *The Volume of Higher Education Litigation: The Latest Update*, 349 EDUC. L. REP. 877 (2018); Stacy Donoso & Perry A. Zirkel, *The Volume of Higher Education Litigation: An Updated Analysis*, 232 EDUC. L. REP. 549 (2008); Perry A. Zirkel, *Higher Education Litigation: An Overview*, 56 EDUC. L. REP. 705 (1989).

[2] DAVID TYACK, THOMAS JAMES, & AARON BENAVOT, LAW AND THE SHAPING OF PUBLIC EDUCATION 1785–1954 215–16 (1987); JOHN C. HOGAN, THE SCHOOLS, THE COURTS, AND THE PUBLIC INTEREST 11 (2d ed. 1985); Michael Imber & Gary Thompson, *Developing a Typology of Litigation in Education and Determining the Frequency of Each Category*, 27 EDUC. ADMIN. Q. 225 (1991); Michael Imber & David Gayler, *A Statistical Analysis of Tends in Education-Related Litigation Since 1960*, 24 EDUC. ADMIN. Q. 55 (1988).

The predecessor analyses revealed that on an overall basis the "boom" in education litigation ended in the 1970s, with the succeeding three decades forming more of a rippled high plateau. The most recent of the earlier analyses identified differences in terms of judicial forum and case category.[3] For forum, the federal courts' proportion of the overall total increased from 2% in the 1940s to 45% in the decade 2000–09.[4] For category, the most pronounced change was the continued growth of the special education student category.[5] The analysis also identified various limitations in tracking trends via the West Key Number system, including, for example, mitigated but not eliminated multiple counting of cases.[6]

As a result, two related metaphors led to revision in the title of this latest analysis. First, although referring generally to "litigation," all of these analyses are limited to the published decisions[7] that form

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[3] The forum differentiation was between ALLFEDS (federal courts) and ALLSTATES (state courts.) The broad categories, which were based on identified combinations of Key Numbers within the topic 345 (Schools) were desegregation, other system level, employees, special education students, and general education students. Zirkel & Johnson, *supra* note 1, at 3 & n.13.

[4] *Id*. at 5.

[5] *Id*. at 6. This growth was almost entirely in federal courts. *Id*.

[6] *Id*. at 7–9. More specifically, the discussion section in the predecessor analysis included this observation:

> Although the procedure of stringing together, rather than doing separate tabulations, for various Key Numbers reduces 'double counting' of cases, this problem persists due to other sources, including 1) decisions with [key] numbers in more than one of the selected broad categories of this series of trend studies, and 2) cases that have multiple, different decisions due to appeals, remands, and separable issues extending from the threshold stage, such as discovery or statute of limitations, to the posttrial stage, such as attorneys' fees."

Id. at 8.

[7] Rather than the narrower meaning of those court decisions that are officially published, in the Westlaw system "published" has the broader scope of those court decisions that have headnotes and, thus, Key Number classifications. Nevertheless, this broader meaning does not extend to court decisions in the database with WL numbers that do not have headnotes. More generally, the Westlaw system includes federal trial court decisions more extensively than state trial court decisions.

the proverbial tip of the iceberg, which has several larger levels that are submerged from visibility.[8] As a result, the title of this article uses "judicial rulings" for improved approximation.[9] Second, the "explosion" metaphor in the titles of earlier analyses is attributable to the dramatic increase in the numbers found in the initial decades culminating immediately before and after the turbulent 1970s.[10] Instead, the title of this article uses the more accurate and neutral term of "longitudinal trends."

During the intervening period since the 2011 update, other longitudinal tabulations of the volume of K–12 education litigation have been scant, such as one limited to published judicial rulings in special education within a fifteen-year period.[11] Such narrow studies employ search strategies that do not rely on the Westlaw Key Number categories because their much smaller scope allow for more time-consuming collection and selection.

Thus, an updated extension of the previous line of broad-based longitudinal analyses is warranted. Due to its feasibility for this purpose, the procedure relies on the Westlaw system.

Method

The current update follows the same pattern and methodology of this article's immediate predecessor, with one major difference in categorization for the sake of more precision, and a technical change in queries due to an update to the Key Number classification system. Specifically, the major

[8] *See*, *e.g.*, Perry A. Zirkel & Diane M. Holben, *Spelunking in the Litigation Iceberg: Exploring the Outcomes of Inconclusive Rulings*, 46 J.L. & EDUC. 195 (2017) (examining the ultimate outcomes of inconclusive published court decisions in the context of student bullying claims, including settlements and abandonments); Perry A. Zirkel & Amanda Machin*, The Special Education Case Law "Iceberg": An Initial Exploration of the Underside*, 41 J.L. & EDUC. 483 (2012) (illustrating the successively "hidden" levels of unpublished court decisions, administrative adjudications, and settlements/abandonments).

[9] The three successively smaller units of analysis, which are often not clearly differentiated but which are largely intercorrelated, are cases, decisions, and rulings. Here, due to the mitigated but not eliminated multiple counting, the unit equates to broad issue category rulings that correspond to the identified two or three subcategories within the search strings for each of the four categories. *See infra* notes 15–19 and accompanying text. For other examples of this unit of analysis, with issue categories of varying scope depending on the nature and purpose of study, see Perry A. Zirkel & Diane M. Holben, *District-Initiated Due Process Decisions under the IDEA: Frequency and Outcomes*, 398 EDUC. L. REP. 8, 12 (2022); Perry A. Zirkel, *The Two Dispute Decisional Processes under the Individuals with Disabilities Education Act: An Empirical Comparison*, 16 CONN. PUB. INT. L.J. 169, 175 (2017); Perry A. Zirkel & Cathy Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525, 549 (2014). Perry A. Zirkel, *Adjudicative Remedies for Denials of FAPE under the IDE*A, 33 J. NAT'L ASS'N ADMIN. L. JUDICIARY 214, 223–24 (2013).

[10] *Supra* note 1 and text accompanying note 3.

[11] Zorka Karanxha & Perry A. Zirkel, *Trends in Special Education Cases: Frequency and Outcomes of Published Court Decisions 1998–2012*, 27 J. SPECIAL EDUC. LEADERSHIP 55 (2014) (finding upward trajectory, with the highest proportions coming from the Second, Third, and Ninth Circuits).

change was the merger of the prior categories of "Desegregation" and "Other System Level"[12] into a broader "System-Level" category due to the dwindling numbers of desegregation cases.[13] The change in queries was necessary largely because the updated system abrogated the Schools topic upon which the 2011 article relied.[14]

Thus, based on the four remaining major categories, the search procedure was substantially similar, although not identical, to that of the 2011 analysis.[15] As in the previous two studies, each query searched the digest field in the ALLSTATES and ALLFEDS databases. The differences were that instead of searching for particular Key Numbers within the former Schools topic, the Boolean queries for this article relied on the relevant elements of the reorganized system, which primarily encompassed the cases with headnotes under topic 141E Education, corresponding to the designated four broad categories.[16] The

[12] *Supra* note 3.

[13] For the new decade, 2010–19, the overall number in the Desegregation category was 56 compared to its high in 1970–79 of 717 and compared to all of the other categories for 2010–19, which were each well above 1000. For the specific numbers per decade overall and per judicial forum, see *infra* notes 20–21.

[14] Westlaw's master classification system of U.S. law, which was initially developed during1897–1906, indexes headnotes, which are summaries of points of law in a case, into 364 topics and approximately 112,150 classifiable Key Numbers. E-mail from Nicholas W. Koster, Principal Attorney Editor, Thomson Reuters, to Benjamin H. Frisch, Senior Attorney Editor, Thomson Reuters (January 3, 2023, 15:23 CST) (on file with author). Each time, this dynamic system changes to fit the evolution of case law, legacy material is reclassified to the new outline, averaging approximately 600,000 headnotes per year. *See, e.g.*, Maggie Keefe, *Free v. Westlaw: Why You Need the West Key Number System*, https://legal.thomsonreuters.com/en/insights/articles/using-the-west-key-numbers-system. For the latest update, a newly created Education topic, with Key Numbers from 141Ek1 to 141Ek1243, replaced the former Schools and Colleges & Universities topics. Under the Education topic, Roman numeral II, "Public Primary and Secondary Schools," encompasses the area of this analysis. The sub-categories of II are: A – Establishment, Operation, and Regulation in General; B – Taxpayer Suits and Other Remedies; C – Officers and Employees; D – Teachers and Education Professionals; E – Pupils or Students; F – Racial Segregation and Desegregation; and G – Children with Disabilities/special education. An additional relevant change was the creation of the topics Public Contracts and Public Employment, but cases in the K-12 context under these two new topics also had Key Numbers within Education. *See, e.g.*, WEST'S ANALYSIS OF AMERICAN LAW 694–706 (2022).

[15] Zirkel & Johnson, *supra* note 1, at 3 & nn.13–14.

[16] For example, the query in the current article for desegregation was 141EII(F), thereby covering all Key Numbers in Roman numeral II under letter F, which range from 141EK830 to 141EK859, whereas those in the predecessor article for desegregation relied on Key Number 345k13. In addition to the corresponding elements in the Education topic, the search strings extended to cover the few subtopics that moved under the new system to Civil Rights. To avoid double-counting, the string did not include the Public Contracts and Public Employment cases due to their continued Key Numbers within Education.

following example is for the decade 1940–49:

- system-level: DA(aft 1939 & bef 1950) & 141EII(A) 141EII(B) 141EII(F) 141EI + for the former desegregation category: DA(aft 1939 & bef 1950) & 141EII(F)[17]
- employees: DA(aft 1939 & bef 1950) & 141EII(C) 141EII(D) 78k1129[18]
- general education students: DA(aft 1939 & bef 1950) & 141EII(E) 78k1059 DI("Family Education Rights #and Privacy Act" FERPA)[19]
- special education students: DA(aft 1939 & bef 1950) & 141EII(G)

Results

Table 1 presents the frequency of rulings per decade and per category for the combination of the federal and state forums.

TABLE 1: OVERALL FREQUENCY TREND BY DECADE AND CATEGORY

	1940–49	**1950–59**	**1960–69**	**1970–79**	**1980–89**	**1990–99**	**2000–09**	**2010–19**
System-Level[20]	1324	1682	2103	2789	2160	2018	2023	1679

[17] "System-level" in this context refers to the aforementioned (*supra* note 14) subcategories A, B, and F. More specifically, generic subcategory A includes, for example, the following designated issues: creation, alteration, and dissolution of districts; government and boards; district property in general; school buildings and grounds; district contracts; district liabilities in general; school aid and funding; administration of finances; and school taxes. *See, e.g.*, WEST'S ANALYSIS OF AMERICAN LAW at 694–70.

[18] The "employee" category encompasses the aforementioned (*supra* note 14) subcategories C and D and the additional Key Number 78k1129, which captures civil rights in employment in education.

[19] The "general education student" category encompasses the aforementioned (*supra* note 14) subcategory E plus Key Number 78k1059, which captures civil rights in education for nondisabled students.

Employees	526	520	778	2625	2803	2410	2508	2235
Gen. Ed. Students	219	271	456	1166	1220	1686	2147	2119
Spec. Ed. Students	0	8	8	152	604	761	1412	1325
TOTAL	2069	2481	3345	6732	6787	6875	8090	7358

First, an examination of the bottom row of Table 1 shows that the overall trajectory was upward for the first four decades, particularly into the 1970s; next was relatively level from the 1970s through the end of the century; and then made a moderate ascent and moderating descent in the last two decades. Second, review of the category-by-category data shows that the moderating descent for the overall total during the past decade was largely attributable to the system-level and employee categories. Third, wider examination within each of the successive categories reveals that (a) the system-level category has been mostly, although not entirely, in decline since the 1970s; (b) the employee category has declined more unevenly and moderately during that same period; (c) the trajectory of the general education student category has been upward since the 1970s until a slight decline during the last decade; and (d) the special education student category has largely paralleled the trajectory of the general education student category during the same period but with a more pronounced ascent and a moderate, rather than modest, recent descent. Finally, upon viewing the categories vertically rather than horizontally across the decades, the trend seems to shift from the initial predominance of the system-level category to the shared and more moderate first-place position of the employee and general education categories, even with the most dramatic growth being in the special education category.

Table 2 provides the component frequencies of the rulings in the federal courts and state courts, respectively. The entries for the state courts are *italicized* to facilitate the differentiation.

TABLE 2: SEPARATE FREQUENCY TRENDS FOR FEDERAL COURTS AND *STATE COURTS*

	1940–49	**1950–59**	**1960–69**	**1970–79**	**1980–89**	**1990–99**	**2000–09**	**2010–19**
System-	32	109	446	971	532	507	434	446

[20] The merged Desegregation category frequencies were as follows for each succeeding decade: 1940s -18; 1950s - 91; 1960s - 415; 1970s - 717; 1980s - 307; 1990s - 196; 2000–09 - 90; and 2010–19 - 56.

Level[21]	*1292*	*1573*	*1657*	*1818*	*1628*	*1511*	*1589*	*1233*
Employees	8 *518*	9 *511*	156 *622*	670 *1955*	401 *2402*	499 *1911*	955 *1553*	959 *1276*
Gen. Ed. Students	11 *208*	22 *249*	94 *362*	461 *705*	397 *823*	710 *976*	1084 *1063*	1244 *875*
Spec. Ed. **Students**	0 *0*	1 *7*	2 *6*	38 *114*	432 *172*	635 *126*	1264 *148*	1264 *61*
TOTAL	51 *2018*	141 *2340*	698 *2647*	2140 *4592*	1762 *5025*	2351 *4524*	3737 *4353*	3913 *3445*

First, examination of the bottom row's entry pairs reveals (a) an ascending trajectory of rulings in the federal courts with the exception of the 1980s and (b) a reversal to a descending trajectory for state courts starting in the 1990s, both resulting in an overall shift from the state to the federal courts.[22] Second, the category-by-category rows successively show that: (a) for the system-level category, the respective federal and state entries are largely parallel in their upward and downward directions except for the last two decades, and the frequencies for the state courts continue to predominate; (b) for the employee category, the direction and the proportion of the federal and state court frequencies vary widely, although the state courts account for the majority of the rulings for every decade except the 1960s; (c) for the general education student category, the trend has been upward except for the federal courts in the 1980s and the state courts in the most recent decade, with an overall shift from a heavy majority in the state courts to a more moderate majority in the federal courts; and (d) for the special education category, the federal courts have increasingly been the locus for the steep upward slope since the 1970s until an even plateau at its high point during the last two decades, with the modest overall decline attributable to the state courts.

[21] The merged Desegregation category data were as follows for each of these two judicial forums:

	1940s	1950s	1960s	1970s	1980s	1990s	2000–09	2010–19
Federal Courts	5	76	370	663	284	178	70	50
State Courts	*13*	*15*	*45*	*54*	*23*	*18*	*20*	*6*

[22] The balance changed from almost entirely in favor of state courts to a slight majority in favor of federal courts. The specific federal-court proportion for each succeeding decade was as follows: 1940s -2%; 1950s - 6%; 1960s - 35%; 1970s - 32%; 1980s - 26%; 1990s - 34%; 2000–09 - 36%; and 2010–19 - 53%.

Discussion

The delimitations of this line of analyses, which bear repeating here, include not only the iceberg-like measure of education litigation[23] but also the overlapping and evolving nature of the Westlaw classification system.[24] Nevertheless, this procedure provides a readily feasible and relatively reliable way to approximate the longitudinal trends in the frequency of judicial decisional activity within the K–12 education context. The boundaries are rather limited and imprecise. Yet, the procedure is uniform for the entire retrospective period. Moreover, like the iceberg metaphor, the overall climate conditions affect both the visible and subsurface levels. Thus, the accretions and diminutions in the proverbial tip imperfectly but significantly correlate with the corresponding fluctuations in the larger mass that is below the surface.[25]

Within these methodological delimitations and the brevity of this analysis, three successive findings are selected for illustrative discussion. Identification and interpretation of the other results, along with follow-up research, by fellow scholars is encouraged.

First, the major finding of this update is that the resurgence in the overall volume of K–12 published court rulings that the previous analysis found for 2000–09 was not the harbinger of continuing upward slope, like that from the 1940s to the 1970s. Instead, it seems to have signaled what appears to be moderate hills and valleys above the high plains from the 1970s through the 1990s. Referring to the original metaphor, the bottom line of Table 1 shows not only that the boom in the first decade of the current century was far less than the previous "explosion" but also that the next, most recent decade lowered the overall volume. This moderated volume in the first two decades of this century is still above the high level of the three decades that ended the previous century.

Second, the bottom line of Table 2 shows that the moderately reduced level during the last decade is attributable to an accelerated decrease in the state court rulings, with only a partial offset by the continuing but decelerated increase in the federal court rulings. The reasons for this shift to the federal

[23] *Supra* notes 7–8 and accompanying text.

[24] *Supra* notes 14–19 and accompanying text. Based on the previous line of analyses, an overlapping limitation is that the scope does not extend to the preschool level of public schools or to private schools at the pre-K or elementary and secondary levels.

[25] An example that appears to be consistent with this relationship is the largely parallel pattern for impartial hearings under the IDEA, which are the primary level for most cases that are litigated in courts. *See* Zirkel & Skidmore, *supra* note 9, at 529–31, 551 (summarizing other studies and finding a similar upward trajectory from the late 1970s until an overall decline during 2000–09). A subsequent analysis of national CADRE data revealed a levelling off during the next available interval. Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, 376 EDUC. L. REP. 870, 872 (2020) (finding "an uneven plateau for the ten-year period ending in 2018).

courts likely include their jurisdictional correlation with federal questions,[26] their more uniform and stable level of adjudication,[27] and their generally higher levels of recovery.[28]

Third, the special education category serves as the most dramatic illustration of (a) the overall upward and then relatively leveling trajectory and (b) the shift from the state to the federal courts. Fueled initially by the passage of the Individuals with Disabilities Act (IDEA) and, to a lesser extent, the Section 504 of the Rehabilitation Act in the 1970s and the successive amendments to the IDEA and, via the Americans with Disabilities Act (ADA), to Section 504, in the subsequent decades,[29] this student category has ascended to its current high plateau-like level. Furthermore, federal courts account for 95% of its total for the most recent decade.

Providing further perspective for the significance of the special education student category of court rulings, the proportion of K–12 students under the IDEA has gradually increased since the passage of the Act in the 1970's, with the increase during the last decade going from about 8% to 10%.[30] Due to its broader definition of disability, Section 504 includes, but extends beyond, IDEA-eligible students. The proportion of K–12 students who are exclusively covered by Section 504 has also increased since the 1970s, with the major growth being during the change from about 1% to 3% during the most recent

[26] 20 U.S.C. § 1331 ("The [federal] district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). This jurisdiction generally overlaps with, rather than being exclusive from, that of state courts. *See, e.g.*, NATIONAL CENTER FOR STATE COURTS, THE ROLE OF STATE COURTS IN OUR FEDERAL SYSTEM (2022), https://ncsc.contentdm.oclc.org/digital/collection/federal/id/104/rec/1

[27] The examples of this uniformity and stability respectively include the Federal Rules of Civil Procedure and the tenure of federal judges under Article III of the U.S. Constitution.

[28] *See, e.g.*, Theodore Eisenberg, *Litigation Outcomes in State and Federal Courts: A Statistical Portrait*, 19 SEATTLE U.L. REV. 433, 441(1996) (finding substantially higher verdicts in federal courts for the same issues in state courts).

[29] The IDEA was amended in 1986, 1990, 1997, and 2004. *See, e.g.*, OSEP Fast Facts: IDEA 45th Anniversary (2020), https://sites.ed.gov/idea/osep-fast-facts-idea-45th-anniversary/. The ADA of 1990 and its amendments in 2008 applied to Section 504. *See, e.g.*, Perry A. Zirkel, *An Updated Comprehensive Comparison of the IDEA, Section 504/ADA*, 342 EDUC. L. REP. 886 (2017).

[30] *E.g.*, U.S. DEPARTMENT OF EDUCATION, 43RD ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES ACT 40 (2021), https://sites.ed.gov/idea/2021-individuals-with-disabilities-education-act-annual-report-to-congress/ (reporting the percentages from 2010 to 2019).

decade.[31] Thus, the special education category, which approximated one-eighth of the public schools' K–12 enrollment, accounted for more than one-third of this past decade's total for combination of the two student categories.[32]

Finally, reinforcing the recognition in the last analysis of the evolving nature of the Westlaw classifications and reclassifications,[33] comparing this latest tabulation with its predecessor reveals that the corresponding entries for the previous decades changed, with the direction being generally downward for the system-level category and to a varying extent largely upward for the other categories. These changes are likely largely attributable to the revisions in the Education and Civil Rights topics and creations of Public Employment and Public Contract topics approximately two years after the publication of the 2011 article.[34] In any event, the overall trend, particularly at the bottom line, did not change to a significant extent. For both policymakers and practitioners, these latest data show that the explosion is in the past, but education litigation continues at a high level rather than returning to its pre-boom quiescence.

[31] *E.g.*, Perry A. Zirkel & Gina L. Gullo, *State Rates of 504-Only Students in K–12 Schools: The Next Update*, 385 EDUC. L. REP. 14, 18 (2022) (reporting rates gradually increasing from 1.09% in 2009–10 to 2.7% in 2017–18).

[32] The first fraction is based on the combined percentages of IDEA and 504-only students. The second fraction is based on the entries for the general education and special education student categories for 2010–19 in Table 1. Using the same column of the table, the special education student category accounted for almost one-fifth of the total for this most recent decade.

[33] Zirkel & Johnson, *supra* note 1, at 6–8.

[34] *Supra* notes 14 and 16.

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