

Questions and Answers/May 9, 2008, Webinar

1. The state defines Multiple Disabilities to include "...the combination of which causes such severe educational needs that they cannot be accommodated in special education program..." page 17 Regulation-Identification and Evaluation.

Does this mean that a school does not have multiple disabled students if the school provides all the services the student need on campus?

At our school (a school for the deaf), does this mean that because we meet the needs of all our students on campus our students are considered deaf with other disabilities and can't be classified as Multiply Disabled?

Answer: The state regulations provide "Multiple disabilities means concomitant impairments (such as MR-Blindness, MR-OI, etc.), the combination of which causes, such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf/blindness."

The State Plan does not detail the criteria as much as the Standards and Indicators and may give the impression that any two disabilities can qualify a child under MD.

It is certainly possible that a student who is identified as MD who is being served appropriately at a School for the Deaf is not properly identified under the category of MD and likely should have been under the category of Deaf.

The eligibility criteria for multiple disabilities says that the evaluation report must document at least two diagnosed physical/sensory impairments by qualified personnel:

- A physical evaluation by a licensed physician
- AND
- A visual evaluation by a qualified optometrist or ophthalmologist
- OR
- An auditory evaluation by a qualified audiologist

- OR

The evaluation report document one diagnosed physical/sensory impairment by qualified personnel:

- A physical evaluation by a licensed physician
- OR
- A visual evaluation by a qualified optometrist or ophthalmologist
- OR
- An auditory evaluation by a qualified audiologist
- AND
- All components for documentation of a concomitant disabling condition using the approved eligibility criteria

Remember, the evaluation report must document all of the areas in which the child's multiple disabilities adversely affects his educational performance.

A student who is deaf/blind would not qualify under multiple disabilities because deaf/blind is its own eligibility category for special education.

A couple of examples of concomitant impairments would be appropriate to identify under Multiple Disabilities would be Mental Retardation-Blindness or Mental Retardation-Orthopedic impairment.

A couple of examples of concomitant impairments that would not be appropriate to identify under Multiple Disabilities would be Deaf-Blind or Autism-Language Impairment or Deaf-Specific Learning Disability

2. Will you please clear up some confusion that we have concerning writing IEP goals and accommodations for disabilities and/or weaknesses mentioned in the present level. Are we to write goals and accommodations for only the diagnosed disability areas or also for any mentioned weakness? For example, student meets criteria to be diagnosed with a SLD in the area of basic reading only but present level also mentions a weakness in the area of math calculation. Would you expect to see a math goal and/or an accommodation for a calculator on student's IEP?

Answer: In regard to your specific example above, we have typically said that in the area of SLD, if a student only qualifies in reading (for example) we generally would not expect to see goals and services related to math, but reading services might be provided during instruction in math to help the child with difficulties in that subject area. Ultimately, the decision about appropriate goals and services need to be made on an individual basis by the child's IEP team. So we cannot tell you you are prohibited from addressing the non-disability area in the goals. However, in general you would not want to have goals on areas that are unrelated to the disability unless the student needs special education for that area. Meaning that you need to keep in mind that special education refers to specialized instruction; a child who is struggling does not necessarily need special education - rather that child likely needs interventions and accommodations in the regular education/general education arena, like you would do for a regular education student who is struggling.

3. Student is diagnosed SLD in basic reading, has a postsecondary transition goal of living independently, present level mentions that he cannot manage his money and does not know how to write a budget or perform banking procedures. Can we write an annual independent living goal in his IEP since his disability is not in math?

Answer: Yes, if the IEP team has determined through age appropriate transition assessments and input from the student and other members of the IEP team that writing a budget and performing banking procedures are appropriate postsecondary goals in the area of independent living, there is not a problem with including an annual goal to address these areas, even though math is not a disability area.

4. We have been told that we need an actual signature on the Notice of Action for any IEP services/accommodations/placement changes that are to be initiated immediately (without the 10-day wait period), but what about when we talk with the parent on the phone and do an IEP amendment that doesn't require a meeting, can we just document that we have the parent's verbal permission on the Notice of Action and initiate the change immediately?

Answer: A parent signature is not required in order to begin the services in fewer than 10 days after provision of the notice of action. Our sample Notice form includes a place for a parent to sign to indicate they are waiving the 10 day waiting requirement, but that was added as a convenient way for the districts to keep documentation. If the parent gives

verbal agreement to waive the 10 days, the district can document this and go ahead and implement the action stated in the notice. If a change is made in an IEP that results from an IEP amendment meeting (held by phone) and that change requires a prior written notice, then the district may document either on the notice of action form or in another place that the parent gave permission to proceed with the action immediately.

5. Our speech pathologist contracts with several different school districts. She has indicated that schools are handling ESY differently. If you mark on the IEP that you will consider ESY in April and you have the meeting with the parent to discuss if ESY is needed do you have to do a Notice of Action after you decide ESY is not necessary for this child? This question wasn't covered in the ESY FAQ or in the new Notice of Action FAQ you posted.

Answer: This is covered in the Notice of Action document posted on our web site and is listed as an example of one of the actions that does trigger written notice. I don't think it was included in the very first draft posted of that document, so you may not have seen it at that time, but it was revised shortly after that.

6. How do we legally handle it when we have students that are in special education who are ranking high in their class? For example, we have a senior who is MR and has been mainly self-contained. She is currently ranked 17 out of 99 students. I am concerned if they are not ranked we are discriminating against them.

Answer: This question involves Section 504 of the Rehabilitation Act of 1973, rather than IDEA, so Office for Civil Rights (OCR), U.S. Department of Education is your best source; however, as we understand it, it is permissible for school districts, under Section 504, to set eligibility criteria for class ranking or honors, provided it does not arbitrarily discount or exclude grades received by students with disabilities. Weighted grading systems are allowed, where the school district can show that such a system is based on objective rating criteria.

7. If a district is implementing Early Intervening Services for students with articulation errors, are there any requirements regarding special education students receiving speech services and those receiving Early Intervening Services being served at the same time and in the same room?

Answer: EIS cannot be provided in a special education classroom; providing EIS in a special education classroom would result in the child being served as special education. EIS is regular education intervention - so it needs to be provided as a regular education intervention, not as special education.

8. When using Response to Intervention (RtI), how much time can a nondisabled child be pulled out of class and served in a special education setting?

Answer: ZERO amount of time. A non-disabled child cannot be served in a special education setting. RtI should not include this option.

9. What advice would the department give concerning achieving and maintaining a high level of "persistence to graduation" rate as it is now calculated"? Let me explain the dilemma that districts are now in because of the way the graduation rate is now calculated. The graduation rate is now calculated by taking the number of graduates and dividing by the total of the number of graduates plus the number of dropouts reported for the 4 years of the "cohort" group of the graduates. If a district dismisses high school students from special education, it can hurt the calculation of the graduation rate. Examples:

10 "cohort" SE to start as 9th graders; 9 SE graduates reported with one dropout over 4 years: $9 + 1 = 10$, so 9 is divided by 10 to get a SE grad rate of 90%

Same 10 kids with 1 dropping out, but with 3 being dismissed: now we have 6 SE graduates, $6 + 1 = 7$, so 6 is divided by 7 to get a SE grad rate of 86%, a decrease in the grad rate of 4% that is due to dismissal from services which is a good thing, but looks bad for the district. So, should we not dismiss high school kids from services to keep the SE grad rate higher?

Answer: We are aware that this is a problem; we do not have a good answer for you. However, we are going to attempt to pull together an internal group of people to try and reason this out and see if we can come up with some scenarios and solutions. We are not sure a solution will be reached, but we will try.

11. When conducting a Manifestation Determination meeting, is an IEP amendment required to show the change in services and placement for the alternative educational setting determined for disciplinary reason? This is not part of the discipline documentation form, so we want to verify if this is a requirement or not.

Answer: Yes, an IEP amendment is required to reflect decisions in services and placement for an alternative educational setting determined in a discipline context.

12. Do IEP changes have to wait the 10 days for implementation when there have been documented two attempts to gain participation by the parent with no success and the team proceeds with the annual IEP review/revise process?

Answer: Yes. The two attempts required to gain parent participation is not connected to the issue of the ten days prior notice. So even though you may have held the IEP meeting without the parent, they still have the right to prior notice before implementation of the change decided upon by the IEP team.

13. With regard to the disability category of Orthopedic Impairment; can you give us some guidance with regard to what needs to be documented with regard to "need for specialized instruction" for a student with cerebral palsy whose impairment is primarily orthopedic in nature.....is the need for OT/PT, accommodations, modifications, extended time to complete assignments, assistance with retrieving materials, assistance navigating the halls away from crowds, sufficient reason for meeting the eligibility for Orthopedic Impairment? Would appreciate some guidance distinguishing this disabling condition from when a 504 would be sufficient.

Answer: A student with CP would not qualify for special education unless he needs special education. If his need is only for related services and accommodations, as listed above, then he is not in need of special education and would not be eligible under IDEA. This is a good example of a student who would likely be identified under Section 504 of the Rehabilitation Act of 1973, rather than IDEA.