

Questions and Answers/October 8, 2009, Webinar

1. If a homeschooled student is initially referred for special education testing and the parent refuses to allow an observation, does the evaluation continue with the areas needing an observation not being considered or is a note of the refusal enough or is the testing halted?

Answer: Observation is required for eligibility in LD; assuming that the question concerns that category, the consent for initial evaluation would be consent for all portions of the evaluation including the observation. If the parent refuses to allow anyone into the home to conduct the evaluation, I would suggest asking if they would agree to an observation at the school. Ultimately, the parent can revoke consent to the completion of the evaluation. If no observation is allowed by the parent, eligibility under LD can't be determined and the evaluation ends.

2. In the October 8, 2008, webinar question #10. Do speech implementers and speech pathologists need to secure a substitute if they are absent?

Answer: yes

Does the substitute hired need to be trained in speech/language therapy, or is this person just someone from the substitute teacher list?

Answer: the substitute has to have the same qualifications as the speech pathologist or implementer, depending on which one they are substituting for.

3. If a student is identified as Specific Learning Disabled in reading and math but needs individualized instruction in a non-core class such as life skills (special education class) or computer applications (CWC classes), can we justify that need in the present level and provide the services even though these are not areas of disability? Do we then need to write goals specific to these areas, such as, type 30 words per minute? Can we provide the life skills class instruction based on an independent living transition goal? If a student's disability is SLD basic reading, but benefits from the use of a calculator, can we provide that accommodation even though that is not the area of disability?

Answer: Generally, for Specific Learning Disability (SLD) the special services provided must be related to the identified area of disability—reading, math, written language, etc. A student with a reading disability could receive specialized instruction in a number of different classes (social studies, math, and science) but that instruction would need to be tied to a reading goal.

IDEA does require that other areas of need related to the child's disability be in the child's present level of performance and addressed in the child's IEP. So, if a child with a SLD has motor skills problems or organizational difficulties or behavior problems, these would be described in the present level, IEP goals written and specialized instruction &/or accommodations/modifications provided. Where that instruction is provided is a decision of the IEP team (regular classroom, resource room, etc.).

For students age 16+ (or younger, if appropriate) instruction in life skills &/or keyboarding could be related to their Post-secondary Transition Plan. If the child's disability requires specialized instructional support in that class that could be done either through a CWC setting or through resource instruction, based upon the decision of the IEP team.

The use of accommodations is also based upon the child's disability and a specific need arising from that disability. Accommodations are not provided based upon whether the child would benefit from having the accommodation, but whether the child's disability requires the accommodation. Again, accommodations are the decision of the IEP team, but those decisions must be based upon the needs of the child related to the disability.

4. I have a few students that have received (& some are still receiving) OT. These students have various disabilities like speech, autism, and LD (writing/reading). How can I prove/disprove that these services are needed? The guidelines are not real clear on how to distinguish between medically or educationally necessary. Also, the same eye doctor is prescribing these children. I just received a referral and this student has a diagnosis from the same doctor. This doctor wrote a diagnosis to me that stated under treatment: "OT and an IEP to assess associated learning difficulties". The parent even brought in a photocopied catalog page of an item the child's OT said that we should buy for him. Please speak about related services RE: OT. Can students receiving speech/language receive OT?

Answer: There is no easy answer to help you determine when a student needs OT. But it is important to remember that a doctor "prescribing" OT is not determinative. Whether the student needs OT for educational purposes, rather than medical purposes, is the IEP team's decision. They must consider the outside recommendation from the doctor, but are not bound to it. They should keep in mind that by definition, a related service is a service that allows a child to benefit from the special education services. So unless there is a connection between the OT and the child's special education services, OT would not be a related service in the IEP. There may be examples of students who are identified under the category of speech/language, but who also have other disabilities and for whom OT might be considered a related service. But in general I would not expect to see OT for a student identified as Speech.

5. We have a student who is in the custody of a court in another county due to 2 felony charges. He is residing with his father in our county. We have placed him on homebound until we can get a complete psychological evaluation. We have several other reports that he is at risk to perpetrate again. We realize this young man (5th grader) is also a victim, however we do not feel that it is safe for him to be at school since he has been an offender in at least three cases. We feel that this young man needs more than any school district could furnish him with – possible 24/7 psychological program in addition to academic assistance. If our report comes back that he is at risk to perpetrate again, what is our recourse? Even though he is being served in the area of curriculum & IEP goals and objectives, he needs more that we could ever provide – where do we go for assistance?

Answer: The scenario appears to be one about a child who is a sexual offender/predator. If the psychological report concludes the child is a danger, the school district has evidence it can use in seeking an injunction to enjoin the student from coming back to the school setting, or to seek an order from a hearing officer to the same effect, assuming the parent did not agree to an alternative setting or homebound. However, you would want to discuss this with your school district lawyer. There may be ways you can continue to serve the child in the school setting with proper supervision and precautions. Keep in mind also that you can consider whether the MoVIP (Missouri Virtual Instruction Program) might be appropriate so the student can access on-line courses from home in a homebound setting. Finally, depending on what happens with the pending felony charges, it is possible the student will be in the custody of Division of Youth Services and no longer in your school district.

6. Would In-school Suspension that isolates a student for the day in the principal's office fit the definition of seclusion?

Answer: No, not under the current reference in Missouri statute to "seclusion" which appears to refer to a student who is in a locked room with no supervision.

7. When scoring an individual achievement test (ex: WIAT-II) should we still be scoring based on grade norms? The old standards manual specifically stated the grade based norms should be used when scoring test. The current standards do not specify. As we read the eligibility criteria for LD – age and grade are both mentioned. Please clarify this point for us. Which norms should we be using now when we score these achievement tests – grade or age? We have looked everywhere for this answer and no one can find it addressed.

Answer: See the Q & A from the January 4, 2008 webinar:

The standards and indicators reflect the federal regulations implementing IDEA: “the child exhibits a pattern of strengths and weaknesses in performance, achievement or both relative to age, state approved grade-level standards, or intellectual development.” While we have eliminated the previous wording in the standards and indicators document that referred to full-scale IQ and the standard scores using grade level norms obtained in each identified area, our guidance in calculating the severe discrepancy has not changed. District will use broad achievement scores based on grade-level norms and a full scale IQ score to determine whether there is a 1.5 standard deviation between achievement and intellectual ability. Age can be a consideration but cannot be used as sole criteria. Both a pattern of strengths and weaknesses in performance and severe discrepancy between academic achievement and ability must be considered. We say both must be considered because using age only would not yield well when a student was retained and had not been exposed to curriculum because it would not be accurate to measure them against things they have not had a chance to learn. Professional judgment can still be used for SLD if the discrepancy does not exist and there is justification that can be documented.

8. DESE requires districts to formulate a written policy stating the processes they will allow their schools to use for SLD considerations. For districts that are continuing to use the discrepancy model – could you please tell us what this policy would need to look like? What need to be included? Are there samples of what you would want in the policy? And does it have to be board adopted policy.

Answer: See our Guidelines Document for RtI that discusses this policy - it is posted on our website. We do not have samples for any of the choices listed here, but it could be as simple as a sentence: “The district will continue to use the discrepancy model to evaluate students for specific learning disability.” The guidelines indicate:

- 1) All districts must have a written policy regarding the process that will be used to determine a child eligible under the category of Specific Learning Disability (SLD). For example, the district could:
 - Use a scientific, research-based intervention process for grades kindergarten through two and a discrepancy (pattern of strengths and weaknesses) model for grades three through twelve
 - Use a discrepancy (pattern of strengths and weaknesses) model until all the components for use of a scientific research-based process are implemented in the district
 - Use different models at different schools
 - Use only a scientific research-based process in all cases
 - Use only a discrepancy (pattern of strengths and weaknesses) model in all cases

<http://www.dese.mo.gov/divspeced/documents/MORtIGuidelines.pdf>

We would expect to see this policy be adopted by the local board. But we are not convinced that is an IDEA requirement. You may want to consult with your school attorney on whether they recommend you have this policy adopted by the board.

9. Is it necessary for us to maintain protocols after evaluation is complete and meeting has been held or can we shred them? If we do shred them, do we have to notify parents that they are being destroyed?

Answer: Our state regulations, page 13, define educational records as including test protocols. This is because test protocols normally contain the student's personally identifiable information on them. So these need to be maintained as any other educational record, and are subject to the same requirements as any other records being destroyed.

10. At the recent MO CASE conference the question was raised whether or not to send testing protocols to the individual requesting them when the district is conducting a Destruction of Records. The comment was made that sending the protocols would be in violation of copyright law. What is your understanding of this practice?

Answer: Test protocols are copyrighted and subject to copyright protections. Therefore, when you are asked for copies of a student's records, you do not want to provide copies of these. Keep in mind that parents have a right to "access" their child's records - and

copied are only required in the situation where denial of copies is a denial of access (e.g. parent in prison, parent out of state). So with test protocols, you really do want to stick with providing "access" meaning the right to inspect and review, rather than the right to copies.

11. Based on an earlier webinar question, I understand that if a parent chooses to not send a child to kindergarten when they are kindergarten age eligible, they cannot receive special education services. However, If the child is attending a district preschool (or a private preschool) but is kindergarten age eligible, may they receive special education services?

Answer: No.

12. We keep getting Evaluation Reports with the student identified as Specific Learning Disability and Emotionally Disturbed. I was taught that you could only use one or the other. Has something changed that we don't know about?

Answer: Nothing has changed. You are correct; eligibility determinations are for one category and the student is reported for data collection purposes under IDEA under that one category. However, if there are other disabilities, you will want to pick the primary disability and use that for identification purposes/eligibility purposes.

13. How long does a school district need to keep records for a student with special needs with the following scenarios?

- When a student reaches Age of Majority
- When a student receives a High School Diploma
- When a parent/guardian removes their student in receiving special education services
- When the student is found to be ineligible to receive special education services
- Etc.
- What specific records are to be kept?

Answer: On page 17 of our state regulations/state plan, there are provisions regarding records that speak to this. The bottom-line is that records must be maintained at least 3 years past the point the child no longer receives IDEA services. After that point, you can still keep the records if you want to do so (and there are some good reasons to do so) or you may decide you want to keep some as a part of a "permanent record."

14. We know that a student can remain YCDD during his kindergarten year if he was identified as YCDD prior to entering kindergarten. If he repeats kindergarten again next year, can we still continue with the YCDD label next year?

Answer: Not unless the student is still age 5. YCDD can't be used for age 6.

15. If students are returned to regular education during their senior year, does that impact our dropout rate?

Answer: Not really. The student will be reported as a regular education graduate with his cohort. He falls off the radar of the special education graduation rate.

16. If a student is identified as Other Health Impaired, receives only 10 minutes per week of consultative special education services, is reevaluated, found to meet criteria for LD but is progressing in the regular education curriculum with only minor accommodations, do we say that they qualify or do not qualify since they do not need specially designed instruction to progress and neither disability appears to have an adverse educational impact?

Answer: You have described a student who is ineligible for special education. There is no such thing as a "monitoring IEP" and that is what is being described. A student who does not require specially designed instruction, and who has a disability that has no adverse educational impact, is ineligible for special education.

17. If a student is on a long term suspension (determined not related) and is receiving homebound instruction in general education only, is the IEP placement 100% general education or homebound?

Answer: The placement is homebound.

18. Where should the protocols be kept? Our test examiner has them currently, should they be kept in permanent file?

Answer: Neither IDEA nor FERPA specify where records are kept; each district determines this. But keep in mind, that if you have too many files in too many different places at the district, you run the risk of losing track. If you have a request from a parent to access records, you may inadvertently exclude some records that were not centralized.

19. If a child does not meet eligibility in any area, based on the district evaluation information, but has a medical diagnosis of central auditory processing disorder. Could/would this make them eligible in any disability area?

Answer: A student is only eligible for special education if they meet the criteria in one of the eligibility categories under our state regulations.

20. Please define in the broadest legal terms - "parent's role as an active participant" - does this indicate the need for frequent parent observations in the school.

Answer: IDEA reference to parents as a participant, is referring to ensuring parents have a voice. For example, at an IEP meeting, the school district team must ensure the parent is given an opportunity to voice their opinions, share their concerns with the team. There is nothing in IDEA that speaks to parent observation. IDEA does not require nor prohibit parent observation. So from a legal standpoint, whether to allow a parent to observe a classroom, and if so under what conditions and frequency, is left to local school district policymakers.

21. How does a school / IEP team decide if a state school would be a better environment for a student?

Answer: The IEP team decision has to be whether a separate school is an appropriate placement; this means the IEP team must determine what is the least restrictive environment for the child to benefit from special education. Missouri Schools for the Severely Disabled, require as a part of the eligibility determination, an IEP team to justify a separate school placement. Additionally, a student must be severely cognitively impaired - meaning that he is functioning at a level that is more than 4 standard deviations from the norm. If a child can benefit from his education at the local school district, there is no justification for a placement at a state operated school.

22. With regard to the OT...and Section 504, can the OT service be the primary support offered as a stand-alone support?

Answer: Under IDEA OT can't be a "stand-alone" service; that is because it is a related service, and under IDEA that means a service that allows a child to benefit from his special education program. However, under Section 504 of the Rehabilitation Act, it is possible to have a therapy or related service that allows a child to benefit from his educational services (not special education services). You may want to consult with the U.S. Department of Education, Office of Civil Rights (OCR) for a more definitive answer.

23. Our district is currently rewriting curriculum and the principals want curriculum for special education classes. My understanding is that the regular education curriculum applies to all students with the exception of MAP-A. My question is do special education classes need a special curriculum?

Answer: No there is no special curriculum; you are correct, the regular education curriculum applies to all students.

24. How will the Parents' Bill of Rights differ from procedural safeguards?

Answer: It is a very abbreviated listing of rights compared to the procedural safeguards. Another short listing also exists in the Parents' Guide to Special Education which is located on our website and is available hardcopy.

25. When you have foster children placed in a group home, who is considered the parent or the educational decision maker for that child? We have always used their DFS worker but I am being told that is not correct and we need to get a surrogate for this child which is correct?

Answer: A Children's Division caseworker can't make educational decisions for a child; a foster child is not eligible for an educational surrogate. A foster child's foster parent(s) makes educational decisions for the child.

26. Are students placed in residential facilities considered foster children?

Answer: Not usually. Children in residential facilities may be placed by their parents, by Department of Mental Health, by the Children's Division. Some of the kids placed by the Children's Division could be foster kids, but most would not be.

27. But if the decision for LRE is state school, before the LEA has made any attempt to try with that child, the parent's only recourse is due process?

Answer: If the IEP team decides the child's Least Restrictive Environment to receive a Free Appropriate Public Education is a separate school, and the child is found eligible for placement in Missouri Schools for the Severely Disabled, the parent's recourse is to initiate due process or mediation with the local school district. Keep in mind, that the MSSD eligibility process does provide for parent input, too.

28. For the child on a so-called "monitoring IEP" can you conduct a review of existing data and find he no longer meets eligibility or do you have to conduct a formal evaluation?

Answer: Remember, that a reevaluation refers to a process. That process includes a review of existing data, and additional assessments if those additional assessments are decided upon by the team as necessary to determine continued eligibility or appropriateness of services. So, if the team has sufficient existing data to determine a child is no longer eligible for special education, that child can be exited without additional assessments.

29. An IEP student enrolls in the district's alternative school. In that environment, the student is being successful and is not requiring individualized instruction. Should the student be reevaluated for possible dismissal from special education?

Answer: It is unclear why a student under an IEP would be in the alternative school without individualized instruction; his IEP would require individualized instruction, so there should be no context for this type of situation unless you mean that he was in the alternative school for 10 days or less. If that is the case, I don't know that you can reach the conclusion that he no longer needs special education just because he was able to succeed for 10 days or less without specialized instruction. In any event, if the IEP team members, at any point, suspect that a student no longer requires specially designed instruction/special education, a reevaluation may be a good idea.

30. What if the IEP team feels the alternative school is the least restrictive environment for a student with an IEP?

Answer: Least Restrictive Environment refers to the level of interaction with non-disabled peers, and that continuum of placements can include everything from regular education placement to hospital/homebound placements. A school that is an alternative school, can fall on that continuum in a number of places; some alternative schools are

regular education placements, others have both regular education placements as well as self-contained placements. So the question seems to assume that the alternative school is one particular kind of placement. Whether the alternative school is an appropriate placement, will depend on what placement the IEP requires and whether that placement can be implemented in an alternative school.

31. If the special education student has been moved to a CWC setting only knowing that this is a regular education setting should he be dismissed from special education or is it ok to put him on consultative service for a semester ok to do or does this go along with your monitoring IEP answer.

Answer: There should be no reason for an IEP to be in place as a monitoring IEP or "consultative" IEP; the team needs to decide if the student continues to be a student with a disability requiring special education services.

32. When I called DESE about the same issue of destroying protocols, the issue became "what is a protocol?" What I was told by the DESE compliance person was that we should NOT destroy old protocols because they are already part of the file, but that it is permissible to destroy current protocols, as long as we keep the front page, since it contains raw scores and info that the remaining pages of the protocol contains.

Answer: Our state regulations do define educational records as including test protocols. This was based on our presumption that the protocols do contain personally identifiable information. I do not think you can rip off the attached pages and treat them differently from the front page. I am not sure why you were told this, and will follow-up with our staff in the Compliance Section to be sure I am not missing something. For now, please assume that the entire document is educational records. I think this is the safest way to handle given the current definition of educational records in our state regulations.

33. If a student needs accommodations for testing like a quiet setting, have tests read aloud, but does not need Specialized Instruction in any subject, can you still give them Special Education Services, and how would you show this on the Service Summary page?

Answer: A student cannot receive special education services unless they are eligible for special education. A student cannot be eligible for special education unless they have a disability under our state criteria (including an adverse educational impact) and require specially designed instruction. If a student has a disability that does not meet our state criteria under IDEA, and requires accommodations for testing, they may be a student protected under Section 504 of the Rehabilitation Act of 1973.

34. If a child is exited from special education services and then determined later that is eligible under another disability area is the second an initial evaluation or reevaluation?

Answer: An initial evaluation.

35. Can a parent observe in the SPED setting or does that violate confidentiality of other students?

Answer: A parent observation in the classroom is not considered a violation of confidentiality of the other students.

36. Can an alternative school that is supported by a school district refuse to take special education students?

Answer: The question may be whether an alternative school operated by a school district can refuse to accept kids with disabilities from other districts - this appears to be a question of whether this refusal would be discriminatory. The best place to find that answer is to discuss it with your school district lawyer or the U.S. Department of Education's regional Office for Civil Rights (OCR) in KC.

37. Is there a specific form to exit a student if they no longer need services?

Answer: There is no "exit" form at the state level; however, the model written notice form would be the form you would want to use, to provide prior written notice of the decision to find the child ineligible (or change his "identification" to non-eligible.)

38. When Parents who dig in their heels and are the only one on the IEP team who disagrees with LRE determination pose a struggle for serving the student. What posture does that team maintain? The district's obligation to provide FAPE was explained to no effect. Help!

Answer: The IEP team needs to ensure the parent has had a voice at the table; however, once the discussion has taken place, and the team has attempted to explain the basis for the proposed placement, there is not much else you can do. There are times when the parent will be in disagreement with the proposed placement despite a good faith effort to discuss and persuade. That is the reason for the remedies built into the process - mediation and due process. One other comment: sometimes the parent is hesitant because they feel once the change is made, they can never go back. If this is the case, you might consider having the IEP team propose a trial basis placement for a trial period - maybe 90 school days or something - with the placement reverting back to the original placement at the end of the trial period placement if the team doesn't propose a more "permanent" outcome at the end of the trial period.

39. Since the out-of-district foster child can access the "school of origin", can the district or IEP team change the actual school?

Answer: The statute doesn't address this specifically; however, for a student under an IEP, it seems to me that the placement or school assignment can't be "forever" and that to be consistent with IDEA there needs to be authority of the school district to decide upon a different school assignment, and certainly the authority of the IEP team to decide on a

different placement, that may result in the school or origin not being able to continue down the road.

40. In regard to the homeschooled student observation: If the parent only wants speech services, and already signed consent to observe the student in the home school environment and then changes her mind and does NOT want the observation to take place, does the school district stop the evaluation process?

Answer: A parent can revoke the consent to evaluate; if they revoke, the evaluation stops. If the team has sufficient information to determine eligibility without the remaining assessments, and the observation is not required part of the evaluation (e.g. LD) the team can still move forward with an eligibility determination.

41. Are there critical issues that compliance consultants at the Regional Professional Development Centers (RPDCs) should address with the school districts they are assisting?

Answer: Timely Correction of non-compliance is a priority; then, improvement in areas identified with gaps in the targets of the State Performance Plan. The consultants should examine the school level data with the director of the RPDC, as well as with the DESE Compliance Section, to identify the problem areas based on that data; in this way, your assistance is targeting the gaps - in other words, you are making data-driven decisions on how to assist the school districts in your region.