

IDEA and Educational Need - Early Childhood

Erin Swilling – Parent Information Center

[307-253-8934](tel:307-253-8934)/eswilling@wpic.org

What is FAPE –

Under the IDEA children with disabilities are entitled to a “**free appropriate public education (FAPE)** designed to meet their unique needs and prepare them for further education, employment, and independent living. FAPE requires that a school district provide special education and related services designed to meet the needs of a particular student and are in conformity with the IEP.

Special Education –

- Special education is **not a place!**. It’s a **set of services**, which includes **adapting instruction** (what’s presented, how it’s presented) to address the unique needs of the child that result from the disability.
- Special education isn’t separated from the academic content that students are supposed to learn for their grade. It’s meant to *support* the learning of that academic content. That’s why IDEA emphasizes that special education needs to ensure that students with disabilities have **access to the general curriculum** that all students are expected to learn.
- An individualized curriculum that is **different** from that of same-age, nondisabled peers (for example, teaching a blind student to read and write using Braille);
- The **same** (general) curriculum as that for nondisabled peers, with adaptations or modifications made for the student (for example, providing a preschooler visual supports such as a daily schedule);); and
- A combination of these elements.

The Prongs Of Eligibility

There is a two part process in determining if a student is to be provided services through special education. Federal regulations require that eligibility for special education services be determined based on:

1. The presence of a disability
2. Student’s education is adversely affected or for preschool children, as appropriate, **how the disability adversely affects the child’s participation in appropriate activities.**

Prong 1 – IDEA Eligibility Categories –

Not every child is eligible for special education under IDEA, and having a diagnosis doesn’t guarantee eligibility. To qualify, a student must have a disability that falls under one of [the 13 \(+ 1\) categories](#) IDEA covers.

- Deaf-blindness
- Deafness
- Developmental Delay (through age 9 in WY)

- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment (includes ADHD)
- Specific learning disability (includes dyslexia, dyscalculia, dysgraphia, and other learning differences)
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness
- Autism

Prong 2 - Educational Need

Educational needs are the instructional strategies, services, activities and supports, and the accommodations and modifications required in order for the individual to be involved and make progress in the general curriculum or **for preschool children, as appropriate, how the disability adversely affects the child's participation in appropriate activities.**

Courts have ruled that if a student can receive educational benefit (or for preschool children - appropriately participate in activities) from the services provided in the regular classroom, even if they have a disability, then they do not qualify as "a child with a disability" under IDEA. When that is the case schools should provide struggling students with support services available to all students in the regular classroom, such as:

- PBIS
- MTSS
- Differentiated instruction
- Accommodations.

What Does "Participate in Age Appropriate Activities" mean?

Age appropriate refers to a developmental concept that certain activities may be deemed **appropriate or inappropriate to a child's "stage" or level of development.**

Although every child develops in a unique way, all children are **expected to interact with their environment at an age-appropriate level.**

Looking at a child's functional development involves observing whether or not the child has **mastered certain developmental milestones and expectations for his or her age.**

https://link.springer.com/referenceworkentry/10.1007%2F978-1-4419-1698-3_1349

Specially Designed Instruction

IDEA Part B regulations define the term "specially designed instruction," the critical element in the definition of "special education," as "adapting, as appropriate to the needs of an eligible child, **the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum,** so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 CFR §300.39(b)(3)

Determining Eligibility

The determination process can be confusing to parents and school staff, and there may be times that IEP team members will have different interpretations of the data. Even though IDEA clearly outlines the eligibility categories, it doesn't list all the issues that fall into each one. It also doesn't provide definitions for some key terms, like "**adverse effect**". Even the word "**education**" is open to interpretation.

When this happens it is a good idea for the IEP team to answer a few questions:

- What eligibility category does a child's needs best fit in?
- What is considered to be a part of a child's education?
- What does an "adverse effect" look like in real life?

At one time the standard practice was to only look at academic information to make this decision. Often the standard was whether the student was passing and being promoted to the next grade. The current regulations say that if a student has a disability and needs special education services, services must be provided "even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade."

What Should Be Considered

Before a CDC refuses to evaluate a student or says that there is not a need for special education, there should be some focus on whether the student is able to participate in appropriate activities or if a screening indicates concerns. Other indicators (parent report, observations, teacher concerns, an "outside" diagnosis from a physician or psychologist, etc.) should also be considered. Consider if behavior problems could be impacting the educational benefit the student is receiving.

- 1) **Uniqueness of the child's performance.** Consider information that reflects whether or not the child's performance is different from peers in the school or community with similar developmental and educational experiences. The purpose of this information is to assist in determining if the concerns relate to the child (i.e., are indicative of disability) or the concerns are shared by a significant number of others with similar backgrounds and may be indicative of a problem with the general education system of support and instruction.

Individual Basis

The Office of Special Education Programs (OSEP) has specifically stated that a child's educational performance must be **determined on an individual basis and should include non-academic as well as academic areas.**

What Does the Law Say?

“Consistent with 34 C.F.R. 300.8, to be eligible for special education and related services under the IDEA a child must meet the criteria for one (1) or more disability categories listed in this section, and the ability must adversely affect the student’s educational performance such that the student needs special education as defined in C.F.R. 34 300.39 and related services 34 C.F.R 300.34”.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

- (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, **but only needs a related service and not special education, the child is not a child with a disability under this part.**
- (ii) If, consistent with §300.39(a)(2), the **related service required by the child is considered special education rather than a related service under State standards,** the child would be determined to be a child with a disability under paragraph (a)(1) of this section. <https://sites.ed.gov/idea/regs/b/a/300.8/a>

(1) Special education means **specially designed instruction**, at no cost to the parents, to meet the unique needs of a child with a disability, including—(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.

<https://sites.ed.gov/idea/regs/b/a/300.39/a/1>

- General. Related services means transportation and such developmental, corrective, and other supportive services **as are required to assist a child with a disability to benefit from special education**, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. <https://sites.ed.gov/idea/regs/b/a/300.34/a>

Hearing officers and state and federal courts have found that special education, and related services encompass more than just academic progress.

Recently, the Maine District Court, concurred with the importance of non-academic needs.

- *The Court found that a student with Asperger’s Syndrome was eligible for special education and related services, even though she made excellent academic progress. In reaching the decision,*

the court held that educational performance encompassed not merely the acquisition of academic knowledge but also the cultivation of skills and behaviors needed to succeed generally in life. This decision was, in part, based on State curriculum goals addressing language, oral presentations, responsible personal and social behaviors in physical activity settings, career preparation including teamwork and handling change.

- In a Policy Letter titled “Letter to Lybarger” issued September 14, 1990, OSEP clarified that in determining a child’s specific needs, the child must be assessed in all areas related to the suspected disability; including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.
- On January 21, 2011 the Office of Special Education Programs (OSEP) issued a [Memorandum to: State Directors of Special Education](#) clarifying that the RTI process cannot be used to delay or deny a student's eligibility for special education services under the IDEA. The memorandum then clearly states that it is inconsistent with the evaluation procedures in the IDEA at [34 CFR 300.301 through 300.111](#) for a school district "to reject a referral and delay the provision of an initial evaluation on the basis that a child has not participated in the RTI framework." <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>

When Should an Initial Evaluation Take Place?

- 1) Child Find - a legal requirement that schools find all children who have disabilities and who may be entitled to special education services.
 - Child Find covers every child from birth through age 21.
 - The LEA must evaluate any child that it knows or suspects may have a disability.
- 2) Parent Request – When a parent has requested an evaluation. An LEA is not required to evaluate if they do not have concerns with a disability/suspected disability. The LEA must provide a Prior Written Notice to the parent. Parents can follow through with Dispute Resolution options.
- 3) MET - Master Evaluation Team (or similar) - referral process

Comprehensive Evaluation

Evaluation is an essential beginning step in the special education process for a child with a disability.

The purposes of conducting this evaluation are straightforward:

- To see if the child is a “child with a disability,” as defined by IDEA.
- To gather information that will help determine the child’s educational needs
- To guide decision making about appropriate educational programming for the child.

A comprehensive evaluation requires information be gathered from a variety of sources, including aptitude and achievement tests, **parent input**, observations, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior. A child is not to be determined to have a disability if the determinant factor is based on:

- a lack of appropriate instruction in reading, including the essential components of reading instruction;
- a lack of appropriate instruction in math; or
- Limited English proficiency.

Eligibility Meeting - Required attendees include:

- Parent/guardian
- General education teacher
- Special education teacher
- School administrator
- Professional/s who evaluated the child
- Others who have knowledge of the child

Yes or No - MDT Team? Call parent w/o meeting to let them know?

Predetermination

If school personnel have made the decision that a student’s educational performance/participation in appropriate activities (preschool) has not been adversely affected and does not require specially designed instruction, prior to a team meeting (including parents!) then there has been pre-determination, which is a procedural violation of IDEA. A decision regarding eligibility should be based on a variety of individuals who know the child, along with data, observations, etc.

Under/Over Qualifying Students for Special Education

Under Qualifying –

- Child Find Obligation
- Denial of FAPE

Over Qualifying –

- Consider PBIS or MTSS instead
- Is a 504 Plan appropriate?

504 Plans

- A student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.
- Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.
- Section 504 requires recipients to provide students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met.

Thinking Outside the Box

- Individualized – not “cookie cutter”

- Lack of staff/funding/resources
- Time constraints
- Difficult parents
- Differing ideas/views from IEP Team Members

De Bono's 6 Thinking Hats - <https://www.youtube.com/watch?v=gFqAAI7FYus>

Look at important decisions from different perspectives.

Red – “Feelings”

Blue – “Thinking”

Yellow – “Good Points”

White – “Information”

Green - “New Ideas”

Black – “Bad Points”

Benefits

- View problems from new and unusual angles.
- See all sides of a situation.
- Achieve significant and meaningful results.
- Look at problems, decisions, and opportunities systematically.
- Generate more ideas and solutions.

Resources:

Partners Resource Network - <https://prntexas.org/what-is-educational-need/#:~:text=Under%20the%20IDEA%20children%20with,%2C%20employment%2C%20and%20independent%20living.&text=An%20evaluation%20determines%20if%20the%20student%20has%20a%20disability.>

Parent Centered Hub - <https://www.parentcenterhub.org/fapebrief-ref-list-sped/>

CADRE -

<https://www.cadeworks.org/sites/default/files/sessions/Session%205.2%20ThinkOutsideBox.pdf>

Undertood.org - <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/child-find-what-it-is-and-how-it-works> and <https://www.understood.org/en/school-learning/evaluations/evaluation-basics/what-to-expect-at-an-iep-eligibility-meeting>

Parent Information Center - <http://wpic.org/>