

Iowa Special Education Eligibility and Evaluation—Questions and Answers

Issue 2: Determining a Need for Special Education

Joint Guidance by Iowa Department of Education and Iowa AEA Special Education Directors

Overview

The below guidance is intended to dispel common myths pertaining to legal requirements for special education eligibility and evaluation. This joint guidance should be used in conjunction with Iowa Administrative Rules for Special Education (IAC § 281—41), Iowa Special Education Evaluation and Eligibility Standards (2015), and the AEA Special Education Procedures Manual (August, 2018). This guidance is part of a series. Topics included in the series scheduled to be released during the 2018-2019 school year include:

- Discrepancy Data & Disability Decisions
- Determining a Need for Special Education
- Eligibility on the Basis of Specific Learning Disability (SLD) and/or the Academic Domain
- Other Eligibility Questions

This guidance is issued by the Iowa Department of Education (IDE) and Iowa's Area Education Agencies (AEA's). The IDE has statutory authority to exercise "general supervision" over Iowa's AEAs and school districts. Iowa's AEA's have authority to provide this guidance as they are required to be involved in systematic problem solving and general education interventions, and are responsible for child find. Additionally, the AEA Directors of Special Education certify special education eligibility determinations.

Authority

- Iowa Administrative Code Rules § 256.1
- Iowa Administrative Code Rules 281—41.402(2), 281—41.407, 281—41.306(4), 281—41.312-13



Questions & Answer: Determining a Need for Special Education

1. Question: Are there times that a child who is benefiting from RtI/MTSS may also need special education?

Answer: Yes, RtI/MTSS is neither general nor special education; it is a framework and process for an education system and delivery of appropriate instruction to all learners. The fact that a child has benefited from an intervention in the general education setting through RtI/MTSS does not mean this intervention may not become special education. The intervention is special education if it is required to meet a child's disability related needs (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018).

2. Question: If a general education teacher can provide the instruction, isn't it considered general education?

Answer: According to Judge Scase (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018), "The IDEA, federal regulations, and state rules define special education in terms of what it is, not where or by who it is delivered. Special Education "means specially designed instruction ... to meet the unique needs of a child with a disability." 20 U.S.C. § 1401(29); 34 CFR § 300.39(a)(1); 281 IAC 41.39(1). The location of instruction is unimportant under this definition. Special education includes "[i]nstruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings." Id. The delivery of specially designed instruction in a regular education classroom does not change the nature of the instruction."

Therefore, one should not make the assumption that if the needed instruction is provided by a general education teacher it must be general education.

While special education may be provided in any educational setting and be delivered by a range of educators, the IDEA, federal regulations and state rules require that a licensed special education teacher plans and oversees delivery of special education services.

3. Question: What is the difference between general education and special education?

Answer:

General education includes

- universal instruction,
- differentiated and remedial group instruction that is routinely provided to learners without disabilities and routinely available leveled, repeated or slower paced instruction (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018),
- all educational interventions implemented while schools are attempting to resolve concerns prior to a full and individual evaluation (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018), and
- non instructional adaptations (281 IAC 41.39; IDEA Due Process Hearing Decision, 28 D.o.E. App. Dec. 419 (2018)) such as:
 - removing time restraints

- special seating
- checking for understanding
- chunking assignments
- warning/cueing a change in routine
- assessments in small group setting
- large-print books
- transportation

Special education includes

- specially designed instruction defined as adaptations to content, methodology or delivery of instruction to meet the unique needs resulting from a disability, and
- instruction from related services (i.e., occupational therapy, physical therapy, nursing, speech and language services, vision and/or hearing services etc.).

When determining if instruction is adapted to meet a disability related need it is helpful for eligibility teams to consider the ongoing instructional supports the child needs in comparison to the instructional supports commonly provided through differentiation/remediation (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018).

Eligibility teams should consider the following:

- Setting: What are the characteristics of the learning environment that best supports the learner? How similar/different is this from the age/grade educational environment (e.g., group size, seating arrangements, and structures)?
- Curriculum: What are the standards and concepts/skills that the child needs? How similar/different is this from the age/grade expectations?
- Instruction: What instructional methods (i.e., how content is best taught, practiced, reinforced, corrected) does the child need? How similar/different is this from the age/grade instruction?

Additional questions teams should consider include:

- How long might the instruction be needed?
- How might the child respond if the instruction is removed?
- What is the degree to which the needed instruction is individualized versus routinely available through differentiation?