

**Hillsboro EA Building Rep Questions About
Special Education Issues From January 18, 2011 Meeting**

Elementary Rep Questions

1. We have a special education student who does not belong in regular education classrooms (hits, kicks, spits, etc.). What are my rights?

The IDEA requires that students with disabilities be educated in the least restrictive environment (LRE), i.e. that they be included in the regular classroom if possible. The 2004 IDEA amendments underscore this principle by making it clear that there is a presumption that children with disabilities will be educated in regular education classes. Here is the Oregon rule implementing this requirement:

581-015-2240 Requirement for Least Restrictive Environment

School districts must ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability and

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The student's IEP must identify the extent to which the child will not participate with children without disabilities in the regular class and the specific special education and related services and supplementary aids and services or modifications/supports the child needs. The amount of time a special ed student spends in the regular education classroom is a placement decision that must be made by a group including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Placement must be determined at least annually.

Before a placement team can decide to change a student's placement from a regular classroom, it must consider whether additional services, behavior interventions, or other supports may enable the student to remain in the LRE.

While the placement decision must consider the child's needs, it must also consider the educational impact on other students in the class. A regular classroom may not be appropriate if, even after supplementary aids or services are provided (e.g. an educational assistant, behavior intervention plan, counseling), the student is so disruptive that other students' learning is significantly impeded. It is very important to document incidents of disruptive or unsafe behavior and their impact on other students in the class. It is also important to make requests to

administration for an IEP or placement meeting if the teacher believes that a placement is not appropriate and/or if additional supplementary aids or services are needed.

Aside from the overall placement decision, the student may be disciplined for violating school rules, but some special rules apply. (See answer to question 19 below.)

2. How is placement decided, is it a majority of the team? What is a minority report and how do you overturn a bad placement decision?

Placement must be decided by “a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” If you are among those in the group deciding upon a placement, you are free to express your professional opinion in the meeting. The term “minority report” does not appear in the law or regulations. This may be the district’s procedure or practice for recording dissent about a placement decision.

Only the district and the parent have the legal right to pursue due process hearings over disputes about placement. A teacher does not have the ability to “overturn a bad placement decision.” Practically speaking, if there is disagreement about placement among the group, the district will have to make a placement decision and provide prior written notice to the parent before it is implemented. The parent then may request a due process hearing to challenge the placement (e.g. on the grounds that the placement is not the LRE). In most cases this would trigger the “stay put” rule requiring the placement to remain the same while the hearing process occurs. In practice, districts may honor parent placement preferences to avoid the conflict and expense of defending their position in a due process hearing. Professionally expressing your opinion about placement, however, may help the district resist improper placement demands by parents.

3. Is it possible to place a student back one grade level from his/her grade level?

There is a clear preference in the law to include disabled students with their regular age peers in the least restrictive environment. It is more likely that an IEP would require modifications to the curriculum than that a student would be demoted a grade level. It is conceivable that parents could request such a placement, but without parental agreement, this seems highly unlikely.

4. What if we think/know an IEP is not being met? Specifically the amount of time, but also services.

You may, but do not have a legal obligation to, protest the district’s failure to provide the amount of special education and related services specified on a student’s IEP. If you wish to protest, you may want to do so internally first. If so, you should do so in writing (e.g. via email to the Special Education Director or other relevant administrator) so there is a record of your objection.

If your internal objections do not resolve the matter, and if the violations are serious or systemic, then you may wish to file a complaint with the State Superintendent of Public Instruction. Any individual can file a complaint alleging that the district is violating the IDEA or corresponding state law. The procedures for filing a complaint are set forth in the Oregon Department of Education's administrative rules. *See* OAR 581-015-2030.

Courts have held that it is unlawful for a district to retaliate against a teacher for speaking out to enforce the rights of students with disabilities. Retaliation, however, is often very difficult to prove. Having a record of the protected activity can be very helpful evidence of the employer's knowledge of the protected activity and the timing in relation to any retaliatory action.

5. Teachers should have a clear idea of the referral and identification process (steps, timeline, etc.) What are they?

Districts are responsible for identifying and evaluating students suspected of being in need of special education services. Anyone – a parent, teacher, nurse, doctor, social worker – can request that a child be evaluated for special education. The law (as of 2004) requires that such requests be in writing though.

If a student is suspected of needing services, the district must designate a team to determine whether an initial evaluation will be conducted. The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities. The team can decide whether to evaluate without meeting, but if a meeting is held, the parents must be invited in writing to participate.

The team must also conduct an evaluation planning process. This too can be done without a meeting, but again, if there is a meeting, the parents must be invited in writing to participate. The team considers any existing evaluation or assessment data, evidence of academic performance, observations, and parental input to determine what additional data are needed to ascertain whether the child is a child with a disability, the child's present level of achievement, and the child's special education and related service needs.

Prior to evaluating, the district must provide formal written notice, along with an explanation of procedural safeguards, to the parent and obtain consent to conduct the initial evaluation to determine if the child qualifies. The notice must specify the evaluation procedures identified by the team through the planning process. If the parent does not provide consent for an initial evaluation, the district can either decline to pursue the evaluation and special ed services or push for the evaluation by requesting mediation or a filing for a due process hearing. Parents can also file for due process hearings if they object to the evaluation or to the identified areas to be evaluated.

If consent for an initial evaluation is obtained, the evaluation is conducted and then an evaluation report and statement of eligibility is prepared by the team and then discussed at an

eligibility meeting. The initial evaluation generally must be completed and an eligibility meeting must be held within 60 school days from receiving written parent consent.

A district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.

6. Can specialists not provide services the first and last couple weeks of school?

The student's IEP must include "[t]he projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule." OAR 581-015-2200(1)(e)

For initial IEPs: "As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP." 581-015-2220(2)(b).

I found nothing else in the regulations that addresses this question. Generally speaking, it would seem that services should be provided throughout the school year. Without knowing the specific reasons for failing to provide services at the beginning and end of the school year, it is difficult to know if they are legitimate.

7. Why does elementary have to go through hoops/hurdles to get help with behavior needs students when middle and high school doesn't?

Other than the six-week behavior modification plan referenced in question 8 below, I do not know what "hoops/hurdles" elementary staff need to clear to get help with students with behavioral issues and/or how they compare with the middle and high school process. I am unaware of anything in the special education laws that creates a distinction in how behavioral needs are addressed among different grade levels. For all special education students, a functional behavior assessment must be conducted before a behavior intervention plan is developed. It seems that this concern may be based on a district-adopted policy or practice. I would need more information to respond.

8. Why do we have to do all the six weeks behavior modification plans and they do not? It is a huge workload issue in addition to having a huge impact on the classroom learning environment.

I do not have the background information I need to answer this question. (See question 7.)

9. SPED teachers teaching primarily non-speds kids - leading to large groups instead of small learning groups. Are IEPs being met with this change? What do we do if they are not being met?

I do not understand why SPED teachers are teaching primarily non-SPED students or why

students without disabilities would be in a pull-out setting like a resource room.

The SPED teacher should be in a good position to determine whether students he or she teaches are meeting their IEP goals and objectives. If they are not making adequate progress toward those goals and objectives, and if the teacher believes the class-size renders it impossible to meet those goals, then there should be a discussion with the district about this. If this is a widespread, systemic issue, perhaps the discussion should occur with the involvement of the Association.

10. Do special education students have to do easycbm? It's a grade level exam, if they have in their IEP's to take a modified version of OAKS (because they are below grade level/have sped issue) Why do they still have to take the regular easycbm?

The student's IEP must include the following information about both State and district assessments:

A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:

(A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.

(B) If the IEP team determines that the child must take an alternate assessment in any area instead of a regular State or district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment selected is appropriate for the child.

OAR 581-015-2200(1)(g).

11. Should counselors be on IEPs as "related services" or as a required part of IEP?

Yes. See OAR 581-015-2000(28):

"Related services" includes 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 orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including

rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

- 12. If a student has an assistant a lot of the time but refuses to do anything without the assistant when left without an assistant, how much attention is the teacher expected to give this student when their assistant is not present?**

The teacher's job is not to be a 1:1 teacher, but rather to teach the whole class. It is unreasonable to expect the teacher to work for significant parts of the class period 1:1 with any particular student. It is reasonable to expect the teacher to float among students and work intermittently on a 1:1 basis for portions of the instruction time. If the student is not making regular progress toward IEP goals because the assistant time is inadequate, that is an issue that should be raised in an IEP meeting. The teacher can request that an IEP meeting be held for that purpose.

Secondary Reps Questions

- 13. How do I teach a regular education teacher in middle school teaching a grade level textbook driven class with special education students who read 5 or more grade levels below grade level?**

See the response to question 14 for information about how a regular classroom teacher can get the training and support services necessary to provide modified curriculum. The specific question about how curriculum can be modified for students who read five or more grade levels below the class should be addressed by professionals who have training and experience in developing modified curriculum. See question 14.

- 14. When modifications are identified - who is responsible for providing those resources and curriculum?**

The district is ultimately responsible for implementing the IEP. The IEP should identify the teacher training necessary to provide modifications specified in the IEP. If it does not, you should request an IEP meeting to include that information in the IEP. You can ask for release time and technical assistance in order to plan properly for the student. Special education funds may be used for professional development and release time.

- 15. There is always the "fight" if you will, over whether supplies/curriculum come from bldg budgets or SPED budgets. Where is the delineation?**

There is no bright line. The law is clear that special education funds can be used to train and support regular education teachers on how to serve special education students. Because special education funding generally does not cover the full cost of delivering special education services, SPED budgets will not be adequate to meet all SPED-related needs.

16. If you have 30 students in your class, is it legal to say that every child will get 1/30 of my time?

There is nothing in the law that states that students get equal proportions of the teacher's time. If a particular student's needs render the teacher unable to teach the curriculum content adequately to the rest of the class, however, that is a problem that should be addressed by requesting additional services (e.g. assistant time) for the student or a placement change.

17. What if I can't meet the needs of the child in the reg classroom due to not having support or materials - what can happen to me?

The district is the party responsible for providing the Free Appropriate Public Education (FAPE) to students with disabilities and for ensuring that their IEPs are implemented. Individual teachers cannot be held liable under the SPED laws. A teacher could face negative evaluation remarks, a directive, or potentially disciplinary action if he or she is failing to adequately perform or is disregarding an IEP. If the teacher's ability to meet the child's needs is due to inadequate supports or materials that are beyond the teacher's responsibility to create or provide, however, the teacher should not suffer adverse consequences. You may wish to seek Association representation or at least make a record (e.g. by sending an email to the Special Education Director or other relevant administrator) if you believe you cannot fulfill the obligations of the IEP because of lack of support/resources.

18. How can I "encourage" my bldg admin to follow district discipline procedures when not a manifestation of their disability. which means standing up to parents from time to time.

File a grievance under Article 17, A, 1, which provides that "disruptive student behavior will not be allowed to hinder the progress of the class" and requires the building administrator to observe the provisions provided in the handbook for dealing with disruptive behavior.

19. Confusing information about SPED students and behavior issues - can they be held to the same standards of behavior- what are the parameters

Yes, students with disabilities can be disciplined to the same extent as children without disabilities for violating school rules. There are some provisos, however:

- a. If the student already has Behavior Intervention Plan identified on his or her IEP, then it must be followed. It may identify particular responses or interventions for the behaviors at issue. If the student does not have a Behavior Intervention Plan, but the teacher

believes the behavior is related to the student's disability, then the teacher can ask for an IEP meeting to address the issue.

b. If the child is suspended or removed for more than 10 consecutive school days or is subject to a series of removals that constitute a pattern, those removals constitute a change in placement, and the rules regarding placement changes must be followed.

c. After 10 school days of suspension, the school must provide services to enable the child to make progress toward his or her IEP goals and have access to the regular curriculum. The school must also conduct an IEP meeting to determine whether the misconduct was related to the student's disability (i.e. a "manifestation determination"). If the team determines it was not related to the student's disability, the district can suspend or expel as it would any other student (although the district still must provide interim alternative services during the suspension or expulsion).

d. After the manifestation determination, regardless of the outcome, the district must conduct a functional behavior assessment. The IEP team then uses this information to develop a behavior plan. If the child already had a behavior plan before being disciplined, then the district must review and change it as necessary to address the behavior.

e. If a student brings drugs or weapons to school, the district can place the student in an appropriate interim alternative educational placement for up to 45 days.

f. If a child causes serious bodily injury (i.e. likely to cause death or serious disfigurement), the school can immediately place the student into an interim alternative placement. If the child engages in behavior that is likely to cause injury, the district must first request an expedited due process hearing if it wants to put the child into an interim alternative placement. If the behavior is not of the kind that is likely to cause injury, then the student is subject to the normal discipline rules and may be suspended for up to 10 days or longer if the above provisions are followed.

20. SPED decisions being made at district level prior to the IEP mtg. How should we handle this?

Decisions about IEP goals, modifications, related services, etc. are generally to be made by the IEP team. The 2004 IDEA amendments allow some changes to be made to the IEP between annual meetings without holding an additional meeting, but the changes must be in writing and by agreement between the district and the parents. If decisions are being made outside the IEP team meeting process or the process for districts and parents to agree in writing to changes, you can choose whether to raise an objection to this. If you do so, it should be in writing (e.g. email) so that there is a record.