Iowa Special Education Eligibility and Evaluation—Questions and Answers

Issue 1: Discrepancy Data and Disability Decisions

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: Discrepancy Data and Disability Decisions

1. Question: Is it appropriate to use discrepancy data to determine if a learner does/does not have a disability?

Answer: Discrepancy data such as that gained from screening, statewide assessment, achievement testing and other measures of performance is one type of data that is required as part of a full and individual educational evaluation for special education (initial or reevaluation).

It is however noncompliant to base disability determinations solely on discrepancy data. Disability determinations for making special education entitlement decisions must include evaluation of both the learner's performance over time (progress) and performance compared to expectations (discrepancy) (41.306(3)).

Discrepancy data is most useful in defining problems, providing validation of problems, describing the intensity/degree of the problem, reflecting the intensity/degree of resources the concern might require and Identifying the areas that need further diagnostics.

Discrepancy data however are not helpful in describing how a learner's performance is unique from his/her peers on a standard or expectation, determining if the problem is due to a disability or some other reason, or determining what to do about the problem. Additionally, one time assessments such as statewide assessments and achievement testing are poor at describing how the child performs on everyday expectations in his/her educational setting.

2. Question: Why can't teams use discrepancy cut points to determine if a learner has a disability?

Answer: State and federal law requires that all children with disabilities, "regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated." (34 C.F.R. § 300.111(a)(1)(i); A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018).

Using specific cut points and criteria requiring a learner's performance to be significantly/severely below expectations does not take into consideration the fact that a child may have a less severe disability and may need special education services to meet the needs of this disability. Additionally, using severe/significantly discrepant criteria contributes to a "wait to fail" mentality. Lastly, discrepancy information alone is not sufficient to determine if a child has a disability as it is not an adequate indicator of why the concern/deficit is occurring or what supports the learner needs to progress.

3. Question: If requiring a significant discrepancy illegally narrows identification, what does inadequate but not significantly discrepant performance look like?

Answer: In determining if a learner's level of performance is adequate, teams must consider if the child's performance differs from age/grade level expectations, and if the learner's performance differs from the performance of same age/grade peers (A.W. vs Urbandale C.S.D., HAEA, IDOE). A child's performance would be considered *adequate (although perhaps below standards)* if same age/grade peers were performing similarly. For example, if a learner's performance falls within the range of typically performing peers without any different instructional needs than others, their performance could be considered acceptable. This would be particularly true if the skills of all are at or close to the expected standards rather than being depressed or far from adequate.

Caution: When a learner performs below standards, but same age/grade peers also perform similarly below standards, this may indicate that universal instructional supports may not be sufficient to address learner needs. However, alternatively it is also possible the learner may have a disability and be in a system with limited universal instructional supports. For this reason, it is inappropriate to identify a learner as a child with a disability based solely on discrepancy data.

4. Question: Can a child who is performing adequately be identified as a child with a disability?

Answer: A team *must not* determine that a child is eligible unless they find that the child does not perform adequately in one or more of Iowa's performance areas (i.e., academics, behavior, physical, health, sensory [hearing and vision], adaptive behavior, communication) (41.306(3) and 41.50).

However, teams must also consider the degree to which instructional supports (e.g., private tutoring, intensified/individualized intervention, etc.) may be masking a disabling condition. If a child makes sufficient progress over time but with instruction akin to specially designed instruction as a result of adaptations to content, methodology or delivery, one would hardly say the child's performance is adequate. This is particularly true if the concern impacts the child such that he/she cannot progress without said instruction (A.W. vs Urbandale C.S.D., HAEA, IDOE, 2018).