



NASET Q & A Corner

Issue #17

Questions and Answers About Basic Special Education Jargon

Questions answered include:

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What is Special Education?

Under the federal law that protects students in special education and their parent/guardians, the Individuals with Disabilities Education Improvement Act (IDEA), special education is defined as “specially designed instruction, at no cost to the parent/guardians, to meet the unique needs of a student with a disability” (20 U.S.C.1401(29)).

In the Definition of Special Education, What Does “Specially Designed Instruction” Mean?

Specially designed instruction means adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction:

- To address the unique needs of the student that result from the student's disability
- To ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all students.

In the Definition of Special Education, What Does “At No Cost to Parent/guardians” Mean?

At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parent/guardians as a part of the general education program.

In the Definition of Special Education, What Does a “Student with a Disability” Mean?

A student with a disability means, “a student evaluated as having mental retardation, 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.”

For students aged 3 through 9, a "student with a disability" may include, at the discretion of the State and the local educational agency (LEA), a student who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- physical development
- cognitive development
- communication development
- social or emotional development or adaptive development who needs, for that reason, special education and related services.

From birth through age 2, students may be eligible for services through The Infants and Toddlers with Disabilities Program (Part C) of the IDEA

Where is Special Education Instruction Provided?

Special education instruction can be provided in a number of settings, such as: in the classroom, in the home, in hospitals and institutions, and in other settings. Public agencies must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities. This continuum must include the placements just mentioned (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. Unless a student's Individualized Education Program (IEP) requires some other arrangement, the student must be educated in the school he or she would attend if he or she did not have a disability.

Special education instruction must be provided to students with disabilities in what is known as the least restrictive environment, or LRE. Both IDEA and its regulations have provisions that ensure that students with disabilities are educated with nondisabled students, to the maximum extent appropriate. IDEA's LRE requirements apply to students in public or private institutions or other care facilities. Each State must further ensure that special classes, separate schooling, or

other removal of students with disabilities from the general 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.

What Federal Laws Protect Students with Disabilities?

Education for All Handicapped Students Act (EHA)

The passage of Public Law 94-142, Education for All Handicapped Students Act (EHA), by Congress in November of 1975 was the end result of many years of litigation and state legislation to protect and promote the civil rights of all students with disabilities. This federal law required states to provide "a free, appropriate public education for every student between the ages of 3 and 21 (unless state law does not provide free, public education to students 3 to 5 or 18 to 21 years of age) regardless of how, or how seriously, he may be handicapped." PL 94-142 was the first law to clearly define the rights of disabled students to free appropriate public education.

PL 94-142:

- was the first law to clearly define the rights of disabled students to free appropriate public education (FAPE).
- required the school systems to include the parent/guardians and guardians when meeting about the student or making decisions about his/her education.
- mandated an individualized education program (IEP) for every student with a disability. The IEP must include short and long-term goals for the student, as well as ensure that the necessary services and products are available to the student.
- required that students are placed in the least restrictive environment (LRE). LRE means placing the student in the most normal setting that is possible.
- ensured that students with disabilities were given nondiscriminatory tests (tests which take into consideration the native-language of the student and the effects of the disability)
- required that due process procedures were in place (to protect families and students).

Education of the Handicapped Act Amendments

In 1986, the Education Handicapped Amendments (EHA) was amended by P.L. 99-457, the Education of the Handicapped Act Amendments. These amendments, which are also known as the Early Intervention Amendments to PL 92-142, extended FAPE to all students ages 3 to 5 by October 1991 (Section 619, Part B) in all states which wanted to participate (all 50 wanted to and did, even states that do not have public schooling for students this age). In Section 619, Part H, a new program was created for infants, toddlers, and their families, which required the development of an individualized family service plan (IFSP) for each student/family served.

Provisions were also included to help States develop early intervention programs for infants and toddlers with disabilities; this part of the legislation became known as the Part H Program.

Individuals with Disabilities Education Act

The EHA was amended again in 1990 by P.L. 101-476, which, among other things, changed the name of the legislation to the Individuals with Disabilities Education Act, or IDEA. More importantly, PL 101-476 replaced the word "handicapped" with the word "disabled" and therefore, expanded the services for these students. IDEA reaffirms PL 94-142's requirements of a free, appropriate public education (FAPE) through an individualized education program (IEP) with related services and due process procedures. This act also supports the amendments to PL

94-142 that expanded the entitlement in all states to ages 3 to 21, designated assistive technology as a related service in IEPs, strengthened the laws commitment to greater inclusion in community schools (least restrictive placement), provided funding for infant and toddler early intervention programs, and required that by age 16 every student have explicitly written in the IEP a plan for transition to employment or post secondary education.

Individuals with Disabilities Education Act Amendments of 1997

The IDEA was first amended in 1992 by P.L. 102-119. The newest amendments to this law were the Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105-17). These amendments restructured IDEA into four parts: Part A addressed General Provisions; Part B covered the Assistance for Education of All Students with Disabilities; Part C covered Infants and Toddlers with Disabilities; and Part D addressed National Activities to Improve the Education of Students with Disabilities.

Individuals with Disabilities Education Improvement Act of 2004

On December 3, 2004, the Individuals with Disabilities Education Improvement Act of 2004 was enacted into law as Pubic Law 108-446. The statute, as passed by Congress and signed by the President George W. Bush, reauthorized and made significant changes to the Individuals with Disabilities Education Act.

The Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA), is intended to help students with disabilities achieve to high standards--by promoting accountability for results, enhancing parent/guardian involvement, and using proven practices and materials; and, also, by providing more flexibility and reducing paperwork burdens for teachers, States, and local school districts.

Enactment of the new law provides an opportunity to consider improvements in the current regulations that would strengthen the Federal effort to ensure every student with a disability has available a free appropriate public education that--(1) is of high quality, and (2) is designed to achieve the high standards reflected in the Elementary and Secondary Education Act of 1965, as amended by the No Student Left Behind Act of 2001 (NCLB) and its implementing regulations.

Section 504 of the Rehabilitation Act of 1973

A student with a disability who does not need special education but who needs a related services may be eligible for that services under a federal law, Section 504 of the Rehabilitation Act of 1973.

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: 1) have a physical or mental impairment that substantially limits one or more major life activities; 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 and 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.

To determine whether a student is protected by Section 504, an evaluation would need to be conducted to determine whether he or she is a "handicapped person" within the meaning of Section 504. Public elementary and secondary school districts receiving Federal financial

assistance are required by Section 504 regulations to provide a free appropriate public education to students with disabilities in their jurisdiction.

Decisions about what educational and related services are appropriate for a student under Section 504 must be made by a placement group including persons knowledgeable about the student, the meaning of evaluation data, and placement options. The placement group decides whether the student needs regular or special education and related aids and services. Section 504 also applies to recipients of Federal financial assistance that operate private elementary and secondary education programs. These recipients may not, on the basis of handicap, exclude a qualified handicapped person from such programs, if the person can, with minor adjustments, be provided an appropriate education within the recipient's program.

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. Section 504 regulation defines a physical or mental impairment as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” The regulation does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

What is the Purpose of the Individuals with Disabilities Education Act (IDEA)?

IDEA states four specific purposes of the Act. These are:

- To ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living
- To ensure that the rights of students with disabilities and their parent/guardians are protected
- To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all students with disabilities
- To assess and ensure the effectiveness of efforts to educate students with disabilities.

What is a Free Appropriate Public Education?

Under IDEA, a free appropriate public education (FAPE) means special education and related services that:

- are provided to students and youth with disabilities at public expense, under public supervision and direction, and without charge
- meet the standards of the State Education Agency (SEA), including the requirements of the IDEA

- include preschool, elementary school, or secondary school education in the State involved
- are provided in keeping with an individualized education program (IEP) that meets the requirements of law

Who is Considered a Parent/guardian under IDEA?

A parent/guardian of a student with a disability can include:

1. A natural or adoptive parent/guardian of a student;
2. A foster parent/guardian, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent/guardian from acting as a parent/guardian;
3. A guardian (but not the State if the student is a ward of the State);
4. An individual acting in the place of a natural or adoptive parent/guardian (including a grandparent/guardian, stepparent/guardian, or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or
5. A surrogate parent/guardian who has been appointed in accordance with IDEA regulations, sometimes referred to as an Educational Suuogate (ESP). An ESP is a trained volunteer who is appointed to advocate for a student who is in state custody, such as foster care, and whose parent/guardians are unable or unwilling to advocate for them.

Also note that if a judicial decree or order identifies a specific person or persons to act as the “parent/guardian” of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the “parent/guardian” for purposes of this section (20 U.S.C. 1401(23))

What Disabilities are Covered Under IDEA?

Under IDEA, “a student with a disability” is a student who may have one or more of the following disabling conditions (Authority: 20 U.S.C. 1401(3); 1401(30)). They are:

- **Autism**
Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance
- **Deaf-Blindness**
Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
- **Deafness**
Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

- **Developmental Delay**

A student with a disability for students aged three through nine (or any subset of that age range, including ages three through five), may include a student:

- Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- Who, by reason thereof, needs special education and related services.

- **Emotional Disturbance**

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- Inappropriate types of behavior or feelings under normal circumstances.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems.
- Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted

- **Hearing Impairment**

Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness

- **Mental Retardation**

Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

- **Multiple Disabilities**

Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

- **Orthopedic Impairment**

Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

- **Other Health Impairment**

Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia
- Adversely affects a student's educational performance.

- **Specific Learning Disability**

Specific learning disability means a disorder in one or more of the basic psychological processes

involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. **Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

- **Speech or Language Impairment**

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

- **Traumatic Brain Injury**

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

- **Visual Impairment**

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

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