Q&A: Needs-Based Goals

The Minnesota Department of Education (MDE), Divisions of Compliance and Monitoring and Special Education Policy, have developed this document to address questions raised by parents and school districts regarding determining individualized education programming for special education students based upon educational need. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal question.

Question 1: How does an individualized education program (IEP) team determine a special education student's educational needs?

Answer: The IEP team reviews the district's most current evaluation report (ER). This should include results from a variety of assessments and tools that provide relevant information to directly assist the IEP team in determining all of the educational needs of the student. Further, the evaluation process should be sufficiently comprehensive to identify all of the student's special education and related needs, which may or may not be commonly linked to a particular disability category.

Prior to the completion of the evaluation process, the IEP team and any additional qualified professionals must determine if any additional data is needed to determine if a child is a child with a disability and to determine the educational needs of the student. 34 C.F.R. §300.305(a)(2). Upon completion of the evaluation, the summary section of the ER should include the interpretation of all evaluation data identifying and supporting the student's educational needs that adversely impact the student's educational performance, which would include cognitive, academic, communicative, social and emotional, developmental, motor ability, vocational, sensory, physical, or behavioral and functional needs.

As set forth in the comments to Chapter 34 section 300.8 of the IDEA regulations, the determination of educational needs is based upon the unique identified needs of the student and not the disability category in which the child is classified. C.F.R. § 300.8(a); Fed. Reg. 46,549 (2006).

Authority: 34 C.F.R. § 300.304(b)(c)(4)(c)(6)(c)(7); 34 C.F.R. § 300.305(a)(2); 34 C.F.R. § 300.306(a)(c), and 34 C.F.R. § 300.320(a). See Minn. R. 3525.0210, subp. 42; Minn. R. 1325, subp. 3B; Minn. R. 3525.1329, subp. 2aB; Minn. R. 3525.1333, subp. 1; Minn. R. 3525.1336, subp.1; Minn. R. 3525.1337, subp.1; Minn. R. 3525.1341,subp.3 C(1); and Minn. R. 3525.1348 subp. 1.

Question 2: What data and information is reviewed by the IEP team in developing or revising a student's IEP?

Answer: The IEP team reviews all of the available data and information provided in the most recent evaluation report, progress reports, and other available sources in order to determine the student's strengths, parental concerns for enhancing the student's education, and to determine the student's present levels of academic, developmental, and functional performance needs. Data and information considered by the IEP team

may include the student's classroom data, classroom, local and state assessment data, and information provided by team members, including the student's general and special education teachers, related service providers, and the student's parents. In addition, the IEP team must consider special factors, such as behavioral concerns, results of functional behavioral assessments, limited English proficiency, communication needs, and assistive technology needs.

Authority: 34 C.F.R. § 300.324(a)(b); See Fed. Reg. 46,682-46,683 (2006).

Question 3: How does an IEP team determine what type of special education programming will meet the student's unique educational needs?

Answer: Once an IEP team has considered all the data and information as described in the response to Question 2, the IEP team determines the student's present levels of academic achievement and functional performance. The IEP team must then consider what type of programming will address the student's unique needs that result from the child's disability. The programming must enable the child to be involved in, make progress in the general curriculum, and meet each of the other educational needs that result from the child's disability, whether or not commonly linked to a particular disability category. The IEP team must develop an individualized program for the student with specially designed instruction, "to ensure access of the child to the general curriculum, so that the child can meet the [state and district] educational standards that apply to all children." 34 C.F.R. § 300.39(b)(3)(ii). The IEP should be designed to meet the student's unique needs and result in educational benefit to the child, rather than only developing annual goals commonly used for a particular disability.

Authority: 34 C.F.R. § 300.8(a), 71 Fed. Reg. 46,549 (2006); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39(a)(b)(3); 34 C.F.R. § 300.42; 34 C.F.R. § 300.105; 34 C.F.R. 300.320(a)(2)(i)(A) and (B); 34 C.F.R. § 300.320 (a)(4).

Question 4: Can a student receive specialized programming for academic needs if they meet eligibility criteria for emotional or behavioral disability?

Answer: The IEP team would first need to determine if the student's academic needs have an adverse impact upon the student's educational performance. If the IEP team answers in the affirmative, then the IEP team must determine if the student's academic need is related to the student's disability. If the need is related, whether or not the need is commonly linked to the disability category, then the IEP team would need to consider what type of programming would assist the student in meeting that need. An example of a related academic need might be a student reading below grade level due to missed instruction where the missed instruction occurred due to the student's removal from class for behavioral reasons or inability to attend due to internalized emotional responses. The IEP team would then need to review the student's academic, emotional, and behavioral educational needs and develop or revise the student's programming to ensure the student has access to the general education curriculum so the student can meet the state and local educational standards that apply to all students.

While the most appropriate disability category for that student may be emotional or behavioral disability, the IEP is designed to meet all of the student's needs related to the student's disability, whether or not it is commonly linked to that disability. Thus, in this situation, the team has determined that the academic need was related to the disability and they would revise the IEP to address this academic need that impacts the student's educational performance.

Authority: 34 C.F.R. § 300.304(c)(6); 34 C.F.R. § 300.39(a)(b); 34 C.F.R. § 300.42; 34 C.F.R. § 300.34; 34 C.F.R. § 300.105; 34 C.F.R. § 300.320(a)(1), (a)(2)(i); 71 Fed. Reg. 46,684 (2006). See Minn. R. 3525.1325, subp. 3B; Minn. R. 3525.1329, subp. 2aB; Minn. R. 3525.1333, subp. 1; Minn. R. 3525.1336, subp.1; Minn. R. 3525.1337, subp.1; Minn. R. 3525.1341, subp.3 C(1); and Minn. R. 3525.1348, subp. 1.

Question 5: Can a student receive specialized programming for reading if they meet eligibility criteria for other health disability?

Answer: The IEP team would first need to determine if the reading needs have an adverse impact upon the student's educational performance. If the IEP team answers in the affirmative, then the IEP team must determine if the student's reading need is related to the student's disability. If the need is related, whether or not the need is commonly linked to the disability category, then the IEP team would need to consider what type of programming would assist the student in meeting those needs. For example, the IEP team would need to determine if the student's disability resulted in the student receiving low grades in reading due to not turning in work or needing additional time to complete work, or due to an in inability to grasp the concepts presented, which could be a result of processing or sensory issues.

The IEP team would then need to consider how to assist the student in being able to access the general curriculum so that the student can meet the state and local educational standards that apply to all students. This may or may not include specialized instruction in reading, depending upon the reason for the particular educational need and the IEP's determination of what type of specialized programming would meet the student's unique educational needs. The district must ensure that the IEP is designed to enable the student to receive educational benefits. CB v. SSD #1, U.S. Ct. App. (8th Cir. April 21, 2011) (citing Rowley, 458 U.S. 176 (1982)).

Authority: 34 C.F.R. § 300.8(a) comments page 46549; 34 C.F.R. § 300.39(a)(b); 34 C.F.R. § 300.42, 34 C.F.R. § 300.34; 34 C.F.R. § 300.105; 34 C.F.R. § 300.320(a)(1), (a)(2)(i) and (a)(4); comments to 34 C.F.R. § 300.320(a) page 46684; 34 C.F.R. § 300.324; See Hailey M. v. Department of Education, State of Hawaii, US DC Hawaii, (September 7, 2011); 57 IDELR 124, 111 LRP 60073 (The student's IEPS addressed the student's unique educational needs, regardless of the disability classification, and were "needs driven"); 34 C.F.R. § 300.39(b)(3); 34 C.F.R. § 300.304(c)(6). See Minn. R. 3525.0210, subp. 42; Minn. R. 1325, subp. 3B; Minn. R. 3525.1329, subd. 2aB; Minn. R. 3525.1333, subp. 1; Minn. R. 3525.1336, subp.1; Minn. R. 3525.1337, subp.1; Minn. R. 3525.1341, subp.3 C(1); and Minn. R. 3525.1348, subp. 1.

Question 6: Does a student's IEP have to include a goal or related service for all areas of weakness?

Answer: No. When determining whether a student has an educational need, the evaluation team and the IEP team must consider whether the weakness or deficit has an adverse impact on the student's learning, and is related to the student's disability. For example, if a student qualifies for special education services under OHD, and also has fine motor weakness, the IEP team would need to determine if that fine motor weakness impeded the student's ability to access the curriculum or benefit from his or her education. If the answer is no, then special education programming would not be needed to provide a free and appropriate public education (FAPE).

However, if the answer is yes, then the IEP team would need to also determine if the weakness or deficit is related to the student's disability, whether or not it is commonly linked to that particular disability category or categories. If that answer is yes, then the IEP team would need to address the student's educational need in the

area of fine motor weakness to ensure that the student has access to the general curriculum and can then meet the state and local educational standards that apply to all students.

Authority: 34 C.F.R. § 300.8(a) and 71 Fed. Reg. 46,549 (2006); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39(a)(b)(3); 34 C.F.R. § 300.42; 34 C.F.R. § 300.105; 34 C.F.R. § 300.320(a)(2)(i)(A)(B); 34 C.F.R. § 300.320(a)(4); 34 C.F.R. § 300.324; Mass. SEA Hudson Public Schools (August 2, 2011). 57 IDELR 178, 111 LRP 52971; Alex R. v. Forrestville Community Unit School Dist. #221, 375 F.3d. 603, 612 (7th Cir. 2004) (question presented is whether the school district appropriately addressed the student's needs and provided the student with a meaningful educational benefit. (cert. denied 543 U.S. 1009 (2004)).

Question 7: Can services be provided by a program or provider that is "outside" the disability eligibility category?

Answer: Yes. At the time a student's evaluation is completed, the evaluation team determines whether the student meets eligibility criteria for one or more disability categories and determines the unique educational needs of that student. In addition, during any annual IEP team meeting, the team should consider other data generated since the most recent evaluation was completed to determine if the student's needs have changed. The appropriate specialized programming, which should be comprised of measurable annual goals, specialized instruction, related services and supplementary aids and services, would be determined based upon the student's unique educational needs as set forth in the district's evaluation report, and as determined by the IEP team when developing or revising the student's present levels of academic achievement and functional performance. The specialized programming must meet the student's unique needs and ensure access to the general curriculum to enable the student to meet the state and local educational standards that apply to all students.

As set forth in the comments to the specific learning disability regulation, while the evaluation team determines the most appropriate disability category for a student, that determination does not limit the services, which may be provided to that student. Instead, the services must meet the student's needs and cannot be determined by the student's eligibility category. 71 Fed. Reg. 46,655, 34 C.F.R. § 300.309(a)(3).

In some cases, a district may use a multi-disability team teaching model and assign more than one teacher and/or related service providers licensed in different areas to provide instruction and related services to students with disabilities. The IEP would set forth the type of special education instruction to be provided by each special education teacher and related service provider.

Authority: 34 C.F.R. § 300.8(a); 71 Fed. Reg. 46,549 (2006); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39(a)(b)(3); 34 C.F.R. § 300.42; 34 C.F.R. § 300.105; 34 C.F.R. § 300.320(a)(2)(i)(A) and (B); 34 C.F.R. § 300.320(a)(4); 34 C.F.R. § 300.324; and Minn. R. 3525.2350.

Question 8: How is programming determined for a student who meets the eligibility criteria for autism spectrum disorder?

Answer: Under Minnesota rule, the criteria for autism spectrum disorder (ASD) identify three core features. The core features are impairment in social interaction, impairment in communication, and restricted, repetitive, or stereotyped patterns of behavior, interest, and activities. If the student meets eligibility by meeting the criteria for two or more core features, then the ER would include a summary of the eligibility criteria and the student's unique educational needs, whether or not commonly linked to that disability category. This includes all

of the student's educational needs that adversely impact the student's educational performance, such as academic, emotional, social, behavioral, communication, sensory, health, physical motor, developmental and functional performance needs. The IEP team would then determine the student's present levels of academic achievement and functional performance. The student's unique programming would be developed by addressing each of the student's educational needs as related to the core features for ASD as well as other areas of educational need related to the student's disability, whether or not commonly linked to that disability category.

Authority: Minn. R. 3525.1325, subp. 3. 34 C.F.R. § 300.8(a); 71 Fed. Reg. 46,549 (2006); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39(a)(b)(3); 34 C.F.R. § 300.42; 34 C.F.R. § 300.105; 300.320(a)(2)(i)(A)(B); 34 C.F.R. § 300.320 (a)(4).