

MEMORANDUM

To: Glenna Gallo, Director of Special Education Services
From: Utah Special Education Advisory Panel (USEAP)
Subject: Proposed changes to the Special Education Rules
Date: June 3, 2016

In our role as an advisory panel, we have a duty to comment publicly on any rules or regulations proposed for issuance by the State regarding the education of students with disabilities.

We have thoroughly reviewed and discussed the proposed changes to the Special Education Rules overall; this panel is content with and supports the suggested changes. We do ask that that you review and consider this additional input from USEAP:

Section II. Identification, Location, and Evaluation

1. *Referral (II.B):*

Define and/or give examples of what "reasonable time" means once a referral for evaluation is received before Informed Consent is obtained. Delineate that obtaining Informed Consent for Evaluation cannot be delayed due to the Response to Intervention (RTI) process.

2. *Evaluation (II.D):*

Regarding Comment [GG9]: The statutory requirements for DCFS referrals for a 30-day timeline should be included here as well to make sure the timelines are clear.

3. *Emotional Disturbance:*

It will be helpful to define what "social maladjustment" is, since there is disagreement on how that term is applied in determining eligibility. It is in the Federal law, but from comments made at the time, it was put there to exclude "juvenile delinquents." However, many children with ED can present as being socially maladjusted and so are not evaluated for an underlying ED.

4. *Specific Learning Disability:*

Continue the use of the discrepancy method as a component (in combination) in determining eligibility but not as a sole determining factor. The evaluation group should use the value as a component but the value should NOT be the sole factor that determines eligibility as dictated by a commercial program's specific cut-off percent. The use of this testing in combination can contribute to the identification of a student's strengths, weaknesses, and needs.

Section III. IEP Development and Service Delivery

1. Service Animals:

Regarding Comment [GG26]: We agree that service animals must be addressed in this section and hereafter in accordance with ADA access and guidelines and as an accommodation on an IEP.

2. Age for Transition Services:

In area III.H.2 and where it is mentioned hereafter, we strongly suggest that Transition Services should begin for a student at age 14 years old. This is consistent with the national trend, the start of high school, and with other agencies, such as DCFS.

Section IV. Procedural Safeguards

1. Procedural Safeguards Notice (IV.E.):

In most school districts, a summary of the Procedural Safeguards is given to the parent in addition to the full Procedural Safeguards Notice. We suggest that USOE create and then provide an acceptable summary to all districts so the information is consistent and in accordance with the official notice.

2. State Complaint Timeline:

We note that Rule IV.G.4 requires the violation to occur not more than one year prior to the date the complaint is received. There are no exceptions listed here. We recommend that if a person is seeking to file a complaint that is over one year and the issue is still occurring that they can seek a waiver, within the complaint, to this rule that can be granted or denied by the State Director of Special Education.

3. Informed Consent Rule:

Please note that R277-752 needs to be removed from IV.W. We also recommend including a requirement to provide parents with alternatives they can consider when the rights transfer, including supported decision-making, power of attorney, and guardianship.

Section VI. Students with Disabilities in Other Settings

1. Clarifying Other Settings:

Regarding Comments [GG35-38]: It should be clarified that the LEA that is receiving the child should be responsible or require coordination between the LEAs for mental health or health services. Procedures and information regarding how serving students with disabilities in other settings effects the Carson Smith Scholarship and USDB classrooms also need to be addressed and clarified.

2. Online Programs:

Regarding Comment [GG41]: The rules should address existing Board rules on home school students also enrolled in the statewide online education program.

3. *Adult Education:*

Regarding comment [GG43]: Define the maximum age.

4. *Interagency Agreement (VI.I.4):*

Add language from §300.154 to ensure clarity. Define interagency agreement and give examples of agencies that may participate. Meet with DHS representatives (perhaps, Tanya Albornoz) to craft language specific to this to ensure accuracy and completion of the requirements.

5. *State Custody/Care (VI.J. VI.K.):*

Regarding Comment [GG45-46]: Yes, adding statute for YIC would be very helpful.

Please include that the LEA is responsible for these services. It may also be helpful to refer to the statute that states that DHS/DCFS can place a child in whichever district it determines is necessary or the child. Consider adding that they may not charge for services.

6. *Interstate Compact (62A-4a-701):*

Request a meeting with DHS to address this section and ensure accurate information is represented.

Section VII. Transitions

1. *Definition:*

We suggest the wording be changed in the following way in order to encourage higher expectations for students with disabilities: "*a(2) is based on the individual student's needs and strengths, taking into account the student's preferences, interests, and potential; and includes:*"

2. *Parent participation:*

As previously mentioned, change Transition Services to begin at age 14.

3. *IEP team:*

At the yearly meeting to develop a transition plan, the LEA should explain the different options for students at the end of 12th grade, such as obtaining a HS diploma or a certificate of completion and make it also clear that a diploma constitutes a change in placement. This information should be presented early, annually, and clearly to the student so they can make a plan and understand the options.

4. *Definition of IEP*

Please change the wording to read, "*a(2) Realistic and reasonable measurable postsecondary goals including academic and functional goals based upon annual age-appropriate transition assessments related to training or education, employment, and, where appropriate, independent living skills.*" Functional goals are important for independent living and by keeping them here, reference/coincide with the "functional performance" listed in definition listed directly above a(1).

5. *Graduation*

Currently the decision as to whether a SWD can participate in commencement is at the discretion of the LEA. Please consider adding clarity to this in the Special Education Rules so that all SWD will be allowed to participate with their class even if they are receiving a certificate of completion.

6. *USEAP*

Amend that USEAP must include not less than **two** representatives of vocational, community, or business organizations concerned with the provision of transition services to students with disabilities.

Section IX: LEA Eligibility and Responsibilities

We would like to suggest that three areas of concern be addressed and/or clarified in this section:

1. *Allocation of Funds:*

Specify what percentage or amount of Special Education Funds should be used for Administration positions and needs and what percentage and/or amount should go to support direct instruction for students receiving special education services (teacher and aide compensation, assistive technology, adaptive equipment, classroom supplies).

2. *LEA Consistency:*

Specify the role of an LEA in making fiscal decisions at an IEP meeting when additional support (equipment, personnel, etc.) is needed. Currently, the individual who fulfills the LEA position at an IEP meeting is variable and often has to defer to another entity or decision-maker regarding decisions that require allocation of funds. Fulfillment of the IEP meeting is then incomplete.

3. *Caseload Recommendations:*

Consider providing guidelines for student caseloads for related servers, psychologists, and teachers. This will improve quality of instruction and ensure students get adequate IEP services to meet their needs/goals.