



STATE OF IOWA

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

DEPARTMENT OF EDUCATION
RYAN M. WISE, DIRECTOR

DATE: September 26, 2017

TO: AEA Directors of Special Education

FROM: David Tilly, Deputy Director
Barbara Guy, Administrative Consultant

SUBJECT: Department Appeal of Due Process Decision

The Iowa Department of Education recently filed in district court an appeal of the *A.W.* administrative law judge decision. In the appeal, the Department is seeking clarity on decisions that affect policies and practices for the identification of individuals eligible for special education services in Iowa. The administrative decisions made in the *A.W.* case are in effect until an appeal decision is made or the case is otherwise resolved. This memo is intended to provide guidance for addressing two of the administrative decisions that most pertain to the identification of individuals eligible for special education:

1. The Iowa Department of Education shall not require, and the AEA and District shall not employ, criteria that make a finding of disability under the IDEA contingent upon existence of a significant or severe discrepancy between the child's performance and age or grade-based standards.
2. The Iowa Department of Education shall not require, and the AEA and District shall not employ, a definition of special education for purposes of determining whether a child needs special education as a result of a disability that excludes instruction adapted in content, methodology, or delivery to meet the needs of the child; merely because the instruction is within the capacity of general education.

Use of significance or severity of discrepancy. Nothing in the Iowa Rules of Special Education or Iowa Eligibility Standards of 2015, promote use of severity of discrepancy in the identification of eligible individual. As the *A.W.* decision states: *The 2015 Iowa Standards do not direct evaluators to require a significant or severe discrepancy in performance or otherwise quantify the degree of discrepancy required* (p.58). In fact, Standard 8 warns evaluators that the eligibility determination should not be based on the severity of a child's disability.

The current version of the AEA Special Education Procedures manual, however, provides several examples of the use of significant discrepancy which are in conflict with the *A.W.* decision. Staff shall no longer use the following as a determinant factor in an eligibility decision: cut-offs or approaching a cut-off for discrepancy, "times discrepant"/discrepancy ratios/percentile ranks as an indicator for significant/not significant discrepancy. Instead, staff should consider the child's unique circumstances and describe and thoroughly consider the adverse affect on the child's performance using a variety of sources (e.g., achievement, parent input, teacher recommendation, information about the child's physical, social and cultural background, and adaptive behavior).

Grimes State Office Building - 400 E 14th St - Des Moines IA 50319-0146

PHONE (515) 281-5294 FAX (515) 242-5988

www.educateiowa.gov

Championing Excellence for all Iowa Students through Leadership and Service

Consideration of general education. IDEA requires teams to consider whether an individual's perceived need for special education is a result of any of three things:

- lack of appropriate instruction in reading, including the essential components of reading instruction;
- lack of appropriate instruction in mathematics; or
- limited English proficiency.

If the eligibility determination team concludes the existence of one or more of these factors, the individual does not have a disability. If a child suspected of having a disability responds to appropriate instruction during the evaluation process, the child's low performance is caused by lack of appropriate instruction. If there are no data demonstrating that a child received appropriate instruction, the function of the evaluation is to fill that gap.

Appropriate instruction includes whether curriculum, instruction, and assessment are (1) based on sound educational research and (2) in alignment with each other and with state standards. The *A.W.* decision requires a broad perspective when determining a need for special education as a result of the individual's disability. According to the decision,

The fact that an intervention has been used in the general education context during the evaluation process does not mean the intervention cannot become special education.

If during evaluation based on RtI data a student is found to be disabled and able to progress through the general education curricula only when provided with one or more specific interventions that meet needs resulting from the student's disability, then the child is eligible for special education . . . (p.63).

Until an appeal decision is made, the ruling as quoted above and drawn from the *A.W.* decision is the perspective that eligibility determination and evaluation teams must take.