

Eligibility

1. Our district mandates that we can only use the discrepancy model when qualifying a student for special education. We are not allowed to demonstrate a discrepancy between ability and achievement through multiple measures such as: information provided by parent, information provided by present teacher and observations of classroom performance such as work samples, test score and behavioral observations. Is this legal? (2010 Spring)

No, this is not legal.

According to the Code of Regulations (CCR) 3030, if standardized tests do not reveal a discrepancy, a team “may” define discrepancy in the following manner.

CCR 3030 (C) If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

1. Data obtained from standardized assessment instruments;
2. Information provided by the parent;
3. Information provided by the pupil's present teacher;
4. Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
5. Consideration of the pupil's age, particularly for young children; and
6. Any additional relevant information.

(5) The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

[Authority cited: Statutes of 1981, Chapter 1094, Section 25(a); and Section 56100(a), (g), (i), Education Code] [Reference: 20 U.S.C. 1401(a)(15) and 1412(5); 34 CFR 300.5(b)(7) and (9), 300.532(a) (2), (d) and (e), 300.533, 300.540, 300.541-43; and Sections 56026, 56320, 56333, and 56337, Education Code]

Considerations:

The language says that the team “may” find a student eligible for special education using an alternate definition of discrepancy. However, it does not say it “must”. This choice of language makes it confusing for many people.

The bottom line: You must follow the directions of your district so as to not be insubordinate. But this does not mean you have to stop here.

1. Ask your district and/or SELPA for a copy of the policy for qualification of services.
2. Write a letter to your supervisor and make sure you include the following:

- a) Concerns: can relate to a specific student, fear of a lawsuit, inequity of who qualifies for special education.
- b) Make it clear you want to work to resolve the concern.
- c) Ask for a written response within 2 weeks.
- d) Include a copy of CCR 3030.

3. If you do not hear back from your supervisor, consult with the entire IEP team (including the parents). Give all members a copy of CCR 3030 and send another letter of concern to your supervisor from the whole team. Again request a written response within 2 weeks.

4. If you still get no response, CARS+ suggests that you begin to climb the administrative ladder. Send the above information to your special education director. If your concern is not resolved, send it to the SELPA director. If the concern is still not resolved, the letters would be directed to the district superintendent and then finally to the California Department of Education, complaints division. The easiest way to file a complaint is to call 1-800-926-0648.

** Note: If you get to step #4 you may want to contact your CARS+ Region Director for assistance in these processes.

2. Can a student who is eligible under speech and language impairment receive services from a resource specialist? (2009 Winter)

If the student is designated as a student needing special education services they are entitled to whatever services are necessary to provide them with a free appropriate education.

If a student has difficulty accessing the general education curriculum because of his/her language difficulties support from a resource specialist may be appropriate. This is an IEP team decision.

3. In the winter 2009 newsletter we said in our Q and A that a child eligible for special education services under speech and language disorder could access the resource specialist program if appropriate. Where does it say this in ed. code? (2009 Summer)

When a student qualifies for special education, goals are written to meet his/her needs. Once these goals are written the IEP team determines which special education services and/or related services are necessary to implement the goals. In considering program options, the IEP team must consider the least restrictive environment for the student.

Most of the time a student with speech and language goals receives DIS services from a speech and language pathologist. However, there are times when the severity of the language disability significantly impacts the student's ability to access the core curriculum. At this time, other program options may be considered by the team.

Education Code 56360 and 56361 support our response. Education Code 56360 stipulates that all special education local planning areas must have a continuum of

program options available to meet the needs of individual's with exceptional needs. Education Code 56361 states that the continuum includes general education, resource specialist program, DIS services, special classes, etc. It also states that it includes any combination of the listed options.