

Working with non-identified students

1. Can Special Educators serve non-identified students? (2010 Summer) (2009 Fall)

Yes, if the following legal requirements are met:

Ø Special Education teachers must have the appropriate credentials to provide instruction to both students with an IEP and those students without IEPs. (Service Delivery for Students with Disabilities, CDE, March 27, 2009)

Ø Teachers must be highly qualified Special Education teachers providing instruction in the core academic subjects must meet the same “highly qualified” requirements and personnel qualifications described in the Individuals with Disabilities Education Act (IDEA) laws and regulations (EC Section 56058). (Service Delivery for Students with Disabilities, CDE, March 27, 2009)

Ø All IEPs of identified students are being appropriately implemented. Failure to appropriately implement IEPs is one of the most non-compliant areas in California.

There must be clear entrance and exit criteria for non-identified students. For example, “students will be provided intervention services for 6 weeks focusing on a specific set of learning goals.”

2. Is there a law that stipulates that 20% of a resource specialist’s day can be spent working with general education students? (2008 Fall)

No. The Ed. Code 56362 (d) explicitly states, “Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.” However, some schools want resource specialists/specialists to provide early intervention services. In this model, part of their salary is paid with general education money. This is acceptable as long as the resource specialists/specialists have the appropriate credentials to teach general education students. An example: if the resource specialist’s position is funded 80% by special education and 20% by general education, 20% of his/her day may be used to serve non-identified students. This also impacts caseload. The caseload is no longer 28, but 80% of 28 = 22!

3. Can general education students receive instruction in special education classrooms as an intervention? (Fall 2008)

Yes, if the special education teacher is appropriately credentialed (highly qualified) to teach general education students and the IEPs of special education students can be fully implemented. Part B of IDEA '04 specifies that 15% of special education funds can be used for pre-referral activities. One example of pre-referral activities could be the Tier 3 level (intensive, individual interventions) of an RTI model.

4. As a special educator can I teach the site intervention programs—for example: *Language!* or *Reach?* (Fall 2008)

Yes, if you are appropriately credentialed to teach general education students and the IEPs of the special education students on your caseload can be fully implemented.

5. If a RSP program has one general education student in the room does this make all the resource students 100% general education? (2009 Winter)

IDEA law and regulations, plus state law and regulations do not use the term mainstreaming or inclusion . Rather, Least Restrictive Environment (LRE) is the legal term. LRE is individually determined by the IEP team for a eligible student with a disability. It is expected that students with IEPs will have access and make progress in the general education curriculum.

LRE is a term related to the student with the IEP and not the non-identified student(s). Placing a non-identified student (general education) in an RSP room does not make the RSP program 100% general education.

CARS+ would also be concerned that the RSP teacher may be assigned to teach both identified and non-identified students. A Resource Specialist cannot be **simultaneously assigned** to serve as a resource specialist **and** as a regular class teacher.

6. If a general education student is in a special day class (SDC) room for language arts does this count as mainstreaming for the SDC student's? (2009 Winter)

As stated in question #10, placing a non identified student (general education) in a SDC setting does not provide LRE for special day class students.

7. Can general education students receive special education services without an IEP? (2009 Fall)

This question has no easy answer. There is a great deal of debate on whether or not this can happen. Even the most recent information on RTI from the California Department of Education (2009) does not clearly answer the question. CARS+ will continue to ask the California Department of Education for further clarification on this issue.

IDEA 300.300

(a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must obtain informed consent from the parent of the child before conducting the evaluation. (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

At this time there are 3 scenarios that are very common in California:

* First, some school site plans state that special educators only serve students with IEPs. These schools see RTI/intervention as a general education responsibility. This approach is acceptable to CARS+.

* Second, other school site plans state that special education personnel can serve non-identified students as part of their RTI/intervention model if the special education personnel agree with the model, can fully implement the IEPs already on their caseload, and parents are informed. This approach is acceptable to CARS+ if the special education personnel are truly part of the process and agree to the plan.

* Third, and unfortunately the most frequently used, are schools that use special education personnel to serve both identified and non-identified students without any agreement from personnel or specified plan about how the model will work. CARS+ is strongly against this approach and will continue to work with the CDE to eliminate this model.