



CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

March 27, 2009

Dear County and District Superintendents, Charter School Administrators, Principals,
Special Education Local Plan Area Directors, and Nonpublic School Directors:

SERVICE DELIVERY FOR STUDENTS WITH DISABILITIES

In a desire to close the achievement gap and meet federal and state requirements, many districts and schools are implementing the latest research-based practices that ensure students are successful in school. As a means to effectively utilize personnel, some special education teachers are being asked to instruct students with and without an Individualized Education Program (IEP). If there are changes occurring in the manner of how instructional programs are delivered, including special education services, it is necessary that these practices remain compliant with federal and state laws and regulations. This letter provides clarification about delivering services to students with disabilities and how to effectively implement laws and regulations to meet compliance requirements.

Basic Legal Requirements

Local decisions concerning changes in service delivery must be guided by, but not limited to, the following legal requirements:

- All individuals with exceptional needs, as defined in California *Education Code* (EC) Section 56026, must receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) (EC sections 56000[a] and [b], 56040, and 56040.1)
- Any changes to services provided to students with IEPs must be determined by the IEP team, agreed to by the parent and documented in the IEP
- Resource Specialist Program (RSP) teachers must meet some specifics (EC Section 56362):
 - The RSP caseload cannot exceed 28 students who have IEPs; instructional aides and pupil enrollment requirements remain the same
 - An RSP teacher cannot be **simultaneously assigned** to serve as a resource specialist **and** as a regular class teacher

- Procedural safeguards must be provided as required in state statute and regulations (*EC* sections 56500 through 56509 and Title 5, *California Code of Regulations* [CCR], sections 4600 through 4670). You can find a brief summary of procedural safeguards for students with disabilities receiving special education services on the California Department of Education (CDE) Parents' Rights Web page at <http://www.cde.ca.gov/sp/se/qa/psssummary.asp>
- The local educational agency (LEA), county office of education (COE), and Special Education Local Plan Area (SELPA) must meet all applicable state and federal laws, regulations, and policies (*EC* Section 56205)
- Each SELPA shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services (*EC* sections 56360 through 56361)

Considerations - Changes to Service Delivery

If the district is planning to make instructional changes to service delivery for students with IEPs, the following information should be considered:

Use of Personnel and Funding

1. Special education teachers must have the appropriate credentials to provide instruction to both students with an IEP and those students without IEPs.
2. 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).

The full text of *EC* Section 56058 is available on the CDE Laws & Regulations: A Composite of Laws Database Search Engine Web page at http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=839&keywords=56058.

3. If personnel costs are shared across special education and non-special education funding sources in a pro-rated manner based on instructional time, the pro-rated costs must be in accordance with federal funding requirements.

Funds apportioned to the SELPAs are to assist local educational agencies to provide special education and related services to individuals with exceptional needs and shall be expended exclusively for programs under this part (*EC* Section 56836.04).

Federal funds available through Part B of the IDEA are appropriated through the annual Budget Act and shall only be used for the excess costs of providing special education and related services to individuals with exceptional needs. The federal funds are to supplement state, local, and other federal funds and not to supplant those funds (*EC* Section 56841).

For example, a full time RSP teacher operating within the required caseload limit of 28, might implement 14 IEPs (one-half of the maximum caseload of 28) and provide instruction in reading as 50 percent of the position. Special education funding could be used for the 50 percent of the special education RSP teacher in implementing IEPs and **other** funding sources could fund the position for the remaining percent. The remaining 14 IEPs must also be implemented by qualified staff.

In the above example, special education funds could only be used for the RSP teacher to fund 50 percent of the position that delivers special education and related services. In this case, the special education teacher is assigned half-time to special education and half-time for instruction to students without IEPs. There is no funding supplanting and the LEA is compliant regarding assignments.

Professional Development

4. Professional development, IDEA funds, and the No Child Left Behind (NCLB) Act of 2001 Title II funds can be used to increase the number of special education teachers meeting highly qualified teacher requirements under both laws. SELPAs receive federal funds for personnel development as authorized in the state budget. Title II funds are also federal funds distributed to local public education agencies.

Service Delivery Reporting Requirements

5. All special education services are reported in an annual service plan (ASP) which is submitted to CDE. The ASP provides information about special education services as of December 1 for every school, district, and SELPA in the state (*EC* Section 56205[b][2]).

The full text of *EC* Section 56205 is available on the CDE Laws & Regulations: A Composite of Laws Database Search Engine Web page at http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=684&keywords=56205.

March 27, 2009
Page 4

If these changes in service delivery are made in response to the NCLB Program Improvement (PI) requirements, compliance with reauthorized IDEA must be assured as well. While service delivery might address NCLB PI requirements, those activities and re-design of service delivery cannot be implemented in any way that would place the public education agency into noncompliance with IDEA.

Stakeholder Involvement

6. Districts, COEs, and SELPAs are encouraged to hold discussions with parents, other stakeholders and community members to obtain their comments on proposed service delivery changes. An example of a venue is through the public hearing held by the SELPA regarding the ASP.

If you have any questions regarding this letter, please contact your regional Focused Monitoring Technical Assistance (FMTA) consultant. This information may be found by contacting the Special Education Reception Desk at 916-445-4613, or on the CDE FMTA Contact Information Web page at <http://www.cde.ca.gov/sp/se/qa/fmtacncnt.asp>.

Sincerely,

JACK O'CONNELL

JO:mh