



How is “Educational Need” Determined?

Frequently parents hear schools or ARD/IEP committees talk about “educational need”. There is a two part process in determining if a student is to be provided services through special education. Federal regulations require that eligibility for special education services be based on:

1. The presence of a disability, and
2. The student’s need for special education and related services.

The term “educational need” is not in the law or regulations, but is a common way of referring to the second part of the determination process. An evaluation determines if the student has a disability. The ARD committee looks at a variety of information to decide if the student needs special education and related services.

A school may say that a student with a disability does not need special education. At one time the standard practice was to only look at academic information to make this decision. Often the standard was whether the student was passing and being promoted to the next grade. The current regulations say that if a student has a disability and needs special education services, services must be provided “even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.” Through due process hearings and litigation, it has been well established in the past few years that a student’s behavior can also create a “need” for special education.

New federal and state regulations as well as current philosophy emphasize reducing the number of special education students and meeting the needs of struggling students through a variety of general education procedures and programs. This emphasis has and will continue to increase the number of cases where schools refuse to evaluate students and/or decide that a student does not need special education services. When ARD/IEP

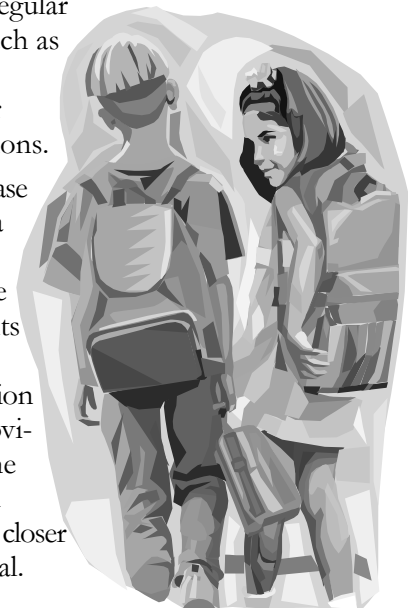
committees consider whether a need for special education services exists, school staff and parents must look at a variety of factors, including:

1. Academic and behavioral performance and functioning, and
2. General education services/programs available and tried.

The law says that the ARD/IEP Committee must “draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior”. This can all be confusing to parents and school staff, and frequently there will be different interpretations of the same data.

Special education is defined as specially designed instruction. Courts have ruled that if a student can receive educational benefit from the services provided in the regular classroom, even if they have a disability, they do not need specially designed instruction and therefore, do not qualify as “a child with a disability” under IDEA. Often schools provide struggling students with support services available to all students in the regular classroom, such as differentiated instruction or accommodations.

In one court case dealing with a student with above average IQ, the parents asked that special education services be provided so that the student could reach or come closer to his potential.



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The student was receiving educational benefit in the regular classroom. The court ruled that the student did not qualify for special education services, because the law does not require that a student achieve optimum performance or reach his potential.

A 2007 5th Circuit Court of Appeals ruling also gives some guidance regarding determining “educational need”. Decisions of the 5th Circuit Court are important to students in Texas, because it is the federal court for Texas. Only decisions of the Supreme Court carry more weight for Texas than 5th Circuit Court decisions. The court case, Alvin ISD v. A.D. dealt with a student who “had been medically diagnosed with ADHD” and had behavioral problems at school. The district agreed that he met the definition of “other health impairment” due to the ADHD. The school also cited all of the other factors that might cause A.D. to be struggling (his baby brother had died, he was abusing alcohol, his relationship with his stepfather was ‘strained’, and his mother was pregnant). The issue was “whether or not A.D. needed special services, and if so, if that ‘need’ derived from his impairment.” The school determined that A.D. did not need specially designed instruction. The parents asked for a due process hearing, and the hearing officer accepted the recommendations of medical experts and ruled against the school district. The school district appealed to federal court.

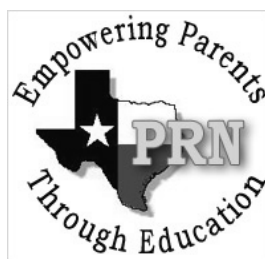
The 5th Circuit Court ruled that the school was right, saying that “the fact that A.D.’s ADHD adversely affects his educational performance does not necessarily mean that he is eligible for special education services under the IDEA.” The court said that while adversely affecting educational performance was part of making a student eligible, there still must be a need for special education services. The court gave consideration to the fact that other factors might be causing any educational need that existed. Texas attorney Jim Walsh notes that this case is important to schools, because it “supports the notion that kids who need special help do not always require ‘special education.’” He also notes that “due to the active involvement of the SST (Student Support Team), the boy continued to progress in the general curriculum”.

If a school refuses to evaluate a student or says that there is not a need for special education, the parent should focus on whether the student is receiving educational benefit in the regular classroom. Consider if there are any indicators (grades, class and standardized tests, teacher comments, etc.) that the student is not receiving benefit

or making progress in some area. Consider if behavior problems could be impacting the educational benefit the student is receiving. If factors outside of the school might be affecting the student, the parent could work with the school or other entities to address these factors. If the school is trying other options or services to help a student improve their educational performance, it is important to monitor these efforts. If performance is not improving, the parent should request that other options be tried or can again request a special education evaluation. It is important not to let too much time go by before making such a request.

At times a school may say that a student who is receiving special education services does not need a certain related service. IDEA regulations define related services as “services required to assist a child with a disability to benefit from special education”. The law states that related services must be provided when needed to enable the student “to be involved in and make progress in the general education curriculum”. Parents should ask the school, “Why do you believe that my child does not need this service to benefit from special education and to be involved in and make progress in the general curriculum?” If the school refuses to provide a requested related service, the parents can ask for a written notice of refusal. This notice must state: 1) what the school is refusing to do, 2) what the school decided to do instead, 3) the data on which that decision was based, and 4) and the other options which were considered.

PRN wishes to thank Walsh, Anderson, Brown, Schulze & Aldridge, PC for permission to use quotes from the newsletter, *This Just In* (#211, October, 2007) and to disseminate it. A copy of the newsletter can be requested from PRN.



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