

NC CASE Presentation-Q & A
NC DPI/EC DIVISION
October 4, 2016

1. **A student with a disability has been served in pre-K. The parents have decided not to send him to kindergarten.**
 - a. **What are the responsibilities of the LEA if the parents want services?**
 - b. **What are the responsibilities of the LEA if the parents choose not to put him in a homeschool?**

If an LEA has proposed an IEP and placement for the child in kindergarten, the LEA has met its obligation to make FAPE available by offering the program and services that it believes constitute FAPE for the child. If the parent rejects that offer of FAPE, and does not enroll the child in kindergarten, the LEA would not be required to continue to provide services at a child care program or in the home.

2. **During a fiscal audit, an LEA is found to have some noncompliance issues. After given some time to correct the problems there are still inconsistencies and the LEA has not made corrections. At what point does the LEA risk losing EC dollars?**

At this time the EC Division does not take EC Funds from the LEA.

However, we are required to develop a risk-assessment to determine what steps will be taken when an LEA does not correct non-compliance.

The EC Division and the Finance and Business Section are working on this with possible sanctions including: funding in installments or reimbursing the LEA for funds spent, but that has yet to be determined. Contact Tracy Riddle for additional details.

3. **Can a Guardian at Litem request an IEP meeting?**

*Yes. However, a **guardian ad litem** may only serve as parent if he or she has been appointed by the court or meets the criteria and has been appointed as educational surrogate by the LEA.*

4. **If it is time for a meeting and the parent is incarcerated, can the IEP meeting take place?**

*Yes, the IEP Team meeting can take place provided the LEA has made extensive efforts to involve the parent and offered alternate means of participation. **NC 1503-4.3 Parent Participation***

- a. Who would sign as the parent?

If the parental rights have not been terminated, the parent retains his or her right to sign as parent. Remember, signatures on the IEP/DEC 5 indicate the attendance and participation during the IEP Team meeting. Parent consent/signature is needed for the initial or reevaluation process to conduct evaluations or to provide services to the student for the first time.

- b. Can family members of the parent sign?

It depends. If the family member meets the definition of parent cited below in NC 1500-2.24, then, yes.

NC 1500-2.24 Parent

(a) Parent means--

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent (e.g. therapeutic foster parent); (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

c. To what extent does the LEA have to go to involve the parent

LEAs should follow the Policies regarding parent participation [NC 1503-4.3] paying particular attention to conducting an IEP meeting without a parent in attendance.

5. What is the role of DSS in developing IEPs?

A DSS worker may provide information specific to the student's unique needs and may participate in an IEP Team meeting. However, they cannot act as parent or provide parental consent for evaluations or initial placement. As always, if the IEP Team is in disagreement, the LEA retains the right to make the final decision and provide appropriate prior written notice.

6. There is an increasing number of requests for accommodations for EC students to participate in school sponsored activities, that fall outside regular IEP services. Who should pay for these services?

Each LEA must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

If a district offers supplementary aids and services designed to afford a student equal opportunity to participate, those aids and services must be included in the student's IEP.

Provision of equal opportunity does not mean that a student is entitled to a particular accommodation.

7. Under what circumstances would you not need signatures on a DEC 4?

A signature on the IEP (DEC 4) in North Carolina documents the persons that participated in the development of the IEP during the IEP Team meeting. A signature on the IEP (DEC 4) does not indicate agreement or disagreement.

8. Must you have protocols supporting the DEC 3 information or are the summary results enough documentation?

For example: There are speech assessment scores on the DEC 3. Must there be protocols to corroborate those scores attached to the report?

Testing protocols generally note the raw data collected during an evaluation.

It is the interpretation of the scores and instructional implications that are necessary when determining eligibility. The eligibility form requires a summary of evaluation or evaluation worksheet. It does not require the testing protocols to be attached to the report.

9. Under ADA and Section 504, which of these could be considered for modifications/accommodations:

-LBGT issues, drug addiction, kleptomania, pregnancy, cosmetic disfigurement, CAPD, anatomical loss of limb, kidney disease, chronic ulcers high blood pressure?

It depends. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

10. Has DPI been given any directives on how the Workforce Innovation Opportunity Act (WIOA) will impact LEAs and contracting with Vocational Rehabilitation Facilities?

*The **Vocational Rehabilitation Act Section 511 (b)(2)** specifically states that neither the LEA or the SEA may enter into contract with an entity for an individual who is age 24 or younger under which work is compensated at a sub-minimum wage.*

see page 153:

<http://legcounsel.house.gov/Comps/Rehabilitation%20Act%20of%201973.pdf>

Workforce Innovation and Opportunity Act (WIOA)

In North Carolina, the Division of Vocational Rehabilitation Services (DVR) will be working with LEAs to provide Pre Employment Transition Services (PETS), which is a WIOA provision. Information was shared with DVR and EC school personnel at the DVR Conference in February. Additional information will be provided at the Secondary Transition Institute and a breakout session at the upcoming EC Conference. DVR will collaborate with the ECD to provide three regional trainings to support the provision of PETS for LEAs. Please contact Beverly Colwell or Dreama McCoy for further information.

11. If you remove transportation from an IEP, do you have complete a reevaluation with a DEC7 or can it be done as part of an annual review without the DEC 7?

Currently, on the EC Division website the directions for our Reevaluation Determination form indicate the following:

Related services are not disability categories and do not have specified eligibility criteria. The need for related services must be based on data and determined by the IEP team. (Why is this service needed or not needed for this student to benefit from special education?)

For a student who is already identified as a student with a disability, adding or discontinuing a related service will be done through the reevaluation process, which may or may not include formal assessment(s). The reevaluation process resets the date for the required reevaluation.

There is great concern over the blanket statement that a reevaluation must be done to add or discontinue a related service. There is no argument that the decision must be data driven, however, the team needs to review whether or not a reevaluation needs to be conducted if no formal data is needed to make the decision - particularly in the event that it resets the date for the required reevaluation to determine if the child continues to be eligible for special education and related services. The upcoming statewide training on IEP Process/Forms will provide additional clarification. Until that time, the directions referenced on the EC Division website and listed above, are current and applicable.

12. Money/time spent on child find and evaluations cannot be counted towards the proportionate share. Can you count the time spent on Private School Service Plan meetings other than the initial meeting toward the proportionate share?

Yes, although proportionate share funds can't be used for child find activities, those funds can be used to provide direct services to the parentally placed private school student, for transportation for the parent to bring the child for those services, or for the therapist to get to the private school to provide services, for time spent developing the PSSP and for time spent at the PSSP meeting. Contact Tracy Riddle for more information.