



TO: Lana Michelson, Chief
Bureau of Children, Family & Community Services
FR: Thomas A. Mayes, Legal Consultant
Bureau of Children, Family & Community Services
DA: August 28, 2006
RE: Students with Disabilities & Alternative Education

A recent site visit by the Department raised concerns about access to alternative education (including but not limited to education for students at risk of school failure, students who have dropped out or are at risk of dropping out, etc.) by students with disabilities. This document addresses this concern.

Question 1: Is it legal for alternative schools, programs, or services to categorically exclude children who are eligible for special education under the Individuals with Disabilities Education Act (IDEA, 20 U.S.C. §§ 1401 *et seq.*) or reasonable accommodations under Section 504 of the Rehabilitation Act (29 U.S.C. § 794)?

Answer 1: No. A school district, a consortium of districts, or a community college or other entity that provides alternative education in cooperation with or on behalf of a school district or a consortium of districts may not have a policy or practice, either written or unwritten, of excluding children with disabilities from alternative schools, programs, or services.

Question 2: Why would such a policy be unlawful?

Answer 2: Excluding children with disabilities from such programs would certainly violate the IDEA, as well as Section 504 and the Iowa Civil Rights Act (Iowa Code ch. 216). Depending on the nature of the educational entity and the nature of the exclusion, additional sources of liability could include the Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 *et seq.*) and provisions of the United States and Iowa Constitutions.

Question 3: When are students with disabilities entitled to alternative schools, programs, or services?

Answer 3: A student who is eligible for special education under the IDEA is entitled to participate in alternative schools, programs, or services if such participation is necessary for the student to receive a “free appropriate public education” (FAPE). An eligible child’s IEP team determines what is FAPE for that child, and placement decisions for that child must be based on that determination. Additionally, students who are otherwise qualified to participate in alternative schools, programs, or services (i.e., school-age

students who need alternative education) may not be excluded from such participation solely on the basis of a disability. To do so would violate state and federal civil rights laws.

Question 4: What specific policies or practices are unlawful?

Answer 4: The following policies or practices would be legally impermissible: (1) not permitting students who participate in special education to participate in alternative education schools, programs, or services; (2) requiring students participating in special education to “sign out” of or be exited from special education before participating in alternative education; (3) not permitting students who participate in alternative education to participate in special education; (4) requiring students participating in alternative education to “sign out” of or be exited from alternative education before participating in special education; and (5) any other similar practice or policy.

Question 5: Don’t Iowa’s education finance laws require the separation of special education and alternative education?

Answer 5: No. This is a common misunderstanding. Although students who participate in special education are not eligible for supplementary weighting for alternative schools and at-risk programs (*see* Iowa Code §§ 256B.9, 257.11(7)), this particular funding mechanism does not provide a legally sufficient justification to categorically exclude children with disabilities from these programs. These Code sections deal with funding, not access.

Furthermore, these state statutes must yield to contrary federal law. If a child with a disability needs access to alternative education to receive FAPE, then the IDEA requires such access. Notably, the IDEA provides Iowa may not have any funding mechanism resulting in placement decisions being made based on funding streams or sources, rather than “the unique needs of the child as described in the child’s IEP.” 20 U.S.C. § 1412(a)(5)(B).

Question 6: Are students with disabilities who participate in alternative education entitled to special education and/or educational supports while in alternative education?

Answer 6: Yes. Students with disabilities who participate in alternative education are entitled to such specially designed instruction and related services that are necessary to provide FAPE (under the IDEA) or to provide equitable access (under Section 504). Those supports are to be identified by a student’s IEP team or “504 team,” and are to be provided according to the IEP or 504 Plan. The student’s team should make itself aware of the nature of the alternative education at issue and any supports necessary for the student. If an educator believes insufficient support is being provided or implemented to allow the student to receive FAPE in or equitable access to alternative education, that educator should call this matter to the attention of the student’s IEP team or “504 team.”