

The Minnesota Department of Education Divisions of Compliance and Monitoring and Special Education Policy has developed this document to address questions raised by parents and school districts regarding the determination of the educational needs of a student that has been identified as having ASD. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal question.

Question 1: Is eligibility under state criteria for ASD based only upon academic needs or is it possible for a student who is performing well academically but has functional performance needs in social, behavioral and/or communication areas to meet criteria and be found eligible and in need of special education and related services?

Answer: Special education and related services are not limited to academic needs as the evaluation and IEP teams are required to also consider a child's developmental and functional needs. Autism Spectrum Disorder, by its very definition, is an impairment to areas of a child's development such as social interaction, communication and patterns of behavior. The educational needs of a child who meets eligibility criteria for ASD would arise from the impairment in at least two of the listed areas of development and might not result in poor academic performance. Evaluation procedures must be administered so as: "to yield accurate information on what the child knows and can do academically, developmentally, and functionally." 34 C.F.R. 300.304(c)(1)(ii). When developing an IEP, the IEP team must consider "the academic, developmental, and functional needs of the child." 34 C.F.R. §300.324(a)(1)(iv).

Authority: Minn. R. 3525.1325; 34 C.F.R. § 300.8(c)(1)(i); 34 C.F.R. §300.304(c)(1)(ii), and 34 C.F.R. §300.324(a)(1)(iv).

Question 2: Must an evaluation team identify all disabilities that impact a student's educational performance?

Answer: As IDEA requires that all of a child's special education and related service needs be identified even if not commonly associated with a specific disability, an evaluation team may need to consider more than one disability category when evaluating a student. As the team reviews the comprehensive evaluation data, it is possible the student may meet eligibility criteria for more than one disability category. Meeting eligibility criteria under ASD does not preclude meeting eligibility criteria under additional disability categories. Each public agency must ensure that-- "The evaluation is sufficiently comprehensive to

identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.”

Authority: 34 C.F.R. § 300.304(c)(6).

Question 3: **If a child has been found eligible for, and in need of, special education and related services by meeting ASD criteria, and district staff then suggest that the parent may also want to discuss health related issues that may be of concern and possible resources with their physician, will it be the responsibility of the district to pay for a possible medical evaluation?**

Answer: In the case where a district recommends additional testing to address educational concerns that may be medically based, the additional testing must be considered as part of the comprehensive evaluation conducted by the district and conducted at district expense. Also, if the medical information is necessary in order to identify all of the child's special education and related services needs it must be included as part of the district's comprehensive evaluation and conducted at district expense.

However, a district may provide information to parents about additional resources, which could include additional medical testing, that are not related to educational concerns and are not needed to identify all of a child's special education and related service needs. It should be made clear to the parent that these resources are optional and not related to the child's special education needs. It is not the district's responsibility to pay for any expense incurred if a parent chooses to utilize these resources.

Authority: 34 C.F.R. §300.304(c)(4); 34 C.F.R. § 300.304(c)(6).

Question 4: **Can a student who meets state eligibility criteria for ASD also meet state eligibility criteria for additional disabilities such as Emotional or Behavioral Disorders (EBD), Developmental Cognitive Disability (DCD), Specific Learning Disabilities (SLD) or other disability categories? Doesn't the rule out or exclusionary requirement in the EBD as well as DCD criteria eliminate the possibility of co-existing disabilities such as ASD?**

Answer: There are occasions when a student may meet eligibility criteria for ASD and other disability categories that each impact their educational performance and learning.

The eligibility requirements for EBD, ASD, SLD, and DCD do not rule out the possibility that a child who is found eligible for and in need of special education by meeting eligibility criteria for ASD could also meet eligibility requirements for EBD, SLD, or DCD. Therefore, as part of a comprehensive evaluation, an evaluation team may have to consider a child's eligibility under these categories simultaneously. However, when making the eligibility determination, it must be shown that eligibility under EBD or DCD is not primarily due to the student's autism spectrum disorder.

Authority: Minn. R. 3525.1333, 3525.1329; 34 C.F.R. §300.8(c)(1)(ii); See also 34 C.F.R. § 300.306.

Question 5: Does eligibility under a specific category determine the educational services to be provided?

Answer: When making the eligibility determination, the team must ensure that information obtained from all sources is carefully considered and documented in the evaluation report. In developing the IEP, a team is required to consider all of the needs identified through the evaluation process in determining the student's special education and related services. Accordingly, the student's educational services must be based on individually identified needs rather than a disability category. When developing the IEP, the team must consider the results of the evaluation and the academic, developmental, and functional needs of the child.

Authority: 34 C.F.R. §§ 300.304(b) and (c)(6), 34 C.F.R. § 300.305; and 34 C.F.R. §300.306; 34 C.F.R. §. 300.324.

Question 6: Is the Severely Multiply Impaired (SMI) disability category an appropriate option as the "primary" disability category for individuals who meet eligibility criteria for ASD and another disability?

Answer: If a student meets eligibility criteria for any two or more of the six disabilities included in the SMI criteria, then that student is eligible for special education services under SMI category and both the evaluation report and the IEP should document the student has met eligibility criteria under the "Severely Multiply Impaired" category. Those six disability categories are deaf or hard of hearing, physically impaired, developmental cognitive disability: severe-profound range, visually impaired, EBD, or ASD. Comprehensive evaluation data and professional judgment is used to reach a team decision regarding primary disability.

Authority: Minn. R. 3525.1339.

Question 7: Can a Speech/Language Pathologist (S/LP), Occupational Therapist (OT) or other professional licensed to provide related services including consultation, work as an ASD teacher or special education teacher in another disability area or apply to be licensed as a teacher in a special education license area?

Answer: While an S/LP, OT, or other providers of related services often complete continuing education programs emphasizing specific disabilities, such as ASD, and are licensed by their respective professional organizations to provide important direct and consultation services, if they are not licensed as a special education teacher or otherwise meet the highly qualified special education teacher requirement, they cannot provide direct special education instruction. This would include meeting the standards of effective practice for

general education teachers and core skills for special education teachers as set by the Minnesota Board of Teaching.

Authority: Minn. R. 8710.2000; Minn. R. 8710.5000; Minn. Stat. § 122A.16; 34 C.F.R. §300.18.

Question 8: **How will the adoption of the new DSM-5 diagnostic criteria for autism affect a district's special evaluation process to determine eligibility under the state ASD criteria?**

Answer: Minnesota's rule sets forth the core features to consider when evaluating a student for possible ASD eligibility. The evaluation would identify the student's demonstrated behavioral indicators to determine if they are atypical for a student's developmental level. While the evaluation would include a review of medical reports provided by the parent, which may include Diagnostic and Statistical Manual (DSM) criteria, the presence or absence of eligibility under DSM criteria is not a determining factor in determining educational eligibility under the ASD rule. To be eligible for special education services based upon the ASD criteria, the student would need to meet the criteria in the ASD rule, which includes a determination that the ASD adversely affects the student's performance. The proposed changes to the DSM criteria are to take place in May of 2013. Please note that a change in the DSM criteria may impact eligibility in other service areas, such as county services or possibly medical coverage which relies upon the DSM diagnostic criteria. If you have concerns, you should contact the service provider to obtain further clarification.

Authority: Minn. R. 3525.1325; American Psychiatric Association DSM5 Development: <http://www.dsm5.org>.