



COLORADO DEPARTMENT OF EDUCATION

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Guidance Memorandum

Date: October 31, 2011

To: Superintendents
Special Education Directors
BOCES Executive Directors
State Operated Programs
Approved Facility Schools

From: Ed Steinberg
Assistant Commissioner,
Exceptional Student Services Unit

Re: Guidance and Timelines Relating To The New Disability Categories
Established by House Bill 11-1277

I. Purpose and Background

On June 9, 2011, Governor Hickenlooper signed into law House Bill 11-1277, which included numerous changes to Colorado's laws involving K-12 education, including amendments to the Exceptional Children's Educational Act (ECEA). The ECEA changes included aligning Colorado's disability categories for students with disabilities with the federal Individuals with Disabilities Education Act ("IDEA") and the regulations implementing the Act.¹

Specifically, "children with disabilities" is now defined as individuals from three to twenty-one years of age who are unable to receive reasonable benefit from general education by reason of one or more of the following conditions:

- (A) Autism spectrum disorders;
- (B) A hearing impairment, including deafness;
- (C) A serious emotional disability;
- (D) An intellectual disability;
- (E) Multiple disabilities;
- (F) An orthopedic impairment;
- (G) Other health impairment;

¹ 20 U.S.C. § 1401 *et seq.* and 34 C.F.R. Part 300.

- (H) A specific learning disability;
- (I) A speech or language impairment;
- (J) Traumatic brain injury;
- (K) A visual impairment, including blindness;
- (L) Deaf-blindness; and
- (M) A preschooler with a disability.²

These changes will be implemented in new rules under the ECEA that will be adopted by the State Board of Education. The new disability categories will replace those currently in the ECEA rules and being used by administrative units (“AUs”) and state-operated programs throughout Colorado. Staff from the Exceptional Student Services Unit (ESSU) is taking the lead in collecting stakeholder input and for recommending revised disability criteria for adoption by the State Board of Education.

The purpose of this memorandum is to provide guidance and information, including relevant timelines, to be used by AUs and state-operated programs in transitioning to the new disability categories.³ Through the training and technical assistance provided by CDE over the coming years, including the new State online IEP program, CDE will be encouraging AUs and state-operated programs to implement the new disability categories and related eligibility criteria as soon as possible after the State Board issues the implementing rules.⁴

II. Timelines

Table 1 contains the timelines and/or deadlines relevant to the transition from the old eligibility categories to the new categories set out in HB 11-1277. The timelines are driven by the deadlines mandated by HB 11-1277 and the timelines and requirements governing the rulemaking process, including convening stakeholders, drafting proposed rules, the mandatory public comment period, and budgeting and planning the necessary training.

Importantly, AUs may begin using the new eligibility category **names** immediately. For example, if an AU chose to begin using the term “Intellectual Disability” in place of “Significant Limited Intellectual Capacity,” it could do so as soon as it was able to change its forms. AUs may not, however, use new

² C.R.S. § 22-20-119, see HB 11-1277, p. 39.

³ “On or before November 1, 2011, the Department shall develop guidelines and timelines to be used by administrative units and state-operated programs for developing local systems and infrastructure that incorporate the disability categories set forth in Section 22-20-103(5)(a).” *Id.*

⁴ “The timelines shall encourage administrative units and state-operated programs to implement the disability categories and related eligibility criteria established in Section 22-20-103(5)(a) as soon as possible after the State Board issues implementing rules, to be adopted on or before December 1, 2012.” *Id.*

criteria attached to those new disability categories until the new rules are adopted by the State Board of Education in 2012.

SEE TABLE 1 of the Appendix.

III. The “new” disability categories

For most of the eligibility categories, in addition to the change in the name of the category, there will be substantive changes to reflect new or updated developments or practices in the field, scientific research, and/or improvements in relevant technology. For a few categories, only the name of the disability category will likely change, except for some technical modifications to align the category with new language or to phase out expired provisions (*e.g.*, SLD). All categories will use the term “general education” rather than “regular education.”

There will also be two other major changes:

1. The elimination of the “Physical Disability” (“PD”) category; that category will be broken out into Autism Spectrum Disorder (“ASD”), Orthopedic Impairment (“OI”), Other Health Impairment (“OHI”)⁵ and Traumatic Brain Injury (“TBI”). Currently, children with those disabling conditions are usually identified under the Physical Disability label; and
2. Breaking out Deaf-Blindness (“DB”) as its own disability category; Colorado currently includes Deaf-Blindness in the Multiple Disability category.⁶

CDE currently maintains eligibility checklists for ASD and TBI; we anticipate that the ASD and TBI eligibility category definitions developed via the rulemaking process will draw from and closely resemble the characteristics identified in those checklists. New definitions will be developed for OI, OHI and DB via the rulemaking process, and CDE will create eligibility checklists corresponding with those disability categories by the time the new eligibility rules go into effect. CDE will also provide training on all of the new categories and on the changes to existing categories and criteria.

SEE TABLE 2 of the Appendix.

IV. December Count changes

The new eligibility rules and changes will not be in effect for the 2011 December Count. Starting in December 2012, the new eligibility rules and codes will be available for data reporting purposes, though the Physical

⁵ The new OHI category will include students who are eligible on the basis of a condition such as Attention Deficit Hyperactivity Disorder or Attention Deficit Disorder.

⁶ ECEA Rule 2.08(8).

Disability reporting code will still be available. The PD code will be available through the 2015 December 1 count.

The new state online IEP system, Enrich, will include the PD category as well as the new categories (OI, OHI, TBI, ASD and DB) in December 2012, when the new rules are enacted. To encourage AUs to switch over to the new categories, starting in March 2013 the PD eligibility category will only be available to those AUs that specifically opt in to continue to use it; otherwise, the new categories will be the "default" categories in Enrich for purposes of identifying the disability category of a student with a disability. PD will disappear entirely from Enrich on July 1, 2016.

V. Tier A and Tier B funding

HB 11-1277 modified the State's tiered funding formula for special education to reflect the new eligibility categories. Under that formula, AUs receive funding as follows:

- Tier A disability categories: \$1250 per identified student with a disability, and
- Tier B disability categories: up to a \$6000 supplement

The Tier A/Tier B breakdown is now as follows:

OLD CATEGORIES		NEW CATEGORIES	
TIER A	<ul style="list-style-type: none"> • Specific Learning Disability • Speech or Language Impairment • Physical Disability (except Autism or TBI) • Preschool Child with a Disability 		<ul style="list-style-type: none"> • Specific Learning Disability • Speech or Language Impairment • OHI • OI • Preschooler with a Disability
TIER B	<ul style="list-style-type: none"> • Vision Disability • Hearing Disability • Multiple Disabilities (including Deaf-Blindness) • Significant Identifiable Emotional Disability • Autism • Traumatic Brain Injury • Significant Limited Intellectual Capacity 		<ul style="list-style-type: none"> • Vision Impairment, Including Blindness • Hearing Impairment, Including Deafness • Multiple Disabilities • Deaf-Blindness • Serious Emotional Disability • Autism Spectrum Disorders • Traumatic Brain Injury • Intellectual Disability

APPENDIX (TABLES 1 AND 2)

TABLE 1: Timelines for developing and implementing new disability categories

ACTIVITY	TIMELINE/DEADLINE
<p>ESSU will convene stakeholders to review existing disability criteria for necessary changes; develop recommendations for new categories; and develop language for new criteria in the ECEA rules. (CDE Contact: Tanni Anthony, Supervisor, ESSU)</p>	<ul style="list-style-type: none"> - First stakeholder meeting was held on October 7, 2011 - Second stakeholder meeting scheduled for January 27, 2012
<p>ESSU will complete a draft of all proposed rules for the special education components of HB 11-1277 (CDE Contact: Wendy Armstrong, Policy Analyst and Developer, ESSU)</p>	<p>February 15, 2012</p>
<p>60-day public participation process required by IDEA, including regional hearings (CDE Contact: Wendy Armstrong, Policy Analyst and Developer, ESSU)</p>	<p>April 30, 2012 (public participation period will run through March and April 2012)</p>
<p>ESSU will review IDEA public participation comments and revise proposed rules as necessary (CDE Contact: Wendy Armstrong, Policy Analyst and Developer, ESSU)</p>	<p>May 15, 2012</p>
<p>ESSU will initiate the rulemaking process before the State Board of Education (SBE)</p>	<p>May 18, 2012</p>
<p>SBE will conduct rulemaking hearing(s) and will adopt permanent rules</p>	<p>December 1, 2012</p>
<p>December Count will include codes for OHI, OI, TBI, ASD and Deaf-Blindness for AUs to use at their discretion (old codes will still be available)</p>	<p>December 1, 2012</p>

TABLE 1: Timelines for developing and implementing new disability categories (cont.)

ACTIVITY	TIMELINE/DEADLINE
State IEP forms and online system will include new eligibility categories, but PD will remain available for those AUs that still use it.	December 2012.
ESSU rolls out training for special education directors and service providers in new eligibility rules	December 2012
Physical Disability eliminated as an automatic choice for eligibility within Enrich (state online IEP program), unless specifically requested	March 1, 2013
Last December 1 Count that includes Physical Disability as a reporting code	December 1, 2015
Physical Disability disappears from December 1 Count	December 2, 2015
Physical Disability disappears from Enrich	July 1, 2016
All new disability labels and eligibility criteria mandated for use	July 1, 2016

Table 2: Transition from current disability categories to new HB 11-1277 categories

OLD CATEGORY	RELEVANT LANGUAGE AND/OR RULE	NEW CATEGORY	ANTICIPATED CHANGES
Physical Disability (Autism)	"Conditions such as ... autism ... may qualify as a physical disability, if they prevent a child from receiving reasonable educational benefit from regular education." ECEA Rule 2.08(1)(a).	Autism Spectrum Disorder, aligned with federal autism category under 34 C.F.R. § 300.8(c)(1).	<ul style="list-style-type: none"> - Adopt new eligibility criteria that capture the federal autism regulatory definition through the rulemaking process, including obtaining stakeholder input, public comment and participation; - Modify state forms and online IEP system to reflect change.
Hearing Disability	ECEA Rule 2.08(3)	Hearing Impairment including Deafness – 34 C.F.R. § 300.8(3).	<ul style="list-style-type: none"> - Change category name and update eligibility criteria to reflect advances in technology and new practices in the field; refine language of existing criteria to add specificity and clarity; eliminate "significant discrepancy between verbal and nonverbal performance on standardized intelligence test" as criteria. - Modify state forms and online IEP system to reflect changes.

Table 2: Transition from current disability categories to new HB 11-1277 categories (cont.)

OLD CATEGORY	RELEVANT LANGUAGE AND/OR RULE	NEW CATEGORY	ANTICIPATED CHANGES
Significant Identifiable Emotional Disability	ECEA Rule 2.08(5)	Serious Emotional Disability – 34 C.F.R. § 300.8(4).	<ul style="list-style-type: none"> - Change category name; incorporate federal definition and refine existing criteria to reflect practices in the field and scientific research. - Modify state forms and online IEP system to reflect change.
Significant Limited Intellectual Capacity	ECEA Rule 2.08(4)	Intellectual Disability – 34 C.F.R. § 300.8(6).	<ul style="list-style-type: none"> - Change category name; clarify that required deficiency on standardized testing is “2.0 standard deviations or more,” rather than simply “more than 2.0”; emphasis on the need for comprehensive evaluation based upon multiple sources, including interviews with parents; require that deficits in adaptive behavior be observed and documented. - Modify state forms and online IEP system to reflect change.
Multiple Disabilities	“A child with multiple disabilities shall have two or more areas of significant impairment, one of which shall be a cognitive impairment except in the case of deaf-blindness....” ECEA Rule 2.08(8)	Multiple Disabilities, not including deaf-blindness, aligned with the federal Multiple Disabilities category under 34 C.F.R. § 300.8(7).	<ul style="list-style-type: none"> - Modify eligibility criteria to exclude deaf-blindness; further stakeholder discussion will address possible change to eliminate cognitive impairment as a required disability.

Table 2: Transition from current disability categories to new HB 11-1277 categories (cont.)

OLD CATEGORY	RELEVANT LANGUAGE AND/OR RULE	NEW CATEGORY	ANTICIPATED CHANGES
Physical Disability (Orthopedic)	"Conditions such as ... cerebral palsy ... may qualify as a physical disability.... [A physical disability may also be based upon a disabling condition that] interferes with ambulation, ... hand movements, coordination ... and other activities of daily living." ECEA Rule 2.08(1)(a), (b)(ii).	Orthopedic Impairment, aligned with federal OI category under 34 C.F.R. § 300.8(8).	<ul style="list-style-type: none"> - Adopt new eligibility criteria that capture the federal OI regulatory definition through the rulemaking process, including obtaining stakeholder input, public comment and participation; - Modify state forms and online IEP system to reflect change.
Physical Disability (Limited strength, vitality or alertness due to chronic health problems)	"A sustained illness means a prolonged, abnormal physical condition requiring continued monitoring characterized by limited strength, vitality, or alertness due to chronic or acute health problems... " ECEA Rule 2.08(1)(a), (b)(ii).	Other Health Impairment, aligned with federal OHI category under 34 C.F.R. § 300.8(9).	<ul style="list-style-type: none"> - Adopt new eligibility criteria that capture the federal OHI regulatory definition through the rulemaking process, including obtaining stakeholder input, public comment and participation; - Modify state forms and online IEP system to reflect change.
Specific Learning Disability	ECEA Rule 2.08(6)	Specific Learning Disability – 34 C.F.R. § 300.8(10).	<ul style="list-style-type: none"> - Only technical changes anticipated. - Modify state forms and online IEP system to reflect change.
Speech or Language Impairment	ECEA Rule 2.08(7)	Speech or Language Impairment – 34 C.F.R. § 300.8(11).	<ul style="list-style-type: none"> - Only technical changes anticipated. - Modify state forms and online IEP system to reflect change.

Table 2: Transition from current disability categories to new HB 11-1277 categories (cont.)

OLD CATEGORY	RELEVANT LANGUAGE AND/OR RULE	NEW CATEGORY	ANTICIPATED CHANGES
Physical Disability (TBI)	"Conditions such as ... traumatic brain injury ... may qualify as a physical disability...." ECEA Rule 2.08(1)(a).	Traumatic Brain Injury, aligned with federal TBI category under 34 C.F.R. § 300.8(12).	<ul style="list-style-type: none"> - Adopt new eligibility criteria that capture the federal TBI regulatory definition through the rulemaking process, including obtaining stakeholder input, public comment and participation; - Modify state forms and online IEP system to reflect change.
Vision Disability	ECEA Rule 2.08(2).	Visual Impairment including Blindness— 34 C.F.R. 300.8(13).	<ul style="list-style-type: none"> - Change category name and reformat rule consistent with formatting of other rules; no major substantive changes in criteria anticipated. - Modify state forms and online IEP system to reflect change.
Multiple Disability (Deaf-Blindness)	Definition includes deaf-blindness ("A child with multiple disabilities shall have two or more areas of significant impairment, one of which shall be cognitive impairment except in the case of deaf-blindness.") ECEA Rule 2.08(8).	Deaf-Blindness, aligned with federal Deaf-Blindness category under 34 C.F.R. § 300.8(2).	<ul style="list-style-type: none"> - Adopt new eligibility criteria that capture the federal deaf-blindness regulatory definition through the rulemaking process, including obtaining stakeholder input, public comment and participation; - Modify state forms and online IEP system to reflect change.

Table 2: Transition from current disability categories to new HB 11-1277 categories (cont.)

OLD CATEGORY	RELEVANT LANGUAGE AND/OR RULE	NEW CATEGORY	ANTICIPATED CHANGES
Preschool Child with a Disability	ECEA Rule 2.08(9)	Preschooler with a Disability	<ul style="list-style-type: none"> - Change category name and reformat rule consistent with formatting of other rules; emphasis on obtaining comprehensive evaluation including multiple sources of data and ruling out other disability categories before determining a child is eligible under this category; no major substantive changes in criteria anticipated. - Modify state forms and online IEP system to reflect change.