

**EVERYTHING YOU'VE ALWAYS WANTED TO ASK ABOUT THE IEP
AND THE SPECIAL EDUCATION PROCESS AND EARLY DISPUTE
RESOLUTIONS: QUESTIONS AND ANSWERS**

**TRANSCRIPTION OF THE ONLINE WEBINAR HOSTED ON
MAY 21, 2009 BY THE UTAH PARENT CENTER**

**Presented by: Glenna Gallo, Utah State Office of Education;
and Adina Zahradnikova, Disability Law Center**

REBECCA: I'd like to welcome everyone here today. My name is Rebecca from the Utah Parent Center and we have special guests here. We are going to be doing our second webinar, called "Everything You've Always Wanted to Ask about the IEP and the Special Education Process and Early Dispute Resolutions," and our two guests are happy to answer questions and give answers. I want to introduce our guests. Our first guest is Glenna Gallo, and she's been with the Utah State Office of Education since March of 2005 as a monitoring specialist, then as a state and federal compliance officer, and previously she worked in the Jordan School District for the past 8 years as a cluster leader, self-contained education teacher and a resource teacher, all at the middle school level. Glenna has earned a Master's degree in special education, as well as an Administrative endorsement from Utah State University. Glenna feels very strongly in compliance with the IDEA requirements, results in increased student outcomes for students with disabilities. Then our other guest here today, we're happy to have Adina Zahradnikova, and she works for the Disability Law Center and is a special education advocate, and she is the issue team leader for the special education team at the Disability Law Center. She coordinates the protection in advocacy for traumatic brain injury program at the Disability Law Center. She's originally from Romania and she moved to the United States in 2000 and joined the Disability Law Center team in 2001. She has served as the Program Director for the Peace Corps Environmental Program in Romania and worked as a legal intern for the Utah State Attorney General's Office, providing legal counseling in federal and state environmental law. Ms. Zahradnikova holds a Master's Degree in Environmental Law from the University of Utah and a Juris Doctorate from Al Cruz University in Romania. Thank you for being here as our guests today. Now I'm going to go ahead and turn the time over to them for their presentations. Please note that you can type in questions at the lower left hand corner of your screen.

ADINA: Good afternoon everyone. My name is Adina Zahradnikova and I'm happy to be here today. I would like to first of all take the opportunity to thank the Utah Parent Center for hosting this webinar. I'd like to start by sharing a little bit of information about our Center. The Disability Law Center is a private non-profit organization designated by the Governor to protect the rights of people with disabilities in Utah. We are part of a national protection and advocate system. Our services are provided statewide and free of charge. As indicated, I work with the special education team at the Disability Law Center. Normally, by the time parents or family members of students with disabilities call our Center, they are pretty upset. The DLC provides legally-based advocacy services. The problem that is being brought to our attention does not have legal support. We normally cannot provide advocacy services beyond the aspects of the legal compliance with state and federal law. I just wanted to make that a clarification. (Can we move on to the next slide?)

Okay, the IEP Team Membership: As we probably know, the IEP team must include at minimum, the parents of the student, at least one general education teacher, at least one special education teacher of the student, an LEA representative, and if the team's reviewing reevaluation results, there has to be someone who is in a position to interpret instructional implications of the evaluation results. Other IEP members may include, at the discretion of the parent, or of the local educational agency, other individuals with knowledge or special expertise regarding the student, including related service providers and the student. Decisions regarding the IEP team members, beyond the required team members, should be made on a case-by-case basis.

LEAs must take steps to ensure that parents are present at the IEP meetings and they have a meaningful opportunity to participate. Those steps include an opportunity to examine all educational aspects of the student, an early notification of the IEP meetings. Here I'd like to clarify one important aspect. People frequently confuse notification of IEP meetings with written prior notice. The notification does not have to be in writing. It can be in writing, but it must indicate the purpose, the time, the location of the meeting, who will be in attendance, and inform the parents of their rights to bring other individuals who have knowledge or special expertise about the student.

Parents can participate – they can bring questions/concerns to an IEP meeting, either verbally or in a written form. Draft IEPs, if provided, if

it is a true draft, it can be changed. The team can discuss a draft of an IEP. The parents can provide information on strengths and educational concerns regarding their students. They can discuss the needs for special education and related services, supplementary aids and services, and decide, with the team, how their student will be involved in and progress in the general curriculum, participate in assessments, and the services that the LEA will provide to the student and in what setting.

If neither parent can participate in an IEP meeting, in which a decision is to be made relating to the educational placement of their student, the LEA must use other methods to ensure parental participation. Alternative means of participation can be conference calls, video conferencing, and so on.

GLENNA: Hello, this is Glenna Gallo from the Utah State Office of Education, Special Ed Department. Can everybody hear me? If you can, can you just type yes down there? Great. Let's talk about the LEA responsibility for FAPE. So, Adina's addressed the issue of parents having the right and the responsibility to participate in meetings to discuss their student's educational program, but the LEA has the ultimate responsibility to provide a free appropriate public education, as we refer to FAPE, for the student. So, while the LEA has to ensure that they take steps to involve parents, and that parents have an opportunity to participate, that responsibility ultimately resides with the LEA.

When the team meets, they're working towards consensus on decisions. Frequently, we'll see that teams have difficulty reaching consensus due to disagreements about needs of students, or misunderstandings between parents and school personnel. A lot of times, those misunderstandings come from incomplete documentation, which doesn't specify what decisions have been reached. An example of that would be when accommodations are provided, and it says something like the student requires special seating, but that special seating isn't assigned. So that parents may think special seating means one thing or will be provided at a certain time, and school personnel think it's something else. An LEA has to consider parental input during the decision-making process, but the LEA isn't required to include parent requests. So, that means consideration would be verbal consideration, the team could document it if they were taking informal IEP notes, but there's no requirement that the consideration be written verbatim in an IEP. And

again, we're going to go back to the fact that the LEA must ensure that the student receives a FAPE.

So, what if the team doesn't reach consensus on what's needed for FAPE? If there's no consensus, there's a variety of options that could be done. I put could/should because they kind of change depending on the option. The team should always consider all available data, and then if decisions can't be reached, consensus can't be reached, consider the need for additional data collection prior to reaching a decision, if that's possible. Sometimes reconvening at a later time to rediscuss the issue may help. It gives everybody kind of a chance to think about it in a different setting, talk about it a little bit more. What you have to be careful of with these issues is if an IEP needs to be implemented immediately. Those are options that you can take if the IEP isn't expiring soon. But since the IEP does need to be reviewed and revised at least annually, there are times when decisions do have to be made and consensus can't be reached. If that happens, then the LEA needs to provide the parents with a written prior notice of whatever actions they are proposing or refusing. So, if it's an IEP, they would present the parent with the IEP, that's what they're proposing to do, and then that decision would be implemented in order to ensure that the student is provided with FAPE. That doesn't mean that the discussion has to automatically stop there though. It could be, you know, an IEP is developed and implemented, and then the IEP could be rescheduled to reconvene to look at the issues again. So, sometimes decisions need to be made and they need to move on.

Let's talk briefly about that written prior notice. Adina talked about notice of meeting earlier. Notice of meeting and written prior notice of meeting are frequently confused. Notice of meeting is your invitation to the meeting. Written prior notice is a written statement of what actions the school is going to take or refusing to take. And it has some very specific requirements under the Rules. It is actually, for those of you that have your Rules out, written prior notice is covered under Section 4d on pages 79 and 80 in the Utah Special Education Rules, and it requires a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, a description of each evaluation procedure assessment record or report that the LEA used as a basis for that decision; a statement that parents of a student with a disability have protection under their procedural safeguards, and the method for them to obtain a copy of that, if they need an additional copy, sources for parents to contact to obtain assistance and understanding of IDEA, a description of any

other options that were considered, and reasons why those options were rejected, and a description of other factors that are relevant to the LEA's proposal or refusal. An additional requirement is that that notice is to be easy to understand for parents.

We talked in the last slide about being provided with procedural safeguards. In IDEA, 2004 changed that requirement, so that parents must only be provided with a copy of their procedural safeguards once a year, except in the bulleted exceptions down there. So, once a year, which is usually done at the IEP, as well as upon initial referral for a special education evaluation, if the parents request an evaluation for special ed, the first State complaint or due process complaint from the parent that's received by the LEA, or whenever the parent requests a copy. Stacie has a question, "Is an email considered written notification?" Do you mean written notification of a meeting? Do you mean prior written notice? No, so I'm going to have to have some clarification Stacie, but if you're talking a formal State complaint, then formal State complaints are not accepted by email. They have to be either mailed or faxed. So if that's the complaint you're referring to, otherwise give me a little bit more information and I'll come back and address it.

Procedural safeguards must include a description of these things. Most LEAs in Utah purchase their procedural safeguards notice from the same place. Those notices are also available on websites, as well as the State Office of Education's website. The procedural safeguards notice discusses a parent's right to an independent educational evaluation (or IEE) which a parent has a right to if they disagree with an evaluation conducted by the LEA; prior written notice which we just discussed; the right for parents to consent for the initial evaluation, and placement, initial placement of their student in special education; parent's right to access educational records of their students; dispute resolution options both formal and informal, which we're going to go into detail; and then placement during dispute resolution.

So, in Utah, we have dispute resolution options available in our State Rules. The first one is problem solving facilitation. It's an early dispute resolution option. There's a formal state complaint, mediation, and due process hearing. Those options are not sequential, so you don't have to do them in that order. And then facilitators and mediators, when we look at those items, do not provide legal representation or counseling to either parents or LEAs. So when we have disputes that come up between parents and LEAs, so the LEA (Local Educational

Agency), we frequently see disagreements based on eligibility, determinations, IEP services, placements and discipline is kind of the big ones that I generally hear about. Besides these state dispute resolution options that are on your screen, many of the LEAs also have their own dispute resolution options within their District. So a nice way to look at this, if you have concerns, is not only to review the options available through the State, but also in District policy manuals. They have some other dispute resolution options. Additionally, the Utah Parent Center has IEP coaches and IEP trainings for parents who are looking for information or ways to be more informed and participate in their student's meetings.

So, early dispute resolution: We have problem solving facilitation. This is a voluntary process for both the parent and the LEA, so both have to agree to it. Parents can request problem solving facilitations, and schools/school districts can request it as well. It's at no cost to either the parent or the LEA. The State selects a qualified and impartial facilitator to assist in these meetings. That facilitator has been trained in effective communication and problem solving techniques, and helps kind of maintain the focus on the student needs and keep the communication ongoing.

Mediation is another dispute resolution option. It's a voluntary process, again at no cost to either the parent or the LEA, and it can't be used to deny or delay a parent's right to a due process hearing. One of the big differences here between facilitation and mediation is that mediation discussions are confidential and they can't be used as evidence in any due process hearing or civil action. So, frequently we will have parents ask if they can record mediation discussions, and unless the LEA agrees to it, which generally doesn't happen, that is not permissible because those discussions are confidential.

In addition, mediation, the State selects a qualified and impartial mediator who has been trained in effective mediation techniques. Those mediators, and the same with the facilitators, are trained annually by the State, and we keep a list of all available facilitators and mediators, and they're selected on a random rotational basis. So, if you've engaged in mediation more than once, generally you wouldn't have the same mediator because it is a random basis. If an agreement is reached in mediation, both parties, the parents and the LEA, will sign a legally binding agreement that is enforceable in any State court of competent jurisdiction or in a U.S. District Court. So, that is another major difference between facilitation and mediation; in

mediation you receive that, if it is reached, a legally binding agreement.

ADINA: In addition to the dispute resolution processes available through the State Rules, an LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party from a community or resource center such as the Utah Parent Center or a different entity to encourage the use of mediation.

A State complaint is a formal dispute resolution process, and almost anyone can file a State complaint: the parents of a student with an IEP; an individual, an interested individual, a family member, a staff member even from another state; an organization from Utah or an organization from out of state. The complaint must be in writing to the LEA and then to the Utah State Office of Education. If the parents of the students are unable to file in writing, they may contact the LEA or the State Office of Education for assistance.

The State complaint must include a few elements and the first one is a statement that the LEA violated their requirement of the IDEA or the Utah Special Education Rules. Then, the complaint needs to outline the fact on which the statement is based. The signature and contact information for the complainant, and if the alleging violations are with respect to a specific student, the Complaint needs to include the name and address of the residence of the student, the name of the school the student is attending, a description of the nature of the problem of the student, and, very important, the party filing the Complaint needs to identify a proposed solution to the problem, to the extent known and available at the time to the party the complaint is received.

The question is: "Do you have to have filed the Complaint with the school prior to a State Complaint?" Normally, this is a two-tiered process. The State Complaint includes a two-tier process. The complainant needs to file a Complaint with the LEA. The LEA has an opportunity to investigate the Complaint and issue a written response within 30 days. If the party is not satisfied with the response received from the LEA, then the response can be appealed to the Utah State Office of Education.

GLENNA: Sorry, we're switching the headset. I'm going to answer this one a little bit differently because I'm wondering Stacy, without an

opportunity to talk with you, if you meant, do you have to inform the school or the district of your complaint prior to filing a State Complaint. And while it's not required, we do always kind of recommend that you've worked through the chain of command in your school and District to resolve the issue first. So starting with your Special Ed teacher, your school principal, if that's not successful, then the District's Special Education Director, and then looking at dispute resolution options available within the LEA and through the State. So if you do decide to file a State formal Complaint, your Complaint must include these issues that Adina addressed, and be sent to both the LEA Superintendent, or if it's a charter school, the charter school principal, as well as the State Office of Education. And then, the two-tiered process that Adina talked about starts where the District has thirty days to investigate.

ADINA: As Glenna mentioned before, the Complaint needs to be in writing, and either faxed or sent via mail to the Utah State Office of Education. No email. Okay, thank you, let's move on to the next slide.

The complainant must allege a violation that occurred not more than 1 year prior to the date that the complaint is received by the LEA. There are certain exceptions, and when we receive requests for a State Complaint, any formal dispute resolution process, we look at the details of each individual situation. As I said, exceptions apply to the 1 year limit. One important exception is that if the violation is continuing or the complainant is requesting compensatory services provided for the violation that occurred not more than 2 years prior to the date the Complaint is received by the LEA, then the party can go ahead and file a Complaint on those basis. The LEA must resolve the complaint within 30 days, and again, there are certain exceptions that apply here. They have to issue a written decision, and as I said, that decision may be appealed to the Utah State Office of Education. The State has an obligation to do a thorough investigation and issue a final written decision within 60 days.

Also available to the parents are, due to hearings and civil actions, we would not call this an early dispute resolution process, but those processes are available to the parents, and I think it's very important to mention them. The Complaint can include anything from identification, problems with the evaluation process, concerns about educational placement, or the provision of FAPE. There is a mandatory resolution session that provides the parties an opportunity to resolve their complaint before the due process hearing. The LEA has an obligation

to convene a resolution session within 15 days of receiving the parents' due process complaint notice. Again, this is an opportunity to settle the issues before parties move forward and go to a due process hearing. Parties can choose to file a Complaint with the Office for Civil Rights. The Office for Civil Rights is a component of the U.S. Department of Education. They are mandated to enforce Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is a civil rights statute that prohibits discrimination against individuals with disabilities. Section 504 requires that school districts provide free appropriate public education to qualified students in their jurisdiction, who have physical or mental impairments that substantially limits one or more major life activities. The Office for Civil Rights receives complaints from parents, students, advocates, and they conduct their own investigations. They can also provide technical assistance to school Districts, parents, or advocates. They have a process that you can file a Complaint with the Office for Civil Rights via email, online, letter; they can even take a Complaint over the phone.

You have the contact information for the Disability Law Center. We can be reached at (801) 363-1347 or toll free at (800) 662-9080. We have a website: www.disabilitylawcenter.org with a host of publications, useful information. We also have an online intake process, if you want to contact us, please do so, either by phone or by accessing our website. As I mentioned before, our services are provided statewide and free of charge. We provide a variety of services ranging from simple information and referrals, all the way to formal dispute resolution assistance and legally-based advocacy services, trainings, so just give us a call if you have any further questions. I thank you for your time.

GLENN: Hi, I've put up contact information for me, if you have a specific question that you'd like me to answer. The State Office of Education provides technical assistance to school districts, charter schools, and parents, so we're available to do that. While we do provide technical assistance, we do not provide legal advice, so we will clarify that with you. If you have a need for a dispute resolution forms or further information, I've given you the website for that and for the Special Education Rules. I would just like to, before we go, to question, we know that disputes frequently come up, and as the team members work to clarify concerns and work towards that communication, generally they can be resolved at the IEP team level. We always recommend that as disputes come up, that the team works together to resolve those, but we want you to remember you can also

access those early dispute resolution options, such as IEP coaches from the Utah Parent Center; anything internal in your district or charter school, as well as a state facilitator to resolve issues before they become bigger issues; and then working through that chain of command that your LEA is also an appropriate avenue. Right now, we have a list of questions here that we're going to discuss, but for those of you that are actually participating right now, are there any specific questions that you would like to ask? Okay, while I give you a chance to write any questions, I'm going to just start with some of the ones that we've been given.

“Do IEP team members have to stay in the IEP meeting? Sometimes they leave early.” I'd like to just kind of refer back to the beginning of our presentation where we talked about the required team members. The IEP teams must include, at a minimum, those required team members. So, it's not an option for people to cut in and out unless they're replaced on the team, however, IDEA 2004 does allow an opportunity for parents and the LEA Representative, who's generally the school administrator, to excuse an IEP team member from the IEP meeting in part or in whole, so, whether they leave partway through or they're not there at all. If the parent and LEA agree in writing, prior to the meeting, and the team member who leaves submits, in writing, their input. So, that is an option if IEP team members are not able to stay the entire time.

Another question: “Will the district do guardianship for me?” And, I'm assuming that the question is about when students reach the age of maturity in Utah, which is the age of 18 – the procedural safeguards transfer to the student since they are an adult, unless the parent has received guardianship of the student, which is a legal process that goes through the Court. Districts do not do guardianship at least one year prior to the student turning 18, so by the 17th birthday, LEAs and IEP teams do inform both the parents and the student of those rights transferring, and that kind of triggers an opportunity for the parents to have notification that if they'd like to get guardianship, they would need to start that process. So while it's a legal process, not an educational process, the IEP team will discuss it at least one year prior.

“What happens if the parents do not sign the IEP?” Signing an IEP shows that the team members participated in the IEP; it doesn't show agreement with an IEP or disagreement with an IEP. If you are part of an IEP team and the IEP is written (so that's the written prior notice of what actions the school district is proposing to take) signing the IEP just

shows that you participated in it. As a parent, if you disagree with the IEP, then that triggers (that written prior notice triggers) procedural safeguards, so you have access to those dispute resolution options, or before you go there, you could also say, "I still don't feel comfortable with this IEP, I'd like to revisit this issue," and see if additional data can be collected, as we talked about on Slide 8, I believe, and reconvene to redetermine the issues. Again, if it's still not what the parent truly believes is an offer of FAPE, then those procedural safeguards are in place.

"Does every District, and I'm going to say every District or charter school, because they're all public schools, have a post-high school program or service?" Every District and charter school in Utah are required to provide special education services to eligible students through graduation (as long as the student is eligible) or, if the student has not graduated, through age 22. How those services are provided is determined by an IEP team, so there's no requirement that every District or charter school have the same type of program available – they're just required to provide whatever services are determined by the IEP team as needed.

ADINA: The next question is: "How often should children on IEPs receive progress reports?" This is an important question; quite often we get questions from parents on this topic. The answer is: they have to be provided by the LEA to parents of students with disabilities with the same frequency they are provided to parents of students without disabilities. The IEP can modify that, the team may agree on more frequent progress reports, or on a certain methodology, they can agree to provide those reports to parents by, let's say an email, once every two weeks, so it can be more frequent than what's required for the parents of students without disabilities, but it cannot be less than that. I hope that answers the question.

What is an LEA and what is their role in an IEP meeting? An LEA is a representative – an LEA representative is basically a representative from the District (it could be the school principal who acts in that capacity). They need to be present at an IEP meeting; their presence is required because they are knowledgeable of the resources that are available in the District. Let's say the team makes a decision on a certain amount of related services - it's very important to have the LEA, in fact it is required to have an LEA representative present at the meeting, because the team needs to get that feedback from a person knowledgeable about the resources that are available in the District.

The LEA may designate an LEA member of the IEP team to also serve as the LEA representative, if again, that person has knowledge about the availability of the resources of the LEA.

The next question is: "If I have a private test that was done for my child, can the school use that instead of doing their own?" The schools have an obligation to provide a comprehensive evaluation of the needs of a child with a disability, and that has to happen at least every 3 years, or more often than that at parental request, or if the LEA requests it. Parents have the right to disagree with the evaluation provided by the District, or the results of the evaluation provided by the District, and therefore, can request an independent educational evaluation at public expense. If parents get an evaluation, the IEP team may consider, take into consideration, the results. Definitely, that's important information for the team. The LEA does not have to consider the results of a private evaluation without having an opportunity to evaluate the student first. They can take that information into consideration, but they do not have to abide by its recommendation.

GLENN: We still haven't received any questions through the chat, so we'll just keep going through the questions we were provided. "Does a change in placement mean a change in school location?" Placement is different than location, geographical location, and so, a change in placement would be determined by an IEP team, and then, whatever that placement was, looking at the continuum of alternative placements, whether a regular class with supplementary aids and services, or itinerant special education related services, a special class, a special school, kind of going down that continuum, once that placement has been determined, then the LEA does have an opportunity to determine where their program that meets that placement requirement is located. And they're not required to have options along the continuum available at each school site. It really is an individualized, team decision, and then the District has some opportunity to make decisions in there about geographical location.

"My child has an IEP for a speech and language disorder, she's also struggling with reading. Can she have special education to improve her reading?" Eligibility is kind of the door that students with disabilities walk through in order to access specialized instruction, whether it's special education and related services, and so once a student has been determined eligible, kind of regardless of which eligibility category it is, the IEP team meets and determines the student's

educational needs and an IEP to address all of those needs. If you had a student who had a speech/language impairment, who also had reading issues, that need would be considered by the IEP team, and if the team agreed that reading was a need, they would develop an IEP to address that need.

ADINA: The next question is: "I want my child to have extra time to take tests because he has ADHD – is that a good goal?" I would say that may be an appropriate accommodation for this child, and the team may discuss what accommodations or modifications to the general curriculum are needed to help the child make progress in his/her education. That is not a goal in itself, it basically can be one of the modifications or program accommodations listed on the IEP.

GLENNA: I'm just going to add to Adina's comments in that, when you say extra time to take tests, you know, that really does need to be defined a bit more. Are they going to have extra time to take every test, how much extra time, where, who will provide that? When we talked about kind of not defining things in the IEP, and that causing disputes, this would be an option of it, making sure that the team does define that further.

Michelle said: "Are there any requirements about the distance a student can travel to receive services if a specific program is closer?" There are some restrictions with transportation, but they aren't IDEA restrictions, those are actually kind of state and national restrictions on travel. Michelle, I don't know that I have enough information to answer that question, but if you want to email me, or give me a call, and give me more details, I can research that one for you.

"Go back to the question about reading services. Under IDEA, isn't Utah still on the discrepancy models? So, wouldn't that mean that reading data and test scores would need to show a 93% discrepancy in order for services to be provided? Can a team override?" Okay, that's actually kind of multiple questions. Utah, for a specific learning ability, used to be on the discrepancy model. When the rules were revised, in 2007 to coincide with IDEA 2004, Utah has 3 options under SLD eligibility. One is the discrepancy model, a second option is response to intervention, which is a whole other webinar topic, and then the third option is a combination that uses both discrepancy and response to intervention. If you look at this in the special education rules, it actually describes, kind of, what's required under each method, whether it's discrepancy, RTI (response to intervention) or the combination. On pages 46 through 52, each District and charter

school in Utah has been required to review their policies and procedures...

Under SLD eligibility in Utah, there are 3 different options. Those options were added with the reauthorization of IDEA and the rewriting of the Utah Special Education Rules. LEAs can choose in their District which option they'll use, whether they use the traditional discrepancy model, whether they use a response to intervention model, or whether they use a combination model that involves both discrepancy and RTI. The specifics of these are in the Rules, if you look under Tab 2, under eligibility, starting on page 46 to 52; it describes SLD eligibility. Each LEA gets to determine and put in their policies and procedures, which method they will use to determine eligibility in their District or charter school. So, that's kind of the first part; that's eligibility. If you use a discrepancy model for eligibility that required that 93% likelihood, that, as well as consideration of other data, was what the eligibility determination was based on. The eligibility determination is not allowed to be based on only one data point. It's a requirement in IDEA and Utah Special Education Rules that a variety of data are used. So, the team would not need to override if they had a discrepancy of less than 93% - if they had additional data showing the team the student had a learning disability, there would not need to be an override procedure. Once eligibility is determined, so this is a little bit different question; I'm going to take it two ways. Once eligibility is determined for a specific student with a disability, the team meets and discusses the student's educational needs. They do not have to determine eligibility for math, reading; they generally look at that, but it's not required to determine eligibility in each separate area in order to provide services in those areas. The IEP team looks at all data and determines what services and goals are necessary. So I'm going to go back to the student who had a speech/language impairment. If the student had a communication issue, the IEP team could look, and if someone brought up that there was a concern with reading, they could look at either formal or informal assessment data to determine whether that was a need, and if the team agreed, provide services and write a goal for that.

The eligibility category and the actual services and goals that are worked on in the IEP do not have to align exactly. It would be the same if the student had a learning disability and engaged in inappropriate behavior. They wouldn't have to go back and re-determine eligibility, as having an emotional disturbance, to address behavior. The team would meet; once you're eligible under one of

the categories, the team meets and determines what is needed. Did that answer that question? Katie Morrison says, "Yes, thanks."

"My daughter is in a very popular small group class program for children on the autistic spectrum. Many parents have purchased homes in the home school neighborhood. Can the district say that this classroom program is "closed" and transfer students to a much further program that is "open" for the district's convenience?" The District has to provide a continuum of placement options, and they have the option of determining where those programs are located. So, I think that answers that question. I'm not quite sure about the District's designation of "closed" and "open", but the IEP team would determine the services and placement (placement is along that continuum of alternate placements) the District could determine the location of the services.

ADINA: The question is: "When a parent requests an assessment to determine eligibility for special education, and the school postpones the assessment to try RTI strategies, what is the appropriate notification and procedures the school should follow to remain compliant to the procedural safeguards?" Okay, I'm going to give a short answer to this question. Once a school district is put on notice of a parental request for an assessment to determine eligibility for special education, the school cannot postpone the assessment to try RTI strategies. At least that's our position, is that the school District has 45 days to complete an evaluation and make a determination of eligibility. Once they have received the consent from the – the moment the school District receives the parent's written consent to an evaluation, they have 45 school days to conduct an evaluation and make a determination.

GLENN: I'm going to try and go back. This is kind of a tricky situation. So, if the parent meets with the school and requests to make a referral, requests an evaluation, then the school does have to respond to that in either, get consent from the parent to do the evaluation, or provide them with written prior notice of the refusal to evaluate, if they feel the evaluation is not needed. However, if there's a discussion between the school personnel and the parent and there's kind of an agreement to try interventions as part of the process, then sometimes that could be agreed upon.

ADINA: "Should RTI strategies be done simultaneously for data purposes?" That's absolutely a possibility. I'm not saying that the school should not continue to try implementing response to

intervention strategies for data collection. I think that can be an important part of the evaluation process, but again, upon receiving that written request for an evaluation, the school has two choices. One is to comply with the 45 school day timeframe after they get that written consent from the parents (the written consent for an evaluation) or they can give the parents written prior notice of the refusal to evaluate.

GLENNA: RTI is an interesting subject because it's fairly new in the state in the last few years. It's really starting to become implemented and whether it's implemented and how it's implemented really depends upon your District or charter school. So if you're looking at questions around that, I would first start with your District Policy and Procedures manual because that should clarify it. It's just not as prescribed as other methods.

GLENNA: We are going to...I'm going to look at this last question, "Should RTI strategies be done simultaneously for data purposes?" So you mean in conjunction with an evaluation – and I think that's always a good idea. We've looked at that in the State of Utah for a long time with strategies and interventions happening in the general ed group. That is the practice – I'm going to refer you back to your District or charter school policy manual.

GLENNA: I do have the Question and Answer Evaluation up on the screen, and so, if you would take a minute to complete that evaluation, and also if you have any further questions, please feel free to contact us, either Adina or myself.