



Dear School Administrator:

It has come to our attention that many children with Selective Mutism around the country are being denied the educational rights that they have been given by the United States Federal Government under the Individuals with Disabilities Education Act (IDEA).

The purpose of special education as stated by Congress in 20 U.S.C., Section 1400(C)(1): “Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. **Improving educational results for children with disabilities is an essential element of our national policy** of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”

The Definition of Special Education as stated in IDEA 20 U.S.C., Section 1401(25) states: ‘The term ‘special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including:

- Instruction conducted in the classroom, in the home, in hospitals, and institutions, and in other settings; and
- Instruction in physical education.

*We ask you, how is denying a child who suffers from anxiety disorders such as Selective Mutism and Social Anxiety going to meet their unique needs?*

*Will denying the child special education allow them equal opportunity, full participation, independent living and economic self-sufficiency?*

Many parents have been told that their children do not meet the criteria for Special Education because they are at “grade level” with their academics. They are told that their child is perfectly normal and do not need assistance. How can these children be “perfectly normal” when they do not even meet the basic building blocks for learning?

Those building blocks begin with:

1. Foundation: Attention and Impulse control; Emotions and Behavior: Self-Esteem:
2. Symbiotic: Visual; Auditory: Motor.
3. Conceptual: Language; Images.
4. Strategies.

Children with Selective Mutism and Social Anxiety do not meet the Emotions and Behavior area of the first building block.

Emotions and Behavior include but are not limited to:

- The child's temperament as well as his or her mood. Conditions such as depression, anxiety, can significantly affect a child's availability for learning.

If not attended to early, anxiety disorders can lead to:

- Missed school days or an inability to finish school,
- Impaired relations with peers,
- Low self-esteem;
- Alcohol or other drug use;
- Problems adjusting to work situations;
- And anxiety disorder in adulthood.

Without early intervention within the school and during the school day, allowing the child to go through their school years without intervention could cost the school, the community and the state more money in the long run.

We have been in contact with the U.S. Department of Education and asked them the question below in January of 2005.

We wanted to share their reply with you so that children with Selective Mutism will not be left behind.

I have a child with Selective Mutism. This disorder is anxiety based and when in uncomfortable situations she is not able to speak, such as in school. She cannot raise her hand to ask questions, she cannot answer questions that are asked of her. She cannot perform (read to her teacher or peers) . Although she seems to be on grade level at the present time, I feel that if she does not receive the help she needs while she is in school, she will begin to decline in her grades, self esteem and relationships with peers and others. This will eventually cause school retention, school refusal or dropping out.

We have been told by the school that she is not eligible for special education because she is at grade level and that her disability is not affecting her education. I do not think that the school is taking into account that the extreme anxiety causes cognitive function to decline and that she actually may be able to receive higher grades if she was able to perform as her peers do.

How can this type of anxiety not affect her education, I do not understand the reasoning for the denial to special education. Wouldn't allowing her into special education be an early intervention service to allow her to have an education to meet her unique needs? From what I have read, the goal of special education is to prepare children with disabilities to lead productive, independent lives as adults, to the maximum extent possible. If she continues with being unable to speak in the school setting, she will not be able to reach that goal.

~~Could you please advice me on what I can do for her. Is having grade level skills the only~~  
criteria for eligibility into special education? Thank you.

Dear Customer:

The Individuals with Disabilities Education Act (IDEA) ensures that all children birth through age 21 are given the right to a Free and Appropriate Public Education (FAPE) and the special services they need to assist them in meeting their educational needs. **Under IDEA the major mechanism ensuring a child receives FAPE, is the development of an Individualized Education Plan (IEP).** The IEP serves as a blueprint for the child's special education needs and any related services. As a parent you have the right to request that your child be tested. **The school district must either test him in a timely manner, or provide written documentation as to why testing is not appropriate.** If you do not agree with this decision, you have the right to appeal through mediation or due process.

In order for your child to be eligible for special education services, he or she must have a disability according to the criteria set forth in the IDEA or under state law (state law is based on the IDEA). The disability must adversely affect his or her educational performance.

**Educational performance, which consists of social, emotional, behavioral, or academic performance, must be adversely affected.**

Presently, the IDEA lists 13 categories of disability under which a child may be found eligible for special education. One category is: "Other Health Impairment" category.

The definition of this category is that:

"...having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and adversely affects a child's educational performance." 34 Code of Federal Regulations §300.7(c)(9)

Thus to qualify for special education, an evaluation needs to determine that your child's disability is adversely effecting his or her educational performance. **If the evaluation determines that your child does not qualify, the school system is required to provide a written statement as to why he or she does not qualify, and what steps you may take to appeal this decision.** Some students not eligible for services under IDEA, may be eligible for services under a different law, Section 504 of the Rehabilitation Act of 1973. In both cases, the school and the child's parents need to meet and talk about what special help the student needs.

Once again, thank you for contacting the U.S. Department of Education. If we can be of further assistance, please do not hesitate to write us again, or call (800) USA-LEARN (800-872-5327), between the hours of 9-5 Eastern Time.

Sincerely,  
Anthony Sepúlveda  
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U.S. Department of Education

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Dear Friend of Education:

As you are aware, the Individuals with Disabilities Education Act (IDEA) is the Federal law that ensures all children, birth through age 21, receive a Free and Appropriate Public Education (FAPE) and the special services they require to meet their educational needs. Under IDEA, there are currently 13 categories under which children ages 3 through 21 may be eligible for services. For a child to be eligible for services, the disability must affect the child's educational performance. **Educational performance, which consists of social, emotional, behavioral, or academic performance, must be adversely affected.** IDEA states that if you suspect that a child has a disability, you can call or write to his or her teacher, the principal of the school, or the Director of Special Education in your school district. If the public agency suspects that the child has a disability, the child must be evaluated at no cost to the parents.

**To find out if a child is eligible for services, he or she must first receive a full and individual initial evaluation.** This evaluation is free. Two purposes of the evaluation are to see if the child has a disability, as defined by the Individuals with Disabilities Education Act (IDEA), and to learn in more detail what his or her special needs are.

Under IDEA, children with disabilities who are eligible for special education **may receive related services according to their individual needs.** This may include such services as occupational and physical therapy, speech language pathology, transportation, and special health care services.

As stated above, if a child is not eligible for special education and related aids, the school must tell you so in writing. **They must also provide parents with information about what to do if they disagree with this decision.** If this information is not in the materials the school gives you, then you should ask for it. Parents have the right to disagree with the eligibility decision and be heard. The school should also be able to give options on how they will help a child if he or she will not be receiving special education services.

Once again, thank you for contacting the U.S. Department of Education.