



SECTION 3

Evaluation Reevaluation Eligibility Criteria

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PROCEDURAL SAFEGUARDS

Due Process refers to parental rights and responsibilities according to state and federal laws, rules, and regulations, in all aspects of acquiring, developing, planning and implementing special education and related services for pupils with disabilities. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. Children with a disability and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, including assistive technology assessment, and educational placement of children with a disability.

Specifically, the following **Notice of Procedural Safeguards**, must be given to parent(s) or legal guardian(s), in their native language, at these times:

1. First time child is referred for a special education evaluation;
2. Each time an annual individual educational program (IEP), an annual individual interagency intervention (IIIP) or an annual individual family service plan (IFSP) meeting is scheduled for a child;
3. Each time a child is evaluated;
4. If a due process hearing is requested; or,
5. If the district suspends a child with a disability for more than ten (10) consecutive days; or,
6. If the district places a child in an interim alternative education setting for up to forty-five (45) days for certain drug and weapons-related misconduct.

MDE website navigation to Due Process Forms in diverse languages.

<http://education.state.mn.us/mde>

*Home Page/Learning Support/ Special Education/ Evaluation & Program Planning:
Cultural & Linguistic Diversity/ Due Process Forms*

It is recommended that you send the blank form in the native language to accompany the SPED forms when you send it to the parent or guardian.

NOTICE OF A TEAM MEETING

The purpose of this form is to invite and inform parents of a meeting proposed by the school district. This notice also provides parents with the names and titles of persons expected to attend the meeting.

The district must document that parents were invited to and informed of a team meeting, but it may use means other than this form. If the district chooses to notify parents in another manner, it must include all the information on this form. Alternative means of meeting participation include conference calls or video conferences.

Purpose: Check the appropriate box or boxes to indicate the purpose of the meeting.

Attach a copy of the ***Notice of Procedural Safeguards***.

Optional Team Meetings:

1. Review of existing data (may obtain parent input via phone)
2. Progress report review
3. To go over evaluation results (may be combined with IEP meeting)

Note: The following examples do not constitute formal team meetings and do not require Notice to Parents:

- Informal or unscheduled conversations involving school personnel
- Conversation on issues such as:
 - Methodology,
 - Lesson Plans, and
 - Service Coordination
- Preparatory activities to develop a proposal or response to parental proposal that will be discussed at a later meeting.
- IDEA allows for IEPs to be amended in writing without reconvening the IEP team after the annual IEP has been held, if the parent and the school agree not to meet to make such changes. The law also allows for the IEP to be amended without redrafting the entire IEP.

PRIOR WRITTEN NOTICE

The purpose of this form is to provide required written notice to the parents of a child with a disability a reasonable time before the district proposes or refuses to initiate a change. This notice is to inform the parent(s) or a learner, if age 18 or older, of the district's proposals for evaluation, placement/change in placement in special education, or a change in special education and related services or denial of parent's written request.

The notice must be written in language understandable to the general public. It must also be provided in the native language or other mode of communication used by the parent, unless it

clearly is not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the district must take steps to ensure –

- 1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication.
- 2) That the parent understands the content of the notice; and
- 3) That there is written evidence that these requirements have been met.

Note: The Prior Written Notice form is to be used in conjunction with the Parental Consent/Objection form.

Reasons, basis, other options and factors considered and rejected: If the parent did not attend the IEP team meeting, or if the team did not agree about placement, describe the reasons and the information used by the team as a basis for the proposed placement and/or change to the program. Identify all placement options considered by the team and explain why each was rejected. For example, if Federal Setting III is selected, the reasons for rejecting settings I and II must be stated. While the team has the responsibility to consider settings with learners without disabilities, it has an equal responsibility to ensure a learner with a disability receives an appropriate education.

Prior to receiving parental consent, all IEPs should be identified as “**DRAFT**”.

Date: The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation.

The date initiates the district’s 14 calendar day time limit to respond to the parent’s written request.

- 1) **Description of actions:** Provide a brief description of the proposals and/or refusals. Simply referring to an attached IEP may not be sufficient. These descriptions should be clear and succinct. For example: “The district is proposing to add 60 minutes per week of speech therapy service: Or, “the district is refusing the parents request to add a full time paraprofessional to the Student’s program.”
- 2) **Explanation why:** For each proposal or refusal described above, briefly explain why the district is taking the stance it is. For example: “The student is not making sufficient progress toward her speech goal.” Or, “The student is on track to reach his goals by the end of the year, so no additional services are necessary.”
- 3) **Data sources:** The district must describe each evaluation procedure, test, record, or report it used as a basis for its proposed actions and refusals. For example: “aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior., etc.
- 4) **Other options:** The district must document other options the IEP team considered in its deliberation over ideas about evaluation or program planning.
- 5) **Other factors:** Factors that affect the district proposals or refusals may include, the student’s need for frequent medical appointments. If there were no other factors, the district may simply say so.

Notice Requirements: Prior Written Notice form will go out with the proposed IEP and the Parent Consent/Objection form including Procedural Safeguards.

District / Agency is Denying: State the action the parent requested and summarize why the team determined the request should be denied.

Decisions Are Based On: State the existing assessment data, current observation data, class work samples, etc., and summarize the results of this information to show how the team determined the proposed actions or denial.

Recommendation: If the team decides to attach the **Evaluation Report** or other documentation, note the attachment here.

Parent Action: Upon receipt of this form, the parent or the learner (if age 18 or older) should indicate a response to the team's decision and return the form to the school with a signature, date, address and phone number. If the parent (or learner, if age 18 or older) does not respond within fourteen (14) calendar days from the date Watershed High School sends the form, it will be assumed the parent (or learner, if age 18 or older) agrees with the decision.

DO NOT change anything on the IEP after the parent signature, including dates.

NOTICE OF EDUCATIONAL EVALUATION / REEVALUATION PLAN

Notice Requirements: Prior Written Notice form will go out with the proposed Notice of Evaluation Plan and the Parent Consent/Objection form including Procedural Safeguards.

Evaluation is required:

- Prior to initial provision of special education services,
- Prior to determining that a child is no longer in need of special education services,
- At least one every 3 years, not more than once a year, unless parent and school agree.

Evaluation is not required:

- Graduation with regular diploma,
- Aging out at 21 years of age.
- Consideration of parent requests. If denied district must provide in writing detailed explanation for the denial

The purpose of this notice is to inform parents of a proposed evaluation / reevaluation plan. A parent's written consent must be obtained before the district proceeds with an initial evaluation. For a reevaluation, the district may proceed if it can demonstrate and document that it has taken reasonable measures to obtain parent consent and the parent has failed to respond. The district should wait 14 days from the date that Watershed High School sent out the notice before beginning reassessment without parent permission. Reasonable measures are interpreted as more than one attempt. Parent input via telephone is acceptable.

Prior to beginning the process for evaluation/ reevaluation, a group of individuals that includes the parent, special education teacher, general education teacher, district representative, and

other qualified professionals reviews existing data to determine what, if any, additional data are needed to identify that a learner has a disability and is in need of special education service.

Notes:

- A. *Always review current data.*
- B. *Parent involvement and input may be gathered via telephone. Presence at a meeting is not required.*

If this is an *initial evaluation*, the team uses the review data, plans an evaluation, and then conducts a comprehensive, multidisciplinary evaluation.

When this is a *reevaluation*, the team may decide:

1. there is insufficient data to make the determination of continuing need for special education services and then will proceed to conduct the necessary evaluative procedures to gather the necessary additional information; or
2. there is sufficient data and no further evaluation procedures are necessary.
3. If there is sufficient data, the team summarizes the information used to determine continued eligibility on the ***Evaluation Report***.

The Team will need sufficient data – whether existing or to be gathered – to determine:

1. whether the child has a disability
2. present levels of performance and educational needs
3. whether the child needs special education and related services
4. whether any additions or modifications are needed to meet goals and to participate in general curriculum.

Timelines: Within 30 student contact days the school team must:

1. evaluate,
2. review evaluation results and apply eligibility criteria,
3. write completed Evaluation Report, including final signature page,
4. hold meeting if needed or requested, and,
5. provide copy of report to parents.

Initial Evaluation: Check box #1 if this is the first time the learner is being evaluated in order to determine eligibility for special education services.

1. For a child who was previously evaluated and determined not eligible for special education or related services, an evaluation at a later date is considered an initial evaluation.
2. For a child who was determined eligible in another Minnesota district, the first evaluation of this child in your district is considered a reevaluation.
3. For a child who was determined eligible in another state, the first evaluation in Minnesota is considered an initial evaluation and requires parental consent. See Section 6 for more information.

Reevaluation (plan to begin least two months before due date): Based on a review of existing data (indicate enough information to show progress or lack of progress); there is a continuum of options for reevaluation, ranging from full evaluation to a determination that no additional data are needed.

1. Check box #2 if the learner is being reevaluated to determine if the learner continues to have a disability and continues to need special education and related services and additional data is needed.
2. The team should consider the need for an evaluation when a child enrolls in the district with a current **IEP** from another state, is being evaluated in a new disability area and is already in special education, or is transitioning from the Developmental Cognitive Delay category (at age 7) to a different disability category.

3. **Additional data are not needed:** Box #3 is checked to notify the parent that additional evaluation data are not needed to consider whether or not the child continues to have a disability and needs special education and related services. Use the **Notice of No Additional Information Needed for Reassessment** to document the team's conclusion that no further assessment was needed. Written evaluation must address eligibility criteria.

Reason(s), basis, other options & factors: Describe why this evaluation is being conducted. Interventions tried and found unsuccessful may be stated here, along with other reasons the group believes evaluation is needed for this child. Describe:

1. the information used by the group as a basis for the decision whether to conduct an evaluation and explain how it impacted the group's decision;
2. options other than a referral for special education evaluation that were considered by the group and the reasons why those options were rejected; and
3. any factors relevant to the group's decision to conduct this evaluation.

IDEA identifies five special factors that must be addressed on the **IEP**: behavior, limited English proficiency, blindness, communication and assistive technology. The group should incorporate consideration for these special factors into the evaluation / reevaluation plan. See *Special Considerations* for more information.

Describe any specific adaptations needed in conducting the evaluation (e.g., interpreter, Braille, assistive technology). For learners of a minority race, culture or language, IDEA places the following requirements that may require adaptations to standard evaluation procedures:

1. Tests and other evaluation materials should be selected and administered so as not to be discriminatory on a racial or cultural basis; and they should be provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.
2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
3. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors that test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills.

Area(s) to be evaluated: Identify each area affected by the suspected disability including transition during Grade 9 and thereafter (e.g., work, recreation and leisure, home living, community participation, and post-secondary training and learning opportunities). *If the referral does not indicate concerns in a particular area, such as Math, there is no need to assess.*

Materials and Procedures: Identify the evaluation instrument(s) and procedures to be used in the evaluation/reevaluation. **Area(s) of Assessment/Assessment Procedures** forms can be used (optional) to clearly describe assessments to the parents. Some test instrument titles provide both the name and a description of the type of instrument (e.g., Wechsler Intelligence

Scale for Children - III). *Recommendation:* Do not use acronyms, abbreviations, or jargon (e.g., WISC-III).

Evaluators: List the title of the individuals who will conduct each of the evaluation components. Avoid using individual's names.

For children age birth to seven who are suspected of having a sensory impairment, the group conducting the evaluation must include a licensed teacher in each area of suspected sensory impairment, such as a teacher of the deaf/hard of hearing or a teacher of the blind/ vision impaired.

Location: Enter the name of the building or facility at which the evaluation/reevaluation will be conducted; state all buildings or sites if more than one location is to be used for the evaluation.

For an initial evaluation or reevaluation, attach a copy of the ***Notice of Procedural Safeguards***.

Parent Action: For both an initial evaluation and a reevaluation, a parent (or learner, if age 18 or older), should indicate a response on this form to the group's decision and return the form to the school with a signature, date, address and phone number. If it is a reevaluation, and a parent (or learner, if age 18 or older), does not respond within fourteen (14) calendar days from the date of mailing by Watershed High School and reasonable attempts to obtain a response have been made and documented, it is assumed the parent (or learner, if age 18 or older), agrees with the decision.

Note: Learners 18 and older need to sign a ***Consent to Release Information*** form in order for the parent to provide information to school.

CONSENT TO RELEASE PRIVATE DATA

Use this form to acquire parental (or learner, if age 18 or older) permission to send or receive communicates to and/or from other agencies regarding learners' special education evaluation, services, medical needs or diagnosis, court status, etc.

Annually renew permission to continue cross agency communications.

EVALUATION REPORT

An ***Evaluation Report*** is written to document a learner's educational needs and determination of eligibility. The ***Evaluation Report*** is the culmination of the evaluation/reevaluation process. It must be completed and provided to parents (or learner, if age 18 or older), within the evaluation period of 30 school days. It should summarize all data. Among other things, evaluation reports must always address criteria elements, involvement in general curriculum, and student specific needs. The ***Evaluation Report*** should be written using parent-friendly language. Avoid the use of technical jargon and acronyms. Do not use the names of the evaluators, only the titles.

Note: Although individual efforts of group members are important, separate reports by individuals conducting the evaluation are NOT required and are discouraged. If separate reports are written, they do not eliminate the need for an integrated Evaluation Report representing collective conclusion regarding the interpretation of evaluation results and the eligibility of the learner. Separate reports and/or other documents stapled together **do not** constitute a group's interpretation and decision regarding eligibility and need for services.

Date of this report: Enter the date on which the team determined eligibility.

The **Evaluation Report** must include the following components:

1. **Information reported by parents:** Summarize parent(s) information regarding their child's strengths, skills and concerns. Information from the parent(s) is required for all learners with disabilities.
2. **Evaluation Results:** List and describe the evaluation tools / procedures conducted and summarize pertinent test scores in the format designated in the specific eligibility criteria. Provide an explanation of the meaning of the test scores. Include information regarding the affect of the disability on the learner's involvement in and progress in the general curriculum, or, for preschool children, to participate in appropriate activities.

If an evaluation procedure is not conducted under standard conditions (for reasons on language differences, nondiscrimination or other reason), include a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) in the evaluation report. The group must determine the effects of the variation on the validity and reliability of the information reported. Describe how procedures were modified to be culturally and linguistically nondiscriminatory or adapted because of sensory and/or physical limitations. If relevant, describe any social or cultural background factors.

When the evaluation includes secondary transition (during Grade 9 and thereafter), summarize the learner's future goals and relevant interests and skills in each of the five secondary transition areas (e.g., employment, post-secondary education and training, community participation, recreation and leisure, and home living).

Summarize classroom observation data describing relevant observed behaviors and how the daily routine or setting relates to the learner's educational functioning. Describe how behaviors related to the disability are manifested in the classroom.

Describe any relevant medical findings that may affect the learner's learning (e.g., certain medications or allergies, attention deficit disorder), a copy of relevant reports or letters from physicians or other medical personnel should be included in the learner's special education due process file.

3. **Special Considerations:** IDEA requires that **IEP** teams give consideration to the following special factors: behavior, limited English proficiency, blindness or visual impairment, communication needs, and assistive technology.

LIMITED ENGLISH PROFICIENCY

Determining special education eligibility for English Language Learners (ELL) or Limited English Proficient (LEP) students is of particular concern when staff members modify the administration of standardized tests through use of interpreters or through other means, thus limiting the validity of derived scores. In the case of LEP students, the use of alternate procedures and sources of data for the purpose of reducing bias in eligibility determination does not constitute an override of state eligibility criteria so long as all criteria components are addressed. However, the override process can serve as a decision-making model as outlined below.

1. When determining eligibility for a disability category for a student who is ELL, teams must address all parts of the eligibility criteria, including exclusionary factors.
2. When working with ELL students, teams should gather additional evaluation data to supplement and support data gathered through standardized tests.
3. If teams determine that standardized test scores are not valid for an ELL student, the team is recommended to follow a decision-making procedure similar to that found in Minnesota Rule 3525.1354 (complete reference attached). This decision-making procedure allows the team to document all types of data that were gathered and considered as part of the eligibility determination. Following this practice will also help teams ensure that they are in compliance with requirements to conduct fair, unbiased and comprehensive evaluation procedures.

Decision-Making Model

The team's evaluation report should contain the following information for all criteria components:

1. Information explaining why procedures used with the majority of pupils resulted in invalid or inconclusive findings for this pupil;
2. A summary of the data that were used to determine that the student has a disability. This may include "test scores, work products, self-reports, teacher comments, previous testing, observational data, ecological assessments; and other developmental data." In addition, the summary should describe any modifications made during the administration of standardized procedures including the use of interpreters (34 C.F.R. § 300.532 (c) (2)).
3. An indication of which data sources had the greatest relative importance for the eligibility decision.

Blindness or Visual Impairment: Minnesota Statute 125A.06 places the following requirements for the evaluation of learners who are blind:

1. the team must evaluate the child's reading and writing skills, needs and appropriate reading and writing media (including evaluation of the learner's future need for instruction in Braille or use of Braille); **and**
2. for children who read and write Braille, the evaluation report must include the results of a Braille inventory (e.g., the Minnesota Braille Skills Inventory), including a statement of strengths and deficits skills; **or**

- a. documentation in the evaluation report as to why the administration of a Braille skills inventory was not considered appropriate (for example, “The team has determined the child is not a reader at this time due to age/ability factors); and
- b. a statement that the decision was reached after a review of pertinent literature describing the educational benefits of Braille instruction and use; and
- c. an explanation of the evidence used to determine that the child’s ability to read and write effectively without Braille is not impaired.

Assistive Technology: IDEA requires consideration of the learner’s needs with regard to assistive technology, not including a medical device that is surgically implanted or the replacement of such device (such as cochlear implant); however, it can include a functional review of the environment; the selection, design, fitting, etc., of adaptive devices; and the need for training on the device on the part of the learner or the family.

4. **Interpretation of Evaluation Results and Eligibility Determination:** Write a summary reflecting the group’s interpretation of the evaluation results and judgment regarding eligibility, addressing all criteria components. The evaluation data must support the group’s decision concerning eligibility and need for special education or related service. All criteria components must be addressed in the report for both an initial evaluation and reevaluation.

When no additional data are needed, summarize the existing data that support a continuing disability and need for special education or related service.

For all disabilities the team must determine that the learner’s difficulties and subsequent disability identification are not primarily caused by:

1. a lack of instruction in reading or math; or
2. limited English proficiency

In addition, when determining eligibility for a Specific Learning Disability (SLD), the group must determine that the learning problems are not primarily the result of “visual, hearing or motor impairment; cognitive impairment; emotional or behavioral disorders; or environmental, cultural, economic influences, or a history of an inconsistent educational program.”

5. **SLD Written Report:** If the team determines the learner meets Specific Learning Disability criteria, the evaluation report must include a statement of:
 1. the relationship of that behavior to the child’s academic functioning;
 2. the educationally relevant medical findings, if any;
 3. whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; (according to IDEA 04, the severe discrepancy criteria is optional; however, until Minnesota’s rule changes, the discrepancy part of the criteria should continue to be followed) and
 4. the determination of the group regarding the effects of the exclusionary factors.

Note: Criteria for Specific Learning Disability is currently under Rule Revision.

6. **Educational Needs:** Based on existing data and evaluation results, describe the educational needs of the learner. These identified needs flow naturally into the goals on the learner's **IEP** and the program to be provided to the learner.
7. **Eligibility:** Following the synthesis and interpretation of the evaluation results, the group's judgment regarding eligibility is recorded on the final page of the report by checking the appropriate box (es). Indicate the primary disability as (**P**). The primary disability is the one that most impacts a learner's ability to learn.
8. **If the learner qualifies through override of criteria**, the group must provide an explanation of:
 - why commonly used standards and procedures used resulted in invalid findings for this learner;
 - what objective data were used to conclude the learner has a disability and is in need of specialized instruction (may include test scores, work products, self-reporting, teacher comments, observational data, previous testing, ecological assessments, and other developmental data); and
 - which data had the greatest relative importance for the eligibility decision?
9. **Team Signatures and Checkboxes:** Document the team members' names and title in this section. For an override of any criteria and SLD evaluation reports, each team member must sign the report and then indicate whether the report reflects his/her agreement with the group's conclusions. If the report does not reflect a group member's conclusion, that person must write and sign a statement presenting his/her conclusion and attach it to the ***Evaluation Report***.

INDEPENDENT (OUTSIDE) EDUCATIONAL EVALUATION (IEEs)

What is an independent (outside) educational evaluation?

An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district.

Under what circumstances can an independent (outside) educational evaluation be obtained?

If a parent provides written notice that he/she disagrees with the school district's evaluation, he/she potentially has the right to an independent (outside) educational evaluation at public expense. *Public expense* means that the school district either pays for the full cost of the educational evaluation or ensures that the evaluation is provided at no cost to the parent. Whenever an independent (outside) educational evaluation is at public expense, the standards under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must meet the same standards that the school district uses. The parent cannot mandate the examiner, and it

is the school district's obligation to provide three independent/outside evaluation options to the parent.

If a parent obtains an independent educational evaluation at his/her expense, the school district must consider those results in planning the learner's educational program.

In addition, an independent educational evaluation may be requested by a hearing officer. In this case, the independent educational evaluation *must* be at public expense.

If a parent requests an independent educational evaluation, contact the Director to assist in planning.

Assessed and did not qualify: If the student does not qualify for Special Education services, the district should determine a uniform policy for how to deal with the protocols, evaluation report and other paper work. A notation should be made in the cumulative file that the student was assessed for special education eligibility, and the note should also indicate where to find that information.

STATE AND FEDERAL REFERENCES

Minnesota Rule 3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS

Subpart 1. **Documentation required.** The team may determine that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts **3525.1325** to **3525.1345** and **3525.2335**, the team must include the documentation in the pupil's special education record in accordance with items, A, B, C, and D.

- A. The pupil's record must contain documents that explain why the standards and procedures, used with the majority of pupils, resulted in invalid findings for this pupil.
- B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of specialized instruction. These data include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testing, observational data, ecological assessments, and other developmental data.
- C. Since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.
- D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included.

20 U.S.C. § Sec. 1414 (b) (2) Additional requirements... (A) Tests and other evaluation materials used to assess a child under this section –

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and

- (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

34 C.F.R. § 300.532 Evaluation procedures

Each public agency shall ensure, at a minimum, that the following requirements are met:

- (a) (1) Tests and other evaluation materials used to assess a child under Part B of the Act:
 - (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and
 - (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and
- (2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- (b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child...
- (c) (1) any standardized tests that are given to a child...
 - (i) have been validated for the specific purpose for which they are used; and
 - (ii) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
- (2) if an assessment is not conducted under standard conditions, a description of the extent to which is varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

34 C.F.R. § 300.534 Determination of eligibility

- (a) Upon completing the administration of tests and other evaluation materials –
 - (1) a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 300.7; and
 - (2) the public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.
- (b) A child may not be determined to be eligible under this part if:
 - (1) the determinant factor for that eligibility determination is:
 - (i) lack of instruction in reading or math; or
 - (ii) limited English proficiency...

34 C.F.R. § 300.19 Native language.

- (a) As used in this part, the term *native language*, if used with reference to an individual of limited English proficiency, means the following:
 - (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a) (2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Eligibility Criteria and Checklists

3525.1325 AUTISM SPECTRUM DISORDERS (ASD) .

Subpart 1. **Definition.** "Autism spectrum disorders (ASD)" means a range of pervasive developmental disorders, with onset in childhood, that adversely affect a pupil's functioning and result in the need for special education instruction and related services. ASD is a disability category characterized by an uneven developmental profile and a pattern of qualitative impairments in several areas of development, including social interaction, communication, or the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. These core features may present themselves in a wide variety of combinations that range from mild to severe, and the number of behavioral indicators present may vary. ASD may include Autistic Disorder, Childhood Autism, Atypical Autism, Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, or other related pervasive developmental disorders.

Subp. 2. [Repealed, 24 SR 1799]

Subp. 3. **Criteria.** A multidisciplinary team shall determine that pupil is eligible and in need of special

education instruction and related services if the pupil meets the criteria in items A and B. A determination of eligibility must be supported by information collected from multiple settings and sources.

A. An educational evaluation must address all three core features in subitems (1) to (3). The team must document that the pupil demonstrates patterns of behavior described in at least two of these subitems, one of which must be subitem (1).

The behavioral indicators demonstrated must be atypical for the pupil's developmental level. The team shall document behavioral indicators through at least two of these methods: structured interviews with parents, autism checklists, communication and developmental rating scales, functional behavior assessments, application of diagnostic criteria from the current Diagnostic and Statistical Manual (DSM), informal and standardized evaluation instruments, or intellectual testing.

(1) Qualitative impairment in social interaction, as documented by two or more behavioral indicators, for example: limited joint attention and limited use of facial expressions directed toward others; does not show or bring things to others to indicate an interest in the activity; demonstrates difficulties in relating to people, objects, and events; a gross impairment in ability to make and keep friends;

significant vulnerability and safety issues due to social naivete; may appear to prefer isolated or solitary activities; misinterprets others' behaviors and social cues.

(2) Qualitative impairment in communication, as documented by one or more behavioral indicators, for example: not using finger to point or request; using others' hand or body as a tool; showing lack of spontaneous imitations or lack of varied imaginative play; absence or delay of spoken language; limited understanding and use of nonverbal communication skills such as gestures, facial expressions, or voice tone; odd production of speech including intonation, volume, rhythm, or rate; repetitive or idiosyncratic language or inability to initiate or maintain a conversation when speech is present.

(3) Restricted, repetitive, or stereotyped patterns of behavior, interest, and activities, as documented by one or more behavioral indicators, for example: insistence on following routines or rituals; demonstrating distress or resistance to changes in activity; repetitive hand or finger mannerism; lack of true imaginative play versus reenactment; overreaction or under-reaction to sensory stimuli; rigid or rule-bound thinking; an intense, focused preoccupation with a limited range of play, interests, or conversation topics.

B. The team shall document and summarize in an

evaluation report that ASD adversely affects a pupil's performance and that the pupil is in need of special education instruction and related services. Documentation must include:

(1) an evaluation of the pupil's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, the team must consider all other areas of educational concern related to the suspected disability;

(2) observations of the pupil in two different settings, on two different days; and

(3) a summary of the pupil's developmental history and behavior patterns.

Subp. 4. **Team membership.** The team determining eligibility and educational programming must include at least one professional with experience and expertise in the area of ASD due to the complexity of this disability and the specialized intervention methods. The team must include a school professional knowledgeable of the range of possible special education eligibility criteria.

Subp. 5. **Implementation.** Pupils with various educational profiles and related clinical diagnoses may meet the criteria of

ASD under subpart 3. However, a clinical or medical diagnosis is not required for a pupil to be eligible for special education services, and even with a clinical or medical diagnosis, a pupil must meet the criteria in subpart 3 to be eligible.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.1327 DEAF-BLIND.

Subpart 1. **Definition and criteria.** "Deaf-blind" means medically verified visual loss coupled with medically verified hearing loss that, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously, and the pupil must meet the criteria for both visually impaired and deaf and hard of hearing to be eligible for special education and services under this category.

Subp. 2. **Pupils at risk.** Pupils at risk of being deaf-blind include pupils who:

A. are already identified as deaf or hard of hearing or visually impaired but have not yet had a medical or functional evaluation of the other sense (vision or hearing);

B. have an identified condition, such as Usher Syndrome or Optic Atrophy, that includes a potential deterioration of vision or hearing in the future;

C. have a medically or functionally identified hearing loss and a verified deficit in vision determined by a functional evaluation in the learning environment;

D. have a medically or functionally identified vision impairment and verified hearing loss determined by a functional evaluation in the learning environment; or

E. have an identified syndrome or condition that includes hearing and vision loss in combination with multiple disabilities, for example, CHARGE Syndrome.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.1329 EMOTIONAL OR BEHAVIORAL DISORDERS.

Subpart 1. **Definition.** "Emotional or behavioral disorders" means an established pattern of one or more of the following emotional or behavioral responses:

A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;

B. disordered thought processes with unusual behavior patterns and atypical communication styles; or

C. aggression, hyperactivity, or impulsivity.

The established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional or behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings, and one other setting in either the home, child care, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

Subp. 2. [Repealed, 26 SR 657]

Subp. 2a. **Criteria.** A pupil is eligible and in need of special education and related services for an emotional or

behavioral disorder when the pupil meets the criteria in items A to C.

A. A pupil must demonstrate an established pattern of emotional or behavioral responses that is described in at least one of the following subitems and which represents a significant difference from peers:

(1) withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth defined by behaviors, for example: isolating self from peers; displaying intense fears or school refusal; overly perfectionistic; failing to express emotion; displaying a pervasive sad disposition; developing physical symptoms related to worry or stress; or changes in eating or sleeping patterns;

(2) disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships, for example: reality distortion beyond normal developmental fantasy and play or talk; inappropriate laughter, crying, sounds, or language; self-mutilation, developmentally inappropriate sexual acting out, or developmentally inappropriate self-stimulation; rigid, ritualistic patterning; perseveration or obsession with specific objects; overly affectionate behavior towards unfamiliar

persons; or hallucinating or delusions of grandeur; or

(3) aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, for example: physically or verbally abusive behaviors; impulsive or violent, destructive, or intimidating behaviors; or behaviors that are threatening to others or excessively antagonistic.

The pattern must not be the result of cultural factors, and must be based on evaluation data which may include a diagnosis of mental disorder by a licensed mental health professional.

B. The pupil's pattern of emotional or behavioral responses adversely affects educational performance and results in:

(1) an inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; or

(2) a pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders under part [3525.1325](#); or inconsistent educational programming.

C. The combined results of prior documented interventions and the evaluation data for the pupil must establish significant impairments in one or more of the following areas: intrapersonal, academic, vocational, or social skills. The data must document that the impairment:

(1) severely interferes with the pupil's or other students' educational performance;

(2) is consistently exhibited by occurrences in at least three different settings: two educational settings, one of which is the classroom, and one other setting in either the home, child care, or community; or for children not yet enrolled in kindergarten, the emotional or behavioral responses must be consistently exhibited in at least one setting in the home, child care, or community; and

(3) has been occurring throughout a minimum of six months, or results from the well-documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional.

Subp. 3. **Evaluation.**

A. The evaluation findings in subpart 2a must be supported by current or existing data from:

(1) clinically significant scores on standardized, nationally normed behavior rating scales;

(2) individually administered, standardized, nationally normed tests of intellectual ability and academic achievement;

(3) three systematic observations in the classroom or other learning environment;

(4) record review;

(5) interviews with parent, pupil, and teacher;

(6) health history review procedures;

(7) a mental health screening; and

(8) functional behavioral assessment.

The evaluation may include data from vocational skills measures; personality measures; self-report scales; adaptive behavior rating scales; communication measures; diagnostic assessment and mental health evaluation reviews; environmental, socio-cultural, and ethnic information reviews; gross and fine

motor and sensory motor measures; or chemical health assessments.

B. Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in subpart 2a, items A, B, and C, subitems (2) and (3). The evaluation process must show developmentally significant impairments in self-care, social relations, or social or emotional growth, and must include data from each of the following areas: two or more systematic observations, including one in the home; a case history, including medical, cultural, and developmental information; information on the pupil's cognitive ability, social skills, and communication abilities; standardized and informal interviews, including teacher, parent, caregiver, and child care provider; and standardized adaptive behavior scales.

STAT AUTH: MS s [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; 17 SR 3361; 26 SR 657

3525.1331 DEAF AND HARD OF HEARING.

Subpart 1. **Definition.** "Deaf and hard of hearing" means a diminished sensitivity to sound, or hearing loss, that is expressed in terms of standard audiological measures.

Hearing loss has the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services.

Subp. 2. **Criteria.** A pupil who is deaf or hard of hearing is eligible for special education instruction and related services if the pupil meets one of the criteria in item A and one of the criteria in item B, C, or D.

A. There is audiological documentation provided by a certified audiologist that a pupil has one of the following:

(1) a sensorineural hearing loss with an unaided pure tone average, speech threshold, or auditory brain stem response threshold of 20 decibels hearing level (HL) or greater in the better ear;

(2) a conductive hearing loss with an unaided pure tone average or speech threshold of 20 decibels hearing level (HL) or greater in the better ear persisting over three months or occurring at least three times during the previous 12 months as verified by audiograms with at least one measure provided by a certified audiologist;

(3) a unilateral sensorineural or persistent

conductive loss with an unaided pure tone average or speech threshold of 45 decibels hearing level (HL) or greater in the affected ear; or

(4) a sensorineural hearing loss with unaided pure tone thresholds at 35 decibels hearing level (HL) or greater at two or more adjacent frequencies (500 hertz, 1000 hertz, 2000 hertz, or 4000 hertz) in the better ear.

B. The pupil's hearing loss affects educational performance as demonstrated by:

(1) a need to consistently use amplification appropriately in educational settings as determined by audiological measures and systematic observation; or

(2) an achievement deficit in basic reading skills, reading comprehension, written language, or general knowledge that is at the 15th percentile or 1.0 standard deviation or more below the mean on a technically adequate norm-referenced achievement test that is individually administered by a licensed professional.

C. The pupil's hearing loss affects the use or understanding of spoken English as documented by one or both of the following:

(1) under the pupil's typical classroom condition, the pupil's classroom interaction is limited as measured by systematic observation of communication behaviors; or

(2) the pupil uses American Sign Language or one or more alternative or augmentative systems of communication alone or in combination with oral language as documented by parent or teacher reports and language sampling conducted by a professional with knowledge in the area of communication with persons who are deaf or hard of hearing.

D. The pupil's hearing loss affects the adaptive behavior required for age-appropriate social functioning as supported by:

(1) documented systematic observation within the pupil's primary learning environments by a licensed professional and the pupil, when appropriate; and

(2) scores on a standardized scale of social skill development are below the average scores expected of same-age peers.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19

3525.1333 DEVELOPMENTAL COGNITIVE DISABILITY.

Subpart 1. **Definition.** "Developmental cognitive disability (DCD)" means a condition resulting in significantly below average intellectual functioning and concurrent deficits in adaptive behavior that adversely affects educational performance and requires special education and related services. DCD does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or inconsistent educational programming.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible as having a DCD and is in need of special education instruction and related services if the pupil meets the criteria in items A and B.

A. The pupil demonstrates below average adaptive behavior in school and home, and, if appropriate, community environments. For the purposes of this item, "below average" means:

(1) a composite score at or below the 15th

percentile on a nationally normed, technically adequate measure of adaptive behavior; and

(2) documentation of needs and the level of support required in at least four of the seven adaptive behaviors domains across multiple environments. Systematic observation and parent input must be included as sources to document need and level of support. All of the following adaptive behavior domains must be considered:

(a) daily living and independent living skills;

(b) social and interpersonal skills;

(c) communication skills;

(d) academic skills;

(e) recreation and leisure skills;

(f) community participation skills; and

(g) work and work-related skills.

Other sources of documentation may include checklists;

classroom or work samples; interviews; criterion-referenced measures; educational history; medical history; or pupil self-report.

B. The pupil demonstrates significantly below average general intellectual functioning that is measured by an individually administered, nationally normed test of intellectual ability. For the purposes of this subitem, "significantly below average general intellectual functioning" means:

(1) mild-moderate range: two standard deviations below the mean, plus or minus one standard error of measurement; and

(2) severe-profound range: three standard deviations below the mean, plus or minus one standard error of measurement.

Significantly below average general intellectual functioning must be verified through a written summary of results from at least two systematic observations with consideration for culturally relevant information, medical and educational histories, and one or more of the following: supplemental tests of specific abilities, criterion-referenced tests, alternative methods of intellectual assessment, clinical

interviews with parents, including family members, if appropriate, or observation and analysis of behavior across multiple environments.

Subp. 3. [Repealed, 26 SR 657]

STAT AUTH: MS s [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 26 SR 657

3525.1335 OTHER HEALTH DISABILITIES.

Subpart 1. **Definition.** "Other health disability" means having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a pupil's educational performance.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criteria in items A and B.

A. There is:

(1) written and signed documentation by a licensed physician of a medically diagnosed chronic or acute health condition; or

(2) in the case of a diagnosis of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD or ADHD), there is written and signed documentation of a medical diagnosis by a licensed physician. The diagnosis of ADD or ADHD must include documentation that DSM-IV criteria in items A to E have been met. DSM-IV criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition.

For initial evaluation, all documentation must be dated within the previous 12 months.

B. In comparison with peers, the health condition adversely affects the pupil's ability to complete educational tasks within routine timelines as documented by three or more of the following:

(1) excessive absenteeism linked to the health condition, for example, hospitalizations, medical treatments, surgeries, or illnesses;

(2) specialized health care procedures that are

necessary during the school day;

(3) medications that adversely affect learning and functioning in terms of comprehension, memory, attention, or fatigue;

(4) limited physical strength resulting in decreased capacity to perform school activities;

(5) limited endurance resulting in decreased stamina and decreased ability to maintain performance;

(6) heightened or diminished alertness resulting in impaired abilities, for example, prioritizing environmental stimuli; maintaining focus; or sustaining effort or accuracy;

(7) impaired ability to manage and organize materials and complete classroom assignments within routine timelines; or

(8) impaired ability to follow directions or initiate and complete a task.

Subp. 3. **Evaluation.** The health condition results in a pattern of unsatisfactory educational progress as determined by a comprehensive evaluation documenting the required components

of subpart 2, items A and B. The eligibility findings must be supported by current or existing data from items A to E:

A. an individually administered, nationally normed standardized evaluation of the pupil's academic performance;

B. documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's parent or guardian;

C. one or more documented, systematic observations in the classroom or other learning environment by a licensed special education teacher;

D. a review of the pupil's health history, including the verification of a medical diagnosis of a health condition; and

E. records review.

The evaluation findings may include data from: an individually administered, nationally normed test of intellectual ability; an interview with the pupil; information from the school nurse or other individuals knowledgeable about the health condition of the pupil; standardized, nationally normed behavior rating scales; gross and fine motor and sensory

motor measures; communication measures; functional skills checklists; and environmental, socio-cultural, and ethnic information reviews.

STAT AUTH: MS s [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 26 SR 657

3525.1337 PHYSICALLY IMPAIRED.

Subpart 1. **Definition.** "Physically impaired" means a medically diagnosed chronic, physical impairment, either congenital or acquired, that may adversely affect physical or academic functioning and result in the need for special education and related services.

Subp. 2. **Criteria.** A pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There must be documentation of a medically diagnosed physical impairment.

B. The pupil's:

(1) need for special education instruction and

service is supported by a lack of functional level in organizational or independent work skills as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher;

(2) need for special education instruction and service is supported by an inability to manage or complete motoric portions of classroom tasks within time constraints as verified by a minimum of two or more documented systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or

(3) physical impairment interferes with educational performance as shown by an achievement deficit of 1.0 standard deviation or more below the mean on an individually administered, nationally normed standardized evaluation of the pupil's academic achievement.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.1339 SEVERELY MULTIPLY IMPAIRED.

Subpart 1. **Definition.** "Severely multiply impaired" means

a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by an evaluation as defined by part [3525.2710](#).

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible as being severely multiply impaired if the pupil meets the criteria for two or more of the following disabilities:

- A. deaf or hard of hearing, part [3525.1331](#);
- B. physically impaired, part [3525.1337](#);
- C. developmental cognitive disability:
severe-profound range, part [3525.1333](#);
- D. visually impaired, part [3525.1345](#);
- E. emotional or behavioral disorders, part [3525.1329](#);

or

- F. autism spectrum disorders, part [3525.1325](#).

STAT AUTH: MS s [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 26 SR 657

Current as of 09/15/04

3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1. **Definition.** "Specific learning disability" means a condition within the pupil affecting learning, relative to potential and:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the pupil does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment;

B. demonstrated by a significant discrepancy between a pupil's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or mathematics reasoning, basic reading skills, reading comprehension, and written expression; and

C. demonstrated primarily in academic functioning, but may also affect self-esteem, career development, and life adjustment skills. A specific learning disability may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or

environmental, cultural, economic influences, or a history of an inconsistent education program.

Subp. 2. **Criteria.** A pupil has a specific learning disability and is in need of special education and related services when the pupil meets the criteria in items A, B, and C. Information about each item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the disabling effects of the pupil's disability occur in a variety of settings.

A. The pupil must demonstrate severe underachievement in response to usual classroom instruction. The performance measures used to verify this finding must be both representative of the pupil's curriculum and useful for developing instructional goals and objectives. The following evaluation procedures are required at a minimum to verify this finding:

(1) evidence of low achievement from, for example, cumulative record reviews, classwork samples, anecdotal teacher records, formal and informal tests, curriculum based evaluation results, and results from instructional support programs such as Chapter 1 and Assurance of Mastery; and

(2) at least one team member other than the pupil's regular teacher shall observe the pupil's academic

performance in the regular classroom setting. In the case of a child served through an Early Childhood Special Education program or who is out of school, a team member shall observe the child in an environment appropriate for a child of that age.

B. The pupil must demonstrate a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation, or mathematical reasoning. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The team shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the pupil's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the pupil's chronological age level.

C. The team must agree that it has sufficient evaluation data that verify the following conclusions:

(1) the pupil has an information processing

condition that is manifested by behaviors such as: inadequate or lack of expected acquisition of information, lack of organizational skills, for example, following written and oral directions; spatial arrangements; correct use of developmental order in relating events; transfer of information onto paper; visual and auditory memory; verbal and nonverbal expression; and motor control for written tasks such as pencil and paper assignments, drawing, and copying;

(2) the disabling effects of the pupil's information processing condition occur in a variety of settings; and

(3) the pupil's underachievement is not primarily the result of: visual, hearing, or motor impairment; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; or a history of inconsistent educational programming.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.1343 SPEECH OR LANGUAGE IMPAIRMENTS.

Subpart 1. **Fluency disorder; definition and criteria.**

"Fluency disorder" means the intrusion or repetition of sounds, syllables, and words; prolongations of sounds; avoidance of words; silent blocks; or inappropriate inhalation, exhalation, or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a fluency disorder and is eligible for speech or language special education when:

A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and

B. dysfluent behaviors occur during at least five percent of the words spoken on two or more speech samples.

Subp. 2. **Voice disorder; definition and criteria.** "Voice disorder" means the absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration. Voice patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a voice disorder and is eligible for speech or language special education when:

A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and

B. achievement of a moderate to severe vocal severity rating is demonstrated on a voice evaluation profile administered on two separate occasions, two weeks apart, at different times of the day.

Subp. 3. **Articulation disorder; definition and criteria.**

A. "Articulation disorder" means the absence of or incorrect production of speech sounds or phonological processes that are developmentally appropriate. For the purposes of this subpart, phonological process means a regularly occurring simplification or deviation in an individual's speech as compared to the adult standard, usually one that simplifies the adult phonological pattern. Articulation patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in subitem (1) and either subitem (2) or (3):

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and

(2) test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test; or

(3) a pupil is nine years of age or older and a sound is consistently in error as documented by two three-minute conversational speech samples.

Subp. 4. **Language disorder; definition and criteria.**

A. "Language disorder" means a breakdown in communication as characterized by problems in expressing needs, ideas, or information that may be accompanied by problems in understanding. Language patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has a language disorder and is eligible

for speech or language special education services when:

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child;

(2) an analysis of a language sample or documented observation of communicative interaction indicates the pupil's language behavior falls below or is different from what would be expected given consideration to chronological age, developmental level, or cognitive level; and

(3) the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available; or

(4) if technically adequate, norm-referenced language tests are not available to provide evidence of a deficit of 2.0 standard deviations below the mean in the area of language, two documented measurement procedures indicate a substantial difference from what would be expected given consideration to chronological age, developmental level, or cognitive level. The documented procedures may include additional language samples, criterion-referenced instruments, observations in natural environments, and parent reports.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19,20

HIST: 16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.1345 VISUALLY IMPAIRED.

Subpart 1. **Definition.** "Visually impaired" means a medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interaction with the environment to the extent that special education instruction and related services may be needed.

Subp. 2. **Criteria.** A pupil is eligible as having a visual disability and in need of special education when the pupil meets one of the criteria in item A and one of the criteria in item B:

A. medical documentation of a diagnosed visual impairment by a licensed eyespecialist establishing one or more of the following conditions:

(1) visual acuity of 20/60 or less in the better eye with the best conventional correction;

(a) estimation of acuity is acceptable for difficult-to-test pupils; and

(b) for pupils not yet enrolled in kindergarten, measured acuity must be significantly deviant from what is developmentally age-appropriate;

(2) visual field of 20 degrees or less, or bilateral scotomas; or

(3) a congenital or degenerating eye condition including, for example, progressive cataract, glaucoma, or retinitis pigmentosa; and

B. functional evaluation of visual abilities conducted by a licensed teacher of the visually impaired that determines that the pupil:

(1) has limited ability in visually accessing program-appropriate educational media and materials including, for example, textbooks, photocopies, ditto copies, chalkboards, computers, or environmental signs, without modification;

(2) has limited ability to visually access the full range of program-appropriate educational materials and media without accommodating actions including, for example, changes in posture, body movement, focal distance, or squinting;

(3) demonstrates variable visual ability due to environmental factors including, for example, contrast, weather, color, or movement, that cannot be controlled; or

(4) experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition.

STAT AUTH: MS s [14.389](#); [120.17](#); L 1999 c 123 s 19

HIST: 16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799

3525.1348 TRAUMATIC BRAIN INJURY (TBI) .

Subpart 1. **Definition.** "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that may adversely affect a pupil's educational performance and may result in the need for special education and related services. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as: cognition, speech/language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, and information processing. The term does not apply to brain injuries that are

congenital or degenerative, or brain injuries induced by birth trauma.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education and related services if the pupil meets the criterion in item A and the criteria in items B and C as documented by the information gathered according to item D:

A. There is documentation by a physician of a medically verified traumatic brain injury.

B. There is a functional impairment attributable to the traumatic brain injury that adversely affects educational performance in one or more of the following areas: intellectual-cognitive, academic, communication, motor, sensory, social-emotional-behavioral, and functional skills-adaptive behavior. Examples of functional impairments which may adversely affect educational performance are:

(1) intellectual-cognitive, for example, impaired:

(a) attention or concentration;

(b) ability to initiate, organize, or complete tasks;

(c) ability to sequence, generalize, or
plan;

(d) insight/consequential thinking;

(e) flexibility in thinking, reasoning, or
problem-solving;

(f) abstract thinking;

(g) judgment or perception;

(h) long-term or short-term memory;

(i) ability to acquire or retain new
information;

(j) ability to process information;

(2) academic, for example:

(a) marked decline in achievement from
preinjury levels;

(b) impaired ability to acquire basic skills

(reading, written language, mathematics);

(c) normal sequence of skill acquisition
which has been interrupted by the trauma as related to
chronological and developmental age;

(3) communication, for example:

(a) impaired ability to initiate, maintain,
restructure, or terminate conversation;

(b) impaired ability to respond to verbal
communication in a timely, accurate or efficient manner;

(c) impaired ability to communicate in
distracting or stressful environments;

(d) impaired ability to use language
appropriately (requesting information, predicting, analyzing, or
using humor);

(e) impaired ability to use appropriate
syntax;

(f) impaired abstract or figurative
language;

(g) perseverative speech (repetition of words, phrases, or topics);

(h) impaired ability to understand verbal information;

(i) impaired ability to discriminate relevant from irrelevant information;

(j) impaired voice production/articulation (intensity, pitch, quality, apraxia, or dysarthria);

(4) motor, for example, impaired:

(a) mobility (balance, strength, muscle tone, or equilibrium);

(b) fine or gross motor skills;

(c) speed of processing or motor response time;

(d) sensory, for example, impaired;

(5) sensory, for example, impaired:

(a) vision (tracking, blind spots, visual field cuts, blurred vision, or double vision);

(b) hearing (tinnitus, noise sensitivity, or hearing loss);

(6) social-emotional-behavioral, for example:

(a) impaired ability to initiate or sustain appropriate peer or adult relationships;

(b) impaired ability to perceive, evaluate, or use social cues or context appropriately;

(c) impaired ability to cope with over-stimulating environments, low frustration tolerance;

(d) mood swings or emotional ability;

(e) impaired ability to establish or maintain self-esteem;

(f) denial of deficits affecting performance;

(g) poor emotional adjustment to injury
(depression, anger, withdrawal, or dependence);

(h) impaired ability to demonstrate
age-appropriate behavior;

(i) impaired self-control (verbal or
physical aggression, impulsivity, or disinhibition);

(j) intensification of preexistent
maladaptive behaviors or disabilities;

(7) functional skills-adaptive behavior, for
example, impaired:

(a) ability to perform developmentally
appropriate daily living skills in school, home, leisure, or
community setting (hygiene, toileting, dressing, eating);

(b) ability to transfer skills from one
setting to another;

(c) orientation (places, time, situations);

(d) ability to find rooms, buildings, or
locations in a familiar environment;

(e) ability to respond to environmental cues
(bells, signs);

(f) ability to follow a routine;

(g) ability to accept change in an
established routine;

(h) stamina that results in chronic fatigue.

C. The functional impairments are not primarily the
result of previously existing:

(1) visual, hearing, or motor impairments;

(2) emotional or behavioral disorders;

(3) mental retardation;

(4) language or specific learning disabilities;

(5) environmental or economic disadvantage;

(6) cultural differences.

D. Information/data to document a functional impairment in one or more of the areas in item B must, at a minimum, include one source from Group One and one source from Group Two:

(1) GROUP ONE:

(a) checklists;

(b) classroom or work samples;

(c) educational/medical history;

(d) documented, systematic behavioral observations;

(e) interviews with parents, student, and other knowledgeable individuals;

(2) GROUP TWO:

(a) criterion-referenced measures;

(b) personality or projective measures;

(c) sociometric measures;

(d) standardized assessment measures;
(academic, cognitive, communication, neuropsychological, or
motor).

STAT AUTH: MS s [121.11](#); L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20

HIST: 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657

**3525.1352 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION: SPECIAL
EDUCATION.**

Subpart 1. **Definition.** "Developmental adapted physical
education: special education" means specially designed physical
education instruction and services for pupils with disabilities
who have a substantial delay or disorder in physical development.
Developmental adapted physical education: special education
instruction for pupils age three through 21 may include
development of physical fitness, motor fitness, fundamental
motor skills and patterns, skills in aquatics, dance, individual
and group games, and sports.

Students with conditions such as obesity, temporary
injuries, and short-term or temporary illness or disabilities
are termed special needs students. Special needs students are

not eligible for developmental adapted physical education: special education. Provisions and modifications for these students must be made within regular physical education.

Subp. 2. **Criteria.** A pupil is eligible for developmental adapted physical education: special education if the team determines the pupil meets the criteria in items A and B.

A. The pupil has one of the following disabilities in each respective criteria in parts [3525.1325](#) to [3525.1341](#), [3525.1345](#), and [3525.1354](#): autism spectrum disorders, deaf-blind, emotional or behavioral disorders, deaf or hard of hearing, specific learning disability, developmental cognitive disability, severely multiply impaired, other health disability, physically impaired, visually impaired, traumatic brain injury or part [3525.1350](#), subpart 3.

B. The pupil is determined by the team to need specially designed physical education instruction because:

(1) the pupil's performance on an appropriately selected, technically adequate, norm-referenced psychomotor or physical fitness instrument is 1.5 standard deviations or more below the mean. The instrument must be individually administered by appropriately licensed teachers; or

(2) the pupil's development or achievement and independence in school, home, and community settings is inadequate to allow the pupil to succeed in the regular physical education program as supported by written documentation from two or more of the following: motor and skill checklists; informal tests; criterion-referenced measures; deficits in achievement related to the defined curriculum; medical history or reports; parent and staff interviews; systematic observations; and social, emotional, and behavioral assessments.

STAT AUTH: MS s [121.11](#); L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20

HIST: 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657

3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

Subpart 1. **Documentation required.** The team may determine that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts [3525.1325](#) to [3525.1345](#) and [3525.2335](#). The team must include the documentation in the pupil's special education record according to items A, B, C, and D.

A. The pupil's record must contain documents that explain why the standards and procedures used with the majority

of pupils resulted in invalid findings for this pupil.

B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of special instruction and related services. These data include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testings, observational data, ecological assessments, and other developmental data.

C. Because the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.

D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included.

Subp. 2. [Repealed, 24 SR 1799]

STAT AUTH: MS s [14.389](#); [120.17](#); [121.11](#); L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20

HIST: 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

Subpart 1. **Team staff.** A district may assign more than one teacher licensed in different areas or one or more teachers and related services staff as a team to provide instruction and related services to pupils in a school-age educational service alternative.

Subp. 2. **License requirement.** There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

Subp. 3. **Team member responsibility.** The team member licensed in a pupil's disability shall be responsible for conducting the pupil's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part [3525.0210](#) must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time for specific consultation and indirect services shall be determined by the IEP team.

Subp. 4. **Implementation.** Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The special education provided by each team member shall be included in the IEP.

Subp. 5. [Repealed, 19 SR 2432]

STAT AUTH: MS s [120.17](#); [121.11](#); L 1994 c 647 art 3 s 23; L 1999 c 123

DISABILITY CATEGORIES IN MINNESOTA SPECIAL EDUCATION

AUTISM SPECTRUM DISORDERS: A behaviorally defined group of disorders characterized by an uneven developmental profile and a pattern of qualitative impairments in social interaction, communication, and restricted repetitive and stereotyped patterns of behavior, interest, and activities, with onset in early childhood.

BLIND / VISUALLY IMPAIRED: a medically verified condition accompanied by limitations in sight that interfere with acquiring information or interaction with the environment.

DEAF / HARD OF HEARING: a diminished sensitivity to sound that is expressed in terms of standard audiological measures.

DEAF / BLINDNESS: a medically verified visual impairment coupled with medically verified hearing impairment that, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously and must meet the criteria of both vision and hearing impairment.

DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION: specifically designed physical education instruction and services for pupils with disabilities who have a substantial delay in physical development. DAPE for students age three through 21 may include physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games and sports.

DEVELOPMENTAL COGNITIVE DISABILITY: significantly sub-average general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior.

EMOTIONAL / BEHAVIORAL DISORDER: an established pattern characterized by severely aggressive or impulsive behaviors, severely withdrawn or anxious behaviors, generally pervasive unhappiness, depression or side mood swings or severely disordered thought processes manifested by unusual behavior patterns, atypical communication styles or distorted interpersonal relationships.

OTHER HEALTH IMPAIRED: having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a student's educational performance.

PHYSICALLY IMPAIRED: a medically diagnosed chronic physical impairment, either congenital or acquired, that adversely affects physical or academic functioning.

SPECIFIC LEARNING DISABILITY: a significant discrepancy between one's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or reasoning, basic reading skills, reading comprehension and written expression.

SEVERE MULTIPLY IMPAIRED: a severe learning and developmental problem resulting from two or more disability conditions determined by an evaluation.

SPEECH / LANGUAGE IMPAIRMENT: a communication disorder in fluency, voice, articulation or language.

TRAUMATIC BRAIN INJURY: an acquired injury to the brain caused by external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Listed below are disability criteria, dated August 2011, from the Minnesota Department of Education (MDE) website: <http://education.state.mn.us>

- [Specific Learning Disability](#) -
- [Autism Spectrum Disorder](#)
- [Deaf and Hard of Hearing](#)
- [Deaf and Blind](#)
- [Developmental Adapted Physical Education](#)
- [Developmental Cognitive Disability](#)
- [Emotional or Behavioral Disabilities](#)
- [Physically Impaired](#)
- [Other Health Disabilities](#)
- [Severely Multiply Impaired](#)
- [Speech Language Impairment](#)
- [Traumatic Brain Injury](#)
- [Visual Impairment Checklist](#)

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