

Handouts

Theme C: Evaluating Children for Disability

These handouts are designed to accompany Modules 9-11.



"Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs."

Section 300.15 Evaluation.

Snapshot of Training Curriculum

Title of Curriculum

Building the Legacy: Individuals with Disabilities Education Act Amendments of 2004.

Purpose of the Curriculum

To provide authoritative information about, and training materials on, IDEA and its final Part B regulations.

Source

The *Building the Legacy* training curriculum is a product of the National Dissemination Center for Children with Disabilities (NICHCY), produced at the request of the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

Organization of the Curriculum

A snapshot table of contents for the training curriculum is shown in the box at the right. As you can see, there are five overarching themes (A, B, C, D, and E), with multiple training modules beneath each theme (1, 2, 3, and so on).

Additional themes are planned for the future, including those addressing early childhood, administration of IDEA, and monitoring and supervision.

List of Modules in the Curriculum

As the snapshot at the right shows, as of March 2007, *Building the Legacy* has 19 training modules on separate topics, as listed in the box at the right. (Note: A title in gray text will be available in Summer 2007. All others will be available within the coming weeks.)

Materials for each module include: a slide show for use in training, detailed background text and explanation for trainers, handouts for participants, and supplemental resources for trainers.

These Handouts: Theme C, Modules 9-11
*This packet of handouts (what you're reading now) is provided for Modules 9-11, the modules under **Theme C: Evaluating Children for Disability**. Depending on what module is being presented at any given time, participants may not need every handout in this packet.*

Availability of the Curriculum

Individual modules will become available as they are finalized, most in the coming weeks, the remainder by Summer 2007. Sign up to be notified when new modules are released, at:

www.nichcy.org/mod_signup.asp

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** Coming in March-April 2007.*

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Please feel free to copy and share these handouts.

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Additional handouts for Theme C will become part of this handout packet as other modules in Theme C are finalized.

IDEA 2004's Final Regulations for:

Parent Consent for Evaluation

§300.300 Parental consent.

(a) *Parental consent for initial evaluation.* (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evalua-

tion under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial

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Parent Consent for Evaluation

provision of special education and related services, the public agency—

(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) *Parental consent for reevaluations.* (1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) *Other consent requirements.*

(1) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

IDEA 2004's Final Regulations for:

Evaluation and Reevaluation

Evaluations and Reevaluations

§300.301 Initial evaluations.

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) *Request for initial evaluation.* Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) *Procedures for initial evaluation.* The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) *Exception.* The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and

prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))

§300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§300.303 Reevaluations.

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

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Evaluation and Reevaluation

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

§300.304 Evaluation procedures.

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

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

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent

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Evaluation and Reevaluation

with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

§300.305 Additional requirements for evaluations and reevaluations.

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) *Requirements if additional data are not needed.*
(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

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Evaluation and Reevaluation

(e) Evaluations before change in eligibility. (1)

Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including 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; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

IDEA 2004's Final Regulations for:

Definition of "Child with a Disability"

§300.8 Child with a disability.

(a) *General.* (1) *Child with a disability* means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deafblindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays.* *Child with a disability* for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—



(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

(1)(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

Editor's note: IDEA's provisions at §300.111(b) are included on page 3 of this handout.

Definition of “Child with a Disability”

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance.

(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

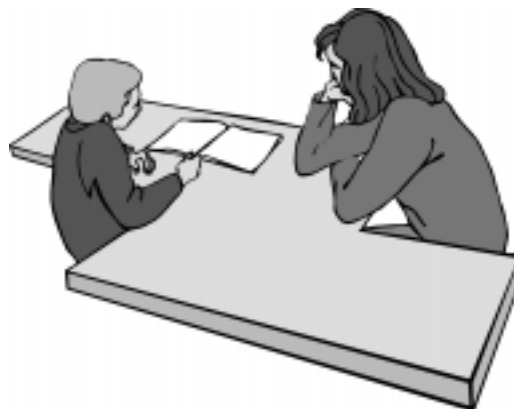
(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).



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Definition of “Child with a Disability”

(9) *Other health impairment* means 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—

(i) 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, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child’s educational performance.

(10) *Specific learning disability*—(i) *General*.

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.



(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

(12) *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 adversely affects a child’s educational performance. Traumatic brain injury 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-

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Provisions at §300.111(b) Relevant to “Developmental Delay”

(b) *Use of term developmental delay*. The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of *developmental delay* under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in §300.8(b), the LEA must conform to both the State’s definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child’s eligibility under this part.

Definition of “Child with a Disability”

solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

IDEA Regulations

Changes in Initial Evaluation and Reevaluation

(See also Procedural Safeguards: Surrogates, Notice, and Consent and Identification of Specific Learning Disabilities)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the Act. The final regulations were published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding initial evaluation and reevaluation.

IDEA Regulations

1. Adds a provision regarding initiation of a request for initial evaluation.

Consistent with the consent requirements in 34 CFR 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

[34 CFR 300.301(b)] [20 U.S.C. 1414(a)(1)(B)]

2. Adds a 60-day timeline to complete initial evaluation (unless the State has an established timeline).

The initial evaluation:

- Must be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
- Must consist of procedures to determine if the child is a child with a disability under 34 CFR 300.8 and to determine the educational needs of the child.

[34 CFR 300.301(c)] [20 U.S.C. 1414(a)(1)(C)]

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

² For purposes of this document, *No Child Left Behind* (NCLB) also is referred to as the *Elementary and Secondary Education Act* of 1965, as amended (ESEA).

U.S. Department of Education's Topic Brief (on the Regulations)

Changes in Initial Evaluation and Reevaluation

The timeframe described in 34 CFR 300.301(c)(1) does not apply to a public agency if:

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- A child enrolls in a school of another public agency after the relevant timeframe in 34 CFR 300.300(c)(1) has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR 300.8.

[34 CFR 300.301(d)] [20 U.S.C. 1414(a)(1)(C)]

The exception in 34 CFR 300.301(d)(2) applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

[34 CFR 300.301(e)] [20 U.S.C. 1414(a)(1)(C)]

3. Clarifies that screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

[34 CFR 300.302] [20 U.S.C. 1414(a)(1)(E)]

4. Revises procedures for reevaluations.

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 300.311:

- If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

A reevaluation conducted under 34 CFR 300.303(a):

- May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

[34 CFR 300.303] [20 U.S.C. 1414(a)(2)]

5. Adds a requirement that evaluation procedure be administered in form that is most likely to yield the most accurate information

Each public agency must ensure that assessments and other evaluation materials used to assess a child under Part 300 are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

[34 CFR 300.304(c)(1)(ii)] [20 U.S.C. 1414(b)(3)(A)(ii)]

U.S. Department of Education's Topic Brief (on the Regulations)

Changes in Initial Evaluation and Reevaluation

6. Adds a requirement regarding transfer from one public agency to another in the same school year.

Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 CFR 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

[34 CFR 300.304(c)(5)] [20 U.S.C. 1414(b)(3)(D)]

7. Revises the review of existing data provisions.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part 300, the IEP Team and other qualified professionals, as appropriate, must:

- Review existing evaluation data on the child, including:
 - Evaluations and information provided by the parents of the child;
 - Current classroom-based, local, or State assessments, and classroom-based observations; and
 - Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - Whether the child is a child with a disability, as defined in 34 CFR 300.8, and the educational needs of the child; or, in case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - The present levels of academic achievement and related developmental needs of the child;
 - Whether the child needs special education and related services; or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

[34 CFR 300.305(a)] [20 U.S.C. 1414(c)(1)-(4)]

The group described in 34 CFR 300.305(a) may conduct its review without a meeting.

[34 CFR 300.305(b)] [20 U.S.C. 1414(c)(1)-(4)]

The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under 34 CFR 300.305(a).

[34 CFR 300.305(c)] [20 U.S.C. 1414(c)(1)-(4)]

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of:

- That determination and the reasons for the determination; and

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- The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

The public agency is not required to conduct the assessment described in 34 CFR 300.305(d)(1)(ii) unless requested to do so by the child's parents.

[34 CFR 300.305(d)] [20 U.S.C. 1414(c)(1), (2), (4)]

8. Revises the provisions regarding the exception to requirements for evaluation before a change in eligibility.

Except as provided in 34 CFR 300.305(e)(2), a public agency must evaluate a child with a disability in accordance with 34 CFR 300.304-300.311 before determining that the child is no longer a child with a disability.

[34 CFR 300.305(e)(1)] [20 U.S.C. 1414(c)(5)]

The evaluation described in 34 CFR 300.305(e)(1) is not required before the termination of a child's eligibility under Part 300 due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education (FAPE) under State law.

[34 CFR 300.305(e)(2)] [20 U.S.C. 1414(c)(5)]

For a child whose eligibility terminates under circumstances described in 34 CFR 300.305(e)(2), a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

[34 CFR 300.305(e)(3)] [20 U.S.C. 1414(c)(5)]

9. Revise provisions regarding determinant factors.

A child must not be determined to be a child with a disability under Part B:

- If the determinant factor for that determination is:
 - o Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA²);
 - o Lack of appropriate instruction in math; or
 - o Limited English proficiency; and
- If the child does not otherwise meet the eligibility criteria under 34 CFR 300.8(a).

[34 CFR 300.306(b)] [20 U.S.C. 1414(b)(5)]

Available online at:

www.nichcy.org/reauth/Eval-Reeval-Regs.pdf

www.nichcy.org/reauth/Eval-Reeval-Regs.doc

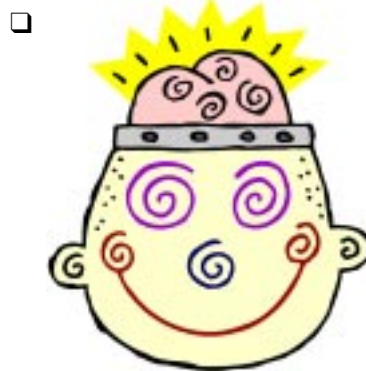
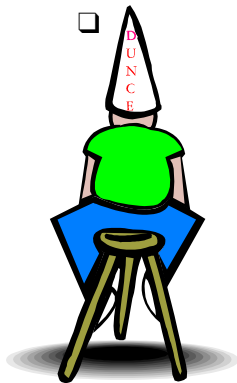
What You Bring to the Party

Instructions: Work individually to complete the sentences below. You have 5 minutes

1. What I know about *learning disabilities*...

- One drip of the faucet.
- Would fill a teacup
- Would make a bucket overflow
- Would raise the Earth's oceans a foot

2. When someone says *response to intervention*, I look like this:



3. One reason why I need to know about identifying specific learning disabilities is...

IDEA Regulations

Identification of Specific Learning Disabilities

(See also Procedural Safeguards: Surrogates, Notice, and Consent)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the Act. The final regulations were published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding the identification of specific learning disabilities.

IDEA Regulations

1. Adds procedures for identifying children with specific learning disabilities.

A State must adopt, consistent with 34 CFR 300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR 300.8(c)(10). In addition, the criteria adopted by the State:

- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10);
- Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10).

A public agency must use the State criteria adopted pursuant to 34 CFR 300.307(a) in determining whether a child has a specific learning disability.

[34 CFR 300.307] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

2. Requires additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 CFR 300.8, must be made by the child’s parents and a team of qualified professionals, which must include:

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Response to Intervention; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

Identification of Specific Learning Disabilities

- The child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child of less than school age, an individual qualified by the State educational agency (SEA) to teach a child of his or her age; and
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

[34 CFR 300.308] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

3. Adds criteria for determining the existence of a specific learning disability.

The group described in 34 CFR 300.306 may determine that a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10), if:

- The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 - o Oral expression.
 - o Listening comprehension.
 - o Written expression.
 - o Basic reading skills.
 - o Reading fluency skills.
 - o Reading comprehension.
 - o Mathematics calculation.
 - o Mathematics problem solving.
- The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in 34 CFR 300.309(a)(1) when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR 300.304 and 300.305; and the group determines that its findings under 34 CFR 300.309(a)(1) and (2) are not primarily the result of:
 - o A visual, hearing, or motor disability;
 - o Mental retardation;
 - o Emotional disturbance;
 - o Cultural factors;
 - o Environmental or economic disadvantage; or
 - o Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 34 CFR 300.304 through 300.306:

- Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(continued on next page) 

Identification of Specific Learning Disabilities

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 34 CFR 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1):

- If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 34 CFR 300.309(b)(1) and (b)(2); and
- Whenever a child is referred for an evaluation.

[34 CFR 300.309] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

4. Describes the required observation.

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

The group described in 34 CFR 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to:

- Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- Have at least one member of the group described in 34 CFR 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 34 CFR 300.300(a), is obtained.

In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

[34 CFR 300.310] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

5. Specifies documentation required for the eligibility determination.

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 CFR 300.306(a)(2), must contain a statement of:

- Whether the child has a specific learning disability;
- The basis for making the determination, including an assurance that the determination has been made in accordance with 34 CFR 300.306(c)(1);
- The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- The educationally relevant medical findings, if any;
- Whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with 34 CFR 300.309(a)(1); and the child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR 300.309(a)(2)(i); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(i); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with 34 CFR 300.309(a)(2)(ii);

(over) 

Identification of Specific Learning Disabilities

- The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - o The instructional strategies used and the student-centered data collected; and
 - o The documentation that the child's parents were notified about: (1) the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (2) strategies for increasing the child's rate of learning; and (3) the parents' right to request an evaluation.

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

[34 CFR 300.311] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

IDEA 2004's Final Regulations for:

Additional Procedures for Identifying Children with Specific Learning Disabilities

§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

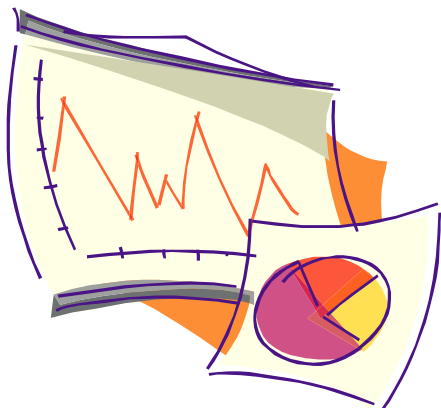
(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))



§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1221e-3; 1401(30);1414(b)(6))

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(over)

Additional Procedures for Identifying Children with Specific Learning Disabilities

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2) (i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance; (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))



(continued on next page) 

Additional Procedures for Identifying Children with Specific Learning Disabilities

§300.310 Observation.

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))



§300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and

(ii)(A) The child does not make sufficient progress to meet age or State approved grade-level standards consistent with §300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii);

Additional Procedures for Identifying Children with Specific Learning Disabilities

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30);
1414(b)(6))

What You Take From the Party



Instructions: Work individually to complete the sentences below.

1. One thing I learned today about *learning disabilities* is...

2. One thing I learned today about *response to intervention* is...

3. One thing I learned today about *identifying specific learning disabilities* is...

4. How I'll put this knowledge to use when I get back to work and home:
