

SPECIAL EDUCATION ELIGIBILITY CRITERIA AND IEP PLANNING GUIDELINES

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SPECIAL EDUCATION ELIGIBILITY CRITERIA AND IEP PLANNING GUIDELINES

6.1 PURPOSE AND SCOPE

The purpose of this chapter is to define the specific processes and procedures involved in determining a student's need to receive special education and related services. It is not meant to determine instructional setting or placement. Those determinations are made by the IEP team based on identified student needs.

The determination of eligibility must be based on the findings of a multi-disciplinary assessment where no single test or single observer is the sole determining factor. The IEP Team must assure that the student's academic needs cannot be met through modifications of the regular education program and that the disability, even with corrections and modifications, adversely affects the individual's educational performance. The IEP team must also assure that all areas of suspected disability have been assessed. There shall be further documentation that race, cultural differences, economic disadvantage, language background, limited school experience and poor attendance are not primary contributing factors to the results of the assessment. The IEP team will determine eligibility, present levels of performance, areas of need and goals that address each area of need. Goals and (objectives if required) will be supported by appropriate services in the least restrictive environment as determined by the IEP Team for the child to receive educational benefit.

6.2 PRIOR TO REFERRAL FOR SPECIAL EDUCATION

The Student Study Team (SST), or the referring instructional personnel, shall document that accommodations/modifications of the regular program have been attempted and that the results of those modifications have not been effective in meeting the student's need for an appropriate education. Students shall be referred for special education and related services only after the resources of the regular education program have been considered and, where appropriate, utilized. The Student Study Team (SST) is a regular education function. It is a process of reviewing individual student issues pertaining to educational performance and planning instructional interventions to be implemented in the regular classroom.

Although specialists, such as school psychologists, speech/language pathologists, and resource specialists may be involved in the SST process, however, the SST is not a special education function and as such is not subject to the associated restrictions and timelines.

A special education referral may be appropriate after interventions have been implemented. As a regular education function, the SST also helps with mainstreaming

strategies for those students who are already are already receiving special education and related services.

6.3 REFERRAL

All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the school district, special education local plan area, or SCCOE shall offer assistance to the individual in making a request in writing, and shall assist the individual if the individual requests such assistance.

All school staff referrals shall be written and include:

1. A brief reason for the referral.
2. Documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay time lines for completing the assessment plan or assessment. (C.C.R., Title 5, Sec. 3021)

6.4 ASSESSMENT

The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:

1. Whether the pupil may need special education and related services;
2. The basis for making the determination;
3. The relevant behavior noted during the observation of the pupil in an appropriate setting
4. The relationship of that behavior to the pupil's academic and social functioning;
5. The educationally relevant health and development, and medical findings, if any;
6. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate and;
7. The need for specialized services, materials, and equipment for the pupils with low incidence disabilities. (EC 56136)

Assessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary language or

mode of communication and have a knowledge and understanding of the cultural and ethnic background of the pupil. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall:

1. Document this condition and note that the validity may have been affected and;
2. The normal process of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a disabling condition.

The assessment of a student, including a student with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment. (EC 56136)

6.5 ELIGIBILITY CRITERIA

A student qualifies as an individual with exceptional needs, if the results of the assessment demonstrate that the degree of the student's impairment requires special education and related services. The decision as to whether or not the assessment results demonstrate that the degree of the student's disability requires special education shall be made by the IEP team, including assessment personnel. The IEP team shall take into account all the relevant information that is available on the student. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the student's eligibility for special education. (EC 56220 (a) 56026, 56320, 3030 (a through j) 56361 56341 (d))

Eligibility Criteria are separated into thirteen federal classifications. Students need only to meet eligibility under one of these federal classifications. (34 C.F.R., Part 300.8.)

6.5.A. Three Primary Factors Must Be Considered

Three primary factors must be considered in making this determination:

1. Does the student meet the eligibility criteria as an individual with a disability?
2. Does the severity of the disability have an adverse effect on the student's educational performance?
3. Does the student require special education and services to achieve a free appropriate public education?

6.5.B. Special Rule for Eligibility Determination

In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction.
2. Lack of instruction in math; or
3. Limited English proficiency (EC 56333-56339; 5 CCR 3030; CFR 300.7, 300.534)

6.5.C. Evaluations before Change in Eligibility

1. A LEA shall evaluate a student with a disability before determining that the student is no longer a child with a disability.
2. Exception
 - a. The evaluation shall not be required before the termination of a student's eligibility due to graduation from high school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education. However a Prior Written Notice is required.

6.6 ELIGIBILITY CATEGORIES

In July 2014, California adopted amended regulations to align eligibility criteria with federal regulations. (CCR Title 5, section 3030 and CFR 300.8)

6.6.A. AUTISM (AUT):

1. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting 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.
 - (a) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in subdivision 6.6A (1) of this section.
 - (b) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in subdivision (1) of this section are satisfied.

6.6.B. DEAF-BLINDNESS (DB):

1. 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.

6.6. C. DEAFNESS (DEAF):

1. 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 education performance.

6.6. D. HEARING IMPAIRMENT (HI):

1. 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.

6.6.E. INTELLECTUAL DISABILITY (ID):

1. Intellectual Disability 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.

6.6.F. MULTIPLE DISABILITIES (MD):

1. Multiple disabilities means concomitant impairments (such as intellectual disability-blindness, intellectual disability, orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

6.6.G. ORTHOPEDIC IMPAIRMENT (OI):

1. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, poliomyelitis,

bone tuberculosis, etc.) and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

6.6.H. OTHER HEALTH IMPAIRMENT (OHI):

1. 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
 - (a.) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and Tourette Syndrome, and
 - (b.) adversely affects a child's educational performance.

6.6.I. EMOTIONAL DISTURBANCE (ED):

1. Emotional disturbance is defined as follows:
 - The term 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 education performance:
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - Inappropriate types of behavior or feelings under normal circumstances.
 - A general pervasive mood of unhappiness or depression.
 - A tendency to develop physical symptoms or fears associated with personal or school problems.
 - 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.

6.6. J. SPECIFIC LEARNING DISABILITY (SLD):

1. 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 have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.
 - (a) Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
 - (b) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:
 1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data

which may include other tests, scales, instruments, observations and work samples, as appropriate.

2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.
 3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:
 - (i) Data obtained from standardized assessment instruments;
 - (ii) Information provided by the parent;
 - (iii) Information provided by the pupil's present teacher;
 - (iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
 - (v) Consideration of the pupil's age, particularly for young children; SELPA and
 - (vi) Any additional relevant information.
 4. A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance.
- (c) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:
1. The pupil does not achieve adequately for the pupil'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 pupil's age or State-approved grade-level standards:
 - (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, and
2. (i) The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research-based intervention; or
- (ii) The pupil 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 C.F.R. sections 300.304 and 300.305; and
3. The findings under subdivisions of this section are not primarily the result of:
- (i) A visual, hearing, or motor disability;
 - (ii) Intellectual disability;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors;
 - (v) Environmental or economic disadvantage; or
 - (vi) Limited English proficiency.
4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:
- (i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.
5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment in accordance with 34 C.F.R. section 300.310. In

the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. The eligibility determination must be documented in accordance with 34 C.F.R. section 300.311.

CFR Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 300.309(a)(2)(ii);
 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.

6.6.K. SPEECH OR LANGUAGE IMPAIRMENT: (SLI):

1. A pupil has a language or speech disorder as defined in Education Code section 56333, and it is determined that the pupil's disorder meets one or more of the following criteria:
 - (a) Articulation disorder
 1. The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.
 2. A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.
 - (b) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.
 - (c) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.
 - (d) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:
 1. The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or
 2. The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of

50 utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

6.6.L. TRAUMATIC BRAIN INJURY (TBI):

1. 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. 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; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

- Adaptive behaviors
- The IEP Team shall determine that the traumatic brain injury adversely affects educational performance.
- The least restrictive environment shall be considered when determining placement.

6.6.M. VISUAL IMPAIRMENT INCLUDING BLINDNESS (VI):

1. 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.