

2362 Eligibility for Children Ages Six Years through Twenty One (34 CFR §300.306)

(a) A child shall be eligible for special education if:

- (1) He or she has one or more of the disabilities described in Rule 2362.1;
- (2) ~~Except for the disability categories of Deaf-Blindness and Specific Learning Disability, t~~The disability results in an adverse effect on the child's educational performance in one or more of the basic skill areas as described in subsection (f), below; and
- (3) The student needs special education services to benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.

(b) The three criteria listed in section (a) above shall also be applied at the time the student receives a re-evaluation to determine eligibility.

(c) A formal evaluation process, documented in a report as required by Rule 2362.2.56, shall be used to determine whether the above criteria are met.

(d) Adverse Effect.

~~(1) To conclude that a disability has an adverse effect on the student's educational performance, the EPT shall determine and document that, as a result of his or her disability, the student is functioning significantly below grade norms compared to grade peers in one or more of the basic skills defined in Rule 2362(g).~~

(1) In this section, “adverse effect” and to “adversely affect” are used interchangeably and mean to have a negative impact on the basic skills areas. This impact does not need to be substantial, significant, or marked. It is more than a minor or transient hindrance, evidenced by findings and observations based on data sources and objective assessments with replicable results. An adverse effect on educational performance does not include a developmentally appropriate characteristic of age/grade peers in the general population.

~~(2) "Significantly below grade norms" means the 15th percentile or below, or a 1.0 standard deviation or more below the mean, or the equivalent, as reflected by performance on at least three of the six following measures of school performance, generally over a period of time:~~

~~(i) Individually administered nationally normed achievement test;~~

~~(ii) Normed group administered achievement tests, including nationally normed curriculum-based measures;~~

~~(iii) Grades;~~

~~(iv) Curriculum-based measures which could include benchmark assessments and continuous progress monitoring outcomes;~~

~~(v) Criterion-referenced or group-administered criterion-referenced assessments;~~

~~(vi) Student work, language samples or portfolios.~~

(2) The EPT must identify areas of adverse effect due to disability in the basic skills areas using a range of diagnostic and performance data appropriate to the student where the disability category requires a finding of adverse effect. The EPT and IEP team will consider academic and nonacademic aspects of the child's functioning.

~~(3) With respect to each basic skill considered, the EPT shall specifically identify in its report:~~

~~(i) Each type of measure considered by the Team;~~

~~(ii) The finding of the Team, with respect to each measure considered, as to whether and why the measure met (or did not meet) the 15th percentile, 1.0 standard deviation, or equivalent standard, in order to support a finding of adverse effect;~~

~~(i) The specific testing data/scores, student work, and/or education records relied upon by the Team to support its finding under subparagraph (ii) that a measure did or did not meet the standard; and~~

~~(iv) A statement of each basic skill area in which the disability was determined to have an adverse effect, based upon (i)-(iii).~~

(3) The documentation of adverse effect on educational performance must also substantiate that the educational deficiencies persist or will persist over time in spite of specific alternative strategies that are provided within the general education setting. The EPT should document evidence that scientific, research-based interventions have been implemented with fidelity. The EPT will consider these efforts and their impact when determining adverse educational performance.

(e) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, fluency including oral reading skills, vocabulary

development, reading comprehension strategies), or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.

(f) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:

- (1) Consider the interventions, services, and accommodations the student may need, and
- (2) Determine and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.

(g) Basic skill areas—

(1) Unless otherwise specified in the disability category in these rules, basic skill areas are:

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skills;
- (v) Reading comprehension;
- (vi) Mathematics calculation;
- (vii) Mathematics reasoning;
- (viii) Motor Skills; and
- (ix) Functional skills.

(2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

(3) 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.

(4) “Functional skills” means the acquisition of essential and critical skills needed for a child with disabilities to learn specific daily living, personal, social, and employment skills or the skills needed

to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for post-secondary and other life-long opportunities.

2362.2.5 Additional Procedures for Identifying Children With Specific Learning Disabilities (34 CFR §§300.307-300.311)

(a) In making the determination that a student has a specific learning disability the LEA shall decide whether to use ~~a discrepancy model~~ or a model based on whether the student responds to scientific, research based intervention or to use a model based on other alternative research-based procedures for determining whether a child has a specific learning disability.

~~(1) When using a discrepancy model, the EPT shall document that the student exhibits a discrepancy of 1.5 standard deviations or greater between ability and expected levels of performance in one or more of the basic skill areas.~~

(1) Eligibility determinations for a student who is determined to have a specific learning disability shall not be required to include an assessment of adverse effect as outlined in Rule 2362(d).

(2) When using a model based on whether the student responds to scientific, research based intervention the EPT shall document use of the following:

- (i) High-quality instruction and scientific research-based tiered interventions aligned with individual student need;
- (ii) Frequent monitoring of student progress to make results-based academic decisions; and
- (iii) Use of student response data to evaluate the effectiveness of interventions.