

March 22, 2010

(X) ACTION REQUIRED  
( ) INFORMATIONAL

TO: Chancellor, District of Columbia Public Schools (DCPS)  
Public Charter School Board  
Public Charter School Directors  
Principals, DCPS

FROM: Kerri L. Briggs, PhD  
State Superintendent of Education

RE: Part B Initial Evaluation/Reevaluation Policy

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This Memorandum serves to clarify what is required of all Local Education Agencies (LEAs) regarding the Part B Evaluation/Reevaluation and eligibility determination requirements of the Individuals with Disabilities Education Act (IDEA). This Memorandum supersedes all previous policy, memoranda and/or guidance promulgated by the Office of the State Superintendent of Education (OSSE).<sup>1</sup> This policy takes effect on March 22, 2010.

#### I. BACKGROUND

The IDEA contains specific requirements regarding the obligations of all LEAs to ensure that children in need of special education and related services are appropriately identified and served. This Memorandum addresses these obligations as they pertain to Part B evaluation, determination of eligibility, and the reevaluation process. Specifically, the Memorandum serves to:

<sup>1</sup> This Memorandum is not intended to be a restatement of the requirements of the IDEA and the District of Columbia Code of Municipal Regulations (DCMR) in regard to initial evaluations and reevaluations. LEAs are responsible for knowing and implementing the requirements of IDEA and the DCMR applicable to LEAs.

- Clarify the concepts of eligibility, evaluation and assessment, including the distinction between formal and informal assessment;
- Clarify the timeline requirements for initial evaluation and reevaluation;
- Clarify the Federal rules governing parental consent as altered by amendments to the IDEA Federal Regulations that were issued in December, 2008; and
- Establish clear criteria for each disability category that are aligned with Federal law and DC Municipal Regulations (DCMR), ensuring that the new requirements for the identification of children with Specific Learning Disabilities are incorporated.

## II. KEY CONCEPTS

Most key terms have specific meanings assigned by IDEA and/or DCMR 5-3001. Other terms have the meanings set by this policy.

**Assessment.** Assessment is defined in DCMR<sup>2</sup> as a data collection procedure to examine a particular area of need in accordance with the rules in IDEA and DCMR. This procedure must be used by a group of qualified professionals<sup>3</sup> to determine a child's educational needs and eligibility for special education and related services. An initial evaluation involves the use of a variety of assessment tools and strategies to 1) gather relevant functional, developmental and academic information to assist in determining if the child is eligible for special education and related services; and 2) inform the content of the IEP. To better facilitate the evaluation process, OSSE draws a distinction between formal and informal assessments and provides clarification below on how to utilize data driven information to determine eligibility and identify the educational needs of the child.

**Formal Assessment.** A formal assessment is a standardized test that measures overall student achievement that has been "normed," or administered to a representative sample. The mathematically computed score provides a summary using percentile, stanines, or standard scores to compare children of similar characteristics and indicate the child's relative performance in the group. Formal assessments must be administered by a qualified, trained professional, as specified by the producer of the assessment, to ensure valid and reliable results. One type of formal assessment is a medical assessment. If a formal assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

<sup>2</sup> 5 D.C.M.R. §3001.1

<sup>3</sup> In accordance with 5 D.C.M.R. §3005.3 the group of qualified professionals must be consistent with the IEP team members identified in 5 D.C.M.R. §3003.

**Informal Assessment.** An informal assessment is what teachers, related service providers or other educators use to find out how well a child is progressing in core academic, behavioral and/or functional areas. Informal assessment procedures may include, but are not limited to, scientific, research-based interventions, classroom activities such as group or individual projects, experiments, oral presentations, journals, essays, reports, anecdotal records, observations, reading and behavior logs or checklists. Curriculum-Based Measurement (CBM) is the best known method of progress monitoring that utilizes informal assessments to determine the success of the instruction and intervention the child is receiving.

The distinction between a formal or informal assessment does not determine whether a Prior Written Notice (PWN) or parental consent is required. If the assessment is conducted **after** a child is suspected of having a disability and is referred for an evaluation under the IDEA, then a PWN and parental consent are required. If the assessment is conducted before a child is suspected of having a disability, as part of a screening process, then a PWN and parental consent are not required.

**Screening.** For children age 3 through 21, the LEA should have in place a process to monitor academic progress of its students that includes but is not limited to: (a) observations in a variety of settings; (b) a multi-tiered problem solving approach; (c) parent/family communications; and (d) a review of attendance and grades. Screenings must be available for children in public schools, private schools, or for children who are home-schooled or who are wards of the District; and they must include the regular review of pertinent information and communication to parents regarding whether:

- Appropriate instruction in the general education setting is being delivered by qualified personnel;
- Instruction and interventions are provided at varying intensity levels; and
- Progress monitoring data are collected which reflected the child's progress during instruction.

**Eligibility.** A child is eligible for special education and related services if he/she meets the definition of "child with a disability" under the IDEA and DCMR 5-3001. This determination is premised upon whether the child has one of the designated disabilities under the IDEA and the DCMR and, as a result of that disability, requires special education and related services. To make this determination, a team consisting of a group of qualified professionals and the

parent<sup>4</sup> must consider all reports of assessment procedures, including a review of informal and formal assessments, parent information, health records, and other independent evaluations. An LEA may not identify any child as a child with a disability if the determinant factor is a lack of appropriate instruction in reading and math and/or limited English proficiency and the child does not otherwise meet the eligibility criteria.<sup>5</sup>

**Evaluation.** An evaluation is a process consisting of a set of procedures and/or assessments used in accordance with the IDEA and DCMR to determine 1) whether a child has a disability, and if so, 2) the nature and extent of the special education and related services that the child needs.<sup>6</sup> Each LEA is responsible for conducting a full and individualized initial evaluation, at no cost to the parent, before determining whether a child is a child with a disability.

Under IDEA, the evaluation must 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...”<sup>7</sup> Assessment tools and strategies may include, but are not limited to, observations, interviews, behavior checklists, criterion-referenced and norm referenced instruments, and tests of basic concepts or other techniques and procedures as deemed appropriate by the professional(s) conducting the evaluation. The term evaluation does not refer to a single testing procedure or report. Once a child has been determined eligible in the District of Columbia under the IDEA, any further evaluation process, including evaluation in a new area of suspected disability, constitutes a reevaluation.

Each LEA must ensure that assessments are selected and administered so as not to be discriminatory on a racial or cultural basis. Furthermore, all assessments must be administered in the child’s native language. Native language, in the context of the evaluation of the child, is defined as the language normally used by the child in the home or learning environment (not by the parent, if there is a difference between the two). For example, if a child’s primary mode of communication is sign language, Braille, or oral communication, the evaluation must utilize that modality.

<sup>4</sup> In accordance with 5 D.C.M.R. §3005.3 the group of qualified professionals must be consistent with the IEP team members identified in 5 D.C.M.R. §3003.

<sup>5</sup> 34 C.F.R. §300.306(b)

<sup>6</sup> 34 C.F.R. §300.301 et seq; 5 D.C.M.R. §3001.

<sup>7</sup> 34 C.F.R. §300.304(b)

**Parental Consent.** Parental consent is defined as follows:

1. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
2. The parent understands and agrees in writing to the proposed activities for which his or her consent is being requested. When an LEA is seeking informed consent, the notice must describe the activities and lists the records, if any, that will be released and to whom.
3. The parent understands that providing consent is voluntary and may be revoked at any time.

**Types of Assessments.** Both formal and informal assessments, and previously available screenings, are expected to be used to assist the group of qualified professionals in determining eligibility and special education and related services. During the evaluation, the group of qualified professionals may utilize, if appropriate, a combination of assessments, including, but not limited to, the assessments identified below. Appropriateness should be based on ensuring that sufficient comprehensive evidence is available to accurately identify strengths and weaknesses of the child and determine if a child is a child with a disability.

**Adaptive Behavior Assessment.** The adaptive behavior assessment provides a measure of adaptive skills required for success in educational settings. The assessment refers primarily to the effectiveness with which the child generally meets the standards of personal independence and social responsibility expected of his or her age and cultural group. The evaluation has two major components:

- The extent to which the child is able to function independently; and
- The extent to which the child can interact successfully across varied social settings. Assessments of adaptive behavior look at the total environment of the child. Adaptive behavior information should be obtained from two sources, one of which must be the child's parent. If the child's parent is unavailable, the LEA may solicit information from a family member. Additionally, the LEA must obtain input from non-family members close to the child, such as members in the community, mentors, or coaches. An LEA must obtain consent from the parent before contacting either family members other than the parent or individuals who are close to the child.

**Audiological Assessment.** An audiological assessment may include as appropriate the following: case history, otoscopy, air and bone conduction testing, speech reception/discrimination testing and impedance audiometry. Additional testing may be required including but not limited to Otoacoustic emissions (OAE) and auditory brainstem response (ABR) testing. The evaluation identifies the type and degree of hearing loss and its likely effect on academic learning.

**Auditory Processing Assessment.** Auditory processing testing is a series of specialized tests designed to assess the various functions of the brain, specifically auditory sensitivity, auditory extraction, auditory attention, auditory distractibility, auditory memory, auditory integration, and organization and sequencing. Testing is performed in a sound proof room by an audiologist. These test results must be considered in conjunction with other assessment areas including but not limited to hearing acuity, speech and language, and cognition (Full scale IQ should be 80 or above). A variety of assessment tools and strategies to gather relevant functional, developmental, and academic information should be used. Most of the tests of Auditory Processing Disorder (APD) require that a child be at least 7 or 8 years of age because the variability in brain function is so marked in younger children that test interpretation may not be possible.

**Developmental Assessment.** A developmental assessment includes an in-depth assessment of overall functioning. Areas to be assessed may include as appropriate: social/emotional- interaction with peers and/or adults and the ability to follow directions; adaptive- toileting, dressing, feeding, and attending to tasks; gross motor- large motor movements such as running, jumping, and skipping; fine motor- small motor movements such as cutting, drawing, and stringing beads; communication- ability to understand spoken language, express wants and needs clearly, and follow directions; and pre-academic skills- early learning skills such as matching, memory skills, counting, and naming colors.

**Health Screening.** Health screening may include, but is not necessarily limited to, as many of the following areas as may be appropriate: vision screening, hearing screening, dental screening, review of health history, review of developmental milestones, assessment of physical growth and assessment of nutritional status.

**Motor/Occupational/Physical Screening.** These screenings are for diagnostic or evaluation purposes. They are provided by a licensed physician to assist the LEA in determining a child's medically related disability that results in the child's need for special education and related services. Motor/occupational/physical screening may

include, when appropriate, a review of written and verbal information, observation of the child in a variety of settings, and/or the administration of screening instruments to determine adequacy of motor skills functioning and need for further evaluation.

Motor/Occupational Therapy/Physical Assessments. A motor assessment obtains information that assists in assessing a child's current level of motor skill functioning and any problems encountered in performing motor tasks. This information may be collected through a review of educational and medical records; interviews with teachers, parent(s), and others, including the child; clinical observations; and the administration of formal testing instruments, procedures, and techniques. A motor assessment should include, but is not limited to, the following areas as appropriate:

- musculo-skeletal status;
- neuromotor/neurodevelopmental status;
- gross-motor development and coordination;
- fine-motor development and coordination;
- sensory-motor skills;
- visual-motor skills;
- bilateral coordination;
- postural control and balance skills;
- praxis/motor planning skills;
- oral-motor skills; and
- gait and functional mobility skills.

Observation. Student observations usually occur in the regular classroom and/or settings related to the area(s) of concern, and must document areas of strength as well as areas of need. As appropriate, observations must assess academic skills and functional skills, including behavior. If an observation is conducted, it is recommended that at least one member of the team other than the child's regular teacher observes the child's academic performance in the regular classroom setting.<sup>8</sup>

Psychological Assessment. The psychological assessment may include an assessment of cognitive functioning as is appropriate based on the referral question. The assessment should include an assessment of cognitive functioning and may also include, but not be limited to, assessments of educational performance, social/emotional/behavioral functioning, and adaptive behavior. Procedures used by the psychologist may include

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<sup>8</sup> 5 D.C.M.R. §3005.10

formal and informal assessment measures, observations, interviews, and other techniques as deemed appropriate by the psychologist. The assessment of cognition may address areas such as intelligence, memory, reasoning, problem solving, attending, and processing. Where these instruments would not be valid and reliable for a particular purpose, the psychologist should use his or her professional judgment about the selection of instruments for assessing the intellectual functioning of children.

**Social History.** A social history assessment documents normal and abnormal developmental and/or medical events and may include a review of information gathered during the evaluation process. For preschool children, a social history must include an assessment of family composition, support systems, stressors, and environment as they correlate with the child's need or special services. The history also may include the family's or caregiver's perspective about the child and the need for special education services.

**Speech-Language Screening and/or Evaluation.** A speech-language evaluation may include, as appropriate, the following aspects of speech-language: articulation, fluency, voice, and language (form, content, and function, and pragmatics). A screening of areas including hearing, articulation, language, voice, and fluency should also be completed during every evaluation. A variety of assessment tools and strategies to gather relevant functional, developmental, and academic information should be used. Assessment instruments may include interviews; curriculum-based, authentic, dynamic assessment tools; norm referenced tests; or criterion referenced tests. For a child to be considered for intervention, the child's speech, language, voice, or fluency must be determined to have a negative impact on academic achievement and functional performance.

**Evaluation Summary Report.** Upon completion of appropriate evaluation procedures, the LEA must, with input from a group of qualified professionals and the parent, prepare a comprehensive written report to be provided at no cost to the parent.<sup>9</sup> The report must include a description of the child's performance in each area evaluated, including specific strengths and weaknesses.

**Extended School Year Services.** These services are defined as special education and related services that are provided to a child with a disability beyond the normal school year, are in

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<sup>9</sup> 34 C.F.R. §300.306(a)(2); 5 D.C.M.R. §3006.5



accordance with a child's IEP, are provided at no cost to the parents of the child, and meet the standards of the SEA.<sup>10</sup>

**Independent Educational Evaluation.** An independent educational evaluation (IEE) may be obtained by the parent of a child suspected as having a disability or an adult child with a disability. The IEE may not be performed by individual(s) who are employed by the LEA and responsible for the education of the child. The individual(s) performing an IEE must meet state and local standards to conduct the examination. The parent has the right to request an IEE, at public expense, if the parent disagrees with the evaluation obtained by the LEA subject to the conditions in the IDEA.<sup>11</sup> A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.<sup>12</sup> If a parent requests an IEE of the child, the LEA, without unnecessary delay, must take one of the following actions:

1. Initiate a due process hearing to show that its evaluation is appropriate and hence, that an IEE is not warranted; or
2. Provide information to the parent about where an IEE may be obtained and the LEA's criteria prescribed under this subsection that apply to the IEE. If the LEA chooses this course, it must:
  - a. pay the full cost of the IEE or otherwise ensure that the evaluation is provided at no cost to the parent; or
  - b. initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.

If a parent requests an IEE, the LEA may ask the reason for the objection to the public evaluation. However, an explanation by the parent is not required, and the LEA cannot unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the LEA's evaluation. If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent must still have the right to an IEE, but the LEA is not required to pay the cost of that evaluation. If the parent obtains an IEE at public expense or provides the LEA with an evaluation obtained at private expense, the results of the evaluation must be considered by the LEA in any decision made with respect to the provision of FAPE to the child if the evaluation meets the LEA's criteria. If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation shall be paid by the LEA.

<sup>10</sup> 34 C.F.R. §300.106(b)(1) and (b)(2)

<sup>11</sup> 34 C.F.R. §300.502(b)(1)

<sup>12</sup> 34 C.F.R. §300.502(b)(5)

Each LEA must have in place a policy and procedure for obtaining an IEE at public expense. The policy and procedure may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation. The criteria for IEEs must be the same as the criteria that the LEA uses when it conducts and completes an evaluation, to the extent that those criteria are consistent with the parent's right to obtain an IEE.

**Parent Participation.** LEAs must allow the parent the opportunity to be members of any decision making team for his or her child, including initial evaluation and reevaluation, eligibility, and development of an individualized education program (IEP) for the provision of a Free and Appropriate Public Education (FAPE) and placement. Parents are to be provided notice of meetings (consistent with Subsection V. Eligibility/IEP Team Meeting) to ensure that they have the opportunity to participate in the meetings.

The LEA must make reasonable efforts to ensure that the parent understands and has the opportunity to participate in meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is not English. The parent and the school may agree to use alternative means of meeting participation, such as video conferences or conference calls.<sup>13</sup> These meeting requirements do not apply to informal or unscheduled conversation of school personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities in which LEA personnel engage to develop a proposal or response to a parent's proposal that will be discussed at a later meeting.<sup>14</sup>

**Prior Written Notice.** A PWN must be provided to the parent within a reasonable amount of time before the date the LEA proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE. The PWN must include:

- A description of the action proposed or refused by the LEA;
- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action;
- A description of other options considered, if any, and the reason for rejecting them;
- A description of other factors related to the proposal or refusal;

<sup>13</sup> 34 C.F.R. §300.322(e) and §300.328

<sup>14</sup> 34 C.F.R. §300.501(b)(3)

- A statement that the parent has protection under the procedural safeguards of IDEA Part B and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for the parent to contact to obtain assistance in understanding the provisions of IDEA Part B and DCMR Chapter 30.<sup>15</sup>

The notice must be written in a language that is understandable to the general public and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the parent uses other modes of communication that are not a written language, the LEA must ensure that the notice is translated orally. Additionally, the LEA must have written evidence that the notice requirements have been met if the native language or other mode of communication is not a written language.<sup>16</sup>

**Procedural Safeguards Notice.** To ensure that the parent has knowledge about his or her rights under the IDEA, LEAs are required to provide a copy of the Procedural Safeguards Notice (PSN) only one time during each school year and also in the following circumstances:

- Upon initial referral or parent request for an evaluation of the child;
- Upon receipt of the first State complaint filed by the parent in a school year;<sup>17</sup>
- Upon receipt by an agency of the first due process complaint filed against it by the parent in a school year;
- Upon the parent's child being subjected to disciplinary removal from the child's current placement that constitutes a change of placement; and
- Any time, upon request of the parent.<sup>18</sup>

The PSN must be written in a language that is understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the language or mode of communication is not a written language, the LEA must translate the notice orally or use another mode of communication so that the parent understands the content of the notice. The LEA must have written evidence that the notice requirements have been met if the native language or other mode of communication is not a written language. Parents may elect to receive the PSN by

<sup>15</sup> 34 C.F.R. §300.503(b)

<sup>16</sup> 34 C.F.R. §300.503(c)

<sup>17</sup> 34 C.F.R. §§300.151 through 300.153

<sup>18</sup> 34 C.F.R. §300.504

electronic mail communication, if the LEA makes that option available.<sup>19</sup> If the notice is provided electronically, the LEA should have a copy of the email sent to the parent and documentation that the notice was received. The LEA may place a current copy of the PSN on its Internet web site if one exists.<sup>20</sup> However, simply putting the notice on the LEA's website does not fulfill a school's obligation to provide the PSN to the parent.

**Reevaluation.** A reevaluation is defined as an evaluation conducted after the initial evaluation. It is the process by which the IEP team gathers data to determine if the child with a disability still has a disability, the present levels of academic achievement and related developmental needs of the 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 necessary.<sup>21</sup> As in the case of an initial evaluation, the IEP team may agree to determine eligibility without conducting additional assessments. Reevaluation is required before determining that a child is no longer eligible for special education and related services, unless the child is graduating with a regular high school diploma or aging out of the IDEA system.<sup>22</sup> Reevaluation must occur at least once every three years, whether or not the child's needs have changed, unless the parent and LEA agree that a reevaluation is unnecessary. Reevaluations may occur more frequently if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation. A reevaluation need not occur more than once a year, unless the parent and the LEA agree otherwise.<sup>23</sup>

**Referral.** A referral is defined as written documentation provided by the child's parent, or others defined by DCMR 3004.1, which clearly states why it is thought that the child may have a disability. The referral must be submitted to the building principal or designee of the child's home school or public charter school on a form provided by the school at the time of the parent's referral. A referral must be in writing and address specific academic or behavior concerns. Upon an oral referral for an initial evaluation from a parent, the LEA must provide assistance, as needed, in completing a written referral. The referral may come from a variety of sources which include:

- Early Childhood Screening
- Part C Infant-Toddler Program

<sup>19</sup> 34 C.F.R. §§300.504(b), 300.505

<sup>20</sup> 34 C.F.R. §300.504(b)

<sup>21</sup> 34 C.F.R. §300.305(a)(2)

<sup>22</sup> 34 C.F.R. §300.305(e)

<sup>23</sup> 34 C.F.R. §300.303

- General Education Intervention Team (Individual Problem-Solving or Student Support Team)
- Parent
- Self-Referral by Adult Student
- Public Agency<sup>24</sup>

A referral for an initial evaluation should be made when a child is suspected to be a child with a disability. In determining whether to propose to evaluate the child, the LEA should review a variety of educational and behavioral assessments, interventions and strategies provided to the child in the general education setting; behavioral observations; health records; and parent information. In accordance with DCMR Section 3004.1(e), a group of qualified professionals<sup>25</sup> must meet following a referral to review:

- (1) Existing data;
- (2) Information from the parent;
- (3) Pre-referral interventions and strategies;
- (4) Current classroom-based assessments; and
- (5) Observations by teachers and related service providers.

Upon referral for an initial evaluation, regardless of the source, the LEA must provide the parent a copy of the PSN<sup>26</sup> and a written notification of the referral (referral acknowledgment). Once the team makes the determination regarding whether the child is suspected to be a child with a disability, the LEA must provide a PWN to the parent that provides the LEA's proposal or refusal to evaluate based on the suspicion that the child may be disabled and in need of special education and related services, or the absence of such suspicion. The above process must be completed in a reasonable time after receiving the referral (for more information see the PWN definition in the Key Concepts section of this memorandum).

**Review of Existing Data.** If the LEA's PWN is a proposal to conduct the initial evaluation or a reevaluation for a child suspected of being a child with a disability, a group of qualified professionals, consisting of individuals prescribed in DCMR 3003.1, must, if appropriate, consider all data that are currently available. The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

<sup>24</sup> 34 C.F.R. §300.301(b)

<sup>25</sup> In accordance with 5 D.C.M.R. §3005.3 the group of qualified professionals must be consistent with the IEP team members identified in 5 D.C.M.R. §3003.

<sup>26</sup> 34 C.F.R. §300.504.

- If the child is a child with a disability;
- Whether the child needs special education and related services;
- The educational needs of the child;
- The present levels of academic achievement and related developmental needs of the child; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum.<sup>27</sup>

If the team determines that no additional data are needed to determine eligibility and to determine the child's educational needs, the LEA must notify the parent, consistent with the PWN requirements, of that determination and of the reasons for the determination. The LEA must also inform the parent of his or her right to request an assessment to determine whether the child is a child with a disability and to determine the educational needs of the child. Furthermore, if the team determines that additional data are needed (formal or informal assessments), the LEA must complete these assessments in a timeframe that can ensure adherence to the 120 day overall evaluation timeline (discussed in Section III, Evaluation Timeline). The procedures used to collect data should be described on the PWN.

### III. EVALUATION TIMELINE

**Initial Evaluation.** The LEA must complete an initial evaluation, including the determination of the eligibility, of a child suspected of having a disability within 120 calendar days of receiving the written referral. In order to meet this timeline, LEAs are encouraged to analyze existing data and proceed with additional assessments, if required, in a timely manner to determine whether a child has a disability. The LEA is not required to use the entire 120 days to complete the initial evaluation and determine eligibility and may proceed through the process in fewer than 120 days.

**Exception.** The 120 day timeframe does not apply to an LEA if:

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation;
- The parent fails or refuses to respond to a request for consent for the evaluation; or
- A child enrolls in a school of another LEA after the 120 day timeline has begun, and prior to the determination by the child's previous LEA as to whether the child is a

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<sup>27</sup> 34 C.F.R. §300.305(a)(2)

child with a disability under this policy. This only applies if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed.<sup>28</sup>

The LEA must document in the Special Education Data System (SEDS) its reasonable efforts to contact the parent regarding evaluation appointments, requests for consent, or its progress on completing the evaluation as outlined above. Reasonable efforts are defined as a minimum of three attempts and multiple modalities (e.g. phone and mailed correspondence) by the LEA.

**Reevaluation.** The LEA must hold a reevaluation meeting within three years of the date the previous initial evaluation or reevaluation was completed. The reevaluation meeting must be scheduled in time to allow the IEP team to conduct assessments, if necessary, and to reconvene within three years of the previous eligibility meeting. When appropriate, and for the convenience of both the parent and the LEA, the IEP team should attempt to consolidate the annual meeting and the reevaluation meeting.

#### **IV. CONSENT REQUIREMENTS**

The IDEA requires LEAs to obtain parental consent for an initial evaluation when the LEA suspects the child may be a child with a disability. The LEA is not required to obtain parental consent before taking either of the following actions:

1. Reviewing existing data as part of an evaluation or reevaluation, including the review of existing data for a functional behavioral assessment; or
2. Administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

In addition, the LEA is not required to obtain parental consent for the initial evaluation when the child is a ward of the State and is not residing with the child's parent and the conditions under 34 C.F.R. 300.300(a)(2) are met.

Parental consent for a reevaluation does not need to be obtained if the public agency can demonstrate that it made reasonable efforts to obtain consent, and the child's parent failed to

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<sup>28</sup> 34 C.F.R. §300.301(d) and (e)

respond.<sup>29</sup> Reasonable efforts to obtain informed consent include a minimum of three attempts and multiple modalities (e.g. phone and mailed correspondence) by the LEA. Each attempt to inform the parent and obtain consent must be made in the parent's native language or other mode of communication to qualify as reasonable efforts. To demonstrate reasonable efforts, the LEA must maintain a record of its attempts in the Special Education Data System (SEDS) as noted above.<sup>30</sup>

A PWN must accompany the request for consent for each proposed special education action except in the following situations: consent to excuse an IEP team member from the IEP meeting and consent to invite an outside agency. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services. In addition, if a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).<sup>31</sup>

#### **Failure to Respond or to Provide Consent**

**Initial Evaluation.** If the parent does not provide (or refuses) consent or fails to respond to a request to provide consent for an initial evaluation, the LEA may, but is not required to, pursue the initial evaluation by utilizing mediation or by requesting a due process hearing.<sup>32</sup> The LEA does not violate its obligation for child find or for conducting an initial evaluation if it declines to pursue the evaluation.<sup>33</sup>

The LEA is required to locate, identify, and evaluate children who are home schooled, but it is not required to provide services unless the child is enrolled in a public school. If the parent of a child who is home schooled or voluntarily placed in a private school by the parent does not provide consent for the initial evaluation or the reevaluation, or if the parent fails to respond to a request to provide consent, the LEA may not use mediation or due process procedures to obtain consent. In this case the LEA is not required to consider the child as eligible for services for parentally placed students in private schools.<sup>34</sup>

**Reevaluation.** The LEA must make reasonable efforts to obtain parental informed written consent as required for initial evaluations; however, if the parent fails or refuses

<sup>29</sup> 34 C.F.R. §300.300(c)(2)

<sup>30</sup> 5 D.C.M.R. §3026.4

<sup>31</sup> 34 C.F.R. §300.9

<sup>32</sup> 34 C.F.R. §300.300(a)(3)(i)

<sup>33</sup> 34 C.F.R. §300.300(a)(3)(ii)

<sup>34</sup> 34 C.F.R. §300.300(d)(4)



to respond, the LEA may proceed with the reevaluation without obtaining parental consent, as long as it can demonstrate it made reasonable efforts to obtain consent.<sup>35</sup> If the parent refuses to provide consent, the LEA may pursue the reevaluation through mediation or a due process hearing, but is not required to do so.<sup>36</sup> An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities, benefits, or services offered by the agency.

Initial Consent for Services. If a parent refuses to provide consent or fails to respond after an LEA's reasonable attempts to obtain informed written consent, the LEA may not use mediation or due process procedures to obtain consent for the initial provision of special education and related services.<sup>37</sup> Furthermore, the LEA is not required to hold an IEP meeting or create an IEP<sup>38</sup> and is not in violation of providing FAPE to the child.<sup>39</sup>

Parent's Right to Revoke Consent. The December 2008 IDEA regulations strengthen parental rights to unilaterally revoke consent to special education and related services.<sup>40</sup> Specifically, regulations require that parental revocation of consent for the continued provision of special education and related services must be in writing and that upon revocation of consent, a LEA must provide the parent with prior written notice in accordance with 34 CFR Section 300.503. Additionally, if at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the LEA:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 CFR Section 300.503 before ceasing the provision of special education and related services;
2. May not use the procedures in subpart E of the regulations (including the mediation procedures under 34 CFR Section 300.506 or the due process procedures under 34 CFR sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

<sup>35</sup> 34 C.F.R. §300.300(c)(2)

<sup>36</sup> 34 C.F.R. §300.300(c)(1)(ii)

<sup>37</sup> 34 C.F.R. §300.300(b)(3)

<sup>38</sup> 34 C.F.R. §300.300(b)(4)(ii)

<sup>39</sup> 34 C.F.R. §300.300(b)(4)(i)

<sup>40</sup> 34 C.F.R. §300.300(b)(4)

3. Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services;
4. Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under 34 CFR sections 300.320 and 300.324 for the child for further provision of special education and related services; and
5. In accordance with 34 CFR Section 300.9 (c)(3), if the parent revokes consent in writing for his or her child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

#### **V. ELIGIBILITY/IEP TEAM MEETING**

**Notice of Meeting.** The school must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting is to be scheduled at a mutually agreed upon time and place. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing prior to the meeting and inform the parents that their child is invited to attend the meeting if the purpose of the meeting is for consideration of postsecondary goals and transition. The written notice must indicate the:

- Purpose;
- Date;
- Time;
- Location of the meeting;
- Titles or positions of the persons who will attend on behalf of the school (The LEA is to notify the parents about who will be in attendance at an IEP team meeting; however, individuals may be indicated by position only. The LEA may elect to identify participants by name, but they have no obligation to do so.);
- Inform the parents of their right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child; and
- Inform the parents that, if their child was previously served in Part C, they may request that the local Part C coordinator or other representative be invited to

participate in the initial IEP meeting to ensure a smooth transition from Part C to Part B services.<sup>41</sup>

A required member of the IEP team may be excused in whole or in part from the IEP meeting if the LEA and parent agree in writing that the attendance of the member is not necessary because the member's areas of curriculum or related service are not being modified or discussed. When the meeting involves a modification to or discussion of a member's area of curriculum or related services, a required member may be excused from attending an IEP team meeting, in whole or in part, if the LEA and the parent, in writing, consent to the excusal. The member must also submit in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.<sup>42</sup> The written input must include educational and behavioral strengths and needs of the child as related to the member's area of curriculum or related services.

## **VI. ELIGIBILITY CATEGORIES AND CRITERIA**

To be eligible a child must meet a two-pronged test to be considered a child with a disability: (1) have one of the specified disabilities; and (2) because of the impairment, need special education and related services.

The IEP team, consisting of a group of qualified professionals and the parent,<sup>43</sup> must make the eligibility determination. The LEA, with input from the team, must prepare an evaluation summary report that includes a statement regarding how each of the following areas was addressed:

1. The determination of whether the child has a disability;
2. The determination of whether the child needs special education and related services;
3. The basis for making the determination; and
4. The relationship of the child's behavior to the child's academic functioning.

In addition, if the child was evaluated for a specific learning disability (SLD), a review of, and response to, specified SLD eligibility criteria as outlined in this policy is required.<sup>44</sup> Furthermore, when a child is determined eligible for SLD, the team must include specific information in the

<sup>41</sup> 34 C.F.R. §300.322(b)

<sup>42</sup> 34 C.F.R. §300.321(e)

<sup>43</sup> In accordance with 5 D.C.M.R. §3006, the IEP team must make the eligibility determination.

<sup>44</sup> 5 D.C.M.R. §3006.5

report about the basis for making the determination of a learning disability, such as, but not limited to, severe decoding/ processing skills and dyslexia, and how it directly impacts the child in the general education classroom.<sup>45</sup>

If determining whether a child is eligible for Other Health Impairment (OHI), the report must identify the child's specific chronic or acute health conditions limiting "strength, vitality, or alertness," that "result in limited alertness" to the educational environment and have an adverse effect on "educational performance."<sup>46</sup> These specific health conditions include "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."<sup>47</sup>

Each team member must certify in writing whether the report reflects the member's conclusion. If the report does not reflect that member's conclusion, the member must submit a separate statement presenting the member's conclusions. If a parent does not agree with the conclusion in the report, the parent may contact the LEA for sources to contact to obtain assistance. The group shall not determine a child to be child with a disability if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics, limited English proficiency, cultural factors, environmental or economic disadvantage, or if the child does not otherwise qualify as a child with a disability.

#### **Autism Spectrum Disorder (Known as Autism<sup>48</sup>)**

**Definition:** A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, but not necessarily so, that adversely affects a child's educational performance. Other characteristics often associated with Autism Spectrum Disorder (ASD) are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.<sup>49</sup> ASD does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. ASD includes all subtypes of Pervasive Developmental Disorder (such as Autistic Disorder; Rett's Disorder; Childhood Disintegrative Disorder; Asperger Syndrome; and Pervasive Developmental

<sup>45</sup> 34 C.F.R. §300.311

<sup>46</sup> 34 C.F.R. §§ 300.8(c)(9); 5 D.C.M.R. §3001.1

<sup>47</sup> 34 C.F.R. §300.8(c)(9)(i); 5 D.C.M.R. §3001.1

<sup>48</sup> 5 D.C.M.R. §3001.1

<sup>49</sup> 34 C.F.R. §300.8(c)(1)(i); 5 D.C.M.R. §3001.1

Disorder, Not Otherwise Specified) provided that the child's educational performance is adversely affected and the child meets the eligibility criteria below.

Eligibility Criteria: To be eligible, a child must demonstrate Criterion 1, 2, and one or more criteria under Criterion 3 through 6.

**Criterion 1:** The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

**Criterion 2:** The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.

**Criterion 3:** The child exhibits delays, arrests, or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.

**Criterion 4:** The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

**Criterion 5:** The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.

**Criterion 6:** The child displays marked distress over changes, insistence on following routines, and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age—appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

### **Deaf-blindness**

**Definition:** The concomitant existence of 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 designed solely for children with deafness or children with blindness.<sup>50</sup>

**Eligibility Criteria:** To be eligible, the child must meet all criteria listed below:

**Criterion 1:** The child has a current (within one year) medical examination and report completed by either an optometrist or ophthalmologist that confirms a visual impairment.

**Criterion 2:** The child has a current (within one year) medical examination and report completed by an audiologist that confirms a hearing impairment.

### **Deafness**

**Definition:** A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification and the impairment adversely affects the child's educational performance.<sup>51</sup>

**Eligibility Criteria:** To be eligible, the child can be characterized by the absence of enough measurable hearing (usually a pure tone average of 66-90+ decibels American National Standards institute without amplification) such that the primary sensory input for communication may be other than the auditory channel.

### **Developmental Delay (DD)**

**Definition:** A child must be between three through seven,<sup>52</sup> whose development and/or behavior is so significantly delayed or atypical that special education and related services required.

**Eligibility Criteria:** To be eligible, the child must experience severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures in one or more of the following five areas: physical development, language and

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<sup>50</sup> 34 C.F.R. §300.8(c)(2); 5 D.C.M.R. §3001.1

<sup>51</sup> 34 C.F.R. §300.8(c)(3)

<sup>52</sup> 5 D.C.M.R. §3001.1

communication development; social or emotional development; cognitive development; or adaptive development. No child may be classified as having DD based solely on deficits in the area of social and/or emotional development. DD does not apply to children with the following disabilities:

- a) autism;
- b) traumatic brain injury;
- c) mental retardation;
- d) emotional disturbance;
- e) other health impairment;
- f) orthopedic impairment;
- g) visual impairment, including blindness;
- h) hearing impairment, including deafness; or
- i) speech/language impairment.<sup>53</sup>

### **Emotional Disturbance (ED)**

**Definition:** A condition exhibiting one or more of the characteristics described in the eligibility criteria below that exists over a long period of time and to a marked degree that adversely affects a child's educational performance. Emotional Disturbance includes schizophrenia. ED may not apply to children who are socially maladjusted, unless it is determined that they meet criteria for the ED disability category according to the criteria in this policy.<sup>54</sup>

**Eligibility Criteria:** To determine a child to be eligible, a group of qualified professionals must review and/or conduct two scientific research-based interventions that are based on a problem solving model that addresses behavioral/emotional skill deficiency and documentation of the results of the intervention, including progress monitoring documentation. One of the following criteria must be exhibited and the child must display the criterion over a long period of time and with a degree of severity.

**Criterion 1:** An inability to make educational progress that cannot be explained by intellectual, sensory, or health factors;

**Criterion 2:** An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

**Criterion 3:** Inappropriate types of behavior or feelings under normal circumstances;

<sup>53</sup> 5 D.C.M.R. §3001.1

<sup>54</sup> 34 C.F.R. § 300.8(c)(4)(i-ii); 5 D.C.M.R. § 3001.1

**Criterion 4:** A general pervasive mood of unhappiness or depression; or

**Criterion 5:** A tendency to develop physical symptoms or fears associated with personal or school problems.

### **Hearing Impairment**

**Definition:** 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.<sup>55</sup>

**Eligibility Criteria:** A child who has a hearing impairment typically relies upon the auditory channel for primary sensory input related to communication and must meet the criteria of absence of enough measurable hearing (usually a pure tone average range of 30-65 decibels American National Standards Institute without amplification) that the ability to communicate is adversely affected; however, the child who has a hearing impairment typically relies upon the auditory channel as the primary sensory input for communication.

### **Intellectual Disability (ID) (Also known as Mental Retardation (MR))**

**Definition:** Intellectual Disability is a disability characterized by significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.<sup>56</sup>

**Eligibility Criteria:** To be eligible, a child must demonstrate both criteria and be classified at one of the levels listed below.

**Criterion 1:** Intellectual functioning well below the mean on an individually administered standardized intelligence test, and the standard error of measurement of that test must be taken into account in the interpretation of the results. Measures below the mean are as follows:

#### **Mild Intellectual Disability (MID)**

(1) Intellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and

<sup>55</sup> 34 C.F.R. §300.8(c)(5); 5 D.C.M.R. §3001.1

<sup>56</sup> 34 C.F.R. §300.8(c)(6); 5 D.C.M.R. §3001.1



- (2) Deficits in adaptive behavior that significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age level and cultural group, as determined by clinical judgment.

**Moderate Intellectual Disability (MOID)**

- (1) Intellectual functioning ranging from an upper limit of approximately 55 to a lower limit of approximately 40; and
- (2) Deficits in adaptive behavior that significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.

**Severe Intellectual Disability (SID)**

- (1) Intellectual functioning ranging from an upper limit of approximately 40 to a lower limit of approximately 25; and
- (2) Deficits in adaptive behavior that significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.

**Profound Intellectual Disability (PID)**

- (1) Intellectual functioning below approximately 25; and deficits in adaptive behavior that meet Criterion 2 (see below).

**Criterion 2:** Adaptive behavior deficits at or below two standard deviations below the mean in one domain, or one and one-half standard deviations below the mean in two or more domains, which significantly limit a child's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.

### **Multiple Disabilities (MD)**

**Definition:** Two or more impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment) occurring together, the combination of which causes such severe educational needs that the child cannot be accommodated in special education programs solely for one of the impairments.<sup>57</sup> When the group of qualified professionals is discussing eligibility under MD, the team should consider whether the child's impairment is so severe that identification of solely one primary disability is not possible. Multiple disabilities shall not include deaf-blindness.

**Eligibility Criteria:** To be eligible, a child must have concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

In addition, the following criteria should be met:

**Criterion 1:** The child should meet all of the criteria associated with the disability from at least two groups (e.g. intellectual disability – blindness).

**Group A: Cognitive Disability (may select no more than 1)**

- Autism Spectrum Disorder
- Emotional Disturbance
- Intellectual Disability (also known as MR)
- Specific Learning Disability
- Speech-Language Impairment
- Traumatic Brain Injury

**Group B: Sensory Disability (may select no more than 1)**

- Deaf-blindness
- Deafness
- Hearing Impairment
- Visual Impairment including Blindness

**Group C: Other Disability (may select no more than 1)**

- Orthopedic Impairment
- Other Health Impairment

<sup>57</sup> 34 C.F.R. §300.8(c)(7); 5 D.C.M.R. §3001.1

**Criterion 2:** The combination of coexisting impairments is so severe, complex and interwoven that identification in a single category of disability cannot be determined.

**Criterion 3:** The impairment results in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas designed solely to address single impairments.

### **Orthopedic Impairment**

**Definition:** A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, disease (e.g., poliomyelitis, bone tuberculosis), and other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).<sup>58</sup>

**Eligibility Criteria:** Review of screening and/or assessments that indicate the diagnosis/prognosis of the child's orthopedic impairment, along with information as applicable regarding medications, surgeries, specific health care procedures, and special diet or activity restrictions.

### **Other Health Impairment (OHI)**

**Definition:** Having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness with respect to the educational environment, and adversely affecting a child's education performance, due to chronic or acute health problems.<sup>59</sup>

**Eligibility Criteria:** To be eligible, a child must meet both criteria 1 and 2 and the disability must have an adverse effect on educational performance.

**Criterion 1:** The impairment is due to chronic or acute health problems such as asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

**Criterion 2:** The impairment adversely affects a child's educational performance.<sup>60</sup>

<sup>58</sup> 34 C.F.R. §300.8(c)(8)

<sup>59</sup> 5 D.C.M.R. §3001.1

<sup>60</sup> 34 C.F.R. §300.8(c)(9)(i-ii); 5 D.C.M.R. §3001.1

It is the expectation of OSSE that OHI is treated as a separate and distinct classification from all other disability classifications, and not utilized as a spill over or default classification where other classifications do not fit data acquired and reviewed via the child's evaluation process.

### **Specific Learning Disability (SLD)**

**Definition:** 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.<sup>61</sup> SLD may include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. However, SLD may *not* include learning problems that are primarily the result of: visual, hearing, or motor disabilities; intellectual disability (known as mental retardation); emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.<sup>62</sup> The DCMR adopts the federal definition of SLD.<sup>63</sup>

**Eligibility Criteria:** In response to widespread concern about over-identification of children with SLD, the IDEA 2004 introduced new options/opportunities for the way in which states must define eligibility criteria. Consequently, LEAs are permitted to use a process based on scientific, research-based interventions. OSSE supports the use of identification procedures that are based on scientific research rather than identification through the use of a discrepancy model.

**Eligibility Using Scientific Research-Based Interventions.** An LEA may use a process based on a child's response to scientific research-based intervention. The use of scientific research-based interventions may be a part of a comprehensive evaluation process to determine eligibility in SLD but should not be the sole determinant. To determine eligibility using the Scientific Research-Based Interventions Model, observation in the child's learning environment (including regular classroom setting) and both criteria 1 and 2 must be met. A child's need for academic support alone is never sufficient for an SLD eligibility determination.

**Criterion 1:** The child's response to scientific research-based interventions must indicate the child is not achieving 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:

- Oral expression;

<sup>61</sup> 34 C.F.R. §300.8(c)(10)

<sup>62</sup> 34 C.F.R. §300.309(a)(3)

<sup>63</sup> 5 D.C.M.R. §3001.1; 34 C.F.R. §300.8(c)(10)

- Listening comprehension;
- Written expression;
- Basic reading skill;
- Reading fluency skills;
- Reading comprehension;
- Mathematical calculation;
- Mathematics problem solving; **AND**

The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, District of Columbia Learning Standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, **OR**

The child does not make sufficient progress to meet age or District of Columbia Learning Standards in one or more of the areas identified above of this section, and the child exhibits characteristics of specific learning disabilities consistent with the definition.

**Criterion 2 (exclusionary factors):** The team's findings under Criteria 1 are **NOT** primarily the result of:

1. Lack of appropriate instruction in reading, to include the essential components of reading instruction (phonemic awareness, phonics, fluency, vocabulary and comprehension);
2. Lack of appropriate instruction in math;
3. Limited English Proficiency (LEP);<sup>64</sup>
4. Lack of appropriate instruction in writing;
5. A visual, hearing or motor disability;
6. Intellectual disability;
7. Emotional disturbance;
8. Cultural factors; or
9. Environmental or economic disadvantage.<sup>65</sup>

**Eligibility Using Discrepancy Model.** To determine eligibility using the discrepancy model, all of the following three criteria must be met. It is necessary for the team to consider and document

<sup>64</sup>With respect to the exclusionary factors 1-3, the child must not otherwise meet the eligibility criteria for SLD. 34 C.F.R. §300.306(b).

<sup>65</sup> 5 D.C.M.R. §3006.4; 34 C.F.R. § 300.306(b)

all aspects of each of the three criteria for the evaluation to be considered comprehensive, as required by IDEA. A child's need for academic support alone is never sufficient for an SLD eligibility determination.

**Discrepancy Model Criterion 1:** The child does not achieve adequately for his or her age or meet the District of Columbia Learning Standards in at least one of the following areas, when the child has been provided with learning experiences and instruction appropriate for the child's age and grade level:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skills;
5. Reading fluency skills;
6. Reading comprehension;
7. Mathematics calculation; or
8. Mathematics problem solving.

**Discrepancy Model Criterion 2:** A discrepancy is demonstrated between achievement (as measured by the educational evaluation) and measured ability (as measured by the intellectual evaluation) of two years below a child's chronological age and/or at least two standard deviations below the child's cognitive ability as measured by appropriate standardized diagnostic instruments and procedures.<sup>66</sup>

**Discrepancy Model Criterion 3 (exclusionary factors):** The team's findings under Criteria 1 and 2 are NOT primarily the result of:

1. Lack of appropriate instruction in reading, to include the essential components of reading instruction (phonemic awareness, phonics, fluency, vocabulary and comprehension);
2. Lack of appropriate instruction in math;<sup>67</sup>
3. Lack of appropriate instruction in writing;
4. A visual, hearing or motor disability;
5. Intellectual disability;
6. Emotional disturbance;
7. Cultural factors;

<sup>66</sup> 5 D.C.M.R. §3001.1

<sup>67</sup> For Findings 1, 2 and 9, the child must not otherwise meet the eligibility criteria for SLD. 34 C.F.R. §300.306(b)

8. Environmental or economic disadvantage; or
9. Limited English Proficiency.<sup>68</sup>

### **Speech or Language Impairment**

**Definition:** Consistent with OSSE's Related Service Policy, speech or language impairment is defined as a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.<sup>69</sup>

Specific areas of impairment include:

A. **Articulation Impairment:** The child's speech has atypical production of speech sounds characterized by substitutions, omissions, additions or distortions that interferes with intelligibility in conversational speech and obstructs learning successful verbal communication in the educational setting. The term may include the atypical production of speech sounds resulting from phonology, motor or other issues.

B. **Fluency Impairment:** Interruption in the flow of speech characterized by an atypical rate or rhythm; and/or repetitions in sounds, syllables, words and phrases that significantly reduces the speaker's ability to participate within the learning environment. Excessive tension, struggling behaviors, and secondary characteristics may accompany fluency impairments. Secondary characteristics are defined as ritualistic behaviors or movements that accompany dysfluencies. Ritualistic behaviors may include avoidance of specific sounds in words. Fluency impairment includes disorders such as stuttering and cluttering. It does not include dysfluencies evident in only one setting or reported by one observer.

C. **Language Impairment:** Impaired comprehension and/or use of spoken language which may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve, in any combination, the form of language (phonology, morphology, and syntax), the content of language (semantics), and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance.

<sup>68</sup> 34 C.F.R. 300.306(b); 5 D.C.M.R. §3006.4

<sup>69</sup> 34 C.F.R. §300.8(c)(11); 5 D.C.M.R. §3001.1

D. Voice/Resonance Impairment: Interruption in one or more processes of pitch, quality, intensity, or resonance resonance that significantly reduces the speaker's ability to communicate effectively. Voice/resonance impairment includes aphonia, or the abnormal production of vocal quality, pitch, loudness, resonance, and/or duration, which is inappropriate for an individual's age and/or gender.

**Eligibility Criteria:** The team has reviewed, when appropriate, documented results of at least two or more measures or procedures, administered in the area of impairment and documentation of adverse affect. A child with a speech or language impairment in one or more of the above areas must meet the following criteria:

**Criterion 1:** The speech-language pathologist determines the presence or absence of speech and language impairment based on D.C. rules and regulations for special education, and

**Criterion 2:** Documentation exists of an adverse effect of the impairment on the child's educational performance.

#### **Visual Impairment (Including Blindness)**

**Definition:** Visual impairment, including blindness, is impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.<sup>70</sup>

**Eligibility Criteria:** A child with visual impairment (including blindness) must meet one or more of the following minimum criteria:

**Criterion 1:** Central acuity with corrective lenses 20/70 or less in the better eye with correction, or

**Criterion 2:** Reduced visual field to 50 degrees or less in the better eye, or

**Criterion 3:** A diagnosis of cortical visual impairment, or

**Criterion 4:** A diagnosis of a degenerative condition that is likely to result in a significant loss of vision in the future.

<sup>70</sup> 34 C.F.R. §300.8(c)(13); 5 D.C.M.R. §3001.1



### **Traumatic Brain Injury (TBI)**

**Definition:** 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, or attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, or motor abilities; psychosocial behavior; physical functions; information processing; and speech.<sup>71</sup> TBI does not include brain injuries that are: (a) congenital or degenerative; or (b) brain injuries induced by birth trauma.

**Eligibility Criteria:** A child having traumatic brain injury must meet the criteria of deficits in one or more of the following areas:

**Criterion 1:** Cognitive - including areas such as memory, attention, reasoning, abstract thinking, judgment, problem solving, speed of information processing, cognitive endurance, organization, receptive and expressive language and speed of language recall, or

**Criterion 2:** Social/Behavioral - including areas such as awareness of self and others, Interaction with others, response to social rules, emotional responses to everyday situations and adaptive behavior, or

**Criterion 3:** Physical/Motor - including areas such as hearing and vision acuity, speech production, eye-hand coordination, mobility and physical endurance.

### **Compliance and Monitoring**

The U.S. Department of Education's Office of Special Education Programs (OSEP) requires that every State Education Agency monitor LEAs to ensure compliance with IDEA Part B, including timely evaluations and reevaluations.<sup>72</sup> A finding of LEA noncompliance by OSSE results in the requirement to submit an improvement plan containing corrective actions for each area of noncompliance. OSSE may also recommend or require training and technical assistance to LEA staff when crafting corrective actions. All items of noncompliance must, by Federal law, be

<sup>71</sup> 34 C.F.R. §300.8(c)(12); 5 D.C.M.R. §3001.1

<sup>72</sup> 34 C.F.R. §300.600

corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.<sup>73</sup>

Due in part to longstanding noncompliance with initial evaluations and reevaluation timelines, the District of Columbia is currently under Special Conditions related to its Part B IDEA grant funding.<sup>74</sup> OSSE has therefore placed special emphasis on monitoring compliance with 1) employing practices that support education of children in the Least Restrictive Environment (LRE), 2) adherence to timelines for evaluation and reevaluation, and 3) timely and complete response to Hearing Officer Determinations (HODS). All LEAs must comply with monitoring requirements established annually by the OSSE, which include the collection and submission of both quantitative and qualitative data that support monitoring for regulatory compliance and programmatic quality.

#### **Further Guidance, Training and Technical Assistance**

The OSSE is committed to ensuring that LEAs have the knowledge base and tools to conduct timely and appropriate initial evaluations and reevaluations. OSSE will conduct activities to support LEA compliance, including, but not limited to:

- Clear written guidelines for schools on this issue, containing specific scenarios and examples; answers to frequently asked questions; and clarity concerning the use of the State Special Education Data System (SEDS) to document evaluations and reevaluations; and
- In-person professional development for school personnel to ensure knowledgeable implementation.

The OSSE is committed to ensuring that all children with disabilities receive a free appropriate public education, and in so doing, that evaluations and reevaluations are conducted appropriately and in compliance with the law. If you have questions or concerns regarding this Memorandum, please contact Amy Maisterra, Ed.D., Chief of Staff, Department of Special Education, at (202) 481-3757, or by email at [Amy.Maisterra@dc.gov](mailto:Amy.Maisterra@dc.gov).

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<sup>73</sup> 34 C.F.R. §300.604

<sup>74</sup> District of Columbia Part B grant award letter, July 2009, available at <http://www.ed.gov/fund/data/award/idea/2009partb/dc-letter-2009b.doc>