

## 5073 – R Special Education – Evaluation and Eligibility

### Parental Consent

- Prior to conducting an initial evaluation to determine if a student qualifies as a student with a **disorder disability**, after reviewing existing data with the parents and providing prior written notice, the District will obtain informed consent from the parent of the student before collecting any additional data.
- Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services. The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.
- For initial evaluation only, if the student is a ward of the State or is not residing with the student's parent, the District is not required to obtain consent from the parent if:
  - Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parents of the student;
  - The rights of the parents of the student have been terminated by the court;
  - The rights of the parent to make educational decisions have been subrogated by a judge and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.
- The District may, but is not required to, seek informed consent through due process procedures if the parent of a student who is enrolled or seeking to enroll in the public agency refuses consent for an initial evaluation. The District does not violate its Student Find obligation under 34 C.F.R. §300.111 if it declines to pursue the evaluation.
- The District must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student and must make reasonable efforts to obtain that consent.
- If a parent refuses consent for the initial provision of special education and related services, the District may not seek consent through due process hearing procedures. The public agency:
  - Will not be considered to be in violation to provide Free Appropriate Public Education (FAPE) under Section 504 of the Rehabilitation Act of 1973;
  - Is not required to convene an Individualized Education Program (IEP) team meeting or develop an IEP for the student.
- The District must obtain informed consent prior to conducting any reevaluation of a student with a disability. If the parent refuses consent, the public agency may utilize due process hearing procedure to seek consent but does not violate its obligation if it declines to pursue the evaluation or reevaluation. The informed parental consent for reevaluation need not be obtained if the public agency can demonstrate that:
  - It made reasonable efforts to obtain such consent and has documented those attempts;

- The student's parent has failed to respond.
- Parental consent is not required before:
  - Reviewing existing data as part of an evaluation or reevaluation; or
  - Administering a test or other evaluation that is administered to all students unless consent is required of parents of all students prior to administration.
- The District may not use a parent's refusal to consent to one service or activity under this section to deny the parent or student any other service, benefit, or activity of the public agency, except as required by this part.
- If a parent of a student who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the District may not utilize due process hearing procedures to seek consent.

#### Initial Evaluations

- Consistent with consent requirements of §300.300, either a parent of a student or the District may initiate a request for an initial evaluation to determine whether a student is a student with a disability.
- The initial evaluation must be completed within 60 days of receiving **informed** parental consent for the evaluation, unless:
  - The student enrolls in the public agency from another public agency after the parent has provided consent and before the determination of eligibility by the other agency. In that event, the agency will ensure prompt completion of the evaluation.
  - The parent of a student with a disability repeatedly fails or refuses to produce the student for the evaluation.
- The evaluation must consist of procedures to determine whether the student is a student with a disability and to determine the educational needs of the student.

#### Reevaluations

- The District shall conduct a reevaluation of a student with a disability if:
  - The District determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation.
  - If the student's parents or teacher requests a reevaluation.
- The District shall not conduct a reevaluation more than once a year unless the parent and agency agree otherwise.
- The District shall conduct a reevaluation at least once every 3 years, unless the parent and the agency agree that a reevaluation is unnecessary.

#### Evaluation Procedures

- The District shall provide prior written notice to the parents of a student who has, or who is suspected of having, a disability, that described the evaluation procedures that the agency proposes to conduct.
- In conducting an evaluation or reevaluation, the District shall:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent in order to determine:
  - Whether the student is a student with a disability; and
  - If the student is a student with a disability, information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student to participate in appropriate activities).
- Not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- The District shall ensure that evaluation materials and strategies:
  - Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - Are administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
  - Are used for the purposes for which the assessment(s) or measure(s) are valid and reliable;
  - Are administered by trained and knowledgeable personnel;
  - Are administered in accordance with the instructions provided by the assessment publisher.
  - Are selected and administered so as to ensure that if administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude, or achievement level, or other factors the test purports to measure rather than reflecting the student's impairments (unless those skills are the factors being measured).
  - Assess the student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, adaptive behavior, communicative status, and motor abilities;
  - Are sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not those needs are commonly associated with the student's disability;
  - Provide relevant information that directly assists in determining the educational needs of the student.
- Evaluations of students who transfer to or from another public agency in the same school year are coordinated with the prior and subsequent schools, in order to expedite the completion of a full evaluation.

#### Additional Evaluation Requirements

- As part of an initial evaluation (if appropriate), and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, shall:
  - Review existing evaluation data on the student including:

- Evaluations and information provided by the parents;
  - Current classroom-based, local and statewide assessments, and classroom-based observations;
  - Observations by teachers and related services providers.
- On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine whether:
    - The student is or continues to be a student with a disability, and, if so, the educational needs of the student;
    - The present levels of academic achievement and related developmental needs of the student;
    - Whether the student needs special education and related services to enable the student to meet measurable annual IEP goals and to participate as appropriate in the general education curriculum;
    - Whether additions or modifications, if any, to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate as appropriate in the general curriculum.
  - The IEP team may conduct the review without a meeting.
  - If additional data are needed, the public agency shall administer the assessments required to obtain the additional data.
  - If additional data are not needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the public agency shall notify the parents of:
    - The determination and the reasons for the determination; and
    - The right of the parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs.
  - The District shall evaluate a student before determining that the student is no longer a student with a disability except when the termination is due to graduation with a regular high school diploma or completion of the school year in which the student turns 21 years of age.
  - When the student's eligibility terminates because of graduation or exceeding the age of eligibility, the District shall provide a summary of the student's academic achievement and functional performance that includes recommendations on how to assist the student in meeting the student's postsecondary goals.

#### Determination of Eligibility

- Upon completion of the evaluation process, the District shall ensure that a group of qualified professionals and the parent of the student determine:
  - Whether the student is a student with a disability under the IDEA; and
  - If so, the educational needs of the student.
- The parents are provided, at no cost, a copy of the evaluation report and eligibility determination.
- A student will not be determined to be a student with a disability if the primary factor for the determination is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in 1208(3) of the Elementary and Secondary Education Act (ESEA) of 1964;
  - Lack of appropriate instruction in math; or
  - Limited English proficiency.
- The eligibility determination, including education needs, will be based on all of the information sources used in the evaluation process, and if deemed eligible and in need of special education and related services, an IEP will be developed in accordance with §300.320 - 300.324.

#### Additional Procedures for Identifying Students with Specific Learning Disabilities

- The District will use a criteria for determining whether a student has a specific learning disability through the identification of a severe discrepancy between intellectual ability and achievement in conformity with IDEA Regulations §§300.307 – 300.311; or
- ~~The District will use the state-adopted criteria~~ **District developed criteria may be used** for determining whether a student has a specific learning disability ~~through a process based on the~~ **utilizing the** student's response to scientific, research-based intervention in conformity with IDEA Regulations §§300.300 – 300.311.

#### Additional Group Members

- The determination of whether a student suspected of having a specific learning disability is a student with a disability must be made by the student's parents and a team of qualified professionals which must include:
  - The student's regular teacher; or if the student does not have a regular teacher, then a regular teacher qualified to teach students of that age;
  - For a student younger than school age, an individual qualified by the State to teach students of his/her age; and at least one person qualified to conduct individual diagnostic evaluations of students, such as a school psychologist, speech- language pathologist, or remedial reading teacher.

#### Determining the Existence of a Specific Learning Disability

- A student may be determined to have a specific learning disability (SLD) if:
  - The student does not achieve adequately for the student'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 student's age or State-approved grade level standards:
    - Oral expression;
    - Listening comprehension;
    - Written expression;
    - Basic reading skill;
    - Reading fluency skills;
    - Reading comprehension;
    - Mathematics calculation;
    - Mathematics problem solving.
  - The student does not make sufficient progress to meet age or State-approved grade level standards in one or more of the areas above when using a process

- based on the student's response to scientific, research-based intervention; or
- The student 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.
- The findings of this section are not primarily the result of:
  - A visual, hearing or motor disability;
  - **Mental retardation**; Cognitive disability;
  - Emotional **disturbance disability**;
  - Cultural factors;
  - Environmental or economic disadvantage; or
  - Limited English proficiency.
- The group must ensure that the underachievement is not due to a lack of appropriate instruction in reading or math and consider:
  - Data that demonstrate that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.
- The District must promptly request parent consent to evaluate whether, prior to referral, the student has not made adequate progress after an appropriate period of time when provided instruction.

#### Observation

- The District must ensure that the student is observed in his/her learning environment, including the regular classroom setting, to document the student's academic performance and behavior in the areas of difficulty.
- In the case of a student younger than school age or out of school, a group member must observe the student in an environment appropriate for a student that age.

#### Specific Determination for the Eligibility Determination

- For a student suspected of having a specific learning disability (SLD), the eligibility determination must contain a statement of:
  - Whether the student has a specific learning disability;
  - The basis for making the determination, including an assurance the determination was made in accordance with the Individuals with Disabilities Education Act;
  - The relevant behavior, if any, noted during the observation and the relationship of that behavior to the student's academic functioning;
  - The educationally relevant medical findings, if any;
  - Whether the student does not achieve adequately for his/her age or to meet State-approved, grade level standards; and does not make sufficient progress to meet age or State-approved grade level standards; or
  - The determination of the group concerning the effects of a visual, hearing, or motor disability; **mental-retardation cognitive disability**;

emotional **disturbance disability**; cultural factors; environmental or economic disadvantage; or limited English proficiency of the student's achievement level.

- If the student participated in a process that assessed the student's response to scientific, research-based intervention:
  - The instructional strategies used and the student-centered data collected;
  - The documentation that the student's parents were notified about the WDE's policy regarding the amount and nature of student performance that would be collected and the general education services that would be provided;
  - Strategies for increasing the rate of learning; and
  - The parent's right to request an evaluation.
- Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

ADOPTION DATE: June 14, 2011; Minor revisions November 10, **Revised October 26, 2021**; 2015;

LEGAL REFERENCE(S): 34 C.F.R. §§300.300 – 300.311

CROSS REFERENCE(S): 5070, 5070-R

ADMINISTRATIVE REGULATION: