

## PROPOSED USDOE REGULATIONS FOR IDEA 2004

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

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

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))

### §300.306 Determination of eligibility.

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

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

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.

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

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

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

(ii) Lack of instruction in math; or

(iii) Limited English proficiency; and

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

(c) Procedures for determining eligibility and placement.

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

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

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

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1414(b)(4) and (5))

### **Additional Procedures for Evaluating Children With Specific Learning Disabilities**

#### §300.307 Specific learning disabilities.

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

(1) May prohibit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8;

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

(3) Must permit the use of a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in §300.304; and

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

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

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### §300.308 Group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, is made by the child's parents and the group described under §300.306(a)(1) that--

- (a) Is collectively qualified to--
    - (1) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development;
    - (2) Interpret assessment and intervention data, and apply critical analysis to those data;
    - (3) Develop appropriate educational and transitional recommendations based on the assessment data; and
    - (4) Deliver, and monitor specifically designed instruction and services to meet the needs of a child with a specific learning disability; and
  - (b) Includes--
    - (1) A special education teacher;
    - (2)
      - (i) The child's general education teacher; or
      - (ii) If the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; and
  - (c) Other professionals, if appropriate, such as a school psychologist, reading teacher, or educational therapist.
- (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

### §300.309 Determining the existence of a specific learning disability.

- (a) The group described in §300.308 may determine that a child has a specific learning disability if--
  - (1) The child does not achieve commensurate with the child's age in one or more of the following areas, when provided with learning experiences appropriate for the child's age:
    - (i) Oral expression.
    - (ii) Listening comprehension.
    - (iii) Written expression.
    - (iv) Basic reading skill.
    - (v) Reading fluency skills.
    - (vi) Reading comprehension.
    - (vii) Mathematics calculation.
    - (viii) Mathematics problem solving.
  - (2)
    - (i) The child fails to achieve a rate of learning to make sufficient progress to meet State-approved results in one or more of the areas identified in paragraph (a)(1) of this section when assessed with a response to scientific, research-based intervention process; or
    - (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, or a pattern of strengths and weaknesses in performance, achievement, or both, relative to intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and
  - (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
    - (i) A visual, hearing, or motor disability;
    - (ii) Mental retardation;
    - (iii) Emotional disturbance;
    - (iv) Cultural factors; or
    - (v) Environmental or economic disadvantage.
- (b) For a child suspected of having a specific learning disability, the group must consider, as part of the evaluation described in §§300.304 through 300.306, data that demonstrates that--
  - (1) Prior to, or as a part of the referral process, the child was provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel; and
  - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.

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(c) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (b)(1) and (2) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services must be made.

(d) Once the child is referred for an evaluation to determine if the child needs special education and related services, the timelines described in §§300.301 and 300.303 must be adhered to, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.308. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

### §300.310 Observation.

(a) At least one member of the group described in §300.308, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty.

(b) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

### §300.311 Written report.

(a) For a child suspected of having a specific learning disability, the evaluation report and the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether the child does not achieve commensurate with the child's age;
- (6) Whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement, or both, relative to intellectual development in one or more of the areas described in §300.309(a) that require special education and related services; and
- (7) The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process, as described in §300.309 was implemented.

(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

## Individualized Education Programs

### §300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

- (1) A statement of the child's present levels of academic achievement and functional performance, including--
  - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- (2)
  - (i) A statement of measurable annual goals, including academic and functional goals designed to--
    - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (B) Meet each of the child's other educational needs that result from the child's disability;
  - (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of--
  - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and