

## 3301-51-06 Evaluations

### (A) General

- (1) Each school district shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, to ensure that a referral process is employed to determine whether or not a child is a child with a disability. The school district of residence shall ensure that initial evaluations are conducted and that reevaluations are completed.
- (2) Consistent with rule 3301-35-06 of the Administrative Code, each school district shall provide interventions to resolve concerns for any preschool or school-age child who is performing below grade-level standards.
- (3) A school district may not use interventions to delay unnecessarily a child's being evaluated to determine eligibility for special education services. If such interventions have not been implemented prior to referral for evaluation, appropriate interventions shall be implemented during the same sixty-day time frame during which the school district conducts a full and individual evaluation.
- (4) Each school district shall use data from interventions to determine eligibility for special education services, appropriate instructional practices, and access to the general curriculum. In the case of a preschool-age child, data collected through interventions is part of the differentiated referral process.

### (B) Initial evaluations

#### (1) General

Each school district of residence must conduct a full and individual initial evaluation, in accordance with this rule, before the initial provision of special education and related services under Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) to a child with a disability residing in the school district.

#### (2) Request for initial evaluation

Consistent with the consent requirements in rule 3301-51-05 of the Administrative Code, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

- (3) A school district of residence will, within thirty days of receipt of a request for an evaluation from either a parent of a child or a public agency, either obtain parental consent for an initial evaluation or provide to the parents prior written notice stating that the school district does not suspect a disability and will not be conducting an evaluation.

(4) Procedures for initial evaluation

The initial evaluation:

- (a) Must be conducted within sixty days of receiving parental consent for the evaluation; and
- (b) Must consist of procedures:
  - (i) To determine if the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code; and
  - (ii) To determine the educational needs of the child.

(5) Exception

The time frame described in paragraph (B)(4)(a) of this rule does not apply to a school district if:

- (a) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
  - (b) A child enrolls in a new school district of residence after the relevant time frame in paragraph (B)(4)(a) of this rule has begun, and prior to a determination by the child's previous school district of residence as to whether the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code.
- (6) The exception in paragraph (B)(5)(b) of this rule applies only if the subsequent school district of residence is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

(C) Screening for instructional purposes is not evaluation

The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(D) Reevaluations

(1) General

A school district of residence must ensure that a reevaluation of each child with a disability is conducted in accordance with paragraphs (E) to (I) of this rule:

- (a) If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (b) If the child's parent or teacher requests a reevaluation; or

- (c) When a child, who has met the eligibility criteria for a developmental delay, transitions from preschool to school-age services; or
  - (d) In order to make a change in disability category.
- (2) Limitation

A reevaluation conducted under paragraph (D)(1) of this rule:

  - (a) May occur not more than once a year, unless the parent and the school district agree otherwise; and
  - (b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.
- (E) Evaluation procedures
  - (1) Notice

The school district of residence must provide notice to the parents of a child with a disability, in accordance with rule 3301-51-05 of the Administrative Code, that describes any evaluation procedures the school district proposes to conduct.
  - (2) Conduct of evaluation

In conducting the evaluation, the school district must:

    - (a) 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, that may assist in determining:
      - (i) Whether the child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code; and
      - (ii) The content of the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child to participate in appropriate activities);
    - (b) Not use any single source of information, such as a single measure or score, as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
    - (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
  - (3) Other evaluation procedures

Each school district must ensure that:

- (a) Assessments and other evaluation materials used to assess a child under this rule:
  - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information about what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (e) Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with paragraphs (B)(5)(b) and (B)(6) of this rule, to ensure prompt completion of full evaluations.
- (f) In evaluating each child with a disability under paragraphs (E) to (G) of this rule, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

- (g) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- (h) Medical consultation shall be encouraged for a preschool or school-age child on a continuing basis, especially when school authorities feel that there has been a change in the child's behavior or educational functioning or when new symptoms are detected; and
- (i) For preschool-age children, as appropriate, the evaluation shall include the following specialized assessments:
  - (i) Physical examination completed by a licensed doctor of medicine or doctor of osteopathy in cases where the disability is primarily the result of a congenital or acquired physical disability;
  - (ii) Vision examination conducted by an eye care specialist in cases where the disability is primarily the result of a visual impairment; and
  - (iii) An audiological examination completed by a certified or licensed audiologist in cases where the disability is primarily the result of a hearing impairment.

(F) Additional requirements for evaluations and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation, and as part of any reevaluation under this rule, the evaluation team shall develop an evaluation plan that will provide for the following and be summarized in an evaluation team report:

- (a) Review existing evaluation data on the child, including:
  - (i) Evaluations and information provided by the parents of the child;
  - (ii) Current classroom-based, local, or state assessments, and classroom-based observations;
  - (iii) Observations by teachers and related services providers;
  - (iv) Data about the child's progress in the general curriculum or, for the preschool-age child, data pertaining to the child's growth and development;
  - (v) Data from previous interventions, including:
    - (a) Interventions required by rule 3301-35-06 of the Administrative Code; and
    - (b) For the preschool child, data from early intervention, community or preschool program providers; and

- (vi) Any relevant trend data beyond the past twelve months, including the review of current and previous IEPs; and
  - (b) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:
    - (i) Whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, and the educational needs of the child; or
    - (ii) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
    - (iii) The present levels of academic achievement and related developmental needs of the child;
    - (iv) Whether the child needs special education and related services; or
    - (v) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (vi) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (2) Conduct of review
 

The group described in paragraph (F)(1) of this rule may conduct its review without a meeting.
- (3) Source of data
 

The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (F)(1) of this rule.
- (4) Requirements if additional data are not needed
  - (a) If the evaluation team or the IEP team, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the school district must notify the child's parents of:
    - (i) That determination and the reasons for the determination; and
    - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

- (b) The school district is not required to conduct the assessment described in paragraph (F)(4)(a)(ii) of this rule unless requested to do so by the child's parents.
- (5) Evaluations before change in eligibility
- (a) Except as provided in paragraph (F)(5)(b) of this rule, a school district must evaluate a child with a disability in accordance with paragraphs (E) to (I) of this rule before determining that the child is no longer a child with a disability.
  - (b) The evaluation described in paragraph (F)(5)(a) of this rule is not required before the termination of a child's eligibility under this rule due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a free appropriate public education (FAPE) under state law.
  - (c) For a child whose eligibility terminates under circumstances described in paragraph (F)(5)(b) of this rule, a school district 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.
- (G) Determination of eligibility
- (1) General
- Upon completion of the administration of assessments and other evaluation measures:
- (a) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, in accordance with paragraph (G)(2) of this rule and the educational needs of the child; and
  - (b) The school district provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
    - (i) The written evaluation team report shall include:
      - (a) A summary of information obtained during the evaluation process; and
      - (b) The names, titles and signatures of each team member, including the parent, and an indication of whether or not they are in agreement with the eligibility determination. Any team member who is not in agreement with the team's determination of disability shall submit a statement of disagreement.
    - (ii) The school district must provide a copy of the evaluation team report and the documentation of determination of

eligibility or continued eligibility to the parents prior to the next IEP meeting and in no case later than fourteen days from the date of eligibility determination.

(2) Special rule for eligibility determination

A child must not be determined to be a child with a disability under this rule:

- (a) 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 Elementary and Secondary Education Act of 1965, as amended and specified in the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA);
  - (ii) Lack of appropriate instruction in math; or
  - (iii) Limited English proficiency; and
- (b) If the child does not otherwise meet the eligibility criteria under paragraph (B)(10) of rule 3301-51-01 of the Administrative Code.

(3) Procedures for determining eligibility and educational need

- (a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code, and the educational needs of the child, each school district must:
  - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, state and districtwide assessments, parent input, and teacher recommendations, as well as information about the child's 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.
- (b) 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 rule 3301-51-07 of the Administrative Code.

(H) Additional procedures for identifying children with specific learning disabilities

(1) Specific learning disabilities

(a) General

The Ohio department of education adopts in this rule, criteria for determining whether a child has a specific learning disability as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code. The criteria adopted by the state in this rule:



- (i) Do 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 paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code;
  - (ii) Permit the use of a process based on the child's response to scientific, research-based intervention; and
  - (iii) Permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code.
- (b) Consistency with state criteria
- A school district must use the state criteria adopted in this rule pursuant to paragraph (H)(1) of this rule in determining whether a child has a specific learning disability.
- (2) Additional group members
- The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, must be made by the child's parents and a team of qualified professionals which must include:
- (a) The child's regular teacher; or
  - (b) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of the child's age; or
  - (c) For a child of less than school-age, an individual qualified by the Ohio department of education to teach a child of the child's age; and
  - (d) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- (3) Determining the existence of a specific learning disability
- (a) The group described in paragraph (G) of this rule may determine that a child has a specific learning disability, as defined in paragraph (B)(10)(d)(x) of rule 3301-51-01 of the Administrative Code, if:
    - (i) The child does not achieve 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:
      - (a) Oral expression;

- (b) Listening comprehension;
  - (c) Written expression;
  - (d) Basic reading skill;
  - (e) Reading fluency skills;
  - (f) Reading comprehension;
  - (g) Mathematics calculation; or
  - (h) Mathematics problem-solving.
- (ii) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (H)(3)(i) of this rule when using a process based on the child's response to scientific, research-based intervention; or
  - (iii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with paragraphs (E) and (F) of this rule; and
  - (iv) The group determines that its findings under paragraphs (H)(3)(a)(i) to (H)(3)(a)(iii) of this rule are not primarily the result of:
    - (a) A visual, hearing, or motor disability;
    - (b) Mental retardation;
    - (c) Emotional disturbance;
    - (d) Cultural factors;
    - (e) Environmental or economic disadvantage; or
    - (f) Limited English proficiency.
- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in paragraphs (E) to (G) of this rule:
    - (i) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
    - (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal

assessment of student progress during instruction, which was provided to the child's parents.

- (c) The school district must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the time frames described in paragraphs (B) and (D) of this rule, unless the time frames are extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in paragraph (G)(1)(a) of this rule:
  - (i) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule; and
  - (ii) Whenever a child is referred for an evaluation.
- (d) An evaluation may utilize a process based on the child's response to scientific, research-based intervention to determine whether a child has a specific learning disability. This process:
  - (i) Begins when sufficient data have been gathered and analyzed under conditions of targeted and intensive individualized intervention conditions, when there is evidence of an inadequate response to intervention on the part of the child, and the group determines that the child's needs are unlikely to be met without certain specialized instruction in addition to the regular classroom instruction;
  - (ii) Employs interventions that are scientifically-based and provided at appropriate levels of intensity, frequency, duration, and integrity, relative to the child's identified needs;
  - (iii) Is based on results of scientifically-based, technically adequate assessment procedures that assess ongoing progress while the child is receiving scientifically-based instruction, and that have been reported to the child's parents;
  - (iv) Includes the analysis of data described in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule to determine whether a discrepancy is present between actual and expected performance, in both the child's rate of progress in developing skills, and in the child's level of performance on measures assessing one or more of the academic areas listed in paragraph (H)(3)(a)(i) of this rule;
  - (v) May not be used to delay unnecessarily a child's being evaluated to determine eligibility for special education services.

- (e) A school district may use alternative, research-based procedures for determining whether a child 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, if prior approval of the procedures has been granted by the Ohio department of education.
  - (f) The school district must develop written procedures for the implementation of any method used to determine the existence of a specific learning disability that, at a minimum, incorporate guidelines developed by the Ohio department of education as specified in this rule.
- (4) Observation
- (a) The school district must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.
  - (b) The group described in paragraph (G) of this rule, in determining whether a child has a specific learning disability, must decide to:
    - (i) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - (ii) Have at least one member of the group described in paragraph (G) of this rule conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with rule 3301-51-05 of the Administrative Code, is obtained.
  - (c) 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.
- (5) Specific documentation for the eligibility determination
- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in paragraph (G)(1)(b) of this rule, must contain a statement of:
    - (i) Whether the child has a specific learning disability;
    - (ii) The basis for making the determination, including an assurance that the determination has been made in accordance with paragraph (G)(3)(a) of this rule;

- (iii) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (iv) The educationally relevant medical findings, if any;
- (v) Whether:
  - (a) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with paragraph (H)(3)(a)(i) of this rule; and
  - (b) The child does not make sufficient progress to meet age or state-approved grade-level standards consistent with paragraph (H)(3)(a)(ii) of this rule; or
  - (c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards or intellectual development consistent with paragraph (H)(3)(a)(iii) of this rule;
- (vi) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (vii) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - (a) The instructional strategies used and the student-centered data collected; and
  - (b) The documentation that the child's parents were notified about:
    - (i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - (ii) Strategies for increasing the child's rate of learning; and
    - (iii) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.
- (I) Additional procedures for identifying children with multiple disabilities

A group of qualified professionals and the parents of the child may determine the child has multiple disabilities if the child exhibits:

- (1) A combination of two or more areas of disability as defined in rule 3301-51-01 of the Administrative Code, except for a combination that includes a specific learning disability; and
- (2) A severe or profound deficit in communication or adaptive behavior documented through the use of individually administered standardized instruments which have been validated for the specific purpose of measuring communication or adaptive behavior.

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