

CHAPTER 3525
DEPARTMENT OF EDUCATION
CHILDREN WITH A DISABILITY

3525 1341 SPECIFIC LEARNING DISABILITY
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3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1 **Definition.** "Specific learning disability" means 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, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia

The disorder is

A manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment, and

B demonstrated primarily in academic functioning, but may also affect other developmental, functional, and life adjustment skill areas, and may occur with, but cannot be primarily the result of visual, hearing, or motor impairment, cognitive impairment, emotional disorders, or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math

Subp 2 **Criteria.** A child is eligible and in need of special education and related services for a specific learning disability when the child meets the criteria in items A, B, and C or in items A, B, and D. Information about each item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the effects of the child's disability occur in a variety of settings. The child must receive two interventions, as defined in Minnesota Statutes, section 125A.56, prior to evaluation, unless the parent requests an evaluation or the IEP team waives this requirement because it determines the child's need for an evaluation is urgent.

A The child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to appropriate classroom instruction, and either

(1) the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, research-based intervention (SRBI), or

(2) 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

The performance measures used to verify this finding must be representative of the child's curriculum or useful for developing instructional goals and objectives. Documentation is required to verify this finding. Such documentation includes evidence of low achievement from the following sources, when available: cumulative record reviews, classwork samples, anecdotal teacher records, statewide and districtwide assessments, formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education

B The child has a disorder in one or more of the basic psychological processes which includes an information processing condition that is manifested in a variety of settings by behaviors such as inadequate acquisition of information, organization; planning and sequencing, working memory, including verbal, visual, or spatial, visual and auditory processing, speed of processing, verbal and nonverbal expression, transfer of information; and motor control for written tasks

C The child demonstrates a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the child's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the child's chronological age level.

D The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive SRBI, which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when the child's

(1) rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards,

(2) progress will likely not be maintained when instructional supports are removed,

(3) level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards, and

(4) level of achievement is at or below the fifth percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

Subp 3 Determination of specific learning disability. In order to determine that the criteria for eligibility in subpart 2 are met, documentation must include:

A. an observation of the child in the child's learning environment, including the regular classroom setting, that documents the child's academic performance and behavior in the areas of difficulty. For a child of less than school age or out of school, a group member must observe the child in an environment appropriate to the child's age. In determining whether a child has a specific learning disability, the parents and the group of qualified professionals, as provided by Code of Federal Regulations, title 34, section 300.308, must

(1) 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 a special education evaluation; or

(2) conduct an observation of academic performance in the regular classroom after the child has been referred for a special education evaluation and appropriate parental consent has been obtained, and

(3) document the relevant behavior, if any, noted during the observation and the relationship of that behavior to the child's academic functioning,

B. a statement of whether the child has a specific learning disability,

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C the group's basis for making the determination, including that

(1) the child has a disorder, across multiple settings, that impacts one or more of the basic psychological processes described in subpart 1 documented by information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) the child's underachievement is not primarily the result of visual, hearing, or motor impairment, developmental cognitive disabilities, emotional or behavioral disorders, environmental, cultural, or economic influences, limited English proficiency; or a lack of appropriate instruction in reading or math, verified by

(a) data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel, and

(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents,

D educationally relevant medical findings, if any,

E. whether the child meets the criteria in subpart 2, either items A, B, and C or items A, B, and D, and

F if the child has participated in a process that assesses the child's response to SRBI, the instructional strategies used and the child-centered data collected, the documentation that the parents were notified about the state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parent's right to request a special education evaluation

Subp 4. **Verification.** 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 member must submit a separate statement presenting the member's conclusions.

The district's plan for identifying a child with a specific learning disability consistent with this part must be included with its total special education system (TSES) plan. The district must implement its interventions consistent with that plan. The plan should detail the specific SRBI approach, including timelines for progression through the model, any SRBI that is used, by content area, the parent notification and consent policies for participation in SRBI, procedures for ensuring fidelity of implementation, and a district staff training plan.

Statutory Authority: *MS s 121A 515, 121A 67; 125A 07*

History: *33 SR 477*

3525.1350 INFANT AND TODDLER INTERVENTION SERVICES.

Subpart 1. **Services required.** Infant and toddler intervention services under United States Code, title 20, chapter 33, sections 1431, et seq, and Code of Federal Regulations, title 34, part 303, must be available to children from birth through two years of age who meet the criteria described in subpart 2.

Subp 2 **Criteria for birth through two years of age.** The team shall determine that a child from birth through the age of two years is eligible for infant and toddler intervention services if

A the child meets the criteria of one of the disability categories in United States Code, title 20, chapter 33, sections 1400, et seq, as defined in Minnesota Rules, or

B the child meets one of the criteria for developmental delay in subitem (1) or the criteria in subitem (2):

(1) the child has a diagnosed physical or mental condition or disorder that has a high probability of resulting in developmental delay regardless of whether the child has a demonstrated need or delay, or

(2) the child is experiencing a developmental delay that is demonstrated by a score of 1.5 standard deviations or more below the mean, as measured by the appropriate diagnostic measures and procedures, in one or more of the following areas:

- (a) cognitive development;
- (b) physical development, including vision and hearing,
- (c) communication development;
- (d) social or emotional development; and
- (e) adaptive development.

Subp. 3. [Renumbered 3525.1351]

Subp. 4. **Evaluation.** The evaluation used to determine whether a child is eligible for infant and toddler intervention services must be conducted within the timelines established in Code of Federal Regulations, title 34, part 303. It must be based on informed clinical opinion, must be multidisciplinary in nature, involving two or more disciplines or professions, and must be conducted by personnel trained to utilize appropriate methods and procedures. The evaluation must include:

A a review of the child's current records related to health status and medical history;

B an evaluation of the child's levels of cognitive, physical, communication, social or emotional, and adaptive developmental functioning,

C an assessment of the unique needs of the child in terms of each of the developmental areas in item B, and

D at least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the daily setting is not possible, the alternative setting must be justified.

Subp. 5. **Transition.** The service coordinator provided for in Minnesota Statutes, section 125A.33, must facilitate transition from infant and toddler intervention services before the child's third birthday. The IFSP must include steps to determine and document eligibility for special education, and steps to support the transition of the child to special education under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300, or to other appropriate community-based services that may be available.

A For a child who may be eligible for special education services under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300, the service coordinator must, with the approval of the family of the child, convene a conference between the family, the local educational agency, and community-based service providers to discuss services that the child may receive under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300. The conference must be held not less than 90 days, and, at the discretion of all the parties, not more than nine months, before the child is eligible for the preschool services.

B For a child who may not be eligible for special education services under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations,

title 34, part 300, the service coordinator must, with the approval of the family, take reasonable steps, to convene a conference between the family, the lead agency, and community-based service providers to discuss appropriate services that the child may receive after exiting infant and toddler intervention services

Statutory Authority: *MS s 125A 07*

History: *32 SR 653*

3525.1351 INTERVENTION SERVICES: AGES THREE THROUGH SIX YEARS.

The team shall determine that a child from the age of three years through the age of six years is eligible for special education when

A. the child meets the criteria of one of the categorical disabilities in United States Code, title 20, chapter 33, sections 1400 et seq , as defined in Minnesota Rules; or

B. the child meets one of the criteria for developmental delay in subitem (1) and the criteria in subitem (2) Local school districts have the option of implementing these criteria for developmental delay. If a district chooses to implement these criteria, it may not modify them

(1) The child

(a) has a diagnosed physical or mental condition or disorder that has a high probability of resulting in developmental delay, or

(b) has a delay in each of two or more of the areas of cognitive development, physical development, including vision and hearing, communication development, social or emotional development, and adaptive development, that is verified by an evaluation using one or more technically adequate, norm-referenced instruments The instruments must be individually administered by appropriately trained professionals and the scores must be at least 1.5 standard deviations below the mean in each area.

(2) The child's need for special education is supported by

(a) at least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the daily routine setting is not possible, the alternative setting must be justified,

(b) a developmental history, and

(c) at least one other evaluation procedure in each area of identified delay that is conducted on a different day than the medical or norm-referenced evaluation, which may include criterion-referenced instruments, language samples, or curriculum-based measures

Statutory Authority: *MS s 125A.07*

History: *32 SR 653*