

# **LD Roundtable**

**February 2-3, 2004**

## **Reference materials**

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### **Side by Side Comparison**

**IDEA 97 \* H.R. 1350 \* S. 1248**

**Evaluations and Eligibility Determinations provisions**

### **Senate HELP Committee**

**Report 108-185**

### **House Committee on Education and the Workforce**

**Report 108-077**

### **IDEA 97 Final Regulations**

**Procedures For Evaluation And Determination Of Eligibility**

<b>IDEA 97</b>	<b>H.R. 1350</b>	<b>S. 1248</b>
<p><b>SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</b></p>	<p><b>SEC. 204. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</b></p> <p>(a) IN GENERAL- Section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414) is amended to read as follows:</p> <p><b>SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</b></p>	<p><b>SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</b></p>
<p><b>(a) EVALUATIONS AND REEVALUATIONS-</b></p>	<p><b>(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS-</b></p>	<p><b>(a) EVALUATIONS AND REEVALUATIONS-</b></p>
<p><b>(1) INITIAL EVALUATIONS-</b></p> <p>(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.</p>	<p><b>(1) INITIAL EVALUATIONS-</b></p> <p>(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.</p>	<p><b>(1) INITIAL EVALUATIONS-</b></p> <p>(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.</p>
	<p><b>(B) REQUEST FOR INITIAL EVALUATION-</b> Consistent with subparagraph (D), either a parent of a child, a State educational agency, other State agency as appropriate, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p>	<p><b>(B) REQUEST FOR INITIAL EVALUATION-</b> Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p>
<p><b>(B) PROCEDURES-</b> Such initial evaluation shall consist of procedures -</p> <p>(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and</p>	<p><b>(C) PROCEDURES-</b> Such initial evaluation shall consist of procedures--</p> <p>(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and</p> <p>(ii) to determine the educational needs of such child.</p>	<p><b>(C) PROCEDURES-</b> Such initial evaluation shall consist of procedures--</p> <p>(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within</p>

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<p>(ii) to determine the educational needs of such child.</p>		<p>which the evaluation must be conducted, within such timeframe; and (ii) to determine the educational needs of such child.</p>
<p><b>(C) PARENTAL CONSENT-</b> (i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. (ii) REFUSAL- If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.</p>	<p><b>(D) PARENTAL CONSENT-</b> (i) IN GENERAL- (I) CONSENT FOR INITIAL EVALUATION- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. (II) CONSENT FOR SERVICES- An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child. (ii) ABSENCE OF CONSENT- (I) FOR INITIAL EVALUATION- If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child through the procedures described in section 615, except</p>	<p><b>D) PARENTAL CONSENT-</b> (i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. (ii) REFUSAL- If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent. (iii) REFUSAL OR FAILURE TO CONSENT- If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such informed consent.</p>

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	<p>to the extent inconsistent with State law relating to such parental consent.</p> <p>`(II) FOR SERVICES- If the parent of such child does not provide consent for services under clause (i)(II), or the parent fails to respond to a request to provide the consent, the local educational agency shall not provide special education and related services to the child through the procedures described in section 615.</p> <p>`(III) EFFECT ON AGENCY OBLIGATIONS- In any case for which there is an absence of consent for an initial evaluation under subclause (I), or for which there is an absence of consent for services under subclause (II)-</p> <p>`(aa) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child; and</p> <p>`(bb) the local educational agency shall not be considered to be in violation of any requirement under this part (including the requirement to make available a free appropriate public education to the child) with respect to the lack of an initial evaluation of the child, an IEP meeting with respect to the child, or the development of an IEP under this section for the child.</p>	

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	<p><b>(E) RULE OF CONSTRUCTION-</b> The screening of a student 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.</p>	
<p><b>(2) REEVALUATIONS-</b> A local educational agency shall ensure that a reevaluation of each child with a disability is conducted --</p> <p>(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and</p> <p>(B) in accordance with subsections (b) and (c).</p>	<p><b>(2) REEVALUATIONS-</b></p> <p><b>(A) IN GENERAL-</b> A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--</p> <p>(i) if the local educational agency determines that the educational needs, including improved academic achievement, of the child warrant a reevaluation; or</p> <p>(ii) if the child's parent or teacher requests a reevaluation.</p> <p><b>(B) LIMITATION-</b> A reevaluation conducted under subparagraph (A) shall occur--</p> <p>(i) no more than once a year, unless the parent and the local educational agency agree otherwise; and</p> <p>(ii) at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.</p>	<p><b>(2) REEVALUATIONS-</b></p> <p><b>(A) IN GENERAL-</b> A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--</p> <p>(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(ii) if the child's parents or teacher requests a reevaluation.</p> <p><b>(B) LIMITATION-</b> A reevaluation conducted under subparagraph (A) shall occur--</p> <p>(i) not more than once a year, unless the parent and the local educational agency agree otherwise; and</p> <p>(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.</p>
<p><b>(b) EVALUATION PROCEDURES-</b></p>	<p><b>(b) EVALUATION PROCEDURES-</b></p>	<p><b>(b) EVALUATION PROCEDURES-</b></p>
<p><b>(1) NOTICE-</b> The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.</p>	<p><b>(1) NOTICE-</b> The local educational agency shall provide notice to the parent of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.</p>	<p><b>(1) NOTICE-</b> The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.</p>
<p><b>(2) CONDUCT OF EVALUATION-</b> In conducting the evaluation, the local educational agency shall --</p> <p>(A) use a variety of assessment tools and</p>	<p><b>(2) CONDUCT OF EVALUATION-</b> In conducting the evaluation, the local educational agency shall--</p> <p>(A) use multiple up-to-date measures</p>	<p><b>(2) CONDUCT OF EVALUATION-</b> In conducting the evaluation, the local educational agency shall--</p> <p>(A) use a variety of assessment tools and strategies to gather relevant functional,</p>

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<p>strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;</p> <p>(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p>	<p>and assessments to gather relevant functional, developmental, and academic information, including information provided by the parent, to assist in determining--</p> <p>(i) whether the child is a child with a disability; and</p> <p>(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities;</p> <p>(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p>	<p>developmental, and academic information, including information provided by the parent, that may assist in determining--</p> <p>(i) whether the child is a child with a disability; and</p> <p>(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;</p> <p>(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p>
<p><b>(3) ADDITIONAL REQUIREMENTS-</b> Each local educational agency shall ensure that --</p> <p>(A) tests and other evaluation materials used to assess a child under this section --</p> <p>(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and</p> <p>(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and</p> <p>(B) any standardized tests that are</p>	<p><b>(3) ADDITIONAL REQUIREMENTS-</b> Each local educational agency shall ensure that--</p> <p>(A) assessments and other evaluation measures used to assess a child under this section--</p> <p>(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) are provided and administered in the language and form most likely to yield accurate academic and developmental data, unless it is clearly not feasible to do so;</p> <p>(iii) are used for the purposes for which the assessments or measures are valid and reliable;</p>	<p><b>(3) ADDITIONAL REQUIREMENTS-</b> Each local educational agency shall ensure that--</p> <p>(A) tests and other evaluation materials used to assess a child under this section--</p> <p>(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;</p> <p>(iii) are used for purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) are administered by trained</p>

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<p>given to the child --</p> <ul style="list-style-type: none"> <li>(i) have been validated for the specific purpose for which they are used;</li> <li>(ii) are administered by trained and knowledgeable personnel; and</li> <li>(iii) are administered in accordance with any instructions provided by the producer of such tests;</li> </ul> <p>(C) the child is assessed in all areas of suspected disability; and</p> <p>(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p>	<ul style="list-style-type: none"> <li>(iv) are administered by trained and knowledgeable personnel; and</li> <li>(v) are administered in accordance with any instructions provided by the producer of such tests;</li> </ul> <p>(B) the child is assessed in all areas of suspected disability; and</p> <p>(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p>	<p>and knowledgeable personnel; and</p> <p>(v) are administered in accordance with any instructions provided by the producer of such tests;</p> <p>(B) the child is assessed in all areas of suspected disability; and</p> <p>(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p>
<p><b>(4) DETERMINATION OF ELIGIBILITY-</b> Upon completion of administration of tests and other evaluation materials --</p> <ul style="list-style-type: none"> <li>(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</li> <li>(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.</li> </ul>	<p><b>(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED-</b> Upon completion of the administration of assessments and other evaluation measures--</p> <ul style="list-style-type: none"> <li>(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</li> <li>(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.</li> </ul>	<p><b>(4) DETERMINATION OF ELIGIBILITY-</b> Upon completion of administration of tests and other evaluation materials--</p> <ul style="list-style-type: none"> <li>(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</li> <li>(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.</li> </ul>
<p><b>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION-</b> In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.</p>	<p><b>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION-</b> In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--</p> <ul style="list-style-type: none"> <li>(A) lack of scientifically based instruction practices and programs that contain the essential components of reading instruction (as that term is</li> </ul>	<p><b>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION-</b> In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--</p> <ul style="list-style-type: none"> <li>(A) lack of scientifically based instruction in reading;</li> <li>(B) lack of instruction in mathematics; or</li> <li>(C) limited English proficiency.</li> </ul>

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	<p>defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);            `(B) lack of instruction in math; or            `(C) limited English proficiency.</p>	
	<p><b>`(6) SPECIFIC LEARNING DISABILITIES-</b>  <b>`(A) IN GENERAL-</b> Notwithstanding section 607 of this Act, when determining whether a child has a specific learning disability as defined under this Act, the local educational agency shall not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.  <b>`(B) ADDITIONAL AUTHORITY-</b> In determining whether a child has a specific learning disability, a local educational agency may use a process which determines if a child responds to scientific, research-based intervention.</p>	<p><b>`(6) SPECIFIC LEARNING DISABILITIES-</b>  <b>`(A) IN GENERAL-</b> Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.  <b>`(B) ADDITIONAL AUTHORITY-</b> In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).</p>
<p><b>(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-</b></p>	<p><b>`(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS</b></p>	<p><b>`(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-</b></p>
<p><b>(1) REVIEW OF EXISTING EVALUATION DATA-</b> As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall -</p> <p>(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and</p> <p>(B) on the basis of that review, and input from the child's parents, identify what additional data, if any,</p>	<p><b>`(1) REVIEW OF EXISTING EVALUATION DATA-</b> As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall--</p> <p>`(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments, and classroom-based observations, and teacher and related services providers observations; and</p> <p>`(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed</p>	<p><b>`(1) REVIEW OF EXISTING EVALUATION DATA-</b> As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall--</p> <p>`(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and</p> <p>`(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <p>    `(i) whether the child has a</p>

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<p>are needed to determine --</p> <p>(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;</p> <p>(ii) the present levels of performance and educational needs of the child;</p> <p>(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) 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 individualized education program of the child and to participate, as appropriate, in the general curriculum.</p>	<p>to determine--</p> <p>`(i) whether the child is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;</p> <p>`(ii) the present levels of academic achievement and related developmental needs of the child;</p> <p>`(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>`(iv) 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 individualized education program of the child and to participate, as appropriate, in the general education curriculum.</p>	<p>particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;</p> <p>`(ii) the present levels of performance and educational needs of the child;</p> <p>`(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>`(iv) 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 individualized education program of the child and to participate, as appropriate, in the general curriculum.</p>
<p><b>(2) SOURCE OF DATA-</b> The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).</p>	<p>`<b>(2) SOURCE OF DATA-</b> The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).</p>	<p>`<b>(2) SOURCE OF DATA-</b> The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).</p>
<p><b>(3) PARENTAL CONSENT-</b> Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent</p>	<p>`<b>(3) PARENTAL CONSENT-</b> Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local</p>	<p>`<b>(3) PARENTAL CONSENT-</b> Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency</p>

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<p>need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.</p>	<p>educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.</p>	<p>can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.</p>
<p><b>(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED-</b> If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency --</p> <p>(A) shall notify the child's parents of --</p> <p>(i) that determination and the reasons for it; and</p> <p>(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and</p> <p>(B) shall not be required to conduct such an assessment unless requested to by the child's parents.</p>	<p><b>(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED-</b> If the IEP Team and other qualified professionals, 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 local educational agency--</p> <p>(A) shall notify the child's parents of--</p> <p>(i) that determination and the reasons for it; and</p> <p>(ii) the right of such 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; and</p> <p>(B) shall not be required to conduct such an assessment unless requested to by the child's parents.</p>	<p><b>(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED-</b> If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency--</p> <p>(A) shall notify the child's parents of--</p> <p>(i) that determination and the reasons for the determination; and</p> <p>(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and</p> <p>(B) shall not be required to conduct such an assessment unless requested by the child's parents.</p>
<p><b>(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-</b> A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.</p>	<p><b>(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-</b> A local educational agency shall evaluate a child with a disability in accordance with this section prior to graduation, and before determining that the child is no longer a child with a disability, only in instances where the IEP Team is not in agreement regarding the change in eligibility.</p>	<p><b>(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-</b></p> <p>(A) IN GENERAL- Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.</p> <p>(B) EXCEPTION-</p> <p>(i) IN GENERAL- The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.</p> <p>(ii) SUMMARY OF</p>

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		<p>PERFORMANCE- For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall 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.</p>

**House Committee on Education and the Workforce  
Report 108-077  
To accompany H.R. 1350  
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Pages 107-108**

**Senate HELP Committee  
Report 108-185  
To accompany S. 1248  
Filed November 3, 2003  
Pages 26-28**

*Specific learning disabilities*

Dr. Robert Pasternack, Assistant Secretary for Special Education and Rehabilitative Services at the U.S. Department of Education, testified before the Subcommittee on Education Reform regarding specific learning disabilities and appropriate methods of identification of that disability. He testified that:

The convergence of scientific research about LD [“Learning Disabled”], especially reading difficulties associated with LD, has placed us on the edge of new knowledge that we did not have even a few short years ago. We now know, for example, that the way we have traditionally looked at assessment of learning disabilities needs to be re-thought based on recent research in the use and role of IQ tests in assessments for eligibility. We know that using IQ discrepancy between the test and performance is not always an indicator of a learning disability. Indeed, some research indicates that if a child who reads slowly has IQ scores that are above average, that child might receive services under the IDEA based on the discrepancy between the IQ scores and the reading ability. On the other hand, another child who also reads slowly but has IQ scores that are average may not receive any services because of the lack of a significant discrepancy. Such approaches to assessment may clearly result in some children who need services not getting them while others who do not need them will receive them.

The bill includes very clear language regarding the determination of eligibility for students as having a specific learning disability. The Committee is discouraged by the widespread reliance on the IQ-achievement discrepancy model that serves as the determining factor of

*Specific Learning Disabilities*

The committee believes that the IQ-achievement discrepancy formula, which considers whether a child has a severe discrepancy between achievement and intellectual ability, should not be a requirement for determining eligibility under the IDEA. There is no evidence that the IQ-achievement discrepancy formula can be applied in a consistent and educationally meaningful (i.e., reliable and valid) manner. In addition, this approach has been found to be particularly problematic for students living in poverty or culturally and linguistically different backgrounds, who may be erroneously viewed as having intrinsic intellectual limitations when their difficulties on such tests really reflect lack of experience or educational opportunity.

The committee has heard from many experts about innovations and advances in the methodologies used to determine the existence of specific learning disabilities. In response to this growing base of knowledge, the bill clarifies that, in determining whether or not a student has a specific learning disability, a local educational agency is not required to take into account a severe discrepancy between IQ and achievement. This would not prohibit the use of this model, however, if an LEA chooses to base its decisions on the discrepancy formula.

The bill allows local educational agencies to make an eligibility determination through the use of another mechanism, such as through a process based upon a child's response to scientific, research-based intervention. This provision is supported by the findings of the President's Commission on Excellence in Special Education. The Commission recommended that the identification process for children with high-incidence disabilities be simplified and that assessments that reflect learning and behavior in the classroom be encouraged, with less

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whether a child has a specific learning disability. The Committee does not disregard the research base that supports the appropriate use of IQ tests, but the Committee acknowledges the widespread misuse of those measures. The bill specifically allows local educational agencies to continue to use the discrepancy model. However, the Committee hopes that local educational agencies that continue to use the discrepancy model will take great efforts to ensure that the application of the discrepancy model falls within the appropriate guidelines of the IQ assessment, and that evaluators do not rely solely on a simple test score, but place that result within the larger context of the child's individual abilities.

The Committee is greatly encouraged by the growing use of alternative measures that are being used in place of the IQ-achievement discrepancy model. Dr. Douglas Carnine, director of the National Center to Improve the Tools of Educators at the University of Oregon, testified to the Subcommittee on Education Reform that:

Given the converging evidence and agreement in the field that we must do something better for our children, the following model is recommended as the basis to improve how we provide early intervention and identification: Response to Intervention Model (RTI). A RTI model would be designed to ensure that children who are indicating a likelihood of failing in the early grades receive scientifically based instruction as soon as possible. The eligibility for special education services would focus on the children who, even with these services, are not able to be successful. The focus of RTI is on responding to the instructional challenges caused by the disability, not on giving tests to document the failure of the student.

The Committee encourages local educational agencies to take advantage of the prereferral services in section 613 to provide early intervention services to students and accompany those services with rigorous

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reliance on the assessments of IQ and achievement that are now prominent. The Commission also recommended that a student's response to scientifically based instruction become part of the criteria for SLD identification. However, the Commission noted that the development of these response to instruction models is uneven and that technical assistance from OSEP will be critical for implementation. In addition, the Commission noted that parents should always have the right to request an evaluation, and current placement decisions should be respected.

While the committee believes that allowing this flexibility is appropriate, it also acknowledges that the research base supporting such changes continues to advance and improve. Section 614(b)(3)(A)(iii) will require that all procedures, including alternate procedures, be valid and reliable for the purpose for which they are used; the committee expects that new methodologies adopted for use by local educational agencies also will be based on sound research findings. In order to prevent radical differences in how local educational agencies determine the presence of specific learning disabilities, the committee encourages States to develop research-based models that can be adopted by local educational agencies. Further, the committee emphasizes that nothing in the new statutory language would prohibit a State from establishing a consistent statewide process for determining whether a child has a specific learning disability. States should collaborate with LEAs to identify the criteria for determining an SLD and ensuring the consistency and integrity of the classification system across the State. In addition, the committee strongly encourages the Secretary of Education to assist States and LEAs in this effort by developing guidance and technical assistance systems for the improvement of SLD identification and eligibility.

The committee also emphasizes that nothing in this new provision prevents a parent from requesting a full evaluation of a child. Parental input is critical in this area, as parents most always know their child

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evaluation methods and curriculum-based assessments to measure the progress of the child. Through the application of high quality instruction, delivered by well-trained individuals, local educational agencies will be able to differentiate between children that have different learning styles and children that have disabilities. The experience of some local educational agencies and States that have adopted other methods, such as “Neverstreaming” or “response-to-intervention” have demonstrated that scientifically based, rigorous assessment methods exist and should serve as models for other local educational agencies and States to follow.

David W. Gordon, Superintendent of the Elk Grove Unified School District in Elk Grove, California testified to the Subcommittee on Education Reform that:

Neverstreaming changes the paradigm from failing first to preventing failure in the first place. By changing that paradigm through constant vigilance, we actually promote prevention over reactive models. Prevention means that you prevent the child from backsliding educationally to the point where support is only available through separate program models that require long-term remediation with very little chance of catching up to the grade level group.

The Committee encourages the Department to establish effective technical assistance, training, model development, dissemination centers, and professional development activities to support these alternative models. The Department should also conduct high quality research to evaluate the effectiveness of these models, and provide more information regarding these alternatives.

better than anyone else does.

A scientific, research based intervention model of SLD identification, such as that allowed in the committee bill, recognizes the prelude to any intervention process must be effective, research-based instruction in the regular education classroom. Gathering data on each student can help teachers and others frame concerns about a student's progress. The new law supports a continuum of intervention options -- regular and special educators and related service providers working together as part of a coherent system that is accountable for educational outcomes for students with SLD.

Interventions are most effective when they are implemented consistently and with fidelity, with a sufficient level of intensity, and are relevant to individual student needs. Above all, an improved system contemplates the design and timely implementation of individualized interventions, monitoring progress on specified academic and behavioral skills relative to peers in the same educational setting, and full individual assessments as needed, to identify strengths and weaknesses in relevant skills areas and to rule out other disabilities or non-cognitive factors as the primary cause of low achievement.

# **IDEA 97 Final Regulations**

## **Released March 12, 1999**

### **Procedures For Evaluation And Determination Of Eligibility**

#### **§300.530 General.**

Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§300.531-300.536.

(Authority: 20 U.S.C. 1414(b)(3); 1412(a)(7))

#### **§300.531 Initial evaluation.**

Each public agency shall conduct a full and individual initial evaluation, in accordance with §§300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1414(a)(1))

#### **§300.532 Evaluation procedures.**

Each public agency shall ensure, at a minimum, that the following requirements are met:

(a)

(1) Tests and other evaluation materials used to assess a child under Part B of the Act-

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining-

(1) Whether the child is a child with a disability under §300.7; and

(2) The content of the child's IEP.

(c)

(1) Any standardized tests that are given to a child-

(i) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(d) Tests 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.

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test 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).

(f) No single procedure is used 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.

(g) 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.

(h) In evaluating each child with a disability under §§300.531-300.536, 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.

(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(Authority: 20 U.S.C. 1412(a)(6)(B), 1414(b)(2) and (3))

### **§300.533 Determination of needed evaluation data.**

(a) **Review of existing evaluation data.** As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall -

(1) Review existing evaluation data on the child, including-

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations; and

(iii) Observations by teachers and related services providers; and

(2) 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 has a particular category of disability, as described in §300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) The present levels of performance and educational needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) 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 curriculum.

(b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) **Need for additional data.** The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.

(d) **Requirements if additional data are not needed.**

(1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents-

(i) Of that determination and the reasons for it; and

(ii) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(Authority: 20 U.S.C. 1414(c)(1), (2) and (4))

### **§300.534 Determination of eligibility.**

(a) Upon completing the administration of tests and other evaluation materials -

(1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in §300.7; and

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

(b) A child may not be determined to be eligible under this part if-

(1) The determinant factor for that eligibility determination is-

(i) Lack of instruction in reading or math; or

(ii) Limited English proficiency ; and

(2) The child does not otherwise meet the eligibility criteria under §300.7(a).

(c)

(1) A public agency must evaluate a child with a disability in accordance with §§300.532 and 300.533 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.

(Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))

### **§300.535 Procedures for determining eligibility and placement.**

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.7, and the educational needs of the child, each public agency shall-

(1) 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

(2) 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 §§300.340-300.350.

(Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))

### **§300.536 Reevaluation.**

Each public agency shall ensure-

(a) That the IEP of each child with a disability is reviewed in accordance with §§300.340-300.350; and

(b) That a reevaluation of each child, in accordance with §§300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

(Authority: 20 U.S.C. 1414(a)(2))

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

### **§300.540 Additional team members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include-

(a)

(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: Sec. 5(b), Pub. L. 94-142)

### **§300.541 Criteria for determining the existence of a specific learning disability.**

(a) A team may determine that a child has a specific learning disability if-

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading comprehension.

(vi) Mathematics calculation.

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of-

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### **§300.542 Observation.**

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: Sec. 5(b), Pub. L. 94-142)

#### **§300.543 Written report.**

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of-

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: Sec. 5(b), Pub. L. 94-142)