

DRAFT – FOR REVIEW ONLY, NOT FOR USE

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**Is Special Education the Right Service?
Eligibility and Assessment Guidelines**

**Massachusetts Department of
Elementary and Secondary Education**

TABLE OF CONTENTS

- I **Introduction**
- II **Increasing the Capacity of General Education through the Massachusetts Tiered System of Support (MTSS)**
- III **General Guidance on Evaluation and Eligibility Determination**
- IV **Autism**
- V **Communication Impairment**
- VI **Developmental Delay**
- VII **Emotional Impairment**
- VIII **Health Impairment**
- IX **Intellectual Impairment**
- X **Sensory Impairment**
- XI **Neurological Impairment**
- XII **Physical Impairment**
- XIII **Specific Learning Disability**
- XIV **English Language Learners**

I. INTRODUCTION

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II. INCREASING THE CAPACITY OF GENERAL EDUCATION THROUGH THE MASSACHUSETTS TIERED SYSTEM OF SUPPORT

OVERVIEW

Educating students through a strong core curriculum in the general education setting is the foundation of a solid education for all students. Some students need more support than is available through the core curriculum in order to meet the challenging academic standards of the Common Core. When such support is needed, it is important to remember that initial consideration should be given to services within the general education setting by providing students with access to research-based programs and interventions and tracking their response to these interventions. The premise of this approach is that by providing students with supports as soon as they begin to struggle, educators can close gaps and restore students' capacity to demonstrate mastery through core curriculum instruction alone. Much support for this approach is evident in federal and state regulations.

- Under the Individuals with Disabilities Education Act (2004) the federal government recognized that a discrepancy model as the sole method of identifying students as having a specific learning disability was not the only effective method of providing services to students. In this revision to IDEA states were mandated to permit the use of a child's response to scientific, researched-based interventions as a method of qualifying students for special education services. While this method was primarily established in federal statute as a method for providing struggling students with support under the auspices of specific learning disability identification, the passage of this law opened the door for this procedure to be utilized with all students who struggle in school. The MTSS model extends this approach to support the entire student population.
- The Massachusetts Educator Evaluation System includes the general educator's ability to teach all students through differentiated instruction and supports. This highlights the importance of increasing the capacity of the general education teacher to provide various entry points and methods of instruction for all students.

- Chapter 71, Section 38Q1/2 of the Massachusetts General Laws requires adoption and implementation of a district curriculum accommodation plan (DCAP) to assist school principals in ensuring that all efforts have been made to meet students' needs in the general education environment. DCAP is intended to assist the general education classroom teacher in analyzing and accommodating the diverse learning needs of all students in the general education classroom. It is also intended to provide appropriate services and supports within the general education program. These additional supports and services are not limited to preventing the need for special education services. The responsibilities articulated in statute include the requirement that the DCAP address the needs of students whose behaviors may interfere with learning.

The **Massachusetts Tiered System of Support (MTSS)** is the system that has been designed in Massachusetts to increase the capacity of the general education setting through meeting the academic and nonacademic needs of all students (see Figure 1). Designed to be an inclusive model, students with disabilities, English Language Learners, and students who are academically advanced or struggling can all be supported within the general education environment through the provision of supports and services designed to provide students with support based on their learning needs.

CORE COMPONENTS OF MTSS

The core components of this program and philosophy are:

- A high-quality core curriculum and instruction implemented with fidelity
- Research-based academic interventions and assessment practices
- Research-based behavioral interventions and supports
- Universal screening and progress monitoring
- Collaboration and communication between parents and educators

These components are explained as follows:

(1) High Quality Core Curriculum and Instruction Implemented with Fidelity.

Curriculum, instruction, and assessments are aligned vertically (between grades) and horizontally (across classrooms at the same grade level and across sections of the same course). A method is established and implemented for assessing the effectiveness of the core curriculum on a routine basis. District and school leaders address instruction needs and strengths identified through active monitoring of instruction and ongoing use of formative and summative student assessment data. Qualified personnel are skilled in providing large- and small-group research-based differentiated instruction aligned with individual students' developmental levels and learning needs, and a system for formative feedback and decision-making is in place. All students receive academic instruction and non-academic supports that include differentiation and extension activities and are guided by Universal Design for Learning principles.

All students have access to non-academic supports that focus on the optimization of positive and productive functioning. Proactive and predictable classroom routines and a positive school climate are essential to the successful implementation of the tiered system of support. Classroom and school-wide expectations for all students must be clearly defined, communicated, and visually displayed in classrooms and throughout

the school. The school climate fosters positive relationships with teachers, mentors and other adults to provide additional support and encouragement.

(2) Research-Based Academic and Behavioral Intervention and Assessment

Practices. Interventions and assessments are research-based and are valid and reliable predictors of future performance. Intervention and assessment procedures are sensitive to English language acquisition issues and used to distinguish these from other learning challenges. Interventions and assessments are time-efficient and administered by adequately trained staff. The assessment documentation of the student's progress collected through the flexible tiers is provided to the student's parents. The interventions supplement, enhance, support, and provide access to the core curriculum and are provided in addition to the core instruction/universal behavior supports.

(3) Universal Screening and Progress Monitoring. A universal screening system is

in place and used by the school or district to assess the strengths and challenges of all students in academic achievement and social, emotional, and behavioral concepts, skills, and behaviors. A data collection and management system is in place for the purposes of screening, diagnosis, and progress monitoring. Data from continuous progress monitoring drive instructional decisions throughout the tiered process.

Progress-monitoring data indicate student response to intervention and determine student movement through the tiers. Students' academic and non-academic progress is monitored with increasing frequency as they receive more intensive tiered supports and interventions. Additionally, information from assessments of attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults may be considered throughout the tiered system of support.

(4) Collaboration and Communication between Parents and Educators. Teams

use data-driven decision-making and problem-solving processes at the school, classroom, and individual student levels to make academic and non-academic decisions. Responsibility is shared among all educators (e.g., general education, special education, related services, English Language Education, Title I, and community-based representatives) for the progress of all students and parents are involved in the decision-making process across all tiers. School-level, grade-level, and student-centered teams meet collaboratively to review assessment data and make decisions. Time is scheduled for the grade-level and student-level teams to collaborate and conduct follow-up activities. All team members are aware of the necessary policies and procedures that must be in place to comply with special education regulations regarding the use of tiered instruction to determine eligibility for specific learning disabilities.

WHEN A REFERRAL FOR SPECIAL EDUCATION MAY BE WARRANTED

Any member of the team (which includes parents) has the right to request an evaluation for special education services any time that the child is suspected of having a disability. However, educational teams are encouraged to consider whether the child has a disability or a deficit that can be remediated through a well-designed and adequately resourced tiered system of support. Here are some indicators that may suggest that special education may be the right service for a student.

- Failure to respond to multiple research-based interventions in the general education setting following fidelity of implementation and strong data collection;

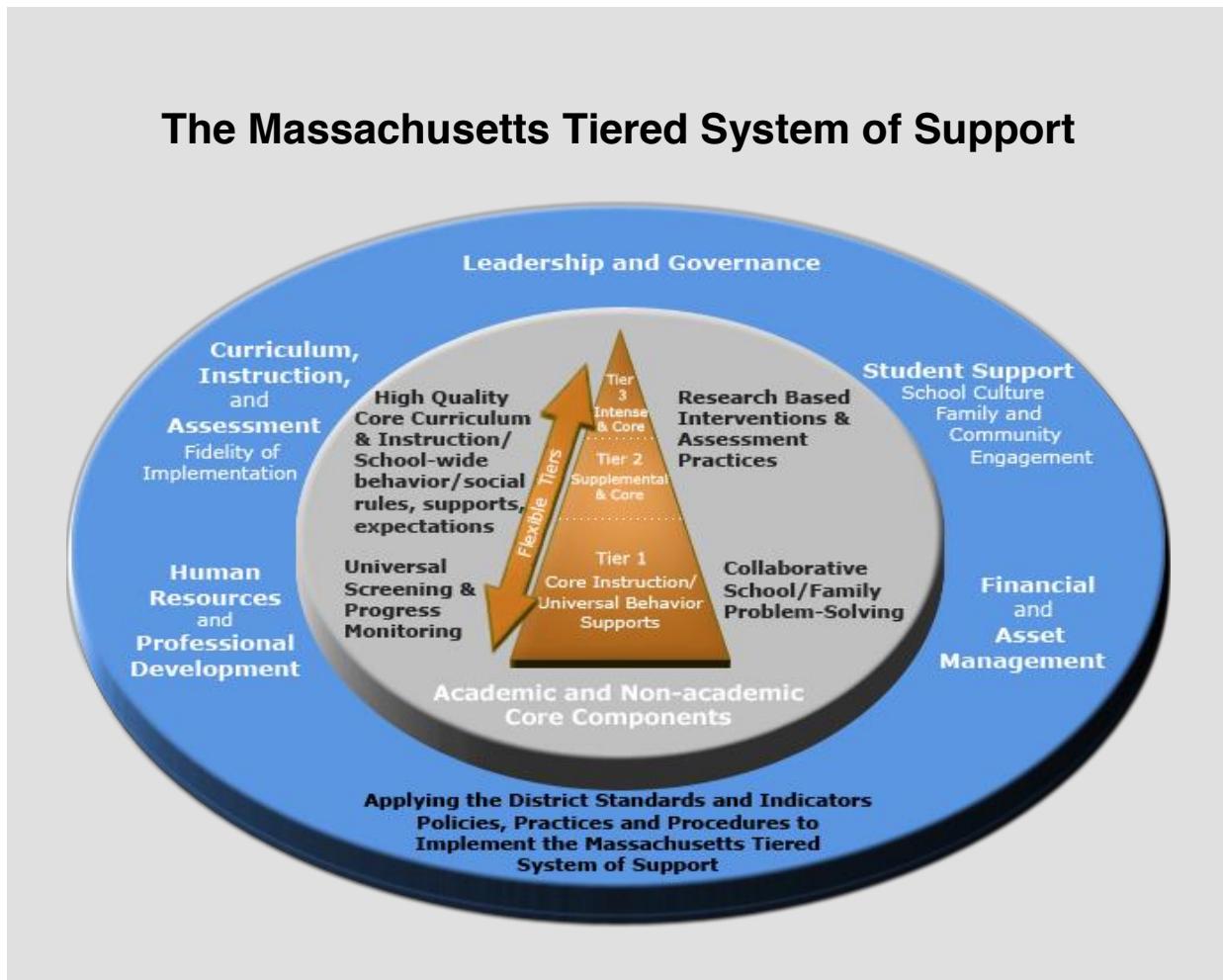
- Gaps between a child's achievement and that of his peers that continue to grow despite research-based supports;
- Progress monitoring data suggesting that general education interventions are no longer effective.

RESOURCES

Eagle, J.W., Dowd-Eagle, S.E., Snyder, A., & Holtzman, E.G. (2015). Implementing a multi-tiered system of support (MTSS): Collaboration between school psychologists and administrators to promote systems-level change. *Journal of Educational and Psychological Consultation*, 25, 160-177.

National Center on Universal Design for Learning (n.d.), About UDL: Learn the basics. Retrieved from <http://www.udlcenter.org/aboutudl>.

Figure 1



III. GENERAL GUIDANCE ON EVALUATION AND ELIGIBILITY DETERMINATION

Eligibility for special education and related services involves several steps: (1) referral, (2) evaluation, and (3) determination of eligibility by the IEP Team. State and federal mandates inform each step of the process. Federal law (the Individuals with Disabilities Education Improvement Act of 2004, or IDEA) and federal special education regulations (U.S. Department of Education, 2006) are fully applicable. Massachusetts public schools must comply with federal laws and regulations as a condition of accepting IDEA entitlement funds.

Massachusetts special education laws and regulations (603 CMR 28.00) are also applicable. They may qualify or elaborate on federal mandates, or may specify additional requirements.

TIMELINES

Under Massachusetts special education regulations, the following timelines are associated with special education evaluation and eligibility determination:

- “When a student is referred for an evaluation to determine eligibility for special education, the school district shall send written notice to the student's parent(s) within five school days of receipt of the referral.” (603CMR 28.04(1)(a))
- Upon receiving parent consent for an initial evaluation, “the school district shall provide or arrange for the evaluation of the student by a multidisciplinary team within 30 school days.” (603CMR 28.04(2))
- Within 45 school days after receiving parent consent for an initial evaluation or a re-evaluation, the school district must “provide an evaluation; convene a Team meeting to review the evaluation data, determine whether the student requires special education and, if required, develop an IEP...” (603CMR 28.05(1))
- Written reports of assessment results must, upon request, be made available to the parent at least two days in advance of the Team meeting. (603CMR 28.04(2)(c))

With regard to the last bullet point, some school districts routinely provide reports to parents prior to Team meetings to ensure compliance with this regulation. This, however, limits the opportunity for evaluators to revise reports after reviewing findings with parents and considering their input or additional information. In some instances, it may be beneficial for evaluators to meet with parents prior to a Team meeting to orient the parent to significant assessment findings and invite input regarding tentative conclusions.

REFERRAL FOR EVALUATION

A referral for evaluation to determine special education eligibility should be initiated when a child is suspected of having, or is known to have, an educational disability. Students with disabilities may be vulnerable to lost educational opportunities if their need for special education and related services is not promptly identified and appropriately addressed.

Parents may make a referral for a special education evaluation at any time. Persons who serve in a caregiving capacity (e.g., foster parent, guardian) or a professional capacity (e.g., physician, psychotherapist) may also make a referral, with parental approval.

A referral may also originate with school personnel. As specified in federal special education regulations (34CFR §300.111), public schools have a responsibility to proactively identify and evaluate all eligible children ages 3-21 who are suspected of having a disability, including children who are highly mobile or homeless, and preschool children. To ensure seamless transition to special education services, Massachusetts regulations require a school district to conduct an evaluation of a child receiving early intervention services (i.e., birth to age three) who is referred for evaluation when the child reaches age two and a half (603CMR 28.04(1)(d)).

In seeking help for children, parents and other referring parties may be unaware of opportunities available through general education, as described in the previous section. These general education supports and strategies may result in prompt delivery of appropriate supports, whereas the end result of a special education referral may be a finding of ineligibility after an evaluation period of several weeks during which the child continues to struggle. Early intervening services in general education may also yield critical information regarding a child's eligibility for special education by determine whether or not appropriate instruction in general education is sufficient to meet the child's needs. Nevertheless, such general education supports and services cannot be used for the purpose of delaying or denying an appropriate referral for evaluation. A parent retains the right to pursue an evaluation to determine the need for special education.

Clearly, it is in the best interests of school districts to offer a positive and responsive school environment, with well-prepared teachers who can address the needs of diverse student learners and mechanisms for providing effective supports and strategies within general education. When schools offer strong instructional practices and behavioral supports, the majority of referrals will be appropriate referrals.

EVALUATION

When a referral is initiated and the parent gives consent for an evaluation, the school district then proceeds to design the evaluation. As the first step, the evaluation team (which is comprised of school personnel and other qualified professionals, as appropriate) reviews existing evaluation data on the child, which may include school records, evaluations and other information provided by the parents, observations of the child in school, and current classroom-based, local, or state assessments. On the basis of that review, the evaluation team identifies what additional data, if any, are needed to determine (1) whether the child has an educational disability as defined by federal and state regulations, (2) the child's present levels of academic achievement and related developmental needs, and (3) the educational needs of the child.

[Note: the term "evaluation" is used to refer to the overall process of acquiring information about the child to inform Team decisions about eligibility and educational planning. The term "assessment" is used to refer to the collection of relevant data through testing, observation, interviews and other means by individual evaluators (e.g., school psychologist, speech and language pathologist, special educator).]

As stated in Massachusetts special education law, an initial evaluation of a child must include (a) "assessment in all areas related to the suspected disability," and (b) "an educational assessment by a representative of the school district" (603CMR 28.04(2)(a)). The assessment measures must be administered by appropriately credentialed and trained specialists

(603CMR 28.04(2)). Federal regulations further elaborate that the assessment in all areas related to the suspect disability may include “if appropriate, health, vision, hearing, social emotional status, general intelligence, academic performance, communicative status and motor abilities” (34CFR 300.304). Federal regulations further specify that the assessment instruments used by evaluators must not be discriminatory on a racial or cultural basis. Furthermore, determination of special education eligibility or educational placement must not be based on the results of a single assessment measure.

Massachusetts regulations (603CMR 28.04(2)(a)2) specify that the educational assessment must include:

- a history of the student's educational progress in the general curriculum, with information from teachers about the student's capability relative to the Massachusetts Curriculum Frameworks and the district curriculum;
- the student's attention skills, participation behaviors, communication skills, memory, and social relations; and
- an evaluation and description of the student's educational and developmental potential.

In assessing the student's educational progress and needs, evaluators are advised to consider a wide range of information about the student and the student's performance within the learning environment, including the following:

- observations of the student both within and outside of the classroom;
- information concerning student attendance or avoidance;
- participation in extracurricular activities;
- linguistic/cultural differences;
- characteristics of the learning environment such as class size, curriculum expectations, and instructional materials; and
- instructional support activities that may have taken place prior to or concurrent with the referral for special education.

Table 1 provides some key questions and assessment strategies that may be useful in reviewing a student's educational status and needs.

Table 1: Assessment Questions and Strategies to Identify Educational Needs

Assessment Questions	Assessment Strategies
How does the student perform in structured and in unstructured activities? <ul style="list-style-type: none"> • mastery of basic academic and social skills • functioning in small group/whole class activities • peer relations and teacher/adult relations • strengths/weaknesses 	<ul style="list-style-type: none"> • Systematic observation of student • Teacher reports • Anecdotal records • Test results • Curriculum-based assessment • Student work products • Interview with the student and family
Are there gaps in the student's school history? Frequent changes in schools? Erratic school attendance?	<ul style="list-style-type: none"> • Review of the school history/record • Family interview
What teaching strategies are used in the classroom? <ul style="list-style-type: none"> • clear directions and expectations • differentiated instruction to ensure appropriate level of difficulty • opportunities for multisensory input/output • a range of instructional materials offered • effective behavior management • teaching style matched to student need • prompt feedback • ongoing assessment data to guide instruction 	<ul style="list-style-type: none"> • Systematic observation of settings in which the student has difficulty and success • Student work products • Anecdotal records • Teacher reports • Curriculum-based assessment • Formal/informal test results • Consultation with parents on effective ways to learn or demonstrate learning
Does the curriculum meet the needs of diverse learners? <ul style="list-style-type: none"> • developmentally appropriate • accommodates learner diversity • experientially based 	<ul style="list-style-type: none"> • Systematic observation • Teacher reports • Curriculum-based assessment • Test results
Do school conditions provide the learner with needed resources and supports? <ul style="list-style-type: none"> • availability of support services • up to date instructional materials • availability of instructional technology 	<ul style="list-style-type: none"> • Systematic observation of the school environment • Review of instructional materials • Student work products
Is the student from a linguistically or culturally different background? <ul style="list-style-type: none"> • primary language spoken in the home • relative proficiency in primary language and in English • proficiency in oral and written academic tasks in English • experience with different types of learning tasks • child and parent attitudes about primary language and/or culture • student comfort with school culture 	<ul style="list-style-type: none"> • Language assessment by assessor fluent in student's primary language • English proficiency assessment • Family interview/home visit • Interview with student • Student work products • Classroom observation • Teacher reports • Diagnostic teaching
What outside factors influence student's performance? <ul style="list-style-type: none"> • family trauma/crisis • health and physical well-being • involvement of outside agencies • peer group influences 	<ul style="list-style-type: none"> • Family interview/home visit • Interview with student • Rating scales completed by parents, teachers, or other service providers

School districts must give careful consideration to current evaluations that are already available. School districts should avoid unnecessary or duplicative assessment or testing. This is particularly applicable for young children who have been receiving early intervention (i.e., “birth to three”) services. School districts are encouraged to avoid duplicate testing by using current assessments from early intervention teams (see 603CMR 28.04(2)(a)2.v).

Optional assessments. The Team must have sufficient assessment information available to make a determination of a disability and to assess the impact of the disability, if any, on the student’s learning. Although school districts typically have the capacity to conduct assessments for high incidence disabilities (e.g., intellectual impairment, specific learning disabilities), certain low-incidence disabilities (e.g., sensory impairment) may call for assessments by specialists from outside of the district.

Optional assessments, as recommended by the school district or as requested by a parent, may include a comprehensive health assessment, a psychological assessment, and/or a home assessment (see 603CMR 28.04(2)(b)). Other assessments may also be recommended by the school or requested by the parent. A medical evaluation for diagnostic purposes is one such assessment. For example, a school district might choose to supplement the findings of its evaluation team in making the determination that a child is eligible for special education services under the “other health impairment” category. If requested by the school district, such medical evaluation is a school district responsibility that, under federal regulations (34 CFR 300.34(c)(5)), must be provided at no cost to parents.

Parents can choose whether or not to consent to assessments recommended by the school district. If parents request these assessments, the school district must ordinarily provide them as part of the evaluation or reevaluation. However, the district may refuse to conduct an assessment requested by the parent, in which case the district must provide the parent with written notice regarding why it believes that such an assessment is unrelated to the suspected disability of the student.

Medical evaluation. A child’s health condition can have implications for special education eligibility. However, it is important to emphasize that a special education disability is not a medical diagnosis, but rather a finding by Team members that the assessed characteristics of the student are consistent with the regulatory definition for the given educational disability. The definitions in regulation are *general* definitions, under which various diagnostic subcategories—some, medical in nature—may be subsumed. It is not the intention of special education law to require a specific diagnosis such as “Asperger’s syndrome” or “cerebral palsy.”

A medical evaluation may be warranted to assist in making an educational disability determination, such as when health conditions are a suspected cause of atypical or problematic behavior. Massachusetts regulations do not require a medical evaluation to make any particular educational disability determination. As stated in Massachusetts regulations, “health assessment by a physician” is an optional assessment and thus should be determined on a case by case basis if it is necessary (603 CMR 28.04(2)(b)). When the evaluation team determines that a medical evaluation is necessary for diagnostic purposes, it is provided by the school district at no cost to the parent, under the “free and appropriate public education” (FAPE) provision of IDEA. However, the school district may request voluntary information as long as there is no additional cost to the parent or loss of benefits to the parent for such use.

Parent participation. Massachusetts regulations require that school districts provide parents with the opportunity to consult with the district regarding the types of assessments and

evaluators used for an evaluation (603CMR 28.04(1)). Best practice is to discuss with the parent, either by phone or in person, prior to the initiation of an evaluation what the parent hopes to learn from an evaluation. Parents have unique information about the needs of their children and may be able to point to effective types of assessments that would provide information relevant to particular issues or concerns held by the parent. Additionally, such behavior on the part of the district will have set the stage for a positive relationship between the school and the family that provides opportunities to build trust, mutual respect, and collaboration and provides the best hope for serving the student appropriately. Nevertheless, if a parent disagrees with a school district's initial evaluation or reevaluation, the parent may request an independent education evaluation as described in Massachusetts regulations 603CMR 28.04(5).

Extending the evaluation timeline. The school district and the student's parent(s) may agree to extend the evaluation timeline to allow for the collection of additional data if evaluation information is inconclusive or insufficient to develop an IEP. For example, the school team and the parent(s) may agree to allow additional time to complete an intervention and collect progress monitoring data. Per Federal regulations, this agreement must be made in writing (Sec. §300.309(c)). According to Massachusetts regulations (603CMR 28.05(2)(b)), timeline extensions may not be used to extend the time for an evaluation to be completed or to deny programs or services recommended by the Team, and the extended evaluation period may not exceed eight school weeks.

Re-evaluation. Under Federal regulations, a child who is receiving special education services must be re-evaluated at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary ((Sec. 300.303(b)(2)). As described in Federal regulations (Sec. 300.305), the requirements for conducting the reevaluation are, in many respects, similar to the initial evaluation. The evaluation team must first review existing evaluation data on the child, and on the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine (1) whether the child continues to have a disability and to need special education and related services, (2) the child's present levels of academic achievement and related developmental needs; (3) the educational needs of the child; and (4) whether any additions or modifications to the special education program are needed to enable the child to meet IEP goals and to participate, as appropriate, in the general education curriculum. It should be noted that the evaluation does not need to address the same areas of suspected disability or to include the same types of measures as in the initial evaluation or the previous evaluation.

If the evaluation team determines that the child continues to have a disability, the child's levels of performance have been established, and the child's educational needs are known and being satisfactorily addressed, this in and of itself meets the requirements of a reevaluation. School personnel may then notify the parent that no further evaluation is required. The parent, however, may still request assessments (e.g., a psychological or speech and language evaluation) to determine the child's disability and educational needs.

Certain factors may play a role in those cases where determination of the child's disability is a major focus of the three year reevaluation:

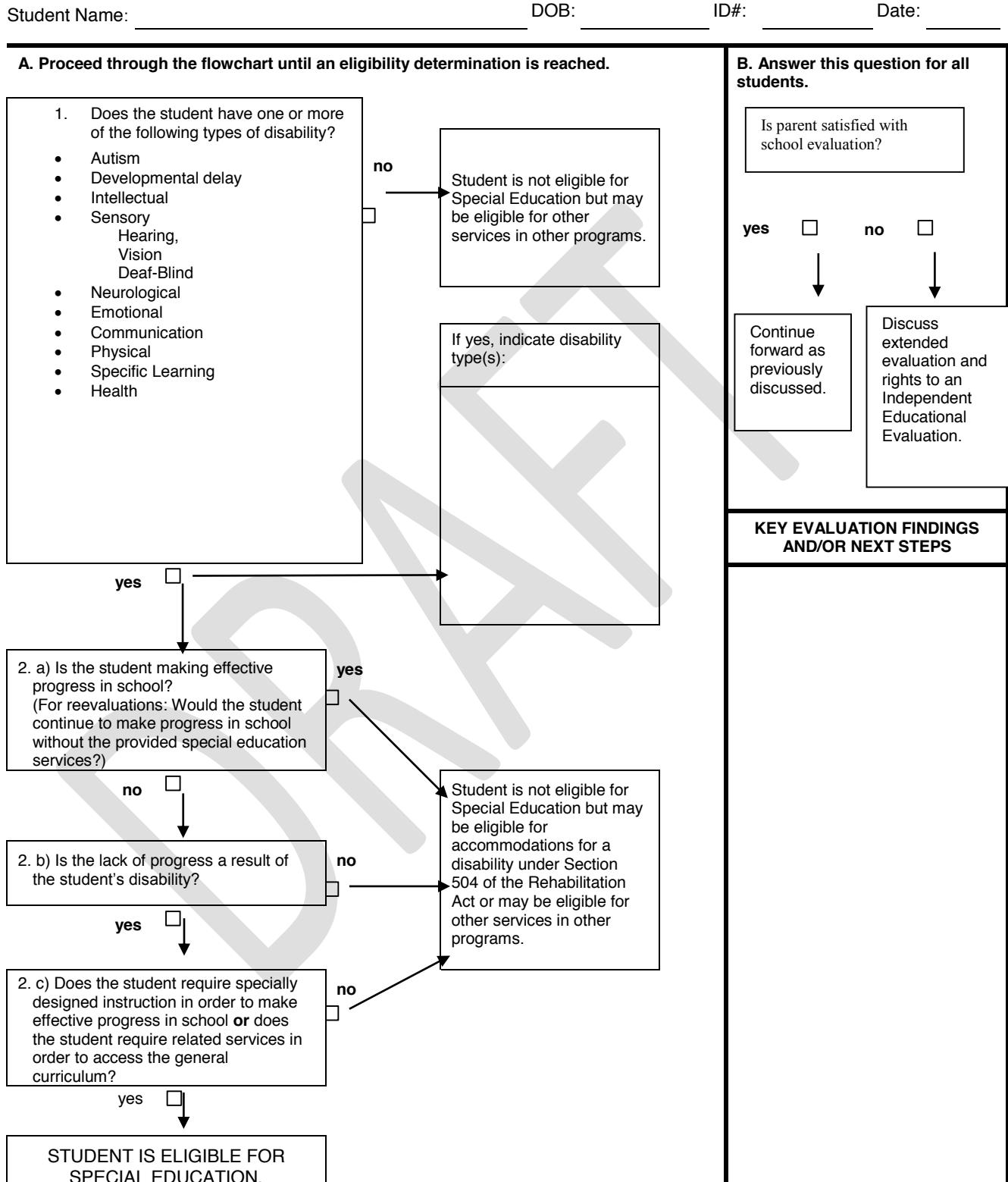
- If the student was originally found eligible for special education as a student with a "developmental delay" and the student is nine years old, or will be nine within the coming year, the Team must determine if the student has a disability other than "developmental delay."

- If the student's health, emotional, or physical circumstances have significantly changed, the Team may consider whether some other type of disability is primarily impacting the student's learning.

The Team must consider the effect of the special education services that have been received by the student when determining if the student is making effective progress. If the student has been making effective progress and the special education services that have been received by the student are necessary for continued effective progress, the Team should conclude that the student continues to be eligible for special education.

Reports of assessment results. Massachusetts special education regulations (28.04(2)(c)) specify that each evaluation team member who conducts an assessment must provide a written summary of the procedures used, the results obtained, and the diagnostic impression, and must identify in clear and relevant terms the student's needs and the means of meeting them. Evaluators may recommend types of placements, but not specific programs, classrooms or schools.

Figure 2. Special Education Eligibility Determination Flow Chart



ELIGIBILITY DECISION MAKING

The Eligibility Flow Chart (Figure 2) illustrates the decision process for determining eligibility for special education. To qualify for special education, a child must (a) be determined to be a child with a disability, having met the criteria for one or more disability categories and (b) as a result of the disability, be determined to need special education and related services.

The first step in the process—determining whether a child meets the criteria for an educational disability—is addressed in detail in Sections IV through XIII of this document. A section is devoted to each disability category defined by Massachusetts law.

The definitions of disabilities under special education law reflect that educational impact is always a key consideration. All disability definitions include a reference to the effect of the disability on the student's educational progress. Thus, an educational assessment is an important component of any special education evaluation. The documentation associated with making a determination of disability must address the educational progress of the student and how it is impacted by the identified disability.

Effective Progress in Regular Education

If a child meets the criteria for one or more disability categories, the next step in the process is for the evaluation team to determine if the child is not making effective progress in the general education program as a result of the disability. As defined in Massachusetts law:

"Progress effectively in the general education program shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities." (603 CMR 28.02(18))

Given this mandate, the educational assessment component of an evaluation must provide sufficient information about educational standing and progress for the Team to be able to determine if the student is making effective progress. This question should be considered independent of the determination of disability, that is, the question of effective progress should be considered as if the student were a general education student. The Team must assess the student's ability to progress effectively in the general education learning environment.

The definition of effective progress makes reference to both individual child characteristics and the learning standards of the Massachusetts Curriculum Frameworks. Thus, the determination of effective progress considers the student's capabilities relative to the school's expectations for similar age nondisabled students. Further, the law requires the Team to consider both academic and non-academic information about the student to determine if the student's participation in the general education program represents effective progress.

Although failing grades would allow the Team to conclude that the student is not making effective progress, the Team would not be able to conclude that the student is making effective progress solely because he or she is making passing grades. Federal special education regulations

specifically prohibit the Team from finding a student ineligible solely because the student is advancing from grade to grade (Sec. 300.111(a)(1)).

In the case of a preschool child, effective progress should be interpreted with respect to whether the child is meeting developmental expectations. This is described at greater length in Section VI.

Is Lack of Progress the Result of a Disability?

Next, the Team must determine whether the child's lack of effective progress is the result of the child's educational disability (step 2b in Figure 2). Having determined that a student is not progressing effectively in general education, the Team must determine whether the educational disability, either alone or in conjunction with other factors, explains why the student is unable to progress effectively in general education.

Does the Student Need Special Education?

Finally, the Team must determine that the student requires special education in order to make effective progress. To qualify for eligibility, the Team must determine that, because of the disability, the student either needs specially designed instruction in order to make effective progress or (as explained below) needs a related service in order to access the general curriculum.

Special education is defined in federal regulations as *specially designed instruction* that is designed to meet the unique needs of that student (Sec. 300.39). Specially designed instruction may require modifying content, methodology, delivery of instruction, or instructional format, or performance criteria. For example, if the student's disability means that he or she cannot produce the kind of work expected of, and produced by, other students in the class, establishing alternate performance criteria suited to the student's needs would be an aspect of the child's special education program.

A child who needs special education is also entitled to related services that are necessary to enable the child to benefit from the specially designed instruction. As defined in federal regulations (Sec. 300.34), related services consist of transportation and such developmental, corrective, and other supportive services as are required for a child with a disability to benefit from special education. Federal regulations explicitly identify and define these other services, which include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, school health services and school nurse services, social work services in schools, and parent counseling and training, and medical services for diagnostic or evaluation purposes.

Related services and the need for special education. Under Massachusetts law (603 CMR 28.05(2)(A)(1)), a related service may meet the definition of special education. *Related services are considered special education if they are necessary to enable the student to access the general curriculum.* If a Team determines that the student with a disability does not require specially designed instruction, the Team must also consider if the student requires a related service in order to access the general curriculum. The following examples illustrate this requirement:

- A student with typical cognitive functioning, who has physical challenges as a result of a stroke with right hemiparesis (weakness), has difficulty accessing the school environment and materials. She has difficulty managing self-care activities (e.g. using bathroom, eating, managing clothes), moving in and around classroom and school environments (e.g. cafeteria, playground, bus) and showing what she knows through written work. The team determines that this student meets the eligibility requirements in the educational disability category of “neurological impairment” and is not making effective progress in her educational program. Occupational therapy and physical therapy interventions are required in order to develop strategies that will allow the student to access the curriculum and participate with her peers in school routines and activities and to work toward independence. She does not require modifications in instructional content, methodology, or performance criteria. This student is eligible for a related services-only IEP.
- A student has developed a severe anxiety disorder that results in extreme fears about performance and school attendance. He has an emotional disability and has, over the past year, fallen further behind in his classroom performance. Because of severe anxiety, the student is often absent and no longer participates in any non-academic school events. The student is intellectually capable, and when he is not experiencing significant stress or anxiety, he is able to understand and participate fully in academic and non-academic activities. He does not require specially designed instruction. However, he does require ongoing **counseling** services to assist him in managing his anxiety disorder so that he can participate in school effectively. This student is eligible for special education and should receive sufficient counseling services to allow him to continue to attend and participate in school and school events.

DISABILITY DETERMINATION AND SERVICE IMPLICATIONS

When more than one disability category is applicable. Children may have no disabilities, one disability, or more than one disability. The Team must seek to identify if the student does have a disability and if so, is there only one type of disability or more than one? If more than one type of disability is present, the Team must determine if one disability is primary (meaning, it has the most significant implications for the child's IEP) or if multiple disabilities are significantly contributing comparably to the student's learning profile? If one disability is primary, the Team should identify that one as the type of disability for the purposes of eligibility. The identification of a primary disability does not preclude the Team from attending to the effects of other “secondary” disabilities that may also be present. When the Team identifies more than one disability as primary, this means that the Team perceives each of the identified disabilities to have a major impact on the student's learning.

Relationship between the disability and the IEP. IEP program and services are determined by the child's individual needs and not by the disability label. Massachusetts special education laws specify that the type of disability “shall not define the needs of the student and shall in no way limit the services, programs, or inclusion opportunities provided to the student” (603 CMR 28.05(2)(A)(1)(ii)). Thus, no specific disability category is required to access a particular service. For example, a child identified as having a learning disability may, in some cases, need related services, such as speech and language and/or counseling. Massachusetts regulations also specify that “Once eligibility has been determined, the type of disability of the student shall not be used to provide a basis for labeling or stigmatizing the student.” (603 CMR 28.05(2)(A)(1)(ii))

Exit from Special Education

Eligibility for special education should not be presumed to continue indefinitely. If a child no longer meets the criteria for having an educational disability, or has met goals and objectives and no longer needs special education and related services, the Team must conduct a reevaluation, as described above, to inform this decision (Sec. 300.305(e)(1)). This action may be proposed at an annual review meeting, but can be initiated at any time at the request of a child's parent.

A comprehensive evaluation as described above is not required when a child exits from special education as a result of high school graduation or of exceeding the age of eligibility for special education (i.e., age 21). In such circumstances, the school district's responsibility is to provide "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" (Sec. 300.305(e)(2&3)).

Transition to Post-Secondary

The importance of transition planning was highlighted in the 2004 revisions to IDEA, as studies show that the prospect of life after high school can be daunting for students and parents alike. Students with disabilities have higher rates of unemployment and underemployment, markedly lower incomes, and substantially lower rates of enrollment in post-secondary programs (National Center for Learning Disabilities, n.d.). Transition planning, which has long been a component of state and federal special education laws, is a critical element in fostering a smooth and supportive adjustment.

Massachusetts regulations stipulate that the IEP for any student who will turn 14 during the coming year must include a Transition Planning Form (TPF). The TPF identifies attributes and accomplishments of the student that may contribute to post-secondary success, as well as the skills and proficiencies the student needs to develop in order to achieve this aim. While the TPF serves as a framework for considering a post-secondary vision, the IEP is the formal mechanism for documenting the specific goals and objectives that will enable the student to actualize the post-secondary vision. Both the TPF and the IEP goals and objectives regarding transition planning are updated annually, and are reported on in quarterly progress reports. Students should be encouraged to actively participate in their transition planning as much as possible. Students who decline or are unable to attend their own IEP meetings should nevertheless be solicited for their input regarding personal strengths, preferences, and interests. Parents are also a valuable source of information in developing transition goals.

Some students may require ongoing services after graduation or after aging out of eligibility for special education under IDEA. This represents an important shift as the student moves from entitlement programs (i.e., supports mandated by state and federal law) to non-entitlement programs (e.g., social service programs serving adults, such as the Massachusetts Rehabilitation Commission and the Department of Developmental Services). An important consideration in effective transition planning is the Chapter 688 referral process, whereby a student is referred to appropriate agencies to determine eligibility for continued supports into adulthood. Consideration of a 688 referral should occur well before anticipated graduation in order to make any necessary referrals and promote interagency collaboration during the student's transitional period.

The Massachusetts Department of Elementary and Secondary Education (DESE; 2012) offers guidelines for ensuring effective transition planning in the 2013 technical assistance advisory, *Postsecondary goals and annual IEP goals in the transition planning process*(citation). This document emphasizes that "the ultimate goal of all endeavors in special education is to prepare students with disabilities for adult life" (p.1).

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 prohibits any institution that receives federal funding (e.g., hospitals, human service programs, public schools) from discriminating against individuals on the basis of a disability (Office for Civil Rights [OCR], 2006). It ensures the rights of individuals with disabilities to participate in, and have access to, program benefits and services (Office for Civil Rights [OCR], 2006). Section 504 protects individuals who demonstrate "physical or mental impairment which substantially limits one or more major life activity" (OCR, 2006, p.1). Major life activities include walking, seeing, hearing, speaking, breathing, caring for oneself, working, performing manual tasks, and learning. Students who meet this definition are eligible to receive accommodations that enable them to participate fully in the public education program. Some examples include students with food allergies who must be protected from harmful exposure, a student in a wheelchair who must be able to reach classrooms and participate in field trips, and a student with a hearing impairment who can participate in a regular classroom who can hear the teacher with the benefit of an FM transmitter system.

Although Section 504 is similar to the Individuals with Disabilities Education Act (IDEA) in some respects, there are a number of important differences. A key distinction is that Section 504 is a civil rights law that ensures equal access to education for individuals with disabilities, while IDEA is an entitlement that provides federal funding for states that agree to provide specialized instruction and related services for qualified individuals in accordance with state and federal mandates. Accordingly, special education is monitored by state departments of education, while compliance with Section 504 is overseen by the federal Office for Civil Rights. Table 1 provides a brief summary of key characteristics of IDEA compared to Section 504.

Evaluation teams may need to consider whether a student is eligible for special education under IDEA, or whether the student's impairment can be effectively addressed in general education with the implementation of a Section 504 accommodation plan. Section 504 does not describe the type of evaluation that must be conducted to determine eligibility. School districts advisedly make such determinations by conducting an evaluation that meets the requirements of IDEA, given the possibility that the child may be eligible for special education.

Notably, all students found eligible under IDEA are also covered under Section 504, but not all students who qualify for a Section 504 plan are eligible for special education under IDEA. To be eligible for special education under Massachusetts law, an individual must have a qualifying disability that causes lack of effective progress in school for which specialized instruction is needed (Massachusetts Department of Education, 2001).

The requirements of a Section 504 accommodation plan are considerably simpler than that of an IEP, requiring little more than a description of the accommodations to be provided and an annual review of the plan to determine continued need and any warranted revisions. Because an IEP is more extensive and includes accommodations to enable access to general education, a Section 504 plan is not necessary when a student has an IEP.

Table 2: Characteristics of IDEA and Section 504

IDEA	SECTION 504
Entitlement (federal funding)	Civil right
Individualized/specialized services <ul style="list-style-type: none">• Special education• Related services	Equal access to the educational program <ul style="list-style-type: none">• Educational program is broadly defined (e.g., includes field trips, extracurricular activities)
Specific, extensive eligibility requirements <ul style="list-style-type: none">• Specific criteria in each of 14 educational disability categories• Comprehensive assessment process	Broad, general eligibility requirement <ul style="list-style-type: none">• Handicapping condition affecting a major life activity• Unspecified assessment process
Detailed service plan (IEP) <ul style="list-style-type: none">• Goals/objectives• Reporting periods	Simple service plan <ul style="list-style-type: none">• Accommodations
Complex enforcement procedures <ul style="list-style-type: none">• Multiple aspects of due process (IEP meeting, mediation, hearing, etc.)• Procedural safeguards• Case-specific (individual child)	Global enforcement by U.S. Office for Civil Rights <ul style="list-style-type: none">• System-level investigation and corrective actions

EFFECTIVE AND APPROPRIATE TEAM PROCESS

There are subtle, but meaningful, differences between an IEP team (in Massachusetts, typically referred to as “the Team”) and an evaluation team, as described by IDEA. An evaluation team may include individuals other than school personnel who contribute components of the evaluation (e.g., a child psychiatrist or a physical therapist who is contracted by the school district on a case-specific basis). The Team, however, consists of specified school personnel—a special education teacher, a classroom teacher, a school official with supervisory knowledge and responsibility, an educator qualified to interpret evaluation results—as well as the child’s parent(s) or guardian (see Federal special education regulations, §300.321). The regulations permit school Team members to be excused from a Team meeting by mutual agreement of the school district and parent, however this option should be considered with caution.

It is acceptable and often conducive to effective and informed team process for evaluation team members to exchange and review evaluation findings prior to a Team meeting. What is not acceptable is to predetermine the outcome of a meeting—to make decisions about eligibility or the content of an IEP—outside of a formal Team meeting. The parent is a full member of the team, and must have the full and genuine opportunity to contribute to decisions about eligibility and program planning.

RESOURCES

Massachusetts Department of Education (2001). *IEP process guide*. Retrieved from
<http://www.doe.mass.edu/sped/iep/proguide.pdf>.

Massachusetts Department of Elementary and Secondary Education (2012). *Technical assistance advisory SPED 2013-1: Postsecondary goals and annual IEP goals in the transition planning process*. Author. Retrieved from
http://www.doe.mass.edu/sped/advisories/13_1ta.html.

National Center for Learning Disabilities (n.d.). *IDEA 2004: Improving transition planning and results*. Author: New York, NY. Retrieved from
<http://www.nclld.org/disability-advocacy/learn-ld-laws/idea/idea-2004-improving-transition-planning-results>.

Office for Civil Rights (2006). *Fact sheet: Your rights under Section 504 of the Rehabilitation Act*. Washington, DC: US Department of Health and Human Services. Retrieved from
<http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf>.

IV. AUTISM

MASSACHUSETTS DEFINITION

Autism – A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR 300.7.

The term ASD shall include the meaning given in federal law 34 CFR 300.7. Both federal and state laws define autism as a disability inclusive of each of the diagnoses on the autism spectrum. This includes children previously diagnosed with autistic disorder, Asperger's disorder, childhood disintegrative disorder, and pervasive developmental disorders (PDD).

Required Assessments & Assessment Factors Based on Chapter 57 of the Acts of 2006

- Assessment of student's language skills including: current level of communication, strengths, modalities, use and understanding of verbal and non-verbal language, emerging communication and pragmatic language skills
- Assessment of ability to respond appropriately to other, the types of social interactions the student can initiate pragmatic skills and social interactions with small and large groups in age-level situations, ruling out language deficit as the cause of social deficits
- Determination of oversensitivity to tactile, sound, smell/taste stimuli
- Determination of resistance to environmental change or change in daily routines, along with the need for visual supports verbal reminders, schedules, and modality needed for communicating impending change.
- Determination of the degree of repetitive and stereotyped behavior and how these behaviors may interfere with daily functioning, the student's response to different types and schedules of reinforcement, and the need for replacement behaviors.
- The needs for positive behavioral interventions, strategies, and supports to address behavioral difficulties.
- Assessment of the level of independent functioning, difficulties with executive functions, need for classroom and social supports, need for previewing, direct, or repeated instruction, cognitive strengths and weaknesses, and academic functioning for students with mild to moderate autism.

ASSESSMENT GUIDELINES

- Autism-specific rating scales
- Assessment of social maturity and skills, in social interaction with age-level peers.
- Communication sample and assessment of student's language skills
- Observations – note if student engages in repetitive or stereotyped movements and the student's response to change in daily routines or environment
- Assessment of student response to sensory experiences
- Assessment of student's emotional status (see also emotional impairment)
- Assessment in multiple environments with a variety of tasks
- Determination of needed assistive technology
- Functional behavioral assessment
- Assessment of adaptive behaviors
- Assessment of academic needs and need for support in the general education classroom

Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools. Assessment should involve a team of professionals.

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

- Performance may be inconsistent and may not be consistent with developmental norms.
- Performance may lack variation or appear unusual
- Environmental structure and presentation of materials may significantly affect performance.
- High anxiety is frequently a major component and may affect performance measures.
- Students may manifest difficulty with incidental learning, making inferences, turn taking, matching communication to the setting/content, reciprocity, nonverbal communicative behaviors, flexibility, relationships, and generalization.
- The impact of this disability is pervasive.

Students may manifest attentional issues and issues with organizing information and understanding abstract concepts.

Characteristics to Consider

- Social Communication
 - Perspective taking: Ability to take others' thoughts into account in recognizing and anticipating how others may react to one's behavior.
 - Thought filtration: Ability to recognize and filter one's thoughts and interests relative to communicating these thoughts to others.
 - Perseverative behaviors and interests and communicating these interests with others.
 - Theory of mind: Ability to assess what others are thinking based on observed behaviors within a given situation
- Central Coherence
 - Ability to recognize the gestalt/main point, including use of inferential reasoning, in discussion with others as well as in meeting academic demands.
 - Ability to understand questions in terms of underlying main points vs. literal analysis.
 - Ability to generalize concepts and behaviors from one situation to another.
- Executive Functioning
 - Ability to meet organizational demands in various settings, including organization of thoughts in discourse and in writing.
 - Ability to sustain attention in different situations.
 - Working memory
- Emotional Regulation
 - Seeking comfort with others vs. isolation
 - Recognition of affect in self and in others.
 - Anxiety and stress management.
- Sensory Regulation and Integration
 - Management of visual, auditory, tactile, and other sensory stimuli
- Stereotyped Behaviors/Repetitive Mannerisms
 - Physical behaviors that may include rocking, hand flapping, or other repetitive behaviors.
 - Self-stimulating behaviors, including those in response to stress or sensory stimuli.

FREQUENTLY ASKED QUESTIONS

Can a school team determine that a child fits the category of ‘autism,’ or does a medical provider need to make this determination?

A medical diagnosis of autism is not required for a school team consisting of professionals such as school psychologists, who are qualified to make this determination, to identify a child as demonstrating the symptoms of autism and requiring appropriate services.

How is the assessment and diagnosis of ASD affected given the updating of DSM?

Autism spectrum disorder is a new DSM-5 name that reflects a scientific consensus that four previously separate disorders are actually a single disorder. This single condition has different levels of symptom severity in several domains. Deficits in social communication and social interaction PLUS restricted repetitive behaviors, interests, and activities are required for the diagnosis when using DSM criteria. If the student does not exhibit restrictive repetitive behaviors interests, and activities, a professional using DSM-5 would diagnose social communication disorder.

How does DSM-5 impact identification under IDEA?

IDEA provides an *educational* definition of autism. Schools *cannot require* a family to obtain a medical diagnosis of autism for their child. Given this, a child can qualify for IDEA’s autism definition without a medical diagnosis of ASD and receive appropriate services to meet needs. IDEA’s definition of Autism does not exactly match with either the DSM-IV or DSM-5 criteria for ASD. Legal precedent and regulation supports including Asperger’s within IDEA’s autism category in a school-determined eligibility determination for services.

How would technology help school professionals assist students with ASD?

According to the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Public Law 100-407), an assistive technology means any item, piece of equipment, or product system, whether acquired commercially, off-the-shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Technology supports can be used for alternative and augmentative communication, or as a motivating teaching tool or strategy designed to increase both skills and to increase independence. Smart technologies such as the iPad and iPod are helpful for students with higher functioning autism

Assistive Technology <http://www.autismspeaks.org/family-services/resource-library/assistive-technology>

A resource explaining how various types of assistive technology might be used for students exhibiting symptoms of ASD can be found at:

<http://www.specialed.us/autism/assist/asst10.htm>

The Wisconsin Assistive Technology Institute (2009) provides a manual to help professionals in gathering information to choose useful assistive technology for a particular student; and provides an environmental observation guide, a decision making guide with directions, and a tools and strategies section. This resource can be located at

<http://www.wati.org/content/supports/free/pdf/ASDManual-1.pdf>

RESOURCES

Asperger's Association of New England <http://www.aane.org>

Autism Law H. 4935, An Act relative to insurance coverage for Autism,
<http://www.mass.gov/legis/bills/house/186/ht04pdf/ht04935.pdf>

Autism Now (the National autism Resource & Information Center) <http://autismnow.org>

Autism Resource Center of Central Massachusetts <http://www.autismresourcecentral.org>

Autism Speaks <http://www.autismspeaks.org>

Autism Spectrum Disorder (Centers for Disease Control and Prevention) Also see free materials
(<http://www.cdc.gov/ncbdd/autism/index.html>)

V. COMMUNICATION IMPAIRMENT

MASSACHUSETTS DEFINITION

"The capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the student's educational performance." 603 CMR 28.02(7)(g)

Relation to Federal Definition:

The Massachusetts disability category is equivalent to the Federal disability category of "speech and language impairment," which has the following definition: "A communication disorder, such as impaired articulation, stuttering, a language impairment or a voice impairment that adversely affects a child's educational performance." 34 CFR §300.8(c)(11))

Key Elements:

- A communication disorder is an impairment in the ability to receive, send, process, and comprehend concepts or verbal, nonverbal and graphic symbol systems. A communication disorder may be evident in the processes of hearing, language, and/or speech. A communication disorder may range in severity from mild to profound. It may be developmental or acquired. Individuals may demonstrate one or any combination of communication disorders. A communication disorder may result in a primary disability or it may be secondary to other disabilities.
- A speech disorder is an impairment of the articulation of speech sounds, fluency and/or voice.
- A language disorder is impaired comprehension and/or use of spoken, written and/or other symbol systems. The disorder may involve (1) the form of language (phonology, morphology, syntax), (2) the content of language (semantics), and/or (3) the function of language in communication (pragmatics) in any combination.

ASSESSMENT GUIDELINES

FREQUENTLY ASKED QUESTIONS:

Should students who have a minor stuttering problem be identified as having a communication impairment and receive special education services?

Speech problems by themselves (without related language impairment) may or may not qualify. It will depend on the severity of the stuttering and whether it is interfering with the student making effective academic progress.

RESOURCES

<http://www.doe.mass.edu/sped/links/speech.html>

[The American Speech-Language-Hearing Association \(ASHA\)](#)

ASHA provides information and resources about communication disorders for students, parents, professionals and others.

VI. DEVELOPMENTAL DELAY

MASSACHUSETTS DEFINITION

The learning capacity of a young child (3-9 years old) is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; and/or self-help skills.

Relation to Federal Definition

Federal regulations (34 CFR §300.8(b)) define developmental delay as follows:

“Children aged three through nine experiencing developmental delays. Child with a disability aged three through nine (or any subset of that age range, including ages three through five) may...include a child—
(1) Who is experiencing developmental delays as defined by the State and as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
(2) Who, by reason thereof, needs special education and related services.”

Key elements

The age range for which the developmental delay category is applicable is determined by individual states. For Massachusetts, the age of eligibility for classification under the developmental delay classification is from the third birthdate until the end of the ninth year.

ASSESSMENT GUIDELINES

Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

Multiple sources and methods of information should be used in the determination of eligibility for service provision. An assessment might include, but not be limited to, the following sources of information:

- a. Developmental, social and medical history;
- b. Interview with the child's parent or caregiver;
- c. Behavioral observations;
- d. Standardized norm referenced instruments; and

- e. Other assessments relevant to intervention planning, such as language samples, behavior rating scales, and criterion referenced assessments

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

- A student cannot qualify for special education services under developmental delay beyond his or her 10th birthday; continued eligibility will be based on having a disability other than developmental delay.
- The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.
- The relevant developmental and/or learning problems are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.
- The student has not had excessive absence during the present school year.
- The student's access to structured learning environments and appropriate educational experiences must be considered when determining eligibility.
- The student's access and response to targeted instruction/intervention may be considered for the purposes of determining whether limited access to instruction is a contributing factor to demonstrated delays.
- Eligibility is not to be determined solely due to student not meeting grade level curriculum benchmarks.

FREQUENTLY ASKED QUESTIONS

My child is currently receiving Early Intervention (EI) services, and will be turning three soon. Will she automatically be eligible for special education services through my public school district?

No, the child would not automatically be eligible. Special education eligibility is determined by several factors. The child must have a disability, not be making effective progress in school, the lack of progress must be the result of the disability, and the child must require specialized instruction and/or related services in order to make progress. Some children who receive EI services may not be eligible for special education services. They may require other types of supports within the general education setting.

I'm concerned that my child is not meeting benchmarks, but I do not think he is disabled. Could he qualify under developmental delay in order to get extra help in school?

The child must be identified as having a disability in order to be considered for special education eligibility. The child may require other types of supports within the general education setting.

My child receives special education services under the disability category of developmental delay. Will she automatically be eligible for special education services after the age of 9?

A: No, the child would not automatically be eligible. Special education eligibility is determined by several factors. The child must have a disability, not be making effective progress in school, the lack of progress must be the result of the disability, and the child must require specialized instruction and/or related services in order to make progress. Some children who receive services due to a developmental delay may no longer be eligible for special education services. They may require other types of supports within the general education setting.

RESOURCES

Center for Parent Information and Resources

<http://www.parentcenterhub.org/repository/dd/>

VIII. EMOTIONAL IMPAIRMENT

MASSACHUSETTS DEFINITION

"As defined under federal law...the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The determination of disability shall not be made solely because the student's behavior violates the school's discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance." (603 CMR 28.02 (7)(f))

Relation to Federal Definition

The Massachusetts definition of *emotional impairment* is largely derived from the federal definition of "emotional disturbance," but with some minor differences. The last sentence of the Massachusetts definition makes explicit reference to school code violations and involvement with a state court or social service agency as not constituting sufficient basis for meeting the definition. Also, the Massachusetts definition does not make reference to schizophrenia, which the federal definition identifies as being tantamount to having one of the listed characteristics.

The current definition in federal regulations (34 CFR §300.8(c)(4)) is as follows:

- (i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

KEY ELEMENTS

There are two essential elements of the definition: (1) the child must exhibit one or more of the five listed characteristics, and (2) the manifestation of the qualifying characteristic(s) must meet all three qualifying criteria—long time, marked degree, and adverse effect on educational performance. In addition, the Team must make the important distinction between social maladjustment and emotional disturbance, in that social maladjustment alone (i.e., that does not meet the definition of emotional disturbance as well) does not qualify under this category (see Table 4, below).

Table 3 offers guidance to help Teams determine whether the three qualifying criteria are met, including sources of assessment data that provide evidence related to these criteria.

Table 3. Evidence of Qualifying Criteria

Criteria	Possible Behavioral Signs and Affective Symptoms	Sources of Assessment Data
Long period of time	<ul style="list-style-type: none"> • Present for six months except in severe cases (e.g., suicide attempt, danger to others, multiple hospitalizations) • Chronic/recurring • Is not a temporary or expected response to identifiable environmental stressor(s) • Is consistently exhibited in at least two different settings, one of which is school 	<ul style="list-style-type: none"> • Developmental History • Records Review • Interviews • Observations • Functional behavior assessment
Marked degree	<ul style="list-style-type: none"> • Severe signs and symptoms are apparent • Occurs in school as well as at least one additional setting (e.g., home, community) consistently despite direct (universal, targeted and intensive) interventions in the general education setting or the child's condition so severe that general education interventions would be insufficient • Frequency is much more than normal or expected; occurs regularly with short instances between occurrences or continual • Duration and/or intensity not consistent with age or cultural expectations 	<ul style="list-style-type: none"> • Observations • Records Review • Interviews
Adversely affects educational performance	<ul style="list-style-type: none"> • Poor attendance • Poor academic performance • Unexpected decline in academic performance • Significant impairment in social functioning 	<ul style="list-style-type: none"> • Records review • Interviews • Observations

ASSESSMENT GUIDELINES

The professional literature highlights the importance of using multiple assessment methods to identify emotional impairment. As key examples, assessment may include classroom observation; interviews with teacher, parent and student; and rating scale data collected from two or more informants (see, for example, Whitcomb & Merrell, 2013).

The following is a further elaboration of assessment data that might be included in a comprehensive assessment, although not an exhaustive list.

- Records Review
 - Developmental history
 - Health records
 - School records (attendance, grades, achievement, discipline, etc.)
 - Documented interventions and progress monitoring data
- Broad Behavior Rating Scales and checklists
 - Parents/guardians
 - Student
 - Teachers
- Narrow Rating Scales (e.g., measures of...)
 - Resiliency and assets (“strength-based assessments”)
 - Depression signs and symptoms
 - Anxiety signs and symptoms
 - Adaptive and maladaptive behaviors
- Interviews
 - Parents/Guardians
 - Student
 - Teachers
 - Other school personnel
 - Outside service providers
- Multiple, systematic behavioral observations
 - Classroom
 - Alternate setting(s)
- Functional behavioral assessment
- Norm-referenced tests of cognitive abilities
- Norm-referenced tests and/or curriculum-based assessments of academic achievement
- Student work samples
- Extracurricular activities including non-school activities and employment or volunteerism

As described in Section III, (1) all assessment measures and procedures should have adequate reliability and validity in accordance with ethical and legal standards; (2) cultural, ethnic and linguistic differences should be carefully considered; (3) assessment procedures are specific to the purposes for which they are being used; and (4) no single source of data shall be the sole determinant in making eligibility determinations.

Strengths-Based Assessment

In assessing the child, it is important to consider assets and strengths. These can be discerned through multiple methods, including existing records, interviews, observations, and rating scales. Measure specifically designed to assess strengths include the following:

- Social-Emotional Assets and Resilience Scales (PAR, 2012)
- Behavioral and Emotional Rating Scales 2 (Pro-Ed, 2007)
- Resiliency Scales for Children and Adolescents – A Profile of Personal Strengths (Pearson, 2006)
- Developmental Assets Profile (Search Institute, 2005)

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

The important distinction between emotional disturbance and social maladjustment only (without emotional disturbance) can be challenging for the Team. Table 4 offers guidance to help make this distinction.

Table 4. Distinguishing Emotional Disturbance and Social Maladjustment

Behavioral Area	Emotional Disturbance	Social Maladjustment only
School Behavior	Unable to comply with teacher requests; needy or has difficulty asking for help	Able but unwilling to comply with teacher requests; rejects help
Attitude Toward School	School is a source of confusion or angst; does much better with structure	Dislikes school, except as a social outlet; rebels against rules and structure
School Attendance	Misses school due to emotional or psychosomatic issues	Misses school due to choice
Educational Performance	Uneven achievement; impaired by anxiety, depression, or emotions	Achievement influenced by truancy, negative attitude toward school, avoidance
Peer Relationships and Friendships	Difficulty making friends; ignored or rejected	Accepted by a same delinquent or socio-cultural subgroup
Perceptions of Peers	Perceived as bizarre or odd; often ridiculed	Perceived as cool, tough, charismatic
Social Skills	Poorly developed; immature; difficulty reading social cues; difficulty entering groups	Well developed; well attuned to social cues
Interpersonal Relations	Inability to establish or maintain relationships; withdrawn; social anxiety	Many relations within select peer group; manipulative; lack of honesty in relationships
Interpersonal Dynamics	Poor self-concept; overly dependent; anxious; fearful; mood swings; distorts reality	Inflated self-concept; blames others; underdeveloped conscience; excessive bravado
Locus of Disorder	Affective disorder; internalizing	Conduct disorder, externalizing

Aggression	Hurts self and others as an end	Hurts others as a means to an end
Anxiety	Tense; fearful	Appears relaxed; cool
Affective Reactions	Disproportionate reactions, not under student's control	Intentional, with features of anger and rage; explosive
Conscience	Remorseful; self-critical; overly serious	Little remorse; blaming; non-empathetic
Sense of Reality	Fantasy; naïve; gullible; thought disorders	Street-wise; manipulates facts and rules for own benefit
Developmental Appropriateness	Immature; regressive	Age appropriate or above
Risk Taking	Avoids risks; resists making choices	Risk taker; daredevil
Substance Abuse	Less likely; may use individually	More likely, with peer involvement

FREQUENTLY ASKED QUESTIONS

A student has been diagnosed by a qualified professional with a disorder listed in the DSM-5. Does the student automatically meet the criteria for emotional disturbance and qualify for special education services?

A. No. While that diagnostic information should be considered by the Team and may be important in communicating the nature of a disorder, a psychiatric diagnosis does not routinely address severity and educational impact, nor does it have certain implications for educational interventions. There are many disorders listed in the DSM-5 that have little, if any, relevance to special education eligibility determinations. All relevant, reliable and valid information must be considered by the Team when making eligibility determinations, however, no one single source of data can be used to make eligibility determinations.

Must a student have a DSM-5 diagnosis in order to qualify for services?

A. No. The determining factors are that the students must exhibit one or more of these five characteristics identified in both the Massachusetts and Federal regulations, and must meet the qualifying criteria of long time, marked degree, and adverse effect on educational performance.

RESOURCES

Connecticut State Department of Education (2012). *Guidelines for identifying and educating students with emotional disturbance*. Hartford, CT: Author.

Whitcomb, S.A., & Merrell, K.W. (2013). *Behavioral, social, and emotional assessment of children and adolescents*, 4th ed. New York: Routledge.

Wisconsin Department of Public Instruction. (2010). *Emotional Behavioral Disability Evaluation Guide*, 2nd ed. Madison, WI: Author. Retrieved from <http://sped.dpi.wi.gov/sites/default/files/imce/sped/pdf/ebdguide.pdf>.

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VIII. HEALTH IMPAIRMENT

MASSACHUSETTS DEFINITION

A chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality, or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student's educational performance.

Relation to Federal Definition

The Massachusetts definition is largely derived from the following definition in federal special education regulations (34CFR 300.8(c)(9)):

"Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance."

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

The determination of a health impairment can be made by a school Team with the requisite expertise. Available medical information should routinely be requested from the family and reviewed by a school nurse or school medical officer. A school district may determine that a medical assessment for diagnostic purposes is needed to provide sufficient information to determine eligibility.

Children may qualify as having a health impairment as a result of attention deficit disorder or attention deficit hyperactivity disorder (ADHD). The definition of ADHD in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5; American Psychiatric Association, 2013) may be helpful in making an eligibility determination, but does not constitute eligibility criteria for this educational disability. ADHD has three subtypes, as defined by the DSM-5: predominantly hyperactive-impulsive, predominantly inattentive, and combined hyperactive-impulsive and inattentive.

FREQUENTLY ASKED QUESTIONS

Should a student who has a health impairment be on an IEP or 504 plan?

Can a student with ADHD have goals on an IEP without another disability?

This depends on the student's individual needs. A student who requires specialized instruction would qualify for services under an IEP. If a student only requires accommodations (i.e., extended time on tasks, frequent breaks), he or she can be serviced on a 504.

RESOURCES

Attention Deficit Disorder Association
http://www.add.org/?page=ADHD_Fact_Sheet

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.). Washington, DC: Author.

IX. INTELLECTUAL IMPAIRMENT

MASSACHUSETTS DEFINITION

The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation.

Relation to Federal Definition

As defined in federal special education regulations (CFR Sec. 300.8(c)(6)), "*Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance." This educational disability is equivalent to the Massachusetts category of intellectual impairment.

Note: The terms *intellectual impairment* and *intellectual disability* and refer to the population of individuals who were diagnosed previously with mental retardation. Furthermore, every individual who is or was eligible for a diagnosis of mental retardation would expectedly be eligible under the intellectual impairment category. While intellectual disability is a preferred term, it takes time for language that is used in legislation and regulation to change.

Table 5. Differences between Massachusetts and Federal Definition

Massachusetts Definition	Federal Definition
Performing cognitive tasks, function, or problem solving is significantly limited or impaired	Subaverage general intellectual functioning
Slower rate of learning	No mention of rate of learning
Disorganized pattern of learning	No mention of pattern of learning
Difficulty with adaptive behavior	Deficits with adaptive behavior
Difficulty understanding abstract concepts	No mention of abstract concepts
No mention of manifestation period	Manifest during the developmental period
Includes students with mental retardation	Is defined as students with mental retardation

Key Elements

- Permanent deficit in the ability to learn, think, solve problems, and make sense of the world

- Deficits with adaptive functioning which includes skills needed to function in every day life. These may include significantly limited or impaired in the following areas:
 - conceptual functioning (e.g. reading, money concepts, language),
 - social functioning (e.g. ability to follow rules, participate in a group, take responsibility for actions), or
 - practical functioning (e.g. vocational, work habits, self-care, housekeeping).
- All symptoms must have onset during the developmental period (prior to age 18)

ASSESSMENT GUIDELINES

Multiple sources and methods of information that demonstrate a consistent pattern of a significant limitation in adaptive behaviors shall be used in the determination of eligibility for services. These include:

- Developmental and educational history- evidence of permanent limitations of capacity
- Assessment of rate of learning, patterns of learning, understanding of abstract concepts
- Assessment of adaptive behavior (conceptual including academic functioning, social, or practical)
- Assessment of generalization in multiple environments
- Observations of behavior in relevant settings
- Indirect measures of student functioning (e.g. parent, teacher, and student interview)
- Curriculum-based assessment of functioning
- Standardized IQ tests may be used as one measure for consideration, but is not sufficient for a finding of disability of this type
- Health, Sensory, or Physical impairments may have similar presentations. Team should carefully consider history and other reasons for assessment results.

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

In order for an IEP team to determine eligibility for special education services under the Intellectual Disabilities category, the following criteria must be met:

- a. A significant limitation in intellectual functioning as defined as an index score that falls 2 or more standard deviations below the population mean on a standardized assessment measures with consideration given to the standard measurement error on the test given. This can be met via one of the following:
 1. An index score that is 70 or below OR
 2. An index score that includes a score of 70 or below within the confidence interval (e.g. a standard score of 73 with a confidence interval of 68 to 78).
- b. Mild, moderate, severe, or profound limitations in adaptive functioning which can be defined as:
 1. Scores on multiple measures of adaptive functioning including conceptual, social, or practical functioning that falls 1.5 standard deviations below the population mean with consideration given to the standard measurement error OR
 2. Qualitative observations within the natural environment suggesting limitations within this area by a professional qualified to make such determination AND
 3. Severely limits generalization of skills and independence

- c. Developmental onset before age 18
 - 1. Determinations are rarely made after the age of 18; however, eligibility under this category may be considered and would require a documented history of impairment before the age of 18 (e.g., misdiagnosed disability, transfer from a place that failed to identify a disability)
 - 2. Significant limitations acquired after age 18 but before age 21 (perhaps due to injury or disease) are not determined to have an intellectual disability.
- d. Requires specially designed instruction
- e. Rule out considerations
 - o Disability is organic in nature and not acquired
 - o Not the result of lack of exposure (e.g., never being exposed to language)
 - o Nature of impairment is permanent, pervasive, and generally consistent across similar learning tasks

FREQUENTLY ASKED QUESTIONS

Is an IQ test alone enough to qualify a student under the category of an intellectual impairment?

No. The evaluation and classification of intellectual disability is a complex issue. There are three major criteria for intellectual disability: significant limitations in intellectual functioning, significant limitations in adaptive behavior, and onset before the age of 18. Massachusetts and Federal laws prohibit qualification based only on an IQ test score.

What types of factors should be considered when selecting an IQ test as part of this assessment process?

When selecting an IQ test, evaluators must consider the technical characteristics of the test, the sample that served as the normative sample for the test, and any bias inherent in the test. The team should also consider linguistic factors and any other limitation that the child presents with that may affect test results.

Will a student with deficits in cognitive functioning be automatically found eligible for special education services?

Not necessarily. There is a team process that school districts are required to follow by law. Eligibility for services will be determined through a team process that includes parents, general educators, special educators, and personnel qualified to allocate resources and interpret assessment data.

Can a student be found eligible under the category of an intellectual disability if impairment in cognitive functioning and adaptive skills happens after age 18?

No. When a student acquires a cognitive impairment, perhaps as the result of head trauma, it is not appropriate to qualify the student under this category, as a component for qualification is that intellectual impairments are developmental in nature. The student may still be eligible for services under a different disability category.

If a student is eligible for special education services under the category of intellectual disabilities, how long will they remain eligible for special education services?

Students who qualify for services under the category of an intellectual disability may be eligible for special education services until they are 22 years old. This is a team determination that will be made on an individual basis for each child receiving services. Students may exist between the ages of 18 and 22 if they meet all of the competency requirements for a high school diploma and have achieved the objectives on their transition plans.

RESOURCES

Connecticut State Department of Education (2007). Guidelines for Identifying Children with Intellectual Disability. Hartford, CT: Author.
http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/guide_intellectualdisability2007.pdf

X. NEUROLOGICAL IMPAIRMENT

MASSACHUSETTS DEFINITION

The capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes students who have received a traumatic brain injury.

Relation to Federal Definition

Massachusetts' definition of neurological impairment is more inclusive than the federal definition which is limited to students with traumatic brain injury. The definition of traumatic brain injury in federal special education regulations (34 CFR §300.8(c)(12)) is as follows:

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psycho-social behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma."

Key Elements

The key element is that the capacity of the nervous system is limited or impaired. This includes traumatic brain injury, as well as other neurological conditions that are identifiable from a medical evaluation or health assessment.

ASSESSMENT GUIDELINES

This is a low incidence disability. It should be used sparingly, and reserved for case in which there is clear evidence of neurological impairment. Whereas the Massachusetts definition incorporates both traumatic brain injury and the broader category of neurological impairment, assessment guidance is provided for both of these conditions.

Assessment of neurological impairment:

Neurological impairment should be identified with input from qualified health professional, such as a physician, neuropsychologist, or nurse practitioner. In addition to medical procedures (e.g., MRI, CAT scan, EEG), the following assessment data may be relevant:

- Developmental and educational history;
- Medical history and current assessment, including screening for known neurological insults;
- Assessment of educationally relevant areas such as: memory, cognitive functioning, sensory and motor skills, communication skills, organizational skills, information processing, social skills, behavior, flexibility/adaptability, attention, reasoning, abstract thinking, judgment, and problem-solving;

- Mental health status exam; and
- Observation of student.

The evaluation team should include assessors who have experience and knowledge related to the appropriate identification and educational needs of children who may have neurological impairment. Assessors should also be able to rule out other types of disability or impairment that might more appropriately be applied in explaining a child's educational deficits.

Assessment of traumatic brain injury

Typically, TBI will have been identified through a medical evaluation, and conveyed with appropriate documentation to the school district. These records may be available from the parent, in the student's file, or may need to be requested from the hospital where the student was treated at the time of the injury. If school personnel suspect an undiagnosed TBI, a medical evaluation should be requested as part of the educational evaluation.

An evaluation should include a comprehensive psychoeducational assessment to determine the effect on educational performance. Areas typically measured are behavior, cognition, memory, attention, abstract thinking, judgment, problem solving, reasoning, and information processing.

Other assessments may be included, as appropriate, such as the following:

Motor assessments:

Assessments evaluating motor skills can be completed by occupational therapists and physical therapists. The focus of these assessments are on examining the student's ability to maneuver around school environments, manipulate classroom tools, participate in classroom-based activities and complete daily living skills as it relates to school functioning. Based on the results of these assessments, the therapists could recommend direct services, consultation, and/or environmental accommodations or modifications.

Communication assessments:

A speech and language pathologist may evaluate the student's pragmatic language, eating and swallowing, current language understanding and production.

Pre-injury performance:

This information may be gathered through interviews and review of records. Comparing pre- and post-injury performance allows the team to directly compare the student's performance across the areas needed for eligibility to determine whether the injury has had a negative impact on any or all of the areas

Adaptive ability:

Adaptive ability measures help assess activities of daily living. These measures should be administered by professionals who have the training or experience to administer and interpret the results. Such individuals include, but are not limited to, appropriately licensed occupational therapists, physical therapists, psychologists, and school psychologists.

Observation

Observations should be conducted in the classroom and at least one other setting. The observations should take note of how the student interacts with others and indicators of cognitive functioning, such as ability to learn new information, reasoning, problem solving, judgment, information processing, memory, attention, concentration, and ability to screen out noise or visual distractions.

Interviews

It is best practice to conduct interviews with the parents, teachers, and student. Interviews might address how the student starts new activities, transitions from one activity to another, socializes, and shows signs of fatigue or confusion; what is working well for the student, and identified strengths in adapting to the injury. Questions to ask of specific interviewees include the following:

- Parents - Determine the impact of the injury on the family and student, and gather information about the student's functioning before and after the TBI.
- Classroom teachers - Determine how the student is doing academically and socially post-injury.
- Teachers from previous years - Compare current functioning with previous performance.
- Student - Ask about a typical day.

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

Neurological Impairment:

- Intellectual impairment, specific learning disability, or emotional impairment may have similar presentations, and should be considered as alternative disability categories that may be more applicable to the child's presentation and educational needs.
- The potential for intermittent, inconsistent, or delayed effects of neurological impairment may confuse the connection to educational progress.)
- There is a high incidence of co-occurrence of behavioral issues, substance abuse issues, or issues of socially inappropriate behavior.
- Neurological impairment is highly correlated with effects of neurotoxins (lead poisoning, substance abuse, Fetal Alcohol Syndrome).
- Neurological impairment is highly correlated with effects of stroke, brain tumors, traumatic brain injury, anoxia, spinal cord injury, infectious disorders (e.g., encephalitis), metabolic disorders, chemotherapy, radiation, degenerative diseases, and various syndromes.
- In most instances one can identify a causal or highly correlated relationship between a biological event and neurological consequences. However, there may be instances where the etiology of the neurological impairment is not clear (i.e. one cannot identify a specific, explicit neurological disorder), but the evidence for neurological impairment is strongly suggestive from psychological evaluations and observations of academic and behavioral functioning.

Traumatic Brain Injury:

The injury has resulted in a total or partial functional disability or psychosocial impairment.

The injury adversely affects the student's educational performance and requires special education to meet the student's needs.

To evaluate a student for special education eligibility under the TBI category, the team either collects the information listed above or conducts the assessments needed to obtain the information. After all information is gathered and interpreted, the Team will determine whether the student meets the definition of neurological impairment and meets the criteria for needing special education . If the student is in need of accommodations only and is able to use these accommodations without specially designed instruction, the team should consider developing a 504 Plan. If the student needs no support at the present time, it is advisable to maintain the medical records documenting the TBI and the evaluation, in case the student needs assistance in the future.

FREQUENTLY ASKED QUESTIONS

Does the evaluation for neurological impairment have to identify a known physical etiology for the area of impairment?

In many instances the reason for the neurological impairment is clear, particularly when there is a connection to a medical issue or a known insult to the brain. [It is allowable, however, to apply the disability term to those cases in which an area of impairment is identified without knowledge of a physical etiology.] Keep in mind, also, that certain "rule-outs" must be considered. For example, the impairment might be associated with a specific learning disability or an emotional disability.

Some school districts consider students with executive function disorder to fall within the category of neurological impairment. Is this justified?

The executive function impairment would be evaluated and considered in the same manner that any other potential area of neurological impairment would be evaluated and considered. This would include consideration of "rule-outs" such as specific learning disability, emotional disability, etc. (see eligibility considerations).

Is a medical diagnosis by a physician required in order for a student to be eligible for special education services under this disability?

No. The Office of Special Education Programs in the U.S. Department of Education has issued opinions stating that school districts may use alternative assessment measures administered by qualified personnel in place of a medical diagnosis by a licensed physician to determine whether a child has a disability. However, the evaluation team must have the relevant expertise to make this determination, and would expectedly include a school nurse.

Is a DSM-V diagnosis required to determine eligibility for services?

A DSM-V diagnosis is neither required nor sufficient to determine a child's eligibility for special education services in this, or any other, disability category.

RESOURCES

Centers For Disease Control and Prevention.

www.cdc.gov/TraumaticBraininjury

Center on Brain Injury Research and Training

www.cbirt.org

National Institute of Neurological Disorders and Stroke.

www.ninds.nih.gov/disorders/tbi/tbi.htm

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XI. PHYSICAL IMPAIRMENT

MASSACHUSETTS DEFINITION

The physical capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions. The term shall include severe orthopedic impairments or impairments caused by congenital anomaly, cerebral palsy, amputations, and fractures if such impairment adversely affects a student's educational performance.

Relation to Federal Definition

The MA category of physical impairment is broader than the federal category of orthopedic impairment and covers a wider range of disabilities. In addition, the MA definition provides additional information as to how a physical impairment may impact educational performance including difficulties in physical and motor tasks; independent movement; performing basic life functions if the impairment adversely affects the student's educational performance.

The federal definition is: "*Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

Key Elements

- Physical impairments can impact physical and motor tasks, independent movement, and/ or performing basic life functions
- Must be significantly limited, impaired or delayed and adversely affects educational performance

ASSESSMENT GUIDELINES

Multiple sources and methods of information should be used in the determination of eligibility for service provision. An assessment should include the following sources of information:

- a. Developmental, social and medical history/status;
- b. Interview with the child's teacher(s) and parent/ caregiver;
- c. Contextual observations across school environments with a variety of tasks;
- d. Formal and/or informal assessment tools related to reason for referral and school participation concerns

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

- The determination of an educational disability in the category of physical impairment and eligibility is made by the Team.
- Medical information and outside evaluations must be considered and reviewed by the Team but are not a sole determinant of eligibility.

- The student may be eligible if the physical impairment significantly affects access, participation and progress in academic and/or non-academic tasks in the school environment.
- The student is not eligible when physical need is short term or medically treatable and/or does not affect the ability to make effective educational progress.
- The student is not eligible when problems of a physical disability can be corrected through changes to the environment/ classroom space, use of assistive devices or other accommodations and can be used without special training.
- The student is not eligible when he/she has learned to independently use compensatory strategies or assistive devices/ equipment and is, therefore, making effective progress.
- The student may be eligible if the physical impairment is progressive and although educational progress is not currently impaired, the prognosis of the physically disabling condition makes such limitation inevitable without immediate intervention to ensure continued effective progress.

FREQUENTLY ASKED QUESTIONS

Can a school team determine that a child fits the category of “physical impairment”, or does a medical provider need to make this determination?

A medical diagnosis of physical impairment is not required for a school team consisting of professionals, such as related service providers, who are qualified to make this determination, to identify a child as demonstrating a physical impairment.

RESOURCES

Massachusetts Association for Occupational Therapy, School Special Interest Group Task Force (September, 2005). *Guidelines for the Provision of Occupational Therapy in Massachusetts Public Schools*. Retrieved from <http://www.maot.org/docs/GuidelinesPDFpassword.pdf>.

Guidelines for the Provision of Occupational Therapy and Physical Therapy in Massachusetts Public Schools, publication pending.

www.MAOT.org

XII. SENSORY IMPAIRMENT

MASSACHUSETTS DEFINITION

Massachusetts law (603 CMR 28.02(7)(d)) uses the following definition:

The term [sensory impairment] shall include the following:

1. **Hearing Impairment or Deaf** - The capacity to hear, with amplification, is limited, impaired, or absent and results in one or more of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorily-presented information in the education environment. The term includes students who are deaf and students who are hard-of -hearing.
2. **Vision Impairment or Blind** - The capacity to see, after correction, is limited, impaired, or absent and results in one or more of the following: reduced performance in visual acuity tasks; difficulty with written communication; and/or difficulty with understanding information presented visually in the education environment. The term includes students who are blind and students with limited vision.
3. **Deaf-Blind** - Concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs.

Relation to Federal Definition

The corresponding definitions in federal regulations are addressed by several separate disability categories, as follows:

“Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.” (§ 300.8(c)(2))

“Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.” (§ 300.8(c)(3))

“Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.” (§ 300.8(c)(5))

“Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.” (§ 300.8(c)(13))

There are few differences between the federal and state guidelines for identification of a sensory impairment. Primarily, Massachusetts uses an umbrella term of “hearing impairment” to encompass all students identified with hearing impairment and deafness, where the federal statutes break the terms apart and offer stricter guidelines. Similarly, the state definition of visual

impairment, while using the same term, is broader in application, allowing for a greater number of students to be subsumed under this designation.

Key Elements

ASSESSMENT GUIDELINES

Consider appropriate assistive technology and formatting accommodations, from low tech (e.g. enlarged text), to high tech (e.g. text reading software) options.

Consider testing accommodations needed, during assessments and in the classroom, including but not limited to enlarged text, access to Braille testing materials, and sign language interpretation of materials. Be sure to include any deviation in test protocols within reports, to ensure access to these required accommodations within the classroom setting.

Consult with medical professionals to review any relevant medical information from school health provider, primary care provider and specialists (e.g. audiologist, ophthalmologist, otolaryngology, neurologist).

Students may require services for mobility, orientation and travel training.

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

FREQUENTLY ASKED QUESTIONS

Should a student identified with a sensory impairment be covered by an Individual Education Program (IEP) or a 504 plan?

This depends entirely on the level of student need. Students who require specialized instruction (e.g. learning sign language or to read Braille) would require an IEP. Students who require only accommodation (e.g. amplification system, alternative formats, or increased font size) may best be served under a 504 plan.

What should we consider in transition plans for students with sensory impairments?

After considering a student's current level of functioning, the team should review the family and student's vision for their future. File a chapter 688 referral for services with the appropriate agency (Massachusetts Commission for the Blind, Massachusetts Commission for the Deaf & Hard of Hearing, Department of Developmental Services, or Massachusetts Rehabilitation Commission (MRC)). If agency services are appropriate at an earlier date, do not hesitate to refer.

RESOURCES

American Society for Deaf Children
<http://deafchildren.org>

Hearing Loss Association of America
<http://www.hearingloss.org>

Massachusetts Commission for the Blind
www.mass.gov/eohhs/gov/departments/mcb

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XIII. SPECIFIC LEARNING DISABILITY

MASSACHUSETTS DEFINITION

Massachusetts regulations align the definition of specific learning disability with the definition in federal regulations.

The term 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 an imperfect ability to listen, think speak, read, write, spell, or to do mathematical calculations. Use of the term shall meet all federal requirements given in federal law. (603 CMR 28.02(j))

Relation to Federal Definition

The Massachusetts category of specific learning disability (SLD) is defined the same as in federal law. Hence, it has the following definition, as found in Federal special education regulations (Sec. 300.8(c)(10)):

The term 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 an 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.

(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

SLD is unique, in that the definition is further qualified by substantial additional language in federal regulations regarding SLD identification procedures. The regulatory language is provided in full in Table 6.

Table 6. Federal Regulations on SLD Determination

§ 300.309 Determining the existence of a specific learning disability.

- (a) The group described in § 300.306 [i.e, the evaluation team] may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—
(1) 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:
(i) Oral expression.
(ii) Listening comprehension.
(iii) Written expression.
(iv) Basic reading skill.
(v) Reading fluency skills.
(vi) Reading comprehension.

- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.
- (2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
- (ii) 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 § 300.304 and 300.305; and
- (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--
- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) 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 §300.304 through 300.306—
- (1) 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
- (2) 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.

Key Elements

As specified in federal special education regulations, three criteria must be met in making a determination of SLD (see Figure 3). The first two elements are “inclusionary” criteria, which are predicated upon the *presence* of identifiable characteristics: (1) underachievement in one of eight established areas of academic performance, and (2) evidence that the underachievement is the results of a learning disability. The third criterion involves ruling out various “exclusionary factors” that might be the *primary* cause of underachievement, rather than a learning disability.

What substantially distinguishes different methods of SLD identification is the second criterion—evidence of the presence of SLD. There are two general approaches to making this determination: (1) a response to intervention (RTI) model, and (2) models that rely on a comprehensive psychoeducational assessment conducted at a single point in time. The school Team must identify which of these two general approaches is the primary basis for making the determination of the existence of SLD.

RTI model. There are various ways of implementing an RTI model, however the following characteristics are considered by the federal Office of Special Education Programs (2013) to be essential elements:

- High quality, evidence-based instruction in general education settings;
- The use of universal screening of all students for academic and behavioral problems;
- Two or more levels (sometimes referred to as "tiers") of instruction that are progressively more intense and based on the student's response to instruction; and
- Progress monitoring of student performance.

With these elements in place, evidence of SLD is inferred from two conditions (1) achievement is discrepant from what is expected relative to age or to "State-approved grade-level standards" (e.g., as defined by curriculum frameworks), and (2) rate of progress when provided with Tier 2 interventions is insufficient.

Psychoeducational assessment models. A psychoeducational assessment relies significantly on data from standardized tests as well as other sources of assessment data—interviews, observations, rating scales, and pre-existing data found in records. Based on this body of assessment data, evidence for the existence of SLD is derived from "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" (§300.309(a)(2)(ii)). This language from federal special education regulations allows for different models for analyzing whether a pattern of performance strengths and weakness is indicative of a learning disability:

- There is a significant discrepancy between ability and achievement;
- There are meaningful intra-individual differences in the profile of academic achievement scores, or in the profile of achievement and ability scores considered together;
- The pattern of performance is characteristic of SLD in the clinical judgment of the evaluation team.

Although performance on standardized tests typically carries significant weight in this approach, there is little evidence to support the use of rigid statistical formulas for decision making. The multitude of factors that bear upon a finding of SLD (e.g., language background, educational opportunities, remedial instruction, motivation) are too numerous and complex to be reduced to an empirically valid formula. As an example, the implementation of remedial instruction or other individualized strategies provided within regular education as part of a multi-tiered system of support (MTSS) may have resulted in achievement gains that, while insufficient to rule out a learning disability, may reduce the discrepancy between measured ability and achievement, thereby rendering a discrepancy formula inapplicable. A discrepancy model may also fail to identify a child with a learning disability because the learning disability compromises performance on measures of intellectual ability, thereby resulting in a lesser difference between ability and achievement.

The professional literature identifies significant shortcomings or challenges to exclusive reliance on any of these four models.¹ At present, best practice favors a "hybrid model" that routinely utilizes a multi-tiered system of instruction, and selective use of psychoeducational assessment data on an individualized basis.

ASSESSMENT GUIDELINES

In determining whether a child presents with a specific learning disability, multiple sources of data must be considered as the team gathers information about a child's functional, academic, and developmental profile. A comprehensive evaluation, as described in Section III, will guide the team in determining eligibility for special education, and in making appropriate recommendations for academic interventions and educational placement.

Comprehensive evaluation for a suspected learning disability will typically include a review of the child's performance history, information about the child's current skills (including norm referenced, criterion based, and/or curriculum based assessments), measures of cognitive ability, classroom/school observations, input from teachers and parents (provided in the form of reports, interviews, or rating scales), and information regarding the child's social and emotional functioning (see NASP, 2011). These various sources of data may be used to address the MA evaluation requirements to assess "the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults" (CMR 28.04(2)(a)(2.ii).

ELIGIBILITY DETERMINATION ISSUES AND CONSIDERATIONS

Determination of Underachievement

Curricular frameworks provide a common reference point for gauging expected achievement. Norm-referenced achievement tests provide relevant information as well. Performance below the 25th percentile (standard score of 90) or below the 16th percentile (standard score of 85, or 1 standard deviation below the mean) are often used as reference points for underachievement, however use of an absolute cutoff is not advisable. Norm-referenced scores should be considered within the context of other relevant factors, such as educational history, behavioral interference, and environmental influences. Curriculum-based assessment may also contribute valuable information. Other relevant sources of achievement data include the following:

- Performance on state assessments.
- Benchmark testing (e.g., universal screening of foundational academic skills) and progress monitoring using curriculum based measurement.
- Formative classroom assessments linked to grade-level State standards
- Progress monitoring using curriculum based measurement.
- Classroom-based observations
- Information from parents: educational, developmental, social history
- Records, including grades and prior evaluations

Assessment of Exclusionary Factors

The evaluation team must routinely consider whether the child's lack of adequate achievement is the result of one or more exclusionary factors, rather than SLD. The following exclusionary factors are explicitly identified under federal regulations for SLD identification:

- A visual, hearing, or motor disability;
- Mental retardation;
- Emotional disturbance;
- Cultural factors;

- Environmental or economic disadvantage; or
- Limited English proficiency.

There are no explicit criteria for evaluating the degree of impact of these factors. Therefore, the determination relies on the professional judgment of the evaluation team.

The presence of exclusionary factors does not, by itself, rule out the possibility that a learning disability significantly contributes to underachievement as well. It is entirely possible for one or more of the exclusionary factors to be *influencing* a student's low achievement or their limited response to instruction, *and* for the student to have a learning disability. Therefore, the evaluation team must consider the *degree* to which each factor affects the student's performance. If the criteria for SLD are otherwise met, the evaluation team must determine whether the SLD contributes to the extent that the student requires special education and related services in order to make effective progress.

Assurance of Appropriate Instruction

To ensure that underachievement is not due to lack of appropriate instruction in reading or math, the Team must consider that the student has been provided appropriate instruction, delivered by qualified personnel, in the general education setting. (CFR Sec. 300.306) Information about the general education instruction implemented in the core curriculum should be considered. Appropriate instruction in reading should systematically address the five essential components: phonemic awareness; phonics knowledge; fluency; vocabulary; and comprehension. Appropriate instruction in math should address concepts and reasoning; automatic recall of number facts; computational algorithms; functional math; and verbal problem solving. As evidence that appropriate instruction was provided, there must be data-based documentation of repeated assessments of student program achievement must be provided to the parents. Documentation to this effect must be provided to the student's parents. These conditions must be met regardless of what identification method is used.

What, then, should occur if the requirement of appropriate instruction is not met, or cannot be established (e.g., in the case of a child who is new to a school district and may have been subject to substandard instruction or learning experiences)? This is addressed by federal regulations, which call for evidence of appropriate instruction prior to or *during* the referral process (Sec. 300.309(b)(1)). Thus, instruction should be provided within the timeline of the referral and evaluation process. In such cases, it is important to provide appropriate instruction within general education, and to monitor the resulting progress as part of the evaluation procedures.

Slow Learners/Low Ability

Using a discrepancy model as evidence of the existence of SLD, many children are ruled out because they exhibit both low achievement and low ability. These children are often characterized as "slow learners," a term suggesting that academic underachievement is to be expected given below average ability. Studies have shown that children of all ability levels attain the basic reading skills of accurate and fluent word decoding, and that a child with low cognitive ability is no more or less likely to experience the atypical cognitive processes that are characteristics of a learning disability. When a child with below average cognitive ability has a learning disability, the learning challenges are even more serious than for children with average to above ability. Consequently, overall low performance should not be regarded as an

automatic basis for ruling out a learning disability. It is inappropriate to have a decision rule requiring that a child with SLD must be of average or above average cognitive ability.

FREQUENTLY ASKED QUESTIONS

Is standardized testing required for an evaluation of suspected SLD?

Neither Federal nor Massachusetts regulations explicit require the use of standardized tests as part of an educational evaluation. When conducting an evaluation to determine eligibility for special education, the team must use “a variety of assessment tools and strategies” (Sec. 300.304 (b) (1)) to assess the student in all areas of suspected disability. As part of the initial evaluation process, a review of the existing evaluation data is conducted. The team must consider 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” (Sec. 300.306 (c)(i)).

Must a re-evaluation assess the same areas or use the same assessment measures as the initial evaluation?

For re-evaluations, special education teams are not required to replicate the specific testing that was conducted as part of the initial evaluation. As part of the re-evaluation, teams must again review the existing data to determine if additional data is needed in order to determine whether the student continues to present with an area of disability and continues to require special education and related services. If the Team determines that no additional information is needed in order to determine if the student continues to present with a disability and the appropriate educational services, federal regulations allow for a more abbreviated evaluation process, given parental agreement.

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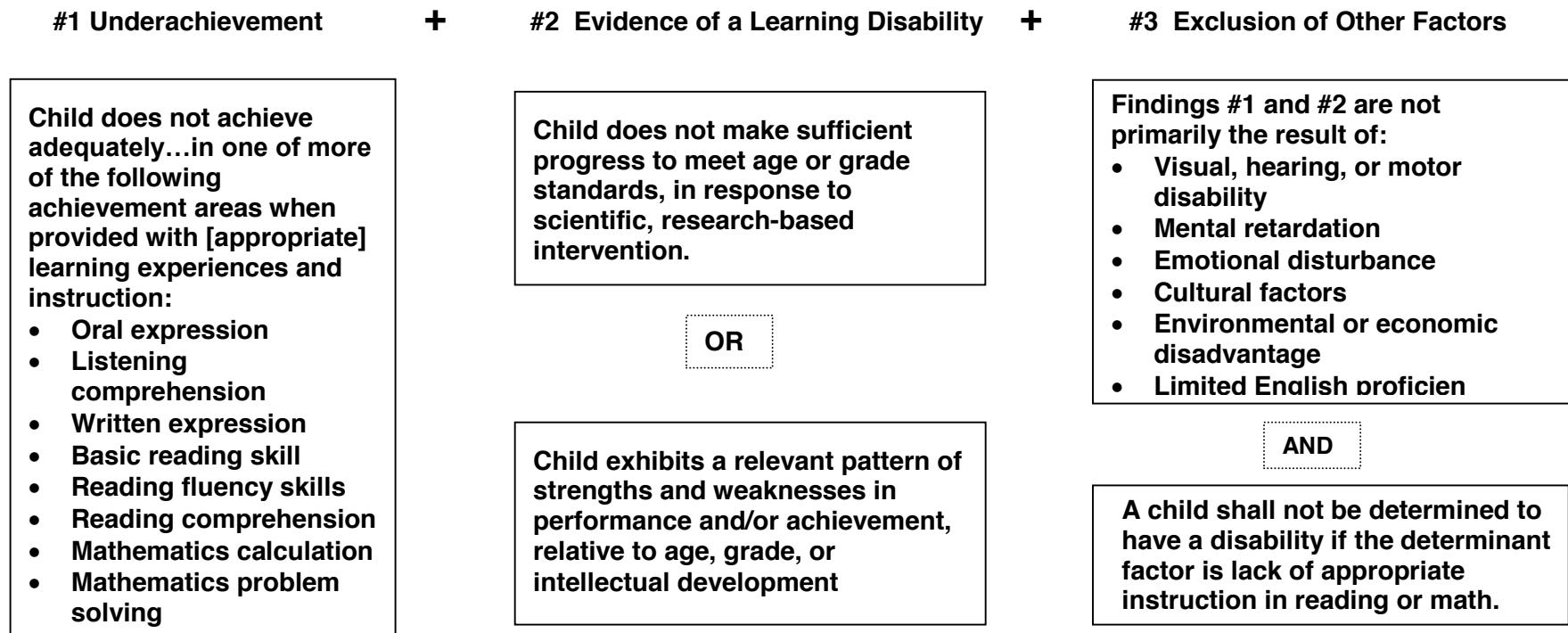
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Figure 3
Criteria for Determining LD Eligibility



XIV. ENGLISH LANGUAGE LEARNERS

According to the federal government, a Limited English Proficient/ English Language Learner (LEP/ELL) is an individual whose native language is a language other than English.

OVERVIEW OF LEGISLATION PERTAINING TO ENGLISH LANGUAGE LEARNERS

English Language Learners and No Child Left Behind

The federal legislation of the No Child Left Behind (NCLB) Act (U.S. Department of Education, 2001) is designed to meet the needs of diverse learners in the U.S. public school system. The No Child Left Behind Act requires that all children develop a certain level of proficiency in English, including English Language Learners (ELL).

Individuals with Disabilities Education Improvement Act (IDEA) 2004

IDEA states that “lack of appropriate instruction in reading or math” cannot result in eligibility of any disability category under this Act. To ensure against misdiagnosis or overrepresentation of minority or ELL populations, the assessments and other evaluation materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis (34 C.F.R. Section 614 (b)(3)(A)(i)). They must be administered in a professional manner by competent personnel and must use the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer. (34 C.F. R. Section 614(b)(3)(A)(ii-v).) The TEAM must also determine that its findings under 34 CFR 300.309(a)(1) and (2) are not primarily the result of Cultural factors or Environmental or economic disadvantage.

Bilingual Education Act:

Enacted in Congress in 1968, The Bilingual education Act established a grant program to fund bilingual education programs for economically disadvantaged language minority students in recognition of the unique educational disadvantages faced by non-English speaking students. The act was reauthorized in 1974, 1978, 1984, 1988, and 1994.

May 1970 Memorandum:

To clarify a school district's responsibilities with respect to national-origin-minority children, the U.S. Department of Health, Education, and Welfare, on May 25, 1970, issued a policy statement stating, in part, that “where inability to speak and understand the English language excludes national-origin-minority group children from effective participation in the educational program offered by the school district, the district must take affirmative steps to rectify language deficiency in order to open the instructional program to the students.”

Lau v. Nichols:

This was a suit filed in 1974 by Chinese parents in San Francisco that led to a Supreme Court ruling that identical education does not constitute equal education under the Civil Rights Act. School districts must take “affirmative steps” to overcome educational barriers faced by non-English speakers (Lyons, 1992).

Equal Education Opportunities Act of 1974:

This civil rights statute prohibits states which receive federal funding from denying equal educational opportunity to an individual on account of his or her race, color, sex, or national origin. The statute specifically prohibits states from denying equal educational opportunity to limited English proficient students by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. [20 U.S.C §1203(f)]

Castañeda v. Pickard:

In 1981, the 5th circuit court established a three-pronged test for evaluating programs serving English language learners. According to the Castañeda standard, schools must:

- base their program on a sound educational theory or legitimate experimental strategy,
- implement the program with the resources and personnel necessary to put the theory into practice, and
- evaluate programs and make adjustments as needed to ensure that adequate progress is being made.

ENGLISH LANGUAGE LEARNERS AND SPECIAL EDUCATION

The mission of the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) is to provide national leadership to help ensure that English learners and immigrant students attain English proficiency and achieve academically.

The OELA wrote the following three guidelines. They are given to state and local districts to ensure compliance with Section 504, Title VI, and IDEA:

- Districts may not assign students to special education programs on the basis of criteria that essentially measures and evaluates English Language Proficiency.. Districts may not refuse to provide alternative language services and special education to students who need both.
- When reviewing, a district's special education referral and evaluation procedures (whether or not) they are in compliance with legal requirements, OCR generally recommends that district staff consider the effect of the language development and proficiency of language-minority students.
- If a student is not proficient in the language skills required to complete an evaluative instrument, the results will not be valid. If district staff relies primarily on invalid data, without considering other sources of information about the student, the district will be in violation of civil rights laws.

Students can be ELLs and have disabilities as well. Sometimes it can be a challenge to distinguish between the two or recognize that both may exist. McCardle and colleagues (2005) examined the national data and found that ELLs are overrepresented in certain special education categories: Speech and Language Impairment, Intellectual Impairment, and Emotional Disturbance.

Table 7. Typical Learning Issues of ELL Students

Learning Issues (What it may seem like)	Reason Difficulty Seen in Typical ELLs
Academic Learning difficulties	ELLs often have difficulty with grade-level academic language and concepts because it typically takes five years or more for non-native speakers to display academic functioning comparable to native speakers.
Language disorder	Lack of fluency and correct syntax is a natural part of learning a new language. Students may require more “wait time” as they process an utterance in one language and translate into another. This “wait time” may be misinterpreted as a language processing issue.
Attention and memory problems	ELLs may have difficulty paying attention and remembering if they cannot relate new information to their previous experiences in their respective cultures. ELLs may also be experiencing exhaustion due to the task of learning in a language in which they are not yet proficient.
Withdrawn behavior	When students are learning a new language and adapting to a new culture a “silent period” is normal. Also, this behavior might be appropriate in the student’s culture.
Acting Out behavior	The student may not have had previous formalized educational experience which may lead to frustration and acting out behavior.

Here are some possible reasons for initiating a special education referral for an ELL:

- The ELL is exhibiting the academic difficulties in both first and second languages.
- The ELL teacher supports the position that the ELL is performing differently from his/her cultural peers.
- The ELL displays very little or no academic progress in spite of receiving appropriate instructional strategies, alternative instruction, or academic interventions.
- Parents recognize and confirm any behavioral difficulties seen in the school setting based on the child’s educational history.

English Language Learning Vs. Language Impairment

Research indicates that ELL children with language impairments often scored significant lower (at least 1 SD) on multiple standardized English language assessments compared to typically developed ELLs (Paradis, Schneider & Duncan 2013). It is important to compare their progress to similar ELL peers, rather than monolingual peers. Further, Paradis, Schneider & Duncan (2013) also documented that interviews with these students’ parents consistently revealed significant difficulties in their first language development. Such findings confirm that delays in

both native and English language is one of the key components that should be considered for special education referral.

Nonetheless, when there is concern with an ELL student's behavior and/or academic achievements, it is important to consider how long he or she has been exposed to the English language. Research on bilingual development and second language acquisition has demonstrated that it takes approximately 1 to 3 years to develop basic interpersonal communication skills (BISC) and approximately 5 to 7 years to develop cognitive academic language proficiency (CALP) in a second language (Rhodes, Ochoa, & Ortiz, 2005), it is reasonable to expect second language functioning to lag well behind that of native language speakers. This assumes, of course, that a solid bilingual / English as a Second Language program is providing adequate primary language instruction.

ASSESSMENT OF CULTURALLY AND LINGUISTICALLY DIVERSE STUDENTS

It is easy to think of the language difference as students' most important characteristic. However, ELLs should not only be defined by their difference in communication skills, but also by other aspects of diversity as well as language. Therefore, another important part of the evaluation process with ELLs is understanding their level of acculturation (O'Bryon & Rogers, 2010). Rhodes, Ochoa, & Ortiz (2005) recommended using interviews and formal assessment instruments to assess acculturation. These assessment help identify their cultural experiences that may impact their frame of mind, academic performance, and overall behavior in school.

When students differ linguistically or culturally from the normative population used to construct an assessment instrument, only descriptive statements should be made. The process of interpreting assessment results is more difficult and assessment professionals must guard against possible bias in decision-making by considering the distinct situational, cultural or linguistic features that might be affecting the student's current performance. A qualitative, descriptive analysis of the student's performance should be used for decision making.

The student's level of English proficiency is determined by referring to their WIDA scores. The WIDA MODEL (Measure of Developing English Language) is a series of English language proficiency assessments for Kindergarten through Grade 12. MODEL can be used by educators as an identification/placement assessment for newly enrolled ELLs or as an interim progress monitoring assessment. One challenge is that the field has not yet developed a test of language proficiency that can adequately determine when a child with a primary language other than English is ready to be tested in only English (Figueroa, 1989; Ortiz, 1997).

Low achievement is too often blamed on low cognitive ability without looking further at the context in which underachievement occurs (Trueba, 1989). Individuals with Disabilities Education Act (IDEA, 2004) has been reauthorized to allow the states to have the option of using Response To Intervention (RTI) criteria as part of the special education identification process. Ideally, RTI models will decrease the number of ELLs who are inappropriately referred to and given special education services by providing them with support and quality instruction within general education before a disability is determined. (Donovan & Cross, 2002; Vaughn & Fuchs, 2003).

Although there is some variation in RTI models, the first tier is generally considered to be quality instruction and ongoing progress monitoring within the general education classroom. Students who do not make adequate progress are identified early and then receive intensive intervention support as part of a second tier. When students do not adequately respond to the

second tier of intervention, they may then receive a formalized evaluation to determine eligibility to receive special education services. Thus, we must ensure that children have received culturally responsive, appropriate, quality instruction within the first and second tiers before a special education referral or placement is made.

Reports of assessments completed on culturally and linguistically diverse students should include:

- A description of the extent to which the Home Language and English were used during the evaluation
- A multifaceted approach, assessing the native and second languages in multiple domains as well as using formal and informal methods (e.g. parent interviews, observations) to rule out the cultural or environmental causes of the students' educational difficulties (O'Bryon & Rogers, 2010). Such factors include poor school attendance, insufficient ELL supports, history of disruption in schooling, recent immigration from another country, cultural values which are distinctly different from those of the majority culture, background of the family, influence of language and dialect on school performance, significant family events (e.g., family crisis, divorce, death, etc.), and medical or physical problems (e.g., vision, hearing, disease, illness). Comparing referred students' to similar ELL peers is also vital.
- A description of the utilization of the interpreter/translator (if one was used), including the briefing/assessment/debriefing process.

TEAM MEETINGS WITH SECOND LANGUAGE FAMILIES

Before the TEAM meeting, the **Parent and Student** should be encouraged to:

- Request any documents to be translated into their native language as needed and review completed evaluations and any assessment data submitted in advance of the meeting.
- Review the most recent progress reports from teachers
- Ensure that a translator will be present if needed.

At the meeting, the **Parent and Student** should be encouraged to:

- Share their comments regarding the student's strengths, abilities and needs
- Consider annual educational goals they would like their child to master by the end of the year
- Help develop the current IEP (if eligible).

FREQUENTLY ASKED QUESTIONS:

What is the difference between a bilingual evaluation and a monolingual evaluation?

A bilingual evaluation and a monolingual psycho-educational evaluation assesses a student's cognitive and learning profile to determine if a learning disability, or other learning issues related to the process of learning, impacts a student's ability to perform within their respective grade level curricula expectations.

A bilingual evaluation also assesses a student's language development in their native and second language to determine that student's progress in second language acquisition by determining their proficiency level. This allows for the determination of administering psycho-educational assessments in one of the following approaches: (1) the student's native language, (2) the student's second language (English), or (3) both native language and English. The end result of this process is to differentiate a true learning disability from depressed performance due to a student's particular stage of development of second language acquisition.

What types of measures are used for a bilingual assessment?

A bilingual evaluation may include a language proficiency measure as well as measures of intellectual functioning and academic achievement. A nonverbal measure can be used if a cognitive assessment is not available in the student's native language and it may also be used in conjunction with other cognitive measures.

What can be done when it is clearly not feasible to conduct procedures in the student's native language or through the use of an interpreter?

In the case of a low-incidence language or lack of available interpreters, the assistance to states for the Education of Children with Disabilities: Final Regulations (U.S. Department of Education, 1999a) recommends that other evaluation procedures (e.g. nonverbal measures of ability) be emphasized. Section 300.531 of the Final Regulations, however, emphasizes that alternate or altered methods of evaluation should be held to the same standard as verbally based procedures, including the following specifications:

- Materials and procedures are selected and administered to ensure they measure the extent to which a child has a disability and needs special education, rather than measuring English language skills.
- Various assessment tools and strategies are used to gather relevant functional and developmental information about the child
- No single procedure is used as the sole criterion for determining whether a child is a child with a disability

Is ELL service a Special Education Service? Do ELLs need an IEP or 504 plan to receive accommodations on tests?

ELL is not a special education services. In fact, it is a service that provides via regular education to support students whose learning English as a second language. All ELLs are entitled to receive testing accommodations on state, district and classroom tests, although these accommodations are limited in number and differ from what is available for students with an IEP or 504 Plan.

How soon can you test a child once they come to the States?

The timing of referral for special education vary, depending on the needs of the child. ELL students may exhibit disabilities at any point in the process of acquiring a second language.

Some schools districts discourage ELL students being referred for special education evaluation within the first 3 years they have moved to the States. However, the school team should always consider the needs of each child rather than rigidly following a timeline.

Should parents be encouraged to speak their native language or be advised to speak only English with their children at home?

Parents should be encouraged to speak in the language in which they are most proficient in order to create a language-enriched environment in the home. Current studies on the effect of bilingualism on the academic growth of students conclude that when children maintain their first language ability, they transfer skills to their second language. In fact, native language proficiency is a powerful predictor of the rate of second language acquisition.

On the other hand, when parents who are not proficient in English are encouraged to speak only English with their children, the communication of concepts may be hindered, and the richness of language may be lost. It is far better for parents to converse and read aloud to their children in their dominant language.

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