

Evaluation Standards

Evaluation or **Reevaluation** is the process of utilizing formal and informal procedures to determine specific areas of a child's or student's strengths, needs, and eligibility for special education services. Each district must conduct a full and individual evaluation of a child or student, for the purposes of special education that meets all state and federal requirements. Such an evaluation includes, but is not limited to: providing the parent(s) with prior written notice of each proposed evaluation; ensuring tests or evaluation tools are administered by trained and knowledgeable personnel; assessing the child or student in all areas related to the suspected disability; presenting all evaluation results to the parent(s) in writing within state and federal timelines; determining whether the child or student meets state eligibility criteria; and, in evaluating each child with a disability, ensuring the evaluation is sufficiently comprehensive to identify all of the child's or student's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.

Required Policies

A district must include in its TSES Manual a description of its child study procedures for the evaluation, beginning at birth, of students who may have a disability. (Minn. R. 3525.1100, subp. 2(A).)

Through their Interagency Early Intervention Committees, districts are required to develop and implement policies and procedures related to assessment systems. These policies and procedures must be included in the district's TSES Manual.

Evaluation or Reevaluation Standards

Children with disabilities must be evaluated in accordance with the Code of Federal Regulations, title 34, sections 300.300 through 300.311, subpart D of this part. (34 C.F.R. § 300.122.)

Evaluation Notice, Consent, and Timelines

Notice before Evaluation or Reevaluation

The public agency must provide notice to the parents of a child with a disability, in accordance with the Code of Federal Regulations, title 34, section 300.503, that describes any evaluation procedures the agency proposes to conduct. (34 C.F.R. § 300.304(a).)

A. Written Notice Requirement: A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under the Code of Federal Regulations, title 34, sections 300.151 through 300.153 and upon receipt of the first due process complaint

under section 300.507 in a school year; (3) In accordance with the discipline procedures in section 300.530(h); and (4) Upon request by a parent. (34 C.F.R. § 300.504(a).)

B. Contents of Written Notice: The notice required under paragraph (a) of this section must include: (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (34 C.F.R. § 300.503(b).)

C. Contents of Procedural Safeguards Notice: The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under the Code of Federal Regulations, title 34, section 300.148, 300.151 through 300.153, section 300.300, sections 300.502 through 300.503, sections 300.505 through 300.518, section 300.520, sections 300.530 through 300.536, and sections 300.610 through 300.625 relating to (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to educational records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings or due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in that State); (12) Civil actions, including the time period in which to file those actions; and (13) Attorneys' fees. (34 C.F.R. § 300.504(c).)

Notice of Refusal to Evaluate or Reevaluate

B. Contents of Written Notice: The notice required under paragraph (a) of this section must include (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (34 C.F.R. § 300.503(b).)

Parental Consent for Evaluation or Reevaluation

A. When Required: The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under the Code of Federal Regulations, title 34, section 300.8 must, after providing notice consistent with sections 300.503 through 300.504, obtain informed consent, consistent with section 300.9, from the parent of the child before conducting the evaluation. (34 C.F.R. § 300.300(a)(1)(i).)

The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. (34 C.F.R. § 300.300(a)(1)(iii).)

To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in section 300.322(d). (34 C.F.R. § 300.300(d)(5).)

(1) Subject to paragraphs (c)(2) of this section, each public agency (i) Must obtain informed parental consent, in accordance with section 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that (i) It made reasonable efforts to obtain such consent; and (ii) The child's parent has failed to respond. (34 C.F.R. § 300.300(c)(1)(i) and (c)(2).)

(1) Parental consent is not required before (i) Reviewing existing data as part of an evaluation or a reevaluation; or (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (34 C.F.R. § 300.300(d)(1).)

B. Consent Overrides: (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under section 300.506 or the due process procedures under sections 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent. (ii) The public agency does not violate its obligation under section 300.111 and sections 300.301 through 300.311 if it declines to pursue the evaluation. (34 C.F.R. § 300.300(a)(3).)

[Note conflict with Minnesota law, below.]

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section. (iii) The public agency does not violate its obligation under section 300.111 and sections 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. (34 C.F.R. § 300.300(c)(ii)-(iii).)

If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the

consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section; and (ii) The public agency is not required to consider the child as eligible for services under sections 300.132 through 300.144. (34 C.F.R. § 300.300(d)(4).)

The district must not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation. (Minn. Stat. § 125A.091, Subd. 5.)

C. Consent to Evaluate for Specific Learning Disability: The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in sections 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in section 300.306(a)(1)

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation. (34 C.F.R. § 300.309(c).)

D. Ward of the State: For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; (ii) The rights of the parents of the child have been terminated in accordance with State law; or (iii) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (34 C.F.R. § 300.300(a)(2).)

Parental consent and ability to decline services

(a) The lead agency must ensure parental consent is obtained before (1) Administering screening procedures under the Code of Federal Regulations, title 34, section 303.320 that are used to determine whether a child is suspected of having a disability; (2) All evaluations and assessments of a child are conducted under section 303.321; (3) Early intervention services are provided to the child under this part; (4) Public benefits or insurance or private insurance is used if such consent is required under section 303.520; and (5) Disclosure of personally identifiable information consistent with section 303.414.

(b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and (2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) The lead agency may not use the due process hearing procedures under this part or part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.

(d) The parents of an infant or toddler with a disability (1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and (2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part. (34 C.F.R. § 303.420.)

Evaluation Timelines

The team shall conduct an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested. (Minn. R. 3525.2550, subp.2.)

A. Infant and Toddler Screening and Evaluation: (a) Except as provided in paragraph (b) of this section, any screening under section 303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under section 303.321; and the initial IFSP meeting under section 303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.

(b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when (1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or (2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.

(c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must (1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent; (2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and (3) Develop and implement an interim IFSP, to the extent appropriate and consistent with section 303.345.

(d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable. (34 C.F.R. § 303.310.)

Day means calendar day, unless otherwise indicated. (34 C.F.R. § 303.9.)

Independent Educational Evaluation

(3) For the purposes of this subpart (1) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i).)

A. Right to an Independent Educational Evaluation: (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (34 C.F.R. § 300.502(a)(1)-(2).)

B. Independent Educational Evaluation at Private Expense: If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation (1) must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) may be presented by any party as evidence at a hearing or a due process complaint under subpart E of this part regarding that child. (34 C.F.R. § 300.502(c).)

C. Independent Educational Evaluation at Public Expense: (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraph (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to sections 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (e)(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (34 C.F.R. § 300.502(b)(1)(2)(4) & (e).)

If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. (34 C.F.R. § 300.502(d).)

Evaluation and Reevaluation Procedures

Initial Evaluation Procedures

Each public agency must conduct a full and individual initial evaluation, in accordance with the Code of Federal Regulations, title 34, sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (34 C.F.R. § 300.301(a).)

Consistent with the consent requirements in section 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (34 C.F.R. § 300.301(b).)

The initial evaluation: (2) Must consist of procedures (i) To determine if the child is a child with a disability under section 300.8; and (ii) To determine the educational needs of the child. (34 C.F.R. § 300.301(c)(2).)

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 C.F.R. § 300.302.)

A school district shall conduct a full and individual initial evaluation, according to this part before the initial provision of special education and related services to a pupil under this chapter. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in Minnesota Statutes, section 125A.02, who by reason thereof needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. If the parents of the child refuse consent for the evaluation, the district may continue to pursue an evaluation by utilizing mediation and due process procedures. (Minn. R. 3525.2710, subp. 1.)

By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to post-secondary education and training, employment, and community living.

A. For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

B. Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet

the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP. (Minn. R. 3525.2900, subp. 4.)

Reevaluation Procedures

A. Results of the Reevaluation: A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with sections 300.304 through 300.311 (1) If the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. (34 C.F.R. § 300.303(a).)

The district shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP team under item A, subitem (2). (Minn. R. 3525.2710, subp. 4(B).)

B. Parental Consent: Each district shall obtain informed parental consent, in accordance with subpart 1, prior to conducting any reevaluation of a pupil, except that such informed parental consent need not be obtained if the district can demonstrate that it had taken reasonable measures to obtain such consent and the pupil's parent has failed to respond. (Minn. R. 3525.2710, subp. 4(C).)

C. Frequency of Reevaluations: A reevaluation conducted under paragraph (a) of this section (1) May occur not more than once a year, unless the parents and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (34 C.F.R. § 300.303(b).)

A district shall ensure that a reevaluation of each pupil is conducted if conditions warrant a reevaluation or if the pupil's parent or teacher requests a reevaluation, but at least once every three years and in accordance with subparts 3 and 4. (Minn. R. 3525.2710, subp. 2.)

Use of Existing Data and Additional Data

A. Review of Existing Evaluation Data: As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must (1) Review existing evaluation data on the child, including (i) Evaluation and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers. (34 C.F.R. § 300.305(a)(1).)

As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall: (1) review existing evaluation data on the pupil, including evaluations and information provided by the parents of the pupil, current classroom based assessments and observations, and teacher and related services providers observation; (Minn. R. 3525.2710, subp. 4(A)(1).)

On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine (i)(A) Whether the child is a child with a disability, as defined in section 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child,

whether the child continues to have a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. (34 C.F.R. § 300.305(a)(2).)

As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall: (2) on the basis of the review, and input from the pupil's parents, identify what additional data, if any, are needed to determine whether the pupil has a particular category of disability, as described in Minnesota Statutes, section 125A.02, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, the present levels of performance and educational needs of the pupil, whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum. (Minn. R. 3525.2710, subp. 4(A)(2).)

B. Additional Data Required: The public agency must administer such assessments and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section. (34 C.F.R. § 300.305(c).)

C. No Additional Data Required: (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (34 C.F.R. § 300.305(d).)

D. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents. E. A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability. (Minn. R. 3525.2710, subp. 4(D)-(E).)

As defined in this section, every district must ensure the following: (4) eligibility and needs of children with a disability are determined by an initial assessment or reassessment, which may

be completed using existing data under United States Code, title 20, section 33, et. seq. (Minn. Stat. § 125A.08(b)(4).)

D. Conduct of Review: The group described in paragraph (a) of this section may conduct its review without a meeting. (34 C.F.R. § 300.305(b).)

Parent Involvement

(a) The parents of a child with a disability must be afforded, in accordance with the procedures of sections 300.613 through 300.621, an opportunity to inspect and review all education records with respect to (1) The identification, evaluation, and educational placement of the child; and (b)(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (34 C.F.R. § 300.501(a) & (b)(1).)

Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in Minnesota Statutes, section 125A.02, shall be made by a team of qualified professionals and the parent of the pupil in accordance with item E, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent. (Minn. 3525.2710, subp. 3(D).)

Evaluation Team

Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in Minnesota Statutes, section 125A.02, shall be made by a team of qualified professionals and the parent of the pupil in accordance with item E, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent. (Minn. 3525.2710, subp. 3(D).)

“Evaluation” or “re-evaluation” means an appropriate individual educational evaluation of a pupil’s performance or development conducted by appropriately licensed personnel according to recognized professional standards, parts 3525.2550 and part 3525.2710. (Minn. R. 3525.0210, subp. 18.)

A. SLD Evaluation Team

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in section 300.8, is made by the child's parents and a team of qualified professionals, which must include (a)(1) The child’s regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and (b) At least one personal qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (34 C.F.R. § 300.308.)

(a) The public agency must ensure that the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty. (b) The group described in section 300.306(a)(1), in deciding whether a child has a specific learning disability, must decide to (1) Use information from an

observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in section 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with section 300.300(a), is obtained. (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (34 C.F.R. § 300.310.)

B. Secondary Transition

As defined in this section, every district must ensure the following: (1) all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individual education program team has determined appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education program. The individual education program team shall consider and may authorize services covered by medical assistance according to Minnesota Statutes, section 256B.0625, subdivision 26. The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education program. The program must address the student's need to develop skills to live and work as independently as possible within the community. The individual education program team must consider positive behavioral interventions, strategies, and supports that address behavior for children with attention deficit disorder or attention deficit hyperactivity disorder. During grade 9, the program must address the student's need for transition from secondary services to post-secondary education and training, employment, community participation, recreation, and leisure and home living. In developing the program, districts must inform parents of the full range of transition goals and range of services that should be considered. The program must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded. (Minn. Stat. § 125A.08(b)(1).)

For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate. (Minn. R. 3525.2900, subp. 4(A).)

C. Multidisability Team Teaching Model

The team member licensed in a pupil's disability shall be responsible for conducting the pupil's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part 3525.0210 must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency

and amount of time for specific consultation and indirect services shall be determined by the IEP team. (Minn. R. 3525.2350, subp. 3.)

Nondiscriminatory Evaluation Procedures

Each public agency must ensure that (1) Assessments and other evaluation materials used to assess a child under this part (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. (34 C.F.R. § 300.304 (c)(1)(ii).)

As defined in this section, every district shall ensure the following: (6) in accordance with recognized professional standards, testing and evaluation materials and procedures used for the purposes of classification and placement of children with a disability are selected and administered so as not to be racially or culturally discriminatory. (Minn. Stat. 125A.08(b)(6).)

Each district shall ensure that: (1) tests and other evaluation materials used to evaluate a child under this part are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so. (Minn. R. 3525.2710, subp. 3(C)(1).)

Evaluation Materials and Procedures

A. District to Provide Relevant Evaluation Tools: Each public agency must ensure that (c)(7) Assessments tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. (34 C.F.R. § 300.304(c)(7).)

Each district shall ensure that: (5) evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided. (Minn. R. 3525.2710, subp. 3(C)(5).)

B. Evaluation Materials Designed Measure Special Education Needs: Each public agency must ensure that (3) Assessments are selected and administered so as best to ensure that, if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (34 C.F.R. § 300.304(c)(3).)

Each district shall ensure that: (2) materials and procedures used to evaluate a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills. (Minn. R. 3525.2710, subp. 3(C)(2).)

Each public agency must ensure that (c)(2) Assessments and other evaluation materials used include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (34 C.F.R. § 300.304(c)(2).)

Each district shall ensure that: (g) tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (Minn. R. 3525.2710, subp. 3(C)(7).)

C. Validity and Reliability of Evaluation Materials: Each public agency must ensure that (1) Assessments and other evaluation materials used to assess a child under this part (iii) Are used for the purposes for which the assessments or measures are valid and reliable. (34 C.F.R. § 300.304(c)(1)(iii).)

Each public agency must ensure that (c)(1) Assessments and other evaluation materials used to assess a child under this part (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. (34 C.F.R. § 300.304(c)(1)(iv)-(v).)

Each district shall ensure that: (3) any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests. (Minn. R. 3525.2710, subp. 3(C)(3).)

D. Comprehensive Evaluation: Each public agency must ensure that (6) In evaluating each child with a disability under sections 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

In conducting the evaluation, the public agency must (4) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (34 C.F.R. § 300.304(b)(3).)

In conducting the evaluation, the district shall: (3) use technically sound instruments that are designed to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (Minn. R. 3525.2710, subp. 3(B)(3).)

Each public agency must ensure that (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (34 C.F.R. § 300.304(c)(4).)

Each district shall ensure that: (4) the child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (Minn. R. 3525.2710, subp. 3 (C)(4).)

Each district shall ensure that: (9) in evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related service needs, whether or not commonly linked to the disability category in which the pupil has been classified. (Minn. R. 3525.2710, subp. 3 (C)(9).)

E. Need to Use Multiple Procedures: In conducting the evaluation, the public agency must (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining (i) Whether the child is a child with a disability under section 300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). (34 C.F.R. § 300.304(b)(1).)

In conducting the evaluation, the district shall: (1) use a variety of evaluation tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that are designed to assist in determining whether the child is a pupil with a disability and the content of the pupil's individualized education program, including information related to enabling the pupil to be involved in and progress in the general curriculum or, for preschool pupils, to participate in appropriate activities. (Minn. R. 3525.2710, subp. 3(B)(1).)

In conducting the evaluation, the public agency must (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. (34 C.F.R. § 300.304(b)(2).)

In conducting the evaluation, the district shall: (2) not use any single procedure as the sole criterion for determining whether a child is a pupil with a disability or determining an appropriate education program for the pupil. (Minn. R. 3525.2710, subp. 3(B)(2).)

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under section 300.8, and the educational needs of the child, each public agency must (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. (34 C.F.R. § 300.306(c)(1).)

F. Variance from Standard Evaluation Conditions: Each district shall ensure that: (6) if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report. (Minn. R. 3525.2710, subp. 3(C)(6).)

G. Use of Assessments Transferred from Other Public Schools: Each public agency must ensure that Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with section 300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (34 C.F.R. § 300.304(c)(5).)

Braille Skills Inventory

In developing an individualized education program for each blind student the presumption must be that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress. The assessment required for each student with blindness must include a Braille skills inventory, including a statement of strengths and deficits. Braille

instruction and use are not required by this paragraph if, in the course of developing the student's individualized education program, team members concur that the student's visual impairment does not affect reading and writing performance commensurate with ability. This paragraph does not require the exclusive use of Braille if other special education services are appropriate to the student's educational needs. The provision of other appropriate services does not preclude Braille use or instruction. Instruction in Braille reading and writing must be available for each blind student for whom the multidisciplinary team has determined that reading and writing is appropriate. (Minn. Stat. § 125A.06(c).)

Secondary Transition Evaluation

By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

A. For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate. (Minn. R., 3525.2900, subp. 4(A).)

Infant and Toddler Evaluation

(2) As used in this part (i) Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in section 303.21. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under this part; (ii) Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this part and includes the assessment of the child, consistent with paragraph (c)(1) of this section and the assessment of the child's family, consistent with paragraph (c)(2) of this section; and (iii) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting. (34 C.F.R. § 303.321(2).)

(ii) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this part even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under paragraph (b) of this section. (34 C.F.R. § 303.321(a)(3)(ii).)

A. Health Status and Medical History: (3)(i) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in section 303.21(a)(1) constitutes a developmental delay or that the child otherwise

meets the criteria for an infant or toddler with a disability under section 303.21. If the child's part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section. (34 C.F.R. § 303.321(a)(3)(i).)

B. Levels of Functioning: (b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include (1) Administering an evaluation instrument; (2) Taking the child's history (including interviewing the parent); (3) Identifying the child's level of functioning in each of the developmental areas in section 303.21(a)(1); (4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and (5) Reviewing medical, educational, or other records. (34 C.F.R. § 303.321(b).)

C. Unique Needs: (b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include (1) Administering an evaluation instrument; (2) Taking the child's history (including interviewing the parent); (3) Identifying the child's level of functioning in each of the developmental areas in section 303.21(a)(1); (4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and (5) Reviewing medical, educational, or other records. (34 C.F.R. § 303.321(b).)

D. Family Evaluation: (B) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met. (34 C.F.R. § 303.321(B).)

(c) Procedures for assessment of the child and family. (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following (i) A review of the results of the evaluation conducted under paragraph (b) of this section; (ii) Personal observations of the child; and (iii) The identification of the child's needs in each of the developmental areas in section 303.21(a)(1). (34 C.F.R. § 303.321(c).)

E. Nondiscriminatory Procedures: Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that (a) tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so; (b) any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory; (4) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a

nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory. (34 C.F.R. § 303.321(a)(4).)

Evaluation Report

A. General Requirements: In interpreting evaluation data for the purpose of determining if a child is a child with a disability under section 300.8, and the educational needs of the child, each public agency must (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. (34 C.F.R. § 300.306(c)(1).)

B. Secondary: An evaluation report must be completed and delivered to the pupil's parents within the specified evaluation timeline. At a minimum, the evaluation report must include: A. a summary of all evaluation results; B. documentation of whether the pupil has a particular category of disability or, in the case of a reevaluation, whether the pupil continues to have such a disability; C. the pupil's present levels of performance and educational needs that derive from the disability; D. whether the child needs special education and related services or, in the case of a reevaluation, whether the pupil continues to need special education and related services; and E. whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP and to participate, as appropriate, in the general curriculum. (Minn. R. 3525.2710, subp. 6.)

C. Secondary Transition: Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP. (Minn. R. 3525.2900, subp. 4(B).)

Miscellaneous Evaluation Provisions

Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. (34 C.F.R. § 300.646(a).)

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act. (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of

the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section. (34 C.F.R. § 300.646(b).)

Procedures for Determining Eligibility and Placement

A. In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts 3525.1325 to 3525.1351 and the educational needs of the child, the school district shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and (2) ensure that the information obtained from all of the sources is documented and carefully considered. B. If a determination is made that a child is a pupil with a disability who needs special education and related services, an IEP must be developed for the pupil according to part 3525.2810. (Minn. R. 3525.2710, subp. 5.)

Each district shall ensure that: (8) tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure. (Minn. R. 3525.2710, subp. 3(C)(8).)

Determining the Child is a Child with a Disability

Upon completion of the administration of assessments and other evaluation measures (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in section 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and (a) Upon completion of the administration of assessments and other evaluation measures (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility to the parent. (34 C.F.R. § 300.306(a)(2).)

A child must not be determined to be a child with a disability under this part (1) If the determinant factor for that determination is (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and (2) If the child does not otherwise meet the eligibility criteria under section 300.8(a). (34 C.F.R. § 300.306(b).)

In making a determination of eligibility under item D, a child shall not be determined to be a pupil with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency, and the child does not otherwise meet eligibility criteria under parts 3525.1325 to 3525.1351. (Minn. R. 3525.2710, subp. 3(E).)

Child with a disability means a child evaluated in accordance with sections 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or

language impairment, a visual impairment (including blindness), serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (34 C.F.R. § 300.8(a)(1).)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under sections 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with section 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section. (34 C.F.R. § 300.8(a)(2).)

Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five) may, subject to the conditions described in section 300.111(b), 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. (34 C.F.R. § 300.8(b).)

"Child with a disability" means a child identified under federal and state special education law as deaf or hard of hearing, blind or visually impaired, deaf-blind, or having a speech or language impairment, a physical impairment, other health disability, developmental cognitive disability, an emotional or behavioral disorder, specific learning disability, autism spectrum disorder, traumatic brain injury, or severe multiple impairments, and who needs special education and related services, as determined by the rules of the commissioner. A licensed physician, an advanced practice nurse, or a licensed psychologist is qualified to make a diagnosis and determination of attention deficit disorder or attention deficit hyperactivity disorder for purposes of identifying a child with a disability. (Minn. Stat. § 125A.02, Subd. 1.)

In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts 3525.1325 to 3525.1351 and the educational needs of the child, the school district shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and (2) ensure that the information obtained from all of the sources is documented and carefully considered. (Minn. R. 3525.2710, subp. 5(A).)

Determining the Child is Not a Child With a Disability

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with sections 300.304 through 300.311 before determining that the child is no longer a child with a disability. (2) The evaluation described in paragraph (e)(1) if this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or exceeding the age eligibility for FAPE under State law. (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of the this section, a public agency must provide the child with a

summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (34 C.F.R. § 300.305(e).)

A child with a short-term or temporary physical or emotional illness or disability, as determined by the rules of the commissioner, is not a child with a disability. (Minn. Stat. § 125A.02, Subd. 2.)

Infant or Toddler with a Disability

(a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual

(1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: (i) Cognitive development. (ii) Physical development, including vision and hearing. (iii) Communication development. (iv) Social or emotional development. (v) Adaptive development; or

(2) Has a diagnosed physical or mental condition that (i) Has a high probability of resulting in developmental delay; and (ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(b) Infant or toddler with a disability may include, at a State's discretion, an at-risk infant or toddler (as defined in section 303.5.)

(c) Infant or toddler with a disability may include, at a State's discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include (1) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive part C services pursuant to section 303.211; and (2) A written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act. (34 C.F.R. § 303.21.)

"Child with a disability" means a child identified under federal and state special education law as deaf or hard of hearing, blind or visually impaired, deaf-blind, or having a speech or language impairment, a physical impairment, other health disability, developmental cognitive disability, an emotional or behavioral disorder, specific learning disability, autism spectrum disorder, traumatic brain injury, or severe multiple impairments, and who needs special education and related services, as determined by the rules of the commissioner. A licensed physician, an advanced practice nurse, or a licensed psychologist is qualified to make a diagnosis and

determination of attention deficit disorder or attention deficit hyperactivity disorder for purposes of identifying a child with a disability. (Minn. Stat. § 125A.02, Subd. 1.)

Children Experiencing Developmental Delays

Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in section 300.111(b), 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. (34 C.F.R. § 300.8(b).)

Specific Disabilities

Autism

A. Definition of Autism: (1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (iii) A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied. (34 C.F.R. § 300.8(c)(1).)

"Autism spectrum disorders (ASD)" means a range of pervasive developmental disorders, with onset in childhood, that adversely affect a pupil's functioning and result in the need for special education instruction and related services. ASD is a disability category characterized by an uneven developmental profile and a pattern of qualitative impairments in several areas of development, including social interaction, communication, or the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. These core features may present themselves in a wide variety of combinations that range from mild to severe, and the number of behavioral indicators present, may vary. ASD may include Autistic Disorder, Childhood Autism, Atypical Autism, Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, or other related pervasive developmental disorders. (Minn. R. 3525.1325, subp. 1.)

B. Criteria for Autism Spectrum Disorder: A multidisciplinary team shall determine that a pupil is eligible and in need of special education instruction and related services if the pupil meets the criteria in items A and B. A determination of eligibility must be supported by information collected from multiple settings and sources. A. An educational evaluation must address all three core features in subitems (1) to (3). The team must document evidence that the pupil demonstrates patterns of behavior described in at least two of these subitems, one of which must be subitem (1). The behavioral indicators demonstrated must be atypical for the pupil's developmental level. The team shall document behavioral indicators through at least two

of these methods: structured interviews with parents, autism checklists, communication and developmental rating scales, functional behavior assessments, application of diagnostic criteria from the current Diagnostic and Statistical Manual (DSM), informal and standardized evaluation instruments, or intellectual testing.

(1) Qualitative impairment in social interaction, as documented by two or more behavioral indicators, for example: limited joint attention and limited use of facial expressions directed toward others; does not show or bring things to others to indicate an interest in the activity; demonstrates difficulties in relating to people, objects, and events; a gross impairment in ability to make and keep friends; significant vulnerability and safety issues due to social naiveté; may appear to prefer isolated or solitary activities; misinterprets others' behaviors and social cues.

(2) Qualitative impairment in communication, as documented by one or more behavioral indicators for example: not using finger to point or request; using others' hand or body as a tool; showing lack of spontaneous imitations or lack of varied imaginative play; absence or delay of spoken language; limited understanding and use of nonverbal communication skills such as gestures; facial expressions, or voice tone; odd production of speech including intonation, volume, rhythm, or rate; repetitive or idiosyncratic language or inability to initiate or maintain a conversation when speech is present.

(3) Restricted, repetitive, or stereotyped patterns of behavior, interest, and activities, as documented by one or more behavioral indicators for example: insistence on following routines or rituals; demonstrating distress or resistance to changes in activity; repetitive hand or finger mannerism; lack of true imaginative play versus reenactment; overreaction or under-reaction to sensory stimuli; rigid or rule-bound thinking; an intense, focused preoccupation with a limited range of play, interests, or conversation topics.

B. Documentation: The team shall document and summarize in an evaluation report that ASD adversely affects a pupil's performance and that the pupil is in need of special education instruction and related services. Documentation must include: (1) an evaluation of the pupil's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, the team must consider all other areas of educational concern related to the suspected disability; (2) observations of the pupil in two different settings, on two different days; and (3) a summary of the pupil's developmental history and behavior patterns. (Minn. R. 3525.1325, subp. 3.)

C. Team Membership: The team determining eligibility and educational programming must include at least one professional with experience and expertise in the area of ASD due to the complexity of this disability and the specialized intervention methods. The team must include a school professional knowledgeable of the range of possible special education eligibility criteria. (Minn. R. 3525.1325, subp. 4.)

D. Implementation: Pupils with various educational profiles and related clinical diagnoses may meet the criteria of ASD under subpart 3. However, a clinical or medical diagnosis is not required for a pupil to be eligible for special education services, and even with a clinical or medical diagnosis, a pupil must meet the criteria in subpart 3 to be eligible. (Minn. R. 3525.1325, subp. 5.)

Criteria for Blind Student

Visual impairment including blindness means impairment in vision that, even with correction, affects a child's educational performance. The term includes both partial sight and blindness adversely. (34 C.F.R. § 300.8(c)(13).)

The following definitions apply to paragraphs (c) to (f). "Blind Student" means an individual who is eligible for special educational services and who: (1) has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees or (2) has a medically indicated expectation of visual fatigue. (Minn. Stat. § 125A.06(b).)

Deaf-Blind

A. Definition of Deaf-Blind: 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. (34 C.F.R. § 300.8(c)(2).)

B. Criteria for Deaf-Blind: "Deaf-blind" means medically verified visual loss coupled with medically verified hearing loss that, together, interferes with acquiring information or interacting in the environment. Both conditions need to be present simultaneously, and the pupil must meet criteria for both visually impaired, and deaf and hard of hearing to be eligible for special education and services under this category. (Minn. R. 3525.1327, subp. 1.)

C. Pupils at Risk: Pupils at risk of being deaf-blind include pupils who: (A) are already identified as deaf or hard of hearing or visually impaired but have not yet had a medical or functional evaluation of the other sense (vision or hearing); (B) have an identified condition, such as Usher Syndrome or Optic Atrophy, that includes a potential deterioration of vision or hearing in the future; (C) have a medically or functionally identified hearing loss and a verified deficit in vision determined by a functional evaluation in the learning environment; (D) have a medically or functionally identified vision impairment and verified hearing loss determined by a functional evaluation in the learning environment; or (E) have an identified syndrome or condition that includes hearing or vision loss in combination with multiple disabilities, for example, CHARGE syndrome. (Minn. R. 3525.1327, subp. 2.)

Emotional or Behavioral Disorders

A. Definition of Emotional or Behavioral Disorders: (4)(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. (34 C.F.R. § 300.8(c)(4).)

“Emotional or behavioral disorders” means an established pattern of one or more of the following emotional or behavioral responses: A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth; B. disordered thought processes with unusual behavior patterns and atypical communication styles; or C. aggression, hyperactivity, or impulsivity. The established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional or behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings, and one other setting: in either the home, childcare, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions. (Minn. R. 3525.1329, subp. 1.)

B. Criteria for Emotional or Behavioral Disorders: A pupil is eligible and in need of special education and related services for an emotional or behavioral disorder when the pupil meets the criteria in items A to C.

A. A pupil must demonstrate an established pattern of emotional or behavioral responses that is described in at least one of the following subitems and which represents a significant difference from peers: (1) withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth defined by behaviors, for example: isolating self from peers; displaying intense fears or school refusal; overly perfectionistic; failing to express emotion; displaying a pervasive sad disposition; developing physical symptoms related to worry or stress; or changes in eating or sleeping patterns; (2) disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships, for example: reality distortion beyond normal developmental fantasy and play or talk; inappropriate laughter, crying, sounds, or language; self-mutilation, developmentally inappropriate sexual acting out, or developmentally inappropriate self-stimulation; rigid, ritualistic patterning; perseveration or obsession with specific objects; overly affectionate behavior towards unfamiliar persons; or hallucinating or delusions of grandeur; or (3) aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, for example: physically or verbally abusive behaviors; impulsive or violent, destructive, or intimidating behaviors; or behaviors that are threatening to others or excessively antagonistic. The pattern must not be the result of cultural factors, and must be based on evaluation data which may include a diagnosis of mental disorder by a licensed mental health professional.

B. The pupil’s pattern of emotional or behavioral responses adversely affects educational performance and results in: (1) an inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; or (2) a pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders under part 3525.1325; or inconsistent educational programming.

C. The combined results of prior documented interventions and the evaluation data for the pupil must establish significant impairments in one or more of the following areas: intrapersonal, academic, vocational, or social skills. The data must document that the impairment: (1) severely interferes with the pupil’s or other students’ educational performance; (2) is consistently

exhibited by occurrences in at least three different settings: two educational settings, one of which is the classroom, and one other setting in either the home, child care, or community; or for children not yet enrolled in kindergarten, the emotional or behavioral responses must be consistently exhibited in at least one setting in the home, childcare, or community; and (3) has been occurring throughout a minimum of six months, or results from the well documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional. (Minn. R. 3525.1329, subp. 2a.)

C. Evaluation:

A. The evaluation findings in subpart 2a must be supported by current or existing data from: (1) clinically significant scores on standardized, nationally normed behavior rating scales; (2) individually administered, standardized, nationally normed tests of intellectual ability and academic achievement; (3) three systematic observations in the classroom or other learning environment; (4) record review; (5) interviews with parent, pupil, and teacher; (6) health history review procedures; (7) a mental health screening; and (8) functional behavioral assessment. The evaluation may include data from vocational skills measures; personality measures; self-report scales; adaptive behavior rating scales; communication measures; diagnostic assessment and mental health evaluation reviews; environmental, socio cultural, and ethnic information reviews; gross and fine motor and sensory motor measures; or chemical health assessments.

B. Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in subpart 2a, items A, B, and C, subitems (2) and (3). The evaluation process must show developmentally significant impairments in self-care, social relations, or social or emotional growth, and must include data from each of the following areas: two or more systematic observations, including one in the home; a case history, including medical, cultural, and developmental information; information on the pupil's cognitive ability, social skills, and communication abilities; standardized and informal interviews, including teacher, parent, caregiver, and child care provider; and standardized adaptive behavior scales. (Minn. R. 3525.1329, subp. 3.)

"Functional behavioral assessment" or "FBA" means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns. (Minn. R. 3525.0210, subp 22.)

Deaf and Hard of Hearing

A. Definition of Deaf and Hard of Hearing: 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. (34 C.F.R. § 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. (34 C.F.R. § 300.8(c)(5).)

"Deaf and Hard of Hearing" means a diminished sensitivity to sound, or hearing loss, that is expressed in terms of standard audiological measures. Hearing loss has the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services. (Minn. R. 3525.1331, subp. 1.)

B. Criteria for Deaf and Hard of Hearing: A pupil who is deaf or hard of hearing is eligible for special education instruction and related services if the pupil meets one of the criteria in item A and one of the criteria in item B, C, or D.

A. There is audiological documentation provided by a certified audiologist that a pupil has one of the following: (1) a sensorineural hearing loss with an unaided pure tone average, speech threshold, or auditory brainstem response threshold of 20 decibels hearing level (HL) or greater in the better ear; (2) a conductive hearing loss with an unaided pure tone average or speech threshold of 20 decibels hearing level (HL) or greater in the better ear persisting over three months or occurring at least three times during the previous 12 months as verified by audiograms with at least one measure provided by a certified audiologist; (3) a unilateral sensorineural or persistent conductive loss with an unaided pure tone average or speech threshold of 45 decibels hearing level (HL) or greater in the affected ear; or (4) a sensorineural hearing loss with unaided pure tone thresholds at 35 decibels hearing level (HL) or greater at two or more adjacent frequencies (500 hertz, 1000 hertz, 2000 hertz, or 4000 hertz) in the better ear.

B. The pupil's hearing loss affects educational performance as demonstrated by: (1) a need to consistently use amplification appropriately in educational settings as determined by audiological measures and systematic observation; or (2) an achievement deficit in basic reading skills, reading comprehension, written language, or general knowledge that is at the 15th percentile or 1.0 standard deviation or more below the mean on a technically adequate norm-referenced achievement test that is individually administered by a licensed professional.

C. The pupil's hearing loss affects the use or understanding of spoken English as documented by one or both of the following: (1) under the pupil's typical classroom condition, the pupil's classroom interaction is limited as measured by systematic observation of communication behaviors; or (2) the pupil uses American Sign Language or one or more alternative or augmentative systems of communication alone or in combination with oral language as documented by parent or teacher reports and language sampling conducted by a professional with knowledge in the area of communication with persons who are deaf or hard of hearing.

D. The pupil's hearing loss affects the adaptive behavior required for age-appropriate social functioning as supported by: (1) documented systematic observation within the pupil's primary learning environments by a licensed professional and the pupil, when appropriate; and (2) scores on a standardized scale of social skill development are below the average scores expected of same-age peers. (Minn. R. 3525.1331, subp. 2.)

Developmental Cognitive Disability

A. Definition of Developmental Cognitive Disability: 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. (34 C.F.R. § 300.8(c)(6).)

"Developmental cognitive disability (DCD)" means a condition resulting in significantly below average intellectual functioning and concurrent deficits in adaptive behavior that adversely affect educational performance and requires special education and related services. DCD does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or inconsistent educational programming. (Minn. R. 3525.1333, subp. 1.)

B. Criteria for Developmental Cognitive Disability: The team shall determine that a pupil is eligible as having DCD and is in need of special education instruction and related services if the pupil meets the criteria in items A and B.

A. The pupil demonstrates below average adaptive behavior in school and home, and, if appropriate, community environments. For the purposes of this item, "below average" means: (1) a composite score at or below the 15th percentile on a nationally normed, technically adequate measure of adaptive behavior; and (2) documentation of needs and the level of support required, in at least four of the seven adaptive behavior domains, across multiple environments. Systematic observation and parent input must be included as sources to document need and level of support. All of the following adaptive behavior domains must be considered: (a) daily living and independent living skills; (b) social and interpersonal skills; (c) communication skills; (d) academic skills; (e) recreation and leisure skills; (f) community participation skills; and (g) work and work related skills. Other sources of documentation may include checklists; classroom or work samples; interviews; criterion referenced measures; educational history; medical history; or pupil self-report.

B. The pupil demonstrates significantly below average general intellectual functioning that is measured by an individually administered, nationally normed test of intellectual ability. For the purposes of this subitem, "significantly below average general intellectual functioning" means: (1) mild-moderate range: two standard deviations below the mean, plus or minus one standard error of measurement; and (2) severe-profound range: three standard deviations below the mean, plus or minus one standard error of measurement. Significantly below average general intellectual functioning must be verified through a written summary of results from at least two systematic observations with consideration for culturally relevant information, medical and educational histories, and one or more of the following: supplemental tests of specific abilities, criterion referenced tests, alternative methods of intellectual assessment, clinical interviews with parents, including family members, if appropriate, or observation and analysis of behavior across multiple environments. (Minn. R. 3525.1333, subp. 2.)

Other Health Disabilities

A. Definition of Other Health Disability: 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. (34 C.F.R. § 300.8(c)(9).)

"Other health disability" means having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a pupil's educational performance. (Minn. R. 3525.1335, subp. 1.)

B. Criteria for Other Health Disability: The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criteria in items A and B.

A. There is: (1) written and signed documentation by a licensed physician of a medically diagnosed chronic or acute health condition; or (2) in the case of a diagnosis of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD or ADHD), there is written and signed documentation of a medical diagnosis by a licensed physician. The diagnosis of ADD or ADHD must include documentation that DSM IV criteria in items A to E have been met. DSM IV criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition. For initial evaluation, all documentation must be dated within the previous 12 months.

B. In comparison with peers, the health condition adversely affects the pupil's ability to complete educational tasks within routine timelines as documented by three or more of the following: (1) excessive absenteeism linked to the health condition, for example, hospitalizations, medical treatments, surgeries, or illnesses; (2) specialized health care procedures that are necessary during the school day; (3) medications that adversely affect learning and functioning in terms of comprehension, memory, attention, or fatigue; (4) limited physical strength resulting in decreased capacity to perform school activities; (5) limited endurance resulting in decreased stamina and decreased ability to maintain performance; (6) heightened or diminished alertness resulting in impaired abilities, for example, prioritizing environmental stimuli; maintaining focus; or sustaining effort or accuracy; (7) impaired ability to manage and organize materials and complete classroom assignments within routine timelines; or (8) impaired ability to follow directions or initiate and complete a task. (Minn. R. 3525.1335, subp. 2.)

C. Evaluation: The health condition results in a pattern of unsatisfactory educational progress as determined by a comprehensive evaluation documenting the required components of subpart 2, items A and B. The eligibility findings must be supported by current or existing data from items A to E:

A. an individually administered, nationally normed standardized evaluation of the pupil's academic performance;

B. documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's parent or guardian;

- C. one or more documented, systematic observations in the classroom or other learning environment by a licensed special education teacher;
- D. a review of the pupil's health history, including the verification of a medical diagnosis of a health condition; and
- E. records review.

The evaluation findings may include data from: an individually administered, nationally normed test of intellectual ability; an interview with the pupil; information from the school nurse or other individuals knowledgeable about the health condition of the pupil; standardized, nationally normed behavior rating scales; gross and fine motor and sensory motor measures; communication measures; functional skills checklists; and environmental, social cultural, and ethnic information reviews. (Minn. 3525.1335, subp. 3).

Physically Impaired

A. Definition of Physically Impaired: 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). (34 C.F.R. § 300.8(c)(8).)

"Physically impaired" means a medically diagnosed chronic, physical impairment, either congenital or acquired, that may adversely affect physical or academic functioning and result in the need for special education and related services. (Minn. R. 3525.1337, subp. 1.)

B. Criteria for Physically Impaired: A pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There is documentation of a medically diagnosed physical impairment.

B. The pupil's: (1) need for special education instruction and service is supported by a functional level in organizational or independent work skills as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or (2) need for special education instruction and service is supported by an inability to manage or complete motoric portions of classroom tasks within time constraints as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or (3) physical impairment interferes with educational performance as shown by an achievement deficit of 1.0 standard deviations or more below the mean on an individually administered nationally normed standardized evaluation of the pupil's academic achievement. (Minn. R. 3525.1337, subp. 2.)

Severely Multiply Impaired

A. Definition of Severely Multiply Impaired: Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot

be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. (34 C.F.R. § 300.8(c)(7).)

“Severely multiply impaired” means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by an evaluation as defined by part 3525.2710. (Minn. R. 3525.1339, subp. 1.)

B. Criteria for Severely Multiply Impaired: The team shall determine that a pupil is eligible as being severely multiply impaired if the pupil meets criteria for two or more of the following disabilities:

- A. deaf or hard of hearing (Minn. R. 3525.1331);
- B. physically impaired (Minn. R. 3525.1337);
- C. developmental cognitive disability: severe-profound range (Minn. R. 3525.1333);
- D. visually impaired (Minn. R. 3525.1345);
- F. emotional or behavioral disorders (Minn. R. 3525.1329); or
- G. autism spectrum disorders (Minn. R. 3525.1325). (Minn. R. 3525.1339, subp. 2.)

Specific Learning Disability

A. Definition of Specific Learning Disability: (10)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in 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) Specific learning disability 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. (34 C.F.R. § 300.8(c)(10).)

“Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The disorder is:

- A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment; and
- B. demonstrated primarily in academic functioning, but may also affect other developmental, functional, and life adjustment skill areas; and may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math. (Minn. R. 3525.1341, subp. 1.)

B. Criteria for Specific Learning Disability: Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability 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. (34 C.F.R. § 300.10.)

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 sections 300.304 through 300.306 (1) Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (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. (34 C.F.R. § 300.309(b).)

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

A. The child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to appropriate classroom instruction, and either: (1) the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, research-based intervention (SRBI); or (2) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability. The performance measures used to verify this finding must be representative of the child's curriculum or useful for developing instructional goals and objectives.

Documentation is required to verify this finding. Such documentation includes evidence of low achievement from the following sources, when available: cumulative record reviews; classwork samples; anecdotal teacher records; statewide and district-wide assessments; formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education.

B. The child has a disorder in one or more of the basic psychological processes which includes an information processing condition that is manifested in a variety of settings by behaviors such as inadequate: acquisition of information; organization; planning and sequencing; working

memory, including verbal, visual, or spatial; visual and auditory processing; speed of processing; verbal and nonverbal expression; transfer of information; and motor control for written tasks.

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

D. The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive SRBI, which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when the child's: (1) rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards; (2) progress will likely not be maintained when instructional supports are removed; (3) level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards; and (4) level of achievement is at or below the fifth percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

C. Specific Learning Disability Written Report: (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by section 300.306(a)(2), must contain a statement of (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with section 300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with section 300.309(a)(1); and (ii)(A) the child does not make sufficient progress to meet age or State-approved grade-level standards consistent with section 300.309(a)(2)(i); or (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with section 300.309(a)(2)(ii); (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; economic disadvantage; or limited English proficiency on the child's achievement level; and (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention (i) The instructional strategies used and the

student-centered data collected; and (ii) The documentation that the child's parents were notified about (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child's rate of learning; and (C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (34 C.F.R. § 300.311.)

Speech or Language Impairments

A. Definition of a Speech or Language Impairment: Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(11).)

B. Fluency Disorder: Definition of a Fluency Disorder

"Fluency disorder" means the intrusion or repetition of sounds, syllables, and words; prolongations of sounds; avoidance of words; silent blocks; or inappropriate inhalation, exhalation or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder. A pupil has a fluency disorder and is eligible for speech or language special education when: A. the pattern interferes with communication as determined by an educational speech pathologist and either another adult or the pupil; and B. dysfluent behaviors occur during at least five percent of the words spoken on two or more speech samples. (Minn. R. 3525.1343, subp. 1.)

C. Voice Disorder: Definition and Criteria of a Voice Disorder

"Voice disorder" means the absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration. Voice patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder. A pupil has a voice disorder and is eligible for speech or language special education when: A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and B. achievement of a moderate to severe vocal severity rating is demonstrated on a voice evaluation profile administered on two separate occasions, two weeks apart, at different times of the day. (Minn. R. 3525.1343, subp. 2.)

D. Articulation Disorder: Definition and Criteria of an Articulation Disorder

A. "Articulation disorder" means the absence of or incorrect production of speech sounds or phonological processes that are developmentally appropriate. For the purposes of this subpart, phonological process means a regularly occurring simplification or deviation in an individual's speech as compared to the adult standard, usually one that simplifies the adult phonological pattern. Articulation patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in item (1) and either subitem item (2), or (3):

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and

(2) test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test; or

(3) a pupil is nine years of age or older and a sound is consistently in error as documented by two three-minute conversational speech samples. (Minn. R. 3525.1343, subp. 3.)

E. Language Disorder: Definition and Criteria of a Language Disorder

A. "Language disorder" means a breakdown in communication as characterized by problems in expressing needs, ideas, or information that may be accompanied by problems in understanding. Language patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has a language disorder and is eligible for speech or language special education services when:

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child;

(2) an analysis of a language sample or documented observation of communicative interaction indicates the pupil's language behavior falls below or is different from what would be expected given consideration to chronological age, developmental level, or cognitive level; and

(3) the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available; or

(4) if technically adequate, norm-referenced language tests are not available to provide evidence of a deficit of 2.0 standard deviations below the mean in the area of language, two documented measurement procedures indicate a substantial difference from what would be expected given consideration to chronological age, developmental level, or cognitive level. The documented procedures may include additional language samples, criterion-referenced instruments, observations in natural environments, and parent reports. (Minn. R. 3525.1343, subp. 4.)

Traumatic Brain Injury

A. Definition of Traumatic Brain Injury: 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. Traumatic brain injury 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; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to

brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 C.F.R. § 300.8(c)(12).)

B. Criteria for Traumatic Brain Injury: The team shall determine that a pupil is eligible and in need of special education and related services if the pupil meets the criterion in item A and the criteria in items B and C as documented by the information gathered according to item D:

A. There is documentation by a physician of a medically verified traumatic brain injury.

B. There is a functional impairment attributable to the traumatic brain injury that adversely affects educational performance in one or more of the following areas: intellectual-cognitive, academic, communication, motor, sensory, social-emotional-behavioral, and functional skills-adaptive behavior. Examples of functional impairments which may adversely affect educational performance are:

(1) intellectual-cognitive, for example, impaired: (a) attention or concentration; (b) ability to initiate, organize, or complete tasks; (c) ability to sequence, generalize, or plan; (d) insight/consequential thinking; (e) flexibility in thinking, reasoning, or problem-solving; (f) abstract thinking; (g) judgment or perception; (h) long-term or short-term memory; (i) ability to acquire or retain new information; (j) ability to process information;

(2) academic, for example: (a) marked decline in achievement from pre-injury levels; (b) impaired ability to acquire basic skills (reading, written language, mathematics); (c) normal sequence of skill acquisition which has been interrupted by the trauma as related to chronological and developmental age;

(3) communication, for example: (a) impaired ability to initiate, maintain, restructure, or terminate conversation; (b) impaired ability to respond to verbal communication in a timely, accurate or efficient manner; (c) impaired ability to communicate in distracting or stressful environments; (d) impaired ability to use language appropriately (requesting information, predicting, analyzing, or using humor); (e) impaired ability to use appropriate syntax; (f) impaired abstract or figurative language; (g) perseverative speech (repetition of words, phrases, or topics); (h) impaired ability to understand verbal information; (i) impaired ability to discriminate relevant from irrelevant information; (j) impaired voice production/articulation (intensity, pitch, quality, apraxia, or dysarthria);

(4) motor, for example, impaired: (a) mobility (balance, strength, muscle tone, or equilibrium); (b) fine or gross motor skills; (c) speed of processing or motor response time;

(5) sensory, for example, impaired: (a) vision (tracking, blind spots, visual field cuts, blurred vision, or double vision); (b) hearing (tinnitus, noise sensitivity, or hearing loss);

(6) social-emotional-behavioral, for example: (a) impaired ability to initiate or sustain appropriate peer or adult relationships; (b) impaired ability to perceive, evaluate, or use social cues or context appropriately; (c) impaired ability to cope with over-stimulating environments, low frustration tolerance; (d) mood swings or emotional lability; (e) impaired ability to establish or maintain self-esteem; (f) denial of deficits affecting performance; (g) poor emotional adjustment to injury (depression, anger, withdrawal, or dependence); (h) impaired ability to demonstrate

age-appropriate behavior; (i) impaired self-control (verbal or physical aggression, impulsivity, or disinhibition); (j) intensification of preexistent maladaptive behaviors or disabilities;

(7) functional skills-adaptive behavior, for example, impaired: (a) ability to perform developmentally appropriate daily living skills in school, home, leisure, or community setting (hygiene, toileting, dressing, eating); (b) ability to transfer skills from one setting to another; (c) orientation (places, time, situations); (d) ability to find rooms, buildings, or locations in a familiar environment; (e) ability to respond to environmental cues (bells, signs); (f) ability to follow a routine; (g) ability to accept change in an established routine; (h) stamina that results in chronic fatigue;

C. The functional impairments are not primarily the result of previously existing: (1) visual, hearing, or motor impairments; (2) emotional or behavioral disorders; (3) developmental disabilities; (4) language or specific learning disabilities; (5) environmental or economic disadvantage; (6) cultural differences.

D. Information/data to document a functional impairment in one or more of the areas in item B, must, at a minimum, include one source from Group One and one source from Group Two:

(1) GROUP ONE: (a) checklists;(b) classroom or work samples; (c) educational/medical history; (d) documented, systematic behavioral observations; (e) interviews with parents, student, and other knowledgeable individuals.

(2) GROUP TWO: (a) criterion-referenced measures; (b) personality or projective measures; (c) sociometric measures; (d) standardized assessment measures; (academic, cognitive, communication, neuropsychological, or motor). (Minn. R. 3525.1348, subp. 2.)

Visually Impaired

A. Definition of Visually Impaired: 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. (34 C.F.R. § 300.8(c)(13).)

"Visually Impaired" means a medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interaction with the environment to the extent that special education and related services may be needed. (Minn. R. 3525.1345, subp. 1.)

B. Criteria for Visually Impaired: A pupil is eligible as having a visual disability and in need of special education when the pupil meets one of the criteria in item A and one of the criteria in item B:

A. medical documentation of a diagnosed visual impairment by a licensed eye specialist establishing one or more of the following conditions: (1) visual acuity of 20/60 or less in the better eye with the best conventional correction; (a) estimation of acuity is acceptable for difficult-to-test pupils; (b) for pupils not yet enrolled in kindergarten, measured acuity must be significantly deviant from what is developmentally age-appropriate; (2) visual field of 20 degrees or less, or bilateral scotomas; or (3) a congenital or degenerating eye condition including, for example, progressive cataract, glaucoma, or retinitis pigmentosa; and

B. A functional evaluation of visual abilities conducted by a licensed teacher of the visually impaired that determines that the pupil: (1) has limited ability in visually accessing program-appropriate educational media and materials including, for example textbooks, photocopies, ditto copies, chalkboards, computers, or environmental signs, without modification; (2) has limited ability to visually access the full range of program-appropriate educational materials and media without accommodating actions including, for example, changes in posture, body movement, focal distance, or squinting; (3) demonstrates variable visual ability due to environmental factors including, for example, contrast, weather, color, or movement, that cannot be controlled; or (4) experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition. (Minn. R. 3525.1345, subp. 2.)

Early Childhood Special Education

A. Infant and Toddler Intervention Services: Infant and toddler intervention services under United States Code, title 20, chapter 33, sections 1431, et seq., and Code of Federal Regulations, title 34, part 303, must be available to children from birth through two years of age who meet the criteria described in subpart 2. (Minn. R. 3525.1350, subp. 1.)

B. Criteria for Birth through Two Years of Age: The team shall determine that a child from birth through the age of two years is eligible for infant and toddler intervention services if:

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

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

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

(2) the child is experiencing a developmental delay that is demonstrated by a score of 1.5 standard deviations or more below the mean, as measured by the appropriate diagnostic measures and procedures, in one or more of the following areas: (a) cognitive development; (b) physical development, including vision and hearing; (c) communication development; (d) social or emotional development; and (e) adaptive development. (Minn. R. 3525.1350, subp. 2.)

C. Intervention Services: Ages Three Through Six Years: The team shall determine that a child from the age of three years through the age of six years is eligible for special education when:

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

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

(1)The child: (a) has a diagnosed physical or mental condition or disorder that has a high probability of resulting in developmental delay; or (b) has a delay in each of two or more of the

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

(2)The child's need for special education is supported by: (a) at least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the daily routine setting is not possible, the alternative setting must be justified; (b) a developmental history; and (c) at least one other evaluation procedure in each area of identified delay that is conducted on a different day than the medical or norm-referenced evaluation; which may include criterion-referenced instruments, language samples, or curriculum-based measures. (Minn. R. 3525.1351.)

Other Available Programs

Developmental Adapted Physical Education: Special Education

A. *Developmental Adapted Physical Education: Special Education:* “Developmental adapted physical education: special education” means specially designed physical education instruction and services for pupils with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for pupils age three through 21 may include development of physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports. Students with conditions such as obesity, temporary injuries, and short-term or temporary illness or disabilities are termed special needs students. Special needs students are not eligible for developmental adapted physical education: special education. Provisions and modifications for these students must be made within regular physical education. (Minn. R. 3525.1352, subp. 1.)

B. *Criteria for Developmental Adapted Physical Education:* A pupil is eligible for developmental adapted physical education: special education if the team determines the pupil meets the criteria in items A and B.

A. The pupil has one of the following disabilities in each respective criteria in parts 3525.1325 to 3525.1341, 3525.1345, and 3525.1354: autism spectrum disorders, deaf-blind, emotional or behavioral disorders, deaf or hard of hearing, specific learning disability, developmental cognitive disability, severely multiply impaired, other health disability, physically impaired, visually impaired, traumatic brain injury or part 3525.1351.

B. The pupil is determined by the team to need specially designed physical education instruction because: (1) the pupil's performance on an appropriately selected, technically adequate, norm-referenced psychomotor or physical fitness instrument is 1.5 standard deviations or more below the mean. The instrument must be individually administered by appropriately licensed teachers; or (2) the pupil's development or achievement and independence in school, home, and community settings is inadequate to allow the pupil to succeed in the regular physical education program as supported by written documentation from two or more of the following: motor and

skill checklists; informal tests; criterion-referenced measures; deficits in achievement related to the defined curriculum; medical history or reports; parent and staff interviews; systematic observations; and social, emotional, and behavioral assessments. (Minn. R. 3525.1352, subp. 2.)

Team Override on Eligibility Decisions - Documentation Required

The team may determine a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts 3525.1325 to 3525.1345, and 3525.2335. The team must include the documentation in the pupil's special education record according to items A, B, C, and D.

A. The pupil's record must contain documents that explain why the standards and procedures that are used with the majority of pupils resulted in invalid findings for this pupil.

B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of special instruction and related services. These data include for example, test scores, work products, self-reports, teacher comments, medical data, previous testings, observational data, ecological [evaluations], and other developmental data.

C. Because the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.

D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included. (Minn. R. 3525.1354, subp. 1.)

Exit Procedures

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

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from a secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. (34 C.F.R. § 300.305(e).)