HANDOUT 4

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
6.00 EVALUATION – ELIGIBILITY CRITERIA
July 2008

6.01 INITIAL EVALUATIONS

6.01.1 Each public agency must conduct a full and individual evaluation, in accordance with 34 CFR 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

6.02 REQUEST FOR INITIAL EVALUATION

6.02.1 Consistent with the consent requirements in 34 CFR 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.

6.03 PROCEDURES FOR INITIAL EVALUATION

6.03.1 General.

6.03.1.1 Evaluation procedures for initial evaluation of a child must be conducted within sixty (60) calendar days ofreceiving parental consent for the evaluation; and

6.03.1.2 Must consist of procedures -

A. To determine if the child is a child with a disability under 34 CFR 300.8; and

B. To determine the educational needs of the child.

6.03.1.3 Evaluation is defined as the data gathering process where procedures are used selectively with an individual student. It does not include basic tests administered or procedures used with all students in a school, grade, or class.

6.03.1.4 Exception. The time frame described in paragraph 6.03.1.1 of this section does not apply to a public agency, if -

A. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

B. A child enrolls in a school of another public agency after the relevant timeframe in paragraph 6.03.1.1 has begun and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR 300.8.

6.03.1.5 The exception in paragraph 6.03.1.1 of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of this evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

6.03.1.6 Screening for instructional purposes is not evaluation. 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.

6.04 EVALUATION PROCEDURES

6.04.1 Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with 34 CFR 300.503, that describes any evaluation procedures the agency proposes to conduct.

6.04.2 Each public agency must ensure that -

6.04.2.1 Assessments and other evaluation materials used to assess a child under Part B of the IDEA -

A. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

B. 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;

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

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

A. Whether the child is a child with a disability under 34 CFR 300.8 and §§2.08 and 6.09 of these regulations; and

B. The content of the child's IEP.

6.04.2.4 Any standardized tests that are given to a child -

A. Have been validated for the specific purpose for which they are used; and

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

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

6.04.2.6 Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a

single general intelligence quotient.

6.04.2.7 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).

6.04.2.8 No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

6.04.2.9 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.

6.04.2.10 In evaluating each child with a disability under 34 CFR 300.304 - 300.306 and this part of the regulations, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

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

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

6.05 DETERMINATION OF NEEDED EVALUATION DATA

6.05.1 Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the

IDEA, the IEP Team and other qualified professionals, as appropriate, must -

6.05.1.1 Review existing evaluation data on the child, including -

A. Evaluations and information provided by the parents of the child;

B. Current classroom-based, local or state, assessments, and classroom-based observations; and

C. Observations by teachers and related services providers; and

6.05.1.2 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine -

A. Whether the child is a child with a disability, as defined in 34 CFR 300.8 and §6.08 of these regulations, or, in case of a reevaluation of a child, whether the child continues to have such a disability;

B. The present levels of academic achievement and related developmental needs, and educational needs of the child;

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

D. 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.

6.05.2 Conduct of review. The group described in §6.05.1 may conduct its review without a meeting.

6.05.3 Need for additional data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under §6.05.1.

6.05.4 Requirements if additional information is not needed.

6.05.4.1 If the determination under §6.05.1 is 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 -

A. Of that determination and the reasons for it; and

B. Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational needs.

6.05.4.2 The public agency is not required to conduct the assessment described in §6.05.4.1B unless requested to do so by the child's parents.

6.05.5 Evaluations before change in eligibility.

6.05.5.1 Except as provided in paragraph 6.05.5.2 of this section, a public agency must evaluate a child with a disability in accordance with 34 CFR 300.304 through 300.311 before determining that the child is no longer a child with a disability.

6.05.5.2 The evaluation described in 6.05.5.1 of 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 due to exceeding the age eligibility for FAPE under State law.

6.05.5.3 For a child whose eligibility terminates under circumstances described in § 6.05.5.2, 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 post secondary goals.

6.06 DETERMINATION OF ELIGIBILITY

6.06.1 Upon completing the administration of tests and other evaluation measures -

6.06.1.1 Within thirty (30) calendar days, an Evaluation/Programming Conference must be conducted.

6.06.1.2 A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR 300.8, in accordance with paragraph 6.09 of this section and the educational need of the child; and

6.06.1.3 The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

6.06.2 Special rule for eligibility determination.

6.06.2.1 A child must not be determined to be a child with a disability under this part -

A. If the determinant factor for that determination is -

1. Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

2. Lack of appropriate instruction in math; or

3. Limited English proficiency; and

B. If the child does not otherwise meet the eligibility criteria under 34 CFR 300.8(a).

6.06.3 Procedures for determining eligibility and educational need.

6.06.3.1 In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR 300.8, and the educational needs of the child, each public agency must –

A. 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

B. Ensure that information obtained from all of these sources is documented and carefully considered.

6.06.3.2 If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with 34 CFR 300.320 through 300.324.

6.07 ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

6.07.1 Additional team members.

6.07.1.1 The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 CFR 300.8 and in §2.08, must be made by the child's parents and a team of qualified professionals which must include.

6.07.1.2 The child's regular teacher; or

A. If the child does not have a regular teacher, a general classroom teacher qualified to teach a child of his or her age; or

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

6.07.1.3 At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychology specialist, speech-language pathologist, or remedial reading teacher.

6.07.2 Criteria for determining the existence of a specific learning disability.

6.07.2.1 A public agency must use the State criteria adopted pursuant to 34 CFR 300.307(a) in determining whether a child has a specific learning disability.

6.07.2.2 The group described in 34 CFR 300.306 may determine that a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10), if:

A. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards;

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skill;
5. Reading fluency skills;
6. Reading comprehension;
7. Mathematics calculation;
8. Mathematics problem solving.

C. The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the are identified in 6.07.2.2A of this section, when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR 300.304 and 300.305.

6.07.2.3 The group may not identify a child as having a specific learning disability under 34 CFR 300.309(a)(1) and (2) and §6.07.2.2 if the findings are primarily the result of -

A. A visual, hearing or motor disability;

B. Mental retardation;

C. Emotional disturbance;

D. Cultural factors;

E. Environmental or economic disadvantage;

F. Limited English proficiency.

6.07.2.4 To ensure that under achievement 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 34 CFR 300.304 through 300.306 -

A. Data that demonstrates that prior to, or as a part of, the referral process, the child was provided with appropriate instruction in regular education settings, delivered by

qualified personnel; and

B. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

6.07.3 Additional requirements regarding parental consent for SLD evaluation.

6.07.3.1 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 time frames described in 34 CFR 300.301 and 300.303 and § 6.03.1.1, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1) and § 8.05 and §6.06.1 -

A. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 34 CFR 300.309(b)(1) and (2) and 6.07.2.4 A and B of this section; and

B. Whenever a child is referred for an evaluation.

6.07.4 Observation.

6.07.4.1 The public agency must ensure 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.

6.07.4.2 The group, described in 34 CFR 300.306(a)(1) and §§8.05 and 6.06.1 in determining whether a child has a specific learning disability, must decide to -

A. 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

B. Have at least one member of the team described in 34 CFR 300.306(a)(1), other than the child's regular classroom teacher, 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 34 CFR 300.300(a) is obtained.

6.07.4.3 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.

6.07.5 Specific documentation for the eligibility determination.

6.07.5.1 For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 CFR 300.306(a)(2) and § 6.05.1.3 of these regulations must contain a statement of -

A. Whether the child has a specific learning disability;

B. The basis for making the determination, including an assurance that the determination has been made in accordance with 34 CFR 300.306(c)(1);

C. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

D. The educationally relevant medical findings, if any;

E. Whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with 34 CFR 300.309(a)(1); and

the child does not make sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR 300.309(a)(2)(i); or 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 34 CFR 300.309(a)(2)(i);

F. The determination of the group concerning the effects of a visual, hearing or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

G. If the child has participated in a process that assesses the child's response to scientific, research-based intervention including the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about -

1. 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;

2. Strategies for increasing the child's rate of learning; and

3. The parents' right to request an evaluation.

6.07.5.2 Each group member must certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.

6.08 ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH EMOTIONAL DISTURBANCE

6.08.1 For students suspected of having emotional disturbance, a clinical diagnosis must be made by either a licensed psychologist or psychiatrist. A clinical diagnosis alone does not qualify a student to receive special education services.

6.08.2 The evaluation committee shall determine the adverse affect on educational performance of the emotional disturbance and the corresponding need for special education and related services. Decisions related to the need for special education services are the responsibility of the evaluation committee.

6.09 ELIGIBILITY CRITERIA

The terms used to establish eligibility criteria are defined as follows -

6.09.1 Autism

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, 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. 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 34 CFR 300.8 and at § 6.09.3 of these regulations.

6.09.1.1 A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this part are satisfied.

6.09.2 Deaf-Blindness.

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.

6.09.3 Emotional Disturbance.

Emotional disturbance means -

6.09.3.1 The term 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.

6.09.3.2 The term 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 6.09.3.1 of this section and 34 CFR 300.8(c)(4).

6.09.4 Hearing Impairment Including Deafness.

6.09.4.1 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 educational performance.

6.09.4.2 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.

A. Audiological Indicators.

1. An average pure-tone hearing loss in the speech range (500 - 2000 Hz) of 20dB or greater in the better ear. A child with a fluctuating hearing impairment, such as one resulting from chronic otitis media, is classified as hearing impaired (HI).

2. An average high frequency, pure-tone hearing loss of 35dB or greater in the better ear at two or more of the following frequencies: 2000, 3000, 4000 and 6000Hz.

3. A permanent unilateral hearing loss of 35dB or greater in the speech range (pure-tone average of 500 - 2000Hz).

4. A diagnosis of auditory neuropathy.

6.09.5 Mental Retardation.

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.

6.09.6 Multiple Disabilities.

Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), 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.

6.09.7 Orthopedic Impairment.

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by 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).

6.09.8 Other Health Impairment.

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 -

6.09.8.1 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

6.09.8.2 Adversely affects a child's educational performance.

6.09.9 Specific Learning Disability.

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

6.09.9.2 Disorders not included. 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.

6.09.10 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.

6.09.11 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.

6.09.12 Visual Impairment.

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.

6.09.12.1 Students with partial sight are those whose vision, although impaired, is still the primary channel of learning and, with adjustments, are able to perform the visual tasks required in the usual school situation. Generally, their visual acuity with correction is 20/70 or less.

6.09.12.2 Students with blindness are those with no vision or with little potential for developing vision as a primary channel for learning and, therefore, must rely upon tactile and auditory sense to obtain information.