

## SPECIAL EDUCATION ELIGIBILITY REQUIREMENTS ([34 C.F.R. § 300.306](#); GEORGIA RULE [160-4-7-.05](#))

### *Special Education Eligibility Decision Making*

LEAs<sup>1</sup> must recognize the direct and relevant relationship between a multi-tiered system of supports, Student Support Team (SST), and the individual evaluation requirements of the IDEA. Once problem-solving teams determine that a child is suspected of having a disability, a comprehensive evaluation shall be provided to the child being considered for special education eligibility. However, an eligibility determination cannot occur until the existing data are reviewed to determine whether one or more of the exclusionary factors is the determinant factor(s) for the determination that the child is a child with a disability and the child does not otherwise meet the specific eligibility criteria.

#### **All eligibility categories include the following exclusionary factors:**

- Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in section 1208(3) of ESEA or
- Lack of appropriate instruction in mathematics or
- Limited English proficiency

*\*Additional exclusionary factors exist for Specific Learning Disability (SLD)*

An eligibility determination must be made using the convergence of data from multiple sources to document each of the following:

- **achievement tests**
- **aptitude/cognitive functioning**
- **parent input**

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<sup>1</sup> Local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, including state charter schools and Georgia Department of Juvenile Justice (DJJ).

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- **teacher recommendations**
- **physical condition** (medical, motor, vision, hearing)
- **social/cultural background**
- **adaptive behavior**
- **communication/language**
- **observations by teachers and related service providers**

### ***Eligibility Determination Process***

The IDEA governs eligibility decisions with requirements regarding multi-factored assessments and the consideration of a variety of domains in placement decision making. In the federal and state rules and regulations regarding evaluations, it states that, “the child is assessed in all areas related to the suspected disability.” [34 C.F.R. § 300.304\(b\)\(4\)](#); Georgia Rule [160-4-7-.04](#). Eligibility teams should consider multiple data sources that include quantitative and qualitative data from classroom work samples, observations, and teacher and parent reports.

It is the responsibility of an eligibility team to determine which children actually exhibit the required characteristics to be considered a child with a disability. The need for support is not always parallel to the data indicating an educational impact. Therefore, collaboration among general, remedial, and special education will ensure that children who require specially designed instruction will be those who are determined to be children with disabilities. When LEAs follow the framework of a multi-tiered system of supports, all children will have access to high quality instruction and needed intense interventions.

### ***Frequently Asked Questions***

#### **What are the procedures for determining eligibility for children who transfer from another state?**

After the receiving LEA reviews the out-of-state eligibility and data, the LEA may determine that the eligibility meets Georgia Rules for eligibility and accept the eligibility determination. If the LEA needs additional data prior to making an eligibility determination, FAPE must be provided to the child while this determination is being made. In the meantime, if the child is referred for an evaluation to determine eligibility, the 60-day timeline applies.

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### **When a child transfers into the LEA from another state, is the determination of eligibility up to one individual who is reviewing the records or is it a team decision?**

Eligibility is always a team determination. However, if the child was determined eligible in another state, the team determination was already made and the receiving LEA can review the information and accept the eligibility determination. If the LEA chooses not to accept the eligibility determination, the team must refer the child for a comprehensive evaluation (subject to the 60-day timeline) to determine eligibility under Georgia Special Education Rules.

### **When a child transfers into a new LEA, and parents report that their child received special education services in the previous LEA, is the receiving LEA obligated to go on the statement of the parents when no records have been received? Can the child be placed in the general education classroom and receive needed additional supports while the records from the previous school are obtained?**

If a child with a disability has an IEP or eligibility report developed in another state or LEA and transfers to a new LEA, the new LEA, in consultation with the parent, must provide the child with FAPE. This should include services comparable to those described in the child's IEP from the previous LEA. Such services should be provided even if the child's annual review IEP or triennial reevaluation is overdue. During this time, the new LEA may choose to adopt the child's prior IEP in its entirety, including annual review date, if timely, or develop a new IEP using information from the IEP or eligibility report developed by the prior LEA and establish a new annual review date.

After taking reasonable steps to obtain the child's records from the previous LEA, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new LEA is not able to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide special education and related services to the child. However, if the new LEA decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in the IDEA or Georgia Rules would prevent the new LEA from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the LEA. See Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, Question and Answer A-2, U.S. Dep't of Educ., Office of Special Education and Rehabilitative Services (OSERS), September 2011.

If in the absence of complete or appropriate documentation, including an eligibility and timely triennial reevaluations, the new LEA decides to complete an evaluation, such evaluation is subject to the 60-day timeline.

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The least restrictive placement for children with disabilities should be the general education classroom with appropriate accommodations and supports. If a child's IEP services cannot be provided in a general education classroom, placement in other environments is also appropriate if needed for the child to receive FAPE.

**What is the timeline for accepting an eligibility from another state that the LEA feels is incomplete? If additional information is needed, can the LEA accept the eligibility and then complete the additional assessments, or is the timeline 60 days regardless of whether the eligibility is accepted or not?**

If the LEA feels that the child's eligibility is incomplete and additional information is needed to establish Georgia eligibility for special education, then the LEA should not accept the eligibility. The LEA should provide FAPE to the child while conducting a comprehensive evaluation subject to the 60-day timeline.

**Can a child have a primary disability and a secondary disability?**

Yes. A child may present with more than one disability.

**Is Intellectual Disability an exclusionary factor for determining Emotional Behavior Disorder?**

Yes. An Intellectual Disability is an exclusionary factor for Emotional Behavior Disorder; however, a team must determine whether an Intellectual Disability and Emotional Behavior Disorder exist concurrently or if the observed behaviors are a characteristic of the Intellectual Disability.

**Can a child with an articulation impairment be eligible for special education?**

Yes, as long as the articulation or other communication impairment adversely affects the child's educational performance.

**Can a gifted child be considered a child with a specific learning disability?**

Yes, a child may be gifted and also eligible for special education if the child meets the specific criteria for eligibility. See [Letter to Delisle, U.S. Dep't of Educ., Office of Special Education Programs \(OSEP\), December 20, 2013](#).

**If a child is being considered to be dismissed from special education, must an evaluation and eligibility form be completed?**

Yes. An LEA must conduct a comprehensive evaluation of a child before determining that the child is no longer a child with a disability. See [34 C.F.R. § 300.305\(e\)\(1\)](#). This does not apply to children whose eligibility is terminating due to graduation with a regular diploma or due to exceeding the age eligibility for FAPE.