

Concerns about Single Measures in Eligibility Determinations

The Department receives occasional communications of concern about children whose parents request evaluations for special education and who are told their children's "test scores are not low enough" or their "grades are too high." The Department wishes to caution public agencies about the hazards of such practices and hereby restates longstanding guidance on this topic.

1. The IDEA specifically requires districts to make a free appropriate public education available to all children with disabilities, including those who receive passing grades and advance from grade to grade. 34 C.F.R. § 300.101(c). A child earning "As" may still be eligible for special education services, if the child has a disability and needs specially designed instruction. *See generally Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369 (8th Cir. 1996) (concerning a child with physical impairments). Remember that the diagnosis is insufficient: a child must still need specially designed instruction or support services to be determined to be an eligible individual. 34 C.F.R. § 300.8(a).

2. The IDEA states eligibility determinations shall not be based on "any single measure or assessment as the sole criterion." 34 C.F.R. § 300.304(b)(2). Therefore, it would be impermissible to refuse an evaluation (or determine that a child is not a child with a disability) solely based on a child's scores on a standardized test, for example. It is permissible to consider grades or test scores as one factor in determining whether a child is suspected of having a disability or whether a child is an eligible individual; it is not permissible that these be the sole factors used to answer those questions.

3. The United States Department of Education states that "IDEA and the regulations clearly establish that the determination about whether a child is a child with a disability is not limited to information about the child's academic performance." *Letter to Clarke*, 48 IDELR 77 (OSEP 2007). As one court stated, "Education, as used within the IDEA, encompasses more than simply academics." *Cave v. East Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610, 635 (E.D.N.Y. 2007). Factors to be considered beyond academics include behavioral disorders and emotional disturbance, *see, e.g., Board of Educ.*, 49 IDELR 89 (SEA N.Y. 2007), and social and communication skills, *see, e.g., Mr. I v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007).

In summary, educational agencies must evaluate all students suspected of having disabilities, and suspicion of a disability is broader than mere considerations of test scores or letter grades.

Please feel free to contact the Department if you have additional questions about this document.