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Special Education Eligibility AND Evaluation Standards



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These standards replace the 2006 and 2015 special education eligibility standards. We gratefully acknowledge the time and resources provided to support the development of the previous and current standards.

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Release Notes

The Special Education Eligibility and Evaluation Standards (December, 2015) was revised as a whole, but with heavy revisions to Standards Two, Five, Six and Eight.

Revisions Affecting Multiple Standards

- This Standards document replaces The Special Education Eligibility Standards (2006) and Special Education Eligibility and Evaluation Standards (December, 2015).
- Emphasis was added to ensure AEAs have policies, procedures and programs that are consistent with the State policies and procedures.
- The role of RtI/MTSS was updated throughout. Particular emphasis is on clarifying that RtI/MTSS is neither general nor special education, but a process for systems to deliver appropriate instruction.
- Detail is added throughout to emphasize that a child is eligible for special education when they have a disability and need specially designed instruction which includes instruction from support services (e.g., audiology, OT, PT, speech and language etc.).¹ A child in need of only non-instructional supports or related services (e.g., transportation, accommodations, etc.) is not eligible for special education. .

Standard One - Qualified Personnel

- New section '*Required Member Attendance and Excusal*' was added to include IAC requirements.

Standard Two - Sound Data

- Assessment methods were revised to include information from 'review'. The description of comprehensive (thorough) evaluations was revised to require, in addition to other data, data from the learner's educational setting.
- Iowa Core was replaced with Iowa Academic Standards which is a larger umbrella of standards to include the required Iowa Core Standards, Iowa Early Learning Standards, Recommended Standards (i.e., fine arts, computer science and physical education) and Electives. The [Iowa Core Essential Elements](#) are the standards in place for children with significant cognitive disabilities who have already been determined eligible for special education.
- Change in requirement for progress monitoring from 'visually displayed' to 'displayed'. This change aligns to IAC.

¹ IAC r. 281 – 41.409; 41.326(2)

- New section '*Determining a Need for Specially Designed Instruction*'.
- New section '*Caution: Need for SDI and the Capacity of General Education*' was added to emphasize that special education is not a setting but instructional support and therefore teams must not limit special education to instruction that is only outside the capacity of general education.
- Additional guidance regarding IEP services that are "reasonably calculated" to confer educational benefit.
- Clarification regarding reevaluation procedures required at the conclusion of a 45 day trial out of special education or a specific special education service.
- The term *intervention integrity* was replaced by the term *implementation fidelity* so as to align to MTSS and the Specially Designed Instruction Framework. However these terms may be used interchangeably.

Standard Four – Procedural Protections

- Requirements to offer paper Procedural Safeguards Booklet and electronic options.

Standard Five - Fair, Thorough and Compliant Evaluations.

- The four assessment domains: Instruction, Curriculum, Environment, Learner (ICEL) were replaced with Setting, Curriculum, Instruction and Learner (SCIL) to align to MTSS tools. Descriptions remain the same.
- Clarification was added to the time requirements for reevaluations.
- Section '*Special Note: Use of Cut Scores*' was expanded to include limitations of discrepancy information.

Standard Six - Disability Determination

- Exclusionary factors were added to the '*What is a Disability?*' section.
- New section '*Level of Performance (Discrepancy)*'. Emphasis was added that the IDEA does NOT require a comparison to the child's potential, but to the approved age/grade level standards. Guidance was added to assure evaluation of level of performance includes consideration of the adverse effect and if the child has been provided appropriate educational experiences.
- New section '*Progress toward Age/Grade Standards (Performance over Time)*'.
- New section '*Disability Masked by Intensive/Individualized Intervention*'.
- New section '*Special Note: Evaluations for Children Suspected of Having Learning Disabilities*' outlines additional evaluation requirements.
- Adds emphasis that disability is determined on a case-by-case basis considering all sources of information gathered before and during the evaluation.

- Adds emphasis that it is inappropriate to rule out the possibility of a disability solely based on a measure of the child's level of performance.

Standard Eight - Disability-Related Need for Special Education

- Examples of SDI and general instruction are added.
- New Section '*Special Note on Accommodations*'.
- Section '*Other Considerations*' regarding reasonably prudent general education services was removed and the section was replaced by '*Caution: Need and MTSS*'. This new section describes how MTSS is a system of support and if a child benefits from instruction through MTSS, it does not preclude that the child may also be a child with a disability. Guidance is added on determining if a learner needs SDI which is also addressed in Standard Two '*Determining a Need for Specially Designed Instruction*' and Standard Six, '*Disability Masked by Intensive/Individualized Intervention*'.

Special Education Eligibility and Evaluation Standards

Authority for Eligibility and Evaluation Standards

The Iowa Department of Education (“Department”) has the legal authority to “prescribe minimum requirements for children requiring special education to be admitted” to special education instructional programs.² The Iowa Code also contains the following: “Children requiring special education may be identified in any way that the department of education determines to be reliable.”³ The Department also has the authority to “interpret the school laws and rules relating to the school laws.”⁴ Moreover, the Department has the discretion to operationalize imprecise modifiers contained in federal law, such as “significant” and “severe.”⁵

The Department is obligated to provide general supervision over district and AEA services.⁶ When providing for the education of children with disabilities, each AEA must have in effect policies, procedures and programs that are consistent with the state policies and procedures.⁷

These ten Standards are the Department’s exercise of its authority, and describe the essential elements of the process by which students are identified and evaluated for special education under the Individuals with Disabilities Education Act (“IDEA”) and state law.

Because they reflect authoritative interpretations of school laws and school rules, compliance with and attainment of these Standards will be used by the Department to determine compliance with federal and state law. Area education agencies (“AEAs”) and local educational agencies (“LEAs”) shall establish policies, procedures and practices in their districts/agencies to conform to these Standards. They are to be used in three specific situations:

1. initial eligibility determinations,
2. re-evaluations, and
3. consideration of exit from special education.

² Iowa Code § 256B.3(5)(2011)

³ *Id.* § 256B.4(3)

⁴ *Id.* § 256.9(16)

⁵ *Letter to Kotler*, 65 IDELR 21 (OSEP 2014)

⁶ 20 U.S.C. § 1412(a)(12-13)

⁷ 20 U.S.C. § 1413(a)(1)

Framework Underlying Eligibility and Evaluation Standards

These Standards provide a framework for teams to determine whether children are eligible for special education services. These Standards will provide three critical components for student success in an educational setting:

1. **A foundation for sound decisions to meaningful questions.** The Department's Standards are based on years of educational research and on the applicable law (which will be embedded throughout the Standards), all of which are focused on providing teams with the tools to support student achievement.
2. **A foundation for consistent statewide practice.** It is expected that, no matter where in Iowa a family may reside and no matter what its demographic characteristics, decisions for their child are made in conformity to these Standards. While the Department encourages public agencies (AEAs and LEAs) to attempt innovative practices, these Standards provide the boundaries for such innovation and decision-making.
3. **A foundation for monitoring and enforcing actions.** The Department will monitor AEA and LEA adherence to these Standards. Should the Department detect a failure to adhere to a Standard, it will take such actions as are required to enforce the legal requirements of these Standards. Each of these Standards provides the legal authority by which it is prescribed and the manner in which the Department will monitor its attainment.

Relationship between Eligibility Standards and Response to Intervention

These Standards, require that teams consider data gathered in the course of high-quality instruction when making special education eligibility decisions. One source of data reflecting the effectiveness of instruction and interventions is Response to Intervention (RtI).

RtI, as described in the law and the professional literature, is a proven process of using high quality, valid, and reliable data to decide whether instruction is working and to decide whether instruction needs to be changed. RtI is neither general nor special education; it is a framework and process for an education system to deliver appropriate instruction to all students.

Multi-Tiered System of Support (MTSS) is one of the frameworks Iowa uses to deliver appropriate instruction to all students. While there may be different frameworks for implementing RtI, these Standards are not dependent on a particular RtI framework.

Authority for Use of RtI. While listed as a component of specific learning disability identification in the 2004 amendments to the IDEA, there is nothing in the law that restricts the use of RtI to children suspected of having learning disabilities.⁸ The United States Department of Education has affirmed that states may permissibly use RtI as part of evaluations beyond those for learning disabilities.⁹

RtI and Eligibility Decisions. RtI data provide useful information toward special education eligibility including information about a child's: progress, discrepancy from peers, educational needs, and whether a child's low performance is due to lack of appropriate instruction (see Standard Seven).

When using RtI information during an eligibility decision it is important to be mindful of the following:

- It is not necessary for a child to participate or complete an RtI process to be suspected of having a disability.
- RtI is not a "hurdle" that must be cleared before being considered for special education.
- Although RtI data may be used to make special education decisions, RtI is not solely a special education process. Acting in that manner is neither proper nor permissible.
- The fact that a child has benefited from an intervention in the general education setting through RtI does not mean this intervention is general education. The intervention, no matter what setting it occurs, is special education if it is required to meet a child's disability-related needs.
- When using RtI information during an eligibility decision, it is important to carefully consider how the child has responded to instruction and the type and intensity of instruction needed.

Logistics. The Department may develop additional standards on RtI (instructional strategies, data quantity and quality, etc.), which will be used alongside these Standards on special education eligibility and evaluation.

The terminology used in this Standards document may vary from the terminology used in a particular RtI or MTSS document or framework. As noted above, these Standards do not depend on any one RtI framework the Department, AEA, or LEA may adopt. For these reasons, there are concepts in these Standards that may not have equivalents in any particular RtI or MTSS document, and there are concepts in these Standards that

⁸ *Letter to Zirkel*, 56 IDELR 140 (OSEP 2011)

⁹ *Letter to Clarke*, 51 IDELR 223 (OSEP 2008)

may be similar but not identical to concepts in common RtI or MTSS frameworks. Using common terms in all instances might lead to confusion between related but distinct concepts. Educators must have a clear and practical understanding of these Standards as well as any RtI or MTSS guidance the Department might issue and apply both, notwithstanding any differences in terminology.

Scope & Summary of Iowa's Eligibility Standards

These Standards describe the role that general educators assume and general education resources used before, during, and after the special education eligibility process. Special education is a collaborative process between general educators and special educators,¹⁰ and the Department has the authority to prescribe standards for evidence of progress in general education.¹¹

These Standards describe the process to determine whether a child needs special education services because of a disability, regardless of the nature or severity of the child's disability and regardless of the nature of the needed special education services. These Standards are not limited to students with academic difficulties. They are to be used for children who may need special education because of needs in any or all of the performance domains (academic, behavior, physical, health, sensory, adaptive behavior, and communication). These Standards are also to be used for children who are suspected of needing instruction from only support service providers (e.g., children who may need 'speech only' IEPs.) No child is exempt from these Standards based on the nature of the child's physical or mental condition.

These Standards apply for determining special education eligibility for children who are school-age, as well as children who are younger than school-age.

As noted above, these Standards are for use in reevaluations, including for use in instances where a child is being considered for exit from special education. For that reason, these Standards have several lengthy discussions about services provided to students who are already eligible for special education. While the eligibility question has already been answered for these children, their current performance (while receiving special education services) is directly related to their continued eligibility for special education. To that end, all IEP goals and services must be based on sound data obtained in the child's evaluation and through ongoing progress monitoring.

These Standards concern eligibility under the IDEA. There are other laws and programs that may have differing eligibility criteria (e.g., the Americans with Disabilities Act, the Rehabilitation Act's Section 504, Supplemental Security Income, Medicaid). While

¹⁰ IAC r. 281 – 41.400(2)

¹¹ *id.* r. 281 – 41.314(1)

another agency's eligibility determination under a different program may be important evidence of eligibility under the IDEA, public agencies are not bound by determinations made under different statutes.

While listed as separate Standards, the ten Standards form a coherent whole and depend on each other for their meaning. Users of this document must read the Standards together. No one Standard should receive inordinate emphasis or be removed from its proper context.

The ten Standards are as follows:

1. Qualified professionals must be part of all decisions about a child's special education eligibility.
2. All special education decisions are based on sound data.
3. When a public agency suspects that a child might have a disability that might require special education, the agency seeks parental consent for an initial evaluation.
4. Children and parents receive procedural protections whenever special education eligibility is questioned, reviewed, or established.
5. Evaluations are fair, thorough and comply with the requirements of special education law.
6. To be eligible for special education, a child must have a "disability."
7. If a child's low performance is due to lack of opportunity to learn or due to cultural or language difference, the child does not have a "disability."
8. A child's disability must cause a need for special education before the child is eligible for special education.
9. A child's evaluation determines and describes the eligible individual's special education needs.
10. If a child is eligible for special education services, the child's IEP team uses evaluation data to draft an IEP that addresses the needs identified in the evaluation.

Standard One

“Qualified professionals must be part of all decisions about a child’s special education eligibility.”

Why is this Standard important?

Educational data comes in many forms and can be quite complex; therefore, the law requires that teams include members who are capable of making sound high-stakes decisions based on sound data.

How is this Standard met?

All public agency staff members are trained in their respective responsibilities in implementing these Standards.

Public agency employees and other team members must have appropriate and current licenses to practice in their areas of service. While sufficient knowledge is required, specific credentials (beyond appropriate licensure) are not required by the IDEA¹².

If a test’s instructions require a certain level of education, experience, or licensure to administer the test or interpret its results, those instructions must be followed.

Professionals who are members of a team making decisions under these Standards must be prepared for all team meetings. This includes having reviewed the current data and having proposals concerning the educational options available for the child. If a team member is not adequately prepared, the meeting must be postponed.

Persons with knowledge of the general curriculum and persons with knowledge of the areas of suspected disability must be members of any eligibility team.

Team members must have knowledge of the child before any decisions about the child’s eligibility are made. This knowledge may be acquired by observing the child, participating in assessments, reviewing reports prepared by other professionals, or gathering data from one or more of the child’s general educators.

Public agency employees and other team members must have the skills and knowledge to use data to make decisions.

¹² *Letter to Janssen*, 51 IDELR 253 (OSERS 2008) (no requirement in IDEA that board certified behavior analyst conduct a functional assessment of behavior)

How is this Standard applied across multiple settings and situations?

The qualifications of the group depend on the status of the child whose needs are being considered.

Suspicion. Public agency personnel who understand the rules for eligibility under the IDEA, Iowa law, and these Standards will determine whether a public agency suspects that a child might be eligible for special education.

Eligibility. A group of qualified professionals (as described in this Standard and who are knowledgeable of these Standards) and the parents of the child, determine whether a child is or continues to be an eligible individual. Typically, this group contains all members listed in the rule describing the required members of an IEP team. Parents are entitled, upon request, to information about the qualifications of an evaluation team member to ensure “he or she has the appropriate knowledge regarding the child's disability.”

IEP Services. A child’s IEP team must include a parent, a person who is qualified to provide special education or to supervise its provision, a person “who can interpret the instructional implications of evaluation results” and a person who is knowledgeable about the general curriculum and about available resources. Decisions about progress, including the implications of progress data for program change or exit, are made by people with knowledge of general curriculum content, educational performance standards, interventions, and instruction.

Required Member Attendance and Excusal. A person may fill more than one role. For example, one individual could be the person knowledgeable of general curriculum and the person qualified to conduct diagnostic examinations. Teams must include the required members and may only excuse members in whole or in part from meetings when the parent and public agency consent in writing to the excusal and the member’s area of expertise/service is either not being modified/discussed or they have provided written input into the meeting.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process (e.g., interviews and file reviews), through observations, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may also use information available from the Board of Educational Examiners and other licensing

bodies (e.g., Department of Public Health) to monitor this Standard. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.211, 281 – 41.306, 281 – 41.308, and 281 – 41.321 (2014)
- *Letter to Janssen*, 51 IDELR 253 (OSERS 2008)
- *Letter to Anonymous*, 22 IDELR 637 (OSEP 1995)

Standard Two

“All special education decisions are based on sound data.”

Why is this Standard important?

Decisions about special education eligibility and services are high-stakes and important, as they are life-changing. For that reason, it is essential that teams address these weighty matters with data that are suitable in quantity and quality to these tasks.

Data are indispensable to a defensible special education system. One of the purposes of both the state and federal special education regulations is to “assess and ensure the effectiveness of efforts to educate children with disabilities.”¹³ Whether this effectiveness is measured on individual basis or some larger basis (classroom, district, AEA, state, or nation), this effectiveness must be measured with sound data.

How is this Standard met?

All decisions that concern or may relate to special education eligibility or services, including initial eligibility and continued eligibility (including exit from special education) must be based on comprehensive, valid, reliable, and objective information (i.e., “sound data”). The nature of the required information may vary based on the areas of concern; however, all areas of concern must be addressed with data. Hopes, guesses, habits, desires, assertions, demands, or conjecture must not substitute for the sound data this Standard requires.

Data must come from multiple sources. It may come from review, interviews, observations, norm-referenced or criterion-referenced assessments, or other diagnostic instruments or measures. A team must consider data that is adequate to answer a question before it, regardless of its source. A team must consider data from the learner’s educational setting (e.g., information provided by teachers, about the educational expectations, about the learner’s functioning in their educational setting). One must not disregard otherwise sound data solely because it was gathered by non-educators (e.g., parent reports of at-home behavior, statements provided by physicians).

Reasonably prudent persons may draw differing inferences from the data relating to a child’s educational performance. In that instance, public agency employees may exercise their professional judgment (subject to procedural safeguards - see Standard

¹³ 34 C.F.R. § 300.1(d)

Four). Applying professional judgment is proper when confronted with ambiguous evidence; however, professional judgment is never a substitute for sound data or evidence. If a public agency employee supports a position based on professional judgment, she must be able to articulate the data from which that judgment is formed.

If a commercially available assessment is used to gather data, the assessment's instructions must be followed or the results do not meet this Standard. If a test's instructions require a certain level of education, experience, or licensure to administer the test or interpret its results, those instructions must be followed.

How is this Standard applied across multiple settings and situations?

The soundness of data is assessed based on the context it is gathered in and its potential uses. The following general discussions illustrate how the soundness of data is assessed.

High Quality General Education Instruction. The sufficiency of data gathered during general education instruction must be judged based on standards prescribed by the Department. At a minimum, such data must be sufficient to establish differentiation in instruction and assessment to respond to learner differences, as required by the Iowa Academic Standards and the Iowa Teaching Standards.

In the early childhood setting, whether instruction is of sufficient quality will also be assessed based on the Iowa Early Learning Standards.

Research-Based Instruction and Interventions. Research-based instruction and interventions are important in all contexts. The IDEA and other laws place great weight on research-based instruction. Research-based instruction has a primary place in the Every Student Succeeds Act (ESSA), as well as the Iowa Academic Standards, Iowa Early Learning Standards and the Iowa Teaching Standards. Additionally, the IDEA requires teams to consider a student's response to scientific, research-based interventions or to other research-based procedures. Finally, all IEP services must be "based on peer-reviewed research, to the extent practicable."

Supplemental Instruction in General Education. "General Education Interventions" means efforts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. If a child receives supplemental instruction in general education, data must be documented and meet the following criteria, which are derived from Iowa's special education rules.

- Data must be gathered to describe the problem or behavior of concern.

- A meaningful and measurable goal must be selected in response to the problem or behavior of concern.
- Supplemental interventions must be selected and designed with an eye toward attaining meaningful and measurable goals. Criteria for determining whether and when instructional strategies are reconsidered must be included in the selection and design of interventions.
- Supplemental interventions must be implemented as selected and designed.
- Data must be collected during the course of the intervention, and as frequently as required to understand a child’s response to the intervention.
- Data must be visually displayed and examined to determine whether the intervention was effective and to determine further courses of action.

A goal is measurable if its attainment is described in observable terms and compared to an objective criterion. In the context of supplemental interventions, a goal is meaningful when its attainment would provide the child with such skills that the child will be able to adequately perform in the general education curriculum and environment.

Suspicion of a Disability. A public agency suspects a disability whenever it has sufficient information that would cause it, when the information is considered as a whole, to believe that a “child’s performance might be explained because the child is an eligible individual.” For more information on what constitutes suspicion, see Standard Three.

Eligibility Determinations. Eligibility decisions must be based on applying Standards Five through Nine to sound data. That data must be comprehensive (see also Standard Five), valid, reliable, and objective, and must establish a disability (see [Appendix 2](#) and Standard Six) that results in a need for special education.

Decisions about whether a child has a disability must be based on multiple sources of information and not use a single measure or criterion (see also Standard Six).

Additionally interventions that a public agency starts or continues as part of an initial eligibility determination must satisfy the following criteria (see also Iowa’s special education rules [Appendix 1](#))¹⁴.

- **Description of problem.** The description must be in “objective, measurable terms that focus on alterable characteristics of the individual and the environment” and in “a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual’s performance.” In this context, “demands” refers to the expectations applicable to all children for the

¹⁴ IAC r. 281 – 41.313

domain or domains at issue (academic, behavior, physical, health, sensory, adaptive behavior, communication).

- **Data collection and problem analysis.** Based on data, identify “interventions that have a high likelihood of success.” Use data to “plan and monitor” those interventions. “Data collection procedures shall be individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.” Data collection procedures must include multiple data points and collection methods.
- **Intervention design and implementation.** “Interventions shall be designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions.” The interventions must include “goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties.” Interventions must be implemented as originally designed. They may be modified only on the basis of objective data and with the agreement of the responsible parties.
- **Progress monitoring.** This must include “regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.” Progress data must be displayed to illustrate trends.
- **Evaluation of intervention effects.** The displays are “analyzed and summarized “to determine whether the student is responding to the intervention. The intervention design must include the method by which effects are assessed, including “decision rules” about when instructional changes or intervention modifications will be considered during the course of the intervention.

Determining a Need for Specially Designed Instruction. Instruction becomes specially designed instruction (SDI) when it is designed or selected to meet a disability-related need and is necessary for the learner to maintain or improve educational performance. Therefore, decisions about if a learner needs SDI must be made by considering a variety of sources of information, on a case-by-case basis, with consideration about the learner and the suspected disability and not based on any one factor/criterion (See also Standard Five).

When determining if instruction is adapted to meet a disability-related need, eligibility teams should gather data regarding the ongoing instructional supports the child needs to succeed in the classroom and meet expectations/grade level standards.¹⁵

¹⁵ *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017).

Teams should consider:

- **Setting.** What are the characteristics of the learning environment that best supports the learner? How similar/different is this from the age/grade educational environment? (e.g., group size, seating arrangements, structures)
- **Curriculum.** What are the standards and concepts/skills that the child needs? How similar/different is this from the age/grade expectations?
- **Instruction.** What instructional methods does the child need? (e.g., how content is best taught, practiced, reinforced, corrected) How similar/different is this from the age/grade instruction?

Additional questions teams should consider include:

- How long might these supports be needed?
- How might the child respond if the supports are removed?
- What is the degree to which the needed supports are individualized versus routinely available through differentiation?

It is unlikely a child will need special education when the child is not exhibiting unique/unusual behaviors, the child is meeting age/grade standards/expectations and teachers are not recommending additional instruction.¹⁶

Caution: Need for SDI and the Capacity of General Education. Teams must not limit special education to instruction that is only outside the capacity of general education. Special education is defined by what it is, not where or by who it is delivered. As determined by *In re A.W.*, “The delivery of specially designed instruction in a regular education classroom does not change the nature of the instruction.” Therefore, teams must not make the assumption that if the needed instruction is provided by a general education teacher it must be general education.

Periodic Reevaluations. The law requires that a reevaluation is conducted at least once every three years for each eligible individual (unless the parent and public agency agree that a three year is unnecessary). A reevaluation may also be conducted when the AEA/LEA determine that it is needed to address the needs of an eligible individual, and/or if a parent of an eligible individual requests a reevaluation. The reevaluation must determine whether the child is still a child with a disability, and the nature of the child’s special education and related service needs. In conducting those periodic reevaluations, the team must consider sound data in answering the two components of a reevaluation (continued eligibility and nature of continued needs, if any). These data

¹⁶ See, e.g., *Board of Educ. of Fayette Cty. v. L.M.*, 478 F.3d 307, 313-14 (6th Cir. 2007).

must include progress monitoring of IEP services (see above, and see Standard Ten). If an IEP service is not implemented with integrity (see below), any resulting data do not meet this Standard's requirement of soundness. If IEP services were not implemented with integrity, other data sources would be required to answer the reevaluation questions (in addition to other consequences flowing from a failure to implement an IEP).

IEP Services. An eligible individual's IEP must describe the services the public agencies will provide and the manner in which the agencies will monitor the individual's response to such services. Public agencies must provide services and monitor progress as required in the IEP. Progress must be monitored as often as needed to understand the child's response to special education services. Public agencies must provide reports of progress to parents in a manner determined by the IEP team. Public agencies must display progress data and compare those data against a target line calculated based on the child's current performance and a meaningful and measurable goal/target. The IEP is to contain "decision rules" about when instructional changes, goal changes, or continued eligibility will be examined.

In the context of IEP services, a goal is meaningful if it is "reasonably calculated" to confer educational benefit "progress appropriate in light of the child's circumstances".¹⁷ For the vast majority of children in special education, that challenging, meaningful goal will be attainment of, or substantial progress toward attainment of, standards applicable to all children of the same grade. For a small minority of children with more intense needs, a goal set to a different target may be challenging and meaningful; however, all goals must be age/grade-level referenced. If a child's team sets a goal that is not attainment of, or substantial progress toward attainment of, standards applicable to all children of the same grade, the team must have justification based on the child's individual data. While this justification is necessary, it must not inhibit teams from identifying a child's disability related needs.

Trial Placements. If a child's team questions whether the child continues to need special education or a specific special education service, the IEP team may initiate a trial placement of not more than 45 school days through the child's IEP. This is a manner by which data are gathered to answer questions about eligibility and FAPE, and the rules on trial placements provide safeguards to ensure data quality and the rights of the child and family. During the period of the child's trial placement, the public agency discontinues special education or a specific special education service (e.g., speech and language, OT, PT etc.) and gathers data about the child's performance. At the conclusion of the trial placement, the IEP team completes a reevaluation which requires the team to decide, based on the data gathered, whether to restore special education or

¹⁷ *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

a particular service, to replace or modify the special education program or service, discontinue the service, or consider exit from special education.

Exit Decision-Making. Whenever, based on a review of sound data, circumstances warrant a conclusion that a child might not need special education (because the child no longer has a disability or because the child's disability no longer requiring special education in each area of need), the child's team conducts a comprehensive reevaluation. Any reevaluation must comply with the law and with these Standards. A team will consider a reevaluation whenever the child's data is consistently above a target line that represents attaining performance that meets standards applicable to all children of the same grade. If a child meets IEP goals, the team must consider whether the child has other areas of need before exiting the child from special education.

Decision Rules. As data are collected during supplemental interventions in general education and during IEP services for children with disabilities, educators must make decisions based on these data. Teams may need to consider modifications of goals, programs, or services; to consider whether a child might need special education; or to consider whether a child might no longer need special education.

Implementation Fidelity. Only data gathered during interventions or IEP services that are implemented with fidelity meet this Standard's requirement of soundness. Implementation fidelity sometimes also referred to as intervention integrity is defined as implementation of an intervention as designed and intended (Iowa C4K Intervention System Guide). If an intervention is not implemented as intended, an individual's progress, or lack of progress, cannot be attributed to the intervention. Valid conclusions and decisions cannot be made on the basis of an intervention that is not implemented with fidelity.

If an intervention is not delivered with fidelity, it does not satisfy the law's requirements of evaluation procedures that are "technically sound," "valid," and "reliable" (see Standard Five).

Periodic checks are necessary to assure implementation fidelity. It is the team's responsibility to determine the fidelity of intervention implementation. Implementation fidelity must be demonstrated based on data accumulated during intervention and by other available information (e.g., observation by a colleague, integrity checklists), to address the elements in the preceding paragraphs. If a child doesn't respond as expected to an intervention that is appropriately matched to his/her need, it is reasonable to conclude that the intervention wasn't implemented with fidelity, unless implementation fidelity data indicates otherwise.

Data gathered during an intervention that does not meet criteria for implementation fidelity are not entitled to the great weight given to data gathered during a properly implemented intervention.

Data Collected by Entities other than the LEA and AEA. Occasionally, the team receives data to review that were collected and/or summarized by an entity other than the LEA or AEA (e.g., private evaluation, provider, etc.). The weight the team gives to those data is determined by the degree to which that data conform to the requirements of this Standard. It is rare for data from qualified professionals to not meet the threshold for consideration in eligibility and evaluation decisions. In the case when private evaluation/information is relevant to the educational concern/s teams must actively seek, discuss, and document such information alongside other sources of information gathered for the decision.

Individualized Family Service Plan (“IFSP”) Data. A team determining whether a child is eligible for an IEP must consider data gathered during services the child received under an IFSP. The weight the team gives to that IFSP data is determined by the degree to which that data conform to the requirements of this Standard.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process (e.g., interviews, file reviews), through observations, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 20 U.S.C. § 6301 et seq. (2013)
- Iowa Code ch. 256 (2013)
- Iowa Code § 279.68
- Iowa Code § 284.3
- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.1(4), 281 – 41.51(15), 281 – 41.116(7), 281 – 41.211, 281 – 41.301 through 41.314, 281 – 41.320, and 281 – 41.324 (2014)
- Education Department, Chapter 41, Adopted and Filed, 30 Iowa Admin. Bull. 713, 714 (Oct. 10, 2007)
- *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 (2017)
- *Board of Educ. v. Rowley*, 458 U.S. 176 (1982)
- *Board of Educ. of Fayette Cty. v. L.M.*, 478 F.3d 307 (6th Cir. 2007)
- *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)
- *Letter to Blodgett*, 115 LRP 5869 (OSEP 2014)
- *Letter to Clarke*, 51 IDELR 223 (OSEP 2008)
- *Letter to Zirkel*, 50 IDELR 49 (OSEP 2008)
- Iowa C4K Intervention System Guide

Standard Three

“When a public agency suspects that a child might have a disability that might require special education, the agency seeks parental consent for an initial evaluation.”

Why is this Standard important?

Special education law requires public agencies to evaluate any child who might need special education. This Standard does not require proof that a child will be eligible for special education. The key word is “might.”

How is this Standard met?

Public agencies have an obligation to locate and evaluate children who might be eligible for special education, “including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability.”¹⁸ Whenever a public agency suspects a child of being eligible, it must seek parental consent for an evaluation. A public agency suspects a child of being eligible when it “is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child’s performance might be explained because the child is an eligible individual.”¹⁹

A public agency cannot delay acting on its suspicions because it has not completed a predetermined number of “tiers” or “levels” of intervention. If it suspects a child might be eligible for special education, it must seek parental consent to evaluate the child, even if the public agency believes it would be a good idea or “best practice” to finish an intervention or do additional interventions.

How is this Standard applied across multiple settings and situations?

A public agency forms a suspicion that a child might have a disability in three common ways. Each of these indicates the child might have a condition that requires special education. There may be other ways in which a public agency’s suspicion is triggered; however, these three ways are most common. Whenever any of the following occur, or

¹⁸ IAC r. 281 – 41.111(1)

¹⁹ *Id.* r. 281 – 41.111(6)

whenever suspicion is triggered in another manner, the public agency seeks parental consent for an initial evaluation.

- 1. A Child Has A Diagnosis of an IDEA-Listed Condition, Which Has a Discernible Effect on any of the Seven Performance Domains.** If a licensed professional (i.e., physician, pediatrician, private evaluator hired by the parent, psychologist, social worker), using appropriate diagnostic methods diagnoses a child with an IDEA-eligible condition, which has any discernible effect on any of the performance domains in the child's educational environment, seek parental consent to evaluate. Please remember that the evaluation team is not required to determine that a child is eligible based solely on a medical diagnosis.

If a public agency has questions about the appropriateness of the technique underlying the private provider's diagnosis, it seeks additional information (obtaining parent release/exchange of information, when required), including consultation with other professionals of the same discipline. Please note that only in the rarest of cases will a public agency permissibly conclude that a diagnosis is unsupported by appropriate diagnostic technique. In such circumstances, the public agency must be mindful of the limits of their professional knowledge and licensure. Resolve any doubts in favor of the appropriateness of the diagnostic technique.

By "discernible," this standard means "noticeable." If the diagnosed condition has a noticeable effect on a child's performance in the child's educational environment in any one of the performance domains, then this Standard is met. The condition's effect needs not be severe or disabling. It need not be the "adverse effect" required to determine a child is eligible for special education. That would be answered post-consent. While a condition must be a disability for a child to be eligible for special education, the condition need only create a possibility to trigger the public agency's suspicion and obligation to seek consent to evaluate.

-OR-

- 2. A Child Is Not Meeting Standards And Is Unique When Compared To Peers.** A public agency suspects a child might have a disability whenever the child's performance is below the level needed to access and make progress in the general curriculum and the child is unique in the setting in their performance level. Universal screening data would provide one source of information to meet this standard. The public agency must define minimal acceptable performance.

-OR-

- 3. A Child Is Not Meeting Standards and Has Received High-Quality Supplemental Instruction.** A public agency suspects a child might have a

disability if, as part of the school's general program, it has provided the child with general instruction plus evidence-based supplemental instruction with sufficient frequency and duration and has an agency-determined number of consecutive data points below a goal line that represents the performance needed to improve to the level that would allow the child to successfully access and perform in the general curriculum. Sufficient frequency and duration is individually determined based upon the intervention provided and the needs of the child. Interventions should be designed so that a reasonable professional would expect that a child without a disability would make progress with the supplemental instruction.

Evidence-based supplemental intervention must be matched to the individual's need(s) and implemented with integrity for a sufficient period of time to allow for performance improvement. If the student's performance does not improve to the extent that this level of intervention will allow the student to adequately meet the expectations that apply to all children, the public agency seeks parental consent for evaluation. A public agency's general education program must include evidence-based supplemental interventions. If a child responds to the supplemental instruction described above, according to the design or plan of the intervention, public agencies do not suspect that the child might be a child with a disability. Public agencies use the child's intervention data to improve the general education instruction the child receives. Supplemental interventions are not a prerequisite to suspicion. If suspicion arises during the course of supplemental interventions, the public agency must seek consent even if the interventions are not finished.

Supplemental Interventions / "General Education Interventions." Since supplemental interventions (including but not limited to coordinated early intervening services) are part of each agency's general education program, a child's participation in such interventions, standing alone, does not satisfy this standard for suspicion. Since supplemental interventions are a part of each agency's general education program, the IDEA's procedural protections do not apply unless the public agency suspects a disability and/or a parent requests an evaluation (see below). A child need not complete a certain number of interventions before suspicion arises. If suspicion arises while interventions are in progress, a public agency must seek parental consent, and must not wait until the conclusion of the intervention.

Screening. Screening for instructional purposes "to determine appropriate instructional strategies for curriculum implementation" is not an evaluation and does not require parent consent. The act of screening a student, as thus described, does not create a suspicion that the student might need special education; however, screening data might create such a suspicion.

Parent Requests for Evaluations. The law is clear that a parent may request an evaluation at any time. A parent may request an evaluation in any form (orally, in

writing, by email, etc.). A public agency must establish procedures for processing parent requests for evaluations, and must ensure all staff know and follow these procedures.

If a parent requests an evaluation, the public agency must consider the parent's request and determine whether it suspects a disability. If it suspects a disability, it seeks parental consent. If it does not suspect a disability, it provides the parent a prior written notice, explaining why it does not suspect a disability. If public agency suspects that a child might have a disability, it must not attempt to convince the parent to delay the evaluation to allow the agency to try or finish interventions.

When requesting a special education evaluation, parents are not required to use specific technical terms, the terminology used or preferred by the public agency, or the terms in the public agency's forms or procedures. If the parent unambiguously requests an evaluation for special education, although not in terms used by the public agency ("I want special education testing for my child."), the public agency determines whether it suspects a disability and seeks consent to evaluate or provides a prior written notice, as the case may be.

If a parent's request is ambiguous ("I want testing for my child.") or the parent requests something that could only happen after a special education evaluation ("I want an IEP for my child."), public agencies must clarify with the parent whether the parent in fact wants a special education evaluation. Public agencies may explain, in an objective manner, the various processes to parents, and parents may elect to rephrase their request or elect to forego a request for a special education evaluation; however, public agencies must not attempt to convince the parents not to request an evaluation and must always seek consent to evaluate whenever they suspect that a child has a disability. If, after clarification by the public agency, the parent still wants a special education evaluation, the public agency determines whether it suspects a disability and seeks consent to evaluate or provides a prior written notice, as the case may be.

Reports from Outside Providers. If a parent requests an evaluation and provides a report from an outside provider, it is improper to refuse to evaluate "solely because the parent provides a medical diagnosis."²⁰ The public agency must review the outside provider's report to see if it creates, standing alone or with other evidence, a suspicion that the child might need special education because of disability.

If a public agency suspects that a child might be eligible for special education, it must not wait for a parent to request an evaluation.

Other Persons and Agencies May Not Initiate an Evaluation. Outside providers (such as physicians), other governmental agencies (such as DHS), or public agency employees

²⁰ *Letter to Williams*, 20 IDELR 1210 (OSEP 1993)

(such as teachers) occasionally request that a public agency evaluate a child for special education. The IDEA provides that only parents or LEAs/AEAs may initiate the evaluation process. Public agencies need not seek parental consent solely because a doctor, a social worker, a court officer, or a classroom teacher requested an evaluation. If such a request contains evidence that would cause a public agency to suspect a disability, then the public agency seeks consent. A classroom teacher's (or support service provider's) request for an evaluation does not create an obligation to seek consent unless the teacher (or provider) is allowed by AEA or LEA policy to act on behalf of the public agency. It is a public agency, not an individual person, which it is required to act on a suspicion.

Suspicion Must Be Based on Evidence. While the suspicion standard does not require proof that a child is eligible for special education, it does require that there be some data suggesting that the child might be eligible (see Standard Two). Suspicion must have some basis in fact, and cannot be based on unsupported conjecture.

Suspicion Is a Relaxed Standard. Suspicion is not intended to be a challenging threshold to clear. A public agency must not set a higher standard for suspicion than is described in these Standards. The determination of whether a public agency suspects a disability should not require extensive analysis, and the public agency should ordinarily be able to make this decision in a matter of days after review of existing data. After a review of existing data under this Standard, a public agency that states it needs "more data" to answer the suspicion question has operationally answered the question in the affirmative. *Resolve any doubts in favor of suspicion.* The question of whether a child is an eligible individual is answered during the evaluation.

Examples of Inappropriate Reasons to Deny Evaluations. The following statements are legally indefensible reasons to deny an evaluation or conclude no suspicion of a disability exists.

- "We do not have any universal screening data for the child."
- "The district does not have a universal screener. Until the district has adopted a universal screener for literacy, the district cannot refer a child to special education."
- "The child has missed too much school."
- "We really do not want to evaluate because the child probably will not qualify."
- "The child just moved to our district."
- "The child's score on X assessment is above the Y percentile. In this district, we do not evaluate for special education until X score is below Y."
- "The district has not sufficiently implemented MTSS. Until MTSS is up and running in the district, we cannot refer a child to special education."

- “Core instruction in the district is ‘broken.’ We cannot refer any child to special education until the Core is ‘fixed.’”
- “The special education room is full.”
- “We are past ‘count date.’ The child will not generate any funding.”

“Disability Suspect” Processes Employed by AEAs. An AEA may have a process by which it determines whether it suspects that children have disabilities under this Standard. These processes must not delay or deny a right to an evaluation. A meeting to discuss whether disability is suspected is permitted, but never legally required.

Suspicion Does Not Equal Eligibility. A child who is suspected of having a disability or who is found in a “child find” process is not automatically eligible for special education. The child’s team must evaluate the child to determine whether the child actually has a disability.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process, through observations, through data gathered for the Department’s annual performance report, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may monitor and enforce this Standard with any other means at its disposal.

The Department may demand additional information from a public agency, which the public agency must supply. The Department may build data systems for public agencies to use in universal screening and in systems of tiered interventions. The use of these data systems will be mandatory and monitored.

What is the authority for the Standard?

- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.111, 281 – 41.131, 281 – 41.211, 281 – 41.226, 281 – 41.301 through 41.302, 281 – 41.309, and 281 – 41.312 through 41.314 (2014)
- Final IDEA Regulations, Regulatory Analysis, 71 Fed. Reg. 46,539, at 46,636 (Aug. 14, 2006)
- *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011)
- *Letter to Anonymous*, 19 IDELR 498 (OSEP 1992)
- *Letter to Williams*, 20 IDELR 1210 (OSEP 1993)

Standard Four

“Children and parents receive procedural protections whenever special education eligibility is questioned, reviewed, or established.”

Why is this Standard important?

The IDEA’s procedural safeguards help ensure the IDEA’s substantive standards are met. These safeguards are crucial to achieving the IDEA’s purposes. These protections enable parents to be actively involved in their children’s education.

How is this Standard met?

One of the IDEA’s purposes is to “ensure the rights of children with disabilities and their parents are protected.” The IDEA’s numerous procedural safeguards ensure thoughtful, fully informed decisions that account for the important interests of the child, her parents, and the public agencies that serve her. Each public agency must provide the IDEA’s procedural safeguards to parents during all processes relating to a child’s eligibility. These procedural safeguards are in addition to the parents’ right to provide information in the evaluation process and the public agencies’ obligations to seek it.

How is this Standard applied across multiple settings and situations?

Procedural Safeguards Booklet. The Department has developed a procedural safeguards booklet for parents, which thoroughly describes the IDEA’s procedural protections. Public agencies must provide a copy of that booklet to parents under four conditions, one of which is whenever a child is referred for an evaluation or a parent requests an evaluation. It must be in understandable language, and public agencies must give it to parents in their native language or other mode of communication, unless clearly not feasible to do so. The public agency must provide a paper copy of the procedural safeguards to parents. An electronic (e.g., web-based) copy of the procedural safeguards is in addition to, not in lieu of, a paper copy. If the parents reject a paper copy and states they will access an electronic copy, the public agency must document that choice.

Parents may be offered a summary of the procedural safeguards, in addition to the safeguards booklet. That summary is for the parents' convenience, and is not a substitute (and must not be described as such) for the procedural safeguards booklet.

Right to Participate in Decisions. The law provides that parents are a part of all important decisions about children who are or may be eligible for special education services. Parents provide input during interventions; parents are members of groups that determine initial and continued IDEA eligibility; parents are members of IEP teams; and parents are members of teams that make placement decisions.

Public agencies must provide parents with advance notice of any meeting, and must schedule meetings at mutually agreed-upon times and locations. The public agencies and the parents may agree to conduct meetings by video conference, telephone conference, or other alternative means. A public agency must attempt to convince a parent to attend a meeting and, before holding a meeting without a parent, the public agency must document its attempts to schedule a meeting at an agreed-upon time and place. Public agencies must take all necessary steps to ensure a parent understands what happens during meetings, which may include providing interpreters.

Right to Give or Refuse Consent. The law requires parent consent for certain important public agency actions. To be valid, consent must be fully informed (including being provided in the parent's native language or other mode of communication), in writing, and voluntary. It may be revoked at any time, but revocation is not retroactive. A parent has the right to give or refuse consent for initial evaluations. A parent has the right to give or refuse consent for reevaluations that would involve new assessments. A parent has the right to grant or withhold consent for initial special education services. A parent has the right to revoke (in writing) consent to continued special education services.

If a parent refuses to provide consent for an initial evaluation or, when required, a reevaluation, the public agencies may, but are not required to, use the IDEA's dispute resolution options to override the refusal to provide consent. If a public agency does not use the IDEA's dispute resolution options in the face of a parent's refusal to provide consent, it does not violate its "child find" and evaluation obligations under the IDEA and these Standards.

If a parent refuses to give consent for initial services or revokes consent to continued services, the public agency must not provide initial services and must discontinue continued services. It must provide a prior written notice (see below) and cannot override the parent's decision by using the IDEA's dispute resolution options.

Right to Information. Public agencies are to annually notify all parents about the general education interventions that may occur during the school year. Parents are entitled to copies of evaluation reports, IEPs, and IEP progress reports. Parents also have many rights concerning their children's education records, including the right to

inspect and review those records, the right to an explanation of those records, the right to challenge the accuracy of information those records contain, and, in certain cases, the right to grant or withhold consent for those records to be shared with others.

Right to Independent Educational Evaluations. Parents are entitled to obtain an independent educational evaluation (“IEE”) when they disagree with an evaluation completed by a public agency. In most circumstances, IEEs are at public expense. Public agencies must establish reasonable criteria for IEEs. A parent is not entitled to an IEE at public expense before the public agency completes its evaluation. If a parent disagrees with a public agency’s evaluation, the parent is only entitled to one IEE at public expense in response to the evaluation with which they disagree. Teams must consider IEE data, but are not bound by data or conclusions that an IEE contains.

Right to Receive Prior Written Notices. Before a public agency proposes to or refuses to initiate or change “the identification, evaluation, or educational placement” or “provision of FAPE” to a child, it must provide written notice to the child’s parents. That notice must contain the following seven items:

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 chapter 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 the IDEA;
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 relevant to the agency’s proposal or refusal.

Prior notices must be in understandable language and provided in the parent’s native language or other mode of communication, unless clearly not feasible to do so.

The following are examples of when a public agency must give a prior written notice:

- The public agency refuses a parent’s request for an evaluation because the public agency does not suspect a disability.
- The public agency proposes to conduct an initial evaluation because it suspects a disability.

- The public agency proposes to start special education services because the child is an eligible individual.
- The public agency refuses to start special education services because the child is not an eligible individual.
- The public agency proposes to stop special education services because the child is no longer an eligible individual.
- The public agency proposes to stop special education services because the parent has given the public agency a written statement revoking consent for continued services.

Right to Use Dispute Resolution Options. A parent who disagrees with a public agency’s decision about a child’s “identification, evaluation, or educational placement” or program of FAPE may use any of the IDEA’s dispute resolution options. Those options are mediation, an IDEA state complaint, and a due process complaint (“request for due process hearing”). With certain exceptions more thoroughly described in the law and the procedural safeguards pamphlet, if a parent or public agency requests mediation or files a due process complaint, the child remains in the child’s current placement until the mediation or due process complaint is over. This is commonly referred to as “stay put.” The “stay put” rule does not apply to IDEA state complaints.

Transfer of Rights. Whenever rights have transferred to the child based on the child’s attainment of the age of majority, or otherwise provided in the IDEA, all of the rights provided to parents under the IDEA and these Standards transfer to the child. The child’s parents remain entitled to notices required by the IDEA and these Standards.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process, through observations, through data gathered for the Department’s annual performance report, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 34 C.F.R. pt. 300 (2013)
- Iowa Admin. Code rules 281 – 41.1, 281 – 41.9, 281 – 41.116, 281 – 41.151 through 41.153, 281 – 41.211, 281 – 41.300, 281 – 41.322, 281 – 41.327 through 41.328, 281 – 41.500 through 41.518, and 281 – 41.610 through 41.626 (2014)
- *Shaffer v. Weast*, 546 U.S. 49 (2005)
- *Joint Policy Memorandum*, 18 IDELR 116 (OSERS 1991)
- *Letter to Nathan*, 73 IDELR 240 (OSEP 2019)
- *Letter to Zirkel*, 52 IDELR 77 (OSEP 2008)
- *Letter to Anonymous*, 22 IDELR 637 (OSEP 1995)
- Iowa Department of Education, *Independent Educational Evaluations* (2013), available at <https://www.educateiowa.gov/documents/special-education/2013/10/independent-educational-evaluation-faq>

Standard Five

“Evaluations are fair, thorough and comply with the requirements of special education law.”

Why is this Standard important?

The law requires that special education evaluations be fair to students of all backgrounds, thorough enough to cover all areas of suspected disability, and comply with other provisions of the law. If an evaluation does not do so, in addition to not being legally defensible, the information obtained from that evaluation is unreliable and inadequate to make an eligibility determination.

How is this Standard met?

This Standard’s requirements of fairness, thoroughness, and compliance are described in that order below.

Fair. Teams conducting initial evaluations and reevaluations must attend to the child’s racial, ethnic, linguistic, and socioeconomic background to ensure that they do not identify a child for special education because of those differences. The law contains the following requirements:

- Teams must select and administer assessments and other evaluation materials “so as not to be discriminatory on a racial or cultural basis.”
- Teams must provide and administer assessments and other evaluation materials “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.”
- Teams administer assessments “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).”
- Teams, when interpreting evaluation data, “draw upon ... information about the child’s ... social or cultural background....”

An evaluation must be able to determine whether a child's performance is due to a disability, due to other factors, or both. If a child's low performance is due to factors other than a disability, the child is not eligible for special education (see Standards Six and Seven).

A child's special education eligibility is determined by the child's performance, not the child's membership in a certain demographic group. It is impermissible and unethical to determine that a child is or is not eligible for special education to attain a building-wide or district-wide quota, indicator, or performance measure. It is illegal for a public agency to state that a child will not be evaluated for special education because "there are too many children of the child's ethnicity in special education in the district."

Thorough. Initial evaluations and reevaluations must have sufficient breadth and depth to answer life-changing questions that special education evaluations pose. They must determine whether a child has a physical or mental condition ("disability", see Standards Six and Seven) and whether the child needs special education (see Standards Eight through Ten). The law contains the following requirements for thoroughness.

- An evaluation must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child" to assist in determining the following:
 - whether the child is an eligible individual under the IDEA and these Standards; and
 - the "content of the child's IEP," if eligible, "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)."
- An evaluation must include "an objective definition of the presenting problem, behaviors of concern, or suspected disability."
- The evaluation must identify and consider the child's "strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability."
- An evaluation must rely on a number of assessment tools and strategies, and must not rely on a single measure.
- Evaluation instruments must be "technically sound ... that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors...."
- Evaluation instruments must be used for "valid and reliable" purposes by "trained and knowledgeable personnel" and in accordance with the producer's instructions.

- Assessments and strategies must assess “specific areas of educational need.” They must not be “merely those that are designed to provide a single general intelligence quotient.”
- Evaluations must address “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.”
- Evaluations must include continued, new, or additional interventions “intended to resolve the presenting problem, behaviors of concern, or suspected disability.”
- Evaluations must be “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.”
- Assessment tools and strategies must “provide relevant information that directly assists persons in determining the educational needs of the child are provided.”
- The evaluation must determine the child’s “present levels of academic achievement and related developmental needs.”
- Evaluation conclusions must be based on “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.”

Information considered during an evaluation is available from four assessment methods. These are commonly referred to by the acronym RIOT (Review, Interview, Observe, Test).

- Review of existing information (both educational records and other records provided by the child’s parents)
- Interview of the child, parents, teachers, and/or service providers
- Observation of the child’s instruction in various educational settings
- Test of the child’s performance

While each child’s evaluation contents are to be determined by the team, an evaluation containing information from various assessment methods will be more likely to be free of bias, fair, and thorough.

Additionally and to ensure the comprehensiveness that the law requires, teams, in conducting evaluations (including designing and implementing interventions) consider four assessment domains: Setting, Curriculum, Instruction, and Learner. An evaluation team that attends to these assessment domains for the child’s current educational setting as well as the demands of the child’s next setting (if applicable) is more likely to

conduct a sufficiently comprehensive evaluation. These four domains are briefly described as follows:

- **Setting domain.** The setting is the environment in which instruction takes place. It includes the physical arrangement of the setting, the setting's routines and classroom management, and the interactions among and between the teacher, learner, and others in the environment. This domain also includes the interaction of the learner and the learner's out-of-school environment, such as family conditions.
- **Curriculum domain.** Curriculum is what is taught. This includes the standards and skills that are the focus of instruction, both on a short-term and a long-term basis. It also includes alignment of assessment instruments and techniques to the curriculum's standards and skills.
- **Instructional domain.** Instruction is how curriculum is taught. It includes selection and variation of teaching techniques and instructional materials.
- **Learner domain.** The learner is the individual being taught. This includes student performance data.

Further, diligent attention to these four domains will reduce the risk that a child is identified based on racial difference, cultural difference, or some other difference that is not a disability.²¹

The IDEA does not require particular tests or assessment instruments. In fact, the IDEA does not require "testing" at all, so long as an evaluation conducted with or without "testing" is sufficiently comprehensive. All methods of assessment information described above (review, interview, observation and test) may be utilized as part of an evaluation.

Compliant. All evaluations (whether initial evaluations or reevaluations) must meet the requirements of state and federal law and these Standards. Those requirements (which include requirements about fairness and thoroughness) are listed in [Appendix 2](#). Public agencies are to observe each of the requirements in [Appendix 2](#) at all times. The following areas are particular points of compliance emphasis, but this is not an exhaustive list.

- **Evaluations must be timely.** Initial evaluations must be completed within sixty (60) calendar days of obtaining consent, unless an exception applies.²² Reevaluations must be conducted at least every three years, unless the parent and

²¹ *Id.* at 36-37

²² IAC r. 281—41.301

the AEA and LEA agree that it is unnecessary.²³ Children who are not yet identified and who are subjected to certain disciplinary actions are entitled to expedited evaluations.²⁴ To perform an expedited evaluation, a public agency may be required to forego the use of RtI.²⁵

- **Evaluations must provide procedural safeguards to parents.** This includes protections related to consent, participation, and access to information (see Standard Four). Evaluations must be conducted at no cost to the parent.
- **Evaluations for children suspected of having learning disabilities must follow the additional requirements of the law.** Those requirements are found in IAC 41.307 to 41.311 (see [Appendix 1](#)). In determining whether a child has a specific learning disability, Iowa law forbids the consideration of whether a child has a severe discrepancy between ability and achievement. Iowa law requires “the use of a process based on the child’s response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability.” (See also Standard Six).
- **Evaluations for children suspected of having any disability may use RtI information.** Although RtI is listed in rules concerning learning disabilities, nothing in federal law limits RtI to the identification of children with learning disabilities. The states have the discretion to use RtI for other disability categories, and Iowa has exercised that discretion.²⁶

Special Note: Use of Cut Scores. To be identified as a child with a disability, a child’s performance must be discrepant from age/grade standards/expectations. It is illegal for a child to be determined eligible or ineligible based on a single measure or cut score or solely based on the evaluation of a child’s level of performance compared to expectations (i.e., discrepancy). There are 3 key reasons why cut scores must not be used as the primary factor in eligibility decisions.

1. State and federal law requires that all children with disabilities, “regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated.”²⁷ Using only a specific cut score does not take into consideration the fact that a child may have a less severe disability and may need special education services to meet the needs of the disability.

²³ IAC r. 281 – 41.303

²⁴ IAC r. 281 – 41.534

²⁵ Letter to Combs, 52 IDELR 46 (OSEP 2008)

²⁶ IAC r. 281 – 41.307(4)

²⁷ 34 C.F.R. § 300.111(a)(1)(i); *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)

2. Discrepancy information alone is not sufficient to determine if a child has a disability as it is not an adequate indicator of why the concern/deficit is occurring or what the learner needs to make progress.
3. A comprehensive evaluation must include an evaluation of how the condition adversely affects educational performance (see Standard Six). While evaluation of discrepancy from expectations may speak to the severity of the concern/disability, it is less informative of how the child functions in their environment and/or how the condition impacts the child's involvement in the general curriculum.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process (such as by interviews and file reviews), through observations, through secure, statewide internet-based databases, and through the Department's monitoring of the IDEA's dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.211, 281 – 41.301 through 281 – 41.313, 281 – 41.534 (2014)
- *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)
- *Letter to State Directors of Special Education*, 61 IDELR 202 (OSERS 2013)
- *Letter to Delisle*, 62 IDELR 240 (OSEP 2013)
- *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232 (OSEP 2013)
- *Letter to Hugo*, 62 IDELR 211 (OSEP 2013)
- *Letter to Zirkel*, 56 IDELR 140 (OSEP 2011)
- *Letter to Combs*, 52 IDELR 46 (OSEP 2008)
- *Letter to Clarke*, 51 IDELR 223 (OSEP 2008)
- *Letter to Baumtrog*, 39 IDELR 159 (OSEP 2002)
- *Letter to Warrington*, 20 IDELR 539 (OSEP 1993)
- *Letter to Anonymous*, 20 IDELR 542 (OSEP 1993)

Standard Six

“To be eligible for special education, a child must have a ‘disability.’”

Why is this Standard important?

A child must have a “disability,” as that term is defined by the IDEA and by state regulations, to be eligible for special education under the IDEA. If a child does not have such a disability, the child is not eligible for special education, no matter how much the child would benefit from specialized instruction.

How is this Standard met?

State and federal law make the presence of a disability a necessary condition for special education eligibility. If a child does not have a disability, the child is not eligible under the IDEA.

Broadly stated, under the IDEA a disability is a physical or mental condition that somehow limits an individual’s performance. The IDEA lists thirteen disability categories, found in [Appendix 2](#). All children who are included in this list of disability categories and who, by reason thereof, need special education, are eligible for special education, and only children included in one of the categories may be considered for special education services.

As noted in Standard Five, although RtI is listed in rules concerning learning disabilities, nothing in federal law limits RtI to the identification of children with learning disabilities. The states have the discretion to use RtI for other disability categories, and Iowa has exercised that discretion.²⁸

In Iowa, in most cases, a disability is established by comprehensive assessment that is focused on evaluating why a child responds or does not respond to quality instruction. A disability must not be inferred based solely from poor student performance, from a single assessment, or bright line threshold or cut score. Instead, a disability is established by considering multiple factors including such things as measurement error present in psychometric measures and contextual factors/circumstances that may be interfering with performance.

²⁸ IAC r. 281 – 41.307(4)

How is this Standard applied across multiple settings and situations?

What is a Disability? While the particular characteristics of each of the IDEA’s disability categories vary, all categories have the following core concepts: (1) a physical or mental condition that (2) adversely affects educational performance and (3) that is not primarily due to lack of opportunity to learn and/or cultural or language differences (see Standard Seven). In Iowa, teams use seven performance domains to analyze the “physical or mental condition” component. Those domains are:

Academic,
Behavior,
Physical,
Health,
Sensory,
Adaptive Behavior, and
Communication.

These domains correspond with the areas of functional limitation implicit in the IDEA’s thirteen disability categories. *Id.* These domains also align with the evaluation considerations listed in state rules.²⁹

Physical or Mental Condition. This term is purposefully broad, and encompasses any impairment or diagnosis, of any kind, that might have an adverse effect on educational performance and might require special education.

A Physical or Mental Condition that Adversely Affects Educational Performance. When considering if a child has a physical or mental condition that adversely affects educational performance, teams consider the child’s educational performance including the child’s: (1) level of performance compared to age/grade based standards/expectations (i.e., discrepancy from expectations) and, (2) progress toward age/grade based standards/expectations that are related to a child’s suspected disability (i.e., performance over time).

Level of Performance (Discrepancy). As part of eligibility criteria, Iowa rules³⁰ require that a child *does not achieve adequately* for the child’s age/grade level expectations or standards, when provided with learning experiences and instruction appropriate for the age/grade.³¹

²⁹ IAC r. 281 – 41.301(6)

³⁰ IAC rr. 281 – 41.307(4), 41.309(1)(a)

³¹ IAC r. 281 – 41.306(2)

When evaluating the child's achievement, teams must consider:

1. The child's level of performance in the domains of concern compared to age/grade-based standards/expectations (e.g., developmental standards, Iowa Academic Standards, etc.) in his/her educational setting. The IDEA does NOT require a comparison to the child's potential, but to the approved age/grade level standards.³²
2. If the deficit adversely affects a child's³³
 - a. meaningful involvement in age/grade level activities (academic and nonacademic),
 - b. progress in other performance areas related to the concern (e.g., a communication problem may interfere with following directions, interaction with others),
 - c. involvement in the curriculum (e.g., placement, sequence, pace etc.), or
 - d. interpersonal relationships/adjustment (e.g., adaptability, motivation, self-direction etc.).
3. If the child was provided with learning experiences and instruction appropriate for the age/grade including consideration of
 - a. opportunities to engage in age/grade-based expectations before and during the evaluation,
 - b. alignment of activities to standards/age-based expectations,
 - c. attendance/access to the instructional environment,
 - d. environmental or economic disadvantage that may impact learning, and
 - e. limited English proficiency that may impact on learning.

While there may be other patterns of evidence that support a decision about whether a child has a disability, the below are common examples.

Evidence supports the likelihood a child has a disability when the child has received learning experiences and instruction appropriate for the grade/age AND is not meeting standards

- while same age/grade peers are meeting standards, AND the deficit adversely affects the child in age/grade activities in the educational setting; or

³² *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)

³³ IAC rr. 281 – 41.50-41.51

- while his/her peers are also not meeting standards, but the child is having more areas of concern and/or intensified concerns in the educational setting compared to same grade/age peers.

Evidence supports the likelihood a child does not have a disability when

- the child is meeting expectations/standards, or
- access to appropriate instruction is the primary reason for the concern, or
- the child is part of a larger group of children that are not meeting standards and the concern is *no more intensive* than the larger group and or not impacting the child in their educational setting. This is an indication the concern may be a school-wide concern.

Additional caution and exploration of the reason for concern must occur when

- a child is receiving supports that are very individualized and/intensive and or being supplemented by intensive private intervention. In this case the supports may be masking a disabling condition.
- the child is part of a larger group of children not meeting standards and while the child's concern is more intensive/impacting them more in the educational setting, it is unclear if the child has received sufficient opportunities for instruction. Teams must evaluate to determine if the concerns are primarily the result of lack of appropriate instruction or a disabling condition.

Progress toward Age/Grade Standards (Performance over Time). In determining if a child has a disability, Iowa rules³⁴ also require that the child is not making sufficient progress to meet age/grade standards/expectations. In most cases this is determined by evaluating a child's performance over time during scientific, research-based intervention. (See Standard Two for additional requirements for research-based instruction in eligibility determination.)

While there may be other patterns of evidence that support a decision about whether a child has a disability, the below are common examples:

Evidence supports the likelihood a child has a disability when

- a child makes less progress than expected during scientific, research-based intervention and the concern is affecting the child's involvement in age/grade activities, affecting other areas/expectations, limiting his/her access to age/grade activities, affecting his/her engagement, motivation etc.; or

³⁴ IAC rr. 281 – 41.306(3), 41.309(1)(b).

- a child makes progress on a single concept/skill, but the focus was quite narrow and the child will need duplication/similar instruction across many areas of concern/concepts while same age/grade peers have moved on to more advanced concepts; or
- a child makes some progress during scientific, research-based instruction but not at a rate similar to other children receiving those same supports and the concern is affecting the child's involvement in age/grade activities, affecting other areas/expectations, limiting his/her access to age/grade activities, affecting his/her engagement, motivation etc.

Evidence supports the likelihood a child does not have a disability when

- the child makes similar or more progress than expected and is expected to reach age/grade standards/expectations in a relatively short amount of time; or
- the child makes less progress than expected but the progress is not affecting the child's involvement in age/grade activities, affecting other areas/expectations, limiting his/her access to age/grade activities, affecting his/her engagement, motivation etc.; or
- the child makes less progress than expected, but progress is similar to that of most age/grade level peers. These results support the likelihood that the child was not receiving sufficient scientific, research-based instruction; or
- the child makes less progress than expected and there is evidence that the scientific, research-based instruction was not implemented as intended.

Disability Masked by Intensive/Individualized Intervention. The full and individual evaluation must determine the educational interventions that are required to resolve the presenting problem, including whether the educational interventions are special education (IAC 281 – 41.301(6)). In the case in which a child is performing adequately, yet evaluation data suggests the child has in the past struggled to make adequate performance, teams must evaluate to answer the following key question:

Is it possible that the child's performance is being maintained/sustained because they are receiving specially designed instruction, adaptations to content, methodology or delivery of instruction designed to meet a disability-related need?

Factors the team may consider include the:

- child's performance before, during and after receiving the supports;
- degree to which the supports are individualized versus routinely available through differentiation;
- degree to which the content is aligned to the grade/age versus individualized for the child;

- intensity (i.e., duration, frequency, group size) of the supports in relation to the intensity of supports commonly provided through differentiation/remediation;
- length of time the supports will be needed; and
- performance of the child if the supports were removed.

Special Note: Evaluations for Children Suspected of Having Learning Disabilities.

When a learning disability/academic disability is suspected, evaluations must follow the additional requirements found in rules 41.307 to 41.311 (see [Appendix 1](#)).

The team must:

Use a process based on the child’s response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

Additionally Iowa rules prohibit the use of severe discrepancy between intellectual ability and achievement for determining whether a child is eligible on the basis of specific learning disability.³⁵

In addition to determining a child’s progress during scientific research-based intervention or use of other alternative research-based procedures, IAC allows, but does not require, teams to determine if a child exhibits a pattern of strengths and weaknesses relative to expectations/standards/intellectual development. The two methods of determining a child’s adequate progress are separate and independent method and teams are not required to use both methods of determining disability on the basis of specific learning disability.³⁶

Teams must choose methods that use sound data and adequately address evaluation questions. In addition to procedures specifically required for an academic disability/Specific Learning Disability, teams must also follow additional procedures required of all evaluations including evaluating to assure the determinant factor for the concern is not lack of appropriate instruction.³⁷ See also Standard Seven.

While these additional procedures are required when suspecting a learning disability, the procedures "may be used in evaluating any child suspected of being an eligible individual, if appropriate to the child's circumstances."³⁸

Necessary but Insufficient. Identifying a condition that adversely affects educational performance is a necessary but insufficient requirement to determining that the condition is due to a disability. Additionally, if a condition is identified, the condition

³⁵ IAC r. 41.307(1)(a-b)

³⁶ *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)

³⁷ IAC r. 41.306(2)

³⁸ IAC r. 41.307(3)

must *not* be primarily due to lack of opportunity to learn and/or cultural or language differences (see Standard Seven).

Disability and the “Eligible Individual ‘Label.’” In Iowa, children with disabilities are referred to as “eligible individuals” (abbreviated as EI), rather than particular labels. This is because labels, standing alone, do not provide parents and educators with information regarding instructional needs. This is also because labelling may be the basis for inappropriately restrictive placement decisions. While not requiring the use of a disability-specific label, the use of the EI “label” does not exempt the team from determining whether a child is included in one of the IDEA’s disability categories. The law clearly provides:

Classification based on disability is not required. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. 34 C.F.R. § 300.111(d).

As a condition of using a noncategorical system, Iowa’s noncategorical system must be as broad as the mandate in federal law. Iowa assures this breadth by considering the seven performance domains listed above.

While specific disability designations are rarely utilized, Iowa’s process assures that all individuals with such disabilities, as defined in IDEA, are identified and served. Statements such as “we don’t identify disabilities in Iowa” do not properly describe what the law requires. While Iowa does not require the use of “labels,” it does require children with disabilities to be identified and served. According to the United States Department of Education, “A child is entitled to FAPE under Part B and not to a particular label.”³⁹

While disability labels are not required, in very exceptional circumstances and given appropriate data, a team may decide that a child’s special education program would benefit from identifying a child based on a label.

In regards to learning disabilities/academic disabilities, while teams are required to follow the additional procedures identified above and from IAC, the eligibility team is not required to use the specific disability label and may use the Eligible Individual designation unless the child’s special education program would benefit from the specific learning disability label.

What Information is needed to Determine Whether a Child Has a Disability or Continues to Have a Disability? In determining if a child has a disability or, in the case

³⁹ *Letter to Anonymous*, 108 LRP 2293 (OSEP 2007)

of a reevaluation, continues to have a disability, the eligibility team must carefully consider all information about a child's performance drawn from a variety of sources gathered before or during the evaluation process and must base decisions on a case-by-case basis (see Standard Five). That information may come from any source and is to be considered to the degree it is sound (see Standard Two). This information may include universal screening and progress monitoring data, classroom observations, assessment results, information from outside providers, and, for children who are currently eligible individuals, IEP results. The amount and kind of information will vary based on the nature of the child's suspected disability or, for a child who is currently eligible, the child's most recent evaluation data and IEP.

It is inappropriate to rule out the possibility that a child may have a disability solely based on a measure of a child's academic achievement or level of performance compared to expectations.

Iowa law requires disability determinations to be demonstrated by progress and discrepancy. In nearly all cases, progress and discrepancy is demonstrated by intervention data. Once a team determines the child's areas of concern ("operationally defined in meaningful and measurable terms, can be monitored, and the data used to make decisions"), the team selects an intervention, or modifies an existing intervention, and monitors progress toward a meaningful and measurable goal (see Standard Two). If the child does not make progress sufficient to reduce the child's discrepancy with peers, and no exclusionary factors apply (see Standard Seven), the child likely has a disability. If the child makes progress and reduces the child's discrepancy when compared to peers, that fact weighs against finding that the child has a disability. In very limited cases, progress-and-discrepancy may be determined by other sources of data, such as medical findings. In all cases, other sources of data (e.g., outside providers) may provide information to answer this question. Please remember that a particular child's evaluation might require intervention data to answer some questions and other types of data to answer other questions. For example, a public agency suspects that a child needs special education because of a physical impairment and a learning disability. A physician statement might provide evidence that the child has a physical impairment. Intervention data, however, might provide the necessary information whether and what kind of special education the child needs because of the physical impairment, as well as whether the child has a learning disability and whether and what kind of special education the child requires because of the learning disability.

Medical Diagnoses. A medical diagnosis, standing alone, is not sufficient to establish the presence of a disability. While a diagnosis may identify a condition, it does not necessarily address "adverse effect on educational performance" or the need for special education (see Standard Nine). Under the law, teams, which must include parents, make eligibility decisions, not individual educational professionals or outside providers (physicians, therapists, university-based clinics, etc.). If the team determines a diagnosis

contains sufficient information to meet this Standard, either independently or as part of a larger body of evidence, the team determines that the child has a disability. It is impermissible to disregard a diagnosis provided by a medical source solely because it came from a medical source.

Disability Does Not Equal Need. Just because a child has a disability under this Standard does not mean the child is eligible for special education. The child must have a need for special education caused by the child’s disability (see Standard Nine).

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process (such as by interviews and file reviews), through observations, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may also use information available from the Iowa Board of Educational Examiners and other licensing bodies (e.g., the Iowa Department of Public Health) to monitor this Standard. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 34 C.F.R. § 300.111 (2013); *see generally* 34 C.F.R. pt. 300
- Iowa Administrative Code rules 281 – 41.111, 281 – 41.211, 281 – 41.306, 281 – 41.308, and 281 – 41.321 (2013)
- *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)
- *Joint Policy Memorandum*, 18 IDELR 1210 (OSERS 1993)
- *Letter to Anonymous*, 108 LRP 2293 (OSEP 2007)
- *Letter to Sawyer*, 30 IDELR 540 (OSEP 1998)
- *Letter to Brooks*, 22 IDELR 888 (OSEP 1995)
- *OSEP Policy Letter*, 22 IDELR 637 (OSEP 1995)
- *Letter to Fazio*, 21 IDELR 572 (OSEP 1994)
- *Letter to Williams*, 20 IDELR 1210 (OSEP 1993).

Standard Seven

“If a child’s low performance is due to lack of opportunity to learn or due to cultural or language difference, the child does not have a ‘disability.’”

Why is this Standard important?

Special education is for children with disabilities. Children with low performance caused by something else are not eligible for special education. If lack of opportunity to learn or disadvantage causes a child’s low performance, the child is not entitled to special education services.

How is this Standard met?

Special education is not a “remedial program” or “initiative” for all students with low performance. State and federal law demand that, to be eligible for special education, a child must have a disability that requires special education. If something other than a disability causes a child’s low performance, the child’s low performance is not addressed with special education services or resources. It is to be addressed with other means.

How is this Standard applied across multiple settings and situations?

The law’s requirements. If, during the evaluation process, a team concludes that the “determinant factor” for the child’s perceived need for special education is any one of these three things, the child does not have a disability.

- lack of appropriate instruction in reading, including the essential components of reading instruction;
- lack of appropriate instruction in mathematics; or
- limited English proficiency.

Also, a child is not eligible if the child’s performance is “primarily the result of,” among other things “cultural factors” or “environmental or economic disadvantage.” Finally, as noted in Standard Five, evaluations must not have racial or cultural bias and must be “provided and administered in the child’s native language or other mode of communication ... unless it is clearly not feasible to do so.”

Lack of “Appropriate” Instruction. Whether a child was in school and received instruction from suitably licensed teachers (or for young children received age appropriate opportunities from home/ daycare/ preschool) are just two pieces of evidence to consider when determining whether a child received appropriate instruction. Appropriate instruction is more than teacher licensure. It includes whether curriculum, instruction, and assessment are (1) based on sound educational research and (2) in alignment with each other and with state standards. It is possible that a child could have been in school and been taught by a licensed teacher but still not received appropriate instruction. If the threshold of appropriateness is not reached, and this causes the need for special education, the child is not eligible. It is impermissible to determine that a child received appropriate instruction to avoid raising difficult questions with teachers or to avoid giving offense. The Iowa Teaching Standards provide a useful framework for determining whether instruction provided was appropriate.

If a child suspected of having a disability responds to appropriate instruction during the evaluation process, the child’s low performance is caused by lack of appropriate instruction. The United States Department of Education cautions against “watering down a focus on appropriate instruction.” It further states that appropriate instruction cannot be presumed, providing:

Schools must have current, data-based evidence to indicate whether a child responds to appropriate instruction before determining that a child is a child with a disability. Children should not be identified as having a disability before concluding that their performance deficits are not the result of a lack of appropriate instruction. (Emphasis added.)

Examples. Children can exhibit low performance due to factors such as not being in school, moving frequently, or lacking exposure to content that other children learn at home or in school settings. Children who are given general instruction plus research-supported supplemental instruction, and who make progress toward the standards that apply to all children, may have lacked opportunity to learn but are not disabled. They are not part of the class protected by IDEA. Three examples illustrate this concept.

1. A public agency suspects that a child who does not speak English has a disability. The child receives supplemental instruction, including instruction in the child’s native language. The child does not respond to the supplemental instruction. The child’s poor performance is not based on the child’s lack of English knowledge. The child’s lack of English is not a “determinant factor” under the law. With enough other information, the team could conclude this child had a disability.
2. A public agency suspects that a child who does not speak English has a disability. The child receives supplemental instruction, including instruction in the child’s

native language. The child partially responds to the supplemental instruction, but not at a rate that would be expected when the intervention was selected or designed. The child's poor performance is partially based on the child's lack of English knowledge and partially based on a disability. The child's lack of English is not a "determinant factor" under the law. With enough other information, the team could conclude this child had a disability.

3. A public agency suspects that a child who does not speak English has a disability. The child receives supplemental instruction, including instruction in the child's native language. The child responds to the supplemental instruction at a rate that would be expected when the intervention was selected or designed. The child's poor performance is based on the child's lack of English knowledge. The child's lack of English is a "determinant factor" under the law. The team cannot conclude this child has a disability.

Attendance and "Appropriate Instruction." Attendance may be an important factor in determining whether a child's performance is predominantly due to lack of appropriate instruction in reading or in mathematics. A poor attendance record, standing alone, is not determinative of this question. Additionally, a child may be below compulsory attendance age and not enrolled in school or in other early learning opportunities. Further examination of the child's data is required. While poor attendance may mean the child did not receive appropriate instruction in reading and mathematics, a child with poor attendance could still be determined eligible. Please note that perfect attendance is no guarantee that a child has received appropriate instruction. If lack of appropriate instruction is the predominant factor for this child's poor performance, then the child is not eligible. If, however, the child did not respond to instruction during the evaluation period, the child's poor attendance is likely not the predominant factor for this child's poor performance. With enough other information, the team could conclude this child has a disability.

No Data Demonstrating "Appropriate Instruction." If there are no data demonstrating that a child received appropriate instruction, the function of the evaluation is to fill that gap. Provide the child with appropriate instruction during the evaluation process and gather data to answer the questions in this Standard. It is impermissible to conclude the child is not eligible solely because there are no currently existing data demonstrating appropriate instruction.

Disproportionality. The Department monitors each district and LEA for disproportionate representation of racial and ethnic groups in special education, and takes action whenever the law requires. The social science literature demonstrates that, as a whole, educators typically wait longer and for greater discrepancies of performance before seeking a special education evaluation for children of color. One way to guard

against disproportionate representation is to use universal screening data and early interventions, and administer them in an objective manner.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this Standard through the LEA and AEA accreditation process (such as by interviews and file reviews), through observations, through secure, statewide internet-based databases, through the AEA and LEA determination process, and through the Department's monitoring of the IDEA's dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- Iowa Code § 284.3 (2013)
- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.173, 281 – 41.211, 281 – 41.304, 281 – 41.306, 281 – 41.309, and 281 – 41.646 (2014)
- Final IDEA Regulations, Regulatory Analysis, 71 Fed. Reg. 46,539, at 46,646 & 46,656 (Aug. 14, 2006)

Standard Eight

“A child’s disability must cause a need for special education before the child is eligible for special education.”

Why is this Standard important?

To be eligible for special education, the law requires more than a finding that a child has a disability. The law requires that the child needs special education because of the child’s disability.

How is this Standard met?

To be eligible for special education or, in the case of a reevaluation, to remain eligible, a child must need special education because of a disability. Special education is defined as specially designed instruction (SDI) to meet a child’s unique needs. Specially designed instruction is adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

1. to address the unique needs of the child that result from the child’s disability; and
2. to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

In addition to specially designed instruction, special education includes instruction from support service providers (e.g., speech and language, OT, PT, etc.), and instruction in physical education, vocational education, and travel training.

“Adapting” Content, Methodology, or Delivery. Determining if a child needs SDI must be based on a case-by-case basis. The adaptation is special education if it is instruction designed or selected to meet the disability-related needs of an individual learner AND necessary for the learner to maintain or improve performance. For a child with a disability, individualized instruction planned for a particular student may constitute special education, when educational performance would be negatively affected in its absence.

Not every adaptation, alteration or modification of content, methodology or delivery of instruction is special education.

If the adaptation is part of the general curriculum’s allowance for the differing needs of diverse learners, it is part of the general curriculum. The Iowa Academic Standards and the Iowa Teaching Standards recognize that learners have diverse needs, and require teaching for learner differences. For example, a classroom teacher uses flexible learning groups in third grade math and provides additional instruction and gives a supplemental worksheet to the group that is not currently making progress. That additional time and supplemental material, being part of the general curriculum and directed to a group, rather than an individual, is not specially designed instruction. Differentiated instruction in the general education environment is not special education. Similarly, interventions/remedial programs that provide nondisabled students with leveled, repeated or slower paced instruction being a part of the general curriculum, are not specially designed instruction.⁴⁰

Additionally, special education does not include non-instructional adaptations such as accommodations including transportation, large-print books, special seating, removal of time restraints, checks for understanding, chunking assignments, and assessments in a small group setting.⁴¹

The fact that not every adaptation of instruction automatically equals special education is borne out by the text of the IDEA itself. For example, the IDEA authorizes LEAs to use Part B funds to provide coordinated, early intervening services to children without disabilities with needed “additional academic and behavioral support to succeed in the general education environment.”⁴² If any educational support, regardless of its nature, was specially designed instruction as a matter of law, then this provision of the law would be superfluous.

Examples.

1. A public agency is completing an evaluation for a child. During general education interventions, the child makes progress, but the child’s performance is poor when supports are removed. *Review of the interventions find the school has individualized several supports based on the learner’s needs and performance was poor when these individualized supports were removed.* With enough other information, the team could conclude the child has a disability and need for special education. Upon eligibility for special education these individualized supports become the learner’s specially designed instruction even though they continue to be provided in the general education setting.
2. A public agency is completing an evaluation for a child. During general education interventions, the child makes progress, but the child’s performance is

⁴⁰ *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)

⁴¹ IDEA Due Process Hearing Decision, 28 D.o.E. App. Dec. 419, 2018

⁴² 20 U.S.C. § 1413(f)

poor when supports are removed. *Review of the interventions find that the instructional supports included additional practice of new concepts and that this support is routinely in place for up to 30% of students and not specifically designed for the child in question.* With enough other information, the team could conclude the child does not have a disability or need for special education, but continued need to receive general education interventions.

Special Note on Accommodations. While accommodations, as noted above, are not in themselves special education, if those accommodations are needed because of a disability and the child is eligible for special education services, the IEP team must include the necessary accommodations in the child’s IEP.⁴³

Caution: Need and MTSS. MTSS is a school-system wide process for educating all students – from the highly gifted to those with severe disabilities. MTSS uses evidence-based instruction, universal screening, instructional interventions and data-based decision making (such as progress monitoring) to ensure that all students receive instruction and supports necessary to meet their needs. If a child benefits from instruction through MTSS, it does not preclude that the child may also be a child with a disability. Therefore, in determining if a learner needs SDI, eligibility determination teams should ask:

1. Does the learner have a disability?
2. If so, does the learner need specially designed instruction (adaptations to content, methodology or delivery) to meet their disability-related needs?

When evidence supports both of these questions, the learner is an eligible individual under IDEA and his/her specially designed instruction must be provided in the setting that best meets her/his needs. This decision begins with consideration of placement in the general education setting (and for preschool-age children the setting they would be in if they were not disabled).

For additional guidance on determining a need for SDI, also see Standard Two and Standard Six.

Adverse Effect and Need are Not Equivalent. The “adversely affecting educational performance” portion of the law is a component of the “disability” eligibility prong. “Need” is a separate eligibility prong. To equate an adverse effect to “need for special education” would be to fuse two statutory requirements into one. This would impermissibly fail to give meaning to all terms in the law. To need special education is to need adaptation of “content, methodology, or delivery” to access the general curriculum and to meet standards applicable to all children. A child could have a

⁴³ IDEA Due Process Hearing Decision, 28 D.o.E. App. Dec. 419.

disability (condition that adversely affects educational performance) yet not need special education if that child met standards applicable to all children.

Examples.

1. A child with ADHD (a physical or mental condition) has challenges in school (adverse effect) but meets the standards applicable to all children with supports available in the general education curriculum and universal instruction. That child, having no need for specially designed instruction or support services (e.g., speech, OT, PT etc.), is not eligible.
2. A child with bipolar disorder who is meeting all of the public agency's standards in all performance domains is not eligible, even though the child has a diagnosis and may receive services from a private provider.

If these children needed specially designed instruction or support services (e.g., speech and language, OT, PT etc.) to meet standards applicable to all children in any performance domain, due to their ADHD and bipolar disorder, respectively, they would be eligible.

Access to the General Curriculum. The definition of specially designed instruction requires adapting content, methodology, or delivery to access the general curriculum. All children who receive special education must have access to content aligned with or referenced to the general curriculum. The law permits activities in addition to the general curriculum to address additional needs (e.g., expanded curricula for students who are deaf or blind). The degree of alignment to the general curriculum will vary based on the unique needs of each child with a disability. The law does not permit a parallel curriculum in lieu of the general curriculum.

“Regardless of the Severity of Disability”. State and federal law requires that all children with disabilities, “regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.”⁴⁴ It is impermissible to say a child is ineligible because their impairment is minor.

Examples.

1. A child with a relatively minor impairment who, because of that impairment, fails to meet standards applicable to all children and needs adaptations to address the disability, is eligible under the IDEA.

⁴⁴ 34 C.F.R. § 300.111(a)(1)(i)

2. A child with a relatively minor impairment who meets standards applicable to all children without the need for special education and related services is not eligible.

Even children with relatively major impairments are not eligible if those children meet standards applicable to all children without the need for special education and related services.

Need Must Be Caused By Disability. Just because a child has a disability and need does not mean the two are related. The law states that a need for special education must be caused by a disability. If the child's disability does not cause the child's need for specially designed instruction, or the child needs extra help but has no disability, the child is not eligible. For example, a child with ADHD is not meeting standards; however, the child's failure to meet standards is due to the child's lack of appropriate instruction because of family mobility and frequent school changes. The child is not eligible.

Need is Broader than Proficiency in Reading and Math. A child could need special education, even though the child meets the agency's academic standards. The Iowa Academic Standards are broader than reading and math, and includes items such as "employability skills" and "health literacy." Additionally, public agencies have standards, whether or not they are expressed, in all of the performance domains (Academic, Behavior, Physical, Health, Sensory, Adaptive Behavior, and Communication). If a child has needs for special education or support services (e.g., OT, PT, Speech and Language) because the child does not meet a standard in one of the seven performance domains, that child is eligible even if the child meets or exceeds academic standards. For example, consider a child who is proficient in reading and mathematics and is earning passing grades; however, the child has a physical impairment and needs different physical education instruction. The eligibility inquiry for this child cannot be limited to the child's proficiency and acceptable grades in reading and mathematics.

Child with Deteriorating Performance Caused by a Physical or Mental Condition. On rare occasions, a child's performance is above age/grade standards but it is deteriorating to such an extent that the child's performance will certainly and consistently fall below standards. If that deterioration is caused by a physical or mental impairment, a team may determine that the child is eligible for special education. This decision would be based on a determination, following an evaluation conforming to the law and these Standards, that adaptation of content, methodology, or delivery of instruction was required (1) to prevent the child from falling below standards, (2) to delay the child from falling below standards, or (3) to teach skills that would be difficult or impossible to teach after the child's performance had deteriorated beyond a certain point.

Examples.

1. A team may determine a child who is above age/grade standards, but has deteriorating performance due to a degenerative sensory impairment (i.e., a physical condition that will cause blindness or deafness), is eligible for special education. The team could decide to adapt the child's content, methodology, or delivery of instruction to address the child's impending sensory impairment.
2. A team may determine a child who once was above age/grade standards, but now has deteriorating performance, is not eligible for special education because the child's deteriorating performance is caused by lack of appropriate instruction or other disadvantage. This paragraph is not intended to apply to all instances of poor performance in general education. For the vast number of children with declining performance, coordinated early intervening services or other supports in general education will be sufficient.

Need Masked By Outside Extra Help. In certain circumstances, the fact that a child meets standards applicable to all children without special education is due to outside assistance provided or obtained by the child's parents. The United States Department of Education has repeatedly provided the following guidance.

Moreover, it has been the Department's long-standing position that, in general, it would be appropriate for the evaluation team to consider information about outside or extra learning support provided to the child to determine whether the child's current academic achievement reflects the service augmentation, and not what the child's achievement would be without such help.

In situations such as this, the evaluation team is to consider whether the child would meet standards without the extra supports. Without the extra supports and when considering all evaluation data, would the child meet standards applicable to all children? If not, then the child is eligible. If yes, the child is not eligible. If the extra supports cause the child to exceed the standards applicable to all children and the child would meet the standards without the extra supports, then the child is not eligible.⁴⁵

Giftedness and Need. A child who is gifted and has a disability that requires special education is eligible. It is illegal to exclude children from special education solely because of their giftedness. For example, a child who is academically gifted but has depression (disability) and does not meet standards due to depression-related absenteeism is eligible. A child who is academically gifted, has a learning disability, and is not attaining academic standards applicable to all children is eligible. A child who is academically gifted and has a learning disability but who is attaining standards

⁴⁵ *Letter to Anonymous*, 55 IDELR 172 (OSEP 2010)

applicable to all children without the need for special education and related services is not eligible.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this Standard through the LEA and AEA accreditation process (e.g., interviews, file reviews), through observations, through secure, statewide internet-based databases, and through the Department's monitoring of the IDEA's dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- Iowa Code ch. 256B
- 34 C.F.R. § 300.111; see generally 34 C.F.R. pt. 300
- Iowa Administrative Code rules 281 – 41.8, 281 – 41.39, 281 – 41.301 through 41.314
- *Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369 (8th Cir. 1996)
- *IDEA Due Process Hearing Decision*, 28 D.o.E. App. Dec. 419 (2018)
- *In re A.W.*, 28 D.o.E. App. Dec. 81 (2017)
- *Dear Colleague Letter*, 61 IDELR 172 (OSERS 2013)
- *IDEA Due Process Hearing Decision*, 28 D.o.E. App. Dec. 419 (2018)
- *Letter to Delisle*, 62 IDELR 240 (OSEP 2013)
- *Letter to Anonymous*, 55 IDELR 172 (OSEP 2010)
- *Letter to Sawyer*, 30 IDELR 540 (OSEP 1998)
- *Letter to Ulissi*, 18 IDELR 683 (OSEP 1992)

Standard Nine

“A child’s evaluation determines and describes the eligible individual’s special education needs.”

Why is this Standard important?

Aside from determining whether a child is eligible for special education, the evaluation process is to determine the nature of the child’s special education needs. If a child needs special education, the evaluation describes what those needs are.

How is this Standard met?

For children who are determined eligible for special education, the data and conclusions in the evaluation report become the platform upon which the IEP is constructed. The evaluation report must provide useful information for the IEP team. The law requires each initial evaluation and reevaluation to determine the child’s educational needs. According to the United States Department of Education, this refers to the “nature and extent” of the child’s special education needs.

Furthermore, the evaluation must be sufficiently comprehensive to identify all of the child’s needs “whether or not commonly linked to the disability category” associated with the child. For example, if a child was initially suspected of needing special education because of a behavior disorder, the evaluation cannot be confined to the child’s behavior needs, but must consider all other possible areas of need to which the data point.

If a child is found to need, because of a disability, adaptations in “content, methodology, or delivery of instruction” to access the general curriculum and meet the standards applicable to all children, the evaluation report is to describe those adaptations in instruction or support services. Additionally, the evaluation report is to describe the related services, supplementary aids and services, and program accommodations and modifications required by the child’s individual needs.

To attain this Standard, the description of need in an evaluation report must:

- determine the skills the child needs to be taught to access the general curriculum and attain standards applicable to all children,

- summarize what was learned about the amount of and type of research-supported strategies that were implemented,
- indicate specific interventions and strategies that worked or did not work, and
- describe the instructional modifications and services or accommodations that may be needed to access the general curriculum and attain standards applicable to all children.

The evaluation report must be useful to the IEP team when it selects services and strategies and makes resource commitments. Conclusory statements that a child “needs special education,” “needs more support than general education can provide,” or “needs resource room support,” for example, are insufficient to meet the law’s requirement that the “nature and extent” of the child’s needs be described.

Additionally and as to the final conclusory statement in the previous paragraph, please note that the child’s special education placement must never be made during the evaluation process. A child’s placement may be determined only after the child’s IEP is written, which occurs after the evaluation is complete.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this Standard through the LEA and AEA accreditation process (e.g., interviews, file reviews), through observations, through the AEA and LEA determination process, through secure, statewide internet-based databases, and through the Department’s monitoring of the IDEA’s dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply. The Department may monitor and enforce this Standard with any other means at its disposal.

What is the authority for the Standard?

- 34 C.F.R. pt. 300 (2013)
- Iowa Administrative Code rules 281 – 41.116, 281 – 41.211, 281 – 41.301, 281 – 41.304 through 41.305 (2014)
- Final IDEA Regulations, Regulatory Analysis, 71 Fed. Reg. 46,539, at 46,640 (Aug. 14, 2006)

Standard Ten

“If a child is eligible for special education services, the child’s IEP team uses evaluation data to draft an IEP that addresses the needs identified in the evaluation.”

Why is this Standard important?

Parents, children, and public agencies invest a significant amount of time and energy in determining special education eligibility. The IEP addresses needs identified in the written evaluation.

How is this Standard met?

For a child who is determined to be eligible, the child’s IEP team uses the evaluation data to draft an IEP containing measurable goals to address each of the child’s needs (see Standard Nine), which are aligned to the general curriculum and which contain rules for monitoring the child’s progress toward those goals.

How is this Standard applied across multiple settings and situations?

An eligible individual’s IEP services and supports are to align to the standards expected of all students. For most students with disabilities, their IEPs should contain goals of attaining grade level standards. When a child’s data provide a child-specific justification, that child’s IEP goals may be something other than attainment of grade level standards applicable to all children. This would occur in a small minority of cases. That small minority of students must still have meaningful goals, which are referenced to grade-level expectations.

The goals and services described in the IEP must be “based on peer-reviewed research, to the extent practicable.” (See Standard Two).

The instruction and supports described in an initial IEP, taken as a whole, should be different in kind, intensity, or both in comparison to the instruction and interventions provided by the general program or to the instruction and interventions provided in the evaluation process.

The public agency will gather progress monitoring data and apply the decision-making rules contained in the IEP to that data. Changes in the instruction and supports in a student’s IEP are based on valid, reliable and objective information (see Standard Two).

A child's IEP data are used whenever that child's continued eligibility is considered. The child's team considers all relevant information related to a student, including the student's progress, given the general program plus special education services and supports, and determines whether

- the student continues to need special education (i.e., whether the instruction and supports described in the IEP, taken as a whole, are more intensive than the instruction and interventions that can be provided by the general program, and
- if the student continues to need special education, whether changes to special education services and supports are needed.

In addition to meeting the requirements of these Standards, an IEP must meet other state law and guidance, including those articulated in Iowa's Guidance for Quality IEPs.

How will the Department monitor attainment of this Standard?

The Department will monitor this Standard based on any available means, based on the circumstances. The Department may monitor this standard through the LEA and AEA accreditation process (such as by interviews and file reviews), through observations, through the AEA and LEA determination process, through secure, statewide internet-based databases, and through the Department's monitoring of the IDEA's dispute resolution mechanisms. The Department may demand additional information from a public agency, which the public agency must supply.

What is the authority for the Standard?

- Iowa Administrative Code rules 281 – 41.211, 281 – 41.301, 281 – 41.304 through 41.306, 281 – 41.314, and 281 – 41.320 through 41.328 (2014)
- *Iowa's Guidance for Quality IEPs*, available at <https://www.educateiowa.gov/pk-12/special-education/iowas-guidance-quality-individualized-education-programs-ieps>

Iowa Rule Child Find and Evaluation



Appendix 1

Iowa Rules – Child Find and Evaluation

281 – 41.111(256B,34CFR300) Child find.

41.111(1) General. All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated; and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.

41.111(2) High-quality general education instruction; general education interventions.

a. As a component of efficient and effective, high-quality general education instruction, it shall be the responsibility of the general education program of each LEA to provide additional support and assistance to all students who may need such additional support and assistance to attain the educational standards of the LEA applicable to all children. Receipt of such additional support and assistance, when considered alone, does not create a suspicion that a child is an eligible individual under this chapter. Activities under this paragraph shall be provided by general education personnel, with occasional or incidental assistance from special education instructional and support personnel.

b. General education interventions involving activities described in rule 281 – 41.312(256B,34CFR300) are a recognized component of an AEA’s child find policy pursuant to the policies set forth in subrule 41.407(1) and the procedures set forth in subrule 41.407(2).

41.111(3) Other children in child find. Child find also must include the following:

a. A child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade; and

b. Highly mobile children, including migrant children.

41.111(4) Classification based on disability not required. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

41.111(5) Evaluation required when disability is suspected. At the point when a public agency suspects a child is a child with a disability under this chapter, the public agency must seek parental consent for an initial evaluation of that child, pursuant to subrule 41.300(1).

41.111(6) Rule of construction – suspicion of a disability. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child’s performance might be explained because the child is an eligible individual under this chapter.

281 – 41.300(256B,34CFR300) Parental consent and participation.

41.300(1) Parental consent for initial evaluation.

a. General.

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 41.503(256B,34CFR300) and 41.504(256B,34CFR300), obtain informed consent, consistent with rule 41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) 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.

b. Special rule: initial evaluation for a child who is a ward of the state and not residing with a parent. 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:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) 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.

c. Parental refusal to provide consent for initial evaluation.

(1) 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 41.300(1)"a," 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 this chapter, including the mediation procedures under rule 41.506(256B,34CFR300) or the due process procedures under rules 41.507(256B,34CFR300) to 41.516(256B,34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B,34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation under 41.300(1)"c"(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

(1) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281 – 41.506(256B,34CFR300) or the due process procedures under rules 281 – 41.507(256B,34CFR300) through 281 – 41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(3) Is not required to convene an IEP team meeting or develop an IEP under rules 281 – 41.320(256B,34CFR300) and 281 – 41.324(256B,34CFR300) for the child.

d. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(1) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with rule 281 – 41.503(256B,34CFR300) before ceasing the provision of special education and related services;

(2) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281 – 41.506(256B,34CFR300) or the due process procedures under rules 281 – 41.507(256B,34CFR300) through 281 – 41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(4) Is not required to convene an IEP team meeting or develop an IEP under rules 281 – 41.320(256B,34CFR300) and 281 – 41.324(256B,34CFR300) for the child for further

provision of special education and related services.

41.300(3) Parental consent for reevaluations.

a. General. Subject to 41.300(3)“b”:

(1) Each public agency must obtain informed parental consent, in accordance with 41.300(1)“a,” prior to conducting any reevaluation of a child with a disability.

(2) 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 41.300(1)“c.”

(3) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B,34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in 41.300(3)“a” need not be obtained if the public agency can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

(2) The child’s parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required.

Parental consent is not required before:

(1) A review of existing data as part of an evaluation or a reevaluation; or

(2) Administration of 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.

b. Additional consent requirements. In addition to the parental consent requirements described in subrules 41.300(1) through 41.300(3), the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency’s use of failure to give consent. A public agency may not use a parent’s refusal to consent to one service or activity under subrules 41.300(1) through 41.300(3) or paragraph 41.300(4)“b” to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) 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 41.300(1)“c” and 41.300(3)“a”; and

(2) The public agency is not required to consider the child as eligible for services under rules 41.132(256B,34CFR300) to 41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in 41.300(1)“a”(3), 41.300(1)“b”(1), 41.300(2)“b,” and 41.300(3)“b”(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parent participation. The identification process shall include interactions with the individual, the individual’s parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel shall seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.

281 – 41.301(256B,34CFR300) Full and individual initial evaluations.

41.301(1) General. Each public agency must conduct a full and individual initial evaluation, in accordance with rules 41.305(256B,34CFR300) and 41.306(256B,34CFR300), before the initial provision of special education and related services to a child with a disability under this chapter.

41.301(2) Request for initial evaluation. Consistent with the consent requirements in rule 41.300(256B,34CFR300), 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.

41.301(3) Procedures for initial evaluation. The initial evaluation:

a. Must be conducted within 60 calendar days of receiving parental consent for the evaluation;

- b. Must consist of procedures:
- (1) To determine if the child is a child with a disability under this chapter; and
 - (2) To determine the educational needs of the child.

41.301(4) Exception. The time frame described in 41.301(3)“a” 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 time frame in 41.301(3)“a” 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 this chapter.

41.301(5) Applicability of exception in 41.301(4)“b.” The exception in 41.301(4)“b” applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the subsequent public agency agree to a specific time when the evaluation will be completed.

41.301(6) Content of full and individual initial evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

- a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.
- b. Analysis of existing information about the individual, as described in 41.305(1)“a.”
- c. Identification of the individual’s strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.
- d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

281 – 41.302(256B,34CFR300) 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.

281 – 41.303(256B,34CFR300) Reevaluations.

41.303(1) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with rules 41.304(256B,34CFR300) to 41.311(256B,34CFR300):

a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

b. If the child’s parent or teacher requests a reevaluation.

41.303(2) Limitation. A reevaluation conducted under subrule 41.303(1):

a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and

b. Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

281 – 41.304(256B,34CFR300) Evaluation procedures.

41.304(1) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with rule 41.503(256B,34CFR300), that describes any evaluation procedures the agency proposes to conduct.

41.304(2) Conduct of evaluation. In conducting the evaluation, the public agency must:

a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

(1) Whether the child is a child with a disability under this chapter; and

(2) 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);

b. 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; and

c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.304(3) *Other evaluation procedures.* Each public agency must ensure that:

a. Assessments and other evaluation materials used to assess a child under this chapter:

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(2) 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;

(3) Are used for the purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of the assessments.

b. Assessments 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.

c. 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).

d. 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.

e. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 41.301(4)"b" and 41.301(5), to ensure prompt completion of full evaluations.

f. The evaluation of each child with a disability under rules 41.304(256B,34CFR300) to 41.306(256B,34CFR300) 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.

g. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

281 – 41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations.

41.305(1) *Review of existing evaluation data.* As part of an initial evaluation, if appropriate, and as part of any reevaluation under this chapter, the IEP team and other qualified professionals, as appropriate, must:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parents of the child;

(2) Current classroom-based, local, or state assessments, and classroom-based observations; and

(3) Observations by teachers and related services providers; and

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

(1) Whether the child is a child with a disability, as defined in this chapter, and the educational needs of the child or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(2) The present levels of academic achievement and related developmental needs of the child;

(3) 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

(4) 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.

41.305(2) *Conduct of review.* The group described in subrule 41.305(1) may conduct its review without a meeting.

41.305(3) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subrule 41.305(1).

41.305(4) *Requirements if additional data are not needed.*

a. 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 or to determine the child's educational needs, the public agency must notify the child's parents of:

(1) The determination and the reasons for the determination; and

(2) 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.

b. The public agency is not required to conduct the assessment described in 41.305(4)"a"(2) unless requested to do so by the child's parents.

41.305(5) *Evaluations before change in eligibility.*

a. Except as provided in 41.305(5)"b," a public agency must evaluate a child with a disability in accordance with these rules before determining that the child is no longer a child with a disability.

b. The evaluation described in 41.305(5)"a" is not required before the termination of a child's eligibility under this chapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

c. For a child whose eligibility terminates under circumstances described in 41.305(5)"b," 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.

41.305(6) *At no cost to parent.* Evaluations or reevaluations under this chapter, including any outside consultations or evaluations, shall be at no cost to the parent. AEAs or LEAs may access a parent's private insurance or public benefits or insurance, however, provided that a parent gives informed consent consistent with rule 41.9(256B,34CFR300) and subrules 41.154(4) and 41.154(5).

281 – 41.306(256B,34CFR300) Determination of eligibility.

41.306(1) *General.* Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(2) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this chapter:

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 this chapter.

41.306(3) *Procedures for determining eligibility and educational need.*

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) 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

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. 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 these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education shall certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required special education and related services of each eligible individual shall be maintained by the AEA, and provision shall be made for its periodic revision.

281 – 41.307(256B,34CFR300) Specific learning disabilities.

41.307(1) General. The state adopts, consistent with rule 41.309(256B,34CFR300), criteria for determining whether a child is an eligible individual on the basis of a specific learning disability as defined in subrule 41.50(10). In addition, the criteria adopted by the state:

a. Requires the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in subrule 41.50(10); and

b. Prohibits the use of a severe discrepancy between intellectual ability and achievement for determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(2) Consistency with state criteria. A public agency must use the state criteria adopted pursuant to subrule 41.307(1) in determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(3) Rule of construction: "Labelling." Nothing in this rule or rules

41.308(256B,34CFR300) to

41.311(256B,34CFR300) shall be construed as requiring children evaluated under these rules to be classified as having a specific learning disability, as long as the child is regarded as a child with a disability or an eligible individual under this chapter.

41.307(4) Rule of construction: Use of rules 41.307(256B,34CFR300) to 41.310(256B,34CFR300). Nothing in this rule or rule 41.308(256B,34CFR300) or 41.311(256B,34CFR300) shall be construed as limiting its applicability solely to determining whether a child is an eligible individual on the basis of a specific learning disability. The procedures, methods, etc. listed in this rule and rules 41.308(256B,34CFR300) and 41.310(256B,34CFR300) may be employed in evaluating any child suspected of being an eligible individual, if appropriate in the child's circumstances.

281 – 41.308(256B,34CFR300) Additional group members. The determination of whether a child suspected of being an eligible individual due to the presence of a specific learning disability is a child with a disability as defined in this chapter, must be made by the child's parents and a team of qualified professionals, which must include the following persons:

41.308(1) Required teachers.

- a. The child's general education teacher; or
- b. If the child does not have a general education teacher, a general education teacher qualified to teach a child of his or her age; or
- c. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age.

41.308(2) Individual qualified to conduct diagnostic examinations. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

281 – 41.309(256B,34CFR300) Determining the existence of a specific learning disability.

41.309(1) Required determinations. The group described in rule 41.306(256B,34CFR300) may determine that a child has a specific learning disability, as defined in subrule 41.50(10), after considering the following three factors:

a. Lack of adequate achievement. The child does not achieve adequately for the child's age, grade-level expectations or such grade-level standards the SEA may choose to adopt in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or grade-level expectations or such grade-level standards the SEA may choose to adopt:

- (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.

b. Lack of adequate progress.

(1) The child does not make sufficient progress to meet age expectations, grade-level expectations, or such state-approved grade-level standards as the state may choose to adopt in one or more of the areas identified in 41.309(1)"a" when using a process based on the child's response to scientific, research-based intervention; or

(2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level expectations, such state-approved grade-level standards as the state may choose to adopt, 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 rules 41.304(256B,34CFR300) and 41.305(256B,34CFR300).

c. Exclusionary factors. The group determines that its findings under 41.309(1)"a" and 41.309(1)"b" are not primarily the result of:

- (1) A visual, hearing, or motor disability;
- (2) Intellectual disability;
- (3) Emotional disturbance;
- (4) Cultural factors;
- (5) Environmental or economic disadvantage;

or

(6) Limited English proficiency.

41.309(2) *Review of data.* 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 rules 41.304(256B,34CFR300) to 41.306(256B,34CFR300):

a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

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.

41.309(3) *When consent required.* 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 rules 41.301(256B,34CFR300) and 41.303(256B,34CFR300):

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 41.309(2)"a" and "b"; and

b. Whenever a child is referred for an evaluation.

41.309(4) *Rule of construction.* Subparagraph 41.309(1)"b"(2) shall not be construed to require a child with a pattern of strengths and weaknesses in performance, achievement, or both, to be identified as an eligible individual, absent a determination that the child has a disability and needs special education and related services.

41.309(5) *Rule of construction.* A process by which a child's response to intervention is measured is a component of a full and individual evaluation and is not, considered alone, a full and individual evaluation, unless the response to intervention process contains all required elements of a full and individual evaluation under this chapter.

281 – 41.310(256B,34CFR300) Observation.

41.310(1) *Observation required.* 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.

41.310(2) *Who must observe.* The group described in 41.306(1)"a," 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, consistent with rules 41.306(256B,34CFR300), 41.309(256B,34CFR300), 41.312(256B,34CFR300) and 41.313(256B,34CFR300); or

b. Have at least one member of the group described in 41.306(1)"a" 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 subrule 41.300(1), is obtained.

41.310(3) *Child less than school age or out of school.* 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. This subrule also applies to school-age children who must be evaluated during school breaks.

281 – 41.311(256B,34CFR300) Specific documentation for the eligibility determination.

41.311(1) *Documentation required.* For a child suspected of having a specific learning disability, the documentation of the determination that the child is an eligible individual, as required in 41.306(1)"b," 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 41.306(3)"a";

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. The determination that:

(1) The child does not achieve adequately for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1)"a"; and

(2) The child does not make sufficient progress for the child's age or to meet grade-level expectations or such grade-level standards

the SEA may choose to adopt consistent with 41.309(1)"b"(1); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to the child's age or to meet grade-level expectations, such grade-level standards the SEA may choose to adopt, or intellectual development consistent with 41.309(1)"b"(2);

f. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; 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:

(1) The instructional strategies used and the student-centered data collected; and

(2) 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.

41.311(2) *Certification required.* 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.

281 – 41.312(256B,34CFR300) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when there is a suspicion that a child is an eligible individual under this chapter, the AEA or AEA in collaboration with the LEA shall conduct a full and individual initial evaluation. Documentation of the rationale for such action shall be included in the individual's educational record.

41.312(1) *Notice to parents.* Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's

general program and that may occur at any time throughout the school year.

41.312(2) Nature of general education interventions. General education interventions shall include consultation with special education support and instructional personnel. General education intervention activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

41.312(3) Referral for full and individual initial evaluation. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.312(4) Parent may request evaluation at any time. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

281 – 41.313(256B,34CFR300) Systematic problem-solving process.

41.313(1) Definition. When used by an AEA in its identification process, “systematic problem-solving” means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions.

41.313(2) Parent participation in systematic problem-solving process. Active parent participation is an integral aspect of the process and is solicited throughout.

41.313(3) Components. At a minimum, a systematic problem-solving process includes the following components.

a. Description of problem. The presenting problem or behavior of concern shall be described in objective, measurable terms that

focus on alterable characteristics of the individual and the environment. The individual and environment shall be examined through systematic data collection. The presenting problem or behaviors of concern shall be defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual’s performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern shall be used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern shall be used to plan and monitor interventions. Data collected shall be relevant to the presenting problem or behaviors of concern and shall be collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures shall be individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions shall be designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions shall be described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions shall be implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring shall be conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions shall be evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the

effectiveness of interventions focus on comparisons with initial levels of performance.

41.313(4) *Rule of construction.* A systematic problem-solving process may be used for any child suspected of being an eligible individual, and nothing in this chapter nor in Part B of the Act shall be construed to limit the applicability of a systematic problem-solving process to children suspected of having a certain type of disability.

281 – 41.314(256B,34CFR300) Progress monitoring and data collection.

41.314(1) *Evidence of progress in general education instruction.* Each public agency shall establish standards, consistent with those the department may establish, by which the adequacy of general education instruction, including the quality and quantity of data gathered, is assessed, and whether such data are sufficient in quantity and quality to make decisions under Part B of the Act and this chapter.

41.314(2) *Progress monitoring and determining eligibility.* Each public agency shall engage in progress monitoring of each individual's progress as the department may require during

the process of evaluating whether a child is an eligible individual and shall record such progress in any manner that the department may permit or require. If the AEA or LEA serving an individual imposes additional requirements for the monitoring of progress of individuals during the process of evaluation, personnel serving that individual shall comply with those additional requirements. The team determining the child's eligibility may increase the frequency with which the child's progress is monitored.

41.314(3) *Progress monitoring and eligible individuals.* Each public agency shall engage in progress monitoring of each eligible individual's progress as the department may require, and shall record such progress in any manner that the department may permit or require. If the AEA or LEA serving an eligible individual imposes additional requirements for the monitoring of progress of eligible individuals, personnel serving that individual shall comply with those additional requirements. An IEP team may increase the frequency with which an eligible individual's progress is monitored.

Appendix 2

Iowa Rules – Disability “Categories”

281 – 41.8(256B,34CFR300) Child with a disability. “Child with a disability” refers to a person under 21 years of age, including a child under 5 years of age, who has a disability in obtaining an education. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults. In these rules, this term is synonymous with “child requiring special education” and “eligible individual.” “Disability in obtaining an education” refers to a condition, identified in accordance with this chapter, which, by reason thereof, causes a child to require special education and support and related services.

281 – 41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals. The following terms may be encountered in the identification of children with disabilities.

41.50(1) Autism. “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, which 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 a behavior disorder, as defined in subrule 41.50(2). A child who manifests the characteristics of autism after the age of three could be identified as having autism if the criteria in the first sentence of this subrule are satisfied. This term includes all conditions described by the term “autism

spectrum disorder,” which adversely affects a child’s educational performance.

41.50(2) Behavior disorder. “Behavior disorder” (or emotional disturbance) means any condition that exhibits one or more of the following five 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.

41.50(3) 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.

41.50(4) Deafness. “Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a child’s educational performance.

41.50(5) Hearing impairment. “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 41.50(4).

41.50(6) Intellectual disability. “Intellectual disability” means significantly subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior and is manifested during the developmental period, and which adversely affects a child’s educational performance.

41.50(7) Multiple disabilities. “Multiple disabilities” means concomitant impairments, such as mental disability–blindness or mental disability–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.

41.50(8) Orthopedic impairment. “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 or bone tuberculosis; and impairments from other causes, e.g., cerebral palsy, amputations, and fractures or burns that cause contractures.

41.50(9) 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:

a. Is due to a chronic or acute health problem 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

b. Adversely affects a child’s educational performance.

41.50(10) 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 disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

41.50(11) 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.

41.50(12) 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.

41.50(13) 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. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in Braille reading and writing.

281 – 41.51(256B,34CFR300) Other definitions applicable to this chapter. The following additional definitions apply to this chapter.

41.51(10) Head injury. “Head 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 an individual’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.