



VIRGINIA DEPARTMENT OF
EDUCATION

Guidance on
Evaluation and Eligibility
for the
Special Education Process

Division of Special Education and Student Services
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Virginia Department of Education Division of Special Education and Student Services

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Introduction

This document is intended to assist teams of educators and parents as they work to address student needs related to the referral, evaluation, and identification of students with disabilities in Virginia public schools. This Guidance Document provides information on the regulatory requirements and best practices for the evaluation and eligibility process under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and the related federal and Virginia special education regulations. These guidelines should be used in conjunction with existing state regulations and federal laws and are not intended to replace any existing regulation or policy.

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Evaluation Process

There are common questions surrounding evaluation and subsequent eligibility for students suspected of having a disability. Educators and families must navigate specific steps in the process required by federal law, Virginia special education regulations, and local policies or procedures. The process for determining whether a student is eligible for special education involves reviewing information and observations about the student, determining the need for individual assessments and observations, reviewing and interpreting the results of any assessments, and making an eligibility determination. Documentation of the process is required and school staff must follow all regulations and policies.

School staff and families should collaborate during the evaluation and eligibility process. Discussions with families and reports provided to families should minimize technical and specialized language. It is important to clearly explain procedures and criteria and address parental concerns. The Virginia Department of Education (VDOE) *Parent's Guide to Special Education* is available online at www.doe.virginia.gov and may assist parents in understanding the special education process. VDOE Training and Technical Assistance Centers, Parent Resource Centers in school divisions, and VDOE's TTAC Online Web site www.ttaonline.org provide additional information and resources for parents and educators.

Parental Rights and Procedural Safeguards

School divisions must be aware of when the referral for evaluation process begins because of the obligations for the school division and procedural safeguards for parents.

Procedural safeguards notice that describes parental rights must be provided to parents at least once per year and then again at specific times. Events that require the school division to provide an additional copy of the procedural safeguards are:

1. at the time of initial referral for special education,
2. when the eligibility team proposes to change the student's identification,
3. when requested by the parents,
4. when the first state complaint is filed during the year,
5. when the first request for due process is made during the year, and
6. when a decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of the code of student conduct.

A copy of *Your Family's Special Education Rights*, Virginia's procedural safeguards document, can be found online at www.doe.virginia.gov and should be readily available within the school division.

Prior Written Notice

The Virginia special education regulations require that parents receive prior written notice (PWN) within a reasonable time when school divisions propose or refuse to conduct an evaluation, initiate or change a student's identification, educational placement, or the provision of a free appropriate public education (FAPE). There are seven items that must be included in a prior written notice.

Table 1. The Seven Elements of Prior Written Notice

<ol style="list-style-type: none">1. Description of the action that the school division proposes or refuses to take.2. Explanation of why the school division is proposing or refusing to take action.3. Description of any other options that the team considered and the reasons why those options were rejected.4. Description of each evaluation procedure, assessment, record or report the school division used as a basis for the proposal or refusal.5. Description of any other factors that are relevant to the school division proposal or refusal.6. A statement that the parent(s) of a child with a disability have protection under Virginia's procedural safeguards.7. Resources for the parent to contact for help in understanding the Individuals with Disabilities Education Act (IDEA) and the related federal and Virginia special education regulations.

This notice must be written in language that is understandable to the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s). A sample Prior Written Notice form is included in Appendix A. Including a prior written notice form, in the student's education record, documents that the school division met its responsibility to provide the parent with this critical information.

A local education agency may include certain portions of PWN in their special education forms to address a proposal, however this is not sufficient and requires additional documentation to address any refusals, options considered, data used as the basis of the decision, and other relevant factors.

For additional information on PWN, see the Virginia Department of Education's publication, [Guidance on Prior Written Notice in the Special Education Process \(2013\)](#).

Referral for Evaluation

Suspicion of a Disability

The evaluation and eligibility process begins at the point the student is suspected of having a disability that requires specially designed instruction. This suspicion of a disability is usually documented on a "referral for evaluation" form. In Virginia, a referral for evaluation can come from any source or individual. For example, a referral may result when:

- A parent or teacher suspects a disability and contacts the special education administrator.
- The results of a school screening indicate a suspicion of a disability.
- A school team that is working to provide strategies and supports suspects a disability.
- A parent or teacher suspects a disability and contacts the principal who then asks the school-based team to review the information and make a determination if a referral for evaluation is needed.

A referral can be made in writing, orally, or using electronic communication. The referral must be documented and included in the student's education record. Documentation must include the name of the referring source, date, a description of the concerns and information about any strategies attempted. A sample referral form is included in Appendix A. The parent must be provided with a copy of the Procedural Safeguards Notice.

The 65 business day timeline begins when the special education director or designee receives the referral for evaluation. When the referral goes directly to the special education administrator or designee, that individual has three business days to decide upon one of three options. The special education administrator or designee may:

- Begin the initial evaluation procedures,
- Refer the child to the school-based team to review and respond to the request, or
- Deny the request, and provide prior written notice.

If the special education administrator or designee decides to begin the initial evaluation procedures, the first step is to document the decision in the student's education record. The next step is to hold a meeting to review existing data.

If the special education administrator or designee's decision is to refer the request to the school-based team, that group then has ten business days to meet. The team may determine that it does not suspect a disability and an evaluation is not warranted. In this case, the team must provide prior written notice to the parents and the process stops. If the team does suspect a disability, they make a referral to the administrator of special education within three business days. It is important to note that if the team met as a result of a request from the administrator of special education, the 65 business day timeline began when the special education director or designee received the initial request.

In the event the special education administrator or designee decides that an evaluation is not warranted, prior written notice must be provided to the parent. The prior written notice must contain all of the required elements. It should focus on the reasons the special education administrator or designee determined that the student is not suspected of having a disability and/or does not require specially designed instruction. The required elements of prior written notice are shown in Table 1., and a sample prior written notice form is provided in Appendix A.

If the referral goes first to a school principal or the principal's designee, such as an assistant principal or the school's student assistance team leader, the school-based team must meet within ten business days from receipt of referral to determine whether an evaluation is necessary. If the team suspects a disability and decides an evaluation is warranted, it has three business days to forward the referral to the special education administrator or designee. In this situation, the 65 business day timeline would begin when the special education administrator receives the referral for evaluation from the school team.

Review of Existing Data:

As part of an initial evaluation or re-evaluation, the team must complete a review of existing data. The team, including the parent, reviews:

1. information provided by the parent(s) of the child,
2. the student's education record, and

3. observations by teachers and related services providers.

Based on the review of this existing data and input from the child's parent(s), the team determines if any additional data is needed to determine whether the child is, or continues to be a child with a disability and the educational needs of the student.

If the review of existing data, including observations by teachers and related service providers, supports the suspicion of a disability and indicates that further assessment is not required, and parents agree, the team may schedule an eligibility meeting and use the existing data to make a determination. Prior written notice must be provided for parental requests for an initial evaluation, a re-evaluation, and for a triennial. The prior written notice must include all required information, as noted in Table 1.

Examples of situations in which a review of existing data and observations by teachers and related service providers may be sufficient to determine eligibility include situations where:

- reports received from another school or private provider include content that reflects the educational needs and provides information about an observation and needs for specially designed instruction,
- for re-evaluation, a student who was previously found eligible and has multiple, previous evaluations on file, or
- a student who moves into a school division from another state, and the parents share observations and reports from previous eligibility determinations, and the committee determines that no additional information is necessary.

There are many pieces of information that the team should consider when reviewing existing data. Common examples of existing data that teams may review are provided in Table 2. Parent input may be gathered through interviews, questionnaires, or during meetings. Information provided by parents should be documented and included in the summary of the review of existing data.

The team should also review the student's school experience, data and information from pre-referral interventions, documentation of strategies attempted and the results, and if implemented, any information from a response to intervention (RtI) process.

The team may choose to review the disability categories that are likely to be considered at the eligibility meeting and review the criteria included in the Virginia special education regulations to ensure that existing data are sufficient to satisfy eligibility criteria. After the review of existing data and eligibility criteria, the team must determine if any additional data are required to determine if a child is or continues to be a child with a disability and the educational needs. Documentation of the review and decision for the need of any additional data should be included in the student's education record. A sample form for documenting the review of existing data is included in Appendix A.

Gathering Additional Data

If the team determines that additional data are required, they must document the types of data to be gathered and obtain informed parental consent. A sample form is included in Appendix A. A variety of assessment tools and strategies should be used to gather functional, developmental, and academic information and ensure that no single measure or assessment will be the sole criterion for determining whether a child is a child with a disability.

The Virginia special education regulations include both general definitions of the disability categories, as well as specific criteria for determining eligibility in each category. Sample forms in Appendix A include criteria for each disability area. In addition, certain requirements apply to all disability categories, such as determining educational impact, educational needs, and academic and behavioral information from an observation. An eligibility team should consider each of the criteria for the suspected disabilities and should ensure that data collected will be sufficient to determine if a child is or continues to be a child with a disability. School division policies and procedures may require additional assessment components for specific disability areas such as a medical evaluation or use of a specific assessment tool or test.

Additional data may be in the form of an observation of the student, data from strategies implemented with the student, or a formal assessment in one or more areas using standardized, criterion referenced, or other types of measures. Common assessment areas include academic, communication, motor, adaptive functioning, social or behavioral, hearing, vision, vocational, and cognitive or intellectual. Informed parental consent is required prior to completing new assessments.

Table 2. Sources and Examples of Existing Data

<p>Parents</p> <ul style="list-style-type: none"> Developmental and social history Parent perception of the student’s possible disability Information about the student’s learning and any behavioral issues Parent input on the student’s educational experiences and motivation Copies of outside evaluations and reports <p>Student Record</p> <ul style="list-style-type: none"> Assessment results (Standards of Learning, Phonological Awareness and Literacy Screening, etc.) Universal screening or progress monitoring data using a Response to Intervention (RtI) process Record review (attendance, report cards, etc.) Discipline reports Medical/health records Developmental assessments for young children <p>Observations</p> <ul style="list-style-type: none"> Formal observations conducted to gather information about a student’s response to instructional strategies and the learning environment Informal observations by teachers and staff working with the student

Parental Consent for Evaluation

Parental consent is necessary when any assessment instrument is administered or formal observation conducted as part of an initial evaluation or re-evaluation. However, parental consent is not required before the review of existing data as part of an evaluation, teacher and related service provider observations for re-evaluations, ongoing classroom evaluation, or the administration of, or review of, the results of assessments that are administered to all children in a class, grade, or school, such as universal screeners like PALS, etc., unless parental consent is required before administration to all students.

Parental consent means the parents have been fully informed of all information related to the evaluation in the parents' native language, or other mode of communication and that they understand and agree, in writing, to the carrying out of the evaluation. The consent form should describe the evaluation components and list the records (if any) that will be requested from medical or other educational providers. Parental consent must also be obtained prior to the release of any information to outside providers.

If a parent refuses consent for an initial evaluation, the child cannot be evaluated. If the school division believes an evaluation is warranted, the school division may request mediation or initiate a due process hearing to resolve the dispute and permit the school division to conduct the evaluation.

A parent who has provided consent for an initial evaluation may revoke that consent any time prior to the evaluation occurring. If parental consent is revoked, the school division can pursue mediation or due process, or stop the evaluation-eligibility process. At this point, the rights and obligations associated with IDEA and Virginia special education regulations no longer apply.

If the evaluation has been completed, a parent can no longer revoke consent for the evaluation and a meeting to consider the results of the evaluation and determine eligibility must be held. Parental consent for evaluation does not give consent for identification, placement or receipt of special education and related services.

Assessment Tools

There are a variety of assessment tools that can be used during an evaluation. These tools should be used to gather information about the child in the functional, developmental, and academic areas. Assessment tools include various types of tests, curriculum-based measures, rating scales, inventories, questionnaires and interviews, and dynamic assessment methods. Virginia special education regulations require that assessments be technically sound and administered by qualified professionals. Groups should consider using measures from both the standardized and informal (structured or unstructured) categories, as well as additional sources of information for eligibility decision making.

Assessment tools should be selected and administered so as not to be discriminatory on a racial or cultural basis and provided and administered in the student's native language and the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally. Assessment tools should be used for the purpose for which they were designed.

Although all norm referenced test scores should be considered estimates, some tests and score types provide more reliable information than others. Each assessment type has advantages and disadvantages

that should be considered prior to use. Assessment tools may provide multiple types of scores that may be reported (standard scores, percentile ranks, developmental ages, etc.). Certain test scores are only useful for certain purposes, and not for others. For example, percentile ranks and standard scores, are not intended to measure student growth, but rather to compare a student’s performance to that of same-age peers taking the same test, while curriculum-based measures and skill inventories may be used to document student progress.

When using commercially available assessment tools, the most recent version of assessment should be used. This ensures the most up-to-date test questions are included and that the normative sample used to compare the student’s performance to others is current. School staff must be qualified to administer assessments and should ensure that nonstandard administrations are appropriately documented.

Table 3. Types of Assessment Tools

	Provides or Measures
Standardized Test	Uses the same tasks or questions, given under the same conditions, with the same directions or instructions to all test takers and scored the same way. Examples include Norm Referenced and Criterion referenced tests.
Norm Referenced	Compares the test performance of individuals with a group of individuals with known characteristics who have taken the test.
Criterion Referenced Tests	Compares an individual’s performance to a criterion to measure a student’s mastery of specific information. These tests do not compare or rank students.
Curriculum-Based Measure	Measures a student’s performance on specific skills, that are part of the curriculum, on a regular schedule (ex. weekly).
Inventory or Checklist	This assessment tool requires that the assessor report observations or impressions of a child’s behavior. Some are standardized.
Dynamic Assessment	Uses testing limits or test-teach-retest methods to determine learning potential for a student who may not have had previous exposure to information.
Rating Scales	A standardized way of collecting observations and/or impressions that allow for comparisons across content areas, settings, and behaviors.
Questionnaires & Interviews	Structured format for asking questions provides a systematic way to gather and compare responses.
Formal and Informal Observation	Documents information about a student’s educational and behavioral performance in a specific setting, use of strategies or supports, and a comparison to peers.

Standardized Tests

A standardized test is a test administered and scored in a consistent manner. The questions, conditions for administering, scoring procedures, and interpretations are consistent across administrations. These tests are administered and scored in a predetermined manner. Standardized test may provide a norm-referenced score or a criterion-referenced score. Norm-referenced scores compare test takers to a sample

of their peers. Criterion-referenced scores are based on the test takers knowledge of specific information, regardless of the scores of peers. The objective is to determine if the student has learned the information.

Norm-Referenced Tests

Standardized scores may be used when the student closely matches the norming population of the test. Scores should not be reported for nonstandard administrations and for students not represented in the normative sample (ex., students who grow up in poor, rural or inner city communities, in ethnic minority families, or in families who primarily speak a language other than English). Scores obtained by these students may not reflect their true abilities. Evaluators should use additional techniques, such as dynamic assessment or responsive instruction, to assess the students' strengths and weaknesses.

Administer all subtests to obtain a full score and gather as complete a picture as possible of the student's performance. Administering select subtests is not advised unless the administration manual provides specific guidance.

The Stanford group tests of achievement and the Wechsler individual intelligence tests are examples of norm-referenced tests.

Criterion-Referenced Tests

Most tests and quizzes written by school teachers are criterion-referenced tests. Most criterion-referenced tests involve a cut score, where the examinee passes if their score exceeds the cut score and fails if it does not (often called a mastery test). A cut score is the score required to pass the test. The criterion is the subject matter that is being tested. Virginia's Standards of Learning (SOL) tests are criterion-referenced tests.

Curriculum-Based Measurement

Curriculum-based measurement (CBM) can be a reliable and valid way of measuring a child's academic skill attainment over both brief and extended periods of time. Teachers can use CBM to find out how students are progressing in basic academic areas such as mathematics, reading, writing, and spelling by giving a brief test each week. Information about CBM is included in the VDOE publication *Responsive Instruction: Refining Our Work of Teaching All Children* available online at www.doe.virginia.gov. CBM may be either standardized or informal measure depending on the techniques and tools used.

Informal assessment

Informal assessment techniques can be used at any time without interfering with instructional time. Results can inform the group about the student's performance on the skill or subject of interest. Unlike standardized tests, informal assessments do not provide a comparison to peers. Informal assessments identify the strengths and needs of individual students.

Methods for informal assessment can be divided into two main types: unstructured (e.g., student work samples, journals) and structured (e.g., checklists, observations). The unstructured methods frequently are

somewhat more difficult to score and evaluate, but they can provide a great deal of valuable information about the skills of the children, particularly in the areas of language proficiency and behavior. Structured methods can be reliable and valid techniques when time is spent creating the scoring procedures.

Structured

Inventory or Checklists

These tools provide a comprehensive list of student behaviors or skills expected. The items on the checklist may be content or behaviors. A checklist may be completed during an observation or based upon experiences with a student. Checklists generally are reliable and relatively easy to use. Inventories or checklists may be completed by staff or given to parents by an evaluator. These tools are interpreted by a trained evaluator.

Dynamic Assessment

Dynamic assessment measures how a student responds to intervention and the difference between what the student can learn unaided, and what he or she can learn with assistance. There are various methods for conducting dynamic assessment including testing limits, the use of graduated prompting, and the test-teach-retest approach. These methods can help identify learning potential and eliminate bias for students with cultural and linguistic differences or socio-economic risk factors.

Rating Scales

Rating scales are often associated with observation of student work or behaviors. Rather than recording the "presence" or "absence" of a behavior or skill, the observer subjectively rates each item according to a set scale. For example, students might be rated on their on-task behaviors in the classroom. Each item is rated on scale from high to low proficiency. Rating scales may be completed by staff or given to parents by an evaluator. These tools are interpreted by a trained evaluator.

Questionnaires/ Interviews

Questionnaires provide a series of items to gather information. Questions may be forced-choice or open-ended. Questionnaires given orally are considered interviews. During interviews, it is important to document the responses to questions. If appropriate, student input about their own strengths and needs can be used and may provide valuable information. Student input may be gathered using an interview, questionnaire or self rating tool.

Observation

Virginia special education regulations require an observation for eligibility that provides information about the student's academic functioning and behavior. Evaluation for special education services may include both formal and informal observation. Parental consent is required for observations conducted after the student is referred for initial eligibility determination.

Formal Observation

Conducting a formal observation in the setting where the student experiences difficulty provides valuable information about strategies used, student strengths, and educational needs. This observation should provide both academic and behavioral information. Data from

observations can be used to compare a student to peers and is necessary for the group to gain a better understanding of the student's strengths and educational needs. Use of a structured observation tool may assist professionals in gathering necessary information. Appendix A includes a sample observation tool.

Informal Observation

Teacher and parent informal observations provide important information for the group to consider. These informal observations may include specific details or information spanning a longer period of time. Documentation of informal observations can be done using a narrative format or included in the summary of the meeting. When conducting a reevaluation, parental consent is not required before educators' observations or ongoing classroom evaluations.

Unstructured

Unstructured techniques for assessing students may include both written and oral activities. Examples of unstructured methods include work samples, homework, journals, and participation in games and activities. These unstructured methods are more subjective and may be difficult to quantify. However, these methods provide valuable information about the skills of students in specific areas.

Additional Sources of Information

No single test or measure should be used to determine a student's eligibility for special education and related services. Information from teacher reports, parental input, and information from outside sources can provide important information.

Parent Input

Parent input can be gathered through rating scales or interviews or through a socio-cultural assessment conducted by the school social worker or visiting teacher. Parent input should be viewed in the context of the other data collected by the group. It is important for school members of the group to ensure that parents understand that their input is valuable.

Information and Reports from Outside Sources

It is not unusual for parents to share information provided by professionals from outside of the school division. Any information provided by the parents must be considered by the group. Parents should be made aware that while the information must be considered, the group is under no obligation to follow recommendations or adopt a diagnosis provided. The Individuals with Disabilities Education Act (IDEA) and Virginia special education regulations require specific criteria to be met in order for a child to be eligible for special education and related services.

Information and reports may be gathered from outside sources including:

- medical or clinical provider records (physician, social worker, psychologist, etc),
- social service agency records, or
- school records from past educational placements.

A release of information from the parent is required prior to school staff contacting outside professionals to gather information or discuss information provided by the parents. Federal laws and regulations do not require parental consent for a school division to exchange information from other school divisions that the child attended or has enrolled.

Upon receipt of parental consent, if appropriate, letters or faxes requesting information may be sent to individuals and agencies who have had contact with the child. A copy of the signed consent form must be included with the letters and retained in the student's education record.

When requesting additional information, a questionnaire or survey form that allows open-ended responses may be more useful than a checklist or rating scale. School personnel should follow up with the reporting professional if they have questions about the information provided. Professionals outside of the educational setting may address topics that are not the responsibility of school staff.

Administration and Interpretation of Assessments

The administration and interpretation of assessments is a vital step in the evaluation and eligibility process. Virginia special education regulations require that the evaluators be knowledgeable and appropriately trained to administer assessments in accordance with the instructions provided by the producer of the assessments. When selecting and administering assessment components, evaluators should consider factors such as: selection of tools, possible racial or cultural bias, the need for nonstandard administration based on student needs, features of the assessment or observation environment, and the impact of a student's cultural or linguistic differences.

Administration Factors to Consider

There are a variety of factors to consider prior to and during administration of assessments. Evaluators should refer to administration manuals, professional training, and best practices in their respective field. The following list provides an overview of some factors to consider that are relevant for most types of evaluations.

Environment

Evaluators should consider administration manual requirements and environmental conditions when administering assessments or conducting observations. Although an administration manual may not include precise descriptions, evaluators should ensure that the physical setting has appropriate lighting, is a comfortable temperature, is free from noise and visual distractions and maintains confidentiality.

Table 4. Common Assessment Terms

Standard Score This score compares one student's performance on a test to the performance of other students of the same age. Standard scores estimate whether a student's scores are above average, average, or below average compared to peers. Comparison of a student's scores on different types of tests is also possible using standard scores.

Percentile Rank This score indicates a student's performance compared to others of the same age who took the same test. A student who scores at the 50th percentile performed at least as well as 50 percent of students their age group. This is not the percent of items correct.

Stanine This score has nine groupings with the largest grouping of students falling in the 3-7 range and an average of about 4.5.

Age or Grade Equivalents This score identifies the typical age of those taking the test that scored the same as the student. Age and grade equivalent scores are not on an equal-interval scale and cannot be added or subtracted to show growth, or used for comparisons across different tests or to same age peers.

Sensitivity This is a measure of how well the test detects an issue when one exists; a sensitive test has few false negatives.

Specificity This is a measure of how well the test rules out an issue when one does not exist; a specific test has few false positives.

Reliability This is the degree to which an instrument, used under the same condition with the same subjects, measures the same way each time it is used.

Standard Error of Measurement (SEM) This is an estimate of error to use in interpreting a student's test score. *"If a student were to take the same test repeatedly, with no change in his level of knowledge and preparation, it is possible that some of the resulting scores would be slightly higher or slightly lower than the score that precisely reflects the student's actual level of knowledge and ability. The difference between a student's actual score and his highest or lowest hypothetical score is known as the standard error of measurement."* (www.doe.virginia.gov)

Validity This is an estimate of the assessment tool's success at measuring what it is supposed to measure.

Nonstandard conditions

Nonstandard administration occurs when procedures, materials, or administration methods included in the test administration manual are not followed. If the administration manual prescribes standard conditions, these requirements must be met to ensure that scores can be used for comparison with peers. Virginia special education regulations require that if an assessment is conducted under nonstandard conditions, a description of the variation be included in the evaluation report. Some

examples of nonstandard administration include allowing breaks or multiple test sessions (for tests that are intended to be single session), enlarging images or print for those with visual impairments, use of an interpreter, or providing rewards or reinforcement during the administration.

Students with learning differences or impairments may require a nonstandard administration to have the opportunity to demonstrate knowledge or abilities; however, the normative scores cannot be used for comparison with peers. Information about strengths and weaknesses and descriptions of performance may be reported and helpful for decision making. Virginia special education regulations require that the description of the extent to which it varied from standard conditions must be included in the evaluator's report.

Time

Evaluators must be aware of any requirements related to time prior to beginning a testing session with a student. If the assessment tool requires a timed response, the evaluator must have a clock or watch available to accurately administer the timed items. If an assessment or test is designed to be administered in one session, evaluators must be sure that the testing location will be free and the session will be uninterrupted. In some situations, the evaluator may need to make arrangements with teachers or parents to secure uninterrupted periods of time. Evaluators should allow ample time for the student to complete the activity.

Materials

Some assessment tools require the use of special materials such as manipulatives, test protocols, or student response forms. Evaluators should ensure that any needed materials are in the testing environment and ready to access prior to beginning an assessment.

Cultural and Linguistic Differences

Cultural and linguistic differences are present in both native and non-native English speakers. The overrepresentation of racially, culturally, ethnically and linguistically diverse students in special education is well documented and continues to be an area of emphasis for the U.S. Department of Education and the Office of Special Education Programs (OSEP). The evaluation process, and any pre-referral interventions, should first examine whether an area of concern results from a cultural or language difference, and/or economic disparity.

Educators must acknowledge that local dialectal and cultural variations exist within the school division. Students, who are native English speakers, may use dialects and speak or write following the language patterns of their community. Educators should use the student's community language, not race, when considering dialect use. Teams should recognize that accents and regional vocabulary differences are a natural part of spoken language and should not be considered a disorder. Cultural or linguistic differences should be examined by the team and documented efforts should be made to ensure that student performance is viewed using culturally and linguistically sensitive measures. The VDOE Speech-Language Pathology Services in Schools: Guidelines for Best Practice (2011) provides additional information on native English speakers who use dialects and language diversity.

When working with students, it is important to consider the cultural background of the student and their family. Cultural differences can impact a student’s ability to be measured by assessments designed for and normed on individuals from U.S. mainstream culture. Differences in areas including social, language, behavior, customs, performance, and expectations should be considered. Table 5 includes examples of cultural differences and how they may impact the evaluation of a student.

Test items that require a high level of knowledge and experience with mainstream culture are considered to have a high ‘cultural load’. Test items that require a high level of proficiency with English are considered to have a high ‘language load’. Researchers (Ortiz and Ochoa, 2005) report that students with cultural and linguistic differences may score substantially lower (up to 35 points) than peers due to language and cultural differences.

Virginia special education regulations require that evaluators ensure that materials and assessment procedures used measure the extent to which a child has a disability, rather than measuring English language skills. Furthermore, assessments and other materials must be selected and administered to not discriminate based on race or culture.

Table 5. Examples of Cultural Differences That May Impact Evaluations

Cultural Difference	Potential Impact on Student Performance
Higher tolerance for emotional expression	<ul style="list-style-type: none"> ▪ Students may appear disruptive, aggressive or speak loudly. ▪ Student or family may consider behavior appropriate.
Belief that elders should be respected	<ul style="list-style-type: none"> ▪ Student may not offer a needed correction to a stimulus item given by an adult. ▪ Student may not make eye contact with an adult or ask for assistance.
Limited exposure to books and storytelling	<ul style="list-style-type: none"> ▪ Student may have limited knowledge of vocabulary, language comprehension, background knowledge, and ability to infer information. ▪ Student may have limited practice sitting and attending to a story or book reading activity.
Language structure in primary language different from English	<ul style="list-style-type: none"> ▪ Student may misunderstand idioms and figurative language. ▪ Student may apply primary language rules to English and make errors in grammar and usage.

The Virginia Department of Education offers additional resources and information on working with students who have cultural or linguistic differences. Visit www.doe.virginia.gov for links to Virginia and national resources such as the *ENGLISH AS A SECOND LANGUAGE Handbook for Teachers and Administrators* and *Increasing Limited English Proficient (LEP) Parent Involvement*. The VDOE Speech-Language Pathology Services in Schools: Guidelines for Best Practice (2011) provides additional information on native speakers using dialects and language diversity.

Socio-Economic Status Considerations

Socio-economic status (SES) factors are equally important to consider when evaluating students. SES factors such as nutrition, reading level, parent availability, family or student mobility, and parental

participation can impact a student's educational performance. Some standardized tests are biased against low SES students because they assess a student's knowledge base. Many low SES students have a compromised knowledge base due to their environmental circumstances which can impact performance on assessments, executive functioning, and experience with the structure and routines of school (Roseberry-McKibbin). Evaluators should consider the impact of socio-economic factors when selecting evaluation tools, during assessments, and when interpreting data and observations for decision making.

Impact of Other Factors

Prior to conducting any assessment or observation, the evaluator should consider the impact of other factors on participation or performance for student assessments or observations. Examples of other factors include vision or hearing impairments, behaviors, sensory needs, motor differences, and student motivation.

These other factors require special attention by the evaluator to ensure that the results accurately reflect the student's ability or achievement. For example, a student with vision or hearing impairments may have difficulty participating in assessments that require looking at pictures or listening to a passage. A student with a cultural or linguistic difference may incorrectly answer questions because of their limited language skills or cultural experience.

Interpretation of Results

Although individual evaluators can develop an interpretation of results from assessments administered, information from other evaluators provides information that may alter preliminary impressions. It is vital for the group to review results from all assessments and observations and combine information from multiple sources. This will help the group create a truer picture of a student's strengths and weaknesses and ultimately determine if a student is eligible for special education.

Because each profession or discipline is likely to have its own terminology, it is important for group members, including parents, to feel free to ask for clarification, request additional explanations or repetition of information. Group members must be able to understand the data presented and synthesize it to make their final determination. Evaluators must be prepared to explain their results so that all group members, including parents, can make informed and responsible decisions.

Group members must view results of assessments and observations and look for consistency among assessment components. Inconsistencies should be examined by the group. For example, if a student performed well on some assessments and poorly on others, the group should examine the reason for the inconsistency. Was the student's performance due to an illness on the day of certain assessment, changing comfort level with the evaluation process, or a true strength in one area and weakness in another?

Consideration of other factors should also be discussed. The group should note if there were factors that could have impacted the student's performance on assessments. For example, if one evaluation reveals a processing delay that requires additional time, did that impact the student's performance on other assessments requiring a timed response? Consideration of the effect of differences such as language ability, cultural differences, and sensory issues should also be reviewed by the group.

Virginia regulations require that no sole source of information be used to determine eligibility for special education and related services. Information from all evaluation components should be synthesized with no single evaluator's interpretation used in isolation for decision making.

When students are aligned with the normative population of a particular assessment, standard scores are considered the most robust for comparison and as a component in decision making. Additionally, standard scores for students who do not fit the normative population of the assessment should be interpreted with caution and considered as a nonstandard administration. Individual evaluators and groups are cautioned against using age and grade equivalent scores to compare students or for decision making. These scores are derived in a way that seriously limits their reliability and validity and should not be used for making diagnostic or placement decisions (Bracken, 1988; Reynolds, 1981).

Evaluation Reports

Professionals who participate in the student's evaluation must carefully document in their reports the results of the evaluation, based upon information gathered. These reports become part of the student's education record and should contain only relevant information that has been carefully reviewed and edited. Reports should include a summary of the assessment activities, descriptions of the student's performance, observation notes, data and norm-referenced scores, a summary of strengths and weaknesses, and recommendations for those working with the student. When students differ from the norming population or participate using a non-standard administration, professionals are encouraged to reference the administration manual for specific instructions.

The Virginia special education regulations require that evaluation reports be available to a parent no later than two business days before the eligibility meeting. This means that the reports must be complete and that school personnel should know where the reports can be obtained if the parent wants to review them.

The regulations do not specifically require that the evaluation reports be sent to the parent prior to the eligibility meeting; however, providing them in advance allows parents time to review the information. By sending the evaluation reports to the parent prior to the meeting, the school division also satisfies the regulatory requirement to provide the parent with a copy of each evaluation report at no cost. The parents must be given a copy of each report no later than ten days after the meeting if they were not provided prior to or at the meeting.

65 Day Timeline

Virginia regulations require the eligibility group to meet and make a determination within 65 business days of the referral. The three exceptions to the 65 day timeline are:

1. If a parent fails or refuses to produce the student for the evaluation,
2. If the student enrolls or moves to another division prior to the completion of the evaluation¹, or
3. If the parents and school agree to an extension in writing (to obtain additional information that is required and cannot be gathered by the due date).

¹ This exception only applies if the school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.

Eligibility

Group Composition

The eligibility group may be an IEP team. The eligibility group must include, but not be limited to, the following individuals; the parent, the special education administrator or designee, school personnel from disciplines providing the assessments, a special education teacher, the child's regular education teacher (or, if the child does not have a regular education teacher, a regular education teacher qualified to teach a child of the child's age); and a person qualified to conduct diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or teacher of remedial reading.

According to regulations, the school division must ensure that the eligibility group is qualified to:

- Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;
- Interpret assessment and intervention data, and apply critical analysis to those data; and
- Develop appropriate educational and transitional recommendations based on the assessment data.

Virginia regulations require specific individuals be present at the meeting but do not indicate the specific roles or duties of each individual. In addition to meeting the regulatory requirements of their position, some individuals may serve in multiple capacities during meetings (e.g., special education teacher and person qualified to conduct individual diagnostic examinations).

It is important for the designated LEA representative to be identified in the event the group cannot reach consensus. Serving as note taker, time keeper, or meeting facilitator does not necessarily mean the individual is also authorized to serve as the LEA representative.

Eligibility Process

The IDEA requires a student to be found eligible as a child with a disability in order to receive special education and related services. Virginia special education regulations require this process to be completed within 65 business days from the receipt of the referral by the special education administrator or designee. A group of qualified individuals, including the parent(s), must consider multiple sources of information and determine if the child has a disability. In order to determine that a child has a disability, the group must find that the child meets the Virginia criteria for a specific disability area. This includes documentation of:

1. the presence of an impairment,
2. adverse impact on educational performance,
3. the need for specially designed instruction, and
4. Any specific criteria from Virginia regulations.

The group must document their deliberations, including information about the review of data, the specific disability criteria, the exclusionary factors, and any recommendations in the meeting summary.

Although academic progress is one focus of school, groups must not consider grades to be the only demonstration of adverse impact on educational performance. Students with passing grades might still

have difficulty in the educational setting interacting with others, forming social relationships, and appropriately interacting with peers and adults. Students may possess characteristics of gifted students and the characteristics of students with disabilities and are known as twice exceptional learners. The characteristic of the disability may mask the giftedness and /or the giftedness may mask the disability. This makes the identification of the exceptionality more difficult, and as a result, current state and national data indicate that twice-exceptional learners are often under identified and underserved in gifted and/or special education programs. The eligibility committees for both gifted and special education identification should be familiar with identification practices and criteria surrounding each area of disability and giftedness. They should examine relevant data accordingly. If the group believes that a change in disability category is appropriate, the reasons for the change, including supporting documentation, must be carefully documented. A student's educational identification or disability category may not be changed or removed without parental consent.

If a student is found not eligible as a student with a disability, the eligibility committee is required to provide information about the child's educational needs to the student's teachers and any appropriate committee. This information may be helpful in planning for and differentiating instruction.

Data

The eligibility decision must be based on data and information drawn from a variety of sources. Eligibility decisions should not be viewed as a way to provide classroom supports or testing accommodations. There are a variety of supports for the student who needs assistance that are available outside of special education. In order for a child to be found eligible for special education and related services, the student must meet the eligibility criteria and it must be determined that the child is a "child with a disability" and is in need of special education and related services.

To ensure appropriate eligibility decisions, the group must consider:

1. comprehensive data across all areas including academic, cognitive, adaptive, emotional/behavioral, language, social and motor skills;
2. multiple data sources, including intervention data and parent input, in determining and planning for a more intensive level of service; and
3. evidence of appropriate instruction in reading and mathematics instruction

Criteria

Each disability category is defined by the IDEA. In addition to these federal definitions, Virginia's special education regulations include specific criteria for each disability category. In order to find that a student is or continues to be eligible for special education and related services, these specific criteria must be satisfied.

For both initial and re-evaluations, groups must review the federal definition and state criteria and determine if a student is or continues to be a child with a disability. Use of a worksheet or form to guide discussion may ensure that all group members are aware of the eligibility criteria. Documentation on criteria forms or worksheets may also provide documentation for the eligibility summary. Sample forms, including the definition and criteria for each disability category, are included in Appendix A.

Exclusions

The IDEA and Virginia's special education regulations require that groups consider exclusionary factors when determining eligibility. A student shall not be determined eligible if the determinant factor is lack of instruction in reading, lack of instruction in mathematics, or limited English proficiency. Although these areas may impact a student's school performance, each must be ruled out as the primary cause of the student's lack of educational achievement. If any of these factors is the determinant factor, the child must not be found eligible as a child with a disability. The eligibility committees should use data from all available records, parents, teachers and other resources to ensure that the student was exposed to high quality instruction and that lack of academic achievement is not primarily due to a lack of instruction in reading or mathematics or limited English proficiency.

Other Considerations

Educational Identification and Medical Diagnosis

Prescriptions, diagnosis, or reports issued by licensed medical professionals, using medical diagnosis and classification systems such as the International Statistical Classification of Diseases and Related Health Problems (ICD) and Diagnostic and Statistical Manual of Mental Disorders 5th Edition (DSM 5), must be considered but are not sufficient to make an eligibility determination. The group must consider information from multiple sources that documents the presence of an impairment, the adverse impact on educational performance, and the need for specially designed instruction.

When a medical diagnosis is presented, groups should address the difference between educational identification under IDEA and medical diagnosis and review the criteria for the specific disability category mandated by the Virginia special education regulations.

Students may meet the criteria for educational identification as a child with a disability under one of the federal disability categories without having a medical diagnosis. It is also possible for a student to have a medical diagnosis but not meet the criteria for an educational identification as a child with a disability.

Disproportionality

The eligibility committee must consider environmental, cultural, and economic influences prior to determining if a child has a disability. The over or under representation of racially, culturally, and linguistically diverse students in special education has been an issue of concern in the Office of Civil Rights of the United States Department of Education and continues to be an area that is monitored at the state and national levels. The Office of Special Education Programs (OSEP) of the U.S. Department of Education defines disproportionality as the over identification or under identification of the number of students of a particular racial/ethnic group in any given category of special education. Table 6 lists examples of environmental, cultural, and economic disadvantages that may affect student performance. Teams should document their consideration of student dialect and disadvantages related to access and exposure that may affect performance when determining eligibility.

States are required to submit data to the federal government in their special education performance plan using local data on race, ethnicity and disability area to determine if any group is overrepresented or underrepresented. Data at the state and local level must be examined to

determine whether disproportionality on the basis of race and ethnicity is occurring in the identification and placement as children with disabilities, as well as in the incidence, duration and type of disciplinary action.

Division level policies and procedures must be in place to address disproportionality and avoid inappropriate identification. Eligibility groups should be aware of this issue and understand the reasons that misidentification may occur.

Table 6. Exclusionary Factors and Examples

Environmental Disadvantages	<ul style="list-style-type: none"> ▪ limited background experiences ▪ irregular/poor attendance ▪ transiency-especially in elementary school years (ex., at least two moves in a single school year) ▪ home responsibilities interfering with learning activities (ex., caring for siblings while parents work or other major home responsibilities)
Cultural Disadvantages	<ul style="list-style-type: none"> ▪ limited experiences in majority-based culture (ex., child does not participate in scouts, clubs, other organizations and activities with members of dominant culture) ▪ child has had limited involvement in organizations and activities of any culture ▪ secondary standards in conflict with majority-based culture standards, or geographic isolation
Economic Disadvantage	<ul style="list-style-type: none"> ▪ residence/living in a depressed economic area ▪ low family income at subsistence level ▪ family unable to afford enrichment materials and/or experiences

Recommendations to IEP Team or School Staff

During the evaluation process, group members may identify strengths and weaknesses, educational needs, and opportunities for the student to use strengths to overcome deficits. Information may reflect the results of the assessment components and observations and focus on academic and or behavioral skills. This information is valuable and should be shared with teachers and the IEP team, as appropriate.

When a student is found eligible for special education and related services, the eligibility group may share information in the form of recommendations to the IEP team. These recommendations are documented in the summary of the eligibility meeting or in the individual reports of the evaluators. Virginia regulations require that the eligibility group identify the student’s educational needs in addition to determining if the student has a disability. This information assists the IEP team in developing the student’s IEP.

If a student is found not eligible for special education, information relevant to instruction must be provided to the student’s teachers and any committee that will be working to support the student. Group

members should work together to identify instructional strategies and supports that can be provided in the general education setting and share any additional information or resources.

For students who are educated in private schools, parental consent is required before releasing any information.

Determination of Eligibility and Documentation

State and federal regulations require documentation of the eligibility process. A copy of completed evaluation reports and a summary of the meeting must be included in the student's education record. The summary of the meeting serves as documentation of the group's discussion and must include the basis for making the determination, information from assessments, any educationally relevant medical findings, classroom observation and behavior noted during the observation and its relationship to academic functioning. Any completed disability worksheets must also be added to the student's education record.

The eligibility group shall work toward consensus while considering data and all state and federal requirements. Participants should ensure that no one voice or one assessment becomes the major factor in the decision-making process. If the group reaches consensus and the decision does not reflect a particular member's conclusion, then the group member must submit a written statement presenting that member's conclusions. The written statement must be attached to the form and placed in the student's record.

Group Cannot Reach Consensus

In the event the group cannot reach consensus, it is the responsibility of the LEA representative to provide a data-based decision in accordance with federal and state regulations. The LEA representative should document the decision, provide copies of all appropriate forms and prior written notice to the parents, and gather members' statements as appropriate.

NOTE: Because they are designated to represent the LEA and are trained in special education regulations, the LEA Representative cannot disagree with the determination of the LEA.

Response to Intervention

When a student participates in a response to scientific, research-based intervention process the documentation must also include: (1) the instructional strategies used and the student-centered data collected; (2) the strategies that were used to increase the child's rate of learning; and (3) the parent's right to request an evaluation. The group must also provide notification to parents that Virginia's guidance document, *Responsive Instruction, Refining Our Work of Teaching All Children* and monographs are available from the Virginia Department of Education Web site www.doe.virginia.gov.

Parent Notification of RtI, notification of Virginia's guidance document on responsive instruction is available from the Virginia Department of Education Web site and satisfies the notification requirement in Virginia's special education regulations.

Prior Written Notice

Once the evaluation process is completed and the eligibility group has made a determination as to whether or not the student is eligible for special education and related services, the group must develop and provide a prior written notice to the parent. It is important that each item in the prior written notice be addressed.

The group must make sure to address any items that the parent requested that the school division refused, as well as document any disagreement among the group members. The prior written notice must be provided to the parent at the time informed parental consent is sought. This is generally at the conclusion of the meeting when seeking consent or within a reasonable time thereafter if consent is not being sought at the meeting. A best practice would be to ensure that the prior written notice is provided no later than ten days following the meeting.

For additional information on PWN, see the Virginia Department of Education's publication, Guidance on Prior Written Notice in the Special Education Process (2013).

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