SPECIAL EDUCATION IN
NORTH DAKOTA

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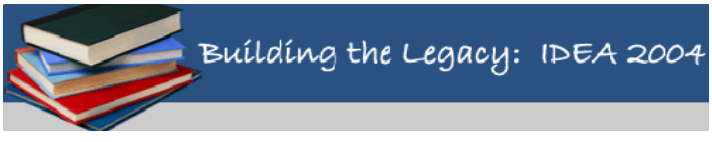
Guidelines for Serving Students with Noncategorical Delays in Educational Settings



United States Department of Education, Office of Special Education Programs (OSEP)

Special Note

"Unless otherwise specified, citations to 'section' or 'sec.' are citations to federal regulations implementing IDEA found in the Code of Federal Regulations at 34 CFR Part 300, which consists of 34 CFR secs. 300.1 through 300.818 and appendices A through E."

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Introduction and Purpose

The purpose of this document is to provide guidance to local school districts, families, caregivers, and community programs/supports about the category of eligibility in North Dakota referred to as Noncategorical Delay (NCD). This document outlines the process for North Dakota school districts planning to use the definition of NCD in determining special education eligibility. The process described includes best practices for team-based decision making, thereby ensuring appropriate services for children three through nine years of age.

What is a Noncategorical Delay?

In North Dakota, noncategorical delay relates to an individual who is at least three years of age but less than ten years of age. S/he exhibits a developmental profile in which cognitive, fine motor, vision, hearing, communication, pre-academic, socialization, or adaptive skill acquisitions are significantly below that of same-age peers. If, because of this disability, the individual needs special education and related services, the school district may determine that the individual is a student with a disability as a result of this noncategorical delay (15.1-32-24).

What Does this Mean?

According to North Dakota standards, children who are experiencing noncategorical delays have significant delays in one or more developmental areas. Noncategorical delay provides for the provision of services and programs based on a child's strengths and needs. This becomes necessary when the assessment of a more specific disability cannot be considered statistically reliable or valid due to a child's young age. Moreover, information adapted from the Division for Early Childhood of the Council for Exceptional Children believes the categories used for older school-aged children are often inappropriate for young children. The identification of children by these disability categories in the early years can result in a misdiagnosis of children and consequently providing inappropriate services. In addition, the use of a noncategorical delay eligibility allows children with disabilities, who might otherwise go unserved, to be identified at younger ages.

For general references of appropriate developmental milestones associated with communication, cognitive, social and emotional, and physical development, refer to the Centers for Disease Control and Prevention's Developmental Milestones.

When analyzing the definition of noncategorical delay, the following areas typically require clarification:

- Fine Motor
- Vision
- Hearing
- Cognitive
- Pre-Academic
- Communication
- Socialization
- Adaptive Skills

Appropriate Diagnostic Instruments and Procedures

The determination of significant delay should utilize global or total scores for the cognitive, communication, social or emotional, and adaptive development domains, rather than isolated deficits identified by assessments. For example, the domain of communication should include a total language score using a combination of both expressive and receptive language skills.

Fine Motor
Fine motors skills involve the use of small muscle groups of the arms and hands to eat, drink, dress, and write (i.e., coordination of small motor movements).

Vision
Vision includes the ability to see objects/items clearly and the physical structure/function of the eye. Vision impacts the ability to safely maneuver around the classroom and school, conceptualize objects, read, and manipulate/operate educational tools (manipulatives, computers, calculators, etc.).

Hearing
Hearing includes the ability to hear or perceive words/sounds in the surrounding environment. A hearing loss may impact a student's education in several ways: their speech and language; needing supports to hear (such as amplification, interpreters, or captioned videos); and instruction in alternate communication methods.

Cognitive
Cognitive development includes the ability to think, comprehend, remember, and make sense out of experiences. Specific examples of cognitive development include abstract thinking or reasoning, capacity to acquire knowledge, and problem-solving skills.

Pre-Academic
Pre-academic skills are a part of cognitive development. They can include interest in books, enjoying being read to, understanding that letters and numbers are symbols that mean something, retelling basic parts of a story, identifying certain logos/environmental print, identifying letters of the alphabet, understanding counting and one to one correspondence, scribbling, imitating vertical and horizontal strokes, and completing simple and complex sequences.

Communication
Communication is typically defined as the ability to use and comprehend language effectively. In this area, an overall measure of language includes expressive language (i.e., use of words and/or gestures to convey meaning) and receptive language (i.e., comprehension or understanding of what is being said).

Socialization
Socialization includes the ability to develop and maintain interpersonal relationships and to demonstrate age-appropriate social and emotional behaviors. It includes the ability to interact appropriately with peers and authority figures, show empathy, establish and maintain relationships with others, and to regulate behaviors and emotions.

Adaptive Skills
Adaptive skills include the ability to engage in age-appropriate activities using daily life skills. It includes the ability to participate independently in home and/or school settings, use self-help skills, engage in independent living, and exercise socialization skills.

Adversely Affects a Child's Educational Performance

One of the key factors in determining whether a student demonstrates an educational disability under the IDEA and North Dakota Century Code is that the defined characteristics of the disability adversely affect a child's educational performance. The impact of those characteristics must indicate that s/he needs the support of specially designed instruction or services beyond the accommodations and

interventions of the general education environment. When considering how to determine this, teams should consider if the student requires specially designed instruction in order to benefit from his/her education program based on identified deficits that could impact a student's performance. Such deficits include the inability to communicate effectively, significantly below average academic achievement, the inability to independently navigate a school building, or the inability to take care of self-care needs without support. If the data do not demonstrate a need for specially designed instruction, and the student is successful with only accommodations or modifications, a Section 504 plan may be considered.

Pre-Referral and Referral Considerations

It is the responsibility of school districts to seek ways to meet the unique educational needs of all children within the general education program prior to referring a child to special education. By developing a systematic model within general education, districts can provide preventative, supplementary, and differentiated instruction and supports to students who are having trouble reaching benchmarks.

Screening

Screening is a general type of assessment that addresses common questions parents and professionals have about the development of young children. Screening assessments are designed to efficiently identify those children who need a more thorough and detailed assessment. The procedures and tests used in screenings are developed to be quickly and easily administered without highly specialized training.

A variety of concerned individuals can request a screening. This list includes but is not limited to:

- Parents/Guardians
- Physicians
- Educators
- Childcare Providers
- Outside Public and Private Providers
- Other Public Agencies

Regarding preschool-aged children, the child's local school district should be contacted to schedule a screening. For children who are school-aged, the teacher, case manager, or school administrator should be contacted for specific procedures.

Pre-Referral Interventions in School-Age Settings

One way the North Dakota Department of Public Instruction (NDDPI) supports prevention and early intervention is through Multi-Tiered Systems of Support (MTSS). The MTSS framework is a problem-solving system providing students with the instruction, intervention, and supports they need with the understanding that complex links exist between students' academic and behavioral, social, and personal needs. The MTSS framework provides multiple tiers of interventions with increasing intensity along a continuum. Interventions should be based on the identified needs of the student using evidenced-based practices. To identify these needs in a student, multiple sources of academic and behavioral data should be used. One example of a tiered intervention model includes Response to Intervention (RtI) which focuses on academic and behavioral instruction and support.

These interventions are *in addition to*, and not in place of, on-grade-level instruction (i.e., Tier I). Tier II is usually referred to as supplementary intervention, and Tier III is intensive intervention. Both, in addition to Tier I, may include standards-based differentiation, remediation, and reteaching as deemed necessary by the student's needs.

It is important to document data related to the intervention selection; interventions (including the intensity, frequency, and duration of the intervention); progress monitoring; intervention integrity and attendance information; and intervention changes to help teams determine the need for more intensive supports and specially designed instruction. This data also provides teams with information when determining the least restrictive environment necessary to meet a student's needs.

Evidence-Based Intervention and Instructional Strategies

During pre-referral interventions, as well as when a student is receiving specially designed instruction, it is important to be using Evidence-Based Interventions and instructional strategies. Section 8101(21)(A) of the Elementary and Secondary Education Act (ESEA) defines an Evidence-Based Intervention as, "being supported by strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale".

How to identify an Evidence-Based Intervention

- Intervention refers to a strategy, curriculum, or manualized program implemented with an individual student or group of students to prevent or remediate a target problem.
- An Evidence-Based Intervention is one that has been shown, in controlled research studies, to be effective in improving student outcomes (i.e., achievement or behavior). For this reason, Evidence-Based Interventions are also commonly referred to as "research-based interventions."

How to select an Evidence-Based Intervention

Evidence-Based Interventions need to be selected based on the specific issues demonstrated by the target student(s). The process for identifying an intervention includes identifying the student issue and evaluating intervention options. More specifically, the process of selecting an intervention can be broken down into five steps:

1. *Identify* the issue of concern, collect baseline data, and develop goals.
2. *Select* interventions that are supported by evidence relevant to local needs and can be implemented successfully.
3. *Create* an Implementation Plan.
4. *Implement* the intervention with fidelity and monitor student progress.
5. *Examine* outcomes and reflect on goals; revise the Implementation Plan as needed.

Background Considerations

During the pre-referral and evaluation process, it is important to keep in mind a student's history and background. Several areas should be considered when determining if a student has a noncategorical delay.

- **Cultural or racial factors:** The assessment team should consider the cultural and linguistic background of individual children and families. Parents often have expectations of

development based on their own culture that may inform a family's decision regarding the child's exposure to early learning opportunities both in the home and community setting (i.e., has the child had an opportunity to be around other children in a social or preschool setting?). Also, the team will want to consider the expected patterns of development in various cultures that may impact the developmental expectations the family has for the child. Another environmental consideration is the child's exposure to various languages, which should guide the assessment instruments chosen for the evaluation.

- **Language acquisition:** Language differences (e.g., limited English proficiency) should not be considered a developmental disability unless the child also demonstrates impairments in his/her primary language or demonstrates overall global deficits that are not primarily attributed to lack of exposure to the English language. Teams should also consider information regarding a student's language skill in his/her dominant language, as deficits in receptive, expressive, and/or pragmatic language are likely to have a significant impact on developing and maintaining social relationships. More information on English learners can be found on the NDDPI website under *EL Guidance and Resources*.

- **Lack of instruction:** Teams should consider the ways in which families have worked to promote the development of their child. These considerations could include participation in developmentally appropriate activities in the home and community settings. This type of information may be gathered through parent interview, parent report, or through direct observation of the home and/or community settings.

  Some key questions should be considered:
  - What does the child's typical day entail? Is it structured or unstructured?
  - Are activities in the home and community aligned to the child's strengths and weaknesses?

  If the child has been afforded access to developmentally appropriate activities across a variety of settings but fails to make adequate progress, then the delay may be inherent to the child and not due to a lack of instruction.

- **Vision/hearing:** Vision and hearing screenings are integral components of all evaluations. Ensuring typical vision and hearing assists teams in focusing intervention and determining possible causes of difficulty. It is also important to address visual/hearing limitations that may impact performance on assessments.

- **Past performance:** A child's past educational/preschool interventions including speech, occupational therapy, physical therapy, and family intervention should be considered. This information is important when evaluating the level of services needed to meet grade-level expectations. For example, if a student is receiving language services through Early Intervention and continues to demonstrate overall communication deficits as reflected by therapeutic progress reports, then data collected as part of therapy should be considered when determining assessment plan needs.

- **Family/environmental factors:** The team should consider factors which could impact the child's opportunities to learn, such as frequent moves, life stress, exposure to developmental experiences and materials, and limited access to a continuum of care. When performing the assessment, it is also important to consider the child's exposure to adults outside the home environment. Some children are inherently shy or reserved around strangers and might need extra time to warm up and/or need multiple testing sessions to acclimate to the testing environment itself.

- **Medical and family history:** The team will also want to gather information regarding the child's medical and family history including birth and developmental information. Parents should be asked if their child's developmental milestones were met within general expectations or if concerns have only appeared recently. The team could then consider whether the child is experiencing delays that may be developmental in nature or if concerns may be related to a situational experience, trauma, significant changes in family or home life, or exposure to any adverse childhood experiences (ACEs).

Transition from Part C (birth to age 3) to Part B (ages 3-21; local school district)

For those children currently receiving Part C services, the transition process is clearly described in *Understanding Early Childhood Transition: A Guide for Families and Professionals*. Every child participating in Early Intervention has a Transition Plan written as part of their Individualized Family Service Plan (IFSP). The local school district is required to conduct any necessary evaluations, determine eligibility, and, if eligible, develop an Individual Education Program (IEP) for the child by the child's third birthday.

Note: When receiving assessment data using different types of scores and explaining the relationship of those scores to team members and parents, a normal distribution curve, with percentile rank and standard score information, may be used. A copy of *The Normal Curve and Its Relationship to Various Derived Scores* may be found in Appendix A.

Comprehensive Evaluation

Once the team has ruled out any factors that could impact a student's ability to make satisfactory progress as a result of classroom interventions, the school district will need to move to the written referral process to pursue a comprehensive evaluation for eligibility. This written referral contains information that will assist the Multidisciplinary Team (MDT) in developing an evaluation plan that will ensure a comprehensive evaluation is conducted and will address the concerns observed throughout the intervention process.

Note: Complete information on the referral and evaluation process is available in the NDDPI document *Guidelines: Evaluation Process* available on the NDDPI Special Education website.

Parents are essential members of the MDT. During the intervention process, parents should be informed of the concerns observed and the interventions proposed to address those concerns. Parents can contribute valuable information to the intervention effort including topics such as behaviors observed in the home and community as well as the student's strengths and interests. Often, parents may become

part of intervention efforts, receiving support from the school to provide consistency in implementation across environments.

Should it become necessary to move to a referral for a comprehensive evaluation for special education eligibility, parent involvement provides a district the opportunity for relationship building. Contacts with parents by school professionals should be characterized by open communication to establish a foundation for a trusting, collaborative, and mutually respectful relationship. This foundation will be critical in the long term to achieve the best outcomes for a student. Collaborations with parents should be child-centered, supportive of both the child and their parents, and focused on creating a successful learning experience for the student.

Multidisciplinary Team

The Multidisciplinary Team (MDT) must consist of the required team members and other qualified professionals. An MDT must consist of the student's parents, special education teacher, a representative of the Local Education Agency (LEA), a general education teacher, and an individual who can interpret the instruction implications of the evaluation results. For information on required MDT members, refer to the NDDPI document, *Guidelines: Evaluation Process*.

Note: For a child younger than school age, a general education teacher is an individual qualified by the North Dakota Education Standards and Practices Board (ESPB) to teach a child of such an age. For a child who is five years of age and served in a preschool or Early Childhood Special Education (ECSE) program, a kindergarten teacher from the neighborhood elementary school is expected to be a team member. For a child who is younger than five years of age and who is served in a preschool or ECSE program, the team will include a community preschool teacher, community child care provider, Head Start teacher, or similar early childhood educator.

Ultimately, the MDT is responsible for gathering the necessary observations and other data from a variety of settings. These observations and data will allow the team to make an appropriate determination of eligibility and to identify all needs that may require support for individualized programming.

Evaluation Planning Process

The MDT is responsible for the evaluation process, including these key components:

- Develop a Student Profile: Evaluation.
- Develop an Assessment Plan.
- Carry out the Assessment Plan.
- Analyze the findings throughout the process.
  And
- Prepare an Integrated Written Assessment Report to summarize pertinent observational data and other relevant assessment results that will determine if the student has a disability that adversely affects education.

The Student Profile: Evaluation

The MDT should develop a *Student Profile: Evaluation* that documents the reason(s) for the proposed evaluation based on information from the referral. The *Student Profile: Evaluation* is beneficial for both initial evaluations and reevaluations.

The *Student Profile: Evaluation*

- Provides a comprehensive picture of the student.
- Identifies patterns of current functioning.
- Indicates areas where further information is required.

Complete information on the development of the *Student Profile: Evaluation* is available in the *Guidelines: Evaluation Process* document found on the NDDPI website. The *Student Profile: Evaluation* process is also used for eligible students with disabilities to review a student's needs for program development purposes or a student's exit from special education.

A child between ages 3 and 9 may not need further evaluation if the existing evaluation data is comprehensive, current, and valid. For children transitioning from Infant Development Part C to Part B (2.7 to 2.9 years of age), all available information should be considered for eligibility. Such information could include assessment data from medical centers or university clinics. If the team determines the available data is insufficient (such as only test sub scores and not overall performance scores) to make the determination of eligibility, additional assessments should be completed.

Assessment Plan

If the *Student Profile: Evaluation* listed any "Questions to Answer Through Assessment," then an assessment plan is written. The assessment plan details how additional information will be obtained and who will be involved in the process. In developing the assessment plan, the MDT considers all areas of suspected disability from the referral, which are included in the student profile, thus ensuring a comprehensive evaluation. A number of important considerations exist for school districts, as identified below in the IDEA Regulations section.

Review of Existing Data

- Evaluations and information provided by the parents.
- Current classroom-based, local, or state assessments.
- Observations by teachers and related service providers.

Ultimately, the MDT is responsible for gathering the necessary observations and other data from a variety of settings which will allow the team to make an appropriate determination of eligibility and to identify all needs that require support from individualized programming. When evaluating a child for consideration under the NCD criteria, the areas of cognitive, fine motor, vision, hearing, communication, pre-academic, socialization, and adaptative skill acquisitions must be considered.

Information the MDT should consider during the evaluation process includes:

1. For children transitioning from Part C Early Intervention to Part B Early Childhood Special Education, consider the comprehensive early childhood referral information. For school-age students, review and consider the documentation in the building level team file and/or RtI data.
2. An investigation and analysis of developmental/educational, medical, family, and social history.
3. For students with more than one language modality, administer a survey about developmental milestones and medical history with additional evidence-based questions that address the following areas:
    - Parent concerns.
    - Where the child spends his/her day.
    - Progress or regression in the past 3 to 6 months.
    - Language/dialect acquisition history.
    - Parent's highest level of education.
    - Family history with speech-language or academic problems.
    - Significant changes in the family.
    - Motor difficulties.
4. An individually administered assessment of adaptive behavior to provide information regarding conceptual, social, and practical skills.
5. Standardized and/or non-standardized developmental/educational data and performance.
6. Dynamic assessments to distinguish difference from disorder.
7. Existing evaluation data.
8. For school-age children, formal and/or informal observations by different members of the evaluation team (which includes parents/caregivers). To determine developmental/educational functioning, these observations must be performed in multiple settings both structured and unstructured.
9. For preschool students, observations should occur in the natural setting. If this is not possible, data will be gathered by the parent or caregiver. Preschool data should focus on participation in the home and community and on developmentally appropriate activities.
10. Interviews with parents, caregivers, and students to determine student preferences, individual strengths and needs, family assets, family needs, and any potential additional concerns.
11. If formal evaluation is not feasible, assessments of functional skills will be necessary in order to gather information about the student's present levels of performance. Additional components of an initial or reevaluation should be determined based on evaluation teams' considerations related to eliminating other disability categories as potential options.

When the team decides additional data is needed to determine whether a student is eligible for special education and related services due to a possible disability, a full and complete assessment of abilities shall be conducted by the MDT team. Whether the team decides additional data is or is not needed, a consent for evaluation is always required at the initial evaluation. For a reevaluation, consent is only needed when the team decides additional data is needed.

Note: The assessment plan describes how additional information will be obtained and who will be involved in that process. The assessment plan includes names of specific tests the MDT team will administer if known at the time of writing the assessment plan. However, if the team has not identified

the exact tests, it is allowable to identify a general area of assessments (i.e. in the area of language or in the area of reading).

For children ages 3 through 5, a teacher with an Early Childhood Special Education (ECSE) credential must be available for consultation on the evaluation team and the IEP team for every child for whom the NCD definition will be utilized. For children ages 6 through 9, a special education teacher must be available for consultation on the evaluation team and the IEP team for every child for whom the NCD definition will be utilized.

Evaluation

Children with NCD demonstrate delays in development that may have a global impact on their ability to succeed in the general education curriculum. Each child is an individual with a unique configuration of strengths, challenges, and temperament characteristics. To identify these children, a variety of assessments is needed in the areas of social skills, play skills, peer interaction skills, and self-help skills. The assessments must include observations and narratives from those who know the child best. Test scores do not drive identification of these children, although they are part of the information the team considers.

When reporting scores, total developmental areas or total domain scores are required; individual subtest scores may not be used as a determinant of delay in any of the developmental domains assessed. For each developmental area, assessment result reporting should include standard score, percentile, assessment observations, and an interpretation of results. The interpretation of results should include strengths and weaknesses identified.

The evaluation report(s) should include a summary of all the findings compiled and should indicate whether and how delays adversely affect educational performance. This information is a culmination of data obtained as part of the evaluation and provides an overall impression based on all sources of information. It is important to remember the documented impact on educational performance does not necessarily mean that a student is demonstrating academic deficits (e.g., poor grades, specific foundational skill deficits). Therefore, nonacademic skills/behaviors should be considered equally. Educational performance reflects the total involvement of a student in the school environment. It includes cognitive functioning, pre-academic skills/academic skills, adaptive behaviors/daily living skills, social-emotional development/functioning, communication skills, and participation in developmentally appropriate activities (e.g., pre-vocational skills or vocational training).

If a child is preschool age, the MDT should consider whether the child is able to follow directions, participate in group activities, engage in parallel or cooperative play (as appropriate to age), regulate emotions, and cope with changes in the schedule or routine. Other examples of how delays may impact educational performance include difficulties transitioning independently between activities, navigating around the classroom independently (e.g., pulling out chairs, sitting in chairs without falling, moving from a seated to a standing position independently), and using communication for social intents.

Complete information regarding the development of the student profile can be found in the NDDPI *Guidelines: Evaluation Process*.

Note: The Response to Intervention (RtI) process cannot be solely used to determine or identify a student with NCD. The data collected though the RtI process should be incorporated into the evaluation process for all disability categories. Currently in North Dakota, Specific Learning Disabilities (SLD) is the only disability category allowed to be determined through the RtI process.

Eligibility Considerations

Integrated Written Assessment Report

When the MDT has completed its full and comprehensive assessment of a student, the MDT will prepare an Integrated Written Assessment Report (IWAR). The IWAR will summarize all relevant data gathered through observation and assessment for the use in determining, as a team, if the student has a disability which adversely affects his/her education and thereby requires specially designed instruction. A thorough description of the IWAR is available in the NDDPI document, *Guidelines: Evaluation Process*.

Eligibility decisions for special education services are two-pronged: (1) the team decides whether the evaluation results indicate the presence of a disability, and (2) the team decides whether the identified disability adversely impacts the student's educational performance such that s/he requires specially designed instruction. The MDT provides the parent(s) a printed copy of the completed IWAR. After the team determines eligibility, they will provide the parent(s) a copy of the eligibility report and a prior written notice documenting the team's decision(s).

Evaluation results enable the team to answer the following questions for eligibility:

- **Are both prongs of eligibility met? If only prong 1 is met, a Section 504 plan could be considered.**
    - **Prong 1:** Do the evaluation results support the presence of an educational disability?
        - The child is between the age of 3 and 9 at any time during the school year.
            - Children must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other identified category at age 10 will no longer be eligible for special education and related services. If the student does not qualify for an IEP, a Section 504 plan may be considered.
        - A lack of appropriate instruction in reading or math, or limited English proficiency, is not a determinant factor.
        - The child does not meet the eligibility requirements for any other IDEA disability category.
        - After looking at the data in the areas of cognitive, fine motor, vision, hearing, communication, preacademic, socialization, and adaptive skill acquisitions:

          Criteria A

          Performance is at or below 1.5 standard deviations of the mean or the 7th percentile rank in any TWO areas.

          OR

Criteria B

Performance is at or below 2.0 standard deviations of the mean or the 2nd percentile rank in any ONE area.

OR

Criteria C

Eligibility is based on professional judgement that is not an individual decision but a team decision.

Prong 2: Is there documentation of how the disability adversely affects the student's educational performance in his/her learning environment? Does data support a need for the student to receive specially designed instruction?

- **Was the eligibility determination made by an IEP team upon a review of all components of the assessment?**

Professional Judgement

As stated above in criteria C, sometimes children are identified as having NCD based on professional judgement. Although the NCD definition creates an opportunity to reach children who might experience failure in a general education classroom, judicious use of the category is necessary to ensure children are not placed under the NCD category due solely to lack of instruction or limited English proficiency. Furthermore, the IDEA regulations make it clear that eligibility under the NCD definition can be based on either documented delays or the professional judgment of the team.

The overall purpose of professional judgment is to ensure the team uses their professional expertise to interpret the array of evaluation data and determine eligibility on an individual basis. It should be used for every decision from the formation of the MDT through the formal eligibility determination. Professional judgment is a special type of judgment rooted in a high level of professional expertise and experience. It emerges directly from extensive data and is based on the professionals' explicit training, direct experience with those with whom the professionals are working, and specific knowledge of the person and the person's environment. The use of professional judgment enhances the precision, accuracy, and integrity of the professionals' decision in that case (Schalock & Luckasson, 2005). It should be noted, there are times when professionals will need to rely more heavily on their professional judgment because of the individual child's characteristics and circumstances.

Cautions Regarding the Use of Professional Judgement

Professional judgment should not be thought of as a justification for abbreviated evaluations, a vehicle for stereotypes or prejudices, a substitute for insufficiently explored questions, an excuse for incomplete or missing data, or a way to solve political problems (Schalock & Luckasson, 2005).

When making an eligibility determination decision, the team must follow the regulations in IDEA (2004), and professional judgment must be used within the context of the evaluation findings.

Specific Considerations for Noncategorical Delay

- Unlike any other disability category in IDEA, students with Noncategorical Delay can qualify in a related service area only. For example, if a kindergarten student is assessed in the areas of cognitive, fine motor, vision, hearing, communication, preacademic, socialization, and adaptative skill acquisitions, and the MDT determines the student's fine motor skills are at a level that is currently impacting his/her success in the general education curriculum, then the student could be eligible for an IEP under the disability category of Noncategorical Delay.

- By definition, a Noncategorical Delay suggests that a child is not meeting expected milestones based on norms for children at the same chronological age. Therefore, teams should review the developmental history of a child's skill/behavior/ability levels. While a child can have a traumatic event that impacts development and thus makes them eligible for a Noncategorical Delay, teams should be cautious to not misclassify a child as having a Noncategorical Delay when in reality the child is displaying a behavioral reaction to transitory change in his/her life (e.g., the birth of a sibling, a divorce, or starting a new school). In some cases, behaviors observed may be short-lived and subside as the child adjusts to the change. If there was no pattern of concerning developmental progress prior to such an event, it is advisable to implement interventions either before or during the evaluation in order to see if the child's behavior/skills improve without the need for additional supports.

IEP Development and Educational Programming

Once the MDT has found a student who is eligible under NCD, the IEP team must meet to develop a plan to address all needs identified through the assessment process. The IDEA requires the IEP be developed and implemented within thirty calendar days of the eligibility determination. The student's IEP will provide a description of the student's needs and will describe the special education, related services, and other supports necessary to address those needs.

Complete information on the IEP process is available in the NDDPI document, *Guidelines: Individual Education Program Planning Process* found on the NDDPI website.

Reevaluation Considerations

A reevaluation must be conducted at least every three years or earlier if conditions warrant. Reevaluations may be requested by any member of the IEP team prior to the three-year reevaluation (e.g., when teams suspect a new disability or when considering a change in eligibility for services). This process involves a review of previous assessments, current academic performance, and input from a student's parents, teachers, and related service providers. The documented previous assessments should include any assessment results obtained as part of a comprehensive evaluation for eligibility or any other partial evaluation. The IEP team will review the data during a meeting before deciding on, and obtaining consent for, reevaluation needs. Depending on the child's needs and progress, reevaluation may not require the administration of tests or other formal measures; however, the IEP team must thoroughly review all relevant data when determining each child's evaluation need.

Some of the reasons for requesting early reevaluations may include:

- Concerns, such as lack of progress in the special education program.
- Acquisition by an IEP team member of new information or data.
- Review and discussion of the student's continuing need for special education (i.e., goals and objectives have been met and the IEP team is considering the student's exit from his/her special education program).
- New or additional suspected disabilities (i.e., significant health changes, outside evaluation data, changes in performance leading to additional concerns).
- Removal of the student from child count. If the student turns 10 before December 1st and remains identified as NCD, they will no longer be counted as a child with a disability for funding purposes.

The IEP team may decide an evaluation is needed or not needed to determine continued eligibility. All components of the *Student Profile: Evaluation* must be reviewed prior to determining the most appropriate decision for reevaluation. More information on reevaluation considerations and procedures can be found in the NDDPI *Evaluation Process* guidance.

Exit/Dismissal of Services

The team may determine the student is no longer eligible for an IEP in the following situations:

- The student no longer qualifies under the disability category of NCD or any other disability category under the IDEA.
- The student continues to qualify under the NCD category, but it no longer affects their educational performance.
  Or
- The student continues to qualify under the NCD category that affects educational performance, but the eligibility team determines the child does not need specially designed instruction.

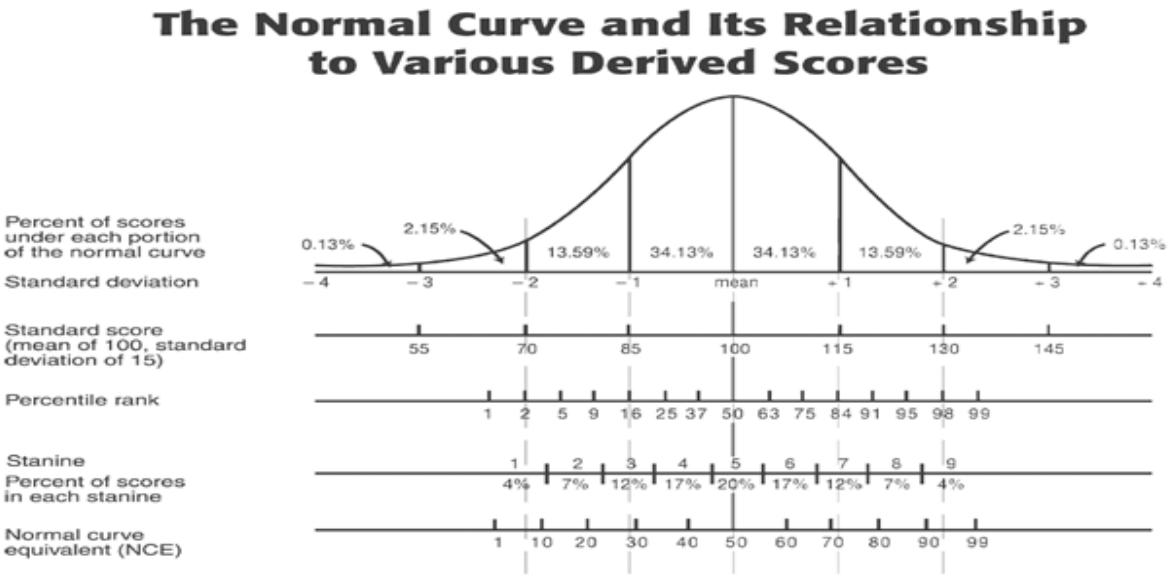
Before termination of eligibility under NCD, a reevaluation is required (34 C.F.R. §300.305). Even though this reevaluation may be based on a review of existing data with a determination that no additional assessments are needed, MDTs need to make sure the reevaluation is comprehensive and rule out the possibility that the student could qualify under a different disability category.

Once termination of services has been determined by the MDT, the parent must be informed that special education services will cease, and a prior written notice explaining the decision must be given to the parent.

Section 504

Students who are not found to be eligible for special education under the IDEA, or who have been exited from an IEP, may be eligible for accommodations and modifications under Section 504. Any agency, including agencies serving the preschool population and receiving federal funds, must comply with the requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 is administered by the Office of Civil Rights (OCR). Information on Section 504 Subpart D: Guidelines for Educators and Administrators is available on the NDDPI website on the Policy/Guidelines page.

Appendix A



After norms have been established, an individual's raw score can be converted to "derived scores" which communicate that individual's performance to the standardization sample. This chart shows the relationship of derived scores in a normal distribution.

References

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