

*The Evaluation and Planning Team must answer three questions in determining special education eligibility.*

## Eligibility for Special Education

Eligibility for special education services requires more than a disability diagnosis.

The Vermont Agency of Education Special Education Rules specify that the Evaluation and Planning Team (EPT), which includes you, the parent, must respond to three specific criteria used to determine special education eligibility:

- If your child has a disability.
- If the disability adversely affects your child's educational performance in at least one basic skill area, except in the disability categories of Deaf-Blindness and Specific Learning Disability.
- Whether your child needs specially designed instruction.



The disability categories are:

- Autism Spectrum Disorder
- Deaf blindness
- Emotional disturbance
- Hearing Loss
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific Learning Disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment

The EPT, which includes the parent, needs to consider if documentation of adverse effect makes a convincing case that the disability has led to basic skill deficits that prevent their child from accessing and progressing in the general curriculum.

In addition to grades and standardized test scores, schools must consider how a child's emotional, health, or other conditions adversely affect their non-academic performance in social and behavioral aspects as well.

Adverse effect on educational performance cannot be based solely on discrepancies in age or grade level performance in academic subjects. EPTs must consider all areas of the child's functioning at school, including academic, social/emotional, cognitive, communication, vocational and independent living skills.

For example, an adverse effect can be shown through behavioral difficulties, inappropriate social relations, or impaired organizational skills, such as being tardy or difficulty with following school rules.

Basic skill areas that comprise educational performance include:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading comprehension
- Mathematics calculation
- Mathematics reasoning
- Motor skills
- Functional skills

Functional skills are defined as skills needed for a child to learn specific daily living, personal, social, and employment skills.

Examples include:

- Social/Emotional skills
- Communication skills
- Independent living skills
- Transition/Job skills

### **Additional procedures for identifying children with specific learning disabilities (SLD).**

In determining if your child has a SLD, the team will review how well your child is learning. Your child's school must use evidence-based teaching strategies which

could include Response to Intervention, Patterns of Strengths and Weakness, Scientific Response to Intervention, etc.

Eligibility determinations will not require a separate assessment of adverse effect as that is built into the SLD diagnosis.

**The Evaluation and Planning Team (EPT), of which the parent is a member, determines special education eligibility using this three Step process.**

#### **Step 1: criterion 1**

Does your child have a disability?

- Give rationale for suspected disability.
- Use disability determination criteria described in the Vermont Special Education Rules.

*Results for the disability question:*

**If YES**, proceed to criterion 2.

\*For diagnoses of specific learning disability or deaf blindness, proceed to criterion 3.

**If NO**, proceed to criterion 2 to further inform the school's Educational Support System (ESS).

The school's Education Support Team (EST) enhances the general education school system by supporting the academic and functional needs of all students, regardless of eligibility for specific services.



## Step 2: criterion 2

Does your child's disability have an adverse effect on educational performance in a basic skill area?

- If your child is determined to have a disability, which basic skill area is adversely affected?
- If your child is experiencing educational difficulty in a basic skill area (though not found to have a disability), what information does the EST need to provide supports/accommodations?

What measures will the team use to answer the adverse effect question?

- Look at "disability" measures to see if any of that information can be applied to adverse effect criteria.
- Does the disability impede your child's educational performance (more broadly defined than academics) such that they are significantly and consistently below typical grade level peers?
- How does your child perform in the general education environment based on data collected from individualized and group cognitive and academic assessments, teacher made tests, grades, continuous progress monitoring, work samples, etc.?
- Does the disability impact your child's social interactions and/or independent functioning and/or learning behaviors?
- How does your child perform in the general education environment based on data collected from psychological reports, classroom observations, continuous behavioral monitoring, discipline records, attendance records, medical records, etc.?
- What scientific research-based classroom interventions have been used and what are the results?

A child cannot be found eligible for special education if there is a lack of instruction or limited English proficiency.

*Results for* to the adverse effect question:  
**If YES for criterion 1 and 2**, proceed to criterion 3.

**If YES for criterion 1 and NO for criterion 2**, refer to the building administrator for 504 Plan consideration.



## Step 3: criterion 3

Does your child need specially designed instruction?

- Does your child require special education supports and services beyond the scope of general education services that are available to all students?
- How must instruction be adapted to meet your child's unique disability-related needs?

Consider the following needs:

- Instructional Needs (i.e., direct/explicit instruction in reading, social skills, life skills, organization)
- Environmental Needs (i.e., reduced distractions, smaller group setting, preferential seating)
- Curricular Needs (i.e., modified content, functional curriculum, scribe, assistive technology, time extensions)



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- Instructional Delivery Needs (i.e., slower pace, simplified vocabulary, additional repetitions, guided practice)
- Behavioral Needs (i.e., coping strategies, social skills, problem-solving skills)
- Medical/Physical Needs (i.e., orientation and mobility, school nurse services, medications)

*Results for the need for specially designed instruction question:*

**If YES for criterion 1, 2, and 3,** your child is eligible for special education.

**If YES for criterion 1 and 2, and NO for criterion 3,** refer to the building administrator for 504 Plan consideration.

### **Qualifying for special education**

If your child meets all three criteria: disability, adverse effect, and need, then eligibility for specially designed instruction has been determined.

If a disability has not resulted in special education eligibility, it is important to consider what is available within the school's system of support, possibly a Section 504 determination or an Educational Support Team (EST) plan.

Whether a child is eligible or not, it is most important for EPTs to determine specific instructional strategies based on the student's learning needs as identified in the comprehensive evaluation.

### **Tips for Parents**

The focus should be placed on your child's overall performance in school and their response to instructional interventions. Some children attain adequate test

scores, but do not demonstrate appropriate academic progress.

For example, if your child cannot attend or engage with school, their inability to complete tasks or classroom assignments may result in failure of the subject material. This can be considered an adverse effect.

A free and appropriate public education (FAPE) must be available to any child with a disability who needs special education and related services, even if the child has not failed or been retained in a course or grade.

While only one of the basic skill areas must have the adverse effect documented in the EPT report, all identified basic skill areas of concern must be documented in the Adverse Effect section.

The EPT summary must provide an explanation that is parent-friendly.

### **Resources**

[Vermont Agency of Education Special Education Technical Assistance.](#)

**802-828-1256**

### [Vermont Legal Aid: Disability Law Project](#)

The project provides counsel and advice, brief service, and full representation to eligible clients and their family members.

**800-889-2047**