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# topic facts

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## **Disability is not eligibility**

*Meeting requirements for special education is a three-step process*

**P**arents call me daily wanting to know why their child is not eligible for special education when the Evaluation and Planning Team says that a disability condition has been met. It should be simple. If Johnny has a disability, he should benefit from special education, right? Wrong.

In August 2001 the Vermont Department of Education revised special education regulations to specify that the Evaluation and Planning Team (EPT) must develop and answer questions in response to three specific criteria used to determine special education eligibility. Questions would be formed based on the presence of a **disability**, the extent to which the disability is having an **adverse effect** in the basic skill area(s), and whether or not the student's **need** is significant enough to require specialized instruction.

The criteria of disability, adverse effect, and need are not new. Prior to the special education regulations change in August 2001, EPTs had to consider if a student's disability was having an adverse effect on a basic skill area(s). Now EPT members need to ask specific questions that show whether or not a disability is having an adverse effect in the basic skill areas under consideration by demonstrating that performance is significantly below age and grade norms. This means that your child is performing among the lowest 15% of students at his or her grade level.

As members of the EPT gathering evidence to support a disability determination, parents need 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 order to do that:

- At least three out of five different types of measures must be used to assess performance in each basic skill area identified in the evaluation plan. Skill areas may include basic reading, reading comprehension, mathematics calculation, mathematics reasoning, written expression, oral expression, listening comprehension, and motor skills for all disability areas except learning disabilities.
- Choices of measures may include standardized test results, report card grades, curriculum-based measures such as class tests, criterion-referenced tests such as a reading or math inventory, Vermont's Developmental Reading Assessment, Writing Portfolio, Math Portfolio or New Standards Referenced Exams, and samples of work.

*The  
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## 3-step process for determining special education eligibility

| CRITERION 1  | CRITERION 2   | CRITERION 3  |
|--|---|--|
| <p><i>Is there a disability?</i></p> <ul style="list-style-type: none"> <li>• Give rationale for suspected disability.</li> <li>• Describe learning profile.</li> </ul> <p>What measures will you use to answer disability question?</p> <ul style="list-style-type: none"> <li>• Look at disability categories in regulations.</li> <li>• Decide which tests and measures to use.</li> <li>• Review measurement outcomes.</li> </ul> <p><i>Answer Disability Question</i></p> <p>If YES, proceed to criterion 2.<br/>If NO, proceed to criterion 2 to further inform ESS.</p> | <p><i>Is there an adverse effect on basic skills?</i></p> <ul style="list-style-type: none"> <li>• If student is determined to have a disability, on which basic skill area is adverse effect experienced?</li> <li>• If student is experiencing education difficulty in basic skill area (though not found to have a disability), what information does ESS need to support/accommodate student?</li> </ul> <p>What measures will you use to answer the adverse effect question?</p> <ul style="list-style-type: none"> <li>• Look at "disability" measures to see if any of that information can be applied to adverse effect criteria.</li> <li>• Review measurement outcomes and decide if they meet criteria for adverse effect.</li> <li>• EPT determines if student is below age or grade norms; in 15th percentile or below; or -1.0 standard deviation below mean; or equivalent. Choose three out of five different measures gathered over a six month period. <ul style="list-style-type: none"> <li>• standard or percentile scores on an individually-administered nationally normed achievement test</li> <li>• grades</li> <li>• curriculum-based measures</li> <li>• normed, referenced assessments</li> <li>• student work, language samples, portfolios</li> </ul> </li> </ul> <p><i>Answer Adverse Effect Question</i></p> <p>If YES for criteria 1 &amp; 2, proceed to criterion 3.<br/>If YES for criterion 1 and NO for criterion 2, refer to building administrator for 504 consideration (§2362.2.6).</p> | <p><i>Is there a need for special instruction?</i></p> <ul style="list-style-type: none"> <li>• Report skill deficits discovered in adverse effect protocol.</li> </ul> <p>Identify and develop the appropriate instructional strategies for student to progress in general education curriculum.</p> <p><i>Answer Need For Specialized Instruction</i></p> <p>If YES for criteria 1, 2 &amp; 3, student is eligible for special education.<br/>If YES for criteria 1 &amp; 2 and NO for criterion 3, refer to building administrator for 504 consideration.</p> |



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- Performance must be compared to average performing grade level peers in the basic skill area considered.
  - In the upper grades, performance may be assessed indirectly if the reason for an adverse effect condition being met in content areas such as social studies or science, for example, is related to skill deficits in reading and writing.
  - Refusal or a lack of work production may be an indicator of a disability, such as an emotional disability, and identified by a professional as having an adverse effect on a basic skill area.
- When the EPT establishes that an adverse condition has been met, you have built your case from supporting information of assessment measures. The team must now identify if specialized instruc-

tion is required that cannot be provided within the school's system of support available to all students. If your child meets all three criteria—disability, adverse effect, and need—then eligibility for special education 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. The educational support system is designed to support students regardless of eligibility for categorical programs.