Determining Special Education Eligibility for School-Age Children: Developmental Delay

Introduction

The Ohio General Assembly passed HB 554 which resulted in the expanded definition of "child with a disability" as it pertains to the developmental delay disability category found in Ohio Revised Code Section 3323.01 Education of children with disabilities definitions. This law became effective April 6, 2023.

These eligibility guidelines were written to provide special education and related services personnel, administrators and other professionals information on the identification and determination of eligibility for special education services for children with a developmental delay.

Note: A child identified under the Developmental Delay category who is transitioning from preschool to kindergarten does not require a reevaluation.

Definition

The developmental delay definition was expanded to include a child who is at least three years of age and **less than 10 years of age**, who is experiencing developmental delays and needs special education and related services as defined by the operating standards adopted by the state board of education.

"Developmental delay" means a child who is experiencing a delay as determined by an evaluation team, IEP team and other qualified professionals in one or more of the following areas of development:
- Physical development
- Cognitive development
- Communication development
- Social or emotional development
- Adaptive development

A school district may choose to use the term "developmental delay" as defined in rules 3301-51-01 and 3301-51-03 of the Administrative Code for children who are experiencing developmental delays and who, by reason thereof, need special education and related services under the following conditions:
1. The applicability of the term shall be based upon the individual needs of the child as determined by the evaluation team or the IEP team and other qualified professionals.
2. In addition to the assessments required to determine eligibility as a child with a disability under the Individuals with Disabilities Education Act (IDEA), the results of appropriate diagnostic instruments and procedures also may be used to help make the determination that a child is eligible under the disability category of "developmental delay."
3. Although a standard score may not be used as the sole factor in making the determination that a child has a developmental delay, the determination may be substantiated by a delay of two standard deviations below the mean in one or more of the areas of development or 1.5 standard deviations below the mean in two or more of the areas of development.

The Developmental Delay category should not be used as a means by which an evaluation team can qualify a possibly nondisabled child for special education services. Nor is it intended to be a "catch-all" category where children with a variety of disorders (who might be eligible in other disability categories such as autism, cognitive disabilities, traumatic brain injuries, etc.) are possibly misidentified due to misunderstandings about developmental delay eligibility, limited evaluation resources or a shortage of qualified service providers.

These are the school-age disability categories available under IDEA:
1. Autism
2. Intellectual disability
3. Deaf-blindness
4. Deafness
5. Emotional disturbance
6. Hearing impairment
7. Multiple disabilities
8. Orthopedic impairment
9. Other health impairment
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment
14. Developmental delay, as defined in the Operating Standards

Comprehensive Evaluation

Note: The evaluation procedure for school age does not change with Developmental Delay. The school-age evaluation planning form must be used.

A comprehensive evaluation must be conducted to determine the eligibility or continued eligibility of the child prior to that child turning 10 years of age.

In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304)

The child is assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. (34 C.F.R. § 300.304).

As the child approaches the age of 10, the IEP team must convene to start the reevaluation process to determine if the child continues to be eligible for special education and related services under a different disability category. (34 C.F.R.§ 300.8).

To find the child eligible, the evaluation team must decide that the determinant factor for the decision is not due to limited English proficiency or a lack of appropriate instruction in reading or math.

In determining eligibility, the evaluation team or the IEP team must consider the following:
1. Does the child meet the developmental delay disability criteria as defined in the Operating Standards?
2. Is there documentation of adverse effect on educational performance?
3. Is there evidence that the child needs special education and related services?

An adverse effect on educational performance can impact many aspects of a child's functioning at school, including but not limited to:

- Academic performance as measured by grades or achievement test scores
- Behavioral difficulties at school
- Inappropriate social relations
- Inappropriate adaptive skills, such as being disorganized or not completing assignments, having trouble getting to school on time, or difficulty following the rules

A special education evaluation request may not be denied because the child's suspected disability does not adversely impact the child's academic performance (passing grades and making meaningful academic progress), as this does not in itself disqualify the child from being deemed eligible for special education and related services.

Frequently Asked Questions

How does the new expanded definition of Developmental Delay impact school-age students?
- The Developmental Delay disability category is now available to school-age students under the age of 10.

How will a school-age student be evaluated if Developmental Delay is a suspected category of disability after preschool?
- The evaluation requirements for school-age students remain the same.
- The evaluation must be sufficiently comprehensive to identify all the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified.
- Although a standard score may not be used as the sole factor in making the determination that a child has a developmental delay, the determination may be substantiated by a delay of two standard deviations below the mean in one or more of the areas of development or 1.5 standard deviations below the mean in two or more of the areas of development.
- A child must not be determined to be a child with a disability if the determinant factor is limited English proficiency or a lack of appropriate instruction in reading or math.

What do you do if the child turns 10 before the three-year reevaluation due date?
- ETR Teams must designate a reevaluation due date that would facilitate reevaluating a child identified as Developmental Delay prior to that child turning age 10 and aging out of the Developmental Delay category. For example, if the child reaches age 10 prior to the required three-year reevaluation date, the ETR team would designate the reevaluation date as prior to or on the child's 10th birth date.
- A district may create its own tracking system.

Preschool Developmental Delay Guidance

For additional information on preschool Development Delay guidance, please visit:
Developmental-Delay-Definition-Age-Expansion-Q-A-JAN-2023.pdf.aspx (ohio.gov)