

**Wyoming Department of Education
Special Education Programs Division**

Reference Guide:

**Developmental Delay: Initial Comprehensive Evaluation
and Eligibility Determination Under the IDEA and Wyoming Chapter 7
Rules: Services for Children with Disabilities**

Understanding Developmental Delay

Developmental Delay occurs when a child does not reach his/her developmental milestones at the expected times. It is an ongoing major or minor delay in the process of development. If a child is temporarily lagging behind, that is not considered developmental delay. Delay can occur in one or many areas. For example, gross or fine motor skills, language, social skills, or thinking skills.

Developmental delays can have many different causes, such as genetics (i.e. Down syndrome), or complications of pregnancy and birth (i.e. prematurity or infections). Often, however, the specific cause is unknown. Some causes can be reversed if caught early enough, such as a mild hearing loss from chronic ear infections. Other causes may lead to lifelong disabilities.

Under the IDEA, states may recognize children ages 3 through 9 who need special education and related services as a result of developmental delays in physical development, cognitive development, communication development, social or emotional development, or adaptive development. *34 CFR §300.8(b)*.

A state must first adopt the term "*developmental delay*" before school districts or public agencies within its jurisdiction may use it to classify their students; however, a state that has adopted the term cannot require school districts or local education agencies (LEAs) to adopt and use the term for students within their jurisdictions. If an LEA chooses to use the approved term it must conform to the state's definition and its adopted age range. *34 CFR §300.111(b)(2-4)*.

Wyoming has adopted the term, *developmental delay*, defined as "a child with a disability ages three (3) through nine (9) who is determined, through appropriate diagnostic instruments and procedures, to be experiencing delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development that adversely affects educational performance and who, by reason thereof, needs special education and related services." *Wyoming Chapter 7 Rules, Section 4(d)(iv)*.

In Wyoming, Developmental Delay is considered a discrete, additional category of disability, used only as a last resort. When a child's assessed characteristics do not fit

the eligibility requirements of any other IDEA disability category, but meet the Wyoming Developmental Delay criteria AND the developmental delay adversely affects the child's educational performance, Developmental Delay eligibility may be appropriate; however, if the evaluation team can make a clear determination in another disability category, then that determination should be made. If additional evaluation(s) or data are needed in order to make a clear determination in one of the other disability categories, it is the responsibility of the test administrator and, ultimately, the LEA, to secure those additional evaluations/data before ruling out any eligibility category in favor of Developmental Delay.

The Developmental Delay category should not be used as a means by which an evaluation team can qualify a possibly nondisabled child for augmented 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, i.e. autism spectrum disorder, 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.

This guidance document will focus on three critical steps of the Developmental Disability eligibility determination process:

1. **Step 1: Comprehensive Evaluation** - Conducting a multi-disciplinary evaluation that addresses all areas of suspected disability, in accordance with *34 CFR §300.304. Evaluation Procedures*.
2. **Step 2: Exclusionary Factors and Initial Eligibility Criteria for Developmental Delay** – Using the results of the comprehensive evaluation to:
 1. Confirm or rule out eligibility in 12 IDEA disability categories; and
 2. Confirm or rule out eligibility in the Developmental Delay disability category, as specified in Wyoming Chapter 7 Rules, Section 4(d)(iv)(A)(I-III).
3. **Step 3: The Developmental Delay's Adverse Effect on Educational Performance** – Addressing the state and federal requirement that the developmental delay must adversely affect the child's educational performance

Step 1: Comprehensive Evaluation

A full and comprehensive initial evaluation is the foundation for students who may be eligible to receive special education and related services. If a district or public agency fails to evaluate a student in all areas of suspected need, not only are they at risk of denying the child a Free Appropriate Public Education (FAPE), but those omissions can manifest and create gaps and inconsistencies in the child's future learning. The IEP team must gather and consider all information and data needed to make informed decisions about a child's eligibility under the IDEA. A comprehensive evaluation

ensures strong links between the child's identified needs, relevant assessment data, appropriate eligibility determination, and meaningful educational programming.

Evaluation teams must be careful to avoid predetermination when designing comprehensive evaluation plans. Predetermination occurs when a member or members of the evaluation team decide that a student will be eligible in a particular disability category in advance of the eligibility meeting and without the parents' participation or input. One danger of predetermination is that it may narrow the scope of the evaluation, focusing only on certain areas of need, while ignoring other areas that may be critical to the team's ability to make informed decisions about the student's appropriate disability.

Assessments are comprised of a battery of tests that are conducted by the public agency. The IDEA's evaluation procedures are aimed chiefly at ensuring that the evaluation is conducted fairly, and screens out other factors that may be unrelated to disability, but may affect test performance. These evaluation procedures should be consulted carefully prior to conducting an assessment.

The IDEA sets forth some basic minimum requirements that must be followed in the area of evaluations, as follows:

- Assessments and other evaluation materials must be selected and administered so as **not to be discriminatory on a racial or cultural basis**. *34 CFR §300.304(c)(1)(i)*.
- Assessments and other evaluation materials must be provided and administered **in the student's native language or other mode of communication** and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. *34 CFR §300.304(c)(1)(ii)*.
- Assessments and other evaluation materials must be **used for purposes for which they are valid and reliable**; must be administered by **trained and knowledgeable personnel**; and must be administered **in accordance with any instructions provided by the producer**. *34 CFR §300.304(c)(1)(iii)-(v)*.
- Assessments and other evaluation materials must include those **tailored to address specific areas of educational need** and not merely those that are designed to provide a single general intelligence quotient. *34 CFR §300.304(c)(2)*.
- Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with **impaired sensory, manual, or speaking skills**, the assessment **results accurately reflect the student's aptitude or achievement** level or whatever factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). *34 CFR §300.304(c)(3)*.

- The student must be 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 CFR §300.304(c)(4)*.
- Assessments of children with disabilities who transfer from one public agency to another public agency **in the same school year must be coordinated with those children’s prior and subsequent schools**, as necessary and as expeditiously possible **to ensure prompt completion of full evaluations**. *34 CFR §300.304(c)(5)*.
- Assessment tools and strategies that **provide relevant information that directly assists persons in determining the educational needs** of the student must be provided. *34 CFR §300.304(c)(7)*.
- LEAs or public agencies must use **technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors**. *34 CFR §300.304(b)(3)*.
- **Observations** - The LEA or public agency must ensure that **the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty**. *34 CFR §300.310(a)*. **In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age**. *34 CFR §300.310(c)*.

Step 2: Exclusionary Factors and Initial Eligibility Criteria for Developmental Delay –

After conducting a comprehensive, multi-disciplinary evaluation in accordance with *34 CFR §300.304*, the evaluation team must use the results of the evaluation to verify that the child *does not* meet eligibility criteria in any of the 12 disability categories listed below:

- | | |
|-----------------------------|-----------------------------------|
| 1. Autism Spectrum Disorder | 7. Orthopedic Impairment |
| 2. Cognitive Disability | 8. Other Health Impairment |
| 3. Deaf-Blindness | 9. Specific Learning Disability |
| 4. Emotional Disability | 10. Speech or Language Impairment |
| 5. Hearing Impairment | 11. Traumatic Brain Injury |
| 6. Multiple Disabilities | 12. Visual Impairment |

During this step of the eligibility determination process, the results of the comprehensive evaluation are used to assess the eligibility criteria for all possible areas of suspected disability. Only *after* the other 12 disability categories have been clearly ruled out may the evaluation team consider the Developmental Disability criteria.

E-DD

Eligibility Criteria Form		
Developmental Delay		
Chapter 7, Section 4(d)(iv)		
Name of Student	Date of Birth	Date of Eligibility Determination

Developmental Delay means a child with a disability ages three (3) through nine (9) who is determined through appropriate diagnostic instruments and procedures to be experiencing developmental delays in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who, by reason thereof, needs special education and related services. Developmental Delay is a category available to children ages three (3) through nine (9) **who do not qualify in other categories**, but meet the Developmental Delay criteria.

Part I: Exclusionary Factors for Developmental Delay
All statements must be checked Yes.

- Yes** **No** The team has determined that the child does not meet eligibility criteria in any other disability category. Check "Yes" to verify that eligibility in all other disability categories has been ruled out:
- Yes No Eligibility for Autism Spectrum Disorder is ruled out.
 - Yes No Eligibility for Cognitive Disability is ruled out.
 - Yes No Eligibility for Deaf-Blindness is ruled out.
 - Yes No Eligibility for Emotional Disability is ruled out.
 - Yes No Eligibility for Hearing Impairment is ruled out.
 - Yes No Eligibility for Multiple Disabilities is ruled out.
 - Yes No Eligibility for Orthopedic Impairment is ruled out.
 - Yes No Eligibility for Other Health Impairment is ruled out.
 - Yes No Eligibility for Specific Learning Disability is ruled out.
 - Yes No Eligibility for Speech or Language Impairment is ruled out.
 - Yes No Eligibility for Traumatic Brain Injury is ruled out.
 - Yes No Eligibility for Visual Impairment is ruled out

Source: WDE Special Education Programs, Model Forms – Form E-DD (Part I), Updated July 2013.

After determining that a child's characteristics *DO NOT* meet the eligibility criteria of any of the other 12 disability categories, an evaluation team may choose to consider, if appropriate, the child's eligibility under the Developmental Delay eligibility criteria for children ages three (3) through nine (9).

In accordance with *Wyoming Chapter 7 Rules, Section 4(d)(iv)*, a child may be identified as a child with a Developmental Delay if the following criteria are met:

(I) The child's performance is significantly below the mean of expected performance, measured at 1.75 standard deviations below the expected performance for children of comparable chronological age in one (1) area (physical, cognitive, social/emotional, communication, or adaptive functioning);

OR

(II) The child's performance is markedly below the mean of expected performance, measure at 1.5 standard deviations below the expected performance for children of comparable chronological age in two (2) or more areas (physical, cognitive, social/emotional, communication, or adaptive functioning); and

(III) Results of hearing and vision screening that provide evidence that the child's performance is not the result of hearing or vision impairments.

E-DD

AND

Part 2: Initial Eligibility Criteria for Developmental Delay

One statement must be checked Yes

Yes **No** Documentation that the child's performance is significantly below the mean performance 1.75 standard deviations expected of children of comparable chronological age in one area (physical, cognitive, social/emotional, communication or adaptive functioning).

Identify area: _____

OR

Yes **No** Documentation that the child's performance is significantly below the mean performance 1.5 standard deviations expected of children of comparable chronological age in two or more of the areas (physical, cognitive, social/emotional, communication or adaptive functioning).

Identify areas: _____

Source: WDE Special Education Programs, Model Forms – Form E-DD (Part II), Updated July 2013.

Step 3: The Developmental Delay's Adverse Effect on Educational Performance

In addition to meeting the eligibility criteria specified for each of the 13 disabilities under the IDEA and Wyoming Chapter 7 Rules, there is a statutory requirement that the disability must adversely affect the student's educational performance, such that the student needs special education, as defined by 34 CFR §300.39 and related services, as defined by 34 CFR §300.34. WY Chapter 7 Rules Section 4(c)(i).

These two requirements are sometimes referred to as the “two prongs of eligibility”: The first prong being the requirement that a child meets the eligibility criteria specified for at least one of the 13 disabilities under the IDEA and Wyoming Chapter 7 Rules; and the second prong being the requirement that the disability must adversely affect the student’s educational performance, such that the student needs special education and related services.

Special education is defined as ***specially designed instruction***, which means *adapting, as appropriate to the needs of an eligible child with a disability, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability.* Specially designed instruction also means ensuring access of the child to the general curriculum, so that the child can meet the LEA or public agency’s educational standards that apply to all children. 34 CFR §300.39(b)(3).

Many people think that educational performance is just about doing well in school. They may think if a child is getting good grades, his disability issues aren’t affecting his education; but if getting good grades comes at the cost of taking hours to do short homework assignments or needing more parental support than should be expected, those things may be considered an “adverse effect” as well. The U.S. Department of Education makes it clear that education includes behavior, attention and social skills, in addition to academics. Trouble with self-control, organization, attention or social skills can also get in the way of learning and have adverse effects on a child’s educational performance.

It is not uncommon for schools to deny a request for special education services because the child’s disability does not cause an adverse impact on the student’s academic performance. Some schools will point to the fact that the student is obtaining passing grades and making meaningful academic progress, however, the fact that a child is not adversely impacted academically, does not in itself disqualify him/her from being deemed eligible for special education and related services.

An adverse effect on educational performance can incorporate many aspects of a child’s functioning at school, including academic performance as measured by grades or achievement test scores; however it can also be manifested through behavioral difficulties at school, impaired or inappropriate social relations, impaired work skills, such as being disorganized or not completing assignments, having trouble getting to school on time, or difficulty following the rules. Some cases are clear... The child has a specific learning disability or attention issue. It affects his ability to learn in the regular classroom, and the team agrees that his/her disability has an adverse effect on his/her educational performance, such that the child needs specially designed instruction to address his learning deficits. Other cases are not so simple.

The causal relationship between a child’s disability and its effect on his/her educational performance should not be confused with an *accommodation* a child may require in

order to enjoy equal benefits and privileges from his/her education as are enjoyed by other similarly situated students without disabilities.

Below are some examples and non-examples of how a disability may or may not have an adverse effect on a child's educational performance:

Example 1: *Marti is a 4-year old child with an orthopedic impairment. She requires assistance to move from standing to sitting on the floor, in order to join her peers for 'Circle Time.' Once situated on the floor, she is able to listen to a story, comprehend its meaning, make predictions, and participate fully with her nondisabled peers.*

Marti is not an example of a student whose disability adversely affects her educational performance. In this example, Marti has an impairment that requires an accommodation, not specially designed instruction, to enable her to access educational activities and participate along with the other nondisabled children in her class.

Example 2: *Kenna is 5-year old child with a cognitive disability. She tested two standard deviations below the expected performance for children her age in the areas of Processing Speed and Working Memory. The evaluation team agrees that Kenna's cognitive disability adversely impacts her educational performance, to the extent that she will require specially designed instruction to help her process information and remember what she has learned.*

In this example, it appears there is sufficient evidence to support the team's decision about the adverse effect of Kenna's disability on her educational performance.

Example 3: *Ben is a 3-year old child who is being evaluated for special education. He met most of his developmental milestones on time, but he makes some articulation errors when he speaks, especially when he gets excited. He has never been to preschool. The observation for his comprehensive evaluation was done while he was being assessed by a speech/language pathologist. He appeared, to the observer, to be somewhat withdrawn and reticent. He scored 1.75 standard deviations below the expected performance for children his age in the area of speech/language-articulation. The evaluation team believes that his articulation disability has an adverse effect on his educational performance because it contributes to his shyness, which might interfere with his ability to develop peer relationships.*

There are two things to consider in this example:

1. The observation should have been performed in an environment appropriate for a 3-year old, not in a testing situation where the child was unfamiliar with the examiner and the activity. Ben may have appeared to the observer to be withdrawn and reticent

under those circumstances, but that does not mean that he has a problem with shyness in other situations. *34 CFR §300.310(c)*.

2. The team cannot satisfy the second prong of eligibility (the question of adverse effect on educational performance) by *predicting* that the child might have trouble developing peer relationships. Additional evidence is needed in this case, in order to establish a clear connection between Ben's articulation disability and its adverse effect on his educational performance and his need for specially designed instruction.

Conclusion

Once the child approaches the maximum age of the Developmental Delay category, the IEP team must convene to review existing data and consider requesting additional evaluations in order to determine, if the student is eligible to continue to receive special education and related services based on his/her unique circumstances under a different disability category per 34 C.F.R. § 300.8.

The determination that a child qualifies as a child with a disability under the IDEA is a pivotal one in the child's life and can drastically impact his/her future. It is essential that evaluation teams conduct comprehensive evaluations in accordance with the IDEA Part B procedural requirements found in 34CFR §300.304 and best practices in order to make sound eligibility decisions.

All requirements of Part B of the Individuals with Disabilities Act (IDEA) are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act. *34 CFR §300.2(b)(2)*.

If you have questions about Developmental Delay Evaluation and/or Eligibility in Wyoming, contact:

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FLOWCHART FOR DETERMINING DEVELOPMENTAL DELAY ELIGIBILITY

