

STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION SERVICES
ADMINISTRATIVE CODE

CHAPTER 290-8-9
SPECIAL EDUCATION SERVICES

290-8-9-.01 Child Identification.

(1) Child Find.

(a) LEA's serving children with disabilities must develop and implement procedures that ensure that all children within their jurisdiction, birth to twenty-one, regardless of the severity of their disability, and who need special education and related services are identified, located, and evaluated. Child Find also applies to children with disabilities who attend private schools, including children attending religious schools, within the LEA's jurisdiction, highly mobile children with disabilities (e.g., migrant children), homeless children, or children who are wards of the State and children who are suspected of having a disability and are in need of special education, even though they have not failed, been retained in a course or grade or are advancing from grade to grade.

(b) Child Find includes a practical method of determining which children with disabilities are currently receiving needed special education and related services and is designed to ensure the equitable participation of parentally-placed private school children with disabilities, as well as an accurate count of these children.

(c) Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the Child Find provisions, include parentally-placed private school children who reside in a state other than the state in which the private schools are located.

(d) For children who are transitioning from Part C to Part B preschool programs, LEA's are required to make FAPE available to each eligible child residing in their jurisdiction no later than the child's third birthday and have an IEP developed and implemented for the child by that date. If the child's third birthday occurs during the summer months, the child's IEP Team will determine when special education services will begin. LEA's must participate in a transition planning conference arranged by the EI service provider in order to experience a smooth and effective transition to preschool programs.

(2) Special Rule. The public agency shall ensure that:

(a) Prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.

(3) **Early Intervening Services.**

(a) An LEA may provide early intervening services to students from kindergarten through twelfth grade (with particular emphasis on students in kindergarten through third grade) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education. In order to provide these coordinated early intervening services, an LEA may not use more than 15% of the money received under IDEA Part B for any fiscal year.

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include:

1. Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on:

1. The number of children served under this section who received early intervening services; and

2. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.

(e) Coordination with the Elementary and Secondary Act of 1965 (ESEA). Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(4) **Intervention Strategies in the General Education Class.** Before a child is referred for special education evaluation or concurrently during the evaluation process, intervention strategies must be implemented in the general education program and monitored by the Problem Solving Team (PST) for an appropriate period of time (a minimum of eight weeks), and be determined unsuccessful. This rule may be waived for a child who has severe problems that require immediate attention, for three- and four-year olds, for five-year olds who have not been in kindergarten, for children with articulation, voice, or fluency problems only, for children with a medical diagnosis of traumatic brain injury, and for a child who has been referred by his or her parents.

(5) **Screening for Instructional Purposes.** The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(6) **Referral for Initial Evaluation.** Public agencies must develop and implement procedures regarding the processing of referrals for special education evaluations.

(a) A parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(b) For a parent who makes a verbal referral because he or she is unable to complete a written referral, the public agency must obtain information from that parent and complete the written referral.

(c) Public agencies may not limit referrals by the number per year or the time of year that referrals are accepted.

(d) Information must be gathered to determine if there are any environmental, cultural, language, or economic differences that might mask a student's true abilities and thereby affect the student's performance in the areas evaluated.

(e) The IEP Team must review the referral, including documentation of intervention strategies and processes, and determine in a timely manner if the child will be evaluated for special education services. If the IEP Team determines that the child should not be evaluated for special education

services, written notice, that meets the notice requirements in these rules, must be given to the parents and the child must be referred to the BBSST. If the IEP Team determines that the child should be evaluated for special education services, the public agency must obtain the parent's written consent for the evaluation.

Author: Joseph B. Morton

Statutory Authority: Code of Ala. 1975, Title 16, Chapter 39; 20 U.S.C. 1400 et seq.; 34 CFR §300.

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