

Rule Changes: Updates to Adverse Effect

May 2, 2022

Process

- Feedback collected through Office Hour Questions, Rule Changes Survey, conversations with teachers, administrators, community partner focus groups
- Categories of response
 - FAQs that we have immediate answers for
 - Changes to current guidance documents
 - Future documents/guidance
- When documents are updated there will be announcements via WFM and Admin Listservs

Adverse Effect Resources

[Webinar](#)

Resources:

- [Regulation Changes for July 2022 – Adverse Effect Memorandum](#)
- [Three-Gate Eligibility Determination – A Vermont Agency of Education Guidance Document](#)
- [Eligibility Deliberation Form](#)

Special Education (3-21) Rule Changes: Adverse Effect Guidance Memo

- Updated Definition... 'mean(s) to have a negative impact on the basic skills areas. This impact does not need to be substantial, significant, or marked. It is more than a minor or transient hindrance, evidenced by findings and observations based on data sources and objective assessments with replicable results'.
- Must be in a basic skill area.
- Team must consider academic and nonacademic aspects of child's functioning.
- Educational deficient must persist over time.
- Document that scientific, research-based interventions have been implemented with fidelity.

Special Education (3-21) Rule Changes: Three Gate Eligibility

Contains further information as well as guiding questions to support teams navigating the criteria.

- 1: The student has a disability according to the established criteria;
- 2: The student's condition adversely affects educational performance;
and
- 3: The student needs specially designed instruction.

Special Education (3-21) Rule Changes: Eligibility Deliberation Form

Optional fillable form for teams to document data sources and considerations for determining adverse effect.

FAQs on Current Guidance

What categories does Adverse Effect apply to?

- Essentially all, but SLD and Deaf and Hard of Hearing are excluded in the rule as the definitions of these categories already requires an adverse effect.
 - In an SLD evaluation academically-based basic skill is selected as an indicator of a learning disability, with additional information regarding interventions and student progress that would substantiate the existence of an adverse effect without having to document it again.
 - [Statute/Regs Main](#) » [Regulations](#) » [Part B](#) » [Subpart A](#) » [Section 300.8](#) » [c](#) » 3
- (3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

Requirements for measurement?

- There is no longer a minimum number of measures expected to determine adverse effect, but multiple measures are expected to be documented.
- No single piece of evidence or measure of school performance will be required by regulations adverse effect is determine by a review of all available evidence, test scores, work samples, observations, progress monitoring, the effects of accommodations and modification in the classroom and whether the student has responded appropriately.

FAQs on Current Guidance (2)

Requirement to 'document that deficiencies will persist over time in spite of alternative strategies' and lack of data.

- If the team is ultimately unable to determine the disability is significantly impeding the performance within the initial evaluation window, then the student cannot be found eligible.
- May be situations where the district needs to go beyond the evaluation timeline and must document an agreement with and obtain consent from the parent.
- What data does the team have to determine that a student's disability has a consistent and negative impact on education performance or functional performance?
- What data exists prior to referral and what is the team collecting upon the point of referral?

What does this statement mean - "this impact does not need to be substantial, significant or marked"?

- Is based on professional judgement, but essentially was written to indicate that an adverse effect needs to be an impact that is more than just a small or minor difficulty or is only anticipated to last for a short time – but does not create an unusually high threshold (i.e. 2 standard deviations or more, 3 or more grade level equivalents below).

Adverse Effect: Upcoming Changes

1. Evaluations Manual is being updated to include:
 - Links to resources from the AOE on specific assessments to use to evaluate in the area of functional skills
 - Real World Scenarios have been added throughout the Guide to illustrate real life application of the processes we describe with an emphasis on areas that came up as particularly unclear during focus groups (e.g. assessment planning)
 - We have developed a section fully dedicated to Eligibility Determination including several checklists to guide an EPT through making a decision. The Eligibility Determination section also connects to the Assessment Process and illustrates for teams the connection between how they prepare for and administer assessments and the data provided to help facilitate a determination decision
- Forms 2 and 4 are being updated to ensure alignment with rule changes
- Reviewing options for clarifying definitions
- Additional guiding questions for the Need conversation
- Reviewing need for additional case studies/examples