



Massachusetts Department of Education

# IS SPECIAL EDUCATION THE RIGHT SERVICE? A TECHNICAL ASSISTANCE GUIDE



WORKING DRAFT - MARCH 2001

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## I. INTRODUCTION

### How did we get where we are today?

Special education is intended to provide services to students who have disabilities, and who, because of those disabilities, need help to make progress in the general education program of the school. Following are selected milestones from the past thirty years:

- ◆ In July 1972, Massachusetts Governor Francis Sargent signed into law Chapter 766 of the Acts of 1972, the Massachusetts special education law.
- ◆ In 1974, the U.S. Congress passed the Education of the Handicapped Act, the federal special education law, modeled in part on the Massachusetts statute.
- ◆ In 1986, the Massachusetts Senate Committee on Post Audit and Oversight released a report on special education highlighting the high percentage of students needing special education in Massachusetts as compared to the nation. The report called for reforms.
- ◆ In August 1991, the Massachusetts Department of Education submitted a report to the Legislature entitled A Review of the Eligibility Criteria for Children with Special Needs. This report recommended: change in the statutory definition of “a school age child with special needs;” the development of statewide eligibility guidelines to ensure clarity and consistency of application of the special education statute across local school districts; and a comprehensive guidelines training program for professionals and parents. The report’s recommendations came with an overall statement that adequate fiscal resources must be provided to strengthen the educational system’s capacity to meet the learning needs of all students.
- ◆ In January 1992, Massachusetts Governor Weld signed into law legislation that amended the definition of a school age child with special needs to incorporate use of the term “disability” for the first time in the Massachusetts statute.
- ◆ In 1993, Governor Weld signed into law the Massachusetts Education Reform Act that required sweeping reforms, statewide accountability measures, and high standard for all students, including students with disabilities. Attached were billions of new dollars added to the state budget for implementation of education reforms.
- ◆ In 1997, the U.S. Congress reauthorized the federal special education law, now called the Individuals with Disabilities Education Act (IDEA). The Congress emphasized that a major purpose of special education was to ensure access to the general curriculum and required that all students with disabilities participate in statewide assessment programs.
- ◆ In 2000, the Massachusetts Board of Education adopted major revisions to the state special education regulations, requiring for the first time the identification of a type of disability upon determining eligibility for special education services.
- ◆ In 2000, Governor Cellucci signed into law major special education reforms. New requirements included: (a) the use of federal definitions for Specific Learning Disabilities and Serious Emotional Disturbance, and (b) an overhaul of the funding of special education. Additionally, the state statute authorizing special education

was revised throughout to incorporate use of the term “child with a disability” in place of the term “child with special needs.”

All of these activities have clarified that special education is intended to address the effect of the disability on the student’s progress and to mitigate any barriers or problems that arise because of the disability. Special education is a program of services to provide, as much as possible, access to services so that students with disabilities have the best chance to receive the full educational benefit of the district’s programs.

Learning and performance expectations apply equally to all students, including students with disabilities.

### **Purpose of this document**

Along with statutory requirements and state regulations, this document offers guidance on how to ensure a responsive general education environment and guidelines to assist practitioners and parents in identifying students with disabilities in the following ways:

- Establish an understanding of what is a disability and the distinctions between and similarities among different types of disability
- Explain the role of the assessment process in determining whether a student has a disability and is eligible for special education services
- Provide direction to Team members in establishing the relationship between a student’s disability and the student’s inability to progress effectively in general education in order to determine whether a student is eligible for special education services.

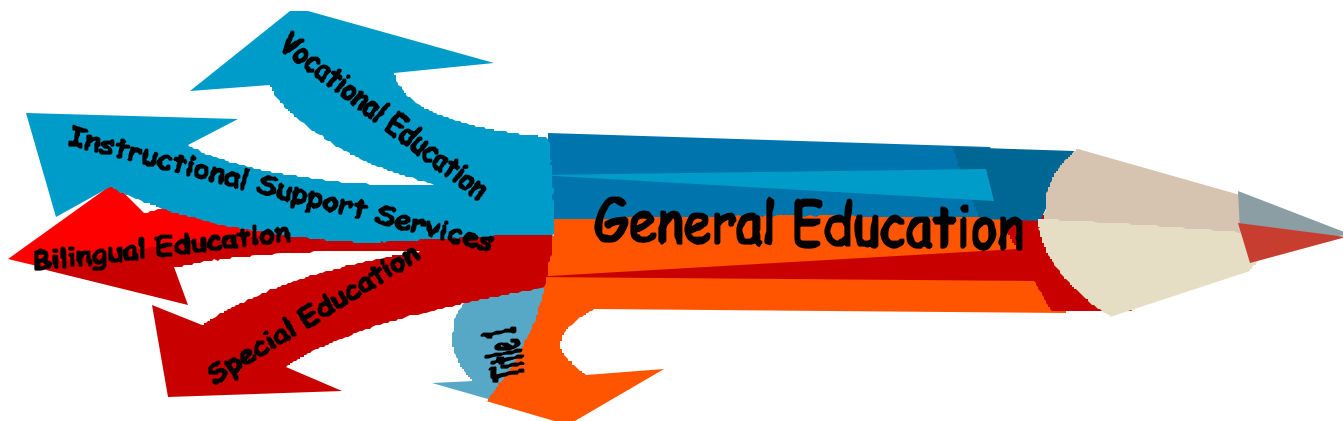
The task of determining eligibility is a complex one. Making a determination that a student has a disability and that the disability is causal to an inability to make progress in general education is one of the most significant judgments professionals and families will make in the educational life of a student. There is no simple way to identify students in need of special education. These guidelines are not meant to prevent students from receiving necessary services. However, special education resources need to be reserved for students with disabilities and because of those disabilities, need the specialized services that special education can provide in order to make educational progress. This document also emphasizes how the capacity of general education can be maximized to ensure that referrals to special education are made appropriately.

## II. INCREASING THE CAPACITY OF THE GENERAL EDUCATION ENVIRONMENT

### Overview

General education is the door to learning through which all students are expected to enter; it should be the **goal** of every school district to make the general education environment the appropriate placement for all students. Special education should not be a separate program, but rather should be one aspect of a continuum of supportive services and programs that are provided to ensure that the general education environment is a responsive environment. Several key activities have taken place in Massachusetts that support the responsiveness of the general education environment:

- ◆ Recently enacted changes to Ch. 71 (Public Schools) of the Mass. General Laws added a new section, Section 38Q½. This section requires adoption and implementation of a district curriculum accommodation plan (DCAP) to assist school principals in ensuring that all efforts have been made to meet students' needs in the general education environment. The DCAP is intended to assist the regular classroom teacher in analyzing and accommodating diverse learning needs of all students in the general education classroom and in providing appropriate services and support within the general education program and is not limited to preventing the need for special education services. The responsibilities articulated in statute include the requirement that the DCAP address direct and systematic instruction in reading and provision of services to address the needs of students whose behavior may interfere with learning. The DCAP additionally includes provisions encouraging teacher mentoring and collaboration and parental involvement. Further, Section 59C of Ch. 71 was amended to require the involvement of the school council in the development and evaluation of the DCAP.
- ◆ Changes in the certification and recertification requirements and in the requirements for the district professional development plan ensure that all educators, both special educators and general educators and paraprofessionals, will receive training to build capacity for a more responsive general education program. The required training emphasizes analyzing and accommodating diverse learning needs of all students and methods of collaboration among teachers, paraprofessionals, and teacher assistants to enhance the ability to be responsive to all students in the general education classroom.



Working together, general and special educators can provide professional support to each other to address student learning. Schools can provide a rich curriculum; instructional practices and varied programs of services geared to individual needs; including opportunities for strong family involvement and awareness of the educational services in the school. In this way special education becomes one of the many supportive programs that is available within the general education environment.

An effective District Curriculum Accommodation Plan may provide for one or more of the following, to help meet the needs of diverse learners in the general education environment.

- increased support services and instructional delivery options available within general education;
- more effective educational policies and practices, such as reduced class size policies;
- responsive, flexible curriculum presentation in general education;
- multiple instructional support strategies;
- staff time for professional collaboration and problem solving;
- availability of standardized and criterion-referenced assessment data as one measure of student learning and indicator of student needs;
- referral services to provide child care, or health care services; and
- information services for parents to understand school programs and options available for their children.

Barriers that contribute to learning difficulties are not always clearly related to education. School districts must consider addressing barriers related to coming to school ready to learn and conditions supportive of learning in an ongoing way.

### **Student Development**

School communities must believe and expect that all students can learn because expectations play an important role in student success. With high expectations comes respect for different approaches to learning, recognition of cultural and linguistic considerations, and recognition of effects of disabilities and developmental variations.

- Students have different rates and styles of learning.
- Students are diverse in their cognitive, physical, linguistic, social, and emotional development.
- Students differ in their current skill level to work and study independently.
- At various times, students experience different reactions and responses to curriculum and instructional task demands.
- Students require different amounts of supervision and instruction.

### **Instructional Support**

Curricula and instruction geared to the individual student's developmental levels, and respectful of cultural and linguistic differences, result in increased student learning.

Instructional support must be viewed as a viable intervention strategy; one that is expected to occur for any student encountering difficulties in learning. Critical to the process of offering effective instructional support is the gathering of information about the learning environment and the individual student. Data collection prior to making adaptations to the general education program might include analysis of curriculum tasks and materials, examples of oral and written directions for tasks, observation of classroom activities, and consultation with teacher(s) and other professionals. Data about the student prior to making adaptations might include: information about the student's cultural and linguistic background, areas of competence, areas of need, guidance files, examples of classroom written work, and ongoing communication with student and family members.

Adaptations to teaching and learning styles and classroom climates can and should be designed and implemented before making an assumption that a student's lack of progress can only be ameliorated by special education. In many cases, however, learning problems are not caused by a disability, and schools are encouraged to have strong instructional support practices.

We offer one caveat to this assertion, however: If a disability is clearly evident or strongly suspected and known to be causing learning problems, then referral for special education should be made promptly. For example: When a student is known to be deaf or hard of hearing, immediate specially designed intervention is the best response

Instructional support practices aimed at assisting all learners to achieve the learning standards contained in the Massachusetts Curriculum Frameworks include (but are not limited to)

Supportive practices related to the curriculum and materials:

- having available a wide variety of curricular and instructional materials including computers, tape recorders, and taped/large print books
- developmentally appropriate, culturally and linguistically sensitive materials
- providing the student with choices in assigned reading materials

Supportive practices related to instruction and learning:

- clear learning objectives
- an emphasis on effort as the key to achievement
- active and varied learning activities across subject areas
- providing both oral and visual directions for assignments, along with visual, auditory, and tactile prompts
- using a variety of teaching approaches, including teacher-directed instruction and practice, group discussion, problem solving, cooperative learning, and research projects
- using a variety of formal and informal assessment procedures
- providing immediate and specific feedback about student performance
- providing reinforcement of desired student behaviors
- co-teaching and team teaching
- homework assignments that further student learning and reinforce it

Supportive classroom and climate variables:

- using contracts, e.g., student/teacher, behavioral
- providing a clear structure for class activities
- allowing additional time for the completion of tasks, when appropriate
- providing preferential seating or other room design adaptations
- arranging physical space/materials to minimize disruptive movement

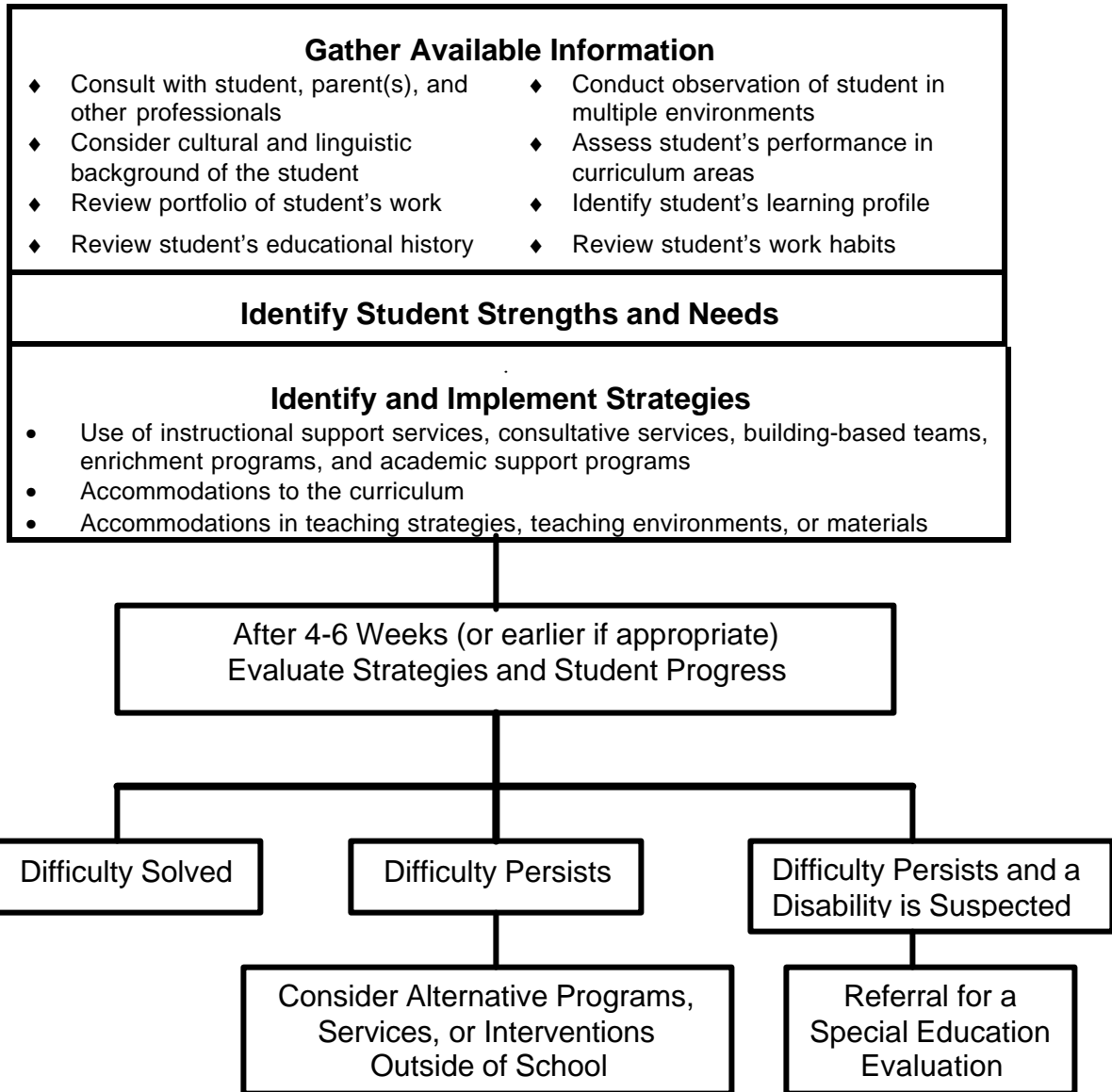
A strong instructional support intervention system enables school practitioners to identify which aspects of the student's educational environment must be changed to ensure learning and success in general education. Table 1 provides a description of this process, and Table 2 provides a list of possible assessment directions to assist in determining appropriate instructional support services. The instructional support system should consist of ongoing systemic efforts to accommodate any student's learning needs within the general education classroom. However, such instructional support strategies may not be used to delay action on a request for an evaluation for special education.

Instructional support efforts will be most effective when parents are involved. Parent input is valuable when gathering information about the student, the learning environment, and when making decisions about the best strategies to implement for the student. Furthermore, parent support and reinforcement of instructional strategies in the home environment can increase the effectiveness of such strategies. Additionally, the success of any school program rests on educating, involving, and including all families. Collaboration with human services and other community agencies assists in efforts to ensure that schools are family-friendly and responsive environments. Any family education program must pay careful attention to the different cultural and linguistic needs of the families it is supporting and encourage ambitious outreach programs.

Appropriate instructional support intervention strategies should be tried, documented, and analyzed. When instructional support activities are implemented properly but are not sufficient to enable the student to progress effectively in general education, there is greater information available to indicate if a referral for a special education evaluation is appropriate. When a referral has already been made, information on instructional support should be included in the evaluation information considered by the special education Team when determining eligibility for special education. By trying multiple means of responding to the student's needs, parents and school personnel may be better able to consider if the student has a disability that is causing continuing difficulties and requires specially designed instruction or support services.

**TABLE 1 INSTRUCTIONAL SUPPORT INTERVENTION PROCESS**

**Student Experiences School Difficulties\***



**\*Note:** The law requires that no instructional support program nor any other intervention limits the right of a parent to refer a student for a special education evaluation. However, if a referral for a special education evaluation has been made and the district has asked for and received parental consent to evaluate, then evaluation information from any instructional support program should be made available to the special education Team to consider when determining if the student is eligible for special education.

**TABLE 2**  
**Questions That May Help Guide the Assessment of Student Instructional Needs**

<b>Questions</b>	<b>Assessment Strategies</b>
<p>How does the student perform within/outside of the classroom and in structured and unstructured activities?</p> <ul style="list-style-type: none"> <li>• mastery of basic academic and social skills</li> <li>• functioning in small group/whole class activities</li> <li>• peer relations and teacher/adult relations</li> <li>• strengths/weaknesses</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic Observation of student</li> <li>• Student work products</li> <li>• Teacher reports</li> <li>• Anecdotal records</li> <li>• Curriculum-based assessment</li> <li>• Formal/informal test result</li> <li>• Interview with the student and family</li> </ul>
<p>Are there gaps in the student's school history? Frequent changes in schools? Erratic school attendance?</p>	<ul style="list-style-type: none"> <li>• Review of the school history/record</li> <li>• Family interview</li> </ul>
<p>Is the student from a linguistically or culturally different background?</p> <ul style="list-style-type: none"> <li>• proficiency in oral/written tasks in English and the primary language of the home</li> <li>• understands directions in English</li> <li>• primary language of casual conversation</li> <li>• experience with different types of learning tasks</li> <li>• child and parent attitude toward primary language</li> <li>• student comfort with school culture</li> </ul>	<ul style="list-style-type: none"> <li>• Language assessment by assessor fluent in student's primary language</li> <li>• English proficiency assessment</li> <li>• Family interview/home visit</li> <li>• Interview with student</li> <li>• Student work products</li> <li>• Classroom observation</li> <li>• Teacher reports</li> <li>• Diagnostic teaching</li> </ul>
<p>Are outside factors influencing student's performance?</p> <ul style="list-style-type: none"> <li>• family trauma/crisis</li> <li>• physical care</li> <li>• involvement of outside agencies</li> <li>• employment</li> </ul>	<ul style="list-style-type: none"> <li>• Family interview/home visit</li> <li>• Interview with student</li> <li>• Interview with others with assessment information</li> </ul>
<p>What types of effective teaching strategies are used in the classroom?</p> <ul style="list-style-type: none"> <li>• clear teacher expectations</li> <li>• opportunities for multisensory input/output</li> <li>• a range of instructional materials offered</li> <li>• effective behavior management</li> <li>• teaching style matched to student need</li> <li>• prompt teacher feedback</li> <li>• ongoing assessment</li> <li>• uses assessment to guide instruction</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic observation of settings in which the student has difficulty and success</li> <li>• Student work products</li> <li>• Anecdotal records</li> <li>• Teacher reports</li> <li>• Curriculum-based assessment</li> <li>• Formal/informal test results</li> <li>• Consultation with parents on effective ways to learn or demonstrate learning</li> </ul>
<p>Is the curriculum broad enough to meet the needs of diverse learners?</p> <ul style="list-style-type: none"> <li>• developmentally appropriate</li> <li>• accommodates learner diversity</li> <li>• experientially based</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic observation</li> <li>• Teacher reports</li> <li>• Curriculum-based assessment</li> <li>• Formal/informal test results</li> </ul>
<p>Do school conditions provide the learner with needed resources and supports?</p> <ul style="list-style-type: none"> <li>• availability of support services</li> <li>• up to date instructional materials</li> <li>• availability of instructional technology</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic observation of the school environment</li> <li>• Review of instructional materials</li> <li>• Student work products</li> </ul>

### III. CONSIDERING REFERRAL FOR AN EVALUATION TO DETERMINE ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

Parents may make a referral for a special education evaluation at any time. Any person in a caregiving capacity in relation to the student may make such a referral. Most referrals are made because of a real concern that a student may have a disability and some referrals are made because of certain knowledge that a student has a disability. Some students with disabilities are particularly vulnerable to lost educational opportunities if their disabilities are not promptly identified and provided with intervention. Some parents, however, may seek special education services for their children because they are unaware of other supportive services for their child. Some teachers may recommend special education assessment because of the teacher's lack of knowledge regarding how to meet the needs of the student. Some schools may depend on special education as the only program to provide "extra" services. Any of these latter scenarios may result in an inappropriate referral or an inappropriate finding of eligibility for special education. Special education was not designed to provide support services across the board, it was designed to serve students with disabilities so that such students are able to have the same full educational opportunities as their non-disabled peers.

It is, therefore, in the best interests of school districts to ensure a strong and responsive school environment including well prepared teachers able to address the needs of diverse student learners. It is also in the best interests of school districts to provide ongoing information to parents and the school community about the instructional support services that the school has available, as well as how and when to access those services appropriately.

With strong instructional support practices, the majority of referrals for an evaluation to determine special education eligibility will be appropriate referrals and schools must be prepared to conduct appropriate assessments.

### IV. ASSESSMENT

When the parent and the school district suspect that the student has a disability and the parent consents to a special education evaluation to determine if a student is eligible, the school district must be prepared to use existing evaluative information and to conduct assessment in all areas related to the child's suspected disability.

**Parent Participation:** The law requires that school districts provide parents with the opportunity to consult with the district regarding the types of assessments and assessors used for an evaluation. Best practice for a school district is to discuss with the parent (either by phone or in person) prior to the initiation of an evaluation what the parent hopes to learn from an evaluation. Parents have unique information about the needs of their children and may be able to point to effective types of assessments that would provide information relevant to particular issues or concerns held by the parent. Additionally, such behavior on the part of the district will have set the stage for a positive relationship between the school and the family that provides opportunities to build trust,

mutual respect, and collaboration and provides the best hope for serving the student appropriately.

### **Required Assessment: An Assessment Related to the Suspected Disability**

Special education is reserved for students who have **disabilities that cause difficulty in learning**. Therefore, the first area that must be assessed is the area of the suspected disability(ies). The Department recommends that school districts review their capacity to provide appropriate assessments in the area of the suspected disability. The skills of the evaluator and his or her experience with the type of disability will play an important role in providing appropriate information to the Team. Neither federal nor state law is prescriptive on what type of evaluator is qualified to make certain assessments, however, it is clear that evaluators must be trained and knowledgeable in addition to having appropriate certification or license in their field. Although most school districts have strong assessment capacity for high incidence types of disabilities (such as Specific Learning Disabilities), some of the low-incidence disabilities (such as Sensory Impairments) will require assessors familiar with key manifestations of that type of disability, possibly from outside of the district. School districts may find that a regional approach to identifying experienced assessors in low incidence disability areas is fruitful. The Team must have sufficient assessment information available to make a determination of a disability(ies) and to assess the impact of the disability(ies), if any, on the student's learning. The disability definitions incorporated in the Massachusetts special education regulations at 603 CMR 28.02(7) are presented at the end of this section in Table 3. Definitions are presented in Table form to note specific wording in the definition that has bearing on a determination of disability.

When multiple disabilities are suspected, the recommendations for evaluation should encompass sufficient assessments that the Team will have good information related to each of the suspected disabilities and can determine the presence or absence of each the suspected disabilities as well as the educational impact.

Reading these definitions makes clear as well that the definition of disability in relation to special education is inextricably connected to educational impact. All of the definitions of disability, in one form or another, speak to the effect of the disability on the student's educational progress. Therefore, this document and all documents associated with making a determination of disability for the purposes of special education eligibility will also consider educational progress of the student and the interaction between the named disability and the educational impact of that disability. This is an important distinction and highlights that it is not the disability label alone that prompts a determination of eligibility for special education. Additionally, in the context of special education eligibility, the disability label has no standing alone without reference to impaired educational progress as a result of the disability.

Table 4 provides an indication of the types of assessments that may be helpful in making a determination of disability for each of the types of disabilities. We note that although experienced evaluators are highlighted in certain areas of low incidence disabilities, all areas of disability require experienced evaluators able to use and interpret appropriate assessment tools.

## **Required Assessment: An Educational Assessment**

Since presence of a disability alone does not mean that a student is eligible for special education services, an educational assessment is also required for any determination of eligibility. The Team, in all cases, will consider if the disability of the student is causal to a student's inability to make effective progress in the general education environment. Therefore, it is important for the Team to consider the questions related to educational impact both separately and in relation to the disability.

Since the Team will be looking at the student's ability to progress effectively in the context of general education, assessment should focus on the individual student and his/her performance within the learning environment. School districts are recommended to include observational information about the student both within and outside of the classroom in order to provide a comprehensive look at the student's participation in the life of the school.

In addition to a review of education progress, school districts are recommended to consider information related to student attendance or avoidance, participation in extracurricular activities, and documentation of any instructional support activities that may have taken place prior to referral for special education, or in some cases, concurrently with such referral.

Additionally, school districts are recommended to consider providing information on factors which shape the learning experience of the individual student, such as class size, availability of general education support services, linguistic/cultural differences, curriculum expectations, and types of instructional materials. Table 2, presented earlier in this document, outlines a series of questions that may be fruitful in reviewing a student's educational history.

A complete educational assessment includes:

603 CMR 28.04(2)(a)(2) ...a history of the student's educational progress in the general curriculum . . . information . . . regarding the student's specific abilities in relation to learning standards of the Massachusetts Curriculum Frameworks and the district curriculum, . . . student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults. . .also . . . the student's educational and developmental potential.

### **Narrative description of the student's educational and developmental potential:**

The law additionally requires that sufficient assessment information be provided to allow the district to include, as part of the educational assessment, a narrative description of the student's educational and developmental potential. This information will be particularly important when determining if the student is making effective progress, since effective progress is not solely measured against the expectations of the classroom but also against the individual student's potential and abilities.

A caveat to this assertion rests in the understanding that special education is intended to provide equal educational opportunities for children with disabilities, and to protect against discrimination on the basis of disability.

Providing a narrative description of the student's educational and developmental potential does not, however, require making a determination of eligibility. That is the

responsibility of the Team. The educational assessment reflects both the educational history and the current educational standing of the student. In that context, the narrative relating to the students educational and developmental potential must contain the following elements:

1. A description of factors that inhibit or assist the student in making effective progress. The assessor must consider if the student's performance in school, in relation to academic and non-academic activities, has been consistent or inconsistent and/or has shown patterns that provide information relevant to assessing the student's potential.
2. An assertion as to whether this summative review suggests that the student:
  - Has consistently performed within the range of performance of typical students; or
  - Has consistently performed better than typical students; or
  - Has consistently performed less well than his/her typical peers; or
  - Has demonstrated inconsistent performance throughout his/her educational history.

It is important for the Team to have this information in order to determine impact of a disability. However, the description of educational and developmental potential cannot be used to deny a student access to the general curriculum or to challenging subject materials or activities.

### **Optional Assessments: Health, Psychological, or Home Assessment**

The law allows school districts and parents to make individual determinations about whether additional assessments are warranted. Assessment information must be comprehensive and sufficient to allow the Team to accomplish three tasks:

1. Determine the presence or absence of a type of disability
2. Evaluate various factors related to the student's performance in school
3. Plan appropriate services to respond to the student's needs

The law requires that no single assessment is used for any of these determinations. The law further requires that assessments be appropriate for the student and the task that is being assessed. Both formal and informal assessments are encouraged and provide valuable information.

School districts may recommend Health, Psychological, or Home Assessments. Parents can choose to consent or not for these assessments. If the parent(s) requests these assessments, the school district must provide them as part of the full evaluation or reevaluation. However, other assessments, in addition to health, psychological or home assessments, may also be recommended by the school or requested by the parent. For all other assessments parents continue to have the right to consent or refuse consent, and school districts have the right to refuse to conduct an additional assessment if such assessment is unrelated to the suspected disability of the student. However, if the district does refuse to conduct another type of assessment requested by the parent, the district must provide the parent with full written notice regarding why it believes that such an assessment is unrelated to the suspected disability of the student.

School districts should avoid unnecessary or duplicative assessment or testing and must give careful consideration to current evaluative information that is already available. This consideration may be particularly true for young children who have been receiving services in early intervention and are being considered for special education eligibility because they are about to turn age three.

<b>Table 3: DISABILITY DEFINITIONS</b>	
<p><i>Autism</i> – A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR 300.7.</p>	<p>Key words from the state and federal definitions:</p> <ul style="list-style-type: none"> <li>▪ A developmental disability <b>significantly affecting verbal and nonverbal communication and social interaction</b>,</li> <li>▪ generally evident before age 3...</li> <li>▪ adversely affects ...educational performance.</li> <li>▪ <b>engagement in repetitive activities and stereotyped movements</b>,</li> <li>▪ <b>resistance to environmental change or change in daily routines</b>, and</li> <li>▪ <b>unusual responses to sensory experiences</b>.</li> </ul>
<p><i>Developmental Delay</i> – The learning capacity of a young child (3-9 years old) is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; and/or self-help skills.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>▪ <b>3-9 years old</b></li> <li>▪ <b>learning capacity significantly limited, impaired, or delayed</b></li> <li>▪ <b>difficulties in one or more areas</b></li> </ul>
<p><i>Intellectual Impairment</i> – The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>permanent capacity for performing cognitive tasks</b></li> <li>• <b>is significantly limited or impaired</b></li> <li>• <b>shall include students with mental retardation.</b></li> </ul>
<p><i>Sensory Impairment – Hearing</i> – The capacity to hear, with amplification, is limited, impaired, or absent and results in one or more of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorally-presented information in the education environment. The term includes students who are deaf and students who are hard-of-hearing.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>capacity to hear, with amplification</b></li> <li>• <b>limited, impaired, or absent</b></li> <li>• <b>reduced performance in hearing acuity</b></li> <li>• <b>difficulty with oral communication</b></li> <li>• <b>difficulty understanding auditorally-presented information</b></li> </ul>
<p><i>Sensory Impairment – Vision</i> – The capacity to see, after correction, is limited, impaired, or absent and results in one or more of the following: reduced performance in visual acuity tasks; difficulty with written communication; and/or difficulty with understanding information presented visually in the education environment. The term includes students who are blind and students with limited vision.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>capacity to see, after correction</b></li> <li>• <b>limited, impaired, or absent</b></li> <li>• <b>reduced performance in visual acuity</b></li> <li>• <b>difficulty with written communication</b></li> <li>• <b>difficulty with understanding information presented visually</b></li> </ul>
<p><i>Sensory Impairment – Deaf-Blind</i> – Concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>concomitant hearing and visual impairments</b></li> <li>• <b>severe communication and other developmental and educational needs</b></li> </ul>

Table 3: DISABILITY DEFINITIONS – continued	
<p><i>Neurological Impairment</i> – The capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes students who have received a traumatic brain injury.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>capacity of the nervous system is limited or impaired</b></li> <li>• <b>includes traumatic brain injury</b></li> </ul> <p>Note: Massachusetts’ definition of neurological impairment is more inclusive than the federal definition which is limited to students with traumatic brain injury.</p>
<p><i>Emotional Impairment</i> – As defined under federal law at 34 CFR §300.7, the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The determination of disability shall not be made solely because the student’s behavior violates the school’s discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance.</p>	<p>Note: The federal definition uses the terminology “serious emotional disturbance.” State statutory requirements require that the term “emotional impairment” be considered synonymous with the term “serious emotional disturbance.”</p> <p>Key words in both state a federal definitions:</p> <ul style="list-style-type: none"> <li>• <b>long period of time and to a marked degree</b></li> <li>• <b>adversely affects educational performance</b></li> <li>• <b>inappropriate types of behavior or feelings under normal circumstances</b></li> <li>• <b>not solely behavior</b></li> <li>• <b>not solely court or social service involvement</b></li> <li>• <b>not solely social maladjustment</b></li> </ul> <p>The regulatory definition is by no means exhaustive in its listing of possible characteristics of an emotional impairment. Readers are reminded that many other sources of evidence of emotional impairment may affect educational progress.</p>
<p><i>Communication Impairment</i> – The capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the student’s educational performance.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>use of expressive and/or receptive language is significantly limited, impaired, or delayed</b></li> <li>• <b>adversely affects educational performance</b></li> </ul> <p>The regulatory definition is not exhaustive in its listing of communication areas that may be affected.</p>
<p><i>Physical Impairment</i> – The physical capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions. The term shall include severe orthopedic impairments or impairments caused by congenital anomaly, cerebral palsy, amputations, and fractures if such impairment adversely affects a student’s educational performance.</p>	<p>Key words:</p> <ul style="list-style-type: none"> <li>• <b>physical capacity to move, coordinate actions, or perform physical activities</b></li> <li>• <b>significantly limited, impaired, or delayed</b></li> <li>• <b>adversely affects educational performance</b></li> </ul> <p>The regulatory definition is by no means exhaustive in its listing of physical impairments. Readers are reminded that <u>many</u> other physical impairments may affect educational progress.</p>
<p><i>Health Impairment</i> – A chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia,</p>	<p>Key words</p> <ul style="list-style-type: none"> <li>▪ <b>Chronic or acute</b></li> <li>▪ <b>Capacity to function is significantly limited</b></li> <li>▪ <b>Resulting in limited alertness with respect to the educational environment</b></li> </ul> <p>The regulatory definition is by no means exhaustive in its listing of health impairments. Readers are reminded that <u>many</u> other health impairments may affect educational progress.</p>

Table 3: DISABILITY DEFINITIONS – continued	
<i>Health Impairment (continued)</i> nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student's educational performance.	
<i>Specific Learning Disability</i> – The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think speak, read, write, spell, or to do mathematical calculations. Use of the term shall meet all federal requirements given in federal law at 34 C.F.R. §§300.7(c)(10) and 300.541.	<ul style="list-style-type: none"> <li>▪ Comments: use of the term “<b>an imperfect ability</b>” must be considered in the context of other federal language which provides guidance that such term may be considered to mean “<b>seriously compromised</b>”.</li> <li>▪ 34 CFR 300.541 includes an assessment of whether the student was provided with learning opportunities appropriate to the age of the student, and directs the Team to look for a <b>severe discrepancy between achievement and intellectual ability</b>. (See also Table 5A)</li> </ul>

**Table 4: Assessment Factors Related to Type of Disability**  
(NOTE: THIS LIST IS NEITHER PRESCRIPTIVE NOR EXHAUSTIVE)

DISABILITY TYPE	POSSIBLE ASSESSMENTS & ASSESSMENT FACTORS
Autism	<ul style="list-style-type: none"> <li>• Autism-specific rating scales</li> <li>• Assessment of social maturity and skills</li> <li>• Communication Sample and assessment of student’s language skills including pragmatic language skills</li> <li>• Observations – note if student engages in repetitive or stereotyped movements and the student’s response to change in daily routines or environment</li> <li>• Assessment of student response to sensory experiences</li> <li>• Assessment of student’s emotional status (see also emotional impairment)</li> <li>• Assessment in multiple environments with a variety of tasks</li> <li>• Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools</li> </ul>
Developmental Delay	<ul style="list-style-type: none"> <li>• Appropriate consideration only if student is nine (9) years of age or younger</li> <li>• Assessment of developmental performance in language; cognition; physical development; social, emotional, or adaptive development</li> <li>• Psychometric assessments</li> <li>• Classroom observations</li> <li>• Developmental history</li> <li>• Norm reference data or professional consensus finding of delay of 6 months or more in one or more areas for <u>younger</u> children and 9 months or more for <u>older</u> children</li> </ul>
Intellectual Impairment	<ul style="list-style-type: none"> <li>• Developmental and educational history – evidence of permanent limitations of capacity</li> <li>• Look for significant limitation, not just slower learning</li> <li>• Assessment of: rate of learning, patterns of learning, understanding of abstract concepts.</li> <li>• Assessment in different environments</li> <li>• Assessment of adaptive behaviors of student</li> <li>• Standardized IQ tests may be used as <u>one</u> measure for consideration, but is not sufficient for a finding of disability of this type</li> </ul>
Sensory Impairment – Hearing	<ul style="list-style-type: none"> <li>• Audiological assessment including assessment of functional residual hearing capacity</li> <li>• Assessment of student’s capacity to derive assistance from the use of assistive technology such as hearing aids, auditory trainers, FM systems, or cochlear implants</li> <li>• Review of student’s educational and developmental history</li> <li>• Medical history and current medical assessment</li> <li>• Assessment of oral language development and communication abilities of student</li> </ul>

<b>Table 4: Assessment Factors Related to Type of Disability – continued</b>	
Sensory Impairment – Hearing (continued)	<ul style="list-style-type: none"> <li>• Assessment of student in relation to school environment, and vice versa, including participation behaviors, social/communication behaviors, interaction with other students and with adults, and behaviors in relation to different learning environments</li> <li>• Assessment of student’s auditory discrimination and processing skills</li> <li>• Note: Hearing impairment is often concurrent with other disabling conditions and should be carefully considered when student has physical disabilities or syndromes, apparent fluctuating or changed auditory skills, communication impairments or poor vision</li> <li>• Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools for students who may be deaf or hard of hearing</li> </ul>
Sensory Impairment – Vision	<ul style="list-style-type: none"> <li>• Visual acuity assessment, including assessment of functional residual vision after correction</li> <li>• Note: students with multiple impairments are at risk for visual impairments. If multiple impairments are present, a vision screening should be provided</li> <li>• Medical history and current medical assessment</li> <li>• Ophthalmological and clinical low vision assessment</li> <li>• If appropriate, assessment of student’s capacity to learn/use Braille</li> <li>• Assessment of student’s orientation and mobility skills</li> <li>• Review of student’s educational and developmental history</li> <li>• Assessment of student’s visual discrimination and processing skills</li> <li>• Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools for students who may be visually impaired</li> </ul>
Sensory Impairment – Deaf-Blind	<ul style="list-style-type: none"> <li>• Visual and auditory acuity assessments including assessment of functional residual vision or hearing capacity. Diagnosis of “deafblind” is best when made by an ophthalmologist and audiologist</li> <li>• Observational checklists</li> <li>• Communication assessment, both receptive and expressive</li> <li>• Review of student’s educational, medical, and developmental history</li> <li>• Assessment of student’s visual and auditory discrimination and processing skills</li> <li>• Medical history and current medical assessment</li> <li>• Note: High probability of associated disabilities; medical, neurological, behavioral, cognitive, and physical</li> <li>• Assessment of orientation and mobility skills</li> <li>• Observation of student in multiple settings</li> <li>• Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools for individuals who may be deafblind.</li> </ul>
Neurological Impairment	<ul style="list-style-type: none"> <li>• Assessment by qualified Neuropsychologist or Neurologist that does not repeat previously administered testing</li> <li>• Developmental and educational history</li> <li>• Medical history and current assessment, including a medical screening for known neurological insults</li> <li>• Assessments in related areas such as: memory, cognitive functioning, sensory and motor skills, communication skills, organizational skills, information processing, social skills, behavior, flexibility/adaptability, attention, reasoning, abstract thinking, judgment, problem-solving, mental health status</li> <li>• Observation of student</li> <li>• This type of disability is often associated with low birth weight</li> <li>• Note: This is a low incidence disability. Assessors should have experience and knowledge related to appropriate assessment tools for students who may have neurological impairment</li> </ul>

**Table 4: Assessment Factors Related to Type of Disability – continued**

Emotional Impairment	<ul style="list-style-type: none"> <li>• Behavioral/diagnostic checklists and rating scales</li> <li>• Projective assessments</li> <li>• Teacher assessments and interviews</li> <li>• Observation of student</li> <li>• Psychiatric assessment</li> <li>• Psychological assessment or neuropsychological assessment</li> <li>• Parent interview</li> <li>• Developmental and social history</li> <li>• Note: Many psychiatric disabilities are low incidence disabilities. Assessors should have experience and knowledge related to psychiatric disorders in order to determine the nature of an emotional impairment and its impact on the student</li> </ul>
Communication Impairment	<ul style="list-style-type: none"> <li>• Assessment of expressive and receptive language skills, including articulation, fluency, and voice</li> <li>• Oral-peripheral exam</li> <li>• Vocabulary assessment</li> <li>• Assessments related to word retrieval, language and auditory processing skills, and semantic and syntactic skills</li> <li>• Assessment of pragmatic language skills</li> <li>• For younger children, analysis of play skills</li> <li>• Observation of student</li> <li>• Language sample - oral and written</li> <li>• Teacher and parent interviews</li> <li>• Developmental and educational history</li> </ul>
Physical Impairment	<ul style="list-style-type: none"> <li>• Orthopedic or neuromuscular assessment</li> <li>• Medical assessment</li> <li>• Developmental history</li> <li>• Assessment of school functioning across school environments</li> <li>• Observation of student</li> </ul>
Health Impairment	<ul style="list-style-type: none"> <li>• Medical assessment</li> <li>• Developmental history</li> <li>• Assessment of school functioning</li> <li>• Observation of the student, over time, with different tasks</li> <li>• Teacher and parent interviews</li> <li>• Assessment of effects of medication or medical treatment, if appropriate</li> <li>• Assessment of effects of chronic absences, including cumulative effect of absences over time, if appropriate</li> <li>• Assessment of emotional and psychological impact of the impairment, if appropriate</li> </ul>
Specific Learning Disability	<ul style="list-style-type: none"> <li>• Assessments as needed to determine if discrepancy between ability and achievement is present in one or more of designated areas (See also Table 5A)</li> <li>• Assessment of provision of learning opportunities appropriate to age of student</li> <li>• Developmental and educational history</li> <li>• Classroom data on performance, over time, and with different tasks</li> <li>• Observations by more than one person, over time, with different tasks</li> <li>• Psychometric, psychological, or neuropsychological assessments</li> <li>• Assessments as needed to also consider the possibility of associated sensory impairment, emotional impairment, cultural difference, intellectual impairment</li> <li>• <u>Caution #1:</u> Assessment should be initially informed by professional judgement and/or parental concerns and does not require assessment that “covers the territory”</li> <li>• <u>Caution #2:</u> The federal term “severe discrepancy” does not require specific IQ or achievement testing, nor does Massachusetts identify a definitive score or score range to draw a clear line showing when a discrepancy becomes “severe” and warrants a finding of disability. We emphasize that the finding by the Team must show that the student's performance is seriously compromised in one or more of the areas designated in the law. Such a determination may be made with information from multiple assessments (which may include IQ tests), and/or criterion-referenced tests (which may include curriculum-based measurement), as well as other types of assessments</li> </ul>

## V. MAKING AN ELIGIBILITY DETERMINATION

The Eligibility Flowchart, ED-1, provided at the end of this section (Section V), reviews the full process of making a determination of eligibility or ineligibility.

According to the regulations, upon request, assessment information must be made available to the parent at least two days in advance of the Team meeting. A best practice is for a school district to make this assessment information routinely available to the parent and to other Team members in advance of the meeting.

**Question #1. Does the student have one or more than one disability?** The assessment information gathered through the required assessment in the area of the suspected disability will help the Team to answer the first question that must be considered: Does the student have some type of disability(ies)? The determination of type of disability must be answered “yes” and must identify the type of disability of the student.

Children may have no disabilities, one primary disability, or more than one disability. The Team must seek to identify if the student does have a disability and if so, is there only one type of disability or more than one? If more than one type of disability is present, the Team must determine if one disability is primary, or are multiple disabilities interacting with similar force in this student’s learning profile? If one disability is primary, the Team should identify that one as the type of disability for the purposes of eligibility. The identification of a primary disability does not preclude the Team from attending to the effects of other “secondary” disabilities that may also be present. When the Team identifies more than one disability as primary, this means that the Team perceives each of the identified disabilities to have primary impact on the student’s learning and the data for this student would reflect a finding of “multiple disabilities.”

A disabling condition is characterized by significant delays, impairments, or limitations in the student’s capacity(ies). To make this determination, the Team should consider all of the following as indices of limited, impaired, or delayed capacity:

- a pattern of difficulty that persists beyond age expectations;
- a pattern of difficulty across settings;
- a pattern of difficulty that is not solely the result of cultural, linguistic, or socioeconomic differences; and
- a pattern of difficulty that persists despite instructional support activities.

The regulatory definitions of disability include impact on learning. However, with the exception of a Specific Learning Disability, it is likely that Teams will look at the “disability label” as if it is occurring in isolation from learning, and because of this natural inclination, the eligibility determination process has been structured to include a consideration of educational impact. Teams may consider that in order to answer Question #1, they must also discuss Question #2. That sequence is perfectly acceptable as long as all questions are answered during the process of considering eligibility.

Naming a type of disability has common characteristics with the process of making a diagnosis. However, it is important to stress that identification of type of disability is not a medical diagnosis, but a more general agreement among Team members that the assessed characteristics of the student are consistent with the regulatory definition for that type of disability(ies). The definitions in regulation are general definitions. Each one is comprised of many subgroups with specific associated diagnostic criteria, often medical in nature. It is not the intention of the special education law to require a specific diagnosis such as “Asperger’s Syndrome” or “Cerebral Palsy.” Those specific diagnoses will generally only be provided by medical personnel using criteria that include educational impact as only one aspect of the diagnostic process. Special education eligibility is both more specific and more general. The use of the disability label is more general, but the consideration of educational impact is very specific.

Some of the assessors who provide information to the Team may be in a position to make a medical diagnosis and the diagnosis may, therefore, be part of the Team discussion. However, although a Team may use a diagnosis made available to them as part of the assessment information, it is not the responsibility of the Team to confirm or deny a diagnosis made by an assessor. Teams should not spend time, therefore, attempting to agree on an exact diagnosis as long as the assessment information is sufficient to make the more general assertion that the student has a certain type of disability.

Conversely, Teams may often have conflicting information provided by assessors, including medical professionals, who have made a diagnosis naming a specific disability or disorder. Teams are not obligated to resolve such conflicts nor to accept such diagnoses as sufficient to require provision of special education services. In fact, the special education law explicitly requires that a Team of people, including educators and the parent(s), make a determination of eligibility. Although medical personnel may be members of a Team, they cannot be the only voice of the Team since a determination of eligibility for special education is an educational decision and not a medical one.

Tables 5A & B, presented at the end of this section identify special considerations unique to making an eligibility determination: Table 5A for each disability type; Table 5B for students with certain characteristics. Each Table includes guidance to support Teams in making eligibility determinations.

Identification of type of disability by a Team without a review of educational impact is insufficient to find a student eligible for special education. The Team must determine that the student is unable to progress effectively in general education and that a disability alone, or in conjunction with other factors, explains why the student is unable to progress effectively in general education. Finally, the Team must determine that the student requires special education in order to make effective progress.

**Three year reevaluations:** Following a three year reevaluation, the Team will convene to consider if a student *continues to be eligible for special education services*. In such case, the Team must determine if the student continues to have a disability that requires special education services. In most cases, determination of type of disability will not change, and the Team will spend more time and attention determining if the student continues to require special education services in order to

make effective progress in education. Some factors may play a role, however, in considering type of disability at the juncture of the three year reevaluation:

- Massachusetts Teams have not been required to identify type of disability until September, 2000. Therefore, three year reevaluations occurring between September, 2000 and, approximately, September, 2003 may have no initial identification of type of disability as a reference to the discussion. In such cases, the determination of type of disability should proceed as it would for an initial determination of eligibility.
- If the student was originally found eligible for special education as a student with a “developmental delay” and the student is now or, within a year, will become 9 (nine) years old, then the Team must determine if the student has a disability other than “developmental delay.”
- If the student’s health, emotional, or physical circumstances have significantly altered such that another type of disability(ies) is playing a primary role in the student’s learning profile and, therefore, the Team determines that identification of a different type of disability(ies) is appropriate.

**Question #2(a) : Is the student making effective progress in school?** The

educational assessment must provide sufficient information about educational standing

603 CMR 28.02(18) *Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities.

and progress that the Team is able to determine if the student is making effective progress. This question should be first answered separately from the determination of disability. Looking at the student as if he/she were any general education student, does the assessment information indicate that this student is making effective progress in school?

We note here that the definition combines both individually determined factors (such as educational potential) and more standardized factors (such as chronological age, developmental expectations, and the learning standards of the Curriculum Frameworks). So, the definition of effective progress is not solely a review of the student’s capabilities, but also a review of the school’s expectations for similarly aged typical students. Further, the general education program includes more than just the academic curriculum and includes a broader assessment of the student’s performance in all areas of the school.

Making an assertion of effective progress is not arrived at through a simple review of the student’s grades. The law requires that the Team use both academic information and non-academic information about the student to determine if the student’s participation in the life of the school represents effective progress.

Although failing grades would allow the Team to assert that the student is not making effective progress, the Team would not be able to comparably assert that the student is

making effective progress solely because he/she is making passing grades. In fact, the federal special education law specifically prohibits the Team from finding a student ineligible solely because the student is advancing from grade to grade (34 CFR 300.121(e)).

**Three year reevaluations:** When the Team convenes in response to a three year reevaluation, they are determining if the student *continues* to be eligible for special education services. The Team must consider the effect of the special education services that have been received by the student when determining if the student is making effective progress. If the student has been making effective progress and the special education services that have been received by the student are necessary for continued effective progress, then the Team must find that the student continues to be eligible for special education.

**Question 2(b): Is the lack of progress a result of the student's disability?** Once the Team has established that the student is not making effective progress, the Team should consider whether the lack of progress is occurring as a result of the student's disability. In some instances, assessment data will provide the Team with clear indications of the disability and its effect on the student's progress and thus enable the Team to proceed in the decision making process. In other cases, however, assessment results may prove inconclusive. At such times, the Team must take particular care in weighing and analyzing assessment data.

Lack of progress may have no discernable connection to a student's disability and if so, the Team must find the student ineligible for special education. For example: A student has a physical impairment which results in use of a single crutch to assist with mobility, however, the disability does not appear to affect the student's learning, and assessment has given no indication of other suspected disabilities. The student participates in class and extracurricular activities, asks questions and performs generally consistent with the expectations of similar aged peers, except that the student is having a difficult time with reading comprehension tasks and is reading below grade level expectations. The Team is required to consider the assessment results as well as other evaluative information, but if the Team sees no connection between the student's disability and the poor reading comprehension, then the Team must make a Finding of No Eligibility. Of course, as outlined in Section II of this report, we strongly would suggest that the school district have other avenues to offer the parent in addressing the reading difficulties of the student.

**Question #2(c): Does the student require special education?**

**Special education is**

- specially designed instruction to meet the unique needs of the student, and may include related services necessary to benefit from the specially designed instruction.
- Or, special education may be solely a related service(s) that is necessary to access the general curriculum.

**Specially Designed Instruction** is instruction for the student that is designed to meet the unique needs of that student. Such special design may require modifying content, methodology, delivery of instruction, or instructional format, or performance criteria. For

instance, if the student's disability means that he/she cannot complete the same amount of work that other students in the class complete (either in quality or quantity or both), the determination of alternate performance criteria suited to the student's needs would be special education.

The Team must determine that, because of the disability, the student either requires specially designed instruction in order to make effective progress, or requires a related service that allows him/her to access the general curriculum.

**Related Service(s) In Order to Access the General Curriculum** are also considered special education in Massachusetts. Related services are defined in federal regulations (34 CFR 300.24) to include transportation and such developmental, corrective, and other supportive services as are required for a child with a disability to benefit from special education. Massachusetts adds (603 CMR 28.02(21)) that such services are considered special education if they are necessary to access the general curriculum. If a Team determines that the student with a disability does not require specially designed instruction, then the Team must also consider if the student requires a related service in order to access the general curriculum. A few examples highlight aspects of this requirement:

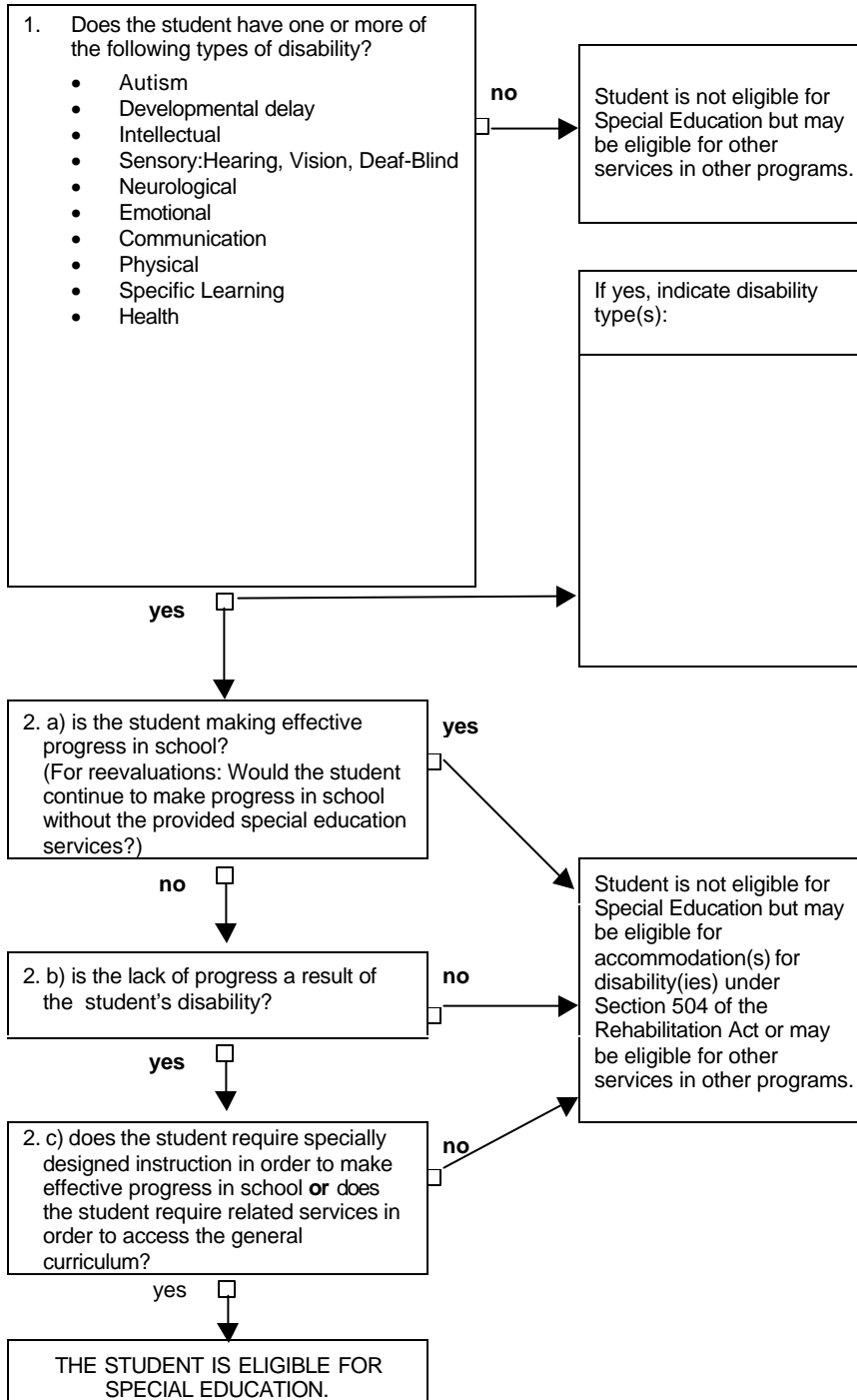
- A student who has been injured and has permanently lost a good deal of fine motor function in her hands is determined to have a physical disability. This student had been excused from a series of assignments following her injury and fell behind her classmates in learning the expected material. Although additional instruction provided by the teacher has brought the student's learning up to the classroom standards, she is unable to take notes or turn in written assignments without ongoing occupational therapy to maintain her remaining fine motor functions. This student is disabled, and because of her disability she is unable to make progress in education. She does not need modifications in instructional content or methodology, nor does she need modifications in performance criteria because, with **occupational therapy**, she can take notes and complete the work at an acceptable performance level. This student, however, does need occupational therapy in order to maintain her full access to the general curriculum. This student is eligible and should receive sufficient occupational therapy services to maintain her hand function for the purposes of school participation.
- A student has developed a severe anxiety disorder that results in extreme fears about performance and school attendance. He has an emotional disability and has, over the past year, fallen further behind in his classroom performance, occasionally does not attend school due to his anxiety level and no longer participates in any non-academic school events. The student is intelligent and capable and when he is not feeling stress or anxiety he is able to understand and participate fully in academic and non-academic activities. He does not require specially designed instruction. However, he does require ongoing **counseling** services to assist him in managing his anxiety disorder so that he can participate in school effectively. This student is eligible and should receive sufficient counseling services to allow him to continue to attend and participate in school and school events.

School District Name:  
 School District Address:  
 School District Contact Person/Phone #:

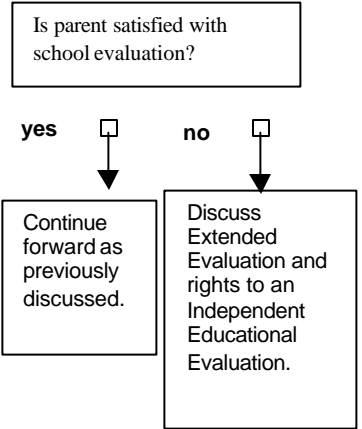
Special Education Eligibility/Initial and Reevaluation Determination

Student Name: \_\_\_\_\_ DOB: \_\_\_\_\_ ID#: \_\_\_\_\_ Date: \_\_\_\_\_

**A. Proceed through the flowchart until an eligibility determination is reached.**



**B. Answer this question for all students.**



**KEY EVALUATION FINDINGS AND/OR NEXT STEPS**

Table 5A

SPECIAL CONSIDERATIONS RELATED TO DISABILITY IN DETERMINING ELIGIBILITY

Autism

- Performance may be inconsistent and may not be consistent with developmental norms.
- Environmental structure and presentation of materials may significantly affect performance.
- High anxiety is frequently a major component and may affect performance measures.
- Students may manifest difficulty with incidental learning.
- The impact of this disability is pervasive.
- Students may manifest attentional issues and issues with organizing information and understanding abstract concepts.

Developmental Delay

- Appropriate consideration only for students 3 to 9 years of age.
- Team must consider developmental normative data and curricular expectations of the educational environment.
- Test scores cannot be single determinant of disability finding particularly in making a finding of a significant delay. A balanced approach to assessment results is required.
- For 3-5 year old students, Team must consider student participation in developmentally appropriate activities.
- Appropriate standards to determine that the developmental delay exhibited by the student is “significant” – recommended minimum is 6 months delay. However, Team must determine if the effect on the student is “significant” in light of the educational context and expectations.
- Team should determine that delay is not a function of lack of instruction or opportunity to learn, nor a function of cultural differences or temporary events in the child’s life.
- Category should not be used as a “temporary catch-all,” and Team should consider if constellation of assessment findings fits with another disability type.

Intellectual Impairment

- Nature of impairment is permanent and generally consistent across similar learning tasks.
- Health or physical impairments may have similar presentations. Team should carefully consider history and other reasons for assessment results.
- Evidence of limited capacity in at least three different settings or situations should be present.
- The impact of this disability is pervasive.

Sensory Impairment – Hearing

- Language and communication access and skills are integral to making effective progress for students who are deaf or who have hearing loss.
- Hearing acuity, not auditory processing, is a key feature.
- Finding should address hearing capacity after correction, if correction is possible. Cochlear implants, hearing aids, or use of an FM system can correct or facilitate learning. If student uses any of these, the impact of such should be part of the assessment consideration.
- Careful consideration must be given to any sudden changes in hearing acuity to determine if short-term, corrective action can be taken, prior to determining eligibility.
- Hearing impairments are at high risk for co-existing with other disabilities.
- Due consideration must be given to assessment challenges with young children.

Sensory Impairment – Vision

- Vision impairments are at high risk for co-existing with other disabilities.
- There is a lack of formal assessment tools for vision loss and concomitant issues. This presents challenges in obtaining complete and representative assessment information.
- Stability or progressiveness of vision loss is integral to examining impact.
- Standardized tests developed for use with sighted individuals may provide inaccurate measures of skills, abilities, or developmental levels for blind or visually impaired students.
- Visual acuity, not visual processing, is a key feature of this impairment.
- Finding should address vision capacity after correction, if correction is possible.

Table 5A: SPECIAL CONSIDERATIONS RELATED TO DISABILITY – continued

Sensory Impairment – Deaf-Blind
<ul style="list-style-type: none"> <li>• Deafblindness is at high risk for co-existing with other disabilities, the presence of which may mask hearing and vision loss.</li> <li>• Many syndromes are associated with deafblindness. Presence of a syndrome should trigger key assessments.</li> <li>• Unique challenges in obtaining representative skill levels.</li> <li>• Low incidence population – presents challenges in identification and service issues. Acuity measures often fluctuate. Presence of an individual familiar with deafblindness is recommended.</li> <li>• Safety and mobility generally significant concerns.</li> <li>• Intellectual capacity difficult to evaluate and often inappropriately ignored. Deafblind individuals have wide range of abilities.</li> </ul>
Neurological Impairment
<ul style="list-style-type: none"> <li>• Intellectual Impairment, Specific Learning Disability, or Emotional Impairment may have similar presentations.</li> <li>• Potential for intermittent, inconsistent, or delayed effects of neurological impairment confusing the connection to educational progress.</li> <li>• High incidence of co-occurrence of behavioral issues, substance abuse issues, or issues of socially inappropriate behavior.</li> <li>• Highly correlated with effects of neurotoxins (lead poisoning, substance abuse, Fetal Alcohol Syndrome).</li> <li>• Highly correlated with effects of stroke, brain tumors, traumatic brain injury, anoxia, spinal cord injury, infectious disorders (e.g., encephalitis), metabolic disorders, chemotherapy, radiation, degenerative diseases, and various syndromes.</li> </ul>
Emotional Impairment
<ul style="list-style-type: none"> <li>• Team must consider if presentation is due to serious emotional disturbance or social maladjustment (see Table 5B).</li> <li>• Willful decision making that does not result from deficits in judgment nor deficits in skill or performance attributable to an emotional impairment may preclude a finding of eligibility.</li> <li>• Voluntary behavior with an absence of remorse that cannot be attributed to an emotional impairment may preclude a finding of eligibility.</li> <li>• Involvement of the court or DYS must be carefully examined and not assumed to represent a finding of disability.</li> <li>• High anxiety is frequently a major component of an emotional impairment and may affect performance measures.</li> <li>• Lack of progress in relation to this type of disability must consider school attendance/school refusal/tardiness; transience; family, personal, or school crisis; and/or possible substance abuse.</li> <li>• High incidence of co-occurrence of behavioral issues, substance abuse issues, or issues of socially inappropriate behavior.</li> </ul>
Communication Impairment
<ul style="list-style-type: none"> <li>• Specific Learning Disability or Emotional Impairment may have similar presentation.</li> <li>• A finding of a “significant” communication impairment must be related to the ability of the student to convey meaning to others or to understand communication from others in both formal and informal educational contexts.</li> <li>• Should not be used to provide supportive services to students with language differences rather than a disability.</li> <li>• Presence of minor articulation errors or disfluencies must be considered in the context of the educational environment and its expectations in order to determine if a disability exists and if it is causal to a lack of educational progress. Many students with minor articulation errors or disfluent speech do not require special education.</li> </ul>

Table 5A: SPECIAL CONSIDERATIONS RELATED TO DISABILITY - continued

Physical Impairment

- Student is not eligible when the physical need is short term and medically treatable and does not affect ability to make effective educational progress.
- Student is not eligible when problems of physical disability can be corrected through changes to the physical plant or classroom space.
- Student is not eligible when problems of physical disability can be corrected through provision of assistive device(s) or equipment that can be used immediately without special training. (If such devices or equipment are educationally necessary, then the school is required to provide them during school hours.)
- Student is not eligible when he/she has learned to independently use compensatory strategies or assistive devices or equipment and is, therefore, making effective educational progress. (If such devices or equipment are educationally necessary, then the school is required to provide them during school hours.)
- Student may be eligible if physical impairment is progressive and although educational progress is not currently impaired, the progress of the physically disabling condition makes such limitation inevitable and requires immediate attention to compensatory strategies.

Health Impairment

- See special considerations related to physical disabilities (above). Similar concerns are present for health impairments.
- Consideration of severity is critical and must occur in the context of the educational program and educational expectations as well as the nature of the health impairment and expected longevity and severity.
- Consideration of temporary, episodic, or cumulative impact related to chronic conditions with phases of partial remission and acute impairment should be carefully considered in light of student's educational progress over time.
- Health conditions may have an impact for the student that fluctuates over time and in response to medication or medical treatment. The Team must determine if such fluctuations represent a persistent threat to the student's ability to make effective progress, or if they are episodic and short term in nature and can be managed through temporary accommodations.
- Attention deficit disorders are discussed in more detail in Table 5B.

Specific Learning Disability

- Test scores cannot be single determinant of disability finding particularly in making a finding of a severe discrepancy. A balanced approach to assessment results is required.
- Federal requirements include that the Team must determine that the student does not achieve commensurate with age and ability, if provided with learning experiences appropriate for the student's age and ability (34 CFR 300.341(a)); and
- Team must ensure that finding of inability to make progress is not the result of other impairments or environmental, cultural, or economic disadvantage (34 CFR 300.541(b)) (see also Table 5B).
- Federal law requires that the Team find that the child has a severe discrepancy between intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, and/or mathematics reasoning. (34 CFR 300.541(a)(2))
- A written statement(s) is required by the Team. (34 CFR 300.543) The statement must document the Team's determination of whether or not the student has a specific learning disability, the basis for the determination, the relevant behavior from observations, the relationship of that behavior to the student's academic functioning; the educationally relevant medical findings, if any; and whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services. The written report must also include the determination of the Team concerning the effects of environmental, cultural, or economic disadvantage. Each Team member is required to indicate if such statement reflects his or her own conclusions and if it does not, the Team member must submit a separate statement with his or her conclusions in these areas.
- Disability finding meshed with finding related to inability to make progress in education – cannot be considered separately like most of the other disability types.
- Consideration in relation to age, instructional history, cognitive abilities, and academic performance.
- A pattern of strengths and weaknesses must be present.
- Particular attention must be paid to reading instruction (or lack thereof) when considering SLD. See also Table 5B.

Table 5B

SPECIAL CONSIDERATIONS RELATED TO STUDENTS WITH CERTAIN CHARACTERISTICS

Groups	SPECIAL CONSIDERATIONS
Students with suspected ADD or ADHD	<ul style="list-style-type: none"> <li>• Not eligible for special education <u>solely</u> by virtue of the diagnosis – assessment must show that attentional issues rise to the level of a disability – if so, most likely disability type will be “health impairment”.</li> <li>• Diagnosis by General Practitioners must be considered in light of educational impact Psychologists or Neurologists may be more precise in their use of this term in the educational context.</li> <li>• Student needs may be able to be met through environmental accommodations or adaptations and may not require special education.</li> <li>• Medical treatment options are controversial, and parents may elect not to consider their use for students with such characteristics.</li> <li>• Schools cannot make service contingent on use of medication for ADD or ADHD.</li> <li>• If the student <u>does</u> use medication, then assessment must reflect performance with medication.</li> <li>• Attentional issues may be components of other impairments or may co-occur with other impairments, and a careful consideration of emotional impairment, specific learning disability, neurological impairment, or other types of disabilities should accompany any discussion considering ADHD.</li> <li>• Student’s attentional issues may significantly interfere with attention to the educational environment and may, therefore, significantly adversely affect educational performance. With no other presenting issues, the disability determination would be Health Impairment.</li> </ul>
Young Children	<ul style="list-style-type: none"> <li>• If the student is coming from early intervention programs, consideration should be given to assessment information already available.</li> <li>• Assessment data may need to be gathered from natural environments such as the playground, the home, or other settings where the child spends time.</li> <li>• Observational data should include the child in relation to activities alone and with others, both adults and other children.</li> <li>• Young children develop at varying rates and according to the life experiences available to them. Great variation will be seen. Determining if the variation seen in the individual child’s performance is aberrant or significantly delayed is the challenge.</li> <li>• Many standardized norm referenced tests are not applicable to young children. Assessment sources may be primarily informal.</li> <li>• Early childhood specialists and the child’s family may be the most effective informants to the Team decision-making.</li> <li>• Concerns about the young child in relation to the general curriculum and the life of the school may consist of a review of typical play-based activities related to the developmental foundation for academic work and may not be based in a school environment.</li> </ul>
Students with Different Linguistic or Cultural Background	<ul style="list-style-type: none"> <li>• Different linguistic or cultural background may only be used to determine <u>ineligibility</u> if different linguistic or cultural background is the <u>determinant</u> factor for a student’s inability to make progress and the student does not otherwise meet eligibility criteria.</li> <li>• Different linguistic or cultural background more of an assessment factor as outlined in the following bullets.</li> <li>• Regulations require the use of tests that are linguistically and culturally free of bias. However, there are not sufficient unbiased assessment tools to provide comprehensive information.</li> <li>• Teams should ensure they have information available on the linguistic or cultural differences related to learning that may be applicable to the student being considered for special education eligibility.</li> <li>• Assessment of the student’s inability to make effective progress must go beyond simple determination of English language skills. Language proficiency, both receptive and</li> </ul>

**Table 5B: SPECIAL CONSIDERATIONS RELATED TO CERTAIN CHARACTERISTICS – continued**

<p>Students with Different Linguistic or Cultural Background (continued)</p>	<p>expressive, in relation to all aspects of school communication must be assessed to determine relationship of linguistic/cultural background to school achievement.</p> <ul style="list-style-type: none"> <li>• Cultural differences may impact the student’s approach to school and learning and the student’s educational history.</li> <li>• Cultural differences of the parent may not be readily apparent in the student but may affect the student’s approach to school, learning, and assessment.</li> <li>• When possible, information from a person fluent in the language and culture of the student and conversant with academic expectations of the school would be valuable to the Team’s discussion.</li> <li>• Information on the student’s educational history should be considered very carefully and, if possible, information on educational history outside of the U.S. should be obtained.</li> </ul>
<p>Students involved with Social Services or the Courts</p>	<ul style="list-style-type: none"> <li>• Involvement with Social Services or the Courts should not result in a presumption that a student requires special education nor that inability to make progress in education is caused by factors outside of the school environment.</li> <li>• Schools must use the same standard to determine eligibility as for any other student.</li> </ul>
<p>Students with Multiple Impairments</p>	<ul style="list-style-type: none"> <li>• Teams may make a determination of multiple disabilities if all disabilities are inextricably meshed and there is no primary disability.</li> <li>• Determination of a primary disability would be appropriate if the Team believes that the educational impact of one type of disability is much greater than any other impairment of the student.</li> </ul>
<p>Social Maladjustment</p>	<ul style="list-style-type: none"> <li>• The Team must determine that student behavior interfering with student achievement does not result from willful misbehavior or the effects of willful unconcern with education with no indication of a causal disability such as an emotional impairment.</li> <li>• The determinations that a Team would make when considering if a student’s misbehavior is a result of the student’s disability are instructive. The Team would seek to determine if the student knew what was appropriate behavior at the time of the misbehavior, was capable of appropriate behavior at the time of the misbehavior, and still willfully choose not to do the appropriate thing.</li> <li>• Information related to use of alcohol or drugs may be a factor in making a finding that social maladjustment is causal to lack of progress rather than a disability.</li> </ul>
<p>Poor performance on MCAS</p>	<ul style="list-style-type: none"> <li>• Statutory language explicitly requires that students not be found eligible for special education solely because of poor performance on the Massachusetts Comprehensive Assessment System (MCAS) tests.</li> <li>• Poor MCAS performance should be considered one piece of assessment information that is appropriately considered when a student is referred for an evaluation because of a suspected disability.</li> </ul>
<p>Lack of Reading or Math Instruction</p>	<ul style="list-style-type: none"> <li>• Ineligibility may only be found if lack of instruction is the determinant factor for lack of progress and the student does not otherwise meet the eligibility criteria.</li> <li>• Special education is <u>not</u> the appropriate service solely to provide instruction to a student who has not received instruction in the past.</li> <li>• Lack of instruction may occur for students coming to the U.S. from underdeveloped countries.</li> <li>• Lack of instruction may occur for migrant students or students from families with transient histories.</li> <li>• Lack of instruction may occur when students have been homeless.</li> <li>• Lack of instruction may be considered by the Team when the Team has knowledge that the student received limited instruction with limited instructional variation. For instance, reading instruction that employed solely a whole language approach.</li> </ul>

## VI. CONCLUSION

The process and activities pertinent to making an eligibility determination are serious and critical. A Team is obligated to take such actions as are necessary to fairly consider all of the various indicators involved in such a decision. School districts will make the process of such decision-making more effective and more consistent across the Commonwealth if multiple options for assistance are available to students having difficulty in school.

School districts are encouraged to gather together the entire school community, including parents of students with and without disabilities, to discuss the type of school community that is necessary to serve all the students in the district. Such discussions will ensure that school administrators are fully aware of the demographics of the student body and the expectations of the school community that they serve. The commitment in Massachusetts to education reform and to effective schools that promote high standards and strong services for all students will help to ensure that special education remains an option for the students who need it the most and for whom the program was designed in the first place – students with disabilities who need special assistance to make progress in school.

### **What's next?**

These guidelines strongly encourage Teams to carefully and separately discuss eligibility first at the initial determination, and again when the student is scheduled for a three year re-evaluation. However, a finding of eligibility for a student inevitably becomes a discussion of services as the Team then seeks to develop an appropriate individualized education program (IEP).

We know that the evaluation completed by the school district has two purposes: (1) to provide information for the Team to determine eligibility; and, if the student is eligible, (2) to provide information for the Team to determine appropriate services. The

Department, therefore, encourages Teams to use the information available about the disability to consider appropriate service and instruction for the student.

However, information about disability is only one piece of information and does not take into account individual needs, and must not be used as a template to force-fit services for any student. Although

knowledge of a type of disability is a critical piece of information, the variation of student needs and behaviors both within and among disabilities is incredibly diverse.

Massachusetts has a long history of resisting efforts to use disability labels as a means of discriminating against children with disabilities. Our state statute and state special education regulations both contain this limitation:

*Identification of "disability" cannot be used to provide a basis for labeling or stigmatizing the student or defining the needs of the student and shall in no way limit the services, program, and integration opportunities provided to the child.*

The services and instructional program identified for the student, therefore, should be based on the individual needs of the student.

Making an eligibility determination well and fairly is critically important and deserving of our attention, but it is only the first step in seeking to appropriately serve students with disabilities. It must be followed by effective planning and services that are provided to allow the student to discover and use his or her strengths and resources. Ultimately, special education is provided to help students with disabilities flourish as individuals with the ability to participate fully in educational opportunities and prepare themselves for independent adult life. Massachusetts has deliberately chosen to ensure that eligibility determinations are based on an individualized inquiry process, with education professionals and parents working together to determine the nature of a student's difficulties in school. We have sought to provide guidelines rather than strict standards. The process does have very consistent parameters, many of which are delineated by law and regulation, such as the use of certain types of assessments and the deliberation of a Team of people, including the parent. However, since one of the primary concepts of the law is that services must be individualized, Massachusetts continues to support an individualized decision on eligibility that will depend for its consistency on well-informed educators and parents. We believe that requiring an affirmation of continuing eligibility at least every three years will ensure that Teams and districts will continue to carefully consider if and when students require special education services.

We hope these guidelines are helpful. Additional technical assistance in understanding the law and regulations that form the legal underpinnings of the eligibility determination may be obtained from the Massachusetts Department of Education, Program Quality Assurances, (781) 338-3700.

## **APPENDIX**

### **Disability Work Groups:**

Special thanks are due to the many individuals who gave their time and expertise to assist in the discussions and review of this document. If the document is helpful, it is due in major part to these individuals. Individuals and their affiliations are ordered below as members of the various Disability Work Groups convened during the summer and fall of the year 2000.

#### Work Group Focus: Autism

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**RESOURCES & BIBLIOGRAPHIES**

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Bibliographies and other resources were sometimes organized and recommended by Work Group members. Due to the volume of possible resources and the changing nature of organizations and resource information, the Department has chosen not to include such resource information in this document. Instead, we recommend that the reader go to the special education portion of the Massachusetts Department of Education website at:

**<http://www.doe.mass.edu/sped/>**

A current listing of all resources suggested in the disability areas will be included.