

Adverse Effect

April 20, 2023

Agenda

Understand adverse effect: historical perspective and the special education rule changes;

Review resources to support the rule change;

Answer previously submitted questions from the field.

Adverse Effect: Historical Perspective

In the early 1990's, Vermont introduced a rule to operationalize the concept of adverse effect.

Evaluation Planning Teams (EPTs) were required to document three measures of educational performance in a basic skills area that fell at or below the 15th percentile.

For 30 years, Vermont has been the only state to operationalize adverse effect in such a manner.

Adverse Effect: Special Education Rule Changes

Vermont will be returning to an eligibility definition of adverse effect in line with most other states.

Rather than wait until students fall into the lowest 15th percentile of their grade level peers, earlier identification can be made.

Although the new regulation no longer requires the documentation of three measures of adverse effect for a basic skill area, those measures should continue to be used to substantiate an adverse effect.

Adverse Effect: Requirements for Measure

There is no longer a minimum number of measures expected to determine adverse effect, but multiple measures are expected to be documented.

No single piece of evidence or measure of school performance will be required by regulations.

Adverse effect is determined by a review of all available evidence.

Adverse Effect: Exceptions to the Rule

The exceptions to this rule are the disability categories of Specific Learning Disability (SLD) and Deaf-Blindness, where the current federal rules do not require such documentation.

SLD and Deaf-Blindness are excluded in the rule as the definitions of these categories already requires an adverse effect.

Adverse Effect: Form 2

Form 2 is utilized for special education evaluation reports for all disability categories. Section two of this form, adverse effect, is not required for student's identified as having a Specific Learning Disability or Deaf-Blindness.

However, the pertinent information to support determinations is necessary to document and this section is an optional place where that data can be documented.

Mateo's Form 2

Resources

[Adverse Effect Memorandum](#): Covers the background and the changes to rule 2362 related to adverse effect.

[Three-Gate Eligibility Determination](#): Reviews the criteria for all three of the three-gate process for special education eligibility that must be met and documented.

[Eligibility Deliberation Form](#): This form is intended to support teams with conversations about adverse effect and determining eligibility.

Eligibility Deliberation Form

<p>9. Do the child's social, behavioral, or emotional deficits (if any), as observed by professionals or parents/guardians in multiple settings (whenever possible), on clinical rating scales or in clinical interviews, demonstrate adverse effect in any of the basic skill areas?</p> <p>Verification: <input type="text"/></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>10. Other (add any other data sources) <input type="text"/></p> <p>Verification: <input type="text"/></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I.B.

Assessment(s) or Data Source(s)	Yes	No
<p>Was only one assessment/data source considered?</p> <p>If the answer to the question is "Yes", state the EPT Team's rationale for the determination that the single assessment/data source is adequate for the determination of adverse effect on educational performance: <input type="text"/></p>	<input type="checkbox"/>	<input type="checkbox"/>

Question and Answer

In situations where teams are completing an evaluation and are considering the documentation of whether the learner has or has not received appropriate instruction through general education, the regulations are clear that you cannot delay an evaluation due to an intervention not having been implemented.

Can a team make the determination that the learner would not meet the need criteria without the documentation of a lack of response to evidence-based general education interventions provided with fidelity?

Question and Answer, continued

If you cannot determine if the student received adequate first instruction, you cannot find that student eligible for special education. Please see section 2362 ([34 C.F.R. § 300.306](#)) of the special education rules, effective July 1, 2023.

If a student is referred for special education and the team begins the evaluation process, an evaluation cannot be delayed based on a student not yet receiving interventions, unless the parent agrees to such a delay. Please see [OSEP Memo, 2011](#) for more information.

Question and Answer, continued

What data and information will be important to collect to substantiate adverse effect and decision making related to special education eligibility?

Question and Answer, continued

While State regulations do not indicate a required number of measures, an EPT should use multiple pieces of evidence in order to get a full picture of the student's educational performance, documenting Adverse Effect in one area.

When determining if a student's disability has an adverse effect on educational performance, EPTs must consider all aspects of the child's functioning at school.

The [Adverse Effect Evidence Source Checklist](#) represents a checklist of the types of evidence that may be helpful for school-aged children.

Adverse Effect Evidence Source Checklist

- Nationally normed, individually administered achievement test(s)
- Nationally normed, group administered achievement test(s), including nationally normed, curriculum-based measures
- Reported prepared by the LEA or presented by the parent
- Performance on comprehensive assessments based on a system of learning results, or the Common Core as of 2014
- Criterion-referenced assessments
- Student's work products, language samples, or portfolios
- Disciplinary evidence
- Student's attendance
- Social, behavioral, or emotional deficits (if any)

Question and Answer, continued

Whose job is adverse effect?

All educators have a responsibility to provide their students with the best possible support and instruction. Documenting adverse effect must be a collaborative process between general and special educators. The table on the next slide provides examples of who often has the best information for a given measure of adverse effect.

Types of Measure

1. Individually administered nationally-normed achievement test
2. Nationally-normed group administered achievement tests, including nationally-normed curriculum-based measures
3. Grades/Proficiency
4. Curriculum based measures, could include benchmark assessments and continuous progress monitoring outcomes
5. Individual or group criterion-referenced tests

Person(s) Responsible

1. Special Educator, SLP, School Psychologist trained in test administration
2. Classroom teacher(s) or Others (i.e., special educators and guidance counselors)
3. Classroom Teacher(s)
4. Classroom teacher(s) or Others
5. Special Educator, SLP, Classroom teacher(s), or Others

Question and Answer, continued

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

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

Question and Answer, continued

How will the changes to adverse effect be implemented and how will the actual definition of adverse effect be operationalized and quantified in a consistent and equitable approach?

Question and Answer, continued

Determinations regarding adverse effect will rely on expertise and based upon the results of assessments or data sources, determined by the team to be necessary to validate the impact of the disability on academic and functional performance.

The additional question to consider is if an adverse effect is demonstrated, how are the student's needs best met.

Please see the [State Board of Education Rules](#), (34 C.F.R. § 300.39), for Vermont's Special Education Rules related to specially designed instruction.

Contact

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