

NC 1502-21 State Agency Eligibility

Any LEA that desires to receive a sub grant for any fiscal year under NC 1506-1.4 must demonstrate to the satisfaction of the SEA that--

- (a) All children with disabilities who are participating in programs and projects funded under Part B of the IDEA receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and
- (b) The LEA meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(h); 34 CFR 300.228)

NC 1502-22 SEA Flexibility

- (a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by the State under NC 1506-1.2 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding NC 1501-12.5 through NC 1501-12.6 (related to State-level nonsupplanting and maintenance of effort), and where SEA is the provider of FAPE or direct services under 20 U.S.C. 1412(b) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.
- (b) Prohibition. Notwithstanding paragraph (a) of this section, if the Secretary determines that the SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under NC 1505-1.4, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.
- (c) Education activities. If the SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.
- (d) Report. For each fiscal year for which the SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary--
 - (1) The amount of expenditures reduced pursuant to that paragraph; and
 - (2) The activities that were funded pursuant to paragraph (c) of this section.
- (e) Limitation.
 - (1) Notwithstanding paragraph (a) of this section, the SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the IDEA and State funds received from the SEA.
 - (2) If the SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under NC 1502-6 by more than the reduction in the State funds they receive.

(Authority: 20 U.S.C. 1413(j); 34 CFR 300.230)

SUBPART D - EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

NC 1503-1 Parental Consent

NC 1503-1.1 Parental Consent

- (a) Parental consent for initial evaluation.
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- (1) (i) The LEA proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under NC 1500-2.4 must, after providing notice consistent with NC 1504-1.4 and NC 1504-1.5, obtain informed consent, consistent with NC 1500-2.6, from the parent of the child before conducting the evaluation.
 - (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
 - (iii) The LEA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
 - (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if –
 - (i) Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child; or
 - (ii) The rights of the parent to make educational decisions have been removed by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
 - (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, (including the mediation procedures NC 1504-1.7 or due process procedures under NC 1504-1.8 through NC 1504-1.17), if appropriate.
 - (ii) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation.
- (b) Parental consent for services.
- (1) An LEA that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
 - (2) The LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
 - (3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—
 - (i) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC 1504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;
 - (ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
 - (iii) Is not required to convene an IEP Team meeting or develop an IEP for the child under NC 1503-4.1 and NC 1503-5.1.
 - (4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--
 - (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with NC 1504-1.4 before ceasing the provision of special education and related services;
 - (ii) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC 1504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;
 - (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
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- (iv) Is not required to convene an IEP Team meeting or develop an IEP under NC 1503- 4.1 and NC 1503-5.1 for the child for further provision of special education and related services.
- (c) Parental consent for reevaluations.
- (1) Subject to paragraph (c)(2) of this section, each LEA –
 - (i) Must obtain informed parental consent, in accordance with NC 1503-1.1(a)(1), prior to conducting any reevaluation of a child with a disability.
 - (ii) If the parent refuses to consent to reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
 - (iii) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation or reevaluation.
 - (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the LEA can demonstrate that—
 - (i) It made reasonable measures to obtain such consent; and
 - (ii) The child’s parent has failed to respond.
- (d) Other consent requirements.
- (1) Parental consent is not required before-
 - (i) Reviewing existing data as part of an evaluation or a reevaluation; or
 - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
 - (2) An LEA may not use a parent's refusal to consent to one service or activity under paragraph (a) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.
 - (3) (i) If a parent of a child who is home schooled or placed in a private school by the parent at their own expense does not provide consent for initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and
 - (ii) The public agency is not required to consider the child as eligible for services under NC 1501-6.3 through NC 1501-6.15.
 - (4) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in NC 1503-4.3(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c); 34 CFR 300.300)

NC 1503-2 Referrals, Evaluations and Reevaluations

NC 1503-2.1 Referral

When a public agency, as defined at NC 1500-2.24 or parent suspects that a child may be a child with a disability, he/she shall provide in writing the reason for referral, addressing the specific presenting concerns and the child’s current strengths and needs. This referral shall be given to the principal of the school, the child’s teacher or other school professional, or the Superintendent or other appointed official of the LEA. For preschool children with disabilities, the referral may also be given to the person designated as the person in charge of services for preschool children with disabilities.

NC 1503-2.2 Initial Evaluations

- (a) General. Each LEA must conduct a full and individual initial evaluation (including progress monitoring data) in accordance with NC 1503-2.5 through NC 1503-2.7 before the initial provision of special education and related services to a child with a disability under these Policies.
 - (b) Request for initial evaluation or determination of eligibility. Consistent with the consent requirements in NC 1503-1.1, either a parent of a child, or an LEA may initiate a request for an initial evaluation to determine if the child is a child with a disability. Upon an oral request for an initial
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evaluation from a parent, the LEA shall provide assistance, as needed, in completing a written referral.

- (c) Timeline for initial referral.
- (1) Evaluations must be conducted, eligibility determined, and for an eligible child, the IEP developed, and placement completed within 90 days of receipt of a written referral; and
 - (2) The IEP Team must determine--
 - (i) If the child is a child with a disability under NC 1500-2.4; and
 - (ii) The educational needs of the child.
- (d) Exception. The timeframe described in paragraph (c)(1) does not apply to an LEA if--
- (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation;
 - (2) The parent of a child repeatedly fails or refuses to respond to a request for consent for the evaluation; or
 - (3) A child enrolls in a school of another LEA after the 90-day timeline has begun, and prior to determination by the child's previous LEA as to whether the child is a child with a disability under NC 1500-2.4.
- (e) The exception in paragraph (d)(3) of this section applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a); 34 CFR 300.301)

NC 1503-2.3 Screening for Instructional Purposes is Not Evaluation

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E); 34 CFR 300.302)

NC 1503-2.4 Reevaluations

- (a) General. A public agency must ensure that the timely reevaluation for each child with a disability is conducted in accordance with NC 1503-2.5 through NC 1503-3.5
- (2) If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant additional evaluation data; or
 - (3) If the child's parent or teacher requests additional evaluation data.
- (b) Limitation. The reevaluation conducted under paragraph (a) of this section--
- (1) May occur not more than once a year, unless the parent and the LEA agree otherwise; and
 - (2) Must occur at least once every three years.
- (c) Reevaluation of Children Identified as Developmentally Delayed. The reevaluation of children identified as developmentally delayed shall occur at least once every three years following placement; and prior to turning eight years of age, or prior to entering third grade (whichever comes first).

(Authority: 20 U.S.C. 1414(a)(2); 34 CFR 300.303)

NC 1503-2.5 Evaluation Procedures

- (a) Notice. The LEA must provide notice to the parents of a child with a disability, in accordance with NC 1504-1.4, that describes any area in which the LEA proposes to conduct evaluation.
- (b) Conducting the evaluation. In conducting the evaluation, the LEA must—
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

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- (i) Whether the child is a child with a disability under NC 1500-2.4; and
 - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 - (c) Other evaluation procedures. Each LEA must ensure that—
 - (1) Assessments and other evaluation materials used to assess a child under these Policies --
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
 - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
 - (iv) Are administered by trained and knowledgeable personnel; and
 - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
 - (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 - (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
 - (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
 - (5) Assessments of children with disabilities who transfer from one LEA to another LEA in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with NC 1503-2.2(d)(2) and (e), to ensure prompt completion of full evaluations.
 - (6) In evaluating each child with a disability NC 1503-2.5 through NC 1503-2.7, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
 - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
 - (d) Required screenings and evaluation for eligibility determination.

A full and individualized evaluation of a child’s needs must be conducted before any action is taken with respect to determining eligibility for special education. Required screenings and evaluation to determine eligibility in each area of disability are as follows:

 - (1) Autism Spectrum Disorder.
 - (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Motor screening;
 - (D) Observation across settings, to assess academic and functional skills;
 - (E) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (F) Social/developmental history; to include an examination of characteristics of Autism Spectrum Disorder present during the early developmental period;
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- (G) Educational evaluation;
- (H) Adaptive behavior evaluation;
- (I) Psychological evaluation; the yielding of an overall intellectual score is not required and should be considered on a case-by-case basis;
- (J) Sensory processing evaluation
- (K) Speech-language evaluation which includes, but is not limited to, measures of language semantics and pragmatics;
- (L) Behavioral assessment related to Autism Spectrum Disorder
- (ii) To be determined eligible in the disability category of autism, the following must be demonstrated currently or by history:
 - (A) Persistent deficits in social communication and social interaction across multiple contexts, manifested by ALL THREE of the following:
 - (1) Deficits in social-emotional reciprocity
 - (2) Deficits in nonverbal communicative behaviors
 - (3) Deficits in developing, maintaining, and understanding relationships

AND

- (B) Restrictive, repetitive patterns of behavior, interests, or activities, manifested by ONE OR MORE of the following:
 - (1) Stereotyped or repetitive motor movements, use of objects, or speech
 - (2) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior
 - (3) Highly restricted, fixated interests that are abnormal in intensity or focus
 - (4) Atypical responses to sensory input or atypical interests in sensory aspects of the environment.

AND

- (C) Symptoms generally present in the early developmental period but may not manifest until social demands exceed coping capacities or may be masked by learned strategies in later life. A child who manifests the characteristics of autism after age three could be identified as having autism spectrum disorder if the criteria in (A) and (B) are satisfied.

- (iii) The disability must:

- (A) Have an adverse effect on educational (academic and/or functional) performance, and
- (B) Require specially designed instruction.

- (2) Deaf-blindness.

- (i) Required screenings and evaluations:

- (A) Motor screening;
- (B) Observation across settings, to assess academic and functional skills;
- (C) Summary of conference(s) with parents or documentation of attempts to conference with parents;
- (D) Social/developmental history;
- (E) Educational evaluation;
- (F) Adaptive behavior evaluation;
- (G) Psychological evaluation;
- (H) Communication evaluation, including receptive, expressive, and augmentative communication skills;
- (I) Audiological evaluation, followed by an otological evaluation when appropriate;
- (J) Medical evaluation, including health history, precautions, and medications; and
- (K) Ophthalmological or optometric evaluation;

- (ii) To be determined eligible in the disability category of deaf-blindness, a child must demonstrate:

- (A) A visual impairment, in combination with a hearing impairment,
- (B) Resulting in severe communication, developmental, and educational needs, and
- (C) That cannot be accommodated in a program for a child with solely a visual impairment or hearing impairment.

- (iii) The disability must:
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- (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (3) Deafness.
- (i) Required screenings and evaluations:
 - (A) Vision screening;
 - (B) Motor screening;
 - (C) Observation across settings, to assess academic and functional skills;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (E) Social/developmental history;
 - (F) Educational evaluation;
 - (G) Communication evaluation, including receptive, expressive, and augmentative communication skills;
 - (H) Audiological evaluation, including air conduction testing, bone conduction testing, speech receptive testing with and without amplification, and impedance testing to determine the type and extent of hearing loss;
 - (I) Otological evaluation to provide diagnoses of middle and inner ear disorders.
 - (ii) To be determined eligible in the disability category of deafness, a child must have a deficiency in hearing as demonstrated by the elevated threshold of auditory sensitivity to pure tones or speech.
 - (iii) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (4) Developmental Delay.
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Motor screening;
 - (D) Health screening;
 - (E) Speech-language screening;
 - (F) Observation across settings, to assess academic and functional skills;
 - (G) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (H) Social/developmental history;
 - (I) Educational evaluation;
 - (J) Adaptive behavior evaluation; and
 - (K) Psychological evaluation, including cognitive and social-emotional measures;
 - (ii) To be determined eligible in the disability category of developmental delayed, a child must be:
 - (A) Between the ages of three through seven, whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.
 - (B) Delayed/Atypical Development. A child may be defined as having delayed/atypical patterns of development in one or more of the following five areas: physical development, cognitive development, communication development, social/emotional development or adaptive development.
 - a. The criteria for determining delayed development for ages three through seven are:
 - 1. A 30 percent delay using assessment procedures that yield scores in months, or test performance of 2 standard deviations below the mean on standardized tests in one area of development; or
 - 2. A 25 percent delay using assessment procedures that yield scores in months or test performance of 1.5 standard deviations below the mean on standardized tests in two areas of development.
 - b. Identification of these children will be based on informed educational/clinical opinion and appropriate assessment measures.

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- (C) Delayed/Atypical Behavior. A child with delayed or atypical behavior is characterized by behaviors that are so significantly inadequate or inappropriate that they interfere with the child's ability to learn and/or cope with normal environmental or situational demands. There must be evidence that the patterns of behavior occur in more than one setting over an extended period of time.
- a. The criteria for determining delayed/atypical behavior for ages three through five must be documented in one or more of the following areas:
 1. Delayed or abnormalities in achieving milestones and/or difficulties with issues, such as:
 - i. Attachment and/or interaction with other adults, peers, materials, and objects;
 - ii. Ability to communicate emotional needs;
 - iii. Ability to tolerate frustration and control behavior, or
 - iv. Ability to inhibit aggression.
 2. Fearfulness, withdrawal, or other distress that does not respond to comforting or interventions;
 3. Indiscriminate sociability, for example, excessive familiarity with relative strangers; or
 4. Self-injurious or other aggressive behavior.
 - (A) The criteria for determining delayed patterns of behavior and adaptive skills for ages six through seven must be exhibited in two or more of the following ways:
 1. The inability to interact appropriately with adults and peers;
 2. The inability to cope with normal environmental or situational demands;
 3. The use of aggression or self-injurious behavior, or
 4. The inability to make educational progress due to social/emotional deficits.
 - (B) Identification of these children will be based on informed educational/ clinical opinion and appropriate assessment measures.
- (5) Emotional Disability.
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Two scientific research-based interventions to address behavioral/emotional skill deficiency and documentation of the results of the interventions, including progress monitoring documentation;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (E) Communication evaluation;
 - (F) Review of existing data;
 - (G) Social/developmental history;
 - (H) Observation across settings, to assess academic, functional, and behavioral skills;
 - (I) Educational evaluation;
 - (J) Psychological evaluation, to include an intellectual evaluation;
 - (K) Behavioral/emotional evaluation which may include a behavior/emotional skill rating;
 - (ii) To be determined eligible in the disability category of serious emotional disability:
 - (A) One of the following characteristics must be exhibited:
 - a. An inability to make educational progress that cannot be explained by intellectual, sensory, or health factors;
 - b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. Inappropriate types of behavior or feelings under normal circumstances;
 - d. A general pervasive mood of unhappiness or depression; or
 - e. A tendency to develop physical symptoms or fears associated with personal or school problems.
 - (B) Additionally, the condition must be exhibited:
 - a. Over a long period of time; and
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- b. To a marked degree.
- (iii) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (6) Hearing Impairment (Hard of Hearing)
 - (i) Required screenings and evaluations:
 - (A) Vision screening;
 - (B) Motor screening;
 - (C) Social/developmental history;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (E) Observation across settings, to assess academic and functional skills;
 - (F) Educational evaluation;
 - (G) Communication evaluation, including receptive, expressive, and augmentative communication skills;
 - (H) Otological evaluation for diagnoses of middle or inner ear disorders; and
 - (I) Audiological evaluation to include air conduction testing, bone conduction testing, speech reception testing with and without amplification, and impedance testing to determine the type and extent of any hearing loss that may be present.
 - (ii) To be determined eligible in the disability category of hearing impairment, a child must have a documented hearing loss of a type and extent to:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (7) Intellectual Disability.
 - (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Health screening;
 - (D) Motor screening;
 - (E) Speech/language screening;
 - (F) When there is no prior diagnosis of intellectual disability, two scientific research-based interventions to address academic and/or functional skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;
 - (G) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (H) Review of existing data;
 - (I) Social/developmental history;
 - (J) Observation across settings, to assess academic, functional, and behavioral skills;
 - (K) Educational evaluation;
 - (L) Adaptive behavior evaluation; and
 - (M) Psychological evaluation, to include an intellectual evaluation.
 - (ii) To be determined eligible in the disability category of intellectual disability, a child must demonstrate both:
 - (A) Intellectual functioning well below the mean on an individually administered standardized intelligence test, and the standard error of measurement of that test shall be taken into account in the interpretation of the results. Measures below the mean are as follows:
 - a. Mild: Two standard deviations below the mean plus or minus one standard error of measure;
 - b. Moderate: Three standard deviations below the mean plus or minus one standard error of measure;
 - c. Severe: Four or more standard deviations below the mean plus or minus one standard error of measure.
 - (B) Adaptive behavior deficits reported by the same source at or below:

- a. Two standard deviations below the mean in one domain, or
 - b. One and one-half standard deviations below the mean in two or more domains.
- (iii) The disability must:
- (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (8) Multiple Disabilities.
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Social/developmental history;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (E) Observation across settings, to assess academic and functional skills;
 - (F) Educational evaluation;
 - (G) Adaptive behavior evaluation;
 - (H) Psychological evaluation;
 - (I) Speech/language evaluation;
 - (J) Medical evaluation; and
 - (K) Motor evaluation.
 - (ii) To be determined eligible in the disability category of multiple disabilities, a child must demonstrate:
 - (A) Two or more disabilities occurring together,
 - (B) The combination of which is so severe, complex, and interwoven that identification in a single category of disability cannot be determined.
 - (iii) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (9) Orthopedic Impairment
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Social/developmental history;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (E) Observation across settings, to assess academic and functional skills;
 - (F) Educational evaluation;
 - (G) Medical evaluation;
 - (H) Motor evaluation.
 - (ii) To be determined eligible in the disability category of orthopedic impairment, a child must demonstrate:
 - (A) A severe physical impairment;
 - (B) Caused by congenital abnormalities, disease, or other causes.
 - (iii) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (10) Other Health Impairment
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Two scientific research-based interventions to address academic and/or behavioral skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;
 - (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
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- (E) Observation across settings, to assess academic and functional skills;
 - (F) Social/developmental history;
 - (G) Educational evaluation; and
 - (H) Medical evaluation.
- (ii) To be determined eligible in the disability category of other health impairment, a child must have a chronic or acute health problem resulting in one or more of the following:
 - (A) Limited strength;
 - (B) Limited vitality;
 - (C) Limited alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.
 - (iii) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (11) **Specific Learning Disability**

The method for determining eligibility in the disability category of Specific Learning Disability is the evaluation of multiple sources of assessment data to document low achievement and a child's response to instruction and evidence-based interventions.

A child's responsiveness to instruction and evidence-based intervention is not, when considered alone, a comprehensive evaluation. Teams must draw upon information from multiple sources to conduct a full and individual evaluation and may not rely on any single procedure or source of data for determining eligibility for special education and related services. Based on a preponderance of the data, including the child's academic performance data and rate of progress, the IEP Team must determine that the child requires specially designed instruction.

When using a child's responsiveness to instruction and evidence-based intervention as a component of eligibility decisions for children with Specific Learning Disabilities, the following essential components must be in place:

- A system of high-quality core instruction and evidence-based intervention;
 - Multiple tiers of instruction, that vary in intensity, matched to student need;
 - A systematic process of problem-solving/data-based decision making; and
 - A comprehensive, assessment system that includes common formative assessments, interim/benchmark assessments, outcome assessments, universal screening, progress monitoring and diagnostic assessments.
- (i) A comprehensive evaluation includes the following required screenings and evaluations.
 - (A) Hearing screening;
 - (B) Vision screening (far and near acuity);
 - (C) Speech/language screening;
 - (D) Documentation of the results of evidence-based intervention(s) which align to the academic area(s) of concern (e.g. critical components of reading, math, writing, listening comprehension, oral expression, etc.) including progress monitoring data;
 - (E) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (F) Review of existing data to include documentation of the systematic problem-solving process (which would include formal and/or informal diagnostic assessments) and observation data of core instruction;
 - (G) Social/developmental history, including any educationally relevant medical findings, a review of disciplinary removals, transiency and attendance/tardy rates;
 - (H) Observation across settings, including core instruction and the setting in which intervention is delivered, to assess academic and functional skills;
 - (I) Multiple sources of educational assessment data, which must include diagnostic and/or standardized norm-referenced measures of achievement (related to the area(s) of concern) and data from progress monitoring. These measures must include relevant comparisons to
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state and/or national norms, age/grade level peers, and appropriate intervention group comparisons. Additional measures may include common formative assessments, universal screening, interim/benchmark assessments and outcome assessments.

(ii) In order to be eligible in the disability category of specific learning disability, the criteria in subsections (A), (B), (C) and (D) below must be met:

(A) The disability must not be the primary result of:

1. A visual, hearing or motor disability;
2. Intellectual disability;
3. Emotional disturbance;
4. Cultural factors;
5. Environmental or economic influences; and/or
6. Loss of instructional time due to factors that include, but are not limited to absences, tardies, high transiency rates and suspensions.

A child must not be determined to have a specific learning disability if the determinant factor for that determination is any of the following:

1. Limited English Proficiency;
2. Lack of appropriate instruction and evidence-based intervention in reading, including the essential components of reading instruction as defined in Section 1208(3) of the ESEA (i.e. phonemic awareness, phonics, vocabulary, fluency and comprehension); and/or
3. Lack of appropriate instruction and evidence-based intervention in math.

(B) Inadequate academic achievement: Inadequate academic achievement is based on evidence from multiple sources of data indicating the child does not achieve adequately for the age or grade-level standards in which the child is enrolled in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

1. Basic reading skills;
2. Reading fluency skills;
3. Reading comprehension;
4. Written expression;
5. Mathematics calculation;
6. Mathematics problem solving;
7. Listening comprehension; or
8. Oral expression.

(C) Insufficient rate of progress: When provided with high-quality core instruction that a majority of students are responding to and evidence-based intervention(s) matched to area(s) of need, the child demonstrates either a lack of response to instruction and intervention or is responding at a rate that is insufficient to reduce their risk of failure after an appropriate period of time.

Documentation of insufficient rate of progress must include:

1. The type, intensity, and duration of identified evidence-based instructional intervention(s)
 - Documentation that the intervention length and frequency is in accordance with the identified research-based criteria that supports effective results;
 2. Progress monitoring on a schedule that:
 - Allows a comparison of the child's progress to the performance of peers;
 - Is appropriate to the child's age and grade placement;
 - Is appropriate to the content monitored; and
 - Allows for interpretation of the effectiveness of intervention;
 3. Evidence that the intervention was implemented with fidelity;
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4. The child's rate of progress during the instructional intervention(s); and
5. A comparison of the child's rate of progress to expected rates of progress, including evidence that the intervention yielded successful responses and outcomes for the majority of other children receiving the intervention.

* Valid and reliable measures of progress monitoring may not be available for the areas of listening comprehension and oral expression. In these cases, teams may use valid and reliable measures of other academic skills that are impacted by the listening comprehension and/or oral expression deficits (i.e., reading, math, written language measures of progress monitoring) to assess a student's rate of progress and the impact of the evidence-based intervention on these academic areas. Additional measures that directly assess progress in listening comprehension and/or oral expression should also be collected to supplement these data.

- (D) Demonstrated educational need: The disability must require specially designed instruction.
- (12) Speech or Language Impairment.
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Articulation screening;
 - (C) Fluency screening;
 - (D) Language screening;
 - (E) Voice/resonance screening;
 - (F) Social/developmental history;
 - (G) Observation across settings, to assess academic, functional, and behavior skills;
 - (H) Summary of conference(s) with parents or documentation of attempts to conference with parents; and
 - (I) Educational evaluation.
 - (ii) Additionally, one of the following evaluations shall be completed. The required evaluation(s) shall be determined based on screening results and shall be individualized to address the specific area(s) of concern as listed:
 - (A) Articulation evaluation;
 - (B) Fluency evaluation;
 - (C) Language evaluation, including form, content and function;
 - (D) Voice/resonance evaluation.
 - (iii) To be determined eligible for services in the disability category of speech or language impairment, a child must meet the criteria listed in one or more of the following areas:
 - (A) Articulation. It is required that a child's speech have:
 - a. Two or more phonemic errors not expected at the child's age or developmental level observed during direct testing and/or in conversational speech, and/or
 - b. Two or more phonological processes not expected at the child's age or development level observed during direct testing and/or in conversational speech.
 - (B) Fluency. It is required that a child demonstrate non-fluent speech behavior characterized by repetitions/prolongations/blocks on a regular basis.
 - (C) Language. It is required that two diagnostic measures occur, one assessing comprehension and one assessing production of language. It is required that:
 - a. Standard scores on the particular standard evaluation instrument suggest a language disorder; and/or
 - b. Non-standardized/informal assessment indicates that the child has difficulty understanding and/or expressing ideas and/or concepts.
 - (D) Voice. It is required that a child must demonstrate consistent deviations in vocal production that are inappropriate for chronological/mental age, gender, and ability.
 - (iv) The disability must:
 - (A) Have an adverse effect on educational performance, and

- (B) Require specially designed instruction.
- (13) Traumatic Brain Injury.
 - (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Vision screening;
 - (C) Speech/language screening;
 - (D) Two scientific research-based interventions to address academic and/or behavioral skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation.

*** Note:** Screenings (A) through (D) may be waived for students who have been medically diagnosed with traumatic brain injury and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months.

 - (E) Review of medical history and records;
 - (F) Review of educational history and records;
 - (G) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (H) Social/developmental history;
 - (I) Observation across settings to assess academic and functional skills;
 - (J) Educational evaluation;
 - (K) Psychological evaluation for traumatic brain injury; and
 - (L) Motor evaluation.
 - (ii) To be determined eligible in the disability category of traumatic brain injury, a written verification by a licensed physician or a licensed psychologist, appropriately practicing in the specialty of neuropsychology, that the child has sustained an injury from which brain injury can be inferred must be obtained. No time limits exist for written verification.
 - (iii) Psychological evaluation for traumatic brain injury must be conducted by school psychologists licensed by the State Department of Public Instruction, or by psychologists who are appropriately practicing in the specialty of neuropsychology and are licensed by the North Carolina State Board of Examiners of Practicing Psychologists. All psychological evaluations for Traumatic Brain Injury must be current within one year. All school psychologists providing assessment of children with Traumatic Brain Injury must meet the guidelines of the Exceptional Children Division for training in the assessment of Traumatic Brain Injury and be listed on the Exceptional Children Division's registry of approved providers (hereafter referred to as the registry.)
 - (iv) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (14) Visual Impairment, including blindness.
 - (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (C) Social/developmental history;
 - (D) Educational evaluation;
 - (E) Ophthalmological or optometric evaluation;
 - (F) For preschool children:
 - a. Observation across settings to include:
 - 1. Observation of physical, behavioral and environmental characteristics;
 - 2. Shutting or covering one eye, tilting head or thrusting head forward, squinting eyelids together;
 - 3. Difficulty with work requiring vision;
 - 4. Avoidance of near work task or irritation when required to do near work;
 - 5. Inability to see distant objects;

- 6. Difficulty with navigation; and
- 7. Eye appearance (e.g., crossed eyes, nystagmus).
- (G) For school age children:
 - a. Observation across settings to assess academic, and functional skills;
 - b. Functional vision assessment; and
 - c. Braille skills inventory and/or media assessment.
- (ii) The disability must:
 - (A) Have an adverse effect on educational performance; and
 - (B) Require specially designed instruction.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B); 34 CFR 300.304)

NC 1503-2.6 Additional Requirements for Evaluations and Reevaluations

- (a) Review of existing evaluation data. As part of an initial evaluation and as part of any reevaluation process under these Policies, the IEP Team and other qualified professionals, as appropriate, must--
 - (1) Review existing evaluation data on the child, including—
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--
 - (i) (A) Whether the child is a child with a disability, as defined in NC 1500-2.4 and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
 - (b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting. If the review is conducted without a meeting, documentation of the process for gathering input from the group must be maintained.
 - (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
 - (d) Requirements if additional data are not needed.
 - (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of -
 - (i) That determination and the reasons for the determination; and
 - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
 - (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
 - (e) Reevaluation before a change in eligibility for special education
 - (1) Except as provided in paragraph (e)(2) of this section, an LEA must reevaluate a child with a disability in accordance with NC 1503-2.5 through NC 1503-3.5 before determining that the child is no longer a child with a disability.
 - (2) The reevaluation described in paragraph (e)(1) of this section is not required before the
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termination of a child’s eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

- (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.
- (f) Reevaluation of children identified as developmentally delayed. The reevaluation of children identified as developmentally delayed shall occur 3 years following placement; and prior to turning eight years of age or prior to entering third grade (whichever comes first).

(Authority: 20 U.S.C. 1414(c); 34 CFR 300.305)

NC 1503-2.7 Determination of Eligibility

- (a) General. Upon completion of the administration of assessments and other evaluation measures--
 - (1) A group of qualified professionals and the parent determines whether the child is a child with a disability as defined in NC 1500-2.4, in accordance with paragraph (c) of this section and the educational needs of the child; and
 - (2) The LEA provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under these Policies –
 - (1) If the determinant factor for that determination is--
 - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect on the day before the date of enactment of Every Student Succeeds Act (December 9, 2015));
 - (ii) Lack of appropriate instruction in math; or
 - (iii) Limited English proficiency; and
 - (2) If the child does not otherwise meet the eligibility criteria under NC 1500-2.4(a).
- (c) Procedures for determining eligibility and educational need.
 - (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under NC 1500-2.4, and the educational needs of the child, the LEA must--
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
 - (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with NC 1503-4.1 through NC 1503-5.1.

(Authority: 20 U.S.C. 1414(b)(4) and (5); 34 CFR 300.306)

NC 1503-3 Additional Procedures for Evaluating Children with Specific Learning Disabilities

NC 1503-3.1 Specific Learning Disabilities

- (a) General. The State has adopted, consistent with NC 1503-3.3, criteria for determining whether a child has a specific learning disability as defined in NC 1500-2.4(c)(11). The criteria –
 - (1) Requires the use of a systematic, problem-solving process based on the child’s response to evidence-based interventions (RTI/MTSS) and the evaluation of data (i.e. progress monitoring data) documenting the child’s response to instruction and evidence-based intervention.
- (b) Consistency with State criteria. LEAs must use the State criteria adopted pursuant to paragraph (a) of

this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.308)

NC 1503-3.2 Additional Group Members

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in NC 1500-2.4, must be made by the child’s parents and a team of qualified professionals, which must include—

- (a) (1) The child’s regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (b) At least one person qualified to conduct and interpret individual diagnostic examinations of children.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.308)

NC 1503-3.3 Determining the Existence of a Specific Learning Disability

- (a) The group described in NC 1503-2.7 may determine that a child has a specific learning disability, as defined in NC 1500-2.4(b)(11), if the child meets the requirements in criteria described previously in section NC 1503-2.5(a) - (c), and (d)(11).
- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in NC 1503-2.4 through NC 1503-2.6 -
 - (1) Data that demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel;
 - (2) Documentation that evidence-based interventions addressing the identified area(s) of concern were delivered by qualified personnel; and
 - (3) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child’s parents.
- (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in NC 1503-2.2 and NC 1503-2.4 unless extended by mutual written agreement of the child’s parents and a group of qualified professionals, as described in NC 1503-2.7(a)(1) –
 - (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction as described in paragraphs (b)(1) and (b)(2) of this section; and
 - (2) Whenever a child is referred for evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.309)

NC 1503-3.4 Observation

- (a) The LEA must ensure that observational data is collected in the child’s learning environment (including core instruction and the setting in which the child received intervention) in order to:
 - (1) Document the child’s academic achievement, functional performance and behavior in the area(s) of difficulty.
 - (2) Assist in the documentation that appropriate instruction was provided, and that evidence-based interventions were delivered.
- (b) The IEP Team described in NC 1503-2.7(a)(1), in determining whether a child has a specific learning disability, must use-
 - (1) Relevant observation data regarding instructional, curricular, and/or environment areas addressed

to support appropriate instruction of all students that was completed before the child was referred for an evaluation, or as part of the evaluation described in NC 1503.2.5 through NC 1503-2.7;

- (2) Relevant observation data/collected within the setting in which the child receives intervention to support effective evidence-based intervention delivery that was completed before the child was referred for an evaluation, or as part of the evaluation as described in NC 1503.2.5 through NC 1503-2.7;

The person(s) responsible for collecting the observational data of evidence-based intervention must have specific content knowledge of the curriculum and/or behavioral area that is targeted for the intervention.

- (3) Information from at least one systematic observation, that was conducted by a member of the group described in NC 1503-2.7(a)(1), of the child's academic performance during routine classroom instruction after the child has been referred for an evaluation and parental consent, consistent with NC 1503-1(a), is obtained.
- (c) For English Learners (ELs), at least one of the individuals conducting the observation(s) must be a person knowledgeable about instruction for ELs, as well as any pertinent cultural and/or linguistic characteristics of the individual child.
- (d) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.
- (e) In the case of a school-age child who is in a placement outside of the local education agency (LEA), a team member must observe the child in the child's current educational environment.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.310)

NC 1503-3.5 Specific Documentation for the Eligibility Determination

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in NC 1503-2.7(a)(2), must include a statement of—
- (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with NC 1503-2.7(c)(1);
 - (3) The relevant academic, functional and behavioral data collected, during the observations of the child in relationship to the child's academic functioning;
 - (4) The educationally relevant medical findings, if any;
 - (5) The determination of the group concerning the effects of Limited English Proficiency or lack of appropriate instruction in reading or math on the child's achievement level;
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic influences; or loss of instructional time due to factors such as absences, tardies, high transiency rates and disciplinary removals on the child's achievement level;
 - (7) Whether the child is demonstrating either a lack of response to instruction and intervention or is responding at a rate that is insufficient to reduce their risk of failure after an appropriate period of time;
 - (8) Within the assessment of the child's response to evidence-based intervention –
 - (i) The instructional strategies used, and the student-centered data collected; and
 - (ii) The documentation that the child's parents were notified about –
 - (A) The State's policies regarding the amount and nature of student performance data collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parent's right to request an evaluation.
- (b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.