

M. Traumatic Brain Injury

- (1) Definition. Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment or both that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. [34 CFR 300.8(c)(12)]
- (2) *Procedure For Determination. All steps below are required.*
 - (a) *Evaluation will be done by a licensed professional who is qualified to make the diagnosis.*
 - (b) *The IEP Team will determine if the impairment adversely affects the child's educational performance.*

N. Visual Impairment including Blindness

- (1) Definition. Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects the child's educational performance. The term includes both partial sight and blindness. [34 CFR 300.8(c)(13)]
- (2) *Procedure For Determination. The step below is required.*
 - (a) *A child displays a visual impairment when a visual impairment or a progressive vision loss has been diagnosed by a licensed, qualified optometrist or ophthalmologist, and the referral indicates that the child displays a visual impairment.*

3. Determination of Adverse Effect for Children Three to Twenty

A. Federal background.

For a child to access special education services, the IEP or IFSP Team must determine that he or she is a "child with a disability" as defined in federal regulations (34CFR §300.8).

In these cases, three elements must be shown:

1. *that the specific disability exists;*
2. *that the disability “adversely affects the child’s educational performance;”*
and
3. *that by reason of the disability, the child “needs special education and related services.”*

B. The “adversely affects” requirement.

Although federal regulations do not define “adversely affects,” the word “adverse” commonly means “harmful, impeding, obstructing or detrimental.” “Adversely affects” means a negative impact that is more than a small or transient hindrance. It means a chronic or episodic condition, not merely detectable, but distinctly measurable over time.

It is evidenced by persistent findings and observations based on objective assessments with replicable results. It does not include minor or transitory effects or those that are commonly experienced by children in the general population.

For children 3 to 20, a disability that “adversely affects educational performance”, which means academic and functional areas, is one that creates a distinctly measurable and persistent gap between the demands of the educational setting and the child’s educational performance (as defined in item #9 of Section II) .

C. Procedure for Determination.

The IEP Team’s determination of adverse effect shall be based upon the results of no fewer than two (2) assessments or data sources, determined by the team to be appropriate, that measure the area(s) of educational performance, which means academic and functional areas, affected and the child’s unique strengths and needs. The following are examples of assessments or data sources to serve as a guide that the IEP team might determine are appropriate:

- (1) *Standard or percentile scores on a nationally normed individually administered achievement test; or, for children ages 3 to 5, an appropriate multi-domain nationally normed test or rating scales;*
- (2) *Standard or percentile scores on a nationally normed group administered achievement test, including nationally normed curriculum-based measures;*
- (3) *Any reports prepared by the SAU that reflect academic or functional performance;*

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- (4) *Performance on comprehensive assessments based on Maine's Learning Results or measurement of indicators within the Early Childhood Learning Guidelines;*
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- (5) *Criterion referenced assessments of academic or functional performance;*
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- (6) *Student work products, language samples or portfolios;*
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- (7) *Disciplinary evidence or rating scales based on systematic observations in more than one setting by professionals or parents;*
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- (8) *In cases of reevaluation, a determination by the IEP Team, including the parent, that adverse performance may result from removal of current supports and services that cannot be provided by general education;*
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- (9) *Attendance patterns; or*
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- (10) *Social or emotional deficits as observed by professionals or parents in multiple settings, in clinical rating scales or in clinical interviews.*
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The consideration of assessments or data sources relates only to the adverse effect prong of three parts of eligibility determination noted in (A) above..

D. Documentation

The evaluations process must include documentation of the intervention strategies employed in a general education setting for children ages 3 to 20. The documentation shall include:

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- (1) *Each type of measure considered by the IEP Team;*
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- (2) *The findings of the IEP Team, with respect to each measure considered, as to whether the measure is sufficient to support a finding of adverse effect and a need for special education services;*
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- (3) *The specific testing, data, scores, student work and education records relied upon by the Team to support its findings; and*
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- (4) *An identification of each academic, functional, or developmental domain affected by the child's disability.*
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4. Needs special education and related services.

Although federal regulations do not define "needs," the word commonly signifies a "necessity," an "exigency," or the "lack of something essential." A child "needs" special education and related services when, because of the disability, the child can neither progress effectively in a regular education program nor

receive reasonable benefit from such a program in spite of other services available to the child.

The need is best established through evidence of a distinctly measurable and persistent gap in the child's educational or functional performance that cannot be addressed through services or accommodations available through the general education program.

5.4. Criteria For Change in Eligibility.

A child's change in eligibility shall be made by the IFSP/IEP Team and shall be based on the recommendation of the members of the IFSP/IEP Team utilizing the following criteria:

A. In school/preschool:

- (1) Adverse effect is no longer demonstrated; and*
- (2) Measured achievement on IFSP/IEP goals and data indicate adequate progress;*
- (3) Needs can be met through identified general educational services;*
- (4) A plan is in place for assessing that the student continues to make progress once the IEP is terminated, including a plan for what will be done if progress ceases after change in eligibility; and*
- (5) No pre-referral would be required if the child's progress lessens during the same school year as a change in eligibility.*

B. Graduation; or

C. Aging out.

Except for children who graduate or age out, the SAU shall evaluate a child consistent with Section V(1),(2)and (3) of this rule, before determining that the child is no longer a child with a disability.

Even if the services are discontinued, a child can be referred again at a later date. If a child is re-referred, the IFSP/IEP Team shall compare the reason for the referral with information on the previous change in eligibility. The IFSP/IEP Team must then determine, on an individual child basis, the appropriate course of action to be taken.