

281—41.306(256B,34CFR300) Determination of eligibility.

41.306(1) General. Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(3) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this chapter:

a. If the determinant factor for that determination is:

(1) 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 the Every Student Succeeds Act (December 9, 2015);

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency; and

b. If the child does not otherwise meet the eligibility criteria under this chapter.

41.306(3) Procedures for determining eligibility and educational need.

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) 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

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. 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 these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education will certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required special education and related services of each eligible individual will be maintained by the AEA, and provision will be made for its periodic revision.

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