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Guidelines:

Identification and Evaluation of Students with Non-Categorical Delay for Ages 3 through 9

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Table of Contents

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Introduction

The purpose of this document is to provide guidance to local school districts, other service agencies, and families, about the category of eligibility in North Dakota referred to as Non-Categorical Delay (NCD). Also described is the decision-making process necessary for determining a child's eligibility for the NCD category and the need for special education and/or related services. This document outlines the process for North Dakota school districts planning to use the definition of NCD in determining special education eligibility. The process described includes best practices for team-based professional judgment, thereby ensuring appropriate services for children 3 through 9 years of age.

The Individuals with Disabilities Education Act (IDEA) Amendments of 1991 amended the definition of children with disabilities under Part B to include children ages 3 through 5 who were experiencing developmental delays. As reported in the *Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act (2002),* "this change allowed states to look at a young child's physical, cognitive, communication, social/emotional, and adaptive development to determine if the child needed special education and related services. A state could, at its own discretion, define developmental delay to ensure that all eligible preschool-aged children with disabilities were provided a free appropriate public education (FAPE) without being inappropriately labeled under one of the other disability categories used for school-aged children and youth".

"The Individuals with Disabilities Education Act (IDEA) Amendments of 1997 added some provisions allowing states to provide identification and early intervention services to young children with disabilities, birth through age 9, under the non-categorical label referred to as developmentally delayed. The definition may be used as an alternative to the specific disability categories with children during a period when it is often difficult to determine the precise nature of the disability." (The House Committee Report on P. L. 105-17, 1997.)

In general, research suggests a positive, child-oriented attitude about using developmental delay both for preschool-aged children as well as for children above age 5 (*Selected Excerpts from the Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act by the U.S. Department of Education 2002).* Using the category of developmental delay into the elementary school years was seen as a benefit because it would:

- Serve children earlier who would later be found eligible for special education, i.e., keep children from "falling through the cracks";
- Keep a functional and service focus on the child rather than deficit-oriented labels that tend to drive services;
- Provide more age appropriate assessments and eligibility determinations for the early elementary years when instruments for determining some specific disability categories are limited or nonexistent;
- Continue to serve children who may not meet specific categorical criteria; and
- Provide a smoother transition from preschool into kindergarten or first grade (Simeonsson, 2001).

Simeonsson et al. (2001) also provide philosophical underpinnings as guidance for states to consider as they study changes in state policy and service delivery system. These considerations include the premise that developmental delay focuses on functional limitations of the whole child rather than characteristics specific to a Part B disability category. Services can be coordinated from a variety of sources and targeted to address a child's functional levels rather than providing a standard menu of services in response to the diagnostic label of a child. Using the category of developmental delay through age 9 allows for continuity of services throughout the developmental years without a stigmatizing label that may be associated with a specific disability category. Finally, emphasis on functional needs, or a non-categorical approach, may help reduce later referrals to special education.

The North Dakota Department of Public Instruction (NDDPI) approved the non-categorical option in 1997 for use with children from ages three through the end of the school year in which they turn six years of age. **The term that was adopted was *Non-Categorical Delay*, (NCD) to prevent confusion with the terms *Developmental Disabilities* (DD) and *Developmentally Delayed* (DD) used by the North Dakota Department of Human Services.** The use of the eligibility definition was not mandated but was available as an option to be used by local special education units and school districts.

Sec. 300.13

Child experiencing developmental delays.

(a) Use of term developmental delay.

(1) A State that adopts the term developmental delay under §300.7(b) determines whether it applies to children aged 3 through 9, or to a subset of that age range (e.g., ages 3 through 5).

(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If an LEA uses the term developmental delay for children described in §300.7(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(b) Use of individual disability categories. (1) Any State or LEA that elects to use the term developmental delay for children aged 3 through 9 may also use one or more of the disability categories described in §300.7 for any child within that age range if it is determined, through the evaluation conducted under §§300.530-300.536, that the child has an impairment described in §300.7, and because of that impairment needs special education and related services.

(2) The State or LEA shall ensure that all of the child's special education and related services needs that have been identified through the evaluation described in paragraph (b)(1) of this section are appropriately addressed.

According to the committee report accompanying the legislation, the use of developmental delay (NCD) "will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals" into special education. (Report 105-17, May 19, 1997. IDEA Amendments of 1997: 6-7). The use of this eligibility option is intended to avoid mislabeling children who do not fit under current disability categories but whose delays have a disabling effect on their development and education. When there is documentation that a child meets eligibility criteria of the existing disability categories specified in state statute and guidelines, the child will be identified accordingly.

After several years of further Pilot Project study, and consistent with the federal option, the NDDPI approved the extension of the NCD definition to children with disabilities in the age range of 5 years through age 9 in June 2004. The same definitional criteria established for the early childhood special education years are also used for these lower elementary age students.

ELIGIBILITY CRITERIA

Special education units must continue to use the current eligibility categories defined in the Individual with Disabilities Education Act (IDEA) and North Dakota state policies and procedures. The use of the NCD eligibility option will be limited to situations where a diagnosis within one of the current eligibility categories is not clear, but delays are well documented and meet the NCD definition established by the state for children ages three (3) through nine (9). Non-Categorical Delay is considered to be a discrete, additional, category of disability used as a last resort, i.e., when the child's assessed characteristics do not fit the eligibility requirements of any of the existing IDEA disability categories.

Categorical definition for Ages 3 through 21: Eligibility based on a diagnosis in one of the categorical areas listed in Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997, (IDEA). There must be a determination by the multi-disciplinary team that the child has a disability and requires special education in order to benefit from age-appropriate developmental learning opportunities.

Non-Categorical Delay (NCD) definition for Ages 3 through 9: Eligibility based on developmental delay or inconsistencies in demonstrating developmental milestones. Developmental delay is defined as demonstrating a developmental profile that documents skill acquisition that is significantly below that of chronologically same-age peers in one or more of the following areas:
1) cognitive; 2) fine motor; 3) motor; 4) vision; 5) hearing; 6) communication, which may include speech and language; 7) preacademic; 8) socialization, which may include interactional and emotional development; and 9) adaptive skills which may include self-help, attending, behavior control, and creative play; exhibited by a child, 3 through 9 years of age, who is determined by a multi-disciplinary assessment team to be in need of special education.

Significantly below average is defined as meeting criteria in one of the following three categories:

Criteria A
- Performance at or below 1.5 standard deviations of the mean in any **TWO** areas of development.

OR

- Performance at or below 2.0 standard deviations of the mean in **ONE** area of development.

Criteria B
- A **30% delay** in developmental age functioning in one area of development.

OR

- A **20% delay** in developmental age functioning in two areas of development.

Criteria C
- **Known risk indicators.** This category includes children diagnosed with:

1. Syndromes and disorders, which have a high probability of resulting in a disability. Examples include: Down Syndrome, Fetal Alcohol Syndrome, and Spina Bifida.

2. This category also includes: children who are functioning above the stated criteria in Category A and B because of intensive early intervention but who are eligible for services based on expected regression if services were to be terminated.

3. Environmentally at-risk students can be included after the impact of severe environmental deprivation can be substantiated, such as when both parents are developmentally disabled.

When using Category A or B Criteria, developmental functioning levels in all domains must be documented. Multiple reference points should be utilized when assessing developmental delay including developmentally referenced, norm referenced, and criterion or curriculum referenced. Diagnostic information sources such as: medical records, social service agency reports, and anecdotal information from observations should be incorporated to assist in determining eligibility and specific programmatic needs. The evaluation must be completed by a multi-disciplinary team following the process outlined in North Dakota *Guidelines: Evaluation Process (8/1/99).*

Specific features of the NCD definition through age 9 include the following:

- Restricted for use with children whose primary disability is not accurately described by any of the existing criteria for the disability categories included in the IDEA.
- The Building Level Support Team (BLST) process may be utilized as the primary referral team.
- Eligibility criteria must be based on documented delay or a rationale for placement in special education utilizing professional judgment.
- Re-evaluation must be completed before the child's 10th birthday resulting in a plan for exit from special education or determination of eligibility under a specific disability category.
- For children, ages 3 through 5, a teacher with an Early Childhood Special Education (ECSE) credential must be available for consultation on the evaluation teams and IEP teams for every child for whom the NCD definition will be utilized.
- For children, ages 6 through 9, a teacher with a Special Education Strategist credential, or a teacher(s) with credentials in the areas of Mental Retardation, Emotional Disturbance, and Specific Learning Disabilities must be available for consultation on the evaluation teams and IEP teams for every child for whom the NCD definition will be utilized.

PROFESSIONAL JUDGMENT

Preliminary Steps to Employing Professional Judgment to Determine Eligibility Criteria under the Definition of NCD.

Although the NCD definition creates an opportunity for the State to reach children who might experience failure in a general education classroom, judicious use of the category is necessary to ensure that children are not placed under the NCD category due solely to lack of instruction or limited English proficiency. Furthermore, the IDEA regulations make it clear that eligibility under the NCD definition can be based on either documented delays or the professional judgment of the team. Therefore, understanding the concepts of "team" and "professional judgment" become critical to the process of identifying and providing services to these young children.

A series of questions must be addressed before a professional judgment decision can be considered. They are as follows:

1. Would it be appropriate to refer the child to special education and related services?

The relationship between families and school personnel can be strengthened by careful navigation through the process of deciding to refer a child for special education services. Gaining the parents' or caregivers' perspective of the child's need for specialized instruction should play a primary role in the referral process and in determining the services provided to the child. For children who are transitioning from early childhood special education to kindergarten, consideration must be given to their continued need for appropriate services as determined by the IEP team.

Before a referral is made for children who have had no prior special education services, general education programs, which offer support to meet the individual needs of all children, should be considered. In addition, cultural, developmental, linguistic, and experiential considerations must be weighed. The examination of developmental milestones must be framed within the context of the family's culture. Different cultures value different skills; consequently, skills may emerge at different stages across cultures. Parent-child interactions that are culturally related may also influence certain areas of development, especially language and social skills. A language difference must be clearly distinguished from a language delay. Children who are truly language delayed or have language related disabilities must express those deficits in their primary language. Finally, consideration must be given to the instructional models and learning opportunities to which the child has been exposed. A child who has learning difficulties may be experiencing learning environments that are not sensitive to the child's developmental level or are not responsive to the child's needs and interests.

The Building Level Support Team (BLST) may collect additional data by monitoring the child's skills and behaviors in school and in other environments. The child may need more time to acclimate to the school environment, and parents and school personnel may need additional time to rule out cultural, linguistic, experiential, and developmental factors.

If a referral is made, the procedures outlined in this document must be followed.

2. Did the child receive specialized services (e.g., any kind of therapy, counseling, psychological, nutritional services) prior to the referral?

If the answer is "yes," information needs to be gathered and reviewed before considering if the child needs an evaluation. This information includes: anecdotal information generated by parents/caregivers, teachers, and other people who know the child (e.g., child care providers, relatives); previous reports; medical documentation; general education supports that have been tried with the child; interviews; and/or checklists.

3. Does the child need an evaluation?

If it is determined that the child needs an evaluation, multiple data sources as well as the primary language must be considered. An evaluation is completed. The referral information and the evaluation information go to the multi-disciplinary team to determine if there is a disability and the need for special education and related services.

The evaluation team members should consist of, at a minimum: the parent and other multi-disciplinary team members (e.g., general education teacher, special education teacher, local education agency (LEA) representatives, specialists, others at the parents' discretion) as well as qualified evaluators. Parents/care-givers possess a wealth of knowledge regarding their child. Professionals provide the specific expertise about the child.

In composing a team, several factors should be weighed carefully. The ideal team should consist of individuals selected because of their knowledge of the child or expertise in a particular area. Family members and individuals who deliver intervention services (e.g., after school care providers, Head Start teacher, early childhood special education staff, an individual trained in second language acquisition, current general and special education teachers) can offer perspectives about the child across time and in a variety of settings. It may be necessary for individuals who do not know a particular child to participate on the IEP team. These individuals are those who have been specifically trained to serve children ages 3 through 9 (e.g., preschool special educators, kindergarten through third grade teachers and teachers with a credential as a Special Education Strategist). They will be helpful to the evaluation and decision-making process with preschool children, children transitioning to kindergarten, and in subsequent years, with newly identified school-aged children up through age 9.

Regardless of the team composition, it is imperative to the process that all members respect and validate each individual's contributions to the decision-making process, as well as to negotiate through disagreement. For a team to be successful, it will be necessary for members to take on certain roles to accomplish the mission of the team. All members facilitate the closure of the decision-making process. At the conclusion of the meeting to review the assessment results, the team, which includes the child's parent(s), will determine whether the unique educational needs of the student are due to a disability as defined by IDEA.

A child between ages 3 through 9 may not need further evaluation if the existing evaluation data is comprehensive, current and valid. A child transitioning from early childhood special education or related services to kindergarten may not need further evaluation if it has been fewer than 3 years since the last evaluation.

If it is determined that the child does not need re-evaluation, the rationale must be included in the Integrated Written Assessment Report (IWAR). The Integrated Written Assessment Report (IWAR) must be reviewed by the team to determine if there is a need for special education or related services.

4. Does the child meet criteria for eligibility in one of the IDEA disability categories?

The NCD definition should be used only with children who have a delay and who do not meet eligibility criteria under the IDEA categories of disability. Under the IDEA regulations, children transitioning from preschool special education and related services do not require re-evaluation prior to transition. However, if the current evaluation and assessment data clearly establish eligibility under one of the existing categories, the child should receive services under that category of disability. For example, a child with cerebral palsy transitioning from preschool who meets the criteria for the Orthopedic Impairment Disability category would qualify for IDEA under that specific category.

If the answer to the question is "yes," the child meets criteria for eligibility in one of the IDEA disability categories, further decision-making is needed about provision of services.

If the answer to the question is "no," the child does not meet criteria for eligibility in one of the IDEA disability categories, the next question must be considered.

5. Does the child demonstrate any delays in development?

The answer to this question is "yes," if the child meets the criteria as stated below:

Developmental delay is defined as demonstrating a developmental profile that documents skill acquisition that is significantly below that of chronologically same-age peers in one or more of the following areas: 1) cognitive; 2) fine motor; 3) motor; 4) vision; 5) hearing; 6) communication, which may include speech and language; 7) preacademic; 8) socialization, which may include interactional and emotional development; and 9) adaptive skills which may include: self-help, attending, behavior control, and creative play; exhibited by a child, 3 through 9 years of age, who is determined by a multi-disciplinary assessment team to be in need of special education.

Significantly below average is defined as meeting criteria in one of the following categories:

Criteria A:
- Performance at/or below 1.5 Standard Deviations of the mean in any **TWO** areas of development.

OR

- Performance at/or below 2.0 Standard Deviations of the mean in **ONE** area of development.

Criteria B:
- A **30% delay** in developmental age functioning in one area of development.

OR

- A **20% delay** in developmental age functioning in two areas of development.

A documented delay sufficient to meet the criteria supports eligibility for service under the NCD definition. Further decision-making is needed about provision of services.

If the answer to this question is “no,” then, and only then, does the team consider eligibility through professional judgment. At this point, the team begins the documentation process necessary to weigh the evidence in support of a child's need for special education and/or related services under *Criteria C - Known Risk Indicators*.

Criteria C ~ **Known risk indicators.** This category includes children diagnosed with:

1. Syndromes and disorders, which have a high probability of resulting in a disability. Examples include: Down Syndrome, Fetal Alcohol Syndrome, and Spina Bifida.

2. This category also includes: children who are functioning above the stated criteria in Category A and B because of intensive early intervention but who are eligible for services based on expected regression if services were to be terminated.

3. Environmentally at-risk students can be included after the impact of severe environmental deprivation can be substantiated, such as when both parents are developmentally disabled.

GUIDELINES FOR MAKING DECISIONS USING PROFESSIONAL JUDGMENT

Holistic View

Broadly speaking, children with NCD identified by the professional judgment process are those for whom the delay in development is anticipated to have a global impact on their ability to succeed in the general education curriculum. Each of these children is an individual with a unique configuration of strengths, challenges and temperament characteristics. Therefore, a single paradigm for the child with NCD cannot be designed, nor would a single paradigm be appropriate. To identify these children, a holistic view of their development in all areas including: social skills, play skills, peer interaction skills and self-help skills must be developed and supported by observations and narratives from those who know them best. To obtain a holistic view, a range of data must be collected. Test scores do not drive identification of these children, although they are part of the information the team considers. As teams apply the professional judgment decision-making process to specific cases, several factors require careful consideration.

Known Risk Indicators

The team at times will be confronted with potential early "risk factors" as a contributing piece of data about a child. The concern is the potential relation between early risk factors and subsequent possible school failure. Early risk factors include: young parents, single parents, alcohol/drug abuse, poverty and violence on television. Medical risk factors such as: low birth weight and pre-maturity have long been acknowledged as early risk factors for development. However, not all children who live in poverty fail at school; not all children of low birth weight develop disabilities; and single parents, even young ones, have children who succeed in school. While these risk factors may combine early in a child's life to create barriers to learning, they do not constitute NCD eligibility in the absence of specific developmental concerns. The team should consider 3 categories of known risk indicators:

- Syndromes and disorders that have a high probability of resulting in a disability. Examples include: Down Syndrome, Fetal Alcohol Syndrome and Spina Bifida.

- Prior intervention includes: children who are functioning close to age level (children who do not currently demonstrate a significant discrepancy) because of intensive early intervention services but who are expected to regress if the intervention services are discontinued.

- Children who are environmentally at-risk with profiles documenting the impact of severe environmental deprivation, such as children who are homeless or transient, or whose parents are chronically unemployed, developmentally disabled, physically or mentally ill, etc.

Early Risk Factors and Dual Language Learner

The professional judgment decision-making process is particularly important when a child has early indicators and is a dual language learner. For example, a child who comes from a low socioeconomic background and is being raised by a teenage mother who has recently immigrated may be affected by lack of exposure to the school language, experiences that may be different than would be expected, and child-rearing practices that impact development due to the mother's inexperience and age. The team will need to pay close attention to lack of opportunity, language and cultural differences and separate these factors from developmental aspects. The child should not receive special education services merely because of deficiencies related to lack of exposure to certain learning opportunities. If it becomes difficult for the team to sort out whether environmental or developmental factors are in operation, the team may provide the child with learning opportunities outside of special education. Close monitoring of the child's progress will determine any next steps in meeting the child's needs.

Challenging Behavior

In addition to early risk factors, challenging behavior is often stated as a concern about a child referred for an evaluation of his or her overall development. The process of screening and subsequent evaluation for some children is triggered by behaviors for which teachers often have low tolerance. These behaviors sometimes may be those generally associated with the medical diagnosis of Attention Deficit with Hyperactivity Disorder (ADHD). At other times, they may be behaviors reflecting poor social skills or limited problem solving abilities. Although these and similar learning characteristics may be indicative of a disability, they can also reflect a lack of opportunity to learn how to get along with others. Concerns regarding low attention span and high need for motion may be a sign of a hidden disability or may be a response to a specific setting.

A careful environmental analysis will be critical to a team's decision that challenging behavior in a given child is a barrier to learning. The analysis needs to include: documentation of developmentally appropriate practice within the child's setting, activity length, opportunity for movement, match of task expectation to child's ability, transition cues, and directions. Direct observation of social interactions with peers and play skills; along with parent and teacher reports of friendship formation, participation in small groups, and coping skills will be needed as well as a functional assessment of the challenging behavior. Additionally, the team needs to consider settings and pervasiveness. A child who does not show challenging behavior across settings (classroom, after school care, church, home) and across time is not a child with a NCD. Situational behaviors should be ruled out as they do not constitute a pattern (e.g., hitting, screaming, or being out of seat).

Team Consensus in Decision-Making

There will be times when the team receives an external report from a physician or therapist that documents concerns and treatments and concludes with the statement, "In my professional judgment, this child would benefit from receiving special education or related services". As an involved professional in the child's life, the person could be invited to participate directly on the team. The data and conclusion need to be considered as the team weighs the evidence, but the decision must be a team consensus. No one person's judgment should be the basis of the decision. The conclusion that the child meets criteria for the NCD definition by professional judgment and consequently requires special education and related services, must be arrived at by a consensus of the team.

STEPS IN THE DECISION-MAKING PROCESS

Professional Judgment

Within an educational context, professional judgment is a process by which a team organizes and weighs information about a child. This information includes impressions regarding skills, abilities, weaknesses, developmental processes, emotional and temperamental patterns as well as more traditional testing information. The purpose of professional judgment is to ensure eligibility determination based on a broad array of information with outcomes linked to service needs.

All individuals who work with young children make individual professional judgments. A parent is making an individual professional judgment when he/she comments that his/her child is not usually so withdrawn with strangers. A physical therapist is making an individual professional judgment when he/she states that a child appears to be motivated to complete assigned work. While these individual judgments are part of the team's decision-making process, no single person can determine eligibility through professional judgment. It must be a team decision.

Step One
Team members consider whether there is enough information/data gathered to make an informed professional judgment about the child's eligibility for special education using the NCD definition.

- If the answer is "yes, enough information has been gathered", the team moves to the next step in the process of documenting professional judgment.

- If the answer is "no, the team does not have enough information about the child for making an informed decision", the team should develop an Assessment Plan to determine what information is needed, who should gather it, and when the team will reconvene.

Step Two
The team organizes professional judgment documentation. The team lists immediate concerns, their degree of concurrence and issues needing revisiting. Included within this approach are: descriptions of how the concerns were documented (e.g., direct observation, interview, testing, work sample) and the contexts in which concerns appear problematic (e.g., free play in classroom, neighborhood play ground, during formal testing). It can be helpful for teams to organize qualitative documentation within a chart listing developmental areas, documentation source and environmental context**.**

Step Three
Teams are charged with the responsibility of identifying priority concerns and ensuring decisions are made based on a broad array of information.

In determining a concern, team consensus must include the following considerations:

- ***Parent Input.*** This process sets the stage for a growing relationship between schools and families and represents the opportunity to build trust, mutual respect and collaboration. *North Dakota Early Childhood Special Education for Children with Disabilities, Ages Three Through Five (1999)* emphasizes a family-centered approach in which the parents' expertise and decision-making role is central to meaningful collaboration (Turner, Rivera, Dudley, Stile, & Rinehart, 1999).
- ***Importance to General Education Curriculum.*** Concerns need to be evaluated in relation to the general curriculum, whether it is an activity/play-based approach emphasizing experiential knowledge characteristic of preschool or the integrated developmental foundation emphasizing fundamental skills and growing conceptual understandings characteristic of primary school. Familiarity with North Dakota local K-4 content and performance standards and benchmarks and how these standards are represented at the local level is essential to making informed decisions on the importance of concerns relative to success in the general education curriculum. Teams may also consider other quality indicators such as those developed by the National Association for the Education of Young Children (Bredecamp & Copple, 1997) and the Division for Early Childhood of the Council for Exceptional Children (Odom & McLean, 1996).

- ***Pervasiveness.*** In weighing concerns, teams need to consider the child's performance relative to his or her classroom peers. Some skills or behaviors that would be expected of children based on national norms may not be consistent with skills and behaviors valued within the local community. To be considered a concern, the child must display a pattern that is not typical of his or her classroom and community peers. Further, the pattern needs to be evident to some degree in more than one environment. A pattern that is a problem only at home or only in the classroom may have more to do with adult expectations than with developmental delays.
- ***Over Time.*** Teams need to ensure that concerns are examined relative to a child's history. Problematic skills and behaviors are those which show persistence and do not yield to more complex, flexible patterns of behavior. By examining the behavior across time, teams can rule out emotional or behavioral reactions to transitory events in a child's life. Events such as the birth of a sibling, a divorce, or enrolling in a new after school care program can result in inappropriate social behaviors that are short-lived, such as withdrawal or aggression.
- ***Deficits in Primary Language.*** Areas related to language must be closely examined when assessing a child from a linguistically diverse background. A language difference must clearly be differentiated from a language delay. Children who are truly language delayed or have language-related disabilities (articulation, fluency, language impairments, language processing problems) must demonstrate those deficits in their primary language.
- ***Not a Function of Lack of Instruction.*** In weighing the evidence, teams need to consider the instructional models and learning opportunities to which the child has been exposed. The guidelines *North Dakota Early Childhood Special Education for Children with Disabilities, Ages Three Through Five (1999)* supports learning experiences consistent with developmentally appropriate practice. Young children need consistent exposure to activities that build on children's interests, address multiple domains and provide many opportunities to interact directly with the world around them. Teams need to recognize that the child who has learning difficulties may also be experiencing learning environments that are not sensitive to the child's developmental level or are not responsive to the child's needs and interests. For example, a child whose difficulties arise during transition within a formal classroom setting and who has a learning history characterized by absence of predictable routines, may be demonstrating problems due to lack of instruction rather than developmental delay. For children who enter school speaking a language other than English, past educational programs should be examined. Careful consideration should be given in examining whether the child's difficulties may be due to lack of learning that is related to the language differences, or whether it is due to lack of instruction or opportunity. An important consideration is whether language has been supported and developed through the educational programs in which the child has been involved.

The child's environment may be different and may lack certain experiences or materials that would typically be found in other homes. This may be especially true for children from low socioeconomic backgrounds. Data will need to be collected through observation of the home environment or parent/caretaker interviews to determine whether the child has had typical experiences. In addition, different cultures value different skills; consequently, skills may emerge at different stages across cultures. Parent-child interactions that are culturally related may also influence certain areas of development, especially language and social skills. For example, some families may communicate less or communicate differently with their children. In observing developmental milestones, the team must ensure that the explanation of milestones is framed within the family's cultural context. This may necessitate the involvement of individuals who are familiar with culture-specific child-rearing practices, communication differences, and other cultural aspects.

In weighing the evidence, the team must confirm that the information gathered is from multiple ***sources*** (at least four of these areas).

- ***Checklists.*** This includes behavioral and developmental questionnaires or rating scales completed by family members, teachers, or other individuals important in the child's life (e.g., child care provider, after school care provider).
- ***Direct Observation.*** This includes information collected by evaluators, therapists, parents/caregivers and teachers while watching the child during a naturally occurring activity or familiar routine. Direct observation may include anecdotal reports, event or time sampling, or running narratives.
- ***Documentary Evidence.*** This includes a review of evaluation reports, medical history, case history, pre-referral intervention history and progress reports.
- ***Ecological Assessment.*** This includes information about the child's environment. It may include: a comparison of the child's behavior with the behavior of school and community peers, completion of a checklist on the use of developmentally appropriate practice in the classroom, expectations held by caregivers or service providers regarding behaviors or skills, functional behavioral assessment to identify environmental events associated with the child's difficulty, identification of classroom organization (e.g., schedules, routines, expectations); physical layout of the classroom related to the child's difficulty; or general environmental rating scales.

- ***Interviews.*** This includes information gathered through in-depth conversations with family (including extended family in addition to the child's parents/caregivers) and service providers (including teachers, related service providers and after school or child care providers) regarding their perceptions of child's performance, concerns, and priorities.
- ***Products.*** This is material produced by the child and may include: portfolios, work samples, audiotapes, videotapes, or photographs.
- ***Testing.*** This includes a variety of norm-referenced and criterion-referenced devices that allow team members to sample a child's behavior at a single point in time.

IMPLICATIONS FOR GENERAL EDUCATION

Programs serving young children must work toward the goal of all services being governed by developmentally appropriate practices and provided in inclusive settings to the greatest extent possible. Active rather than passive learning experiences through hands-on operations or materials that can be explored are critical. Small group activities and opportunities to make choices also should be incorporated into the curriculum. Hands-on activities, desktop activities while seated, and movement activities should be carefully coordinated. All education materials and activities should be respectful of individual, linguistic and cultural characteristics of children and their families.

The IEP team will design modifications for each young child eligible under the NCD category. Expected modification would apply particularly to the instructional methods used and the way the teacher manages the classroom, with particular emphasis on developmentally appropriate practices based on sound principles of child development. Academic and behavior expectations may not necessarily require modifications; however, the way in which information is presented could be modified. With support and appropriate modifications, identified children can reach their potential, develop the basic foundation skills essential for academic success and meet the general education teacher’s expectation for all children in the classroom. A continuum of services from special education and related services personnel would be provided to develop, maintain, assess and monitor for effectiveness of the modifications.

At a national level, programs serving young children have been the focus of considerable attention for some time and there has been much debate around issues related to best practices in educating the young child. In 1987, the National Association for the Education of Young Children (NAEYC) published its work on best practices in the teaching of young children. Entitled Developmentally Appropriate Practice in Early Childhood Programs Serving Children from Birth through Age 8 (Bredekamp, 1987), this work has become a driving force in the development and implementation of quality programs for young children and provides the benchmarks by which early childhood programs are measured. The principles described in the publication reflect what has come to be known as "developmentally appropriate practices" (DAP) and include research based curricular practices that support the development of children. Initially, there was debate about the appropriateness of DAP in programs which served young children with disabilities and their families (Carta, Atwater, Schwartz & McConnell, 1993; Carta, 1995). After considerable debate and discussion, the Division for Early Childhood (DEC) of the Council for Exceptional Children published a similar document. *DEC Recommended Practices: Indicators of Quality in Programs for Infants and Young Children with Special Need and Their Families* (DEC Task Force on Recommended Practices, 1993). Similarities between the two documents exist and in fact, a joint position paper by DEC, the Association of Teacher Educators, and NAEYC entitled *Personnel Standards for Early Education and Early Intervention,* 1994 offers a framework for preparing professionals to work with young children with special needs in inclusive settings. Collaborative programs between early childhood and early childhood special education are now much more common than before and the edges between the two fields in terms of services, strategies and personnel development are becoming more and more blurred (Richey & Wheeler, 2000).

Central to all of this work is the establishment of a foundation of beliefs and practices for all children that is child centered and family focused. It transcends typical categorization of children by disabilities and programs and instead attempts to provide a framework to support the development of programs that reflect best practices in working with young children and their families. While the strategies are at this time generally well accepted in programs providing services to children from birth through age 5, their adoption in the public school sector beyond kindergarten is less wide spread.

There may be curricular implications, therefore, when programs implement the NCD eligibility option in schools. It is clear that best practices in early intervention and early childhood special education call for the implementation of developmentally appropriate practices. The category itself does not dictate specific services, but does provide impetus for the adoption of developmentally appropriate practices.

EXIT CRITERIA

Children eligible under the NCD definition **must** be reevaluated during the school year in which they turn 9 years old and prior to their 10th birthday. Reevaluation will be conducted according to procedures outlined in the North Dakota Department of Public Instruction's Guidelines: Evaluation Process (1999). Some children, because their disability now has clear manifestation, will continue to need special education and related services under a specific disability category. This determination will be made at the time of reevaluation and prior to the date of the child's 10th birthday. Other children, based on evaluation and maintenance of progress data, will no longer require special education services and will exit from the system.

Exit criteria out of the special education system include the following:

- The child is making progress commensurate with same-age peers with no assistance required. The reevaluation can take place at any time during a child's enrollment in special education and related services if the IEP team, including the child's parents/caregivers, concurs that the child is making appropriate progress and no further assistance is required.
- The child is making progress commensurate with age peers with assistance from typical general education supports (e.g., bilingual programs, mentoring programs, Success for All or other tutoring programs, Title I programs, and so on).
- The child is making progress commensurate with age peers with accommodations typical of general education, such as Section 504 plans.

Children meeting the exit criteria should be monitored by the local school district to ensure that no grade retention or re-referral is necessary.

Appendix

A. Case Study

B. Selected Excerpts from the Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act

C. References

Case Study Illustrating Professional Judgment Decision-Making Processes

The following case illustrates the process of applying professional judgment in determining eligibility under the NCD definition.

Meet Joel

Joel was placed in foster care at age 30 months because of neglect. At the time, he was under-weight and his environment was chaotic. Adoption and transition to his new family was completed when he was 38 months old. Joel's adoptive family spent the first eight months prior to preliminary educational evaluation dealing with his health concerns, working on weight gain, establishing a predictable routine, and developing secure attachment. When Joel's family was comfortable with his health status and their growing relationship with him, they contacted the building level support team for their school district. Joel entered public school special education and related preschool services at age 4 years with evaluation data showing global delays ranging from 27 percent to 33 percent (32-35 months) of his chronological age.

Now Joel is 5 years old (60 months) and will transition to kindergarten. Progress data show slow but continuous growth, with his level of functioning at 48-51 months (20-15 percent delay). Joel's parents are pleased with how much he has learned since entering preschool and do not want him to fall behind when he enters kindergarten. Although evaluators have noted across the board concerns, Joel does not meet specified criteria for any particular category of eligibility. He can complete tasks but not within the time frame; he has a growing vocabulary but not sophisticated; he uses tools but immaturely; he is able to walk, run, and skip but clumsily. During play Joel follows others, but does not create or initiate; he has a preference for what he already knows and avoids new materials and games. He is accepted into a playgroup but does not interact to join (e.g., he sits down next to group and does what the other children do). In temperament, Joel is even but slow to warm up to new things and new people; his interactions with people he knows are appropriate except in disagreements where he will push and withdraw.

At home, Joel does not play outside vigorously. He will stay outside for a while but tires quickly. He forgets to do what he is asked. He prefers to play with weeble people to coloring, puzzles, and construction materials. He trips over everything and still has difficulty dressing.

Samples of Joel's art constructions show incomplete shape reproduction, wide irregular margins on cutting, and random placement of pasted objects. Samples of his writing show two recognizable letters in his signature. Additionally, anecdotal notations reflect his forgetting what to do and seldom completing activities.
Because Joel does not meet existing criteria for specific eligibility categories or the documented delay criteria for the NCD definition, the team elects to employ professional judgment.

The documentation approach reveals team concerns regarding time to complete activities, short term memory (even with context cues), attention (divided and selective), balance in movement, social problem-solving, physical endurance, play skills, tool use, initiative, and trying new things. In weighing the evidence, the team concurs that:

- Many of these concerns are of priority to Joel's parents.
- The concerns are important to general curriculum to ensure success with reading, writing, and social interactions.
- The concerns are pervasive and enduring in that they occur at school and at home and have been problematic for some time.
- Neither linguistic difference nor lack of opportunity are plausible explanations for the concerns.
- Developmentally appropriate instruction, including special education and related services, has been successful in closing the gap.

In weighing the evidence, the team confirms that the information gathered includes several sources: testing, interviews, direct observation, documentary, and child products.

The team concludes that continued special education with related services is likely to maintain or narrow performance gap; therefore, eligibility for the NCD definition based on professional judgment is confirmed. As the skills that need further development are ones typically addressed within the kindergarten curriculum and can be accomplished through supplemental instruction and modifications to address memory, attention, visual motor coordination, and social skills, consultation from special education and occupational therapy is an appropriate intensity of services to meet Joel's needs. Developmental monitoring coordinated with grade reports and a service intensity review at six months completes the recommendation process.

The team is now ready to develop an IEP to guide service delivery. When the kindergarten teacher meets with Joel's parents at the 9-week grade report time, she will provide feedback (in consultation with special education and occupational therapy) on his general progress through the curriculum. This can be accomplished by providing benchmarks of success through measurable data and judgments regarding the quality of Joel's progress (e.g., not made progress; some progress but slower than expected; programming as expected; progressing more quickly than expected). At six months, the service team, including Joel's parents, will examine developmental progress to ensure that his development is maintaining or accelerating and that no new concerns are emerging under this intensity of service.

Table 1: Example of Organizing Joel's Information (Adapted from New Mexico)

CONCERNS	HOW DOCUMENTED	CONTEXT ILLUSTRATIONS
Cognition		during routine class activities with 1-step cues, forgets what to do next; at home, forgets mother's requests; at school and at home, does not finish even enjoyable tasks; completed no timed tasks during testing; in class, chooses only familiar activities; at home, will not play with new toys
memory	anecdotal record on work sample;	
attention	direct observation; developmental tests; parent report;	
novelty	teacher report	
Language		in class at free play, parallel positioning with no verbal or gestural bids to play; on school and neighborhood playground, approaches existing groups but does not talk; does initiate with adults
initiations	direct observation; parent report; teacher report	
Motor		majority of outdoor play he spends sitting at home, does not play outside more than 5-10 minutes; trips often; can't stand up and put on his pants; testing required frequent breaks;
coordination & fatigue	direct observation; developmental test; parent report	
visual-motor	art work sample; developmental test; parent report; school skills checklist;	in class, problems with cutting, pasting, shape and name drawing; at home, will not play with crayons, puzzles, etc.
Social Emotional		in class side-by-side play with some material exchange; watches others play games; plays at home for extended period with familiar but not new toys
play level	direct observation; parent report; teacher report	
social problem solving	direct observation; parent report	in class, pushes others away when materials are limited during unstructured times; at home, pushes when cousins try to play with his favorite toys
Health Status	medical history	Past history; weight is low normal; no evidence of hearing problems, seizures, CNS dysfunction, heart irregularities

Selected Excerpts from the Twenty-fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act by the U.S. Department of Education (2002)

Information relevant to the Section 619 Program is reproduced or adapted from the U.S. Department of Education's *Twenty-fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2002), and included in the *Section 619 Profile* for the convenience of the reader. These selections consist of text and data tables. The excerpts are reproduced without change showing the actual page number and table designations from the *Report*. In a few cases we combined tables, where practicable, to display data more conveniently for the reader. For example, we show numbers and percentages from two different tables side-by-side in a single table. In addition to the excerpts from the *Report* we have also included corresponding data tables that will appear in the *Twenty-fifth Annual Report* if that data was available at http://www.ideadata.org. Again, where practicable, data tables may have been combined from the two sources to show multiple years. The source of data, if not the *Twenty-fourth Annual Report*, is clearly noted on all tables.

The complete *Twenty-fourth Annual Report to Congress* is available at the Department of Education's Web site at the following URL:

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Use of the Developmental Delay Classification for Children Ages 3 Through 9

The Individuals with Disabilities Education Act (IDEA) Amendments of 1991 (P.L. 102-119) amended the definition of "children with disabilities" under Part B to include children ages 3 through 5 who were experiencing developmental delays. This change allowed states to look at a young child's physical, cognitive, communication, social/emotional, and adaptive development to determine if the child needed special education and related services. A state could, at its own discretion, define "developmental delay" to ensure that all eligible preschool-aged children with disabilities were provided a free appropriate public education without being inappropriately labeled under one of the other disability categories used for school-aged children and youth. The IDEA Amendments of 1997 added some additional requirements pertaining to states' use of developmental delay. Congressional intent is clearly stated in the amendments' legislative history:

> "[t]he bill expands the definition for service eligibility in part B called "developmental delay," to be used at state and local discretion, for children ages three through nine. The use of a specific disability category to determine a child's eligibility for special education and related services frequently has led to the use of the category to drive the development of the child's Individualized Education Program (IEP) and placement to a greater extent than the child's needs. The committee believes that, in the early years of a child's development, it is often difficult to determine the precise nature of the child's disability. Use of "developmental delay" as part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals of children with disabilities to special education" (S. Rep. No. 105-17, 1997, pp. 6-7).

The 1997 amendments included three overall changes to previous developmental delay requirements. The age range to which developmental delay may apply was expanded to cover ages 3 through 9, and use of the developmental delay category for this expanded age range was stipulated as optional for states. In addition, once a state has adopted use of developmental delay, defined the term, and established an age range, local education agencies (LEAs) were given the option of using or not using the classification.

The regulations implementing the new developmental delay requirements (34 CFR §300.313) clarify the statutory language. First, the regulations stipulated that states may adopt the term "developmental delay" and determine whether it applies to children ages 3 through 9 or to a subset of that age range. The state also defines the term. The state may not require LEAs to use developmental delay, but any LEA that opts to use it must conform to both the state's definition of the term, as well keep within the state's age range. No LEA can use developmental delay absent the state's adoption of the term and establishment of a definition and applicable age range. Finally, the regulations state that the other 13 disability categories may continue to be used for children who fall within the state's prescribed developmental delay age range.

These changes to the statute and regulations raised a series of questions about the long-term implications of expanding the age range through age 9. To answer those questions, the Office of Special Education Programs (OSEP) and the Centers for Disease Control and Prevention's (CDC) National Center for Environmental Health co-funded a project in August 1999 to examine the use of developmental delay through age 9 in states, identify issues affecting states' decisions, and consider options reflecting various ways developmental delay can be implemented above age 5. The project was to study whether the expanded age range would increase the number of children served under IDEA, thus leading to increased costs for providing services or possible misidentification of children. The project was also to study whether developmental delay would simply be an alternate way of reporting students who would otherwise be eligible under one of the 13 disability categories under Part B or if children classified as developmentally delayed have a distinct set of characteristics separating them from any of the other 13 categories of disability. CDC's interest was based on its approach to serving children with developmental delays from an interdisciplinary approach that remediates skill deficits within the context of the family.

The study involved an in-depth survey of state practices on the use of the developmental delay classification for preschool-aged children as well as for children ages 6 through 9. The appendix at the end of this module is a summary chart of developmental delay age ranges and classification criteria across states. Twenty states reported using developmental delay above age 5, while other states said they were considering expanding the age range above 5. Use of some or all of the 13 Part B disability categories in conjunction with developmental delay varies among states. In some instances, states continue to use all 13 disability categories in addition to developmental delay, while other states subsume one or more Part B categories under the definition of developmental delay. There is also variation in the definition of developmental delay, including eligibility criteria. For example, some states use two standard deviations below the mean in one developmental area and/or one and a half standard deviations below the mean in two developmental areas, while other

states use percent delay in one or two developmental areas (National Association of State Directors of Special Education, 2000). Sometimes other criteria in addition to quantitative scores are used to determine eligibility, such as diagnosed conditions, professional judgment, or informed clinical opinion (Danaher, 2001).

OSEP was concerned that using developmental delay above age 5 could greatly expand the population of children served under IDEA. Public comments on the proposed regulations implementing the IDEA Amendments of 1997 revealed concern about local option to use developmental delay (*Federal Register*, 1999). In response to these issues, researchers conducted surveys and held focus groups with state Section 619 preschool coordinators, state directors of special education, and school psychologists. Only one fifth of state directors and school psychologists felt there would be significant increases in the number of children being served under IDEA; one third of both groups thought there would be little change, and one third of both groups felt there would be moderate increases (Simeonsson et al., 2001). Only 5% of the state Section 619 coordinators believed there would be a substantial increase in the number of children served (Simeonsson et al., 2001). Local option to use developmental delay did not appear to be a problem. Ninety-six percent of state directors responding to the survey reported that inconsistencies across LEAs do not exist because 95% or more of their LEAs elected to use developmental delay (Simeonsson et al., 2001).

The surveys and focus group results revealed other areas likely to be affected by the extension of developmental delay above age 5. Some of these areas included training and technical assistance, implementation and programming, family issues, identification and referral, funding mechanisms, assessments, and transition from developmental delay to another Part B category or out of special education (Simeonsson et al., 2001).

In general, the research suggests a positive, child-oriented attitude about using developmental delay both for preschool-aged children as well as for children above age 5. Using developmental delay into the elementary school years was seen as a benefit because it would:

- serve children earlier who would later be found eligible for special education, i.e., keep children from "falling through the cracks";
- keep a functional and service focus on the child rather than deficit-oriented labels that tend to drive services;
- provide more age appropriate assessments and eligibility determinations for the early elementary years when instruments for determining some specific disability categories are limited or nonexistent;

- continue to serve children who may not meet specific categorical criteria; and
- provide a smoother transition from preschool into kindergarten or first grade (Simeonsson, 2001).

Simeonsson et al. (2001) also provide philosophical underpinnings as guidance for states to consider as they study changes in state policy and service delivery systems. These considerations include the premise that developmental delay focuses on functional limitations of the whole child rather than characteristics specific to a Part B disability category. Services can be coordinated from a variety of sources and targeted to address a child's functional levels rather than providing a standard menu of services in response to the diagnostic label of a child. Using developmental delay through age 9 allows for continuity of services throughout the developmental years without a stigmatizing label that may be associated with a specific disability category. Finally, emphasis on functional needs, or a noncategorical approach, may help reduce later referrals to special education. Designing programs based on functional needs also aligns with CDC's interdisciplinary approach to treating the "whole person" (Simeonsson et al., 2001).

Simeonsson et al. (2001) present options for states to consider during the decision-making process of whether to use developmental delay above age 5. First, a child eligible for special education under one of the 13 categories could be identified as developmentally delayed rather than assigned another, potentially more stigmatizing, disability category. Developmental delay would be the term used to describe any child with a disability but would not be a discrete additional category. Second, developmental delay could be a discrete category of disability used as a last resort, (i.e., when the child's assessed characteristics do not fit the eligibility requirements of any of the 13 existing categories). Third, developmental delay could be a discrete additional category based on functional limitations regardless of whether eligibility criteria under one of the existing 13 categories were met. A fourth option is a hybrid category so that developmental delay would not be a discrete category but would subsume any existing category or categories for which the criteria of functional limitations would be sufficient to determine eligibility. This option looks at multiple developmental domains that, taken individually, would be assigned to a specific disability category and eliminates the need to determine which disability should be the child's "main" disability for categorization and service delivery purposes. The final option is a noncategorical approach for all children with disabilities. This option focuses on functional limitations associated with characteristics needed for learning, regulation of behavior, communication, mobility, seeing and listening, use of limbs and extremities, literacy and numeracy ability, and daily living skills.

Changes in Numbers of Children Served

In Table I-5, Part B annual child count data collected by OSEP for school years 1999-2000 and 2000-01 show the change in use of developmental delay above age 5. The figures indicate that there has not been a substantial increase in the number of children served under Part B. In fact, the number of 6- through 9-year-old children served decreased from 1,730,414 in 1999-2000 to 1,710,389 in 2000-01. There was a small increase in children ages 6 through 9 categorized as developmentally delayed (from 19,304 to 28,935 students), which could reflect the fact that more states used developmental delay above age 5 in 2000-01 than in the previous year.

State-reported data indicate a steady increase in the number of states expanding use of developmental delay above age 5. In 1999-2000, 18 states used developmental delay above age 5, but did not necessarily use it for the full 6-through-9 age range. By 2000-01, 20 states had expanded their age range above age 5, again not necessarily for the entire 6-through-9 age range. Most of the children who are served as developmentally delayed above age 5 are 6 years old.

States continue to study the option of using developmental delay for children with disabilities above age 5. Although half of the states have extended use of the classification to 6- through 9-year-olds, there has not been a surge in the numbers of children 6 through 9 served as developmentally delayed. Beginning at age 3, there is a steady decrease in the developmental delay classification as chronological age increases. During 2000-01, 33.4% of 3-year-olds were reported as developmentally delayed, compared to 29.8% of 4-year-olds, and 16.9% of 5-year-olds.

Use of developmental delay continues in all but two states that adopted it. Nearly 25% of preschool-aged children with disabilities are categorized as developmentally delayed. Comparative data to show if this number is increasing are not yet available because 2000-01 was the first year that child count data for 3-, 4-, and 5-year-old children were reported by disability category. The options for using developmental delay in relation to the other 13 disability categories for preschoolers are similar to the recommendations set forth by Simeonsson et al. (2001). Danaher (2001) reports that some states use developmental delay for the age range to which it applies only after considering other disability categories. More than half of the states add developmental delay to the list of Part B categories (i.e., developmental delay is a discrete, 14th category).

Table I-5
Total Number of 6-, 7-, 8-, and 9-Year-Old Students With Disabilities and Number With Developmental Delay for School Years 1999-2000 and 2000-01

	All 6-year-olds with disabilities	6-year-olds with DD	All 7-year-olds with disabilities	7-year-olds with DD	All 8-year-olds with disabilities	8-year-olds with DD	All 9-year-olds with disabilities	9-year-olds with DD
School year 1999-2000	328,674	10,021	397,967	5,153	470,944	3,103	532,830	1,027
School year 2000-01	331,439	14,593	393,828	8,278	463,958	4,491	521,164	1,573

Source: U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS).

Use of the Developmental Delay Classification for Children Ages 3 Through 9

Summary

The IDEA Amendments of 1997 extended the use of the term developmental delay for 6- through 9-year-olds at states' discretion. OSEP and the CDC commissioned a study of how states have used the term since the 1997 amendments. Twenty states reported using the developmental delay option for children over 5, while other states said they are considering doing so. State-reported data suggest that there has been no surge in the number of children reported to be receiving services under IDEA and that use of the developmental delay option steadily decreases as chronological age increases.

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