

# Students with a Developmental Delay

Guidelines for Implementing the Use of  
Developmental Delay as a Categorical Option  
for Young Students with Disabilities  
Ages Three (3) — Nine (9) Years Old



Division of Special Education/Early Intervention Services  
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Maryland State Department of Education  
Division of Special Education/Early Intervention Services

Guidelines for Local School Systems Implementing Use of  
Developmental Delay as a Categorical  
Option for Young Students with Disabilities  
Ages Three through Nine

**Authority**

The Individuals with Disabilities Education Act of 1997 (IDEA 1997) granted states the discretionary authority to establish a developmental delay (DD) categorical option for use with young students with disabilities, beginning at age three and extending up through age nine [34 CFR §300.313(a)]. Consistent with this authority, Maryland State Board of Education adopted a definition for Developmental Delay and established the broadest possible age range permissible for use by local school systems, effective January 7, 2002 [COMAR 13A.05.01.03B(69)]. Students with a developmental delay, as defined in COMAR 13A.05.01.03B(69), must meet one of the following criteria:

- A 25 percent or greater delay in adaptive, cognitive, communicative, emotional, physical, or social development, as measured and verified by appropriate diagnostic instruments and procedures; **or**,
- Atypical development or behavior; this can be demonstrated by abnormal quality of performance and function in one or more of the specified developmental areas, which interferes with current development, and is likely to result in subsequent delay, even when diagnostic instruments and procedures do not document a 25 percent delay; **or**,
- A diagnosed physical or mental condition as defined in COMAR 13A.13.01.02B(21)(c), which has a high probability of resulting in a developmental delay, including, but not limited to students with sensory impairments, inborn errors of metabolism, microcephaly, fetal alcohol syndrome, epilepsy, and Down Syndrome, and other chromosomal abnormalities.

Consistent with federal regulation, 34 CFR §300.313, the Maryland State Department of Education (MSDE) cannot require a local school system to use the DD option for any student within its jurisdiction [§300.313(a)(2)]. The categorical option of DD may be used at local discretion for preschool and young students ages three through nine, but not beyond the age of nine. The DD option must be implemented by a local school system for preschool students with disabilities, ages three through five, prior to making this option available for students beyond age five. In addition to making the DD option available for preschool and young students, local school systems can continue to use existing disability categories established in 34 CFR §300.7(a) and COMAR 13A.05.01.03B(70) for preschool students, ages three through five, as

appropriate and determined by the Individualized Education Program (IEP) team. Any use of DD beyond age nine is prohibited under current federal and State regulations.

### **Purpose**

These guidelines are intended as additional guidance to local school systems for the implementation of the DD categorical option, including required parameters for use by an local school system; identification, assessment, and evaluation; eligibility determination; and provision of services to preschool and young students, ages three through nine.

### **Parameters for Use of Developmental Delay as a Categorical Option**

- Use of the DD categorical option is at the discretion of the individual local school system. Any use must be described in the local education agency policies and procedures.
- A local school system electing to make available the DD option may do so for preschool students with disabilities, ages three through five, as well as extend use of this categorical option beyond age five; up to and including age nine.
- The DD option must be implemented by a local school system for preschool students with disabilities, ages three through five, prior to making this option available for students beyond age five.
- A local school system may, at local discretion, serve any subset of students within the full permissible age range, i.e., ages 3 through 5, 3 through 6, 3 through 7, 3 through 8, or 3 through 9, including students identified for the first time regardless of age, as long as that age is consistent with the subset being served by the local school system.
- The DD option must be universally available for all students within an included age range; e.g., if a local school system chooses to include ages 3 through 6 (or 3-7, 3-8, 3-9) within the local permissible age-range, then the DD option must be available for consideration by the IEP Team for all 3 through 6 year olds, not just a selected group within that subset (such as, for example, making the DD option available only to 6 year olds with severe delays; this would represent only a percentage of the total of 6-year-olds eligible for special education and related services who could be considered for services under the DD option).
- The following conditions apply when considering a child for eligibility under the DD option:
  - Eligibility for DD is independent of a determination of eligibility under any of the 13 existing disability categories; i.e., the student **does not** first need to meet the eligibility criteria for an existing disability category in order to be considered for eligibility under the DD option;

- For a student who has been found to be eligible for special education under an existing disability category, the family may choose to have their child identified under either that category or opt instead to have their child identified under the DD option; or
- The family may choose to decline permission to consider the use or determination of an existing disability category.

### **Identification, Assessment, and Evaluation**

- At any time a student is suspected of a disability or developmental delay, the child's IEP team shall review existing data including information provided by the parents, instructional interventions and strategies, current classroom-based assessments, and observations by teachers and related service providers. Through a review of this information, the IEP team will decide if additional assessments are needed to determine whether or not a child is experiencing a developmental delay.
- The emphasis of assessment of preschool and young students should not be on standardized diagnostic instruments, but rather functional quantitative performance data that provides the IEP team, including the parents, an accurate picture of what their child can and cannot do in the developmental areas as compared to typical developmental performance.
- Local school systems *may not require* a psychological assessment for the determination of eligibility under the DD option. Based on a review of existing assessment information, and identification of areas of concern for an individual child, the IEP team may recommend, but not require, the administration of a formal psychological assessment, the purpose of which would be to provide additional information for program planning purposes only, and not as a prerequisite for determination of eligibility under this option.

### **Eligibility Determination**

The requirement for *demonstrated adverse educational impact* does not apply for the purpose of eligibility determination under the DD option [34 CFR §300.313 (b)]. A child within the DD classification age range who has been identified as a student with disabilities under one of the existing 13 disability categories may be reclassified as DD, as determined by the IEP team. A local school system is not required, however, to reclassify any student on the basis of the availability of the DD option.

As defined in COMAR 13A.05.01.03B(69), students with a developmental delay must meet one of the following criteria:

- A 25 percent or greater delay in adaptive, cognitive, communicative, emotional, physical, or social development, as measured and verified by appropriate diagnostic instruments and procedures; **or**,

- Atypical development or behavior; this can be demonstrated by abnormal quality of performance and function in one or more of the specified developmental areas, which interferes with current development, and is likely to result in subsequent delay, even when diagnostic instruments and procedures do not document a 25 percent delay; **or**,
- A diagnosed physical or mental condition as defined in COMAR 13A.13.01.02B(21)(c), which has a high probability of resulting in a developmental delay, including, but not limited to students with sensory impairments, inborn errors of metabolism, microcephaly, fetal alcohol syndrome, epilepsy, and Down Syndrome, and other chromosomal abnormalities.

### **Provision of Services**

- For students transitioning at age 3 from a local Infants and Toddlers program to preschool special education, the Transition Policies and Procedures issued jointly by the Maryland Infants and Toddlers Program and the Maryland State Department of Education apply.
- The IEP is the required document to be developed and in place for every child found eligible for special education and related services, including students served under the DD option; an IFSP may not be used for any student beyond the date of their third birthday.
- Procedural safeguards under Part B are applicable for all students' ages three through nine served under the DD option.
- Special Instruction under the DD option:
  - Special instruction must be an identified service included on the student's IEP and should be stated in terms of the student's individual needs as a direct or indirect service. This requirement applies to all students served under the DD option, including students otherwise receiving a related service, such as speech/language, physical therapy, occupational therapy, or social-emotional/behavior interventions.
  - At a minimum special instruction should be addressed through periodic consultation by, ongoing monitoring from a special educator to provide for quick and responsive intervention as soon as possible for any newly identified or emerging special education needs that may impact the child's education.

### **Prohibition from Continuing DD Option Beyond Age Range**

A local school system that has adopted the full permissible age range of three through nine for the DD option must identify an existing disability categorical option as the basis for the child's continuing eligibility under IDEA, Part B prior to the child's tenth birthday. If a local school system has designated a subset of the DD option that does not extend for the full permissible age range, then continuing eligibility must be determined for students according to the upper age limit of that subset.

### **Special Services Information System (SSIS) Coding and Reporting**

- Child count information for students served under the categorical option of developmental delay will be recorded and reported on the Special Services Information System (SSIS) annually as of the last Friday in October of each year.\*
- The code of **15** is used to designate developmental delay on the SSIS form.
- Service code **11** is to be used to designate Special Instruction on the SSIS form, and should include an indication of the frequency of service (e.g., one-time consultation, and ongoing periodic consultation).

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\* Prior to the 2003-2004 school year, the required child count has been collected annually on December 1. Beginning with the 2003-2004 school year, annual child count data will be collected on the last Friday of October.