

# “Suspected Disability” Exemption under Tennessee Code Annotated § 49-6-3115

## Guidance for RTI<sup>2</sup> and Promotion Exemption Criteria

### **Promotion Exemptions**

Pursuant to T.C.A. § 49-6-3115, certain groups of students are exempted from being retained, including but not limited to:

- 1) students with a disability that impacts reading, and
- 2) **students who are suspected of a disability that impacts reading.** See T.C.A. § 49-6-3115(a)(2), (c).

### **RTI<sup>2</sup>, Characteristics of Dyslexia, and Suspected Disability**

#### **General Guidance**

Students participating in tiered intervention in the general education setting within the Response to Instruction and Intervention (RTI<sup>2</sup>) framework are not suspected, by default, of a disability. Additionally, **being identified as having characteristics of dyslexia, with or without an Individualized Learning Plan for characteristics of dyslexia (ILP-D)**, does *not* automatically qualify a student for promotion.

Administrative and school-based teams can determine, on a case-by-case basis, whether a student is suspected of having a disability that impacts reading.

#### **Suspecting a Disability**

When a child is suspected of having a disability, the pathway that Local Education Agencies (LEAs) pursue is determined on a case-by-case basis. Child Find requirements exist under both IDEA and Section 504.

#### **IDEA**

Child find is triggered when the student's parent or a school official refers the student for an evaluation because the individual suspects a disability and needs special education and related services as a result of the disability. See [34 C.F.R. § 300.111\(c\)\(1\)](#). If a student is exempted by administrative decision under the category of “suspected disability” and the referring team believes the child needs special education, the LEA must follow certain steps defined under IDEA:

- Convene a meeting to discuss if the team agrees a disability is suspected and an evaluation is warranted.
  - If the team agrees an evaluation is warranted due to suspected disability, obtain parent or legal guardian consent, and complete a special education evaluation. Document the decision in a Prior Written Notice and provide it to parents.

#### **Section 504**

Section 504 also includes a Child Find requirement. Section 504 requires LEAs to annually identify and locate every qualified individual ages 3 – 22 with a disability residing in the LEA's jurisdiction. See Section 504 regulations at 34 C.F.R. 104.32 and 34 C.F.R. 104.3(l)(2). Under Section 504, LEAs must evaluate if the school has reason to believe the student has a disability and the student needs special education or related services as a result of that disability. See [34 C.F.R. § 104.35\(a\)](#). If the student is identified as having a qualifying disability, the Section 504 team must develop a Section 504 Plan for the student. In addition to Section 504 Evaluations, if the student is identified through an IDEA evaluation as having a disability that affects reading but does not qualify for special education services, the team should consider whether a Section 504 Plan is appropriate. See department guidance "Section 504 Evaluations" for detailed information on Section 504 Evaluation requirements. A Section 504 Plan for a disability that impacts reading qualifies the student for the exemption.

### ***Implications***

If educators or parents suspect a disability, they should make referrals promptly to allow teams to complete evaluations and eligibility determinations in time for promotion consideration. Additionally, upon receipt of TCAP scores, for students who score "Below" or "Approaching," teams should determine on a case-by-case basis if a student's disability or suspected disability caused or was substantially related to the student's performance. If the team suspects that the student's disability or suspected disability impacting reading led to the student's performance on TCAP, school teams should convene to determine if an evaluation is warranted, as outlined earlier in this document.

Regardless of which pathway the LEA pursues for evaluation, the outcome of the referral and/or evaluation determines whether the student meets the criteria to be exempted pursuant to T.C.A. § 49-6-3115.

**If the team determines that an evaluation is *not* warranted because a disability is *not* suspected,** the student would not fall under the exemption category.

**If the team determines that an evaluation *is* warranted because a disability *is* suspected,** an evaluation must be completed within 60 days of obtaining parental consent to conduct the evaluation. During this time, the student has a "suspected disability."

**If the eligibility determination is that the child does not have a disability that impacts reading,** the student would no longer fall under the exemption category.

**No student may be exempted because of a "suspected disability" without an IEP team or Section 504 Team convening to determine if an evaluation is warranted.**

**If the team decision is to not pursue an evaluation or the outcome is that the student is determined not to have a disability affecting reading, the student would not meet exemption criteria.**

**If the team completes an evaluation and identifies the student with a disability that impacts reading and the student is supported through an IEP or Section 504 Plan for that disability, the student would qualify for exemption as a student with a disability that impacts reading.** LEAs should consult the [most current guidance](#) for any requirements for promoted students regarding instruction and support.