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Document No. 5040

**DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS**

CHAPTER 88

Statutory Authority: 1976 Code Section 44-20-220

Article 5. Eligibility Determination. (New)

**Synopsis**:

The Department of Disabilities and Special Needs proposes to add Article 5 to provide the procedure establishing eligibility within the scope of state funded services provided by the Department of Disabilities and Special Needs.

Section-by-Section Discussion

88-505. General. New.

88-510. Definitions Used in this Article. New.

88-515. Diagnostic Criteria for Department Eligibility. New.

 A. Intellectual Disability. New.

 B. Related Disability. New.

 C. High-Risk Infant/At Risk Child. New.

 D. Autism Spectrum Disorder. New.

 E. Head and Spinal Cord Injury and Similar Disability. New.

88-520. Time Limitations. New.

A Notice of Drafting was published in the *State Register* on December 25, 2020.

**Instructions:**

Print the regulation as shown below.

**Text**:

Article 5

Eligibility Determination

88-505. General.

 A. Individuals domiciled in the state and determined by the Department, using the diagnostic criteria specified in this Article, to have an Intellectual Disability, Related Disability, Autism Spectrum Disorder, Head Injury, Spinal Cord Injury, Similar Disability, or be a child at greater risk for a developmental disability than that for the general population, will be eligible for services from the Department. Individuals believed to be eligible for services of the Department or their representative must contact the Department to request a determination of eligibility.

88-510. Definitions Used in this Article.

 A. At Risk Child: Defined as a child 36 months of age up to but less than 72 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that of the general population.

 B. Autism Spectrum Disorder: The Department defines Autism Spectrum Disorder (ASD) as included in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) or most current edition.

 C. Developmental Period: The period of time between conception and the twenty-second birthday.

 D. Head Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines head injury. Head Injury means an insult to the skull or brain, not of a degenerative or congenital nature, but one caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities or physical functioning and possibly in behavioral or emotional functioning. It does not include cerebral vascular accidents or aneurysms.

 E. High-Risk Infant: S.C. Code Ann.§ 44-20-30 (9) defines high-risk infant as a child less than 36 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that for the general population.

 F. Intellectual Disability: S.C. Code Ann. § 44-20-30 (12) defines Intellectual Disability as significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

 G. Related Disability: S.C. Code Ann. § 44-20-30 (15) defines Related Disability as a severe, chronic condition found to be closely related to Intellectual Disability or to require treatment similar to that required for persons with Intellectual Disability.

 H. Similar Disability: Similar Disability is not specifically defined within South Carolina Codes of Law; however, S.C. Code Ann. § 44-38-370 states that Similar Disability is not associated with the process of a progressive degenerative illness or dementia, or a neurological disorder related to aging. Similar Disability is similar to head injury or spinal cord injury as defined herein.

 I. Spinal Cord Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines a spinal cord injury. Spinal Cord Injury means an acute traumatic lesion of neural elements in the spinal canal resulting in any degree of sensory deficit, motor deficit, or major life functions. The deficit or dysfunction may be temporary or permanent.

 J. Valid IQ Score: Based on 1) the psychometric properties of the selected test, and 2) the stipulation of the examiner in the Behavioral Observation section of the evaluation that describes the manner in which the examinee approached, participated, and completed the respective cognitive test.

88-515. Diagnostic Criteria for Department Eligibility.

 A. Intellectual Developmental Disorder

Pursuant to the DSM-5, or most current edition, a diagnosis of Intellectual Developmental Disorder requires consideration of both clinical assessment and standardized testing of intellectual and adaptive functions. Individual cognitive profiles based on neuropsychological testing as well as cross-battery intellectual assessment using multiple IQ or cognitive tests to create a profile will also be considered when making a determination of eligibility. Specifically, an individual must meet the following three (3) criteria in order to receive a diagnosis:

 (1) Criterion A requires deficits in mental abilities, referring to intellectual functions that involve reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding.

To meet this criterion, individuals must have a valid IQ score of approximately 70 or below, including a margin of measurement error of +/- 5, establishing a range of eligibility from 65-75. Instruments must be normed for the individual’s sociocultural background and native language. When multiple tests have been conducted for an individual, a clinical assessment of the validity of the results and other related factors (i.e., statistically significant splits between scores) of each singular test will occur as to provide the appropriate clinical judgment of an individual’s score.

 (2) Criterion B requires impairment in everyday adaptive functioning, in comparison to an individual’s age, gender, and socioculturally matched peers.

To meet this criterion, individuals must have one domain in adaptive functioning—conceptual, social, or practical—sufficiently impaired as to necessitate ongoing support in order to have the individual perform adequately at school, at work, at home, or in the community. For the purposes of this Criterion B, the conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities; money management, recreation, self-management of behavior, and school and work task organization, among others.

Adaptive functioning is evaluated by using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family members; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical and mental health evaluations. In situations where standardized testing is difficult or impossible (e.g., sensory impairment, severe problem behavior), the individual may be diagnosed with unspecified intellectual development disorder. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting other medical conditions or mental disorders influence adaptive functioning.

 (3) Criterion C requires onset to occur during the developmental period, referring to recognition of intellectual and adaptive deficits being present in childhood or adolescence.

To meet this criterion, a comprehensive evaluation is required. A comprehensive evaluation includes an assessment of intellectual capacity and adaptive functioning; identification of genetic and non-genetic etiologies; evaluation for associated medical conditions (e.g., cerebral palsy, seizure disorder); and evaluation for co-occurring mental, emotional, and behavioral disorders. Components of the evaluation may include basic pre- and perinatal medical history, three-generational family pedigree, physical examination, genetic evaluation, and metabolic screening and neuroimaging assessment.

 B. Related Disability

 (1) Diagnosis of Related Disability requires all four (4) of the following conditions:

 (a) It is attributable to cerebral palsy, epilepsy, or any other condition other than mental illness found to be closely related (i.e., empirical medical evidence) to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with Intellectual Disability and requires treatment or services similar to those required for these persons; and

 (b) It is likely to continue indefinitely; and,

 (c) It results in substantial functional limitations in three (3) or more of the following areas of major life activity: Self-care, Understanding and Use of Language, Learning, Mobility, Self-direction, Capacity for Independent Living; and

 (d) The onset is before age 22 years.

 (2) Only scores derived from nationally normed standardized tests administered by qualified examiners shall be used in eligibility determinations. Substantial functional limitations shall be defined as the results from administration of a standardized, norm-referenced test yielding a score of two standard deviations or more below the mean.

 C. High-Risk Infant/At Risk Child

 (1) Diagnosis of High Risk Infant/At Risk Child requires that a child younger than 72 months of age meet one of the following:

 (a) Exhibits significant documented delays in three or more areas of development; or

 (b) Have a diagnosis, as recognized by the Individuals with Disabilities Education Act (IDEA) Part C program (BabyNet) Established Risk Condition List, confirmed by a medical professional and exhibit significant documented delays in two areas of development.

 D. Autism Spectrum Disorder

 (1) Diagnosis of ASD based on the (DSM-5) requires that the results from a battery of ASD specific assessments confirm:

 (a) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following three (3) criteria, currently or by history:

 (i) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

 (ii) Deficits in nonverbal communicative behaviors used for social interaction, ranging for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

 (iii) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

 (2) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

 (a) Stereo-typed or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

 (b) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

 (c) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

 (d) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

 (3) Symptoms are present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

 (4) Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

 (5) These disturbances are not better explained by Intellectual Disability (Intellectual Developmental Disorder) or global developmental delay. Intellectual Disability and Autism Spectrum Disorder frequently co-occur; to make comorbid diagnoses of Autism Spectrum Disorder and Intellectual Disability, social communication should be below that expected for general developmental level.

 E. Head and Spinal Cord Injury and Similar Disability

 (1) Diagnosis of Head or Spinal Cord Injury or Similar Disability requires:

 (a) Medical documentation and functional/adaptive assessments to substantiate that Traumatic Brain Injury, Spinal Cord Injury or Similar Disability occurred and produced ongoing substantial functional limitations. Including documentation of pre-existing/concurrent conditions, which impact functioning.

 (b) The person has a severe chronic limitation that:

 (i) Is attributed to a physical impairment, including head injury, spinal cord injury or both, or a similar disability, regardless of the age of onset, but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging;

 (ii) Is likely to continue indefinitely without intervention;

 (iii) Results in substantial functional limitation in at least two (2) of these life activities: Cognitive; Self-care; Communication; Learning; Mobility; Self-direction; Capacity for independent living; Economic self-sufficiency; and,

 (iv) Reflects the person’s need for a combination and sequence of special interdisciplinary or generic care or treatment or other services, which are of lifelong or extended duration.

88-520. Time Limitations.

 A. Department eligibility may be established in a time-limited fashion as determined by the circumstances of the individual applying for eligibility. When an individual seeking eligibility presents with circumstances which could likely improve and thereby impact the eligibility determination, DDSN will establish Department eligibility in a time-limited fashion. All information received by the Department will be reviewed for reliability and validity in the determination of eligibility.

**Fiscal Impact Statement**:

There will be no increased cost to the State or its political subdivisions.

**Statement of Rationale**:

These regulations are added to clarify and state Department procedures.