

DISABILITY CRITERIA

Regulations	301
I. Autism	302
II. Deaf-Blindness	302
III. Auditory Impairment	303
IV. Mental Retardation	304
V. Multiple Disabilities	305
VI. Physical Disability (Orthopedic Impairment)	305
VII. Other Health Impairment	306
VIII. Emotional Disturbance	306
IX. Learning Disability	307
Criteria	307
Multidisciplinary Team Members	309
Observation	310
X. Speech Impairment	310
XI. Traumatic Brain Injury	313
XII. Visual Impairment	311
XIII. Non-categorical Early Childhood	312

DISABILITY CRITERIA
(TAC §89.1040)

REGULATIONS:

34 CFR §300.7a

The term student with a disability means a student evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or a multiple disability, and who because of that impairment needs special education and related services. If it is determined through an appropriate evaluation, that a child has one of the disabilities, but only needs a related service and not special education, the child is not a child with a disability.

TEC §29.003

The Texas Education Agency developed specific eligibility criteria based on the general classifications with reference to contemporary diagnostic or evaluative terminology and techniques. A student is eligible to participate in a school district's special education program if the student:

- A. Is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in CISD without the provision of special services; or
- B. Is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in CISD without the provision of special services: physical disability, mental retardation, emotional disturbance, learning disability, autism, speech disability, or traumatic brain injury.

Age Ranges for Student Eligibility TAC §89.1035

Services will be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. A free appropriate public education will be available from birth to students with visual or auditory impairments in accordance with the Texas Education Code. Graduation with a regular high school diploma pursuant to TAC §89.1070 terminates a student's eligibility to receive services. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to TAC §89.1070, whichever comes first.

TAC §89.1040

To be eligible to receive special education services, a student must be a "child with a disability" as defined in the federal law, the Texas Education Code and Rules. The following pages specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or state law.

The determination of whether a student is eligible for special education and related services is made by the student's ARD/IEP committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with federal and state regulations. The evaluation will document the members of the multidisciplinary team. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to the following:

1. A licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability, or
2. A licensed or certified professional for a specific eligibility category defined in the following disability categories that follow:

I. AUTISM 34 CFR §300.7

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, which adversely affects a child's educational performance. Other characteristics often associated with autism are:

- engagement in repetitive activities and stereotyped movements,
- resistance to environmental change or change in daily routines, and
- unusual responses to sensory experiences.

The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance. A child who manifests the characteristics of “autism” after age 3 could be diagnosed as having “autism” if criteria above are satisfied. [300.7(2c)(ii)]

Students with pervasive developmental disorders are included under this category. The written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

II. DEAF-BLINDNESS 34 CFR §300.7

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and education problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

TAC §89.1040:

The multidisciplinary team that collects or reviews evaluation data includes, but is not limited to, the individuals described as follows:

- An otologist or licensed medical doctor and an audiologist to determine the presence of a hearing impairment.
- An ophthalmologist or optometrist, a professional certified in the education of students with visual impairments or a certified orientation and mobility instruction to determine the presence of a visual impairment
- A speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist, if appropriate.

A student who is deaf-blind is one who based on documented evaluations:

1. Meets the eligibility criteria for auditory impairment and visual impairment above,
2. Meets the eligibility criteria specified for Auditory Impairment and Visual Impairment. If the auditory impairment cannot be demonstrated conclusively, and if a speech/language therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, or
3. Has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance creating a need for special education (i.e. specially designed instruction) and related services. The combination causes severe communications needs, other developmental needs and needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness; or
4. Has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that without special education intervention, will adversely affect the student's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

III. AUDITORY IMPAIRMENT 34 CFR §300.7c.3

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

Hearing impairment means impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. 34 CFR §300.7c.5

A student with an auditory impairment is one who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include:

1. An otological examination performed by an otologist or a licensed medical doctor with documentation that an otologist is not reasonably available.
2. An audiological evaluation by a licensed audiologist shall also be conducted. This evaluation will include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.
3. The team will ascertain the student's language and communication needs, including oral (spoken) or aural (hearing) means, finger spelling, or sign language, opportunities for direct communication with peers and professional personnel in the child's language

and communication mode, academic level, and opportunities for direct instruction in the child's language and communication mode. TAC §89.1040

IV. MENTAL RETARDATION 34 CFR §300.7:

Mental retardation means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance creating a need for special education (i.e., specially designed instruction) and related services.

A student who has mental retardation is one who is functioning two or more standard deviations below the mean on individually administered scales of verbal ability and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior. TAC §89.1040

If the intelligence quotient (IQ) score is above 70, the student is functioning above the mental retardation range.

If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Stanford-Binet Fourth Edition, the Slosson Intelligence Test, the McCarthy Scales of Children's Abilities, or the Bayley Scales of Infant Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.

1. If the Wechsler Intelligence Scale Tests or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used, the student is not functioning above the mental retardation range.
2. If the IQ score on any of the tests is 68 or below, the student is not functioning above the mental retardation range.
3. If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported in non-standardized procedures are used to administer the test. Reporting ranges or categories of scores may be more appropriate.
4. If a student is very young and/or has a severe disability or a severe sensory impairment, a developmental scale may be administered instead of intelligence tests. The student's performance must be within the mental retardation range on the developmental scale.
5. Some measures of intellectual ability result in a composite or global score rather than individual verbal and performance scores. When an IQ test is used which results in a single score, it is up to the evaluation professional to ensure that both verbal and performance skills have been measured and documented. If they have, the single score will suffice as a measure of both verbal and performance ability.
6. An adaptive behavior scale must be administered and documented. Some examples of adaptive behavior scales include the Adaptive Behavior Inventory for

Children, Vineland Adaptive Behavior Scales, and Scales of Independent Behavior.

V. MULTIPLE DISABILITIES 34 CFR §300.7:

Multiple disability means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc. the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. This does not include deaf-blindness.

The multidisciplinary team that collects or reviews evaluation data must include the members of the team required to establish the two or more disabilities that are the basis for the multiple disabilities. TAC §89.1040

A student with multiple disabilities is one whom has a combination of disabilities included in this section and who meets all of the following conditions:

- A. The student's disability is expected to continue indefinitely, and
- B. The disabilities severely impair performance in two or more of the following areas:
 - 1. psychomotor skills,
 - 2. self-care skills,
 - 3. communication,
 - 4. social and emotional development, or
 - 5. cognition.

Students who have more than one of the disabilities but who do not meet the criteria for multiple disabilities shall not be classified or reported as having multiple disabilities.

VI. PHYSICAL DISABILITY 34 CFR §300.7c.8.

Orthopedic Impairment

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance creating a need for special education (i.e. specially designed instruction) and related services. The term includes impairments caused by congenital anomaly (e.g. clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc., and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures, etc.).

The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician. TAC §89.1040

VII.OTHER HEALTH IMPAIRMENT 34 CFR §300.7c.9.

Other health impairment means having limited strength, vitality, or alertness including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, such as: asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, rheumatic fever, nephritis, sickle cell anemia, hemophilia, lead poisoning, or leukemia; the condition must adversely affect the student's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician. TAC §89.1040

VIII.EMOTIONAL DISTURBANCE 34 CFR §300.7

- A. The student with an emotional disturbance is one who has been determined to meet criteria in federal regulations §300.7 and state law which follow. An emotional disturbance is a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
1. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
 2. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 3. inappropriate types of behavior or feelings under normal circumstances;
 4. a general pervasive mood of unhappiness or depression; or
 5. a tendency to develop physical symptoms or fears associated with personal or school problems.
- B. The term includes schizophrenia. It does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.
- C. Determine that the behaviors are not the result of social maladjustment.

The written report of full and individual evaluation from the evaluating professional should specify recommendations for behavioral supports and intervention. TAC§89.1040

The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.²² TAC §465.38(1)(C)

A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of the Texas Occupations Code. TX Occupations Code 501.503

IX. LEARNING DISABILITY 34 CFR §300.7c.10

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria defined in §300.7 above and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with federal and state criteria which is listed below. TAC §89.1040

A. Criteria for Determining the Existence of a Specific Learning Disability (34 CFR §300.541)

A multidisciplinary team may determine that a student has a specific learning disability if:

1. The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed below if provided with learning experiences appropriate for the child's age and ability levels: and
2. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:
 - a. oral expression,
 - b. listening comprehension,
 - c. written expression,
 - d. basic reading skill,
 - e. reading comprehension,
 - f. mathematics calculation, and/or
 - g. mathematics reasoning.
3. The team may not identify a student as having a learning disability if the severe discrepancy between ability and achievement is primarily the result of:
 - a. a visual, hearing, or motor impairment;
 - b. mental retardation;
 - c. emotional disturbance;
 - d. environmental, cultural or economic disadvantage. (*follow the process in place to rule out the effects of these factors*)
4. A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas in B. above is more than one standard deviation below the student's intellectual ability. (TAC §89.1040)

Consider the following:

- a. The discrepancy between the student's assessed intellectual ability and assessed educational achievement was computed either by comparing standardized test scores or reviewing other evaluation data. A severe discrepancy is determined by either: a comparison of standardized intelligence and achievement test scores (Method 1) or a review of other evaluation data (Method 2).
 - b. If the multidisciplinary team cannot establish the existence of a severe discrepancy because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria, the team must document in its written report the areas identified and the basis for determining that the student has a severe discrepancy. The report will include a degree of the discrepancy between intellectual ability and achievement.
 - c. The discrepancy is computed as follows:
 - 1) determine the full-scale IQ score;
 - 2) determine the standard score for each achievement subtest;
 - 3) determine whether both the IQ and achievement test have the same standard deviations; if the standard deviations are different, convert to a common metric using an appropriate statistical procedure (such as z scores);
 - 4) subtract each achievement subtest standard score from the full-scale IQ score. If the difference is more than one standard deviation (more than 15 or 16 points depending on the tests used), the discrepancy is severe. There must be a severe discrepancy in one or more of the areas listed in the item.
 - d. If the intelligence quotient (IQ) score is above 70, the student is functioning above the mental retardation range.
 - e. If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Stanford-Binet: Fourth Edition, the Slosson Intelligence Test, the McCarthy Scales of Children's Abilities, or the Bayley Scales of Infant Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.
 - f. If the Wechsler Intelligence Scale Tests or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used, the student is not functioning above the mental retardation range.
 - g. If the IQ score on any of the tests is 68 or below, the student is not functioning above the mental retardation range.
5. If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported in non-standardized procedures are used to administer the test. In these situations, Method 2 must be used to determine the existence of a severe discrepancy.

6. Document the team's determination of eligibility which must include a statement of: whether the child has a specific learning disability and the basis for making the determination.
 - the adverse affects on educational performance creating a need for special education (i.e. specially designed instruction) and related services;
 - the educationally relevant medical findings, if any;
 - whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
 - the determination of the team concerning the effects of environment, cultural, or economic disadvantage.
7. Method 2 TAC §89.1040 (c) 9(B): If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with D. above because the student could not be assessed through standardized procedures because of a lack of appropriate evaluation instruments, or that standardized test procedures did not reflect the severity of the discrepancy between expected and actual performance, the team must document in its written report. The written report must identify the areas under B. (above) of severe discrepancy and the basis for determining that the student has a severe discrepancy.
 - The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.
 - Address the degree of discrepancy between intellectual ability and achievement demonstrated by data obtained from each of the following sources:
 - a. standardized evaluation instruments
 - b. reports from parents
 - c. observation of classroom performance
 - d. student work samples
 - e. other items as needed.

B. Multidisciplinary Team Members (34 CFR §300.540)

The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in federal law, must be made by the student's parents and a team of qualified professionals which must include:

1. The child's general education teacher; or
 - If the child does not have a general education teacher; a general classroom teacher qualified to teach a child of his or her age; or
 - For a child of less than school age, an individual certified by the State Board of Educator Certification (SBEC) to teach a child of his or her age; and
2. At least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology, educational diagnostician or other appropriately certified or licensed practitioner with experience and training in the are of the disability, and
3. The parent. (Documentation of parent information from the referral, the evaluation report, and participation in the initial ARD/IEP committee meeting will demonstrate that the parent has been involved in the process.)

Each team member will certify in writing whether the report reflects his/her conclusions. If a team member disagrees with the written report, he/she must submit a separate statement presenting his/her conclusions.

C. Observation (34 CFR §300.542)

At least one team member other than the child's general teacher shall observe the child's academic performance in the general classroom. Relevant behaviors are noted during the observation according to their relationship to the student's academic functioning.

If the child is not in school, a team member shall observe the child in an environment appropriate for a child of that age.

IX. SPEECH IMPAIRMENT 34 CFR §300.7

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist. TAC §89.1040

** Persons with a Texas speech-language pathology assistant license may not conduct the evaluation necessary to establish the underlying disability, which would support a determination of eligibility under the speech impairment eligibility category.*

X. TRAUMATIC BRAIN INJURY 34 CFR §300.7

Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the student's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

The term does apply to open or closed head injuries resulting in impairments in one or more areas, such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician. TAC §89.1040

In addition an evaluation to determine educational need must be performed by CISD personnel qualified to assess those areas identified above that are suspected to adversely

affect the student's educational performance. Those personnel may include a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability.

XI. VISUAL IMPAIRMENT 34 CFR §300.7, TAC §89.1040

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affect a child's educational performance creating a need for special education (i.e. specially designed instruction) and related services. The term includes both partial sight and blindness.

- A. The visual loss should be stated in exact measures of visual field and corrected visual acuity at distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If the doctor is unable to report a prognosis, then that inability should be so noted. In meeting criteria in §300.7, a student with a visual impairment is one who:
1. Has been determined by a licensed ophthalmologist or optometrist to:
 - a. have no vision or to have a serious visual loss after correction, or
 - b. have a progressive medical condition that will result in no vision or a serious visual loss after correction.
 - c. have visual loss stated in exact measures of visual field and corrected visual acuity at distance and near in each eye. If exact measure could not be obtained, an eye specialist must so state and give best estimates.
 2. Has been determined by the following evaluations to have a need for special services:
 - a. functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor.
 - * The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision. Environments in which the student functions may include, the classroom, cafeteria, gym, hallway, school grounds, job site, and home – information from medical reports is not sufficient. There should be a variety of recommendations, including modifications to the environment, supplemental aids and equipment, adaptive technology, teaching strategies, physical education, vision related services, evaluation strategies, testing strategies, areas of needed instruction in compensatory skill areas, and reading and writing skills and needs.
 - * Recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation, and
 - b. a learning media assessment by a professional certified in the education of students with visual impairments which must include:
 - * recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student. (A LMA evaluates the variety of methods and materials the student uses to accomplish learning tasks.),
 - * includes recommendations concerning appropriate reading and writing media (including student's future needs for instruction in Braille or the use of Braille);

- * whether or not there is a need for ongoing evaluation in this area and if so, documentation that the evaluation occurred within a reasonable time frame.

B. A student who has a visual impairment is functionally blind if the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability. The report will document strengths and weaknesses in Braille skills. Pre-Braille and/or Braille readiness activities may be appropriate for: infants and preschoolers, students with multiple disabilities, students who are blind and in the primary grades, older students who are learning Braille due to trauma, deteriorating vision, and/or severely limited visual efficiency, students who will need instruction in Braille or use of Braille in the future.

XII. NON-CATEGORICAL EARLY CHILDHOOD (NCEC) 34 CFR §300.7

The term child with a disability for children aged 3 through 5 include a child who is experiencing developmental delays, as defined by our State and as measured by appropriate diagnostic instruments and procedures and who by reason thereof, needs special education and related services.

A child ages three through five who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as Non-categorical early childhood. TAC §89.1040

Document that the student is evaluated as having one of the following:

- autism, (attach written report)
- emotional disturbance, (attach written report)
- learning disability, (attach written report) or
- mental retardation. (attach written report)

In making a decision to identify a child as being eligible under the NCEC eligibility category, multidisciplinary teams and ARD/IEP committees could consider the following:

- the age of the child and/or
- the child's functioning level and/or
- evaluation data.

Use of NCEC is a local decision. The use of NCEC will be determined by the CISD at the policy level prior to implementation in the evaluation and ARD/IEP committee process.