

Section 3. - DISABILITY CRITERIA
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Section 3. - DISABILITY CRITERIA

REGULATIONS

§300.8 Child with a disability.

(a) General.

- (1) **Child with a disability** means a child evaluated in accordance with §§300.304 through 300.311 as having an **intellectual disability**, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child **is not a child with a disability** under this part.
(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged 3-9

(c) Definitions of disability terms

Each disability criteria requires addressing how the disability adversely affects a child's educational performance. A child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. However, the child must have one or more of the impairments identified in Federal law and a need for specially designed instruction and related services because of that impairment. A range of factors - both academic and nonacademic- can be considered in making this determination for each individual child. Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the team still could determine the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specially designed instruction, which could include; modifications to the general curriculum, specific instructional adaptations or supportive services, and/or specific behavioral interventions.

§300.306 Determination of eligibility (for more information see Section 2 – FIE)

(a) General. Upon completion of the administration of assessments and other evaluation measures-

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and
- (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

The group of "qualified professionals" includes those described below.

TAC §89.1040. Eligibility Criteria

- (a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
- (b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. 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 subsection (c) of this section. *(Subsection (c) Definitions of disability terms is located within each individual disability category.)*

TEC §29.003. Eligibility Criteria

- (a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.
- (b) A student is eligible to participate in the school district's special education program if the student:
 - (1) 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 public school without the provision of special services; or
 - (2) 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 public school without the provision of special services:
 - (A) physical disability;

- (B) intellectual disability;
- (C) emotional disturbance;
- (D) learning disability;
- (E) autism;
- (F) speech disability; or
- (G) traumatic brain injury.

TAC §89.1035. Age Ranges for Student Eligibility

- (a) Pursuant to state and federal law, services provided in accordance with this subchapter ~~must~~ shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.
- (b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a) - *(TEA statewide plan)*, and 30.081 *(below)*, a free, appropriate, public education must be available from birth to students with visual impairments or who are deaf or hard of hearing.

Teacher of the visually impaired and deaf or hard of hearing will work with parents and other agencies to address the requirements of evaluation and services for students who meet this criteria. Eligibility and IFSPs (if appropriate) and other required documentation will be maintained in a student's eligibility folder as is required for other students who meet the criteria for eligibility for special education.

TEC §30.081. Legislative Intent Concerning Regional Day Schools for the Deaf

The legislature, by this subchapter, intends to continue a process of providing on a statewide basis a suitable education to deaf or hard of hearing students who are under 21 years of age and assuring that those students have the opportunity to become independent citizens.

I. DEAF OR HARD OF HEARING

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (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.

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (5) Hearing impairment** means an 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.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (3) Deaf or Hard of Hearing.** A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available and an audiological evaluation performed by a licensed audiologist. The evaluation data must 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.

TGC 392.002(b-1) Texas Government Code § 392.002. Use of Person First Respectful Language Required.

Last Amended: 86th Leg., R.S., Ch. 233, Sec. 1, eff. September 1, 2019 Entered: Sept. 10, 2019

§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

- (1)** Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
- (2)** For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

II. AUTISM

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (1) (i) Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that 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.
- (ii) Autism** does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (1) Autism.** A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)
 - (1).** Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

34 CFR §300.8 Child With a Disability

(c) Definitions of Disability Terms. The terms used in this definition of a child with a disability are defined as follows:

- (1) (i) Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that 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.
- (ii) Autism** does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (2) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.**
- (3) A child with a pervasive developmental disorder is included under the eligibility criteria for autism.**

III. DEAF – BLINDNESS

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

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

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (2) Deaf-blindness.** A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (12) of this section:

(c)(3) *has an Auditory Impairment*

(c)(12) *has a Visual Impairment*

- (A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;
- (B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
- (C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or
- (D) 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.

Also available for resources is the TEA – Texas Deaf-Blind Project information and training site. <http://www.tsbvi.edu/deaf-blind-project>

Also available for resources is the TEA - Texas Deaf-Blind Project Information and training site. <http://tea.texas.gov/index2.aspx?id=2147498227>

IV. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (4) (i) Emotional disturbance** means 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:
 - (A)** An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B)** An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C)** Inappropriate types of behavior or feelings under normal circumstances.
 - (D)** A general pervasive mood of unhappiness or depression.
 - (E)** A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia.** The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (4) Emotional disturbance.** A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for behavioral supports and interventions.

Eligibility will be assessed by trained and experienced evaluation professionals on the multidisciplinary team described at the beginning of this Section 3. These professionals use a range of information to distinguish emotional disturbance from other disabilities by close examination of comprehensive assessment information and the student's history and presentation of symptoms.

Eligibility Criteria 89.1040(c)

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c) (4)(i) of this section.

Emotional disturbance means 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:

- A. An inability to learn that cannot be explained by intellectual, sensory, or health factors.*
- B. An inability to build and maintain satisfactory interpersonal relationships with peers and teachers.*
- C. Inappropriate types of behavior or feelings under normal circumstances*
- D. A general pervasive mood of unhappiness or depression.*
- E. A tendency to develop physical symptoms or fears associated with personal or school problems.*

A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, 300.8 (c) (4). The written report of the evaluation shall include specific recommendations for behavioral supports and interventions.

V. INTELLECTUAL DISABILITY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (6) **Intellectual Disability** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability: was formerly termed "mental retardation."

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (5) Intellectual Disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:
- (A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the **overall test score** is at least two standard deviations below the mean, **when taking into consideration the standard error of measurement** of the test; and
- (B) concurrently exhibits **deficits in at least two** of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

The following local guidelines apply:

1. *An Intellectual Disability is federally defined as significantly subaverage general intellectual functioning, **existing concurrently** with deficits in adaptive behavior, and manifested during the developmental period, generally defined as before 18, that adversely affects a child's educational performance.*
 - a. *Subaverage general intellectual functioning is described as the overall test score that is at least two standard deviations below the mean (i.e 70), when taking into consideration the standard error of measurement of the test. The standard error of measurement is an estimate of the amount of error in a test score.*
 - b. *Evaluation instruments provide information on the standard error of measurement (SEM). A SEM is typically 3-4 points but varies depending on the test instrument utilized and age of student. The evaluation professional must consult the appropriate test manual to determine the SEM for the student being assessed. The SEM should not be confused with the confidence interval.*
 - c. *Adaptive Behavior includes the age-appropriate behaviors necessary for people to live independently and to function safely and appropriately in daily life. Adaptive behaviors include real life skills such as grooming, dressing, safety, safe food handling, school rules, ability to work, money management, cleaning, making friends, social skills, and personal responsibility. When formally assessing Adaptive Behaviors, the following areas, as defined by 34 CFR §300.8(c)(6) and TAC §89.1040(c)(5), are considered: Communication, Self-care, Home Living, Social and Interpersonal Skills, Use of Community Resources, Self-direction, Functional academic skills, Work, Leisure, Health, or Safety. A student who meets the criteria for the educational classification of Intellectual Disability must demonstrate formally assessed deficits in two or more of these adaptive behavior areas, in addition to formally-assessed subaverage general intellectual functioning.*

VI. MULTIPLE DISABILITIES

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (7) Multiple disabilities** means concomitant impairments (such as intellectual disability -blindness, intellectual disability - orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

- (i) the student's disability is expected to continue indefinitely; and
- (ii) the disabilities severely impair performance in two or more of the following areas:
 - (I) psychomotor skills;
 - (II) self-care skills;
 - (III) communication;
 - (IV) social and emotional development; or
 - (V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

Assessment Guidelines for Multiple Disabilities

A diagnosis of multiple disabilities occurs when a child has been determined to have a combination of disabilities (such as intellectual disability and blindness, intellectual disability and orthopedic impairment, etc.). The disabilities are expected to continue indefinitely and must severely impair two or more of the following areas:

- *Psychomotor skills;*
- *Self-care skills;*
- *Communication;*
- *Social and emotional development; or*
- *Cognition*

The term Multiple Disabilities does not include deaf-blindness.

VII. NONCATEGORICAL EARLY CHILDHOOD (NCEC) – Developmental Delays

§300.8 Child with a disability.

- (b) Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), subject to the conditions described in §300.111(b), include a child--
- (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and**
 - (2) Who, by reason thereof, needs special education and related services.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (13) Noncategorical.** A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

The use of NCEC has been determined by the Tyler ISD at the policy level prior to implementation in the evaluation and ARD/IEP committee process to be a distinction Tyler ISD allows.

Documentation must be provided that demonstrates that the student is evaluated as having one of the following:

- autism,*
- emotional disturbance,*
- learning disability, or an*
- intellectual disability .*

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*
- all available formal and informal evaluation data.*

VIII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (8) Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, 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).

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (7) Orthopedic impairment.** A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). 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.

Assessment Guidelines for Orthopedic Impairment

A student with an orthopedic impairment must be diagnosed by a licensed medical doctor and the impairment must adversely affect a child's educational performance. This includes impairments caused by a congenital anomaly, impairments caused by disease, and impairments from other causes such as; cerebral palsy, amputations, and fractures or burns that cause contractures.

The multidisciplinary assessment team will work closely with the physician and the parent to complete the FIE and to obtain an eligibility document signed by the physician. A "Release of Confidential Information" form will be obtained from the parent and the eligibility form will be sent directly to the physician by the district. If the child does not have a licensed physician, the district assessment professional will follow the district procedures for obtaining contract services.

IX. OTHER HEALTH IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (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--
- (i)** Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; and
 - (ii)** Adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (8) Other health impairment.** A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). 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.

Assessment Guidelines for Other Health Impairment

The disability of other health impairment is defined as having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia or Tourette's Disorder.

The multidisciplinary assessment team must include a licensed medical doctor. The district assessment professional will work closely with the parent to obtain an eligibility document signed by the physician. A "Release of Confidential Information" form will be obtained from the parent and the eligibility form will be sent directly to the physician by the district. If the child does not have a licensed physician, the district assessment professional will follow the district procedures for obtaining contract services.

X. SPECIFIC LEARNING DISABILITY: Additional Procedures for Identifying Children With Specific Learning Disabilities

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(10) Specific learning disability.

- (i) General. 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 the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309 criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the State-

- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).
- (2) Must permit the use of a process based on the child's response to evidence-based intervention; and
- (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).

May view sample RtI Interventions <http://www.region10.org/response-to-intervention-rti/index/>

View "RTI and Learning Disability Eligibility" [http://tea.texas.gov/WorkArea/linkit.aspx?](http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769817951&libID=25769818054)

[LinkIdentifier=id&ItemID=25769817951&libID=25769818054](http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769817951&libID=25769818054)

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

- (a) (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-

- (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation.
 - (viii) Mathematics problem solving.
- (2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific research-based intervention; or
- (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and

- (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
 - (i) A visual, hearing, or motor disability;
 - (ii) Intellectual disability;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors; or
 - (v) Environmental or economic disadvantage.
 - (vi) Limited English proficiency.
- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--
 - (1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(1)(1)--
 - (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
 - (2) Whenever a child is referred for an evaluation.

§300.310 Observation.

- (a) The public agency must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to--
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

The district will attempt to schedule an observation of the child at the day care where the student attends. If this is not feasible, the district will use an age appropriate play room on a district campus.

Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of child before the child is referred for an evaluation. Parental consent is required for observations conducted after the student is suspected of having a disability and is referred for an evaluation. The district may choose to use either type of observation as available and appropriate.

§300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--
 - (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
 - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - (4) The educationally relevant medical findings, if any;
 - (5) Whether --
 - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and
 - (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - (7) If the child has participated in a process that assesses the child's response to evidence-based intervention--
 - (i) The instructional strategies used and the student-centered data collected;
 - (ii) The documentation that the child's parents were notified about--
 - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.**
(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(9) Learning disability.

- (A) 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 the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic disadvantage.
- (B) A student with a specific learning disability is one who:
- (i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;
 - (ii) When provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), norm-or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or meet state-approved grade-level standards in one or more of the following areas:
 - (I) oral expression;
 - (II) listening comprehension;
 - (III) written expression;
 - (IV) basic reading skill;
 - (V) reading fluency skills;
 - (VI) reading comprehension;
 - (VII) mathematics calculation; or
 - (VIII) mathematics problem solving;
 - (iii) meets one of the following criteria
 - (I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)(VIII) of this subparagraph when using a process based on the student's response to scientific research-based intervention; or
 - (II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessment, consistent with 34 CFR §300.304 and §300.305; and
 - (iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:
 - (I) a visual, hearing, or motor disability;
 - (II) an intellectual disability;
 - (III) emotional disturbance;
 - (IV) cultural factors;
 - (V) environmental or economic disadvantage; or
 - (VI) limited English proficiency.
- (C) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR §§300.307-300.311, and in order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:
- (i) data that demonstrates the student was provided appropriate instruction in reading(as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
- (D) The school district must ensure that the student is observed in the student's learning environment, including the regular classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the admission, review, and dismissal (ARD) committee must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) of this section conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) of this section must observe the student in an environment appropriate for a student of that age.

- (E) The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in 34 CFR §300.8 must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following;
- (i) the student's regular teacher;
 - (ii) if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or
 - (iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

The following local guidelines apply:

Due to the changes in criteria for determining a child has a specific learning disability, special education referrals (reviews of educational need) MUST be discussed with local campus administration. Determine the degree of training/support necessary for a thorough understanding of the federal and state requirements prior to referral for special education evaluation:

Referrals: Initial referrals must have gone through a rigorous "Response to Intervention or Multi-Tiered Systems of Support" process prior to the referral for special education evaluation and all documentation must support the RtI/MTSS process implemented.

300.8 General. 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 the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

** Our local district guidelines are to review data gathered by the Student Support Team, however, a determination of a learning disability will not be through the use of intervention data alone. Additional evaluation data coupled with formal assessments will also be used.*

Re-evaluations: The committee reviewing existing evaluation data in determining the need for additional evaluations is encouraged to consider a comprehensive reevaluation of those students who qualified solely upon the use of the previous Cross-Battery model (patterns of strengths and weakness). The assessment tools used within the evaluations could be, but not limited to: WJIV- DAS-II- KABC-II- Nespsy-II

Tyler ISD will provide a specific checklist/form which will incorporate all of the Federal and State data elements required for the comprehensive review of each student in the determination of specific learning disability. This will assist the Student Support Team to document appropriately prior to referral for evaluation of a student suspected of having a learning disability.

Additional TEA Guidance:

https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/

To review the TEA Dyslexia Handbook, click this link. <https://tea.texas.gov/academics/dyslexia/>
(to see the Dyslexia rule in its entirety go to Section 1. Intervention/Referral).

XI. SPEECH OR LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (11) 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.

§300.34 Related services.

(15) Speech-language pathology services includes--

- (i) Identification of children with speech or language impairments;**
- (ii) Diagnosis and appraisal of specific speech or language impairments;**
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;**
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and**
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (10) Speech impairment.** A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). 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.

“ Whether a speech and language impairment adversely affects a child’s educational performance must be determined on a case-by-case basis, depending on the unique needs of a particular child and not based only on discrepancies in age or grade performance in academic subject areas.” OSEP Letter to Clark (3-8-2007)

Refer to the Tyler ISD Speech and Language Therapy handbook for more specific information.

Or refer to:

<http://www.esc4.net/users/0199/TSHA%20Eligibility%20docs/SI%20Language%20Eligibility%20Guidelines%20Manual.pdf>

XII. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (12) 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 a child's educational performance. Traumatic brain injury applies 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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (11) Traumatic brain injury.** A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). 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, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

The Tyler ISD maintains a list of the most current appropriate assessment instruments used to address cognition, language, memory, attention, reasoning, abstract thinking, judgment, sensory, perceptual, and motor abilities, psychosocial behavior, physical function, information processing and speech. The list is in the office of the special education coordinator of assessment and accountability.

Additional information:

http://tea.texas.gov/Curriculum_and_Instructional_Programs/Special_Education/Programs_and_Services/State_Guidance/Traumatic_Brain_Injury/

Additional Information: <http://tea.texas.gov/academics/special-student-population/special-education/programs-and-services/state-guidance/traumatic-brain-injury>

XIII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(12) Visual impairment.

- (A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a 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 exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:
- (i) has been determined by a licensed ophthalmologist or optometrist:
 - (I) to have no vision or to have a serious visual loss after correction; or
 - (II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and
 - (ii) has been determined by the following evaluations to have a need for special services:
 - (I) a functional vision evaluation by a certified teacher 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 and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and
 - (II) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.
- (B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, 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.
- (C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.
- (D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.
- (E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.

The TEA provides guidance for Services to Students who are Blind or Visually Impaired. The Education Service Center will be contacted if further assistance is needed for training, assessment or other services.

