

**POLICY GROUP 6 - SPECIAL EDUCATION
ELIGIBILITY CRITERIA**

Sec. 1. ELIGIBILITY CRITERIA

A student that is at least three years old but not more than 21 years of age may be eligible for special education services if the student is found to have a disability in one of the following categories, and, by reason of the disability, has need for special education and related services:

1. Autism (AU)
2. Deaf-Blindness
3. Deaf or Hard of Hearing (DHH)
4. Emotional Disability (ED)
5. Intellectual Disability (ID)
6. Multiple Disabilities (MD)
7. Orthopedic Impairment (OI)
8. Other Health Impairment (OHI)
9. Specific Learning Disability (SLD)
10. Speech Impairment (SI)
11. Traumatic Brain Injury (TBI)
12. Visual Impairment (VI)
13. Developmental Delay (DD)
14. Noncategorical (NC)

34 CFR 300.306(a)(5), 300.8; 19 TAC 89.1040(a).

Additionally, students with visual impairments or who are deaf or hard of hearing shall be eligible to participate in International Leadership of Texas’s special education program from birth through age 21. *Tex. Educ. Code § 29.003.*

Sec. 2. DETERMINING ELIGIBILITY

Following the completion of the full and individual initial evaluation and any reevaluation, the student’s admission, review, and dismissal (“ARD”) committee must make an eligibility determination. The ARD committee members reviewing evaluations and data to determine eligibility must include a licensed specialist in school psychology (“LSSP”)/School Psychologist and/or an educational diagnostician, and other appropriately certified or licensed practitioner with experience and training in the area of disability. Additional professional may be required as defined under each eligibility category. *19 TAC 89.1040(b).*

When interpreting evaluation data for the purpose of determining if a student is a student with a disability under 34 CFR 300.8 and the educational needs of the student, International Leadership of Texas shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s

physical condition, social or cultural background, and adaptive behavior; and

2. Ensure that information obtained from all of these sources is documented and carefully considered.

If a student is determined to be a student with a disability and needs special education and related services, the ARD committee must develop an individualized education program (“IEP”) for the student in accordance with 34 CFR 300.320 through 300.324 and corresponding state law. *34 CFR 300.306.*

A student must not be determined to be a child with a disability if:

1. The determinant factor for that determination is:
 - a. lack of appropriate instruction in reading, including in the essential components of reading instruction;
 - b. lack of appropriate instruction in math; or
 - c. limited English proficiency/status as an emergent bilingual student; or
2. The child does not otherwise meet the eligibility criteria and 34 CFR 300.8(a).

34 CFR 300.306(b).

Sec. 3. AUTISM (AU)

A student with autism is one has been determined to meet the criteria under 34 CFR 300.8(c)(1), which states that autism means a developmental disability significantly affecting a student’s verbal and nonverbal communication and social interactions, generally evident before age three, that adversely affects a student’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. A student does not meet the eligibility category for autism if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance, as defined below and in 34 CFR 300.8(c)(4). A student who manifests the characteristics of autism after age three could be identified as having autism if he or she meets the definition of autism. *34 CFR 300.8(c)(1); 19 TAC 89.1040(c)(1).*

A determination of whether a student meets the criteria for autism as stated in 34 CFR 300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. In addition, the absence of “other characteristics” often associated with autism listed in the IDEA definition does not exclude a student from meeting eligibility as a student with autism. *19 TAC 89.1040(c)(1).*

The written evaluation determining eligibility under autism must include specific

recommendations for communication, social interaction, and positive behavioral interventions and strategies. *19 TAC 89.1040(c)(1)*.

Sec. 4. DEAF-BLINDNESS

A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness under 34 CFR 300.8(c)(2), which states that deaf-blindness means that the student has 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 students with deafness or students with blindness. *34 CFR 300.8(c)(2)*.

In meeting the criteria under 34 CFR 300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified for deaf or hard of hearing and visual impairment below:

1. meets the eligibility criteria for student who is deaf or hard of hearing specified in subsection 19 TAC 89.1040(c)(3) and visual impairment specified in subsection 19 TAC 89.1040 (c)(12);
2. 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;
3. 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
4. has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.

19 TAC 89.1040(c)(2).

Sec. 5. DEAF OR HARD OF HEARING (DHH)

A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness under 34 CFR 300.8(c)(3), which states that deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance; or for students who have a hearing impairment as defined in 34 CFR 300.8(c)(5), which states that hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness. *34 CFR 300.8(c)(3),(5); 19 TAC 89.1040(c)(3)*.

The student's evaluation data reviewed by the multidisciplinary team in connection with the

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determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. 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 hearing assistive technology. *19 TAC 89.1040(c)(3)*.

Sec. 6. EMOTIONAL DISABILITY (ED)

A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance under 34 CFR 300.8(c)(4), which states that 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 student'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.

Emotional disability includes schizophrenia, but does not include students who are socially maladjusted, unless it is determined that they also have an emotional disability under the criteria above. A written evaluation for emotional disability must include specific recommendations for positive behavioral supports and interventions.

The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

34 CFR 300.8(c)(4); 19 TAC 89.1040(c)(4).

Sec. 7. INTELLECTUAL DISABILITY (ID)

A student with an intellectual disability is one who has been determined to meet the criteria for intellectual disability under 34 CFR 300.8(c)(6), which states that 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 student's educational performance.

In meeting the criteria stated in 34 CFR 300.8(c)(6), a student with an intellectual disability is one who:

1. has been determined to have significantly subaverage 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
2. 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.

34 CFR 300.8(c)(6); 19 TAC 89.1040(c)(5).

Sec. 8. MULTIPLE DISABILITY (MD)

A student with multiple disabilities is one who has been determined to meet the criteria for multiple disability under 34 CFR 300.8(c)(7), which states that multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), 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. *34 CFR 300.8(c)(7).*

In meeting the criteria of 34 CFR 300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in state law and who meets all of the following conditions:

1. the student's disabilities are expected to continue indefinitely; and
2. the disabilities severely impair performance in two or more of the following areas:
 - a. psychomotor skills;
 - b. self-care skills;
 - c. communication;
 - d. social and emotional development; or
 - e. cognition.

A student who has more than one of the disabilities defined under the IDEA, but who does not meet the criteria above must not be classified or reported as having multiple disabilities.

19 TAC 89.1040(c)(6).

Sec. 9. ORTHOPEDIC IMPAIRMENT (OI)

A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment under 34 CFR 300.8(c)(8), which states that orthopedic impairment means

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a severe orthopedic impairment that adversely affects a student's educational performance, including impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician. *34 CFR 300.8(c)(8); 19 TAC 89.1040(c)(7).*

Sec. 10. OTHER HEALTH IMPAIRMENT (OHI)

A student with other health impairment is one who has been determined to meet the criteria for other health impairment under 34 CFR 300.8(c)(9), which states that 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 or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder; and adversely affects a student's educational performance. *34 CFR 300.8(c)(9)(i).*

A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157. *19 TAC 89.1040(c)(8).*

Sec. 11. SPECIFIC LEARNING DISABILITY (SLD)

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. Specific learning disability includes conditions such as 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 disability; or environmental, cultural, or economic disadvantage. *34 CFR 300.8(c)(10); 19 TAC 89.1040(c)(9).*

A student with a specific learning disability is one who:

1. has been determined through a variety of assessment tools and strategies to meet the criteria of 34 CFR 300.8(c)(10) in accordance with the provisions in 34 CFR 300.307-300.311;
2. 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), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and

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statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

- a. oral expression;
 - b. listening comprehension;
 - c. written expression, which may include dysgraphia;
 - d. basic reading skill, which may include dyslexia;
 - e. reading fluency skills, which may include dyslexia;
 - f. reading comprehension;
 - g. mathematics calculation; or
 - h. mathematics problem solving; and
3. meets one of the following criteria:
- a. does not make sufficient progress or meet age or state-approved grade-level standards in one or more of the areas identified in (2) above when using a process based on the student's response to scientific, research-based intervention; or
 - b. 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 special learning disability, using appropriate assessments, consistent with 34 CFR 300.304 and 300.305.

The student must also not meet the requirements of (2) and (3) above primarily as a result of a visual, hearing, or motor disability; an intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; or being emergent bilingual. In addition, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a specific learning disability. *19 TAC 89.1040(c)(9)*.

International Leadership of Texas shall ensure that the underachievement by a student suspected of having a specific learning disability is not due to a lack of appropriate instruction in reading or mathematics by considering data that demonstrates the student was provided appropriate instruction in reading (as described in 20 USC 6368(3)) and/or mathematics within general education settings delivered by qualified personnel. In addition, International Leadership of Texas shall also consider 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 assessment may include, but is not limited to, RTI progress 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. *19 TAC 89.1040(c)(9)(D)*.

International Leadership of Texas must ensure that the student is observed in the student's learning environment, including the general education 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 multidisciplinary team must decide to either use information

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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 below conduct an observation of the student's academic performance in the general education 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, the student must be observed in an environment appropriate for a student of that age. *19 TAC 89.1040(c)(9)(E)*.

The determination of whether a student suspected of having a specific learning disability is a child 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/school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

1. the student's general education teacher;
2. if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or
3. 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.

19 TAC 89.1040(c)(9)(F).

When a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate, must be used in a student's evaluation report. For formal eligibility purposes under special education, the category of specific learning disability will be reported by International Leadership of Texas. Additional requirements in addition to the above for students evaluated for SLD as a student suspected of having dyslexia, dysgraphia, or other dyslexia related disorders, *see International Leadership of Texas Board Policy PG.-6.13. 19 TAC 89.1040(c)(9)(G)*.

Sec. 12. SPEECH IMPAIRMENT (SI)

A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment under 34 CFR 300.8(c)(11), which states that speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance. 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. *34 CFR 300.8(c)(11); 19 TAC 89.1040(c)(10)*.

Sec. 13. TRAUMATIC BRAIN INJURY

A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury under 34 CFR 300.8(c)(12), which states that a 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 student'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. *34 CFR 300.8(c)(12); 19 TAC 89.1040(c)(11).*

A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician. *19 TAC 89.1040(c)(11).*

Sec. 14. VISUAL IMPAIRMENT

A student with a visual impairment is one who has been determined to meet the criteria for visual impairment under 34 CFR 300.8(c)(13), which states that visual impairment means an impairment in vision that, even with correction, adversely affects the student's educational performance, and includes both partial sight and blindness. *34 CFR 300.8(c)(13); 19 TAC 89.1040(c)(12)*

Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR 300.39(b)(3), and must include:

1. a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has no vision or visual loss after correction; or a progressive medical condition that will result in no vision or a visual loss after correction;
2. a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. 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;
3. 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; and

4. as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation 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.

A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in evaluating data used to make the determination of the student's need for specially designed instruction. *19 TAC 89.1040(c)(12)*.

Sec. 15. DEVELOPMENTAL DELAY

A student with a developmental delay is one who is between the ages of 3-9 who is evaluated by a multidisciplinary team for at least one disability category listed in Sections 3-14 above and whose evaluation data indicates a need for special education and related services and shows evidence of, but do not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD Committee may determine that data supports identification of developmental delay in one or more of the following areas:

1. Physical development;
2. Cognitive development;
3. Communication development;
4. Social or emotional development; or
5. Adaptive development.

To use this eligibility category, multiple sources of data must converge to indicate the student has a developmental delay as described by one of the following:

1. performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed above, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;
2. performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed above, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or

3. a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed above.

International Leadership of Texas is not required to use the eligibility category of developmental delay. However, if International Leadership of Texas chooses to use this eligibility category, it must use the definition and criteria described in 19 TAC 89.1040(c)(13) as described above. *19 TAC 89.1040(c)(13) and (d).*

Sec. 16. 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. *19 TAC 89.1040(c)(14).*

The eligibility category of noncategorical must no longer be used by International Leadership of Texas beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified as noncategorical may maintain this eligibility category, if determined appropriate by the student's ARD Committee, until the required re-evaluation before the age of 6. *19 TAC 89.1040(d)(3).*