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 and related 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
2. Deaf-blindness
3. Deaf or hard of hearing
4. Emotional disability
5. Intellectual disability
6. Multiple disabilities
7. Orthopedic impairment
8. Other health impairment
9. Specific learning disability
10. Speech impairment
11. Traumatic brain injury
12. Visual impairment
13. Noncategorical/developmental delay

34 C.F.R. §§ 300.306(a)(5), 300.8; 19 Tex. Admin. Code § 89.1040(a).

Additionally, a student is eligible to participate in Texas Leadership Public Schools (TLPS)'s special education program if the student 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.

Tex. Educ. Code § 29.003.

Sec. 2. DETERMINING ELIGIBILITY

Following the completion of the full and individual initial evaluation, the student's admission, review, and dismissal ("ARD") committee must make an eligibility determination. The ARD committee members reviewing evaluations and date to determine eligibility must include a licensed specialist in school psychology ("LSSP"), an educational diagnostician, or other appropriately certified or licensed practitioner with experience, and a licensed or certified professional for a specific eligibility category defined below.

19 Tex. Admin. Code § 89.1040(b).

When interpreting evaluation data for the purpose of determining if a student is a student with a disability under 34 C.F.R. § 300.8 and the educational needs of the student, TLPS 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 C.F.R. § 300.320 through § 300.324 and corresponding state law. *34 C.F.R. § 300.306.*

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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 C.F.R. § 300.8(a).

34 C.F.R. § 300.306(b).

For children aged three through nine, or any subset of that age range, may be a child with a disability if the student is:

1. 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. needs special education and related services.

34 C.F.R. 300.8(b).

Sec. 3. AUTISM

A student with autism is one that meets the criteria outlined in 34 C.F.R. § 300.8(c)(1).

19 Tex. Admin. Code § 89.1040(c)(1).

Under IDEA, autism is a developmental disability significantly affecting a student's verbal and nonverbal communication and social interactions that adversely affect a student's educational performance. Engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences are often associated with autism. Characteristics of autism are generally evident before age three. A child who manifests the characteristics of autism after age three could be identified as having autism if the student meets the above criteria, also defined in 34 C.F.R. § 040(c)(1).

34 C.F.R. § 300.8(c)(1)(i).

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 above and in 34 C.F.R. § 300.8(c)(4).

34 C.F.R. § 300.8(c)(1).

The determination of whether a student meets the criteria for autism as stated in 34 C.F.R. § 300.8(c)(1) cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 C.F.R. § 300.8(c)(1) does not exclude a student from meeting eligibility as a student with autism.

The written evaluation determining eligibility under autism must include specific recommendations for communication, social interaction, and behavior interventions and strategies.

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Sec. 4. DEAF-BLINDNESS

A student is eligible under deaf-blindness if identified with 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 C.F.R. § 300.8(c)(2).

In addition to the Individuals with Disabilities Education Act (IDEA) requirements, a student may be eligible if the student is found to:

1. meet the eligibility criteria for auditory impairment specified in subsection 19 Texas Administrative Code § 89.1040(c)(3) and visual impairment specified in subsection 19 Texas Administrative Code § 89.1040 (c)(12);
2. meet 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. have 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; or
4. have 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 Tex. Admin. Code § 89.1040(c)(2).

Sec. 5. 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 C.F.R. § 300.8(c)(3), or for students who have a hearing impairment, as stated in 34 C.F.R. § 300.8(c)(5).

The evaluation of an audiological evaluation by a licensed audiologist and a communication assessment must be reviewed by the multidisciplinary team. The evaluation must include a description of the implications of hearing loss for the student's hearing in a variety of circumstances, with or without recommended hearing assistive technology.

A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 C.F.R. § 303.21.

34 C.F.R. § 300.8(c)(3),(5); 19 Tex. Admin. Code § 89.1040(c)(3).

Sec. 6. EMOTIONAL DISABILITY

A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance as stated in 34 C.F.R. § 300.8(c)(4). The term emotional disability is synonymous with the term

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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.

A student may be eligible for services as a student with an emotional disability if they exhibit 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.

Emotional disability includes conditions such as schizophrenia, but it does not include children who are socially maladjusted, unless the behaviors are also determined to be a result of an underlying emotional disability. A written evaluation must include specific recommendations for positive behavioral support and interventions.

34 C.F.R. § 300.8(c)(4); 19 Tex. Admin. Code § 89.1040(c)(4).

Sec. 7. INTELLECTUAL DISABILITY

A student qualifies as a student with an intellectual disability if the student has significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

34 C.F.R. § 300.8(c)(6); 19 Tex. Admin. Code § 89.1040(c)(5).

Sec. 8. MULTIPLE DISABILITY

A student may qualify as a student with multiple disabilities if they are identified to have a combination of impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), and the combination 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 (as defined by federal law).

34 C.F.R. § 300.8(c)(7).

The impairments must be: (a) expected to continue indefinitely; and (b) severely limit performance in two or more of the following:

1. psychomotor skills;
2. self-care skills;
3. communication;
4. social and emotional development, or
5. cognition.

A student who qualifies for more than one impairment but does not severely impair performance in one of the above categories, or is not expected to continue indefinitely, does not qualify as a student with multiple disabilities. *19 Tex. Admin. Code § 89.1040(c)(6).*

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Sec. 9. ORTHOPEDIC IMPAIRMENT

A severe orthopedic impairment, 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). If the impairment adversely impacts a student's educational performance, the student is eligible under this category.

34 C.F.R. § 300.8(c)(8); 19 Tex. Admin. Code § 89.1040(c)(7).

A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.

19 Tex. Admin. Code § 89.1040(c)(7).

Sec. 10. OTHER HEALTH IMPAIRMENT ("OHI")

A student with OHI is one who has been determined to meet the criteria for OHI due to chronic or acute health problems.

19 Tex. Admin. Code § 89.1040(c)(8).

OHI means having limited strength, vitality, or alertness that adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9)(i).

The term "health problems" includes:

1. Asthma;
2. Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder;
3. Diabetes;
4. Epilepsy;
5. Heart Condition;
6. Hemophilia;
7. Lead poisoning;
8. Leukemia;
9. Nephritis;
10. Rheumatic Fever;
11. Sickle Cell Anemia; or
12. Tourette Syndrome.

19 Tex. Admin. Code § 89.1040(c)(8); 34 C.F.R. § 300.(c)(9)(i).

"Limited alertness" includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

34 C.F.R. § 300.8(c)(9).

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, physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

19 Tex. Admin. Code § 89.1040(c)(8).

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Sec. 11. SPECIFIC LEARNING DISABILITY

Specific learning disability (or "SLD") 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.

SLD includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

A 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 C.F.R. § 300.8(c)(10); 19 Tex. Admin. Code § 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, in accordance with 34 C.F.R. §§ 300.307-300.111, to have 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;

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 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. mathematical calculations;
    b. oral expression;
    c. listening comprehension;
    d. written expression, which may include dysgraphia;
    e. basic reading skill, which may include dyslexia;
    f. reading fluency skills, which may include dyslexia;
    g. reading comprehension;
    h. mathematics calculation; or
    i. mathematics problem solving;

3. meets one of the following criteria:
    a. does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in subparagraph 2(a)-(i) 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 specific learning disability, using appropriate assessments, consistent with 34 C.F.R. §§ 300.304 and 300.305; and

4. does not meet the findings set forth in subparagraphs 1-3 primarily as the result of:
    a. a visual, hearing, or motor disability;
    b. an intellectual disability;

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c. emotional disability;
d. cultural factors;
e. environmental or economic disadvantage; or
f. being emergent bilingual.

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 significant learning disability.

TLPS's evaluation must also show that the student:

1. does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 United States Code §7801(37)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or
2. the student 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 assessments, consistent with 34 C.F.R. §§ 300.304 and 300.305.

TLPS must 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. To do so, TLPS shall consider:

1. data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code § 6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
2. 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, intervention progress monitoring results and reports, 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.

TLPS shall also 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 shall decide to either:

1. 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
2. have at least one of the members described in 19 Texas Administrative Code § 89.1040(b) or §89.1040(c)(9)(F) conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and TLPS has obtained parental consent consistent with 34 C.F.R. §300.300(a).

In the case of a student of less than school age or out of school, a member described in 19 Texas Administrative Code § 89.1040(b) or § 89.1040(c)(9)(F) must observe the student in an environment appropriate for a student of that age.

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The determination of whether a student suspected of having a specific learning disability is a child with a disability as defined in 34 C.F.R. § 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 Tex. Admin. Code § 89.1040(c)(9).

For more information concerning SLD as it relates to dyslexia and related disorders, see PG.-2.27.

Sec. 12. SPEECH IMPAIRMENT

A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. The evaluation team shall include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

34 C.F.R. § 300.8(c)(11); 19 Tex. Admin. Code § 89.1040(c)(10).

Sec. 13. TRAUMATIC BRAIN INJURY

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.

A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.

34 C.F.R. § 300.8(c)(12); 19 Tex. Admin. Code § 89.1040(c)(11).

Sec. 14. VISUAL IMPAIRMENT

A child with a visual impairment is one who has been determined to meet the criteria for visual impairment.

The term "visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects the student's educational performance, and includes both partial sight and blindness.

A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a

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physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 C.F.R. § 303.21.

34 C.F.R. § 300.8(c)(13); 19 Tex. Admin. Code § 89.1040(c)(12).

Evaluation, eligibility, and ARD committee requirements shall adhere to federal and state law.

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 accordance with 34 C.F.R. § 300.122 and §§ 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

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 C.F.R. § 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 state and provide the best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:
    a. no vision or visual loss after correction; or
    b. 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.

34 C.F.R. § 300.8(c)(13); Tex. Educ. Code § 30.002(c-1); 19 Tex. Admin. Code § 89.1040(c)(12).

Sec. 15. DEVELOPMENTAL DELAY

TLPS is not required to use the eligibility category of developmental delay; however, if TLPS chooses to use this eligibility category, the definition and criteria set forth in this paragraph shall apply.

A student with 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 of this Policy and whose evaluation data indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age.

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In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or 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 in this Section, 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 in this Section, 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 in this Section.

19 Tex. Admin. Code § 89.1040(c)(13), (d).

Sec. 16. NONCATEGORICAL EARLY CHILDHOOD (NCEC)

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.

Beginning with the 2025-2026 school year, TLPS shall no longer use the eligibility category of "noncategorical." Any eligible student who begins the 2025-2026 school year already identified as noncategorical may maintain that eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

19 Tex. Admin. Code § 89.1040 (c)(13), (d)(3).

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