

Special Education Rules & Regulations

Individuals with Disabilities Education Act State Board of Education Rules Commissioner's Rules Texas State Laws

To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education employment and independent living.

34 CFR §300.1(a)



Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA).

19 TAC §89.1001(a)

Federal Regulations	Commissioner's/SBOE Rules	State Laws
<p>§ 300.304 Evaluation procedures.</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must—</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—</p> <p>(i) Whether the child is a child with a disability under § 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) Other evaluation procedures. Each public agency must ensure that—</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part—</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p>	<p>§ 89.1040. Eligibility Criteria.</p> <p>(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.</p> <p>(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:</p> <p>(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</p> <p>(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.</p> <p>(c) Eligibility definitions.</p> <p>(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</p>	<p>§ 29.003. Eligibility Criteria.</p> <p>(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.</p> <p>(b) A student is eligible to participate in a school district's special education program if the student:</p> <p>(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</p> <p>(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:</p> <p>(A) physical disability;</p> <p>(B) mental retardation;</p> <p>(C) emotional disturbance;</p> <p>(D) learning disability;</p> <p>(E) autism;</p> <p>(F) speech disability; or</p> <p>(G) traumatic brain injury.</p>

<p>(ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated</p>	<p>under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.</p> <p>(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deafblindness 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 (c)(12) of this section:</p> <p>(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;</p> <p>(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;</p> <p>(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or</p> <p>(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.</p> <p>(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing</p>	<p>§ 29.310. Procedures and Materials for Assessment and Placement</p> <p>(a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.</p> <p>(b) A single assessment instrument may not be the sole criterion for determining the placement of a student.</p> <p>(c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.</p>
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<p>with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p>(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))</p>	<p>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 an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall 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.</p> <p>(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 shall include specific recommendations for behavioral supports and interventions. (5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with mental retardation is one who:</p> <p>(A) 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</p> <p>(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</p>	
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resources, self-direction, functional academic skills, work, leisure, health, and safety.

(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:
 - a. psychomotor skills;
 - b. self-care skills;
 - c. communication;
 - d. social and emotional development; or
 - e. 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 shall not be classified or reported as having multiple disabilities.

(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.

(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.

(9) Learning disability.

(A) 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 in a child 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 child was provided appropriate instruction in reading (as described in 20 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. Databased documentation of repeated assessments may include, but is not limited to, response to intervention

progress monitoring results, in-class tests on gradelevel curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(B) A student with a 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; and

(ii) does not achieve adequately for the child's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterionreferenced tests; statewide assessments; or a process based on the child's response to scientific, research-based intervention; and

(I) does not make sufficient progress when provided a process based on the child's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), as indicated by the child's performance relative to the performance of the child's peers on repeated, curriculum-based assessments of achievement at

	<p>reasonable intervals, reflecting student progress during classroom instruction; or</p> <p>(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.</p> <p>(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.</p> <p>(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.</p>	
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(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.
- (ii) has been determined by the following evaluations to have a need for special services:
 - (I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision 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 professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory

	<p>learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.</p> <p>(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.</p> <p>(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.</p>	
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