

Sec. 1. 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
2. Deaf-Blindness
3. Deaf / Hard of Hearing
4. Emotional Disturbance
5. Intellectual Disability;
6. Multiple Disabilities;;
7. Orthopedic Impairment;
8. Other health Impairment;
9. Specific Learning Disability;
10. Speech or Language Impairment;
11. Traumatic Brain Injury;
12. Visual Impairment; or
13. Non-categorical.

(34 CFR § 300.306 (a)(5); 19 TAC §89.1040(a))

Additionally, a student is eligible to participate in Texas College Preparatory Academies' 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.

Education 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 data 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 TAC §89.1040)

When interpreting evaluation data for the purpose of determining if a student is a student with a disability under § 300.8, and the educational needs of the student, Texas College Preparatory Academies 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.

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)

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 measures 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 CFR 300.8(b)

SEC 3. AUTISM

A student with autism is one that meets the criteria outlined in 34 CFR §300.8(c)(1) of the IDEA. It also includes students with pervasive developmental disorders. (19 TAC 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 affects 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 CFR §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 CFR §300.8(c)(4). (34 CFR §300.8(c)(1)).

The written evaluation determining eligibility under autism must include recommendations for behavior interventions. (19 TAC 89.1040(c)(1))

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 CFR §300.8(c)(2))

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

1. meet the eligibility criteria for auditory impairment specified in subsection 19 TAC §89.1040(c)(3) and visual impairment specified in subsection 19 TAC §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 special education intervention, will adversely affect the student's educational performance. (19 TAC §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 CFR 300.8(c)(3), or for students who are deaf or hard of hearing as defined

~~in 34 CFR 300.8(c)(5). Deafness is 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.~~

~~A hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but is not included under the definition of deafness.~~

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The student's evaluation must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available.

Texas College Preparatory Academies shall also conduct an audiological evaluation by a licensed audiologist. The evaluation 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. (34 CFR §300.8(c)(3), ~~(5)~~; ~~(34 CFR §300.8(c)(5)~~; 19 TAC 89.1040(c)(3))

SEC. 6. EMOTIONAL DISTURBANCE

A student may be eligible for services as a student with an emotional disturbance 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 disturbance includes schizophrenia, but does not include children who are socially maladjusted, unless it is determined that they have an emotional disturbance. A written evaluation must include recommendations for behavior intervention strategies. (34 CFR §300.8(c)(4); 19 TAC §89.1040(c)(4))

SEC. 7. INTELLECTUAL DISABILITY

A student qualifies as a student with an intellectual disability if the student has 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. (34 CFR §300.8(c)(6); 19 TAC §89.1040(c)(5))

SEC 8. MULTIPLE DISABILITIES

A student may qualify as a student with multiple disabilities if they are identified to have a combination of impairments (such as mental retardation-blindness or mental retardation-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. (34 CFR §300.8(c)(7))

The impairments must be expected to continue indefinitely and the impairments must 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 that 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 TAC §89.1040(c)(6))

~~**SEC. 9 NON-CATEGORICAL EARLY CHILDHOOD**~~

~~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 CFR §300.8(b))~~

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SEC 9. ORTHOPEIC 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 CFR §300.8(c)(8); 19 TAC §89.1040(c)(7+0))

The multidisciplinary team determining eligibility must include a licensed physician. (19 TAC §89.1040(c)(7+0))

SEC 10. OTHER HEALTH IMPAIRMENT (OHI)

A student with OHI is one who has been determined meet the criteria for OHI due to chronic or acute health problems. 19 TAC §89.1040(c)(8).

OHI means having limited strength, vitality, or alertness that affects a child's educational performance. The term "health problems" includes: limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli caused by chronic or acute health problems such as:

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.

"Limited alertness" includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment. If the health condition limits alertness in the educational environment and adversely impacts a student's learning, he or she is eligible for OHI.

In determining eligibility, Texas College Preparatory Academies shall include a licensed physician on the multidisciplinary team.

SEC 11. SPECIFIC LEARNING DISABILITY

Specific learning disability includes 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. ~~(34 CFR §300.8(c)(10))~~

A specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.

34 CFR §300.8(c)(10);19 TAC §89.104(c)(9)

In addition to being identified as having a disorder that impacts a basic psychological process, Texas College Preparatory Academies shall also show that the student does not achieve adequately for the student'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 criterion- referenced tests; statewide assessments; or a process based on the child's response to scientific, research-based intervention.

Texas College Preparatory Academies'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 USC, §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, 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. (19 TAC §89.1040(c)(9))

Prior to identifying a student as one with a learning disability, Texas College Preparatory Academies shall ensure that the suspected disability is not due to lack of educational opportunity or lack of appropriate instruction. Texas College Preparatory Academies shall consider data that shows the student has received

appropriate instruction in math and reading in the general education setting. Texas College Preparatory Academies shall also consider documentation of repeated assessments of achievement

at reasonable intervals, reflecting formal evaluation of student progress during instruction. This 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))

SEC 12. SPEECH OR LANGUAGE 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 CFR §300.8(c)(11); 19 TAC 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.

Texas College Preparatory Academies shall include a licensed physician, and a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in this area to review the data and determine eligibility. (19 TAC §89.1040(11))

SEC 14. VISUAL IMPAIRMENT INCLUDING BLINDNESS

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

34 CFR 300.8(c)(13); 19 §TAC 89.1040(c)(12)

The term "visual impairment including blindness" means a ~~An~~ impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13).

~~A student with a visual impairment is one who:~~

- ~~1. has been determined by a licensed ophthalmologist or optometrist to have no vision or to have a serious visual loss after correction; or to have a progressive medical condition that results in no vision or a serious visual loss after correction.~~
- ~~2. has been determined by the following evaluations to have a need for special services, including:~~
 - ~~a. 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; or~~
 - ~~b. 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 learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area. (19 TAC 89.1040(12)(A))~~

~~Through evaluation, Premier High Schools should state the student's visual loss in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye 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.~~

~~A student that qualifies as a student with a visual impairment is considered 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. (19 TAC §89.1040(12)(B))~~

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

~~34 CFR 300.8(c)(13); Education Code 30.002(c-1); 19 TAC §89.1040(c)(12).~~

Sec. 15 Non Categorical

~~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)(13)~~

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