

# Section 2

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**FBISD**

*The Fort Bend Independent School District, an Equal Opportunity Educational Provider and Employer, does not discriminate on the basis of race, color, religion, gender, sex, national origin, disability and/or age, military status, genetic information, or any other basis prohibited by law in educational programs or activities that it operates or in employment decisions. Additionally, the District does not discriminate against an employee or applicant who acts to oppose such discrimination or participates in the investigation of a complaint related to a discriminatory employment practice. Employment decisions will be made on the basis of each applicant's job qualifications, experience, and abilities. Policies DAA, DIA*

# II – Disabilities

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## GENERAL INFORMATION

***FBISD Board Policies: EHBA (Legal); EHBAB(Legal); EHBAE (Legal); FB(Legal); FEA(Legal) 20 U.S.C. § 1401(3); 34 CFR §§ 300.8, 300.39(b)(3) 300.301-300.306 (Evaluations and Reevaluations), 300.307-300.311 (Additional Procedures for Identifying Children with Specific Learning Disabilities), and 300.122(Evaluations); TEC §29.003 (Eligibility Criteria); 19 TAC §§ 89.1040 (Eligibility Criteria), 89.1050 (The Admission, Review, and Dismissal Committee)***

Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes and rules, school policies and procedures, and this Special Education Administrative Procedures.

### **Eligibility Determination**

To be eligible to receive special education services, a student must be a "child with a disability." To qualify as a "child with a disability," a student must have been determined to:

1. have met the definition of one or more of the disabilities listed in federal regulations, state law, or both; and
2. need special education and related services—Specially Designed Instruction (SDI)— as a result of the disability or disabilities.

Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability." Specially Designed Instruction (SDI) means—

- "adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction-
- To address the unique needs of the student that result from the student's disability; and
- To ensure access of the student to *the general curriculum*, so that the student can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*"

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. A student must be assessed in all areas of suspected disability.

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The student's Admission, Review, and Dismissal Committee (ARDC) makes the determination of whether a student is eligible for special education and related services. Any evaluation or re-evaluation of a student shall be conducted in accordance with all applicable law. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

1. A licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
2. A licensed or certified professional for a specific eligibility category.

The student's disability condition must be documented in the Full and Individual Evaluation (FIE) and in the ARD/IEP report.

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### AUTISM (AU)

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**34 CFR §300.8(c) (1); 19 TAC § 89.1040(c) (1)**

*Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age 3 could be identified as having autism if he or she meets the other eligibility criteria. A student does not qualify as a child with autism if his educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in 34 CFR § 300.8(c)(4).

A student who has autism is one who has been determined to meet the criteria for autism as stated in 34 CFR § 300.8(c) (1) by a multidisciplinary team. 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.

The multidisciplinary team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavior interventions and strategies.

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### DEAF-BLINDNESS (DB)

**34 CFR §300.8(c)(2); 19 TAC §§ 89.1040(c)(2), 89.1050(b), 89.1050(c)(3)(C); TEC § 29.310(c)**

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

#### **Evaluation Procedures**

The procedures and materials used for the assessment and placement of the child who is deaf or hard of hearing must be in the child's preferred mode of communication. The evaluation data reviewed by the ARD committee in connection with the determination of the child's disability based on deaf-blindness must comply with the evaluation procedures of DHH and Visual Impairment.

#### **Eligibility Criteria**

A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness in 34 CFR § 300.8(c)(2). A student with deaf-blindness is one who, based on the evaluations specified in 34 CFR §§ 300.8(c)(3) (Deaf/Hard of Hearing) and 300.8(c) (13) (Visual Impairment):

1. Meets the eligibility criteria for DHH in 34 CFR § 300.8(c)(3) and visual impairment in 34 CFR § 300.8(c)(13);
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 DHH or 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 special education intervention, will adversely affect the student's educational performance.

#### **Admissions, Review, and Dismissal Committee (ARDC)**

For a student with a suspected or documented deaf-blindness, the ARDC must include a certified Teacher of the Deaf and a teacher certified in the education of students with visual impairments.

#### **Students (0-2)**

For a student from birth through two years of age with visual impairment and/or hearing loss, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR §§ 300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the *Department of Assistive and Rehabilitative Services*. For students three years of age and older, school districts must develop an IEP.

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### Deaf/Hard of Hearing (DHH)

**34 CFR § 300.8(c) (3), (5); 19 TAC §§ 89.1040(c) (3), 89.1050(b), 89.1050(c) (3) (B); TEC § 29.310(c), TEC § 30.083(a) (6)**

A student with a hearing loss is one who has been determined to meet the criteria for deafness as stated in 34 CFR § 300.8(c)(3), or for hard of hearing as stated in 34 CFR § 300.8(c)(5).

*Deafness* means a loss of hearing that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

Hard of Hearing means a loss of hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness.

A student who is DHH is “one who has been determined to meet the criteria for deafness as stated in 34 CFR §300.8(c)(3), or for hard of hearing as stated in 34 CFR §300.8(c)(5)”

#### **Evaluation Procedures**

The procedures and materials used for the assessment and placement of the child who is deaf or hard of hearing must be in the child’s preferred mode of communication.

The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility as Deaf/Hard of Hearing must include:

1. An audiological evaluation by a licensed audiologist shall also be conducted, and 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.
2. A communication assessment provided by a speech-language pathologist, a person certified in deaf education, or another qualified individual. The information in the communication assessment should be thorough enough to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.

#### **Admissions, Review, and Dismissal Committee (ARDC)**

For a student with a suspected or documented hearing loss, the ARDC must include a certified Teacher of the Deaf.

#### **Students (0-2)**

For a student from birth through two years of age with visual impairments and/or hearing loss, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR §§ 300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the *Department of Assistive and Rehabilitative Services*. For students three years of age and older, school districts must develop an IEP.



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### Frequently Asked Questions:

1. Is the audiological report required to be on the school district's form for eligibility, or can we use a medical report instead?
  - To determine initial documentation of Deaf/Hard of Hearing, TAC §89.1040(c)(3) requires an audiological assessment.
    - The requirement does not indicate that results must be on a specific form.
    - Required components that must be present
      - Audiological –
        - audiologist's signature, credentials, and date
        - description of the implications of the hearing loss for the student's hearing, in a variety of circumstances, with or without recommended amplification
2. If a student qualified as DHH because of ear infections that are now cleared up, do we dismiss the student from special education?
  - The Office of Special Education Programs (OSEP) provides guidance through the Policy Letter to Blodgett (2014) stating that if the student's medical reports indicate that a conductive loss has been corrected, it is still imperative that the Full and Individual Evaluation address whether the need for special education and related services remains. Correction of the conductive loss does not automatically mean that language and academic needs have been resolved.
    - "The evaluation must be sufficiently comprehensive to identify the child's potential need for special education and related services, whether or not commonly linked to the disability category in which the child was previously identified (34 CFR §300.304(c)(6))."
    - "The child's language needs and whether he qualifies under the 'Speech or language impairment' category would be important considerations when evaluating that child's continued eligibility for services (OSEP 2014)".
3. The audiologist is recommending an Auditory Brainstem Response (ABR), and the parents are asking us to pay for it. Are we required to do so because it is a medical evaluation?
  - Yes. To determine whether a student is DHH, TAC §89.1040(c)(3) requires an audiological assessment. An ABR may be required to obtain the audiological information. The LEA is responsible for obtaining the ABR if it is needed to determine whether the student is a student with a disability.
    - LEAs are required to ensure that students are "assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities" (34 CFR §300.304(c)(4)).
4. Are audiological evaluations required annually or every three years?
  - The audiological evaluation is required to determine the presence of the disability, which occurs during the initial evaluation. The admission, review, and dismissal (ARD) committee does not need to determine the continued presence of the disability, unless there have been changes to a student's auditory performance that may impact their IEP.
  - The ARD committee is required to determine if the student's disability continues to adversely impact the student's education.
  - It is best practice for a student who is DHH and uses amplification devices to be seen by an audiologist annually



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### DEVELOPMENTAL DELAY (DD)

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#### **19 TAC § 89.1040(c) (13)**

According to Texas Education Agency (TEA) guidelines, a student may qualify for special education as a student with Developmental Delay if they are between the ages of 3-9 and are evaluated by a multidisciplinary team for at least one disability category 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.

- a. 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 2<sup>nd</sup> percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed above;
- b. 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 7<sup>th</sup> percentile of performance, when taking into account SEM, in at least two areas of development as listed above; OR
- c. A body of evidence from multiple direct and indirect sources clearly documents 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.

*\*\*If DD is being utilized as the eligibility criteria, it MUST be noted as the Primary Disability in the ARD Document.*

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of the child's eligibility based on noncategorical early childhood must include the applicable members for intellectual disability, emotional disturbance, specific learning disability, or autism. The group of qualified professionals conducting an evaluation of a student suspected of meeting eligibility criteria for a development delay will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

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### **Additional FBISD Guidance**

#### **When must you reevaluate?**

The eligibility criteria in 19 TAC § 89.1040(13) states that this eligibility category is only appropriate if the child is between three and nine years of age. This means that the child must be reevaluated and have an ARD prior to the child's ninth birthday regardless of whether the three-year reevaluation is due.

#### **Is Noncategorical still recognized as an eligibility?**

In Fort Bend ISD, all newly evaluated students will not utilize the noncategorical eligibility. However, other districts may choose to utilize the eligibility, therefore FBISD may continue to receive FIE/ARD documents indicating Noncategorical. In addition, FBISD will have students who are currently identified as Noncategorical and their evaluations will remain until a reevaluation and ARD are held prior to the child's 5<sup>th</sup> birthday.

The eligibility category of Noncategorical must no longer be used by any school district 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 six.

#### **How do I keep track of this?**

You must review the student rosters at your campus and determine which students have the Developmental Delay and Noncategorical Eligibilities. If a PEIMS report is run and a child turns nine years old with Developmental Delay or six years old with Noncategorical, it will produce a fatal error. At that point, you will be notified by the special education office that the evaluation is overdue.

#### **Must I complete an Autism supplement if the child Developmental Delay or NCEC and suspected of having Autism?**

Yes. The child is regarded as having the condition of autism, so the supplement is required.

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### EMOTIONAL DISABILITY (ED)

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**34 CFR § 300.8(c) (4); 19 TAC 89.1040(c) (4); 22 TAC § 465.38(b)(2); TX Occupations Code § 501.503**

*Emotional Disability* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

1. An inability to learn which 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.
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

*Emotional Disability* includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined the ARD Committee determines based on evaluation by a group of qualified professionals that the student has an emotional disturbance consistent with the criteria outlined above. The term “social maladjustment” is a persistent pattern of violating social norms with truancy, substance abuse, perpetual struggle with authority or manipulation. *Hansen v. Republic R-III School District*, 632 F.3d 1024 (8<sup>th</sup> Cir. 2011); *Springer v. Fairfax County School Board*, 134 F.3d 659 (4<sup>th</sup> Cir. 1998).

With respect to the criterion that the student manifests one or more characteristics of emotional disturbance to a “marked degree,” this generally refers to the frequency, duration, or intensity of a student’s emotionally disturbed behavior in comparison to the behavior of peers and can be indicative of either degree or acuity or pervasiveness [Letter to Anonymous (OSEP 8/11/1989)].

The definitions of conditions or categories that are used for purposes of establishing an individual's eligibility for mental health services, as found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), are not synonymous with criteria used for determining whether a child is a “child with a disability” for purposes of establishing eligibility for services under the IDEA. Letter to Coe (OSEP 9/14/1999) IDEA neither requires nor precludes the application of the DSM criteria in making eligibility determinations. The DSM classification system may assist the group of qualified professionals in evaluating and diagnosing disability conditions in students, including the disability condition of emotional disturbance [Letter to Woodson (OSEP 4/5/1989)].

The group of qualified professionals conducting an evaluation of a student suspected of having an Emotional Disability will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

The assessment of Emotional Disability for educational purposes, using psychological techniques and procedures is considered the practice of psychology. A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of the Occupations Code.

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### **Evaluation Procedures**

A student with an Emotional Disability is one who has been determined to meet the criteria for Emotional Disability as stated in 34 CFR § 300.8(c) (4).

The written report of evaluation shall include specific recommendations for behavioral supports and interventions [19 TEX. ADMIN. CODE §89.1040(c)(4)] The written report of evaluation should also include:

1. The type and severity of the Emotional Disability;
2. The functional implications of the disability for situations involving instruction; and
3. The degree to which in-school and out-of-school behavior reflects symptoms consistent with the diagnosis and identification of behavior considered to be a direct result of the Emotional Disability.

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## INTELLECTUAL DISABILITY (ID)

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### **34 CFR § 300.8(c) (6); 19 TAC § 89.1040(c) (5)**

*Intellectual Disability* means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

### **Evaluation Procedures**

The evaluation data reviewed by the ARDC must include:

1. a standardized individually administered test of cognitive ability; and
2. adaptive behavior assessment in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

### **Evaluation Criteria**

A student with an intellectual disability is one who has been determined to meet the criteria for intellectual disability as stated in 34 CFR § 300.8(c)(6). In meeting the criteria stated in 34 CFR § 300.8(c)(6), a student with an intellectual disability is one who has been determined to have significantly sub-average intellectual functioning that:

1. is 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:
  - a. communication;
  - b. self-care;
  - c. home living;
  - d. social/interpersonal skills;
  - e. use of community resources;
  - f. self-direction;
  - g. functional academic skills;
  - h. work;
  - i. leisure;
  - j. health;
  - k. safety; and
3. is manifested during the developmental period; and
4. adversely affects the child's educational performance.

The group of qualified professionals conducting an evaluation of a student suspected of having an intellectual disability will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

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It is permissible to have evaluation criteria that use intelligence tests to determine whether a child has a disability, provided that the intelligence test has been validated for the specific purpose for which it is being used, that neither the test itself nor its administration is racially or culturally discriminatory, and does not constitute the sole criterion for determining an appropriate educational program for a child. Letter to Warrington (OSEP 9/2/1993)

### MULTIPLE DISABILITIES (MD)

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**34 CFR §300.8(c) (7); 19 TAC § 89.1040(c) (6)**

*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 do not include deaf-blindness. 34 CFR § 300.8(c)(7)

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 19 TAC § 89.1040(c)(6) and who meets all of the following conditions:

1. the student's disability is 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.

Students who have more than one of the disabilities defined in Section 89.1040 but who do not meet the above criteria shall not be classified or reported as having multiple disabilities. 19 TEX. ADMIN. CODE §89.1040(c)(6)

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### **Full and Individual Evaluation (FIE) Requirements**

The group of qualified professionals conducting an evaluation of a student suspected of having multiple disabilities will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination. The FIE must include the eligibility report for multiple disabilities and the specific eligibility reports for the two or more disabilities.

### **OTHER HEALTH IMPAIRMENT (OHI)**

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***34 CFR § 300.8(c) (9); 19 TAC § 89.1040(c) (8)***

A student may be eligible for special education and related services as a student with an *other health impairment* if the student exhibits limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

1. is due to chronic or acute health problems; and by reason there of
2. demonstrates an educational need for specially designed instruction.

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).

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.



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### ORTHOPEDIC IMPAIRMENT (OI)

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***34 CFR § 300.8(c) (8); 19 TAC § 89.1040(c) (7)***

*Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

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 must determine that the student: (1) has a severe orthopedic impairment (2) that adversely affects the child's educational performance.

#### **Admission, Review, and Dismissal Committee (ARDC)**

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

Medical services" under IDEA are defined as services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services. 34 CFR § 300.34(c)(5) The District will ensure that such services are at no cost to the parent. *Letter to Anonymous* (OSEP 6/3/2020)

The group of qualified professionals conducting an evaluation of a student suspected of having an orthopedic impairment will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

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### SPECIFIC LEARNING DISABILITY (SLD)

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**34 CFR §§ 300.8(c) (10), 300.307-300.311; 19 TAC § 89.1040(c) (9)**

*Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

*Disorders not included:* Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional/behavioral disability, or of environmental, cultural, or economic disadvantage.

Prior to and part of the evaluation, and 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:

1. 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
2. Data-based documentation of repeated assessments of achievement at reasonable intervals reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, Response to Intervention (RTI) progress monitoring results, in-class tests on grade level curriculum, or other regularly administered assessments and repeated performance on other progress monitoring measures. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
3. A student with a specific learning disability is one who:
  - a. Has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability;
  - b. Does not achieve adequately for the child's age or meet state-approved grade level standards in oral expression, listening comprehension, written expression (may include the identification of dysgraphia), basic reading skills, reading fluency (may include the identification of dyslexia), 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 base on the child's response to scientific, research based intervention;
  - c. does not make sufficient progress when provided a process based on the child's response to scientific, research-based intervention as indicated by the child's performance relative to the performance of the child's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or

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- d. 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 area of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

### Fort Bend ISD Criteria for Specific Learning Disabilities

Fort Bend ISD has adopted the Modern Operational Definition and the “Dual Discrepancy/Consistency Model” of SLD (both of which are featured in Flanagan, D.P., Ortiz, S.O., & Alfonso, V.C. (2013) *Essentials of Cross Battery Assessment* 3<sup>rd</sup> edition, Wiley and Sons). This model is widely accepted as a best practice in the identification of SLD and is based on multiple sources of literature and research (e.g., Kavale & Forness, 2000; Kavale et al., 2009; Berninger. 2001; Feifer 2012; Fletcher - Janzen & et al., 2001; Geary, Hoard, & Bailey, 2001); Hale & Fiorello, 2004; Hale et al., 2011; McClosky et al., 2012; Naglieri, 2011; Reynolds & Shaywitz, 2009; Siegal, 199; Stanovich, 1999; Vellutino, Scanlon, & Lyon, 2000).

There are six (6) diagnostic markers for SLD. Each one of the following markers needs to be considered when determining SLD. A reminder of current Individuals with Disabilities Education Act (IDEA) regulations that 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 for SLD eligibility.

1. **A significant academic impairment.** The student needs to have significant difficulties in an academic area of eligibility based on multiple sources. While a deficient standardized score is necessary, other supporting data is necessary to corroborate the difficulty (grades, STAAR, CBA, data from supplemental interventions etc.).
2. **A significant cognitive impairment.** According to IDEA, SLD is defined as “A disorder in one or more of the basic psychological processes” [(300.8(c) (10) (i))]. According to the CHC Theory of Human Cognitive Abilities, there are seven (7) broad cognitive areas (Gs): Fluid Reasoning, Long Term Retrieval, Short Term Retrieval, Processing Speed, Crystallized Intelligence, Visual-Spatial, and auditory processing.
3. **Generally average ability to think and reason.** Individuals with SLD are of average or better overall cognitive ability but have a “specific” area of disability. SLD is not an appropriate eligibility for those students who have learning difficulties for reasons other than specific cognitive dysfunction. Global Learning Deficit has never been an eligibility category in Texas. A student with SLD should be able to perform academically at a level close to his/her typically achieving peers when provided with individualized instruction, as well as appropriate accommodations and instructional modification. Additionally, students with SLD should possess the ability to learn compensatory strategies and apply them independently, which often requires higher level thinking and reasoning. Specific software tools are utilized for the process of determining this marker. Overall, it must be determined that the student has a generally average

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ability to think and reason. This also could be evidenced by typical performance in areas outside of those under consideration for SLD.

4. **Consistency between academic and cognitive impairments.** This is where the determination is made that the cognitive impairment (marker #2) is likely the primary cause of the academic impairment (marker #1). For example, Ga (phonetic coding) links to a disability in basic reading but not math calculation. However, a deficit in auditory processing could be a likely cause of impairment in Basic Reading Skills, as research and data strongly support a linkage between those two areas. This consistency would be further supported by classroom data and evidence pointing towards the primary cause.
5. **The cognitive impairment is domain specific.** SLD is a vertical problem, not horizontal. The cognitive impairment (marker #2) is different from the other cognitive areas and stands out. We must determine whether the cognitive impairment is significantly different from the intact abilities and if the degree of the difference is rare and unusual.
6. **Evidence of unexpected underachievement.** The area of academic impairment is significantly different from what would be expected considering the overall cognitive ability of the student.

### Exclusionary Criteria

The eligibility team is required to take into consideration the effects of what are commonly referred to as “exclusionary” factors.

Federal Regulations, require that the multidisciplinary team determine that its findings (that address the criteria for SLD) are not PRIMARILY the result of – “visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.”

Some factors to consider are the student’s attendance history, the impact of the student’s language/culture, sociological factors, trauma, and behaviors.

### Role of the Evaluation Staff

Diagnostician/LSSP/SLP: trained to interpret test results. While tests provide a lot of necessary information, they are not the only factor in determining eligibility.

Teachers: provide ecological data and information not available from standardized measures.

When considering a student for eligibility as a student with a specific learning disability, the group of qualified professionals shall:

- use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
- have at least one member of the assessment team conduct an observation of the student's academic performance in the regular classroom [34 CFR § 300.310 (b)].

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### SPEECH IMPAIRMENT (SI)

***34 CFR, §300.8(c) (11) (Speech or Language Impairment); 19 TAC § 89.1040(c) (10) (Speech Impairment)***

Speech or language impairment means a communication disorders, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance [34 CFR § 300.310(c)(11)].

#### **Speech Impaired Disability Determination Guidelines, TSHA 2020**

A student is eligible for speech-language pathology services through IDEA 2004 when s/he exhibits a speech impairment that has an adverse effect on educational performance to the degree that specially designed instruction or related services and supports are needed from the SLP to help the student make progress in the general education curriculum.

Determination of eligibility for individualized education program (IEP) services with a Speech Impairment is a three-stage process that involves collecting data to answer two questions to document disability determination and a third question, if a disability is documented, for the ARD Committee to deliberate regarding the need for specially designed instruction and services from the SLP.

Stage 1: Is there a communication disorder (such as stuttering, impaired articulation, a language impairment, or a voice impairment)?

Stage 2: Is there an adverse effect on educational performance (academic achievement and functional performance) resulting from the communication disorder?

Stage 3: Are specially designed instruction and/or related services and supports needed from the SLP to help the student make progress in the curriculum?

NOTE: When the student presents with a communication disorder/disability condition (Stage 1) that results in an adverse effect on educational performance (Stage 2), the conditions to establish an eligibility condition (Speech Impairment) have been met and the need for specialized services from an SLP (Stage 3) should be documented and included in the recommendations section of the Full and Individual Evaluation report.

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### **Admission, Review, and Dismissal Committee (ARDC)**

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. a certified speech and hearing therapist;
- b. a certified speech and language therapist; or
- c. a licensed speech/language pathologist.

The group of qualified professionals conducting an evaluation of a student suspected of having a speech or language impairment will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

### **TRAUMATIC BRAIN INJURY (TBI)**

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***34 CFR § 300.8(c) (12); 19 TAC § 89.1040(c) (11)***

*Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

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).

### **Admission, Review, and Dismissal Committee (ARDC)**

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 19 TAC § 89.1040(b)(1).<sup>1</sup>

“Medical services” under IDEA are defined as services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services. 34 CFR § 300.34(c)(5) The District will ensure that such services are at no cost to the parent. *Letter to Anonymous* (OSEP 6/3/2020)

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<sup>1</sup> 19 TAC 89.1040(b)(1) provides, in part, that the “multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility must include, but is not limited to, the following: (1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified practitioner with experience and training in the area of the disability; or (2) a licensed or certified professional for a specific eligibility category... .”

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The group of qualified professionals conducting an evaluation of a student suspected of having a traumatic brain injury will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

### VISUAL IMPAIRMENT (VI)

**34 CFR § 300.8(c) (13); 19 TAC §§ 89.1040(c) (12), 89.1050(b), 89.1050(c) (3) (A); TEC § 30.002(c-1) (2)**

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

#### Evaluation Procedures

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 state and provide the best estimates.

In meeting the criteria stated in 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:
  - a. to have no vision or to have a serious visual loss after correction; or
  - b. to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and
2. Has been determined by the following evaluations to have a need for special services:
  - a. a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility specialist;
  - b. The evaluation must include:
    - i. the performance of tasks in a variety of environments requiring the use of both near and distance vision; and
    - ii. recommendations concerning the need for a clinical low vision evaluation.
    - iii. a learning media assessment by a professional certified in the education of students with visual impairments; and
3. The learning media assessment must include:
  - a. recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student; and
  - b. whether or not there is a need for ongoing evaluation in this area.



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4. an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist.<sup>2</sup>
  - c. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings including the student's home, school, and community and in settings unfamiliar to the student.

### **Functionally Blind**

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) based upon the preceding evaluations. A student with a visual impairment is functionally blind if, based on the functional vision evaluation and the learning media assessment, 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.

A person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's initial eligibility as a student with a visual impairment. In addition, for a student with a suspected or documented visual impairment, a teacher who is certified in the education of students with visual impairments must be present in the IEP team meeting

### **Re-evaluation Requirements**

The scope of any re-evaluation of a student who has been determined, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR §§ 300.303-300.311, by a multidisciplinary team that includes an appropriately certified teacher of the visually impaired and a certified orientation and mobility specialist. Because vision needs can change rapidly, best practice dictates obtaining updated visual medical information and completing formal assessments for the re-evaluation needs of visually impaired students.

### **Students (0-2)**

For a student from birth through two years of age with visual impairment and/or hearing loss, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR §§ 300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the *Department of Assistive and Rehabilitative Services*. For students three years of age and older, school districts must develop an IEP.

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<sup>2</sup> This requirement along with the requirements in the "Admission, Review, and Dismissal Committee (ARDC)" as well as the requirements involving an appropriately certified orientation mobility specialist found in the "Re-Evaluation Requirements" Section herein took effect beginning with the 2014-2015 school year. See 19 TAC § 89.1040(B)-(E).