

Sec. 1. ELIGIBILITY CRITERIA

A student that is at least three years old but not more than 21 years of age may be eligible for special education services if a 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 disturbance
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

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

Additionally, a student is eligible to participate in Erath Excels Academy'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.

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 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 TAC 89.1040(b).

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

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
2. Ensure that information obtained from all of these sources is documented and carefully considered.

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

34 CFR 300.306.

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

1. The determination 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 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 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).

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 development 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).

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. Erath Excels Academy 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); 19 TAC 89.1040c(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 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 CFR 300.8(c)(6); 9 TAC 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.

34 CFR 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 TAC 89.1040(c)(6).

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 CFR 300.8(c)(8); 19 TAC 89.1040(c)(7).

The multidisciplinary team determining eligibility under the criteria for an orthopedic impairment must include a licensed physician.

19 TAC 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 TAC 89.1040(c)(8).

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

34 CFR 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 TAC 89.1040(c)(8); 34 CFR 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 CFR 300.8(c)(9).

In determining eligibility, Erath Excels Academy shall include a licensed physician on the multidisciplinary team.

19 TAC 89.140(c)(8).

Sec. 11. SPECIFIC LEARNING DISABILITY

Specific learning disability (or “SLD”) 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.

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, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 CFR 300.8(c)(10); 19 TAC 89.1040(c)(9).

In addition to being identified as having a disorder that impacts a basic psychological process, Erath Excels Academy 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. Erath Excels Academy'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, Erath Excels Academy shall ensure that the suspected disability is not due to lack of educational opportunity or lack of appropriate instruction. Erath Excels Academy shall consider data that shows the student has received appropriate instruction in math and reading in the general education setting. Erath Excels Academy 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 administrated assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

19 TAC 89.1040(c)(9).

For more information related to SLD and dyslexia, 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 CFR 300(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 psychological 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.

Erath Excels Academy 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(c)(11).

Sec. 14. VISUAL IMPAIRMENT

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

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

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.

34 CFR 300.8(c)(13).

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. NONCATEGORICAL

A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

19 TAC 89.1040(c)(13)