

DISABILITY CRITERIA
Table of Contents

REGULATIONS	301
I. Auditory Impairment	303
II. Autism.....	303
III. Deaf-Blindness.....	304
IV. Emotional Disturbance.....	304
V. Mental Retardation.....	305
VI. Multiple Disabilities.....	306
VII. Non-Categorical Early Childhood.....	307
VIII. Orthopedic Impairment.....	308
IX. Other Health Impairment.....	308
X. Specific Learning Disability.....	309
XI. Speech or Language Impairment.....	310
XII. Traumatic Brain Injury.....	311
XIII. Visual Impairment.....	312

DISABILITY CRITERIA

REGULATIONS

§300.8 Child with a disability.

(a) General.

- (1) **Child with a disability** means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is **not a child with a disability** under this part.
(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

§300.306 Determination of eligibility. *(for more information see Section 2 – FIE)*

(a) General. Upon completion of the administration of assessments and other evaluation measures-

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
- (2) The Devine Independent School District provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.

TAC §89.1040. Eligibility Criteria.

- (a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined federal regulations, subject to the provisions in the federal regulations, 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.
- (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 federal regulations. 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 defined in subsection (c) of this section. *(Subsection (c) is located in each individual disability page 303-316)*

TEC §29.003. Eligibility Criteria

- (a) The TEA 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.

- (b) A student is eligible to participate in DISD special education program if the student:
- (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
 - (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:
 - (A) physical disability;
 - (B) mental retardation;
 - (C) emotional disturbance;
 - (D) learning disability;
 - (E) autism;
 - (F) speech disability; or
 - (G) traumatic brain injury.

TAC §89.1035. Age Ranges for Student Eligibility

- (a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title, whichever comes first.
- (b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a)-(TEA statewide plan), and 30.081 (below), a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.

TEC §30.081. Legislative Intent Concerning Regional Day Schools for the Deaf

The legislature, by this subchapter, intends to continue a process of providing on a statewide basis a suitable education to deaf or hard of hearing students who are under 21 years of age and assuring that those students have the opportunity to become independent citizens.

I. AUDITORY IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (2) **Deafness** means a hearing impairment 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.

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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 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.

II. AUTISM

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (1) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that 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.
- (i) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (c 4 = Emotional Disturbance)
- (ii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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 under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

III. DEAF – BLINDNESS

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (3) **Deaf-blindness** means concomitant 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 children with deafness or children with blindness.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness 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) Auditory Impairment and (c)(13) Visual Impairment:
 - (A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(13) of this section;
 - (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;
 - (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
 - (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.

IV. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (4) (i) **Emotional disturbance** 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:
- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) **Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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.

V. MENTAL RETARDATION

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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 has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

The following guidelines apply: If the intelligence quotient (IQ) score is above 70, the student is functioning above the mental retardation range.

1. *If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Stanford-Binet: Fourth Edition, the McCarthy Scales of Children's Abilities, or the Bayley Scales of Infant*

Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.

2. *If the Wechsler Intelligence Scale Tests or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used, the student is functioning in the mental retardation range.*
3. *If the IQ score on any of the tests is 68 or below, the student is functioning in the mental retardation range.*
4. *If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported if non-standardized procedures are used to administer the test. Reporting ranges or categories of scores may be more appropriate.*
5. *If a student is very young and/or has a severe disability or a severe sensory impairment, a developmental scale may be administered instead of intelligence tests. The student's performance must be within the mental retardation range on the developmental scale.*
6. *Some measures of intellectual ability result in a composite or global score rather than individual verbal and performance scores. When an IQ test is used which results in a single score, it is up to the evaluation professional to ensure that both verbal and performance skills have been measured and documented. If they have, the single score will suffice as a measure of both verbal and performance ability.*
7. *An adaptive behavior scale must be administered and documented. Some examples of adaptive behavior scales include the Adaptive Behavior Inventory for Children, Vineland Adaptive Behavior Scales, and Scales of Independent Behavior.*

VI. MULTIPLE DISABILITIES

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), 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 does not include deaf-blindness.

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.

- (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, §300.7(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:

- (I) psychomotor skills;
- (II) self-care skills;
- (III) communication;
- (IV) social and emotional development; or
- (V) 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.

VII. NONCATEGORICAL EARLY CHILDHOOD (NCEC)

§300.8 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the State and the LEA and in accordance with §300.111(b), include a child--

- (1) Who is 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) Who, by reason thereof, needs special education and related services.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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.

Use of NCEC is a local decision. The use of NCEC will be determined by DISD at the policy level prior to implementation in the evaluation and ARD/IEP committee process.

Document that the student is evaluated as having one of the following:

- *autism, (attach written report)*
- *emotional disturbance, (attach written report)*
- *learning disability, (attach written report) or*
- *mental retardation. (attach written report)*

In making a decision to identify a child as being eligible under the NCEC eligibility category, multidisciplinary teams and ARD/IEP committees could consider the following:

- *the age of the child and/or*
- *the child's functioning level and/or*
- *all available formal and informal evaluation data.*

VIII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (8) **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, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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.

IX. OTHER HEALTH IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--
- (i) Is 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, and sickle cell anemia; and
 - (ii) Adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment as stated in 34 CFR, §300.8(c)(9). Students with attention deficit disorder or attention deficit hyperactivity disorder are included under this category. 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.

X. SPECIFIC LEARNING DISABILITY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(10) **Specific learning disability.**

- (i) **General.** 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.
- (ii) **Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(9) Learning disability.

(A) A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in 34 CFR, §300.8(c)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540-300.543. A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.

(Method 2 described in (B) below)

(B) If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with subparagraph (A) of this paragraph because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria in subparagraph (A) of this paragraph but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under subparagraph (A) of this paragraph and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.

(See also FIE Section 2 for further criteria on Specific Learning Disability including Observation, Team Members, etc.)

A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas in B. above is more than one standard deviation below the student's intellectual ability. Consider the following:

- 1. The discrepancy between the student's assessed intellectual ability and assessed educational achievement was computed either by comparing standardized test scores or reviewing other evaluation data. A severe discrepancy is determined by either: a comparison of standardized intelligence and achievement test scores (Method 1) or a review of other evaluation data (Method 2).*
- 2. If the multidisciplinary team cannot establish the existence of a severe discrepancy because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria, the team*

must document in its written report the areas identified and the basis for determining that the student has a severe discrepancy. The report will include a degree of the discrepancy between intellectual ability and achievement.

3. *The discrepancy is computed as follows:*
 - *determine the full-scale IQ score;*
 - *determine the standard score for each achievement subtest;*
 - *determine whether both the IQ and achievement test have the same standard deviations; if the standard deviations are different, convert to a common metric using an appropriate statistical procedure (such as z scores);*
 - *subtract each achievement subtest standard score from the full-scale IQ score. If the difference is more than one standard deviation (more than 15 or 16 points depending on the tests used), the discrepancy is severe. There must be a severe discrepancy in one or more of the areas listed in the item.*
4. *If the intelligence quotient(IQ) score is above 70, the student is functioning above the mental retardation range.*
5. *If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Slosson Intelligence Test, the McCarthy Scales of Children's Abilities, or the Bayley Scales of Infant Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.*
6. *If the Wechsler Intelligence Scale Tests, Stanford-Binet or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used the student is functioning in the mental retardation range.*
7. *If the IQ score on any of the tests is 68 or below, the student is functioning in the mental retardation range.*

If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported if non-standardized procedures are used to administer the test. In these situations, Method 2 must be used to determine the existence of a severe discrepancy.

Document the team's determination of eligibility which must include a statement of: whether the child has a specific learning disability and the basis for making the determination.

- *the adverse affects on educational performance creating a need for special education (i.e. specially designed instruction) and related services;*
- *the educationally relevant medical findings, if any;*
- *whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and*
- *the determination of the team concerning the effects of environment, cultural, or economic disadvantage.*

XI. SPEECH OR LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** **The terms used in this definition of a child with a disability are defined as follows:**

- (11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

§300.34 Related services.

- (15) **Speech-language pathology services** includes--
- (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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.

[Refer to DISD Speech and Language Therapy local handbook for more specific information.](#)

XII. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (12) **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.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (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. *(b.1. is found on page 301)*

XIII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(13) 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.

(Authority: 20 U.S.C. 1401(3); 1401(30))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(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 federal regulations, §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 learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(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.