

## Learning Disability

34 CFR §300.8 Child with a disability

19 TAC §89.1040. Eligibility Criteria

IDEA, 2004

Texas

*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.

34 CFR §300.309 Determining the existence of a specific learning disability

The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: (i) Oral expression; (ii) Listening comprehension; (iii) Written expression; (iv) Basic reading skill; (v) Reading fluency skills; (vi) Reading comprehension; (vii) Mathematics calculation; (viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of— (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.

(b) 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 math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

*Learning disability.*

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(B) A student with a learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and

(ii) does not achieve adequately for the 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 student's response to scientific, research-based intervention; and

(I) 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

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.