

**Updates: 19 TAC Chapter 89,
Adaptations for Special Populations,
Subchapter AA, Commissioner's Rules
Concerning Special Education Services**

September 23, 2021

Learning Outcomes

Increase
understanding of
Chapter 89 updates



Determine if and how
the changes will
impact practice



Identify any
implications the
changes may present



Proposed rule
change published in
the Texas Register

June 4, 2021

July 5, 2021

Public comment
period

June 15 & 17,
2021

Public hearings

Rule filed with the
Texas Register

Sept. 15, 2021

Rule published in the
Texas Register

Oct. 1, 2021

Effective Date

Oct. 5, 2021

[Link to the Texas Register](#)

The amendments make changes related to



Updating terminology to implement Senate Bill 281, 86th Texas Legislature, 2019



Eligibility determinations for specific learning disabilities

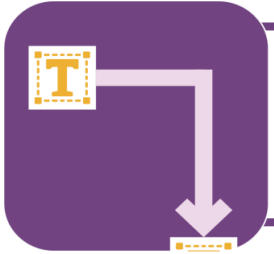


Provision for students who are eligible for special education and related services who enroll in local education agencies (LEAs) during the summer

Conforming edits related to funding for special education to align with Texas Education Code 48.102

Updating cross references

Icons throughout



The text was removed



There was a change in language



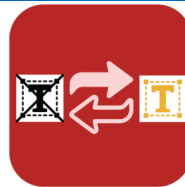
New language was added

19 TAC §89.1040(3)- Eligibility Criteria: Auditory Impairment to Deaf or Hard of Hearing

Before Change

(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 **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 otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an audiological evaluation performed by a licensed audiologist. The evaluation data 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.

Deaf or hard of hearing. A student who is deaf or hard of hearing



After Change

(3) **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 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 **being deaf or hard of hearing** must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an audiological evaluation performed by a licensed audiologist. The evaluation data 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.

Throughout Chapter 89 Auditory Impairment changed to Deaf or Hard of Hearing

Example Before Change (89.1005)

The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and Texas Health and Human Services Commission Early Childhood Intervention Services.



who are deaf
and hard of
hearing



Example After Change (§89.1005)

The appropriate instructional arrangement for students from birth through the age of two with visual impairments or who are deaf or hard of hearing shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and Texas Health and Human Services Commission Early Childhood Intervention Services.

Similar language changes in 89.1035, 89.1050, 89.1121, 89.1131

Impact and Implications

- The term “**deaf or hard of hearing**” replaces “auditory impairment.”
- Update LEA policies, procedures, and documents, to reflect new language.
- Inform staff of the change and transition to using the term deaf or hard of hearing (DHH) in all communication.



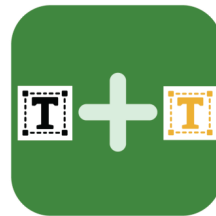
19 TAC §89.1040(9)- Eligibility Criteria: Specific Learning Disability

Before Change

(9) 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:

IDEA definition of specific learning disability added



After Change

(9) Specific learning disability.

(A) 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. 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.

19 TAC §89.1040(9)(B)(I) Eligibility Criteria: Specific Learning Disability

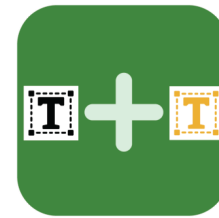
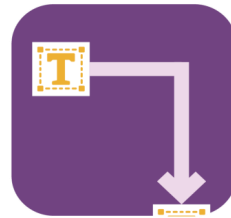
Before Change

(9)(B) Specific Learning Disability

(I) The child does not make sufficient progress when provided a process based on the student's response to evidence-based intervention (as defined in 20 USC, §7801(21)), 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



RtI language
better matches
IDEA



After Change

(9)(B) Specific Learning Disability

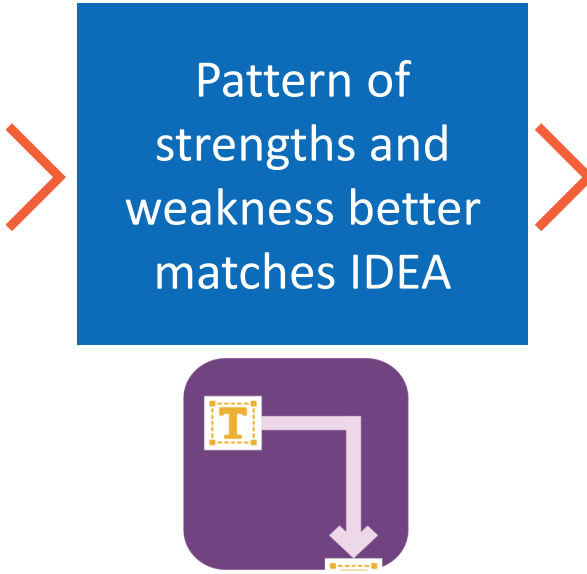
(I)The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (B)(ii) of this section when using a process based on the child's response to scientific, research-based intervention; or

19 TAC §89.1040(9)(B)(II)- Eligibility Criteria: Specific Learning Disability

Before Change

(9)(B) Specific Learning Disability

(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.



After Change

(9)(B) Specific Learning Disability

(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 to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §§300.304 and 300.305;

19 TAC §89.1040(9)(B)(II)- Eligibility Criteria: Specific Learning Disability

You **do** need a pattern of strengths and weaknesses in performance, achievement, or both.

That pattern is relative to age, grade-level standards, or intellectual development.

You **do not** need significant variance among specific areas of cognitive functioning or between specific areas of cognitive function and academic achievement.

Impact and Implications

- There is no substantive change to practice for the RtI process.
- The change **broadens** the ways a pattern of strengths and weaknesses can be identified to better align with IDEA.
- The change helps clarify that **multiple sources of data** are considered when making determinations.
- One score or calculation cannot supersede the preponderance of data gathered as part of the comprehensive evaluation.
- Please inform staff of the changes and look for additional training and guidance on comprehensive evaluation of SLD from the Child Find, Evaluation, and ARD Supports Network.

childfindtx.tea.texas.gov

19 TAC §89.1040(9C)- Eligibility Criteria: Specific Learning Disability

Before Change

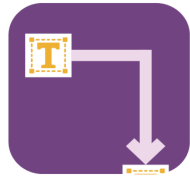
(9) Specific Learning disability.

(C) **(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 by (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:

(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.

Prior to removed



Which must be provided to the student's parents added from IDEA



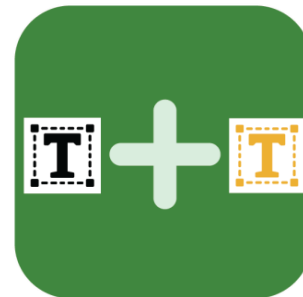
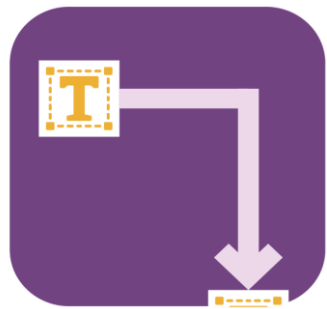
After Change

(C) 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 by (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:

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, **which must be provided to the student's parents.** 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.

Impact and Implications

- Ensure that local policies and procedures do not require movement through a tiered intervention process prior to referral for evaluation when a disability and need for special education is suspected.
- Ensure that local policies and procedures require the provision of achievement and evaluation of students' progress to their parents.



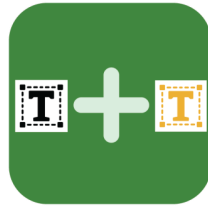
19 TAC §89.1040(9D)- Eligibility Criteria: Specific Learning Disability

Before Change

(9) Specific Learning disability.

(D) DID NOT EXIST

Added IDEA
requirement for
observation

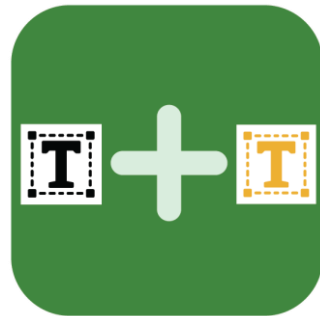


After Change

(D) The school district must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the admission, review and dismissal (ARD) committee must decide to either 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 of the members described in subsection (b) conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) must observe the student in an environment appropriate for a student of that age.

Impact and Implications

- An observation in the learning environment was already required as part of the evaluation for a specific learning disability.
- This change integrates federal IDEA language into the state rules.
- No impact on current evaluation practices is anticipated.



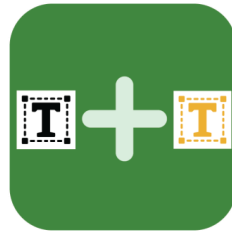
19 TAC §89.1040(9)- Eligibility Criteria Specific Learning Disability

Before Change

(9) Specific Learning disability.

(E) DID NOT EXIST

Added requirements for evaluation team members from IDEA



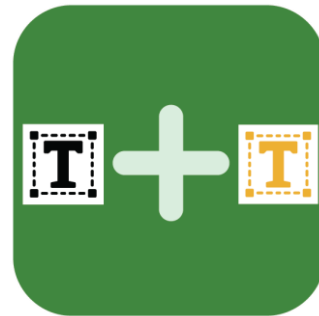
After Change

(E) The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in 34 CFR, §300.8 must be made by the student's parents and a team of qualified professionals, which must include:

- (i) The student's regular teacher; or
- (ii) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or
- (iii) For a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age; and
- (iv) At least one person qualified to conduct individual diagnostic examinations of children, such as a licensed specialist in school psychology, educational diagnostician, speech-language pathologist, or remedial reading teacher.

Impact and Implications

- The change aligns the state rules with existing federal requirements.
- The language from IDEA is customized to reflect Texas context (e.g., licensed specialist in school psychology, educational diagnostician).
- No impact to current evaluation practices is anticipated.



19 TAC §89.1050 (j)(4)- The Admission, Review, and Dismissal Committee

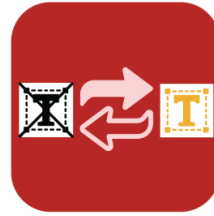
Before Change

(J) A school district must comply with the following for a student who is newly enrolled in the school district

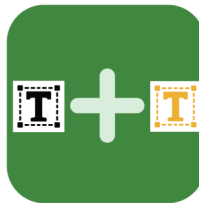
(1) When a student transfers to a new school district within the state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district



Section J(4)
added to
clarify
enrollments
during
summer



After Change

(J) A school district must comply with the following for a student who is new to the school district

(1-3) no change

(4) A student with a disability who has an IEP in place from a previous in- or out-of-state school district and who enrolls in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR §300.323(e) or (f). For these students, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

Impact and Implications

- Language added at 19 TAC §89.1050(j)(4) clarifies that students who enroll in an LEA over the summer with an IEP from a previous district, must have an IEP in place on the first day of school (not considered a “transfer”).
- Update LEA board policies and procedures to ensure students who enroll in the summer have an IEP in place on the first day of school.
- Communicate with applicable staff to ensure students who enroll over the summer are not treated as “transfer students” for the purposes of 34 CFR §300.323 and 19 TAC §89.1050.



Thank You!

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