

§89.1040 Eligibility Criteria Frequently Asked Questions

Prior to Referral

1. Which steps should be taken prior to evaluating a child for special education services?

Students having difficulty in the regular classroom should be considered for tutorial, compensatory, response to intervention and other academic or behavior support services that are available to all students, as described in TAC [89.1011](#). This information is often included in [student handbook statement](#). Such general education options should be thoroughly explored prior to referring a student for special education evaluation. The Child Find Framework of the [Legal Framework for the Child Centered Process](#) provides information and links to legal requirements regarding regular educational services for all students.

Multidisciplinary Team

2. Who is required to serve on the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility?

The multidisciplinary team that collects or reviews evaluation data must be comprised of the child's parents and a team of qualified professionals including but not limited to: 1) a licensed or certified professional for a specific eligibility category; and 2) a professional qualified to conduct individual diagnostic evaluations including 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.

Autism

3. What does the term Pervasive Developmental Disorder include?

The term Pervasive Developmental Disorder is commonly used interchangeably with the term Autism Spectrum Disorder and includes a variety of disorders usually first diagnosed in early childhood and ranging from mild to severe.

Emotional Disturbance

4. Is it appropriate to use a response to intervention (RtI) process in determining eligibility for emotional disturbance?

Schools are encouraged to use a [Response to Intervention \(RtI\)](#) process, in addition to other measures, in evaluating behavior related to a suspected emotional disturbance (ED). Such an RtI process should include the child's response to behavioral, academic, and other appropriate interventions over time and may be useful in determining ED eligibility. The determination of an emotional disturbance should include a variety of information sources and measures and should not be based on a single measure or information source.

Mental Retardation

5. What are important considerations regarding mental retardation eligibility?

While additional flexibility has been added to the rule in order to reflect current thinking regarding the determination of mental retardation (MR), schools are encouraged to exercise caution in making such determinations in order to avoid over-identifying students. The determination of MR must be made through the use of professional judgment, including consideration of multiple information/data sources to support the eligibility determination. Information/data sources may include statewide assessment results, Rtl progress monitoring data and anecdotal reports, in addition to formal evaluation test scores (e.g. intellectual quotient or IQ; adaptive behavior, achievement; cognitive function/processing, etc).

A deficit (limitation in function) refers to the effectiveness of the individual in meeting adaptive standards typical to age peers, environment, and cultural expectation.

6. How should standard error of measurement (SEM) be used in the determination of mental retardation eligibility?

Evaluation instruments provide information on the standard error of measurement (SEM) for its global score. A SEM is typically 3-4 points but varies depending on test instrument and age of student. The evaluation professional must consult the appropriate test manual to determine the SEM for that particular student. The SEM should not be confused with the confidence interval.

Other Health Impairment

7. What has been added to the list of conditions included under the other health impairment eligibility definition?

Language has been added for clarification listing the conditions currently in federal regulations, including the recently added health impairment, Tourette's Disorder. The list of conditions is not exhaustive. In addition, a child is not automatically eligible for special education and related services if the child is diagnosed with such a condition. In the current diagnostic manual classification system, Attention Deficit Disorder is referred to "ADHD predominantly inattentive type". The common understanding of the phrase "attention deficit disorder or attention deficit hyperactivity disorder", as used in the Individuals with Disabilities Education Act (IDEA 2004) regulations, is inclusive of the disorder in general. In addition, the term "attention deficit disorder" is still commonly used in evaluations.

Learning Disability

8. How may a school determine that appropriate instruction was provided to a student in the general education setting?

A school may determine that appropriate instruction was provided to a student in the general education setting by reviewing curriculum and grade-level student performance by class/subject area. This is typically accomplished through a school improvement program that uses a grade-level or campus-level progress monitoring system. [Response to Intervention \(Rtl\)](#) is a process used by schools to target appropriate research-based interventions based on student's needs, monitor student progress, and ensure effective instruction in the general education setting. The Rtl process can provide data that demonstrates an individual child has received appropriate instruction by ensuring that the majority of students were able to master instructional objectives.

In determining whether a child was provided appropriate instruction, schools should consider primary language, limited English proficiency, environmental and cultural factors, as well as whether a child has had frequent moves and/or absences that may have limited the child's access to the curriculum. These factors should be excluded as the primary cause of a child's failure to achieve and/or make sufficient academic progress in determining SLD eligibility. Students showing reasonable progress in response to research-based instructional strategies should not be determined to have an LD even though they may show deficits on specific norm-referenced achievement tests.

Additional information and resources regarding RtI, a general education setting activity, are available through the [National Association of State Directors of Special Education \(NASDSE\) IDEA Partnership](#).

In addition, information regarding appropriate instruction for struggling students is available at <http://www.tea.state.tx.us/special.ed/agc/>.

[Question and answer documents](#) on Response to Intervention (RtI), learning disability (LD) Eligibility and Early Intervening Services (EIS) are available from the United States Office of Special Education Programs (OSEP).

All decisions pertaining to this section should be consistent with TAC [§89.1011](#) and the Child Find Framework of the [Legal Framework for the Child Centered Process](#).

9. What information may be considered as data-based documentation of repeated assessments?

Data-based documentation of repeated assessments may include response to intervention progress monitoring results, in-class tests based on state standards (the [Texas Essential Knowledge and Skills or TEKS](#)), benchmark assessment, criterion-referenced measures or other regularly administered assessments. Data from repeated assessment results used in the SLD eligibility process should typically have been administered at evenly-spaced intervals, such as once per week, over a reasonable period of time. A reasonable period of time may typically fall within a 4 to 8 week period, six weeks being the average. Schools are not limited to such a time frame and should follow the requirements of the particular instruction program or assessment process in use.

Additional information and resources regarding RtI, a general education process, are available through the TEA Division of Curriculum at <http://www.tea.state.tx.us/curriculum/>.

10. What information may be used to determine if a student fails to achieve adequately for the student's age or meet State-approved grade-level standards

Failure to achieve adequately for a student's age or meet State-approved grade-level standards may be determined by measures such as in-class tests scores, grade average over time (e.g. six weeks), statewide assessment scores, standardized achievement test scores, criterion-reference measures, and/or a Response to Intervention (RtI) process. A student's failure to pass the statewide assessment (e.g. TAKS) should not automatically result in a learning disability referral and/or determination. The determination of a learning disability should include a variety of information sources and measures and should not be based on a single measure.

11. What information may be used in determining whether a student makes sufficient progress when provided a RtI process?

This section refers to the provision of targeted and supplemental services beyond what is provided for all students and whose data-based documentation shows an inability to meet age and grade level expectations.

Determining whether a student makes sufficient progress when provided RtI will depend on the particular scientific, research-based intervention(s) criteria. While schools are encouraged to follow a timeline specific to the RtI process, a school should consider alternative actions when a child fails to respond to an increasing intensity of instruction and interventions.

A RtI process does not replace the need for a comprehensive evaluation using a variety of data sources. A school should inform parents when a student is not making progress in the general education setting. If the child is not making progress in the general education setting and demonstrates lack of sufficient progress to intervention(s) after an appropriate period of time (see above for discussion of RTI process), the school should request parental consent to evaluate a child suspected of having a learning disability. Additional information is available at the [National Association of State Directors of Special Education \(NASDSE\) IDEA Partnership](#).

The definition of “scientific, research-based” is in federal law at 20 USC, §7801(37). Local school districts are in the best position to determine interventions that qualify as meeting the definition of “scientific, research-based.”

12. How may a school determine whether a student exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability?

Schools may determine a pattern of strengths and weaknesses by evaluating specific areas of cognitive function, academic achievement or both and comparing those results against each other or in contrast to other measures of student performance.

This evaluation determination process may include significant discrepancies between intellectual ability and achievement. However, a discrepancy cannot be the sole determinant for specific learning disability identification. If a discrepancy is included in the identification process, it should be based on a standard regression procedure and not simple difference procedures. Current research fails to support the validity of simple difference procedures in determining the existence of a learning disability. Evaluation instrument manuals typically provide information specific to identifying a significant discrepancy between intellectual ability and academic achievement.

In conducting an evaluation, schools are encouraged to include criterion-referenced or curriculum-based measures to more accurately identify patterns of strengths and weaknesses and link eligibility determinations to instruction.

In evaluating specific areas of cognitive functioning to determine a pattern of strengths and weaknesses, schools should take into consideration the federal definition of SLD as “a disorder in one or more of the basic psychological processes involved in understanding or in using language” (CFR [§300.8\(c\)\(10\)](#)). An identified pattern of strengths and weaknesses should be linked to the failure to achieve adequately as described above when used as a determination of SLD. Students whose classroom achievement indicates a pervasive weakness that does not constitute a pattern of strengths and weaknesses should not be determined to have a SLD. Students who meet the criteria as having mental retardation should not be determined to have a SLD.

Note: The determination of SLD must be made through the use of professional judgment, including consideration of multiple information/data sources to support the eligibility determination. Information/data sources may include statewide assessment results, formal evaluation test scores (IQ; achievement; cognitive function/processing), RtI progress monitoring data, informal data (e.g. rating scales, student work samples, interviews) and anecdotal reports. Such information/data sources must include an observation of the child in the child's learning environment as related to the area of SLD. Additional information is available at the [National Research Center on Learning Disabilities](#).

Reevaluation: In conducting a reevaluation for LD eligibility, schools should continue to use a variety of data sources, possibly including an RtI process. During the reevaluation process, schools are encouraged to: 1) use caution in determining that a child is no longer eligible for special education services; 2) carefully consider the child's response to removal of such supports; and 3) examine whether the special education instruction has been appropriate and, if so, whether such evidence argues for a continuation of LD eligibility. A major consideration in the reevaluation process should be the student's ability to meet the instructional demands of grade-level standards without special education and related services.

13. What information should be included in a written documentation of learning disability eligibility?

Written reports of SLD eligibility should include: 1) the basis for making the determination; 2) relevant behavior and medical findings, if any, and; 3) whether the child fails to achieve adequately and does not make sufficient academic progress or exhibits a pattern of strengths and weaknesses. As a part of the RtI process, the report should include the instructional strategies used and data collected. The report should also include documentation that the child's parents were notified of: 1) the school policies regarding performance data collected and general education services provided; 2) strategies for increasing the child's rate of learning, and; 3) the parent's right to request an evaluation.