

160-4-7-.05 ELIGIBILITY DETERMINATION AND CATEGORIES OF ELIGIBILITY.

(1) **DEFINITIONS.** A child or youth from 3 through 21 years of age is considered to have a disability under the Individuals with Disabilities Education Improvement Act (IDEA 2004) if the child or youth meets the eligibility criteria in any of the following areas and needs special education and related services.

- (a) **Autism spectrum disorder.**
- (b) **Deafblind.**
- (c) **Deaf/hard of hearing.**
- (d) **Emotional and behavioral disorder.**
- (e) **Intellectual disability (mild, moderate, severe, profound).**
- (f) **Orthopedic impairment.**
- (g) **Other health impairment.**
- (h) **Significant developmental delay.**
- (i) **Specific learning disability.**
- (j) **Speech-language impairment.**
- (k) **Traumatic brain injury.**
- (l) **Visual impairment.**

(2) DETERMINATION OF ELIGIBILITY

(a) Upon completion of the administration of assessments and other measures, a group of qualified professionals and the parents of the child (Eligibility Team) determine whether the child is a child with a disability and the educational needs of the child. [34 C.F.R. § 300.306(a)(1)]

(b) The LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. [34 C.F.R. § 300.306(a)(2)]

(c) A child must not be determined to be a child with a disability if the primary factor for that determination is –

1. Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in section 1208(3) of ESEA);
2. Lack of appropriate instruction in mathematics; or
3. Limited English proficiency; and
4. If the child does not otherwise meet the eligibility criteria under this Rule. [34 C.F.R. § 300.306(b)(1) – (2)]

(d) In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each LEA must:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations as well as the information about the child's physical condition, social or cultural background, and adaptive behavior;
2. Ensure that information obtained from all of these sources is documented and carefully considered. [34 C.F.R. § 300.306(c)(1)]
3. If a determination is made that a child has a disability, and the disability adversely affects educational performance (academic, functional and/or developmental) and therefore needs special education and related services, an IEP must be developed for the child in accordance with Rule 160-4-7-.06 INDIVIDUALIZED EDUCATION PROGRAM. [34 C.F.R. § 300.306(c)(2)]

(3) ELIGIBILITY REPORT. An eligibility report which documents the area of disability shall be completed and placed in each child's special education folder. The eligibility report shall provide statements for each component of the eligibility and shall be comprehensive enough to serve as the evaluation report when necessary.

(a) For those children determined not eligible for special education and related services the eligibility report shall clearly explain the Eligibility Team's determination.

(b) The parent of the child shall receive a copy of the eligibility report at no cost to the parent. [34 C.F.R. § 300.306(a)(2)]

Authority O.C.G.A. § 20-2-152; 20-2-240.

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Appendix (g): OTHER HEALTH IMPAIRMENT (OHI).

Definition.

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 -

(1) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficient hyperactivity disorder, diabetes, epilepsy, or heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome, and

(2) Adversely affects a child's educational performance. [34 C.F.R. § 300.8(c)(9)]

In some cases, heightened awareness to environmental stimulus results in difficulties with starting, staying on and completing tasks; making transitions between tasks; interacting with others; following directions; producing work consistently; and, organizing multi-step tasks.

Eligibility.

1. Evaluation for initial eligibility shall include the following:

(a) The medical evaluation from a licensed doctor of medicine, or in the case of ADD and ADHD an evaluation by a licensed doctor of medicine or licensed clinical psychologist, should be considered by the child's Eligibility Team as part of the process of determining eligibility. The evaluation report shall indicate the diagnosis/prognosis of the child's health impairment, along with information as applicable regarding medications, special health care procedures and special diet or activity restrictions. The evaluation report used for initial eligibility shall be current within one year and must document the impact of the physical condition on the vitality, alertness or strength of the child. In cases of illness where the child's physical health and well-being are subject to deterioration or change, this report shall be updated as frequently as determined by the IEP Committee. A medical diagnosis does not automatically include or exclude a child from determination of eligibility.

(b) A comprehensive developmental or educational assessment to indicate the effects of the health impairment on the child's educational performance. Assessments shall document deficits in pre-academic or academic functioning, adaptive behavior, social/emotional development, motor or communication skills resulting from the health impairment. When

assessment information indicates significant deficits in cognitive/academic functioning, a psychological evaluation shall be given.

(c) A child must not be determined to be a child with Other Health Impairment if the determinant factor for that determination is:

- a. Lack of appropriate instruction in reading, including the essential components of reading instruction;
- b. Lack of appropriate instruction in math;
- c. Lack of appropriate instruction in writing;
- d. Limited English proficiency;
- e. Visual, hearing or motor disability;
- f. Intellectual disabilities;
- g. Emotional disturbances;
- h. Cultural factors;
- i. Environmental or economic disadvantage; or
- j. Atypical educational history (attendance at multiple schools, lack of attendance).

Placement and Service Delivery.

(1) A child meeting eligibility criteria be served by any appropriately certified teacher in any educational program, as specified in the child's individualized education program (IEP).

(2) According to State Board of Education Rule 160-1-3-.03 Communicable Diseases, the district shall allow a child infected with a communicable disease to remain in his or her educational setting unless he or she currently presents a significant risk of contagion as determined by the district after consultation with the child's physician, a knowledgeable public health official and/or a physician designated by the LEA (at the LEA's option).

Appendix (i): SPECIFIC LEARNING DISABILITIES (SLD).

Definition

(1) Specific learning disability is defined as 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 an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing or motor disabilities, intellectual disabilities, emotional or behavioral disorders, environmental, cultural or economic disadvantage. [34 C.F.R. §300.8(c)(10)]

(2) The child with a specific learning disability has one or more serious academic deficiencies and does not achieve adequately according to age to meet State-approved grade-level standards. These achievement deficiencies must be directly related to a pervasive processing deficit and to the child's response to scientific, research-based interventions. The nature of the deficit(s) is such that classroom performance is not correctable without specialized techniques that are fundamentally different from those provided by general education teachers, basic remedial/tutorial approaches, or other compensatory programs. This is clearly documented by the child's response to instruction as demonstrated by a review of the progress monitoring available in general education and Student Support Team (SST) intervention plans as supported by work samples and classroom observations. The child's need for academic support alone is not sufficient for eligibility and does not override the other established requirements for determining eligibility.

Exclusionary Factors

(1) A child must not be determined to be a child with a specific learning disability if the determinant factor for that determination is:

- a. Lack of appropriate instruction in reading, to include the essential components of reading instruction (phonemic awareness, phonics, fluency, vocabulary, and comprehension);
- b. Lack of appropriate instruction in math;
- c. Lack of appropriate instruction in writing;
- d. Limited English proficiency;
- e. Visual, hearing or motor disability;
- f. Intellectual disabilities;
- g. Emotional disturbances;
- h. Cultural factors;
- i. Environmental or economic disadvantage; or
- j. Atypical educational history (such as irregular school attendance or attendance at multiple schools) [See 34 C.F.R. § 300.309(a)(3)]

Required Data Collection

(1) In order to determine the existence of Specific Learning Disability, the group must summarize the multiple sources of evidence to conclude that the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards and intellectual development. Ultimately, specific learning disability is determined through professional judgment using multiple supporting evidences that must include:

(a) Data are collected that include:

(i) At least two current (within twelve months) assessments such as the results of the CRCT or other state-required assessment, norm-referenced achievement tests or benchmarks indicating performance that does not meet expectations for State-approved grade-level standards;

(ii) Information from the teacher related to routine classroom instruction and monitoring of the child's performance. The report must document the child's academic performance and behavior in the areas of difficulty.

(iii) Results from supplementary instruction that has been or is being provided:

(a) that uses scientific, research or evidence based interventions selected to correct or reduce the problem(s) the student is having and was in the identified areas of concern;

(b) such instruction has been implemented as designed for the period of time indicated by the instructional strategy(ies). If the instructional strategies do not indicate a period of time the strategies should be implemented, the instructional strategies shall be implemented for a minimum of 12 weeks to show the instructional strategies' effect or lack of effect that demonstrates the child is not making sufficient progress to meet age or State-approved grade-level standards within a reasonable time frame;

(iv) the interventions used and the data based progress monitoring results are presented to the parents at regular intervals throughout the interventions.

(b) Any educationally relevant medical findings that would impact achievement.

(c) After consent is received from the parents for a comprehensive evaluation for special education determination the following must occur:

1. An observation by a required group member;
2. Documentation that the determination is not primarily due to any of the exclusionary factors;

3. Current analyzed classroom work samples indicating below level performance as compared to the classroom normative sample; and

4. Documentation of a pattern of strength and weaknesses in performance and/or achievement in relation to age and grade level standards must include:

(i) A comprehensive assessment of intellectual development designed to assess specific measures of processing skills that may contribute to the area of academic weakness. This assessment must be current within twelve months and

(ii) Current Response to Intervention data based documentation indicating the lack of sufficient progress toward the attainment of age or State-approved grade-level standards.

(iii) As appropriate, a language assessment as part of additional processing batteries may be included.

Eligibility Determination

(1) The child who is eligible for services under the category of specific learning disability must exhibit the following characteristics: a primary deficit in basic psychological processes and secondary underachievement in one or more of the eight areas along with documentation of the lack of response to instructional intervention as supported by on-going progress monitoring.

(2) Deficits in basic psychological processes typically include problems in attending, discrimination/perception, organization, short-term memory, long-term memory, conceptualization/reasoning, executive functioning, processing speed, and phonological deficits. Once a deficit in basic psychological processes is documented, there shall be evidence that the processing deficit has impaired the child's mastery of the academic tasks required in the regular curriculum. Though there may exist a pattern of strengths and weaknesses, evidence must be included documenting that the processing deficits are relevant to the child's academic underachievement as determined by appropriate assessments that are provided to the child in his/her native language. Though a child may be performing below age or State-approved grade level standards, the results of progress monitoring must indicate that the child is not making the expected progress toward established benchmarks. This is indicated by comparing the child's rate of progress toward attainment of grade level standards.

(3) Underachievement exists when the child exhibits a pattern of strengths and weakness in performance, achievement, or both, relative to age, State-approved grade level standards and intellectual development and when a child does not achieve adequately toward attainment of grade level standards in one or more of the following areas:

- (a) Oral expression- use of spoken language to communicate ideas;
- (b) Listening comprehension-ability to understand spoken language at a level commensurate with the child's age and ability levels;
- (c) Written expression - ability to communicate ideas effectively in writing with appropriate language;
- (d) Basic reading skills-ability to use sound/symbol associations to learn phonics in order to comprehend the text;
- (e) Reading comprehension-ability to understand the meaning of written language based in child's native language;
- (f) Reading Fluency Skills- the ability to read and process a text with appropriate rate and accuracy;
- (g) Mathematics calculation-ability to process numerical symbols to derive results, including, but not limited to, spatial awareness of symbol placement and choice of sequence algorithms for operations required; and
- (h) Mathematical problem solving -ability to understand logical relationships between mathematical concepts and operations, including, but not limited to, correct sequencing and spatial/symbolic representation.

(4) Progress monitoring includes the data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting child progress during instruction. When reviewing progress monitoring data, those students that exhibit a positive response to the research validated instruction being provided by general education cannot be considered as having a specific learning disability even though they may show deficits on achievement tests in the specified areas. In addition, children whose achievement in classroom academics indicates performance that is commensurate with pervasive weaknesses that are not indicative of a pattern of strengths and weaknesses may not be considered as having a specific learning disability.

(5) One group member responsible for determining specific learning disability must conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent for special education evaluation is obtained. The observation of the child is conducted in the learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. The observation must include information from the routine classroom instruction and monitoring of the child's performance.

The SLD Eligibility Group

(1) The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's parents and a team of qualified professionals that must include:

(a) The child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age;

(b) A highly qualified certified special education teacher; and

(c) A minimum of one other professional qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development and interpret assessment and intervention data (such as school psychologist, reading teacher, or educational therapist).

Determination of the required group member should be based on the data being reviewed and the child's individual needs.

(2) Each group member must certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Appendix (j): SPEECH-LANGUAGE IMPAIRMENT (SLI).

Definitions.

Speech or language impairment refers to a communication disorder, such as stuttering, impaired articulation, language or voice impairment that adversely affects a child's educational performance. A speech or language impairment may be congenital or acquired. It refers to impairments in the areas of articulation, fluency, voice or language. Individuals may demonstrate one or any combination of speech or language impairments. A speech or language impairment may be a primary disability or it may be secondary to other disabilities. [34 C.F.R. § 300.8(c)(11)]

(1) Speech Sound Production Impairment (e.g. articulation impairment)- atypical production of speech sounds characterized by substitutions, omissions, additions or distortions that interferes with intelligibility in conversational speech and obstructs learning, successful verbal communication in the educational setting. The term may include the atypical production of speech sounds resulting from phonology, motor or other issues. The term speech sound impairment does not include:

- A) Inconsistent or situational errors;
- B) Communication problems primarily from regional, dialectic, and/or cultural differences;
- C) Speech sound errors at or above age level according to established research-based developmental norms, speech that is intelligible and without documented evidence of adverse affect on educational performance;
- D) Physical structures (e.g., missing teeth, unrepaired cleft lip and/or palate) are the primary cause of the speech sound impairment; or
- E) Children who exhibit tongue thrust behavior without an associated speech sound impairment.

(2) Language Impairment - impaired comprehension and/or use of spoken language which may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve, in any combination, the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance. The term language impairment does not include:

- A) Children who are in the normal stages of second language acquisition/learning and whose communication problems result from English being a secondary language unless it is also determined that they have a speech language impairment in their native/primary language.
- B) Children who have regional, dialectic, and/or cultural differences
- C) Children who have auditory processing disorders not accompanied by language impairment.
- D) Children who have anxiety disorders (e.g. selective mutism) unless it is also determined that they have a speech language impairment. There must be a documented speech-language impairment that adversely affects the

educational performance for these children to qualify for special education services.

(3) Fluency Impairment - interruption in the flow of speech characterized by an atypical rate, or rhythm, and/or repetitions in sounds, syllables, words and phrases that significantly reduces the speaker's ability to participate within the learning environment. Excessive tension, struggling behaviors and secondary characteristics may accompany fluency impairments. Secondary characteristics are defined as ritualistic behaviors or movements that accompany dysfluencies. Ritualistic behaviors may include avoidance of specific sounds in words. Fluency impairment includes disorders such as stuttering and cluttering. It does not include dysfluencies evident in only one setting or reported by one observer.

(4) Voice/Resonance Impairment – interruption in one or more processes of pitch, quality, intensity, or resonance resonance that significantly reduces the speaker's ability to communicate effectively.. Voice/Resonance impairment includes aphonia or the abnormal production of vocal quality, pitch, loudness, resonance, and/or duration, which is inappropriate for an individual's age and/or gender. The term voice/resonance impairment does not refer to:

- A) Anxiety disorders (e.g. selective mutism)
- B) Differences that are the direct result of regional, dialectic, and/or cultural differences
- C) Differences related to medical issues not directly related to the vocal mechanism (e.g. laryngitis, allergies, asthma, laryngopharyngeal reflux (eg. acid reflux of the throat, colds, abnormal tonsils or adenoids, short-term vocal abuse or misuse, neurological pathology)
- D) Vocal impairments that are found to be the direct result of or symptom of a medical condition unless the impairment impacts the child's performance in the educational environment and is amenable to improvement with therapeutic intervention.

Evaluation, Eligibility and Placement

All of the special education rules and regulations related to evaluation, eligibility and placement must be followed including:

1. Evaluation:

- A) Documentation of the child's response to prior evidenced-based interventions prior to referral for a comprehensive evaluation.]
- B) A comprehensive evaluation shall be performed by a certified or licensed Speech-Language Pathologist (SLP) for consideration of speech-language eligibility. Following receipt of a clear hearing and vision screening and medical clearance for voice (as appropriate) this evaluation consists of an initial screening of the child's speech sounds, language, fluency, voice, oral motor competency, academic,

behavioral, and functional skills using either formal or informal assessment procedures to assist in determining if the child is a child with a disability [34 C.F.R. 300.304(b)(1)]. An in-depth evaluation of each area suspected of being impaired, using at least one formal test and/or procedure.

C) A full and individual initial evaluation for each area suspected of being a disability must be provided and considered prior to the child's eligibility for speech-language services. This may include assessments in the areas of health (e.g. ENT, otolaryngologist, ophthalmologist, and optometrist), vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

D) The evaluation is sufficient to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been referred or classified [34 C.F.R. 300.304(b)(4)] 34 C.F.R. 300.304(b)(6).

E) Children with voice/resonance impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g., vocal nodules, polyps) does not necessitate the provision of voice therapy as special education or related service nor does a prescription for voice therapy from a medical doctor. A written order from a medical practitioner is a medical opinion regarding the medical evaluation or treatment that a patient should receive. When directed to a school, these medical orders should be considered by the team as a part of the eligibility process. The team, not a medical practitioner, determines the need for an evaluation for special education services based on documented adverse effect of the voice impairment on the child's educational performance.

F) A variety of assessment tools and strategies must be used to gather relevant functional, developmental and academic information about the child, including information provided by the parent. Information from the evaluation is used to determine whether the child is a child with a disability and the content of the child's IEP including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities)m[34 C.F.R. 300.304(b)(i)].

2. Eligibility:

A) Determining eligibility for speech-language impaired special education services includes three components:

- 1) The Speech-Language Pathologist determines the presence or absence of speech-language impairment based on Georgia rules and regulations for special education, [34 C.F.R. § 300.8(c)(11)]

- 2) Documentation of an adverse affect of the impairment on the child's educational performance
- 3) The team determines that the child is a child with a disability [34 C.F.R. 300.304(b)(1)] and is eligible for special education and appropriate specialized instruction needed to access the student's curriculum. [34 C.F.R. 300.8(b)(2)]

B) Eligibility shall be determined based on the documented results of at least two or more measures or procedures, at least one of which must be formal, administered in the area of impairment and documentation of adverse affect.

A speech-language disorder does not exist if:

- A) Environmental, cultural, or economic disadvantage cannot be ruled out as primary factors causing the impairment; or
- B) A child exhibits inconsistent, situational, transitory or developmentally appropriate speech-language difficulties that children experience at various times and to various degrees.

C) Because children who have communication difficulties do not necessarily have speech or language impairments, the speech-language program may not be the appropriate service delivery model to adequately meet the child's educational needs. For this reason, all children who are suspected of having communication problems shall be the subject of a Student Support Team (SST) to problem solve and implement strategies to determine and limit the adverse affect on the child's educational performance.

(4) For nonverbal or verbally limited children and those with autism and/or significant intellectual, sensory, or physical disabilities, a multidisciplinary team of professionals shall provide a functional communication assessment of the child to determine eligibility for speech-language services. The multidisciplinary team shall consist of professionals appropriately related to the child's area of disability.

(5) A child is eligible for placement in a speech-language program if, following a comprehensive evaluation; the child demonstrates impairment in one or more of the following areas: speech sound, fluency, voice or language that negatively impacts the child's ability to participate in the classroom environment. The present adverse effect of the speech-language impairment on the child's progress in the curriculum, including social and/or emotional growth, must be documented in writing and used to assist in determining eligibility.

3. Placement:

Placement in the speech-language program shall be based on the results of the comprehensive assessment, and eligibility, along with all other pertinent information.

4. Children shall not be excluded from a speech-language program based solely on the severity of the disability. Cognitive referencing (i.e., comparing language scores to IQ scores) is not permissible as the only criteria for determining eligibility for speech-language impaired services.

Communication Paraprofessionals- A communication paraprofessional is an adjunct to the Speech Language Pathologist (SLP) and assists with certain duties and tasks within the speech-language program. The communication paraprofessional is under the supervision of a certified or licensed SLP. The communication paraprofessional can not carry their own caseload, nor do they increase the certified SLP's caseload outside of a self-contained classroom. The primary responsibility for the delivery of services, as indicated on the IEP, remains with the certified or licensed SLP. Children who receive services from the communication paraprofessional shall also receive services from the supervising SLP and/or licensed or certified SLP a percentage of the time designated in the IEP for speech-language services, but no less than one hour per month. Each LEA should develop and implement procedures for the training, use and supervision of communication paraprofessionals.