

# SPECIAL EDUCATION ELIGIBILITY



<b>Eligibility</b>	<b>Federal Law 34 CFR § 300.8(c)</b>	<b>State Law 5 CCR § 3030 unless otherwise noted</b>
<b>Autism</b>	<p>(1)(i) <i>Autism</i> 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.</p> <p>(ii) 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.</p> <p>(iii) 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</p>	<p>(1) <i>Autism</i> means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting 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.</p> <p>(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in subdivision (b)(4) of this section.</p> <p>(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in subdivision (b)(1) of this section are satisfied.</p>
<b>Deaf (See Hearing Impaired)</b>	<p>(3) <i>Deafness</i> 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.</p>	<p>(3) <i>Deafness</i> 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.</p>
<b>Deaf-Blind</b>	<p>(2) <i>Deaf-blindness</i> 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.</p>	<p>(2) <i>Deaf-blindness</i> 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.</p>
<b>Emotionally Disturbed</b>	<p>(4)(i) <i>Emotional disturbance</i> 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:</p> <p>(A) An inability to learn that cannot be explained by</p>	<p>(4) <i>Emotional disturbance</i> 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:</p> <p>(A) An inability to learn that cannot be explained by</p>

	<p>intellectual, sensory, or health factors.</p> <p>(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</p> <p>(C) Inappropriate types of behavior or feelings under normal circumstances.</p> <p>(D) A general pervasive mood of unhappiness or depression.</p> <p>(E) A tendency to develop physical symptoms or fears associated with personal or school problems.</p> <p>(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.</p>	<p>intellectual, sensory, or health factors.</p> <p>(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</p> <p>(C) Inappropriate types of behavior or feelings under normal circumstances.</p> <p>(D) A general pervasive mood of unhappiness or depression.</p> <p>(E) A tendency to develop physical symptoms or fears associated with personal or school problems.</p> <p>(F) 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 subdivision (b)(4) of this section.</p>
<p><b>Established Medical Disability (0-5 yrs.) (State)/ Developmental Delay (Federal)</b></p>	<p>(b) <i>Children aged three through nine experiencing developmental delays.</i> Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—</p> <p>(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</p> <p>(2) Who, by reason thereof, needs special education and related services.</p>	<p>Education Code 56441.11 (d) For purposes of this section, “<i>established medical disability</i>” means a disabling medical condition or congenital syndrome that the individualized education program team determines has a high predictability of requiring special education and services.</p>
<p><b>Fetal Alcohol Syndrome (FAS)</b></p>	<p>NA</p>	<p>SB 1016 (2022) Education Code 56332. The State Board of Education shall include “fetal alcohol spectrum disorder” in the definition of “other health impairment” in Section 3030 of Title 5 of the California Code of Regulations.</p>
<p><b>Hard of Hearing/ Hearing Impairment (See Deaf)</b></p>	<p>(5) <i>Hearing impairment</i> 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.</p>	<p>(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.</p>
<p><b>Intellectual</b></p>	<p>(6) <i>Intellectual disability</i> means significantly subaverage</p>	<p>(6) <i>Intellectual disability</i> means significantly subaverage</p>

<b>Disability</b>	general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."	general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
<b>Multiple Disabilities</b>	(7) <i>Multiple disabilities</i> means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), 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.	(7) <i>Multiple disabilities</i> means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, 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.
<b>Orthopedically Impaired</b>	(8) <i>Orthopedic impairment</i> 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), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).	(8) <i>Orthopedic impairment</i> 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), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
<b>Other Health Impaired</b>	(9) <i>Other health impairment</i> 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, sickle cell anemia, and Tourette syndrome; and (ii) Adversely affects a child's educational performance.	(9) <i>Other health impairment</i> 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: (A) 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, sickle cell anemia, and Tourette syndrome; and (B) Adversely affects a child's educational performance. Note: Fetal Alcohol Syndrome not yet included as of 4/17/2023.
<b>Specific Learning Disability</b>	(10) <i>Specific learning disability</i> — (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	EC 56337. (a) A <i>specific learning disability</i> , as defined in Section 1401(30) of Title 20 of the United States Code, means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning

	<p>perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(ii) Disorders not included. 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.</p>	<p>disability” includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. That term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.</p> <p>(b) Notwithstanding any other law and pursuant to Section 1414(b)(6) of Title 20 of the United States Code, in determining whether a pupil has a specific learning disability as defined in subdivision (a), a local educational agency is not required to take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.</p> <p>(c) In determining whether a pupil has a specific learning disability, a local educational agency may use a process that determines if the pupil responds to scientific, research-based intervention as a part of the assessment procedures described in Section 1414(b)(2) and (3) of Title 20 of the United States Code and covered in Sections 300.307 to 300.311, inclusive, of Title 34 of the Code of Federal Regulations.</p> <p><b>5 CCR § 3030 – discussion of discrepancy model</b></p> <p>(10) <i>Specific learning disability</i> means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual processing, auditory processing, phonological processing, sensory-motor skills, cognitive abilities including association, conceptualization</p>
--	---	---

		<p>and expression.</p> <p>(A) Specific learning disabilities do 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.</p> <p>(B) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:</p> <ol style="list-style-type: none"><li>1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.</li></ol>
--	--	--

		<p>2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.</p> <p>3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:</p> <ul style="list-style-type: none"><li>(i) Data obtained from standardized assessment instruments;</li><li>(ii) Information provided by the parent;</li><li>(iii) Information provided by the pupil's present teacher;</li><li>(iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;</li><li>(v) Consideration of the pupil's age, particularly for young children; and</li><li>(vi) Any additional relevant information.</li></ul> <p>4. A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance.</p> <p>(C) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:</p> <ul style="list-style-type: none"><li>1. The pupil does not achieve adequately for the pupil'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 pupil's age or State-approved grade-level standards:<ul style="list-style-type: none"><li>(i) Oral expression.</li><li>(ii) Listening comprehension.</li><li>(iii) Written expression.</li><li>(iv) Basic reading skill.</li></ul></li></ul>
--	--	---

		<p>(v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation. (viii) Mathematics problem solving, and</p> <p>2. (i) The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research-based intervention; or (ii) The pupil 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 34 C.F.R. sections 300.304 and 300.305; and</p> <p>3. The findings under subdivisions (b)(10)(C)(1) and (2) of this section are not primarily the result of: (i) A visual, hearing, or motor disability; (ii) Intellectual disability; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.</p> <p>4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider: (i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.</p> <p>5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is</p>
--	--	--

		<p>observed in the pupil's learning environment in accordance with 34 C.F.R. section 300.310. In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. The eligibility determination must be documented in accordance with 34 C.F.R. section 300.311.</p>
<p><b>Speech/ Language Impaired</b></p>	<p>(11) <i>Speech or language impairment</i> means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.</p>	<p>(11) A pupil has a language or speech disorder as defined in Education Code section 56333, and it is determined that the pupil's disorder meets one or more of the following criteria:</p> <p>(A) Articulation disorder.</p> <p>1. The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.</p> <p>2. A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.</p> <p>(B) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.</p> <p>(C) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.</p> <p>(D) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:</p> <p>1. The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of</p>



language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or

2. The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of 50 utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

**Education Code §56333.** A pupil shall be assessed as having a language or speech disorder that makes the pupil eligible for special education and related services when the pupil demonstrates difficulty understanding or using language to such an extent that it adversely affects the pupil's educational performance and cannot be corrected without special education and related services. In order to be eligible for special education and related services, difficulty in understanding or using language shall be assessed by a speech-language pathologist who determines that such difficulty results from any of the following disorders:

(a) Speech sound disorder, characterized by deficits in the pupil's production of speech sounds that significantly interferes with communication and attracts adverse

		<p>attention.</p> <p>(b) Voice disorder, characterized by persistent, deficits in voice quality, pitch, intensity, or resonance. A medical examination shall be conducted, where appropriate.</p> <p>(c) Fluency disorder, characterized by persistent deficits in the flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.</p> <p>(d) Language disorder, characterized by inappropriate or inadequate acquisition, comprehension, or expression of language such that the pupil's language performance level is found to be significantly below the language performance level of the pupil's peers.</p> <p>(e) Hearing impairment or deafness that contributes to or results in a language or speech disorder and significantly affects educational performance.</p>
<b>Traumatic Brain Injury</b>	<p>(12) <i>Traumatic brain injury</i> 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.</p>	<p>(12) <i>Traumatic brain injury</i> 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.</p> <p>(A) Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.</p>
<b>Visually Impaired</b>	<p>(13) <i>Visual impairment including blindness</i> means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.</p>	<p>(13) <i>Visual impairment including blindness</i> means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both <i>partial sight and blindness</i>.</p>