The Individuals with Disabilities Education Act: A Comparison of State Eligibility Criteria

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SUMMARY

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The Individuals with Disabilities Education Act: A Comparison of State Eligibility Criteria

The Individuals with Disabilities Education Act (IDEA; P.L. 108-446) is the primary source of federal funding to states for the identification and education of children with disabilities. The majority of IDEA appropriations are allocated to states by formula to carry out activities under Part B, which covers 14 disability categories: (1) autism, (2) deaf-blindness, (3) deafness, (4) emotional disturbance, (5) hearing impairment, (6) intellectual disability, (7) multiple disabilities, (8) orthopedic impairment, (9) other health impairment, (10) specific learning disability, (11) speech or language impairment, (12) traumatic brain injury, (13) visual impairment, and (14) developmental delay.

Each state is responsible for ensuring that children with disabilities are found and evaluated. States must submit a plan to the Secretary of Education (the Secretary) that provides assurances that the state has policies in place to meet certain conditions. Two of the required conditions are (1) finding children who may have disabilities and (2) evaluating them. States are required to implement the provisions regarding evaluation to determine whether a student is a *child with a disability* and eligible for special education and related services. States develop their own definitions and eligibility criteria, but they are not required to submit this information to the Secretary.

This report seeks to document the variability in state definitions of eligibility criteria in IDEA disability categories. CRS conducted a survey of state regulations and other state department of education documents to identify operational definitions of eligibility criteria for each of the IDEA disability categories. CRS identified 15 states that have operational definitions of eligibility criteria with similar levels of detail for most of the disability categories. For these 15 states, CRS compared and contrasted state operational definitions of eligibility criteria to evaluate the size and scope of the variability. The survey results are grouped into three broad categories for analysis: low-incidence disabilities, medium-incidence disabilities, and high-incidence disabilities. The results indicate there is uneven variability in state operational definitions of eligibility criteria for disabilities in terms of specificity, severity, method of identification, and timeline for identification. Eligibility criteria for low-incidence disabilities tend to be less variable than eligibility criteria for high-incidence disabilities. The greater variability in eligibility criteria for high-incidence disabilities may be reflective of ongoing debate surrounding the identification of these disabilities, most notably in the *specific learning disabilities* category.

Because of the variability in eligibility criteria across states, there may be confusion for some regarding the identification of and service delivery for children with disabilities. In many cases, a child with a disability in one state would be eligible as a child with the same disability in another state, and in those cases service delivery may continue with minimal disruption. In some cases, however, a child with a disability in one state may *not* be identified as a child with a disability in another state. Service delivery would be discontinued if the child no longer met the definition and eligibility criteria of *child with a disability* in the new state. In other cases, a child who is determined not to be a child with a disability in one state may be found to be a child with a disability eligible for special education and related services in another state. To minimize disruption in service delivery, Congress could consider whether to create provisions that (1) incentivize interstate or regional compacts, (2) create an expedited evaluation process, and (3) direct states to establish a network that would allow local educational agencies to work across state lines to help children with disabilities transition into a new school.

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Introduction

The Individuals with Disabilities Education Act (IDEA; P.L. 108-446) is the primary source of federal funding to states for the identification and education of children with disabilities.[1] The majority of IDEA appropriations are allocated to states by formula to carry out activities under Part B—the Assistance for Education of All Children with Disabilities.[2] The FY2020 appropriations for Part B were $12.8 billion.[3]

The IDEA defines a *child with a disability* as one "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities; and, who, by reason thereof, needs special education and related services."[4] The legislation specifically mentions 10 disability categories. Subsequent U.S. Department of Education (ED) regulations list two additional disability categories: "deaf-blindness" and "multiple disabilities." The regulations also separate deafness from hearing impairment, bringing the total number of disability categories to 13: (1) autism, (2) deaf-blindness, (3) deafness, (4) emotional disturbance, (5) hearing impairment, (6) intellectual disability, (7) multiple disabilities, (8) orthopedic impairment, (9) other health impairment (OHI), (10) specific learning disability (SLD), (11) speech or language impairment (SLI), (12) traumatic brain injury (TBI), and (13) visual impairment (including blindness).[5] ED provides definitions of each of these 13 disabilities in regulations (see **Appendix B**).[6]

The IDEA also includes the option to add (14) "developmental delay" as a disability category, at the discretion of the state. A child with developmental delay is one aged three through nine who experiences developmental delays in at least one of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. Fifty-six of the 50 states, the District of Columbia, the territories, and outlying areas (hereinafter, these entities are referred to as *states*) use "developmental delay."[7] Because of the widespread adoption of developmental delay, it is included in this report as a fourteenth disability category.[8]

The state is responsible for ensuring that children with disabilities are found and evaluated. To be eligible to receive Part B funds, a state must submit a plan to the Secretary of Education (the Secretary). The plan must provide assurances that the state has policies in place to meet certain

[1] See CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

[2] See CRS Report R44624, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*, by Kyrie E. Dragoo.

[3] See FY2020 budget tables at https://www2.ed.gov/about/overview/budget/tables.html.

[4] IDEA §602(3). U.S. Department of Education regulations officially replaced the term *mental retardation* with *intellectual disability* or *intellectual disabilities* in 2010 (Rosa's Law; P.L. 111-256).

[5] 34 C.F.R. §300.8(c).

[6] Note that in reporting data, "hearing impairment" and "deafness" are often reported as a single disability category.

[7] California, Iowa, Puerto Rico, and Texas do not use developmental delay as a disability category.

[8] U.S. Department of Education, "IDEA Part B Child Count and Educational Environments for School Year 2018-2019," *OSEP Data Documentation*, pp. 31-34, https://www2.ed.gov/programs/osepidea/618-data/collection-documentation/data-documentation-files/part-b/child-count-and-educational-environment/idea-partb-childcountandedenvironment-2018-19.pdf.

conditions.[9] Two of the required conditions include carrying out "child find" and "evaluation."[10] Child find is a process of locating children who may have a disability and letting their families know they may be evaluated free of charge to determine if they are eligible for services under the IDEA. The state is required to implement child find for all children in the state, including (1) children with disabilities who are homeless or wards of the state and (2) children attending private schools. The state must also provide an assurance that an evaluation will be carried out for all children with possible disabilities.[11]

The IDEA outlines the required procedures for evaluations and eligibility determinations.[12] Initial evaluations can be requested by a parent, the state, or the local educational agency (LEA). The evaluation must be conducted (1) within 60 days of receiving parental consent for the evaluation, or (2) within a timeframe established by the state.[13] In conducting an evaluation, an LEA must

- use a variety of assessment tools and strategies;
- not use a single measure or assessment as the sole criterion for determining whether a child has a disability;
- use technically sound instruments that may assess the contribution of cognitive, behavioral, physical, and developmental factors;
- ensure that assessments or other evaluation materials (1) are not discriminatory on a racial or cultural basis; (2) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so; (3) are used for purposes for which the assessments or measures are valid and reliable; (4) are administered by trained and knowledgeable personnel; and (5) are administered in accordance with any instructions provided by the producer of such assessments;
- ensure that the child is assessed in all areas of suspected disability;
- ensure that assessment tools and strategies provide relevant information that directly assists persons in determining their educational needs;
- ensure that assessments of children with disabilities who transfer from one LEA to another LEA in the same academic year are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

Upon completion of the evaluation,

- the determination of whether the child is a child with a disability and the educational needs of the child must be made by a team of qualified professionals and the parent of the child; and
- a copy of the evaluation report and the documentation of determination of eligibility must be given to the parent.

[9] IDEA §612(a).

[10] See IDEA Section 612(a) for other assurances required in the state plan.

[11] The requirements to provide assurances for child find and evaluation are found in IDEA Section 612(a). Child find is described in Section 612(a)(3) and evaluation is described in Section 612(a)(7).

[12] IDEA §614.

[13] IDEA §614(a)(1)(C)(i)(I).

The evaluation and eligibility determination provisions above do not outline specific tests, criteria, or decision procedures. The provisions maintain, in brief, that the evaluation must use a variety of assessments that are valid and reliable, that the eligibility determination cannot be made based on a sole criterion, and that eligibility determination must be decided by a qualified team.[14]

States are required to interpret and implement these evaluation and eligibility determination provisions. To determine whether children are eligible for special education and related services, states develop their own disability definitions and eligibility criteria; however, states are not required to submit this information to the Secretary. There have been reports of variability among state definitions and eligibility criteria, but the variability is not well documented or widely understood.[15] CRS's efforts to locate existing reports on the variation or consistency among state definitions and eligibility criteria identified no such products.

The purpose of this report is to document the variability in state definitions and eligibility criteria in the 14 IDEA disability categories. The first section describes ED data that highlight identification rates by disability type and identification rates by state. The next section offers a theory to explain the variability in identification rates across states, focusing specifically on the role of state definitions and eligibility criteria. The report then describes the methodology for studying the variability and how it supports the aim of exploring whether evidence supports this theory. Finally, it presents results, discusses implications for special education service delivery, and considers the role of the federal government in special education eligibility determinations.

Disability Identification Rates

ED collects data on the number and percentage of children in public schools that have been evaluated and found eligible to receive special education and related services under the IDEA. **Table 1** presents the percentage of all children enrolled in P-12 public schools that are served under IDEA, Part B by their primary IDEA disability category. In school year (SY) 2018-2019 (the most recent data available), 14.1% of all public school students in pre-kindergarten through 12th grade (P-12 children) received special education and related services. Rates of disability identification vary by type of disability. Within the 14.1% of all P-12 children who have disabilities, the most common disabilities are SLD (4.7%), SLI (2.7%), and OHI (2.1%).[16] The least common disabilities are deaf-blindness (less than 0.1%), hearing impairment (0.1%), orthopedic impairment (0.1%), TBI (0.1%), visual impairment (0.1%), and multiple disabilities (0.3%). (See **Table 1**.)

[14] CRS analysts and librarians searched legislative history surrounding these provisions and did not find an explicit rationale for requiring states to determine eligibility criteria for disability identification rather than establishing eligibility criteria in federal law. Because states and localities have historically had primary responsibility for elementary and secondary education, it is possible that Congress chose to avoid prescribing specific criteria in legislation. It is also possible that concerns may have arisen about the technical complexity of determining eligibility criteria in statutory provisions or that common eligibility criteria might have committed states and localities to a certain level of expenditure for special education services.

[15] See U.S. Government Accountability Office, *Special Education: Varied State Criteria May Contribute to Differences in Percentages of Children Served*," GAO 19-348, April 2019.

[16] These are the percentages of children with a particular type of disability as a proportion of total public school enrollment from pre-kindergarten through 12th grade.

Table 1. Children Served Under IDEA, Part B, as a Percentage of Total P-12 Enrollment by Primary Disability Category: SY2018-2019

IDEA disability categories listed in order of frequency

Type of Disability	School Year 2018-2019[a]
All disabilities	14.1
Specific learning disabilities	4.7
Speech or language impairment	2.7
Other health impairment[b]	2.1
Autism	1.5
Developmental delay	0.9
Intellectual disability	0.9
Emotional disturbance	0.7
Multiple disabilities	0.3
Hearing impairment (including deafness)	0.1
Orthopedic impairment	0.1
Traumatic brain injury	0.1
Visual impairment (including blindness)	0.1
Deaf-blindness	#

Source: Table created by CRS using data from U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2019* (NCES 2020-009), 2019, Table 204.30.

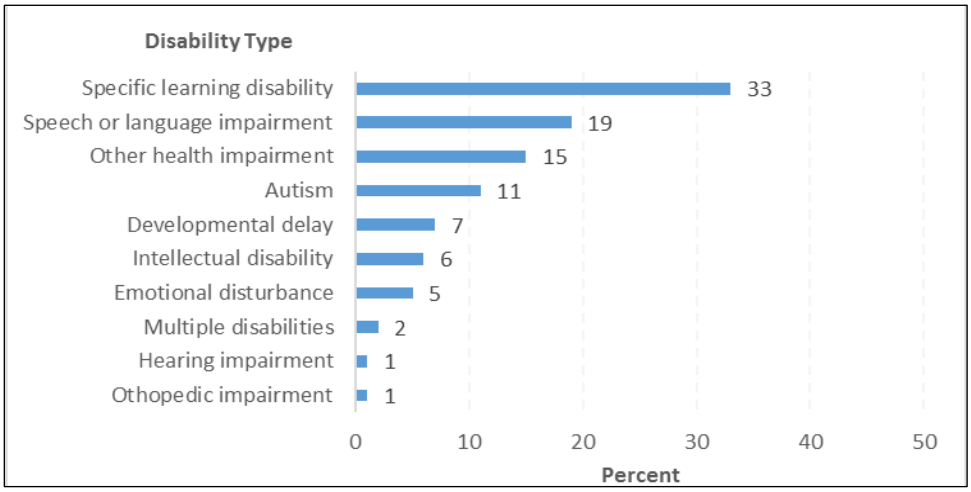
Notes: # = rounds to zero. Table displays percentage of served children with disabilities who were 3 to 21 years old.

a. Includes SY2015-2016 data for 3- to 21-year-olds in Wisconsin because SY2018-2019 data were not available.

b. Other health impairments include having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

Figure 1 presents the percentage distribution of children with disabilities by disability type (i.e., the percentage of children with one type of disability divided by the total of all *children with disabilities*). Again, the most common types of disabilities identified were SLD (33%), SLI (19%), and OHI (15%). Children with SLD represented one-third of all children identified with a disability. The least common types of disabilities are not represented in the figure: visual impairment, TBI, and deaf-blindness each account for less than 0.5% of children identified with a disability.

Figure 1. Percentage Distribution of Children Ages 3–21 Served Under the Individuals with Disabilities Education Act (IDEA), by Disability Type: SY2018–2019



Source: U.S. Department of Education, National Center for Education Statistics, The Condition of Education, "Students with Disabilities."

Notes: Other health impairments include having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

For the purposes of this report, the data above is used to sort the disability categories into three groups:

- **Low-incidence disabilities.** Multiple disabilities, hearing impairment, orthopedic impairment, visual impairment, TBI, deafness, and deaf-blindness represent approximately 5% of all children with disabilities.
- **Medium-incidence disabilities**. Autism, developmental delay, intellectual disability, and emotional disturbance represent approximately 28% of all children with disabilities.
- **High-incidence disabilities.** SLD, SLI, and OHI represent approximately 67% of all children with disabilities.

ED also collects and reports data on disability identification rates by state. **Table C-1** presents disability identification rates by state, expressed as a proportion of total public school enrollment from pre-kindergarten through 12th grade. For SY2017-2018 (the most recent data available that are disaggregated by state), a total of 13.7% of children aged 3 through 21 received special education and related services. The majority of states reported disability rates somewhere between 11% and 16%, and the rates ranged from a low of 9.2% (Texas) to a high of 19.2% (New York).

The top end of the range represents more than double the percentage of children with disabilities than the bottom end. There are multiple explanations for this:

- Some states may in fact have higher shares of children with disabilities than do other states. For example, a state may have a special school or program that serves children with disabilities, and families may move to find better services for their child.

- A state may have a university with a strong special education program, and families may move to a place where there are more special education service providers.
- Some states may have a more widely implemented child find process, which may lead states to evaluate more children and therefore have a higher overall percentage of children with disabilities.
- States may be implementing the evaluation and eligibility determination requirements of IDEA in different ways. As discussed earlier, states create policies for LEAs to determine the eligibility of children for special education and related services. These eligibility determinations depend on state definitions and criteria, which are not consistent across the states.

Variability Across States

This report investigates whether the variability in disability identification rates may be due, in part, to differences in implementation of the IDEA—specifically the evaluation and eligibility determinations.[17] It shows that some of the variability could be due to state definitions and criteria for the 14 disability categories in the IDEA. While all states have a definition of *child with a disability*, this report primarily examines states that present operational definitions.

An *operational definition* is a description of something in terms of the operational procedures, actions, or processes by which it could be observed and measured.[18] An operational definition has three components:

1. **Test:** a specific procedure for measuring a characteristic.
2. **Criteria:** the standard against which to evaluate the results of the test.
3. **Decision:** the determination as to whether the test results show that the characteristics meet the criteria.[19]

The definitions of disability categories in the ED regulations are not operational definitions (see **Appendix B**). These definitions provide a description of the characteristics of a disability; however, the federal government does not specify the procedures and processes by which disability is observed and measured. An operational definition of an IDEA disability category may include tests, such as checklists of behaviors, test scores from certain types of assessments, or medical assessments. Each test may include related criteria. For example, to be eligible for special education under a particular disability category, a child may need to

- exhibit a certain number of behaviors on a checklist (e.g., exhibit four out of seven behaviors),
- score a certain level below the mean on a test of intellectual functioning (e.g., two or more standard deviations), or
- have poor visual acuity on a medical assessment of vision (e.g., 20/70 or worse in the better eye with correction).

[17] See IDEA §614.

[18] G. R. VandenBos, and American Psychological Association, *APA dictionary of psychology* (Washington, DC: American Psychological Association, 2007).

[19] W. Edward Deming, *Out of the Crisis*, Massachusetts Institute of Technology, Center for Advanced Educational Services, Cambridge, MA, p. 238.

When test scores are compared to criteria, a decision can be made about whether a child has a disability and qualifies for special education and related services under the IDEA. If operational definitions (tests, criteria, and decisions) vary across states, it is likely that different percentages of children would qualify as a child with a disability across states. A child who is identified with a disability in one state may not be identified as such in another. Or, as another example, a child identified with an intellectual disability in one state may be identified with multiple disabilities in another.

Although there is no requirement that states develop operational definitions as defined above, some states provide them in regulations or other state department of education documents. When operational definitions can be located, they are useful for illustrating the state eligibility criteria used to make eligibility determinations under the IDEA.

Methodology

CRS conducted a survey of state regulations and department of education documents. These documents were used to locate and examine operational definitions of eligibility criteria. CRS aimed to find states that provided operational definitions of eligibility criteria for the 14 disability categories in the IDEA. Many state regulations adhere to the federal regulations but do not provide additional information, such as operational definitions of eligibility criteria. In cases where state regulations closely paralleled federal regulations, the state was excluded from further analysis. That is, if the state regulations did not provide operational definitions of eligibility criteria, they were not used to compare the consistency or variability across states.

In the survey of state regulations and state department of education documents, 15 states[20] were identified that provided operational definitions of eligibility criteria for most IDEA disability categories with similar levels of detail.[21] These 15 states, which represent a non-random sample of approximately 29% of all states, are the focus of this report. The 15 sample states represent a little less than 20% of the total public school enrollment.[22]

The goal of the report is not to evaluate eligibility criteria to assess their accuracy or quality; but rather, to illustrate a range of operational definitions of eligibility criteria used across a sample of states. Because the sample represents a minority of the public school enrollment, the ability to generalize from this report's findings and make conclusions based upon its analysis may be limited. It is possible, for instance, that the states not included in the sample describe operational definitions of eligibility criteria in other formats (e.g., special education eligibility forms, parent handbooks).[23] Those states not included in the sample serve over 80% of the public school enrollment. If it is assumed that those states have fairly consistent operational definitions of eligibility criteria, then any variability this report's analysis found would be applicable to only a subset rather than the majority of states.[24]

[20] See **Appendix D** for information on the 15 states chosen for analysis and selected results of the state survey.

[21] It was uncommon for states to provide operational criteria; therefore, the sample for this examination includes a minority of states.

[22] Data are compiled from Table 203.20 in the Digest of Education Statistics, available at https://nces.ed.gov/programs/digest/d19/tables/dt19_203.20.asp.

[23] These written formats are not consistently available through electronic searches, and thus were excluded from the analysis.

[24] While it is possible that consistency in operational criteria exist, anecdotal evidence suggests that there is variability that is not well understood. See footnote 15. Also see https://www.masters-in-special-education.com/student-eligibility-

In general, the 15 states examined in this report used either the federal definitions in ED regulations or slight variations thereof. (See **Appendix B**.) Due to the consistency in state definitions, the definitions were excluded from the analysis because they would not help explain the variability in disability identification rates across states. The primary data used for analysis, therefore, were the state eligibility *criteria* for disability identification.

This report describes the consistency and variability of eligibility criteria for disability identification across the sample of 15 states. Regarding consistency, it aims to summarize what is similar across the entire sample. Regarding variability, it selects three states to provide examples of eligibility criteria to illustrate the range across states. When possible, it uses a *low, medium, high* example within each disability category. (See **Appendix B**.) Each state's data were used at least once (i.e., for each state, there is at least one example profiled in one of the disability categories). The number of examples from each state used for the analysis ranged from one to six. No attempt was made to make the number of examples from each state equal.

A low, medium, high example looks different depending on the type of disability. For example, for sensory impairments (e.g., hearing impairment and visual impairment), the low, medium, high example would be based on a medical assessment of hearing or vision. A simplified example for visual impairments would be the following:

- **Low:** 20/50 visual acuity or worse in the better eye with correction.
- **Medium:** 20/60 visual acuity or worse in the better eye with correction.
- **High:** 20/70 visual acuity or worse in the better eye with correction.

The low example would represent a child with lesser visual impairment than the high example. In the high example, a child must exhibit greater visual impairment to be identified as a child with a disability.

As another example, consider a cognitive impairment such as intellectual disability. Intellectual disability is typically defined by subaverage intellectual functioning and subaverage adaptive functioning. A low, medium, high example would be defined by the degree to which the functioning is impaired as measured by assessments of intellectual and adaptive functioning. A simplified example for intellectual disability, as measured by a common assessment, would be the following:

- **Low:** Intellectual functioning at least two standard deviations below the mean.
- **Medium:** Intellectual functioning at least two standard deviations below the mean and adaptive functioning at least 1.5 standard deviations below the mean.
- **High:** Intellectual functioning at least two standard deviations below the mean and adaptive functioning at least two standard deviations below the mean.

Again, the low example would represent a child with a lesser degree of intellectual disability than the high example. In the high example, the child must exhibit greater deficits to be identified as a child with a disability.

for-special-education-programs-state-differences/; https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/01/24/state-special-education-rates-vary-widely and http://blogs.edweek.org/edweek/speced/2017/10/special_educators_accept_wide.html. The scale of this variability cannot be precisely described.

Examination of Results

This section of the report presents results by the three disability groups described earlier: low-incidence disabilities,[25] medium-incidence disabilities,[26] and high-incidence disabilities.[27] The results presented here first provide a sense of the overall consistency or variability in operational definitions of eligibility criteria used across the 15 states. Then, salient similarities and differences in the eligibility criteria are presented, using examples from three states profiled for each disability category. The profiled states were selected to illustrate the range in eligibility criteria. A fuller elaboration of the distinctions among eligibility criteria from the three state examples is presented in **Appendix D**.

Low-Incidence Disabilities

Low-incidence disabilities include hearing impairment, deafness, visual impairment (or blindness), deaf-blindness, orthopedic impairment, TBI, and multiple disabilities. Low-incidence disabilities are sometimes visible and often easily observable. These disabilities generally require a medical or clinical diagnosis as well as an evaluation of educational needs by a multidisciplinary team.[28] Hearing impairments, deafness, visual impairments (or blindness), and deaf-blindness are all sensory impairments that require a hearing or vision assessment by a qualified professional. Orthopedic impairment is a physical impairment usually due to congenital anomaly, disease, or accidents, and TBI is a cognitive disability due to an acquired injury. Multiple disabilities are a combination of one or more disability categories, as allowed by the state eligibility criteria.

Hearing Impairment

- Across the sample of 15 states:
  - Hearing impairment criteria are relatively consistent. Hearing loss is measured based on how loud sounds need to be for an individual to hear them. Hearing loss is measured in terms of decibels (dB).[29]
- Across three selected states:
  - Hearing impairment criteria vary in terms of the type of hearing loss specified (i.e., sensorineural loss versus conductive loss), number of ears affected (i.e., unilateral versus bilateral), severity of loss (pure tone average 20 dB or greater, pure tone average between 30-65 dB, etc.).
  - Hearing impairment criteria sometimes specify a time frame required for observing the loss (e.g., persisting over three months or occurring at least three times in the previous 12 months).
  - Hearing impairment eligibility can also depend on compound criteria, such as either (1) a conductive hearing loss with an unaided pure tone average of 20

[25] Multiple disabilities, hearing impairment, orthopedic impairment, visual impairment, traumatic brain injury, deafness, and deaf-blindness.

[26] Autism, developmental delay, intellectual disability, and emotional disturbance.

[27] SLD, SLI, and OHI.

[28] There may be an uncommon exception to this statement in the case of multiple disabilities. It is possible that a child can have multiple disabilities and be found eligible without a medical assessment.

[29] For more information, see the American Speech-Language-Hearing Association website at https://www.asha.org/public/hearing/Degree-of-Hearing-Loss/.

dB or greater, or (2) a unilateral sensorineural or persistent conductive loss with an unaided pure tone average of 45 dB or greater in the affected ear. For a bilateral loss, eligibility criteria may specify a different level of hearing loss than for a unilateral loss. For a conductive hearing loss, state eligibility criteria may specify a different level of hearing loss than for a sensorineural loss.

Deafness

- Across the sample of 15 states:
  - Deafness criteria are relatively consistent.
- Across three selected states:
  - The criteria for deafness can vary in terms of their specificity, but the unaided pure tone average is similar.
  - Deafness criteria ranged from a minimum pure tone average of 66 dB to 70 dB.

Visual Impairment (Including Blindness)

- Across the sample of 15 states:
  - Blindness criteria are not included in all definitions of visual impairment. When blindness is included, the criteria are consistent across states and are typically defined as visual acuity of 20/200 or less in the better eye with correction.[30]
  - States consistently measure visual impairment by visual acuity and visual field, but across the three states selected to highlight variability, criteria differ somewhat in terms of severity.
- Across three selected states:
  - Visual impairment criteria range from 20/50 to 20/70 or less in the better eye with correction.
  - Visual field criteria range from 40 degrees or less to 20 degrees or less.

Deaf-Blindness

- Across the sample of 15 states:
  - Deaf-blindness criteria are consistent and typically require that a student meets the requirements for hearing impairment and visual impairment. Criteria do not necessarily specify that a student must meet the requirements for deaf and blind.
- Across three selected states:
  - The variability in deaf-blindness criteria depend upon the variability in the hearing impairment and visual impairment criteria. The criteria for hearing impairment, visual impairment, and deaf-blindness are consistent.

[30] A person with 20/200 vision standing 20 feet away from an eye chart sees what an average individual can see when they are 200 feet from an eye chart.

Orthopedic Impairment

- Across the sample of 15 states:
  - Orthopedic impairment criteria are generally consistent.
- Across three selected states:
  - Criteria vary in terms of their specificity and severity.
  - Some orthopedic impairment criteria specify that the impairment is caused by congenital anomalies, disease (e.g., poliomyelitis, osteogenesis imperfecta, muscular dystrophy, bone tuberculosis), or other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
  - In terms of severity, orthopedic impairment criteria range from (1) evidence that the child has a severe orthopedic impairment to (2) motor impairment that results in deficits in the quality, speed, or accuracy by at least 2 standard deviations below the mean in fine motor skills, gross motor skills, or self-help skills (or functional deficits in at least two of these three areas); and, the condition is permanent or expected to last for more than 60 days.

Traumatic Brain Injury

- Across the sample of 15 states:
  - TBI definitions are consistent and generally use the definition in federal regulations.
- Across three selected states:
  - TBI criteria are consistently nonspecific and contain no information on the level of severity necessary for eligibility.

Multiple Disabilities

- Across the sample of 15 states:
  - Multiple disabilities eligibility criteria differ. Criteria vary based on the combination of disabilities allowed and the level of severity. There was no discernable pattern to the different combinations that were permitted.
- Across three selected states:
  - The combinations of multiple disabilities differed. For example, in one state, a student with multiple disabilities must meet the eligibility criteria in two or more categories of disabilities. In a second state, a student with multiple disabilities must meet the eligibility criteria for intellectual disability and another disability category (except SLD, developmental delay, or SLI). In a third state, a student with multiple disabilities must meet the eligibility criteria for intellectual disability, as demonstrated by intellectual functioning at least three standard deviations below the mean with concomitant deficits in at least two adaptive skills areas. The student must also meet the eligibility criteria for one of the following: autism, deaf, hearing impairment, orthopedic impairment, OHI, or visual impairment (including blindness).

Medium-Incidence Disabilities

Medium-incidence disabilities include autism, developmental delay, intellectual disability, and emotional disturbance. These disabilities are not often visible, but they are observable in terms of characteristic behaviors. Medium-incidence disabilities sometimes, but not always, require a medical diagnosis. For example, a psychologist may conduct an evaluation for a student suspected of having autism or emotional disturbance. In all cases, a multidisciplinary team conducts an evaluation of educational needs.

Autism

- Across the sample of 15 states:
  - Autism is a spectrum disorder, and eligibility criteria are lengthy and variable. In general, criteria specify impairments in social interaction and communication, as well as restricted, repetitive, or stereotyped patterns of behavior that are characteristic of autism.
  - Autism criteria are typically checklists of behavior, but states vary in terms of how many of these behaviors must be present. Criteria also vary in terms of their specificity.
- Across three selected states:
  - In one state, a student must be administered a rating scale, which "indicates the presence of an autism spectrum disorder." In this example, it is unclear how many behaviors a student must exhibit to be found eligible under autism criteria.
  - In another state, a student must exhibit at least two behaviors in social interaction, at least one behavior in communication, and at least one behavior in restricted, repetitive, or stereotyped patterns of behavior.
  - A third state uses criteria from the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). In the DSM-5, a student must exhibit three behaviors in social interaction and social communication, and at least two behaviors in restricted, repetitive, and stereotyped patterns of behavior.

Developmental Delay

- Across the sample of 15 states:
  - Developmental delay is consistently characterized by a delay in one or more of the following areas of development: cognitive development, physical/motor development, communication development, social/emotional development, and adaptive development. It is the only IDEA disability that specifies an age range (children aged three through nine, or any subset of that range).[31] States are not required to use the full age range that is permitted in the IDEA, and, as such, there is variability in the age range across states.[32]

[31] IDEA, §602(3)(B). IDEA generally covers children aged 3 through 21.

[32] For a list of states' development delay age ranges, see U.S. Department of Education, "IDEA Part B Child Count and Educational Environments for School Year 2018-2019," *OSEP Data Documentation,* pp. 31-34, https://www2.ed.gov/programs/osepidea/618-data/collection-documentation/data-documentation-files/part-b/child-count-and-educational-environment/idea-partb-childcountandedenvironment-2018-19.pdf.

Criteria for developmental delay also vary in terms of the severity of delay that must be exhibited.

- Across three selected states:
  - In terms of age range, one state included ages three through nine (the maximum age range allowed in IDEA). Two other states included alternate age ranges: (1) three through five, and (2) three through seven.
  - In terms of severity, two states specify that a student must exhibit either (1) a delay of two standard deviations below the mean in one developmental area or (2) a delay of one and one-half standard deviations below the mean in two developmental areas. A third state specifies that a student must exhibit either (1) a delay of two and one-half standard deviations below the mean in one area of development, (2) a delay of two standard deviations below the mean in two areas of development, or (3) a delay of one and one-half standard deviations below the mean in three areas of development.

Intellectual Disability

- Across the sample of 15 states:
  - Intellectual disability is characterized by subaverage intellectual functioning and adaptive functioning. Criteria for intellectual disability are relatively consistent; however, there is variability in the specificity and severity of impairment required for eligibility.
  - In terms of intellectual functioning, the criteria consistently specify that a student must exhibit intellectual functioning at least two standard deviations below the mean; however, criteria can vary in terms of severity.
- Across three selected states:
  - One state specifies different levels of intellectual disability: (1) mild intellectual disability means a student must exhibit intellectual functioning at least two standard deviations below the mean, (2) moderate intellectual disability means that a student must exhibit intellectual functioning at least three standard deviations below the mean, and (3) severe intellectual disability means that a student must exhibit intellectual functioning at least four standard deviations below the mean.
  - In terms of adaptive functioning, the criteria vary in specificity. Two, for instance, specify that the adaptive functioning deficits exist "concurrently with" or "consistent with" deficits in intellectual functioning. Two states specify that the adaptive functioning deficits must occur in two skill areas. One state specifies that deficits in adaptive behavior must be at least two standard deviations below the mean.

Emotional Disturbance

- Across the sample of 15 states:
  - Emotional disturbance is characterized by serious behavior problems that are present over a long period of time (usually six months). It is typically assessed by rating scales and observation.
- Across three selected states:

- There is variability in the specificity and severity of eligibility criteria across states.
- In one state, a student must exhibit withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth. In this case, there is no checklist of behaviors or rating scales discussed among the criteria.
- In two other states, children must be assessed with a norm-referenced measure or behavior scale. The behavior must be at least two standard deviations from the mean (above or below, depending on the measure).

High-Incidence Disabilities

High-incidence disabilities include SLD, SLI, and OHI. High-incidence disabilities are not visible, and they are often difficult to observe. SLD and SLI are typically assessed by a school-based multidisciplinary team. OHI often requires a combination of a medical assessment and evaluation by a multidisciplinary team.

Specific Learning Disability

IDEA contains specific provisions regarding the identification of children with SLD. First, although many eligibility criteria include a documented discrepancy between intellectual ability and achievement, the federal government does not require an LEA to take into consideration whether a student has a severe discrepancy. (This process is commonly called the *discrepancy method*.) Second, the LEA may use a process to determine whether a student responds to scientific, research-based intervention as part of the evaluation procedures. (This process is commonly called *response-to-intervention*, or RTI.[33])

- Across the sample of 15 states:
  - Criteria vary widely. Some states use the discrepancy model, some use RTI, and some use both. All states require a child to demonstrate some form of low achievement that cannot be explained by other factors.
- Across three selected states:
  - Two states use a combination of the discrepancy method and RTI, and one state used RTI only.
    - For the discrepancy method, eligibility criteria vary in severity and whether additional data outside of the discrepancy are required. In one state, children must exhibit a discrepancy of one and one-half standard deviations between intellectual ability and achievement. In addition, the state must collect data on a student's response to general education interventions and level of performance. In another state that uses the discrepancy method, the discrepancy must be one and three-quarters standard deviations or more below the mean for the general population of the student's age.[34]

[33] See sections on Coordinated Early Intervening Services (CEIS) and Response to Intervention (RTI) in CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

[34] Assessments used to identify students with an SLD differ across states; therefore, the data that are used in the

- For RTI, criteria vary in terms of severity and timeline. In one state that uses RTI, a student must participate in a scientific, research-based intervention for at least seven weeks, and the rate of progress must be measured by a minimum of 12 data points. If the progress is minimal or not likely to be maintained without intervention and if the student's level of achievement is at or below the 5th percentile, the student meets the criteria for SLD. In another state that uses RTI, a student must participate in a scientific, research-based intervention for at least 12 weeks. If the student is not making "sufficient progress" to meet age-or grade-level standards within a reasonable timeframe, the student meets the criteria for SLD.[35]

Speech or Language Impairment

SLI includes several types of communication disorders that affect different aspects of language: articulation, voice, fluency, and language. Articulation disorders include atypical production or omission of sounds. Voice disorders include atypical vocal quality, pitch, loudness, resonance, or a disruption in vocal cord function. Fluency disorders are interruptions in the flow of speech, characterized by an atypical rate or rhythm of sounds, syllables, words, and phrases. Language disorders are characterized by impaired comprehension or use of spoken language, which adversely affects written language and other symbolic forms of communication.

- Across the sample of 15 states:
  - SLI criteria vary by the type of communication disorder. Eligibility criteria for language disorders are more likely to incorporate standardized, norm-referenced tests with associated performance targets.[36] Other types of communication disorders use standardized techniques for administering assessments, along with error analysis. For example, to measure communication other than language disorders, the state eligibility criteria may use language samples to denote the number of errors within a sample or the percentage of errors, dysfluencies, etc.
- Across three selected states:
  - One state provides descriptions of the communication disorders. Another state provides criteria with norm-referenced tests for only language disorders. A third state provides operational criteria (standardized, norm-referenced tests, or number/percentage of errors) for fluency disorders, articulation disorders, and language disorders.
  - In general, the most specific state eligibility criteria are those for articulation disorders and language disorders.

discrepancy calculation differ across states. In using the discrepancy model, the SLD eligibility criteria are dependent on the type of assessment used and the size of discrepancy required.

[35] Similar to assessments used to identify SLD with the discrepancy model, assessments used to measure progress in an RTI model differ across states. The different assessments may also contribute to the variability in identification rates of SLD.

[36] For example, assessment of language disorders includes tests such as the Peabody Picture Vocabulary Test, 4th Edition (PPVT-4); the Comprehensive Test of Phonological Processing, 2nd Edition (CTOPP-2); and the Clinical Evaluation of Language Fundamentals, 4th Edition (CELF-4). For a list of examples, see https://comdis.uni.edu/sites/default/files/Standardized%20SLP%20Testing%20%20Instruments%20List-2.pdf.

- For articulation disorders, two states describe characteristics of the disorder and one state describes characteristics and provides eligibility criteria. For example, a student whose test performance is two standard deviations or more below the mean on a standardized, norm-referenced test of articulation meets the criteria for SLI (articulation disorder). Also, a student who is nine years of age or older and for whom a sound is consistently in error as documented by two, three-minute language samples meets the criteria for SLI (articulation disorder).
- For language disorders, one state describes characteristics of the disorder and two states describe characteristics and provide eligibility criteria. In both states that provide eligibility criteria, a student whose test performance is two standard deviations or more below the mean on a standardized, norm-referenced test meets the criteria for SLI (language disorder). One state specifies that if a standardized, norm-referenced test is not available to provide evidence of a two standard deviation deficit, a student may be assessed with two documented measurement procedures that indicate a substantial language difference from expectations based on age, developmental, or cognitive level.

Other Health Impairment

OHI includes chronic or acute health problems that result in limited strength, vitality, and limited or heightened alertness to the surrounding environment. OHI conditions may include asthma, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome. Most OHI conditions require a medical assessment and diagnosis; however, ADD/ADHD may be diagnosed by a certified school psychologist or licensed psychologist.

- Across the sample of 15 states:
  - Criteria for OHI vary by type of condition and by state. Criteria for most conditions are not included; however, some states include operational criteria for ADD/ADHD.
- Across three selected states:
  - Two of the three states have eligibility criteria for ADD/ADHD.
  - ADD/ADHD criteria include behavior rating scales and observations of classroom behavior. In one state, a student must be rated within the "highest level of significance" on a behavior rating scale by the classroom teacher and parent, and there must be documentation that the student's observable classroom behaviors are occurring at a significantly different rate, intensity, or duration than the majority of typical school peers. In another state, standard scores on a norm-referenced behavior scale must be at least two standard deviations above or below the mean. Ratings must be obtained from at least three independent raters, one of whom may be the parent.

Conclusion

Observations from the survey of state regulations and department of education documents provides some data that may support the possibility that the adoption of operational definitions of eligibility criteria may contribute to differences in disability identification rates across states. Criteria vary in terms of specificity, severity, methods of identification, and timeline for identification. For example, consider differences in intellectual disability eligibility criteria between two states. One state requires a child to exhibit significant limitations in intellectual functioning and significant limitations in at least two areas of adaptive functioning, which all must be evidenced by scores that are at least two standard deviations below the mean. The other state requires a child to exhibit significant limitations in intellectual functioning, as evidenced by scores at least two standard deviations below the mean, and exhibit delays in adaptive functioning consistent with the disability. The second state, however, does not require adaptive functioning to be two standard deviations or more below the mean in *two areas*. The first state, therefore, may identify a lower percentage of children with intellectual disabilities than the second state.[37]

Consider the disability category of SLD as another example. One state requires a child to exhibit a discrepancy of one and one-half standard deviations between intellectual functioning and academic achievement in at least one academic area. The other state does not use a discrepancy model and requires a child to participate in an RTI model for a minimum of 12 weeks and demonstrate insufficient progress. It is possible that a child who exhibits a discrepancy between intellectual functioning and achievement in the first state would make sufficient progress during 12 weeks of scientific, research-based interventions in the second state and not be identified as having SLD. Furthermore, it is possible that a child who responds well to scientific, research-based interventions may still have a discrepancy between intellectual functioning and academic achievement. Proponents of the discrepancy model may argue that this child should still be identified with an SLD and receive special education and related services. Even with RTI, if a child exhibits a discrepancy between intellectual functioning and academic achievement, an argument can be made that this student is not realizing his or her academic potential. On the other hand, a child who responds well to RTI and still has a discrepancy between intellectual functioning may not satisfy the federal definition of *child with a disability*. That is, the child with a discrepancy between intellectual functioning and academic achievement may not require special education because his or her achievement is considered acceptable under the RTI model.

Also consider the reverse situation with SLD. A child may not exhibit a discrepancy between intellectual functioning and academic achievement, but the child may also not make sufficient progress within an RTI model. The child would not be eligible for a SLD designation in the first state above but would be eligible for SLD in the second state. If this child lived in the first state and did not exhibit a discrepancy but still exhibited low academic achievement, he or she may be identified under a different disability category. This child may be eligible for an intellectual disability designation because he or she demonstrates subaverage intellectual and adaptive functioning. Or, this child may be eligible for an OHI designation if it is determined that ADD/ADHD contributes to low academic achievement. The same child, therefore, may be eligible or ineligible for special education and related services, depending on the state where he or she is identified. Furthermore, the child may be eligible for SLD in one state and eligible for

[37] Assessments of intellectual and adaptive functioning can differ across states. There are several common standardized, norm-referenced assessments of intellectual functioning for children: the Wechsler Intelligence Scale for Children (WISC); the Stanford-Binet; the Kauffman Assessment Battery for Children, Second Edition; and Wechsler Preschool and Primary Scale of Intelligence, Third Edition (WPPSI-III).

intellectual disability or OHI in another state. Either way, the variability in how a child is identified with a disability may confuse parents and cause disruption in service delivery.

Some disability categories have less variability than others. For example, low-incidence disabilities tend to have less variability than high-incidence disabilities. The variability of eligibility criteria and the higher rates of identification for high-incidence disabilities may contribute to controversy surrounding disability identification, most notably SLD.[38] Because SLD accounts for approximately one-third of all children with disabilities, any change in the variability of eligibility criteria across states may lead to substantial differences in overall IDEA identification rates. For example, if one state created more stringent eligibility criteria for SLD and another state created less stringent eligibility criteria, the first state may identify fewer children with SLD. The stringency of the criteria, therefore, may contribute to the variability in identifying students with SLD.

Differences in practices among state agencies that promulgate regulations may have contributed to the variability found in the results of CRS's survey of state regulations and state department of education documents. The difference in the level of detail within state regulations may contribute to the unintentional omission in this report of criteria that may be available elsewhere. If the level of detail provided in state regulations were equal across states, it would likely be easier to investigate the true size and scope of the variability. As mentioned earlier in this report, it is possible that the 36 states that are not included in this analysis have relatively consistent operational definitions of eligibility criteria to identify children with disabilities. If this is assumed to be true, the variability found in this report's analysis represents a minority of the eligibility criteria across states. Given the anecdotal evidence, however, it is unlikely that there is uniformity among eligibility criteria in the 36 states that are not represented in the sample.[39]

Implications for the Identification of and Service Delivery for Children with Disabilities

Because of the variability in operational definitions of eligibility criteria across states, there is understandably some confusion regarding the identification of and service delivery for children with disabilities. One question that arises is, why does a child with a disability in one state *not* have a disability when he or she moves to another state? Another question is, how is it possible that a child identified with the same disability in two different states receives different special education and related services in each of these states?

The variability in operational definitions of eligibility criteria across states may affect the delivery of special education and related services for some children with disabilities. Before discussing implications for service delivery, it is helpful to have a basic understanding of how special education and related services are determined. After an initial evaluation, a multidisciplinary team develops an individualized education program (IEP) for a child. The IEP provides, among other educational information, a statement of the child's present levels of academic achievement and a statement of measurable, annual goals.[40] After a child is found eligible for special education and

[38] See, for example, https://www.edweek.org/ew/articles/2000/11/29/13idea.h20.html and https://www.edweek.org/ew/articles/2019/01/09/special-education-is-broken.html.

[39] See footnote 15 and footnote 24.

[40] IDEA §614(d). For more information on IEPs, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

related services, a meeting to develop the IEP must be conducted within 30 days, and services must be provided "as soon as possible."[41]

If a child transfers to a new school within the same LEA,[42] services provided on the IEP remain in place. If a child transfers to a new LEA within the same state and enrolls in a new school within the same school year, the new LEA must continue to provide a free appropriate public education (FAPE), including services "comparable" to those in the established IEP, until either (1) the new LEA adopts the student's IEP from the previous LEA, or (2) the new LEA develops, adopts, and implements a new IEP.[43] When a child with a disability transfers within the same state, there is no requirement for a new evaluation. If, however, a child transfers to a new state, the new LEA must continue to provide a FAPE, including services "comparable" to those in the established IEP, until (1) the new LEA conducts a new evaluation, and (2) the new LEA develops, adopts, and implements a new IEP, *if appropriate.*[44]

In some cases, a child with a disability in one state may not be identified as a child with a disability in another state. Service delivery would be discontinued if the child no longer met the definition and eligibility criteria of child with a disability in the new state. In many cases, however, a child with a disability in one state would be eligible as a child with the same disability in another state. In these cases, the delivery of special education and related services may continue with minimal disruption. The timing of conducting evaluations and developing IEPs, however, introduces another complication into the consistency of service delivery. After receiving parental consent for an evaluation, a new LEA has 60 days to complete an initial evaluation and an additional 30 days to develop an IEP. If a child moves toward the middle or end of a school year, he or she may not receive a new IEP by the end of the school year. While the new LEA is required to continue to provide "comparable" services, the evaluation and development of a new IEP may be delayed until the following school year.

If a child with a disability in one state qualifies for a different disability in another state, service delivery will continue to depend on educational needs irrespective of the disability label. The IEP determines service delivery, not the disability label itself. The IEP includes a statement of which special education and related services are to be provided to a child with a disability, so that the child can (1) advance toward the attainment of annual goals, (2) make progress in the general education curriculum, and (3) be educated and participate with other children with disabilities and their non-disabled peers.[45] If a child receives a different disability label in a new state but the IEP team determines that the educational needs of the child are similar, service delivery may be continued with minimal disruption. If the new IEP team determines, however, that the educational needs of that child are different from those addressed in the child's previous IEP, service delivery may change significantly.

[41] 34 C.F.R. §300.323(c).

[42] The regulations describe transfers within and between public agencies, not LEAs. In the case of public school transfers for children with disabilities, it is most common to transfer between LEAs. For the sake of simplicity, *LEA* is used in lieu of *public agency*.

[43] IDEA §614(d)(2)(C)(i). 34 C.F.R. §300.323(e).

[44] IDEA §614(d)(2)(C)(i). 34 C.F.R. §300.323(f). A new IEP must be developed and agreed to by the IEP team and fulfill the FAPE requirements for the child.

[45] IDEA §614(d)(1)(A)(i)(IV).

Considerations for the Federal Role in Special Education Eligibility Determinations

The federal role in special education eligibility determinations has historically been largely an indirect role, comprised mainly of providing broad guidance in statute and regulations. Because states and localities have the primary responsibility for financing and providing elementary and secondary education, it is possible that the federal government did not intend to be more directly involved with eligibility determinations. The original authorizing legislation for the IDEA was the Education for All Handicapped Children Act of 1975 (P.L. 94-142). This act did not provide specific eligibility criteria in legislation, though it did direct the Commissioner of Education to create regulations that established specific criteria and diagnostic procedures for determining whether a particular disorder or condition may be considered an SLD. Subsequent regulations, however, did not expand upon the statute.[46] In September 1976, a short discussion on disability definitions was issued by the Department of Health, Education, and Welfare (HEW). As described in the *Federal Register*, HEW used disability definitions in the National Center for Education Statistics handbook, "Handbook V-R, Student/Pupil Accounting."[47] The purpose of the handbook, however, was to provide common definitions for data and information used in education. These definitions did not include eligibility criteria.

Forty-five years after the initial passage of federal special education legislation, it is possible that the role of the federal government with regard to eligibility criteria and determinations could be reevaluated in light of current policies and practices in special education.

One of the stated purposes of IDEA is to "assess, *and ensure the effectiveness of*, efforts to educate children with disabilities."[48] In light of this, Congress might consider whether disparity in eligibility criteria for services across some states, or the potential disruption in service delivery for some children with disabilities moving from one state to another, makes a case for a greater federal role in determining operational definitions and criteria for the disability categories in the IDEA.

If the objective of the federal government is to focus IDEA, Part B funds on children with disabilities in a more targeted way, it could be done by developing universal operational definitions of eligibility criteria. For example, if Congress wanted to target funds to children with the highest need, the federal government could establish more stringent, precisely specified eligibility criteria. On the other hand, if Congress wanted to serve the greatest number of children with disabilities, the federal government could establish less stringent, precisely specified eligibility criteria. Either way, universal criteria may ensure a certain level of consistency in how children are identified with a disability and provided special education and related services. It may also allow a simpler transition for children with disabilities who transfer to schools in a different state.

The development of universal operational definitions of eligibility criteria may be considered by some observers to be federal overreach. A universal system may not be able to account for

[46] Department of Health, Education, and Welfare, "Handicapped Children: Assistance to States for Education," 41 *Federal Register* 37813-37817, September 8, 1976; and U.S. Office of Education, HEW, "Implementation of Part B of the Education of the Handicapped Act," 42 *Federal Register* 42474-42518, August 23, 1977.

[47] John F Putnam, Student/Pupil Accounting: Standard Terminology and Guide for Managing Student Data in Elementary and Secondary Schools, Community/Junior Colleges, and Adult Education, National Center for Education Statistics, State Educational Records and Reports Series: Handbook V. Revised, Washington, DC, 1974, https://files.eric.ed.gov/fulltext/ED102678.pdf.

[48] IDEA §601(d)(4).

differences in state population, educational capacity, organizational structure, or funding. A universal system may increase federal oversight because there may be a greater need to monitor compliance with the system. Such a system may also inadvertently increase the number of waiver requests, seeking to account for special circumstances. If a certain number of waivers were granted, the system that intended to be universal may eventually become fragmented.

An alternative approach may be to require states to submit their operational definitions of eligibility criteria to the Secretary. This would allow states to maintain their unique systems of identifying children with disabilities, but it would increase transparency in these definitions. The transparency may allow for examination of the variability using more complete and reliable data. It may also help families navigate interstate moves and understand potential changes to special education service delivery.

States could be reluctant to support the development of universal operational definitions of eligibility criteria. If Congress passed legislation that created uniform operational definitions of eligibility criteria, some states could end up serving more students with disabilities than they currently do. This could be viewed by some as a federal mandate to increase the number of students with disabilities served, which may put pressure on local and state budgets. Conversely, some states might end up serving fewer students with disabilities. In these states, students who were receiving special education and related services may lose their current services, leading to an influx of students into general education (without accommodations or special services). General education systems in these states may not be prepared to handle a shift in how they serve these students.

Congress may be able to work toward consistency in service delivery across states even without offering a universal system of identifying and serving children with disabilities. For example, Congress could include provisions to incentivize interstate compacts or regional compacts, allowing states within a compact to adopt the IEP of a child entering the state as is. These compacts may be especially relevant in areas where there is a high level of mobility across state borders. If there were no interstate or regional compact in place, Congress could also include provisions that the new LEA carry out an expedited evaluation and IEP process to establish service delivery in a more timely fashion. Another option may be for Congress to direct states to establish policies facilitating interstate moves of children with disabilities. States could establish a network that would allow LEAs to work across state lines to help children with disabilities and their families transition into a new school.

Appendix A. Common Abbreviations Used in This Report

ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ED	U.S. Department of Education
DSM-5	Diagnostic and Statistical Manual of Mental Disorders
FAPE	Free Appropriate Public Education
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
LEA	Local Educational Agency
OHI	Other Health Impairment
SLD	Specific Learning Disability
SLI	Speech or Language Impairment
SY	School Year
RTI	Response-to-Intervention
TBI	Traumatic Brain Injury

Appendix B. Definitions

Table B-1. Definitions of Disability Categories in the Individuals with Disabilities Education Act

Disability	Definition
Autism	(i) Autism 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. (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. (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.
Deaf-blindness	Deaf-blindness 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.
Deafness	Deafness 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.
Hearing Impairment	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.
Emotional Disturbance	(i) Emotional disturbance 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: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (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.
Intellectual Disability	Intellectual disability means significantly subaverage 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*.
Multiple Disabilities	Multiple disabilities 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.

Disability	Definition
Orthopedic Impairment	Orthopedic impairment 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).
Other Health Impairment	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 deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and 2) Adversely affects a child's educational performance.
Specific Learning Disability	Specific learning disability— (i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. Additional Information (IDEA, §612(b)(6) and 34 C.F.R., §300.307) (a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State - (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10); (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10). (b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.
Speech or Language Impairment	Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.
Traumatic Brain Injury	Traumatic brain injury 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.

Disability	Definition
Visual Impairment (including Blindness)	Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Source: 34 C.F.R. §300.8.

Notes: States and LEAs may, at their discretion, include the disability category of "developmental delay" for children aged three through nine who experience developmental delays in at least one of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

Appendix C. Disability Identification

Table C-1. Disability Identification Rates by State

State or Jurisdiction	1990-1991	2000-2001	2010-2011	2015-2016	2017-2018[a]	As a Percentage of Public School Enrollment, 2017-2018[b]
United States	**4,710,089**	**6,295,816**	**6,434,916**	**6,676,974**	**6,964,424**	**13.7**
Alabama	94,601	99,828	82,286	84,278	90,319	12.2
Alaska	14,390	17,691	18,048	18,390	19,148	14.3
Arizona	56,629	96,442	125,816	132,592	140,702	12.5
Arkansas	47,187	62,222	64,881	68,178	72,835	14.8
California	468,420	645,287	672,174	727,718	767,562	12.2
Colorado	56,336	78,715	84,710	95,101	102,240	11.2
Connecticut	63,886	73,886	68,167	75,030	79,758	15.1
Delaware	14,208	16,760	18,608	20,742	23,196	16.9
District of Columbia	6,290	10,559	11,947	12,258	13,399	15.5
Florida	234,509	367,335	368,808	372,476	389,626	13.7
Georgia	101,762	171,292	177,544	202,314	214,267	12.1
Hawaii	12,705	23,951	19,716	19,223	19,276	10.6
Idaho	21,703	29,174	27,388	29,718	32,908	11.0
Illinois	236,060	297,316	302,830	296,784	295,066	14.6
Indiana	112,949	156,320	166,073	171,368	176,104	16.8
Iowa	59,787	72,461	68,501	63,822	65,935	12.9
Kansas	44,785	61,267	66,873	70,762	73,729	14.9
Kentucky	78,853	94,572	102,370	99,283	104,270	15.3
Louisiana	72,825	97,938	82,943	84,221	84,473	11.8
Maine	27,987	35,633	32,261	32,531	33,004[c]	18.4
Maryland	88,017	112,077	103,490	105,440	108,491	12.1
Massachusetts	149,743	162,216	167,526	168,199	173,762	18.0

State or Jurisdiction	1990-1991	2000-2001	2010-2011	2015-2016	2017-2018[a]	As a Percentage of Public School Enrollment, 2017-2018[b]
Michigan	166,511	221,456	218,957	197,316	198,751	13.1
Minnesota	79,013	109,880	122,850	128,218	135,386[d]	15.3
Mississippi	60,872	62,281	64,038	66,799	69,197	14.5
Missouri	101,166	137,381	127,164	126,328	131,114	14.3
Montana	16,955	19,313	16,761	17,387	18,803	12.8
Nebraska	32,312	42,793	44,299	47,795	50,415	15.6
Nevada	18,099	38,160	48,148	55,452	60,123	12.5
New Hampshire	19,049	30,077	29,920	28,806	29,233	16.4
New Jersey	178,870	221,715	232,002	232,401	238,178	16.9
New Mexico	36,000	52,256	46,628	49,667	52,838	15.8
New York	307,366	441,333	454,542	499,551	522,221	19.2
North Carolina	122,942	173,067	185,107	198,808	200,905	12.9
North Dakota	12,294	13,652	13,170	13,953	15,153	13.9
Ohio	205,440	237,643	259,454	253,896	266,670	15.7
Oklahoma	65,457	85,577	97,250	108,459	112,080	16.1
Oregon	54,422	75,204	81,050	84,517	87,156	14.3
Pennsylvania	214,254	242,655	295,080	303,633	320,817	18.6
Rhode Island	20,646	30,727	25,332	23,515	23,748	16.7
South Carolina	77,367	105,922	100,289	101,776	104,698	13.5
South Dakota	14,726	16,825	18,026	19,527	21,190	15.4
Tennessee	104,853	125,863	120,263	129,386	129,319	12.9
Texas	344,529	491,642	442,019	463,238	498,588	9.2
Utah	46,606	53,921	70,278	79,932	84,196	12.6
Vermont	12,160	13,623	13,936	13,903	14,482[c]	16.7
Virginia	112,072	162,212	162,338	164,757	172,370	13.4
Washington	83,545	118,851	127,978	135,757	143,498	12.9

State or Jurisdiction	1990-1991	2000-2001	2010-2011	2015-2016	2017-2018[a]	As a Percentage of Public School Enrollment, 2017-2018[b]
West Virginia	42,428	50,333	45,007	45,297	46,810	17.3
Wisconsin	85,651	125,358	124,722	120,864	120,864[e]	14.0
Wyoming	10,852	13,154	15,348	15,608	15,551	16.6
Subtotal: States	**4,710,089**	**6,295,816**	**6,434,916**	**6,676,974**	**6,964,424**	**13.7**
American Samoa	363	697	935	666	636	—
Guam	1,750	2,267	2,003	2,036	2,015	—
Northern Marianas	411	569	944	886	956	—
Puerto Rico	35,129	65,504	126,560	123,376	105,827	—
U.S. Virgin Islands	1,333	1,502	1,405	1,207	1,105	—
Palau	—	131	—	97	74	—
Subtotal: Other Jurisdictions[f]	**38,986**	**70,670**	**131,847**	**128,268**	**110,613**	—
Bureau of Indian Education	6,997	8,448	6,801	6,309	6,285	—
Total	**4,756,072**	**6,374,934**	**6,573,564**	**6,811,551**	**7,081,322**	—

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2019* (NCES 2020-009), 2019, Table 204.70.

a. Includes some data for 2015-2016 or 2016-2017 due to unavailability of 2017-2018 data for specific states, as noted below.

b. Based on projected fall 2017 total public school enrollment in prekindergarten through grade 12.

c. Data for 6- to 21-year-olds are for 2016-2017 because 2017-2018 data for this age group were not available for this state.

d. Data for 3- to 5-year-olds are for 2016-2017 because 2017-2018 data for this age group were not available for this state.

e. Data are for 2015-2016 because 2016-2017 and 2017-2018 data were not available for this state.

f. Other jurisdictions are American Samoa, Guam, Northern Marianas, Palau, Puerto Rico, and the U.S. Virgin Islands.

Appendix D. Selected Results of State Survey

Appendix D presents tables displaying operational definitions of eligibility criteria for a selection of three states for all 14 disability categories in the IDEA. The 15 states these operational definitions were drawn from and that were the focus of this CRS examination were: Alabama, Georgia, Hawaii, Indiana, Minnesota, Missouri, Nevada, Oklahoma, Oregon, South Carolina, South Dakota, Utah, West Virginia, Wisconsin, and Wyoming. In general, the data in **Appendix D** were copied from official state documents; however, CRS made several changes in the following areas: (1) deleting information deemed irrelevant, (2) formatting (e.g., if irrelevant information was deleted, items in a list were renumbered), (3) changing names of disabilities (e.g., changing *mental retardation* to *intellectual disability*),[49] and (4) removing information that may identify the state.

Low-Incidence Disabilities

Table D-1. Hearing Impairment

Example 1	1) A child who is hard of hearing can be characterized by the absence of enough measurable hearing (usually a pure tone average range of 30-65 decibels American National Standards Institute without amplification) that the ability to communicate is adversely affected; however, the child who is hard of hearing typically relies upon the auditory channel as the primary sensory input for communication.
Example 2	1) Sensorineural hearing loss with an unaided pure tone average, speech threshold, or auditory brainstem response threshold of 20 decibels hearing level (HL) or greater in the better ear; 2) Conductive hearing loss with an unaided pure tone average or speech threshold of 20 decibels hearing level (HL) or greater in the better ear persisting over three months or occurring at least three times in the previous 12 months as verified by audiograms with at least one measure provided by a certified audiologist; 3) Unilateral sensorineural or persistent conductive loss with an unaided pure tone average or speech threshold of 45 decibels hearing level (HL) or greater in the affected ear; or 4) Sensorineural hearing loss with unaided pure tone thresholds at 35 decibels hearing level (HL) or greater at two or more adjacent frequencies (500 hertz, 1000 hertz, 2000 hertz, or 4000 hertz) in the better ear.
Example 3	1) The student has a hearing loss that is 20 decibels or greater at any one frequency, either unilaterally or bilaterally, or 2) The student has a fluctuating hearing loss, either unilaterally or bilaterally. The student's hearing impairment adversely affects his or her educational performance.

Table D-2. Deafness

Example 1	1) A child who is deaf can be characterized by the absence of enough measurable hearing (usually a pure tone average of 66-90+ decibels American National Standards Institute without amplification) such that the primary sensory input for communication may be other than the auditory channel.

[49] P.L. 111-256, commonly referred to as Rosa's Law, required references to *mental retardation* in IDEA and other federal laws to be changed to *intellectual disability*.

Example 2	1) Deafness is a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, even with amplification, and that adversely affects the student's educational performance. 2) A student may be identified as deaf if a. The unaided hearing loss is in excess of 70 decibels and precludes understanding of speech through the auditory mechanism, even with amplification, and b. The student demonstrates an inability to process linguistic information through hearing, even with amplification.
Example 3	1) A student shall be eligible under the disability category of deaf if the student has a hearing loss averaging greater than 70 decibels in the speech frequencies (500 hertz to 4,000 hertz) and: a. The hearing loss impairs the student's auditory processing of linguistic information through hearing, with or without amplification; or b. The hearing loss adversely affects the student's educational performance.

Table D-3. Visual Impairment or Blindness

Example 1	1) Documentation of loss of vision which adversely affects the child's educational performance and requires the use of specialized tests, techniques, materials, or assistive technology devices; and 2) Documentation of visual acuity in the better eye with the best possible correction of: a. 20/200 or less (blind); b. 20/50 or less (partially sighted); 3) Documentation of reduced visual field to 20 degrees or less in the better eye; 4) Documentation of a progressive loss of vision which may, in the future, affect the child's ability to learn; or 5) Visual acuity, which cannot be measured, but in which the child has a functional loss of vision as determined through a functional vision assessment.
Example 2	At least one of the following: 1) Visual acuity of 20/60 or less in better eye with best conventional correction. 2) Estimation of acuity for difficult-to-test pupils. 3) For pre-kindergarten, measured acuity must be significantly deviant from what is developmentally appropriate. 4) Visual field of 20 degrees or less, or bilateral scotomas. 5) Congenital or degenerative condition: such as, progressive cataract, glaucoma, retinitis pigmentosa
Example 3	At least one of the following: 1) The visual acuity with correction is 20/70 or worse in the better eye; or the visual acuity is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision or a visual field of 40 degrees or less; 2) The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings; 3) There is evidence of cortical visual impairment, and the student's visual impairment adversely affects his or her educational and functional performance; or 4) The adverse effects of the visual impairment on the child's educational performance require specialized instruction and related services.

Table D-4. Deaf-Blindness

Example 1	Deaf-Blindness: 1) Audiological data indicating the individual has a hearing impairment. 2) Optometric and/or ophthalmic data indicating the individual has a visual impairment. 3) Evidence of severe communication needs and evidence of severe educational needs related to the functional use of hearing and vision. Hearing Impairment for state in Example 1: 1) Evidence that vision screening results are satisfactory prior to proceeding with evaluations. 2) Audiological data indicating that the child has a hearing impairment. 3) Evidence that the educational performance is adversely affected by the disability. Vision Impairment for state in Example 1: 1) Evidence that hearing screening results are satisfactory prior to proceeding with evaluations. 2) Optometric/ophthalmic data indicating that the individual has a visual impairment. 3) Evidence of visual functioning that adversely affects educational performance as evaluated by a certified vision specialist.
Example 2	Deaf-blindness: 1) If the student meets the criteria under the category of deaf, or the category of hard of hearing, and the category of visual disability; and 2) The concomitant hearing and visual disabilities cause severe communication and other developmental and educational needs. Hearing Impairment for state in Example 2: 1) A student shall be eligible under the disability category of hard of hearing if the student has a hearing loss, whether permanent or fluctuating, averaging 26 to 70 decibels in the speech frequencies (500 hertz to 4,000 hertz), and: a. The hearing loss impairs the student's auditory processing of linguistic information, with or without amplification; or b. The hearing impairment adversely affects the student's educational performance. Deafness for state in Example 2: 1) A student shall be eligible under the disability category of deaf if the student has a hearing loss averaging greater than 70 decibels in the speech frequencies (500 hertz to 4,000 hertz) and: a. The hearing loss impairs the student's auditory processing of linguistic information through hearing, with or without amplification; or b. The hearing loss adversely affects the student's educational performance. Visual Impairment for state in Example 2: 1) Visual disability including blindness. A student shall be eligible for the disability category of visual disability, including both partial sight and blindness, if the impairment in vision, even with the best correction, adversely affects the student's educational performance and one or more of the following are met: a. Partially-sighted. The student's visual acuity is 20/70 to 20/200 in the better eye and with the best correction; b. Blind. The student's visual acuity is 20/200 in the better eye and with the best correction, or less, or the student has a subtended visual field of less than 20 degrees, regardless of central visual acuity; c. The student has a progressive visual impairment, such as retinitis pigmentosa, that will lead to eventual visual disability.
Example 3	There is evidence that the child meets the criteria for both the Deaf or Hard of Hearing category and the Visual Impairment category.

	Deaf or Hard of Hearing for state in Example 3: 1) There is evidence that the child a. Has a hearing loss that is 20 decibels or greater at any one frequency, either unilaterally or bilaterally, or b. Has a fluctuating hearing loss, either unilaterally or bilaterally. 2) The adverse effects of the deafness or hard of hearing impairment on the child's educational performance require specialized instruction and/or related services. Visual Impairment for state in Example 3: 1) There is evidence that the child has one of the following: a. The visual acuity with correction is 20/70 or worse in the better eye; b. The visual acuity is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision, or a visual field of 40 degrees or less; c. The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings; or d. There is evidence of cortical visual impairment. 2) The adverse effects of the visual impairment on the child's educational performance require specialized instruction and/or related services.

Table D-5. Orthopedic Impairment

Example 1	1) There is evidence that the child has a severe orthopedic impairment. 2) The adverse effects of the orthopedic impairment on the child's educational performance require specialized instruction and/or related services.
Example 2	1) Impairment caused by congenital anomalies (e.g., deformity or absence of some limb.) 2) Impairment caused by disease (poliomyelitis, osteogenesis imperfecta, muscular dystrophy, bone tuberculosis, etc.) 3) Impairment from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). Secondary disabilities may be present, including, but not limited to, visual impairment, hearing impairment, communication impairment and/or intellectual disability.
Example 3	1) The child has a motor impairment that results in deficits in the quality, speed, or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in fine motor skills, gross motor skills, or self-help skills, or functional deficits in at least two of these three motor areas; and 2) The child's condition is permanent or is expected to last for more than 60 calendar days.

Table D-6. Traumatic Brain Injury

Example 1	1) Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term 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. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Example 2	1) Traumatic brain injury 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. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating, and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. 2) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders, and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments under this section. 3) The results of standardized and norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data, shall be considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more of the areas described under par. 4) Before a child may be identified under this subsection, available medical information from a licensed physician shall be considered.
Example 3	1) A student shall be eligible under the category of traumatic brain injury if both of the following are met: a. There is medical evidence that the student has an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or that adversely affects the student's educational performance; and b. The traumatic brain injury is either an open or closed head injury, resulting in impairments in one or more areas such as: i. Cognition; ii. Language; iii. Memory; iv. Attention; v. Reasoning; vi. Abstract thinking; vii. Judgment; viii. Problem-solving; ix. Sensory, perceptual and motor abilities; x. Psychosocial behavior; xi. Physical functions; xii. Information processing; xiii. Speech. 2) The team of qualified professionals and the parent may not identify a student as having a traumatic brain injury if the brain injury is congenital or degenerative, or induced by birth trauma.

Table D-7. Multiple Disabilities

Example 1	The child must meet all eligibility criteria for two or more areas of disabilities as defined in these rules. Eligibility criteria for the two or more areas of disabilities must be documented on the eligibility report.
Example 2	A student with multiple impairments is eligible for special services and programs of instruction if the student meets the requirements for eligibility for intellectual disability and the eligibility team concludes that the student meets the requirements for eligibility for any additional disabling condition, other than a specific learning disability, developmental delay, or a speech and language impairment.
Example 3	A student shall be eligible under the category of multiple disabilities if the student has concomitant impairments, the combination of which causes severe educational needs and all of the following criteria are met: a. The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning three or more standard deviations below the mean; b. The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; c. The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance; and d. The student is not eligible under the category of deaf-blindness, as set forth in subsection (c), and the student is eligible under one or more of the following disability categories: i. Autism spectrum disorder, as set forth in subsection (a); ii. Deaf, as set forth in subsection (b); iii. Hard of hearing, as set forth in subsection (f); iv. Orthopedic disability, as set forth in subsection (i); v. Other health disability, as set forth in subsection (j); or vi. Visual disability including blindness, as set forth in subsection (n);

Medium-Incidence Disabilities

Table D-8. Autism

Example 1	1) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. 2) Score on a rating scale (normed for the appropriate diagnostic group) indicating the presence of an autism spectrum disorder. 3) Medical, clinical, psychiatric, or school psychologist evaluation, or an assessment by a qualified person (e.g., psychometrist) trained in the area of autism evaluation. 4) Evidence that communication/language skills and/or social skills adversely affect educational performance. 5) Evidence of current characteristics/behaviors typical of an autism spectrum disorder.
Example 2	The team must document that the pupil demonstrates patterns of behavior described in at least two of the three subitems, one of which must be subitem (1). 1) Qualitative impairment of social interaction, as documented by two or more behavioral indicators, for example: a. limited joint attention and limited use of facial expressions towards others; b. does not show or bring things to others to indicate interest in the activity; c. demonstrates difficulty relating to people, objects, and events; d. gross impairment in ability to make and keep friends;

	e. significant vulnerability and safety issues due to social naiveté; f. may appear to prefer isolated or solitary activities; g. misinterprets others' behaviors and social cues; h. Other. 2) Qualitative impairment in communication, as documented by one or more behavioral indicators, for example: a. not using finger to point or request; b. using other's hand or body as a tool; c. showing lack of spontaneous imitations or lack of varied imaginative play; d. absence or delay of spoken language; e. limited understanding and use of nonverbal communication skills such as gestures, facial expressions, or voice tone; f. odd production of speech, including intonation, volume, rhythm, or rate; g. repetitive or idiosyncratic language; h. inability to initiate or maintain conversation when speech is present; i. other 3) Restricted, repetitive, or stereotyped patterns of behavior, interests, and activities as documented by one or more behavioral indicators, for example: a. insistence on following routines or rituals; b. demonstrating distress or resistance to change in activity; c. repetitive hand or finger mannerism; d. lack of true imaginative play versus reenactment; e. overreaction or under-reaction to sensory stimuli; f. rigid or rule-bound thinking; g. intense, focused preoccupation with a limited range of play, interests, or conversation topics; h. other.
Example 3	An eligibility committee will determine that a student is eligible for special education services as a student with autism when all of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria are met: 1) Documentation will assure that the student meets all of a. and at least two from b.: a. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history: i. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions. ii. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication. iii. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. b. Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least two of the following:

	i. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases). ii. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day). iii. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest). iv. Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement). c. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life). d. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning. e. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

Table D-9. Developmental Delay

Example 1	1) Developmental delay is a disability category solely for students who are at least three (3) years of age and less than nine (9) years of age. 2) Developmental delay means a delay of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas: a. Gross or fine motor development. b. Cognitive development. c. Receptive or expressive language development. d. Social or emotional development. e. Self-help or other adaptive development.
Example 2	1) For children ages three (3) through five (5) (not kindergarten age eligible) a. The child's development is at or below 1.5 standard deviations, or equivalent levels, of the mean in any TWO areas of development OR at or below 2.0 standard deviations, or equivalent levels, in any ONE area of development. Areas of development that can be used to determine eligibility include physical, cognitive, communication, social/emotional, or adaptive. b. The child needs special education and related services. c. A child may also be deemed eligible when: i. The evaluation report documents through formal and informal assessment that a significant deficit exists and a child is eligible

	for services even though the standard scores, or equivalent levels, do not meet the stated criterion levels in a. above, or ii. The team may determine that a child, who is functioning above the stated criterion level and because of intensive early intervention, is eligible for services based on expected regression if services were to be terminated. 2) For children ages five (5) (kindergarten age eligible) a. Children kindergarten age eligible may continue eligibility as a Young Child with a Developmental Delay if they were identified as such prior to attaining kindergarten age eligibility.
Example 3	1) In a student ages three through seven, developmental delay means a significant delay in one or more of the following areas: physical/motor development, cognitive development, communication development, social/ emotional development, or adaptive development. The delay must adversely affect a student's educational performance. LEAs that choose to use the classification of developmental delay must conform to the State's definition of developmental delay, including the age range adopted by the State, and the requirement that the LEA conduct a full and individual initial evaluation. 2) A team of qualified professionals and the student's parent(s) determine eligibility as defined above. a. The team must determine that the student's primary disability is developmental delay, and not one of the other disability categories. The team must also consider all available evaluation data to show whether the student meets one of the other specific disability categories and if so, the student must be classified in one of the other specific disability categories. b. The developmental delay must adversely affect the student's educational performance. c. The student with a developmental delay must require special education and related services. d. Students who are eligible for services include students who have been determined to have a significant delay or deficit in one or more of the following areas: i. Cognitive development. ii. Physical/motor development. iii. Communication development. iv. Social/emotional development. v. Adaptive development. e. Significant delays are defined as: i. 1.5 standard deviations below the mean, or at or below the seventh percentile in three areas of development. ii. 2.0 standard deviations below the mean, or at or below the second percentile in two areas of development. iii. 2.5 standard deviations below the mean, or at or below the first percentile in one area of development.

Table D-10. Intellectual Disability

Example 1	1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean; 2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and

	3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance.
Example 2	1) There is evidence that the child has: a. Significant limitations in intellectual functioning must be evidenced by scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measurement) on an individually administered intelligence test. b. Significant deficits in adaptive behavior must be evidenced by a score at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains. c. Significant deficits in educational performance (pre-academic, academic and/or functional academic skills) must be evidenced by significant delays in functioning when compared to the child's same aged peers. 2) The adverse effects of the intellectual disability on the child's educational performance require specialized instruction and/or related services.
Example 3	An intellectual disability: 1) is manifested during the developmental period; 2) is characterized by significant limitations in intellectual functioning; 3) is demonstrated through limitations in adaptive behavior; and 4) adversely affects educational performance. A student with a mild intellectual disability has intellectual functioning that generally: 1) falls two (2) standard deviations below the mean; and 2) manifests delays in adaptive behavior consistent with the mild intellectual disability. A student with a moderate intellectual disability has intellectual functioning that generally: 1) falls three (3) standard deviations below the mean; and 2) manifests delays in adaptive behavior consistent with the moderate intellectual disability. A student with a severe intellectual disability has intellectual functioning and adaptive behavior skills that generally: 1) falls four (4) or more standard deviations below the mean; and 2) manifests delays in adaptive behavior consistent with the severe intellectual disability.

Table D-11. Emotional Disturbance

Example 1	1) Significantly Different Behaviors. The student must exhibit withdrawn or anxious behaviors, pervasive unhappiness, depression, severe problems with mood or feelings of self-worth as defined by behaviors, such as: a. isolating self from peers; b. overly perfectionistic; c. displaying intense fears or school refusal; d. failing to express emotion; e. displaying pervasive sad disposition; f. changes in eating or sleeping patterns; g. developing physical symptoms related to worry or stress; h. Other: OR the student must exhibit disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships, such as: Reality distortion beyond normal developmental fantasy and play or talk; Inappropriate laughter, crying, sounds, or language; Self-mutilation; Developmentally inappropriate sexual acting out or developmentally inappropriate self-stimulation; Rigid, ritualistic patterning; Perseveration or obsession with specific objects;

	Overly affectionate behavior towards unfamiliar persons; Hallucinating or delusions of grandeur. i. Other: OR the student must exhibit aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, such as: Physically or verbally abusive behaviors; Impulsive or violent, destructive, or intimidating behavior; Behaviors that are threatening to others or excessively antagonistic. 2) Adverse Effects on Educational Performance. The student's pattern of emotional or behavioral responses must adversely affect education performance and result in at least ONE of the following: a. Inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; OR b. A pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders; or inconsistent educational programming. 3) Areas of Impact K-12. Documentation of prior interventions and the evaluation data for K-12 students must establish significant impairments in at least ONE of the following areas: intrapersonal, academic, vocational, or social skills a. The impaired area identified above must meet ALL of the following criteria: i. Severely interferes with the pupil's or other students' educational performance; ii. Is consistently exhibited by occurrences in at least three different settings: two educational settings, one of which is the classroom, and a setting in either home, child care, or community; iii. Has been occurring throughout a minimum of six months, or results from the well-documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional.
Example 2	1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from the school and one or more other sources of the frequency and severity of the targeted behaviors; 2) The student's performance falls two standard deviations or more below the mean in emotional functions, as measured in school and home or community on nationally-normed technically adequate measures; and 3) An adverse effect on educational performance is verified through the full and individual evaluation procedures. A student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance.
Example 3	Criteria to identify a student with emotional disturbance include all of the following: 1) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. 2) Evidence that the problem is not due to intellectual, sensory, or health factors. 3) Standard scores (total or composite) on two out of three of the same norm-referenced behavior rating scale must be at least two standard deviations above or below the mean (70, depending on the rating scale). Ratings from three or more scales will be obtained from at least three independent raters, one of whom may be the parent or the child through a self report. 4) Evidence that the emotional disability adversely affects the child's academic performance and/or social/emotional functioning in the school environment.

	5) Evidence that the emotional disability is exhibited over a long period of time (typically six months) and to a marked degree, and that the child's educational performance is adversely affected. 6) Observational data that documents the emotional disability in two or more educational settings.

High-Incidence Disabilities

Table D-12. Specific Learning Disability

Example 1	1) A Severe Discrepancy Between Ability & Achievement based upon individually administered assessments and other evaluation data reviewed, a severe discrepancy of 1.5 standard deviations exists between the full scale intellectual ability score (FSIQ) and the standard score from one or more of the 8 areas listed under evaluation considerations for SLD. You must not use age equivalents, grade equivalents or Relative Proficiency Index (RPI) to determine a severe discrepancy. 2) In addition to the required specific learning disability eligibility criteria, the evaluation group must make a determination using a convergence of multiple sources of data that demonstrate the following: a. Response to General Education Interventions: Individual student learning requires resources beyond what typically can be provided in the general education curriculum in order to make adequate progress that is consistent with national or local growth rate comparisons. The student is expected to perform at grade level within a reasonable time period. b. Level of Performance: The student's level of performance in the area of academic concern is significantly below what is expected for their grade and educational setting.
Example 2	A child with a specific learning disability must meet the criteria in (1) or (2). 1) Severe Discrepancy a. The child demonstrates a severe discrepancy between general intellectual ability and achievement in at least one of the identified areas of achievement. b. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The instruments used to assess the child's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. c. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean on a distribution of regression scores for the general population at the student's chronological age. 2) Inadequate rate of progress in response to scientific research-based intervention (SRBI). a. The child demonstrates an inadequate rate of progress in response to intensive SRBI and the following components are documented: Rate of progress is measured over at least seven (7) school weeks on a minimum of 12 data points; b. Rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards; c. Progress will not likely be maintained when instructional supports are removed; Level of performance in repeated assessment of achievement falls below the child's age or state approved grade-level standards; and d. Level of achievement is at or below the 5th percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used

	in addition to either state or national data, but if it differs from either state or national data, the group must provide a rationale to explain the difference.
Example 3	1) 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. 2) Required Data Collection. 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. At least two current (within twelve months) assessments such as the results of the state-required assessment, norm-referenced achievement tests or benchmarks indicating performance that does not meet expectations for State-approved grade-level standards; b. 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. c. Results from supplementary instruction that has been or is being provided: i. 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; and ii. 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.

Table D-13. Speech or Language Impairment

Example 1	1) There is evidence that the child has one or more of the following: a. Fluency – interruption in the flow of speech characterized by an atypical rate, or rhythm in sounds, syllables, words, and phrases that significantly reduces the child's ability to participate within the learning environment with or without his or her awareness of the dysfluencies or stuttering b. Articulation – atypical production of phonemes characterized by substitutions, omissions, additions, or distortions that impairs intelligibility in conversational speech and adversely affects academic achievement and/or functional performance in the educational setting

	c. Language – impaired comprehension and/or use of spoken language which adversely affects written and/or other symbol systems and the child's ability to participate in the classroom environment d. Voice – interruption in one or more processes of pitch, quality, intensity, resonance, or a disruption in vocal cord function that significantly reduces the child's ability to communicate effectively 2) The adverse effects of the speech-language impairment on the child's educational performance require specialized instruction and/or related services
Example 2	1) Articulation a. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. b. Errors are primarily characterized by substitutions, distortions, additions, and omissions. Phonological errors are in excess of developmental expectations and non-developmental processes may be noted. Errors are not stimulable. Connected speech may be unintelligible or may be intelligible only to familiar listeners or within known contexts. c. Children who exhibit a tongue thrust are not eligible for speech/language services unless they also exhibit an associated articulation disorder. Speech/language services are not a required service for children who exhibit tongue thrust only. d. A child does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern. e. A child does not meet the criteria for an articulation disorder as a result of dialectal patterns or second language acquisition patterns. 2) Voice a. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. b. The child's voice is abnormal in vocal quality, pitch, loudness, resonance, and/or duration and is inappropriate for the child's age and gender. Deviance is noticeable and distracting to any listener. The disorder adversely affects communication. c. The voice disorder is not the result of a temporary problem such as normal voice change, allergies, asthma, tonsils and/or adenoid removal or other such conditions. 3) Fluency a. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. b. Abnormally dysfluent speech is observed during conversation and/or structured speaking tasks. Listeners are distracted by the child's dysfluent speech and distracting concomitant behaviors may be observed. The child may exhibit fear or avoidance of speaking. c. The child's ability to communicate is adversely affected by the disorder. Developmental dysfluencies attributable to normal maturation patterns are not considered as a disability. 4) Language a. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. b. Syntactic, morphologic, semantic, and/or pragmatic errors are observed. The child's ability to comprehend or use spoken language is adversely affected. c. A total language standard score or quotient of at least two standard deviations below the mean (70 or below) on a standardized comprehensive language test containing both receptive and expressive components must be obtained.

	d. Dialectal differences or English as a second language is not considered a language disorder.
Example 3	1) Fluency Disorder. A student who meets all of the fluency disorder criteria below is eligible for speech or language special education services: a. The pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil. b. Dysfluent behaviors occur during at least 5 percent of the words spoken on two or more speech samples. c. Fluency patterns are not attributed only to dialectical, cultural, or ethnic difference or to the influence of a foreign language. 2) Voice Disorder. A student with a voice disorder must meet all criteria below to be eligible for speech or language special education services: a. The pattern interferes with communication, as determined by an educational speech language pathologist and either another adult or the pupil. b. Achievement of a moderate to severe vocal severity rating, as demonstrated on a voice evaluation profile administered on two separate occasions, two weeks apart, at different times of the day. c. Voice patterns are not attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language. 3) Articulation Disorder. A student with an articulation disorder qualifies for speech or language special education services if the student meets both a. and d. and either b. or c.: a. The pattern interferes with communication, as determined by an educational speech language pathologist and either another adult or the pupil. b. Test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test. c. The pupil is 9 years of age or older and a sound is consistently in error as documented by two, three-minute conversational speech samples. d. Articulation patterns are not attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language. 4) Language Disorder. A student with a language disorder qualifies for speech and language special education if the student meets a., b., and e. and either c. or d.: a. The pattern interferes with communication, as determined by an educational speech language pathologist and either another adult or the pupil. b. Analysis of language sample or documented observation of communication interaction indicates that language behavior is below or different from expectations based on age, developmental level, or cognitive level. c. Test performance falls 2.0 standard deviations below the mean on a technically adequate language tests. d. If technically adequate, norm-referenced language tests are not available to provide evidence of a deficit of 2.0 standard deviations below the mean on the area of language, two documented measurement procedures indicate a substantial difference from expectations based on age, developmental level, or cognitive level. e. Language patterns are not attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language.

Table D-14. Other Health Impairment

Example 1	All of the following must be met: 1) The student exhibits characteristics consistent with the definition; 2) The student has a chronic or acute medical or health condition as diagnosed and described by a licensed physician; with the exception of ADHD which can be diagnosed by a school psychologist or licensed psychologist. 3) The existence of educational needs as a result of the medical or health condition. 4) The student's condition adversely affects educational performance. 5) The student needs special education.
Example 2	1) There is evidence that the child has a chronic or acute health problem. 2) There is evidence that the diagnosed chronic or acute health problem results in limited alertness to the educational environment due to limited strength, limited vitality, limited or heightened alertness to the surrounding environment. 3) The adverse effects of the other health impairment on the child's educational performance require specialized instruction and/or related services. Evidence of a chronic or acute health problem may be found in the following required evaluation component: 1) A comprehensive written report from a licensed physician documenting a diagnosis of the chronic or acute health problem; 2) In the case of a child with Attention Deficit Hyperactivity Disorder (ADHD), the diagnosis may be made by a licensed physician, a certified school psychologist, licensed psychologist, or a licensed psycho-educational specialist. A term ADHD includes several subtypes. One of those subtypes is "predominantly inattentive type," formerly described as Attention Deficit Disorder (ADD). 3) In the case of a child with ADHD, the student is rated within the highest level of significance on a valid and reliable problem behavior rating scale in areas related to the diagnosis of ADHD by both his classroom teacher and parent. 4) Documentation that the student's observable school and/or classroom problem behaviors related to ADHD are occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers. 5) The medical diagnosis may not be used as the sole criterion for determining eligibility. There must be evidence that the other health impairment adversely affects the child's educational performance.

Example 3	1) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. 2) Evidence of a health impairment. 3) Performance measures that document how the child's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, how the disability affects the child's participation in age-appropriate activities. 4) A statement providing evidence that the health impairment adversely affects the educational performance of the child and, for initial evaluation for special education services only, evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful. Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD): 1) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations. 2) Evidence that the health impairment adversely affects the educational performance of the child. 3) Standard scores (total or composite) on two out of three of the same norm-referenced scale designed specifically to determine the presence of ADD or ADHD must be at least two standard deviations above or below the mean (70, depending on the rating scale). Ratings from three or more scales must be obtained from at least three independent raters, one of whom may be the parent. 4) For initial evaluations only, evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful.

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