

XI. Disability Verification

IDEA Regulations: Disability Definitions

Section 300.8 Child with a disability

(a) General.

1. Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
2.
 - i. Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
 - ii. If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

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Autism

92 NAC 51-006.04B-Autism

006.04B1. To qualify for special education services in the category of Autism, the child must have a developmental disability which:

006.04B1a. Significantly affects verbal and nonverbal communication and social interaction;

006.04B1b. Is generally evident before age three; and

006.04B1c. That adversely affects the child’s educational performance.

006.04B1d. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

006.04B2. Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance as defined in 92 NAC 51-006.04E.

006.04B3. A child who manifests the characteristics of autism after age 3 could be verified as having autism if the other criteria in 92 NAC 51-006.04B1 are met.

Deaf-Blindness

92 NAC 51-006.04C

must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a. Severe communication needs; and

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(b) Children aged three through nine experiencing **developmental delays**. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—

1. Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
2. Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

1.
 - 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

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006.04C1b. Other developmental and educational needs.

006.04C1c. The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

Developmental Delay **92 NAC 51-006.04D**

006.04D1. To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04D1a. Cognitive development,

006.04D1b. Physical development,

006.04D1c. Communication development,

006.04D1d. Social or emotional development,

006.04D1e. Adaptive behavior or skills development, or

006.04D1f. A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.

006.04D2. Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.

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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.

2. **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.

3. **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.

4.

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.

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Emotional Disturbance

92 NAC 51-006.04E

006.04E1. To qualify for special education services in the category of emotional disturbance, the child must have a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

006.04E1a. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04E1b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

006.04E1c. Inappropriate types of behavior or feelings under normal circumstances;

006.04E1d. A general pervasive mood of unhappiness or depression; or

006.04E1e. A tendency to develop physical symptoms or fears associated with personal or school problems.

006.04E2. The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

Hearing Impairment

92 NAC 51-006.04F

006.04F1. To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:

006.04F1a. Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or

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- 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.

5. Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

6. 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."

7. 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.

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006.04F1b. Is permanent or fluctuating, and

006.04F1c. Adversely affects the child's educational performance.

006.04F2. This term combines the state definition of "deaf" contained in Neb. Rev. Stat. §79-1118.01(4), the state definition of "hard of hearing" in Neb. Rev. Stat. §79-1118.01(7), the federal definition of "deafness" in 34 CFR 300.8(c)(3), and the federal definition of "hearing impairment" in 34 CFR 300.8(c)(5).

Intellectual Disability **92 NAC 51-006.04G**

006.04G1. To qualify for special education services in the category of Intellectual Disability, the child must demonstrate:

006.04G1a. 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.

Multiple Impairments **92 NAC 51-006.04H**

006.04H1. To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, 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.

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- 8. 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).
- 9. 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—
- i. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
 - ii. Adversely affects a child’s educational performance.
- 10. 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

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006.04H2. This classification does not include children with deaf-blindness.

Orthopedic Impairment

92 NAC 51-006.04I

006.04I1. To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child’s educational performance.

006.04I2. The category includes children with impairments caused by:

006.04I2a. Congenital anomaly,

006.04I2b. Impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and

006.04I2c. Impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

Other Health Impairment

92 NAC 51-006.04J

006.04J1. To qualify for special education services in the category of Other Health Impairment, the child must have:

006.04J1a. Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child’s educational performance such as:

006.04J1a(1). 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.

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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.

11. **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.

- 12. 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.

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Specific Learning Disability

92 NAC 51-006.04K

006.04K1. To qualify for special education services in the category of specific learning disability the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

006.04K2. The MDT of a child suspected of having a specific learning disability shall include at least:

006.04K2a. The child's parents;

006.04K2b. For a school age child, the child's regular teacher(s) or if a child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;

006.04K2c. For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K2d. Special educator with knowledge in the area of specific learning disabilities;

006.04K2e. At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school

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13. 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.

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psychologist, speech language pathologist, or remedial reading teacher; and

006.04K2f. A school district administrator, or a designated representative.

006.04K3. The MDT may determine that a child has a specific learning disability if:

006.04K3a. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

006.04K3b. The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or

006.04K3b(1). The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

006.04K4. The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:

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006.04K4a. A visual, hearing, or motor disability;

006.04K4b. Intellectual disability;

006.04K4c. Emotional disturbance;

006.04K4d. Cultural factors,

006.04K4e. Environmental or economic disadvantage; or

006.04K4f. Limited English proficiency.

006.04K5. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:

006.04K5a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

006.04K5b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

006.04K6. The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2.

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006.04K6a. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a and b; and

006.04K6b. Whenever a child is referred for an evaluation.

006.04K7. The school district or approved cooperative must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

006.04K8. The MDT, in determining whether a child has a specific learning disability, must decide to:

006.04K8a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

006.04K8b. Have at least one member of the MDT described in 92 NAC 51-006.04K2 conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 92 NAC 51-009.08 is obtained.

006.04K8c. In the case of a child of less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

Speech-Language Impairment

92 NAC 51-006.04L

006.04L1. To qualify for special education services in the category of Speech- Language Impairment, the child must have:

006.04L1a. A communication disorder such as:

006.04L1a(1). Stuttering;

006.04L1a(2). Impaired articulation;

006.04L1a(3). Language impairment; or

006.04L1a(4). A voice impairment.

006.04L2. This disorder must adversely affect the child’s educational performance.

Traumatic Brain Injury

92 NAC 51-006.04M

006.04M1. To qualify for special education services in the category of Traumatic Brain Injury, the child must have:

006.04M1a. An acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the child’s educational performance.

006.04M1b. The category includes open or closed head injuries resulting in impairments in one or more areas such as:

006.04M1b(1). Cognition;

006.04M1b(2). Language;

006.04M1b(3). Memory;

006.04M1b(4). Attention;

006.04M1b(5). Reasoning;

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006.04M1b(6). Abstract thinking;

006.04M1b(7). Judgment;

006.04M1b(8). Problem solving;

006.04M1b(9). Sensory, perceptual and motor abilities;

006.04M1b(10). Psychosocial behavior;

006.04M1b(11). Physical functions;

006.04M1b(12). Information processing; and

006.04M1b(13). Speech.

006.04M2. The category does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Visual Impairment Including Blindness

92 NAC 51-006.04N

006.04N1. To qualify for special education services in the category of Visual Impairment, including blindness, the child must have;

006.04N1a. An impairment in vision that, even with correction, adversely affects the child's educational performance.

006.04N2. This category includes children who have partial sight or blindness.

District Considerations for Policy and Procedure Development

Sample district policy statement

A multidisciplinary team will identify whether a child is eligible for special education services after the completion of a comprehensive evaluation based on disability categories identified by state and Federal regulations (34 CFR §300.8; 92 NAC 51-006.04). The district [does/does not] include the category of developmental delay.

Procedural considerations

- What professional development is provided on disability definitions to staff designated as interpreter of test results as well as LEA designees to help them adequately represent their role?
- What professional development is needed for other special education staff and other team members regarding disability definition?
- What procedures are needed to ensure all areas of a disability are included in evaluations before eligibility decisions are made?
- Which assessment specialists are needed (at minimum) as part of the different disability assessment teams?
- What processes are in place to include all team members in the decision on eligibility?
- How does the district handle when team members do not agree?

Guidance resource

- [Eligibility Guidelines – Nebraska Department of Education](#)