

## Virginia Special Education Disability Categories and Criteria

**"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. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

**"Intellectual disability"** means the definition formerly known as "mental retardation" and 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. (34 CFR 300.8(c)(6))

**"Multiple disabilities"** means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with 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. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

**"Orthopedic impairment"** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

**"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 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, and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

**"Deaf-blindness"** means simultaneous 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. (34 CFR 300.8(c)(2))

**"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 the child's educational performance. (34 CFR 300.8(c)(3))

**"Developmental delay"** means a disability affecting a child ages two by September 30 through six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, 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, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

**"Emotional disability"** 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: (34 CFR 300.8(c)(4))

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

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

3. Inappropriate types of behavior or feelings under normal circumstances;

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4. A general pervasive mood of unhappiness or depression; or

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

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined in this section.

**"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. (34 CFR 300.8(c)(13))

**"Hearing impairment"** means an impairment in hearing in one or both ears, with or without amplification, 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. (34 CFR 300.8(c)(5))

*(\*Severe disability category no longer exists. As with mental retardation, this now comes under the category of Intellectual Disability.)*

**"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.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in

reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

**"Speech or language impairment"** means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

**"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. (34 CFR 300.8(c)(12))

### **Eligibility Criteria Information**

J. Eligibility as a child with **autism**. The group may determine that a child has autism if:

1. There is an adverse effect on the child's educational performance due to documented characteristics of autism, as outlined in this section; and
2. The child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhetts Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references.
  - a. Children with Asperger's Disorder demonstrate the following characteristics:
    - (1) Impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and
    - (2) Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.
  - b. Children with autistic disorder, in addition to the characteristics listed in subdivisions 2 a (1) and 2 a (2) of this subsection, also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.
  - c. Children with Pervasive Developmental Disorder - Not Otherwise Specified or Atypical Autism may display any of the characteristics listed in subdivisions 2 a (1), 2 a (2) and 2 b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

K. Eligibility as a child with **deaf-blindness**. The group may determine that a child has deaf-blindness

if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met.

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L. Eligibility as a child with **deafness**. The group may determine that a child has deafness if:

1. The definition of "deafness" is met in accordance with 8VAC20-81-10;
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a deafness, as outlined in subdivision 3 of this subsection; and
3. The child has a bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness.

M. Eligibility as a child with **developmental delay**. (34 CFR 300.111(b))

1. The group may determine that a child has a developmental delay if the local educational agency permits the use of developmental delay as a disability category when determining whether a preschool child, aged two by September 30 to six, inclusive, is eligible under this chapter, and:

- a. The definition of "developmental delay" is met in accordance with 8VAC20-81-10; or
- b. The child has a physical or mental condition that has a high probability of resulting in a developmental delay.

2. Eligibility as a child with a disability for children ages two through six shall not be limited to developmental delay if eligibility can be determined under another disability category.

3. A local educational agency is not required to adopt and use developmental delay as a disability category for any children within its jurisdiction. If the local educational agency permits the use of developmental delay as a disability category, it shall comply with the eligibility criteria outlined in this section.

N. Eligibility as a child with an **emotional disability**. The group may determine that a child has an

emotional disability if:

1. The definition of "emotional disability" is met in accordance with 8VAC20-81-10; and
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.

O. Eligibility as a child with a **hearing impairment**.

1. The group may determine that a child has a hearing impairment if:

- a. The definition of "hearing impairment" is met in accordance with 8VAC20-81-10; and
- b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a hearing impairment, as outlined in subdivision 2 of this subsection.

2. Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dys-synchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance.

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3. The term "hard of hearing" may be used in this capacity.

P. Eligibility as a child with an **intellectual disability**. The group may determine that a child has an intellectual disability if:

1. The definition of "intellectual disability" is met in accordance with 8VAC20-81-10;
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an intellectual disability, as outlined in subdivision 3 of this subsection; and

3. The child has:

a. Significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the assessment, on an individually administered, standardized measure of intellectual functioning;

b. Concurrently, significantly impaired adaptive behavior as determined by a composite score on an individual standardized instrument of adaptive behavior that measures two standard deviations or more below the mean; and

c. Developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.

Q. Eligibility as a child with **multiple disabilities**. The group may determine that a child has multiple disabilities if the definition of "multiple disabilities" is met in accordance with 8VAC20-81-10.

R. Eligibility as a child with an **orthopedic impairment**. The group may determine that a child has an orthopedic impairment if:

1. The definition of "orthopedic impairment" is met in accordance with 8VAC20-81-10; and

2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an orthopedic impairment.

S. Eligibility as a child with other health impairment. The group may determine that a child has an other health impairment if:

1. The definition of "other health impairment" is met in accordance with 8VAC20-81-10; and

2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of the other health impairment.

T. Eligibility of a child with a **specific learning disability**. (34 CFR 300.307 and 34 CFR 300.309)

1. The group may determine that a child has a specific learning disability if:

a. The definition of "specific learning disability" is met in accordance with 8VAC20-81-10; and

b. The criteria for determining the existence of a specific learning disability are met.

2. The criteria for determining the existence of a specific learning disability are met if:

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a. The child does not achieve adequately for the child's age or to meet Virginia-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 Virginia-approved grade-level standards:

(1) Oral expression;

(2) Listening comprehension;

(3) Written expression;

(4) Basic reading skills;

(5) Reading fluency skills;

(6) Reading comprehension;

(7) Mathematical calculations; or

(8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development,

that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70.

c. The group determines that its findings under subdivisions 2 a and b of this subsection are not primarily the result of:

- (1) A visual, hearing, or motor impairment;
- (2) Intellectual disability;
- (3) Emotional disability;
- (4) Environmental, cultural, or economic disadvantage; or
- (5) Limited English proficiency.

3. The Virginia Department of Education does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. (34 CFR 300.307(a))

#### U. Eligibility as a child with **speech or language impairment**.

1. The group may determine that a child has a speech or language impairment if:

- a. The definition of "speech or language impairment" is met in accordance with 8VAC20-81-10;
- b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of speech or language impairment;
- c. The child has a significant discrepancy from typical communication skills in one or more of the following areas: fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and
- d. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment.

2. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of sociocultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

3. Speech language pathology services may be special education or a related service.

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V. Eligibility as a child with a **traumatic brain injury**. The group may determine that a child has a

traumatic brain injury if:

1. The definition of "traumatic brain injury" is met in accordance with 8VAC20-81-10; and
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.

#### W. Eligibility as a child with a **visual impairment**.

1. The group may determine that a child has a visual impairment if:

- a. The definition of "visual impairment" is met in accordance with 8VAC20-81-10;
- b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and
- c. The child:
  - (1) Demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or
  - (2) Has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future, have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

2. A child with blindness demonstrates the following:
  - a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance or near; or
  - b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.
3. A child with a visual impairment demonstrates the following:
  - a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; or
  - b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.

### **Related Services**

Physical therapy, occupational therapy, counseling, and nursing services are considered related services. A student must be found eligible for special education services before eligibility for any related services can be determined.