

(Effective until January 1, 2022)

WAC 392-172A-01035 Child with a disability or student eligible for special education.

(1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in (a) of this subsection, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student'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 student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) 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 accommo-

dated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over

a long period of time and to a marked degree that adversely affects a student'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/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

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

(g) 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 student's educational performance.

(h) Multiple disabilities means concomitant impairments, 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, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student'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).

(j) 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 student's educational performance.

(k)(i) 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, that adversely affects a student's educational performance.

(ii) 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.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) 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 student'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.

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

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-01035, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01035, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). WSR 11-06-052, § 392-172A-01035, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01035, filed 6/29/07, effective 7/30/07.]

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(b) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education services" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in (a) of this subsection, but only needs a related service and not special education services, the student is not a student eligible for special education

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(d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(e) Special education services may not be solely based on the disability category for which the student is eligible.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student'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 student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deafblindness means concomitant deafness and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that a student's educational performance is adversely affected and the student cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(c) Deafness means a student who is deaf or hard of hearing which manifests in severe difficulty processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through nine who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

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(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through nine, established under this section.

(v) School districts using the category "developmentally delayed," for students three through nine may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age ten and determined eligible for services under one of the other eligibility categories in order to continue receiving special education services.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

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(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/behavioral disability includes schizophrenia and other psychiatric conditions. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional/behavioral disability under (e)(i) of this subsection.

(f) Hard of hearing means difficulty hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) 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 student's educational performance.

(h) Multiple disabilities means concomitant impairments, 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, multiple disabilities does not include deafblindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student'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).

(j) 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

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[Statutory Authority: RCW 28A.155.090. WSR 21-19-065, § 392-172A-01035, filed 9/14/21, effective 1/1/22; WSR 17-23-054, § 392-172A-01035, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01035, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). WSR 11-06-052, § 392-172A-01035, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01035, filed 6/29/07, effective 7/30/07.]