Title of Regulation:	**Regulation No.:**	**43-243.1**
CRITERIA FOR ENTRY INTO PROGRAMS OF SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES	**Effective Date:**	**09/23/11**

Constitutional and Statutory Provisions:

Section(s):

59-21-510, et seq.	Education of Physically and Mentally Handicapped Children.
59-33-10, et seq.	Special Education for the Handicapped.

Code of Laws of South Carolina, 1976.

20 U.S.C. § 1400 et seq.	Individuals with Disabilities Education Improvement Act of 2004

U.S. Code of Laws

State Board Regulation:

Criteria for Entry into Programs of Special Education for Students with Disabilities.

A. General Requirements

These criteria for entry into programs of special education for students with disabilities will be used by all members of the multidisciplinary team, who may include school psychologists, speech-language therapists, and other persons responsible for the identification and evaluation of students with disabilities.

The federal definitions for all categories of disabilities have been used, as included in the Individuals with Disabilities Act (IDEA). All examiners, however, must be appropriately credentialed or licensed and should have completed training that is directly relevant to the assessment procedure being conducted. Examiners may administer supplementary measures such as curriculum-based assessments to gain additional information.

All evaluation procedures must ensure that the following minimal requirements are met:

1. Tests and other evaluation materials used to assess a student suspected of having a disability are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the student's native language or other mode of communication unless it is clearly unfeasible to use that language or any mode of communication.

2. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child to participate in appropriate activities) that may assist in determining whether the student is one with a disability and what the content of the student's IEP should be.

4. Any standardized tests that are given to a student have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, must be included in the evaluation report.

5. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

6. Tests are selected and administered so as best to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student’s aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

7. No single procedure is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the student.

8. The student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In the assessment of each student with a disability, the methods of evaluation are sufficiently comprehensive to identify all of the student’s special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability.

10. Each school district/agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

11. Each school district/agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

B. Autism

1. Definition

Autism is a developmental disability, generally evident before age three, which adversely affects a student’s educational performance and significantly affects developmental rates and sequences, verbal and non-verbal communication and social interaction and participation. Other characteristics often associated with autism are unusual responses to sensory experiences, engagement in repetitive activities and stereotypical movements and resistance to environmental change or change in daily routines. Students with autism vary widely in their abilities and behavior. The diagnosis of Autism does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disorder. Autism may exist concurrently with other areas of disability.

Autism, also referenced as autism spectrum disorder, for the purpose of eligibility, may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), or

Asperger’s Syndrome provided the student’s educational performance is adversely affected and the student meets the eligibility and placement requirements.

2. Eligibility Criteria

There is evidence that the child has any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, PDD-NOS as indicated in the following diagnostic references:

a. Asperger’s Disorder:

(1) There is evidence that the child demonstrates 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.

(3) The adverse effects of the Asperger’s Disorder on the child’s educational performance require specialized instruction and/or related services.

b. Autistic Disorder

(1) In addition to the characteristics listed in (a)(1) and (2) of this subsection, there also is evidence that the child demonstrates 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.

(2) The adverse effects of the Autistic Disorder on the child’s educational performance require specialized instruction and/or related services.

c. PDD-NOS

(1) There is evidence that the child demonstrates any of the characteristics listed in a or b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

(2) The adverse effects of the PDD-NOS on the child’s educational performance require specialized instruction and/or related services.

C. Deaf-blindness

1. Definition

Deaf-blindness means concomitant hearing loss and visual impairment, 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 who are deaf or hard of hearing or children who are blind or visually impaired.

2. Eligibility Criteria

a. There is evidence that the child meets the criteria for both the Deaf/Hard of Hearing category and the Visual Impairment category.

(1) a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally, or

(2) a fluctuating hearing loss, either unilaterally or bilaterally, and

(3) The visual acuity with correction is 20/70 or worse in the better eye; or

(4) 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; or

(5) 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

(6) There is evidence of cortical visual impairment.

b. The adverse effects of the hearing and visual impairment on the child's educational performance require specialized instruction and/or related services.

D. Deaf/Hard of Hearing

1. Definition

Deaf means a hearing loss that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's academic or functional performance.

Hard of Hearing means a hearing loss, whether permanent or fluctuating, that adversely affects a student's academic or functional performance with or without amplification, but that is not included under the definition of deaf in this section.

2. Eligibility Criteria

a. There is evidence that the child has

(1) a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally, or

(2) a fluctuating hearing loss, either unilaterally or bilaterally.

b. The adverse effects of the deafness or hard of hearing impairment on the child's educational performance require specialized instruction and/or related services.

E. Developmental Delay

1. Definition

A child with developmental delay is a child age 3-9 who has been identified before the age of 7 as experiencing significant developmental delays in one or more 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.

The term significant developmental delay refers to a delay in a child's development in adaptive behavior, cognition, communication, motor development or social development to the extent that, if not provided with special intervention, it may adversely affect his/her educational performance in age-appropriate activities. The term does not apply to children who are experiencing a slight or temporary lag in one or more areas of development, or a delay which is primarily due to environmental, cultural, or economic disadvantage, lack of experience in age appropriate activities, lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency or the child does not otherwise meet the eligibility criteria as a child with a disability.

2. Eligibility Criteria

a. There is evidence that child is exhibiting a significant developmental delay in one or more of the following areas:

(1) physical development

(2) cognitive development

(3) communication development

(4) social or emotional development

(5) adaptive behavior development.

b. There is evidence that the delay is not due to:

Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the Elementary and Secondary Education Act;

(1) Lack of appropriate instruction in math;

(2) Limited English proficiency; or

(3) The presence of any other disability for children ages six through seven.

c. The adverse effects of the developmental delay on the child's educational performance require specialized instruction and/or related services.

F. Emotional Disability

1. Definition

Emotional Disability means an emotional disturbance defined as 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 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 in 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.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.

2. Eligibility Criteria

a. There is evidence that the child exhibits one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings in normal circumstances; general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

b. The adverse effects of the emotional disability on the child's educational performance require specialized instruction and/or related services.

G. Intellectual Disabilities

1. Definitions

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.

2. Eligibility Criteria

a. There is evidence that the child has:

(1) 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.

(2) 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.

(3) 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.

b. The adverse effects of the intellectual disability on the child's educational performance require specialized instruction and/or related services.

H. Multiple Disabilities

1. Definition

Multiple Disabilities means concomitant impairments (such as intellectual disabilities-blindness or intellectual disabilities-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.

2. Eligibility Criteria

a. There is evidence that the child meets all eligibility requirements for two or more disabilities. The term does not include developmental delay, deaf-blindness, or speech/language impairment.

b. The adverse effects of the multiple disabilities on the child's educational performance cannot be accommodated in special education programs solely for one of the disabilities and require specialized instruction and/or related services.

I. Other Health Impairment

1. Definition

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, sickle cell anemia, and Tourette's syndrome and adversely affects a student's educational performance.

2. Eligibility Criteria

a. There is evidence that the child has a chronic or acute health problem.

b. 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.

c. The adverse effects of the other health impairment on the child's educational performance require specialized instruction and/or related services.

J. Orthopedic Impairment

1. Definition

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot,

absence of some member, etc.), 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).

2. Eligibility Criteria

a. There is evidence that the child has a severe orthopedic impairment.
b. The adverse effects of the orthopedic impairment on the child's educational performance require specialized instruction and/or related services.

K. Specific Learning Disabilities

1. Definition

Specific Learning disability means a disorder in one of 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, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

2. Eligibility Criteria

a. There is evidence that the child does not achieve adequately for his/her age or to meet state-approved grade level standards in one or more of the following areas: Basic reading skills, Reading fluency, Reading comprehension, Mathematics calculation, Mathematics problem-solving, Written expression, Oral expression, or Listening comprehension; and either
(1) does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention, or

(2) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.

b. The child's underachievement is not due to: visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; limited English proficiency; or lack of appropriate instruction in reading or math.

c. The adverse effects of the learning disability on the child's educational performance require specialized instruction and/or related services.

L. Speech-Language Impairment

1. Definition

Speech-Language Impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.
2. Eligibility Criteria

a. There is evidence that the child has one or more of the following impairments:

(1) 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

(2) 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

(3) 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

(4) 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

b. The adverse effects of the speech-language impairment on the child's educational performance require specialized instruction and/or related services

M. Traumatic Brain Injury

1. Definition

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. 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 brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

2. Eligibility Criteria

a. There is evidence that the child had a traumatic brain injury.

b. The adverse effects of the traumatic brain injury on the child's educational performance require specialized instruction and/or related services.

N. Visual Impairment

1. Definition

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

2. Eligibility Criteria

a. There is evidence that

(1) The visual acuity with correction is 20/70 or worse in the better eye; or

(2) 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;

(3) 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

(4) There is evidence of cortical visual impairment.

b. The student's visual impairment adversely affects his or her educational and functional performance. The adverse effects of the visual impairment on the child's educational performance require specialized instruction and related services.

O. Reevaluation

Reevaluations for all categories of disability must be conducted at least once every three years and must be conducted more frequently if conditions warrant, if the parents or school personnel request such reevaluations, or if the student's dismissal from special education is being considered.

1. This reevaluation must be planned and conducted by an IEP team and other qualified professionals as appropriate.

2. The IEP team must review existing evaluation data on the student, including evaluations and information provided by his or her parents, current classroom-based assessments, and observations of teachers and related service providers.

3. On the basis of that review and input from the student's parents, the IEP team must identify what additional data, if any, are needed to determine the following:

a. whether the student continues to have a disability;

b. what the present levels of performance and the educational needs of the student are;

c. whether the student continues to need special education and related services; and

d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set forth in his or her IEP and to participate, as appropriate, in the general curriculum.

4. Appropriate, qualified professionals must administer such tests and/or collect other evaluation information to produce the data identified by the IEP team.

5. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed, the team must document the justification for this determination.