



# Deaf and Hard of Hearing Students: Eligibility for Special Education



**Texas Sensory  
Support  
Network**

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# Deaf and Hard of Hearing Students (DHH): Eligibility for Special Education



[34 Code of Federal Regulations \(CFR\) §300.8](#) indicates two components that must be considered when determining if a student has a disability and is eligible for special education and related services:

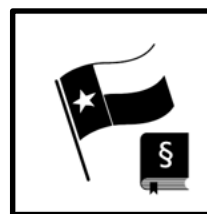
- 1) the child has one or more of the disabilities specified in 34 CFR §300.8; AND
- 2) the disability creates a need for special education and related services.

## Component One: Determining DHH Disability



**Code of Federal Regulations [34 CFR § 300.8\(c\)\(3\)](#) and [\(5\)](#)**

- *“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”*
- *“Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's educational performance but that is not included under the definition of deafness”*





**Texas Administrative Code [TAC § 89.1040\(c\)\(3\)](#)**


- A student who is DHH is “one who has been determined to meet the criteria for deafness as stated in [34 CFR § 300.8\(c\)\(3\)](#), or for hearing impairment as stated in [34 CFR § 300.8\(c\)\(5\)](#)”

*"The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include..." (Texas Administrative Code (TAC) §89.1040(c)(3))*

## Otological

	<p>"...an otological examination performed by an otolaryngologist* or by a licensed medical doctor, with documentation that an otolaryngologist is <b>not reasonably available</b>" (<a href="#">TAC §89.1040(c)(3)</a>).</p> <p>*An otolaryngologist (ENT) is a doctor who treats issues concerning the ears, nose, and throat</p>
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	<h3>What does "not reasonably available" mean?</h3>
<p><b>Not reasonably available</b> may include:</p> <ul style="list-style-type: none"><li>• Long wait time for ENT appointments</li><li>• Significant travel requirements due to lack of ENT locally</li><li>• Difficulty locating ENTs who accept Medicaid, pediatrics, and/or new patients.</li></ul>	

	<h3>Important to note!</h3> <p>Students with unilateral hearing loss are at 10 times the risk for educational challenges as compared to their peers with typical hearing in both ears (Anderson 2017).</p> <p>Approximately 50% of children with otitis media (ear infections) experience mild fluctuating hearing loss, which increases their risk of language acquisition, behavior, and academic achievement (Balbani and Montovani 2003).</p>
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# Audiological



“...an audiological evaluation performed by a licensed audiologist. The evaluation data must include a

- description of the implications of the hearing loss for the student's hearing
- in a variety of circumstances
- with or without recommended amplification” ([TAC §89.1040\(c\)\(3\)](#)).



## What hearing level is required to qualify as a student who is deaf or hard of hearing (DHH)?

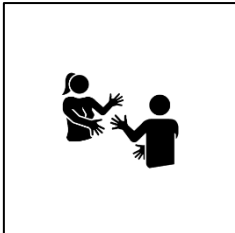
According to the National Association of State Directors of Special Education (NASDSE) “by nature of the sensory impairment, a child with a bilateral or unilateral hearing loss, whether fluctuating, progressive or permanent, meets the disability component for eligibility for special education services. **Neither the Individuals with Disabilities Education Act (IDEA), nor its implementing regulations, defines a minimum decibel (dB) loss as part of the eligibility requirement**” (NASDSE 2006).




## Important to note!

Information from the audiological and the functional listening evaluation (communication assessment) will provide data about how the student is using their hearing. This data are more useful than the actual level of hearing. This information is part of the Full and Individual Evaluation (FIE) as well as included in annual updates.

## Communication

	<p>“...calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language” <a href="#">(Texas Education Code (TEC) §30.083(a)(6)).</a></p>
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*“Do not underestimate the impact of compromised hearing ability, [whether] minimal, mild, unilateral or single sided deafness conditions. [These conditions] can have the same consequences as more significant hearing loss and deafness.”  
(NASDSE 2018, 23)*

<b>Best Practice</b>	
<p>The speech language pathologist (SLP) and the teacher of students who are deaf or hard of hearing (TODHH) should work cooperatively to conduct the communication assessment.</p>	



## What should be included in the communication assessment?

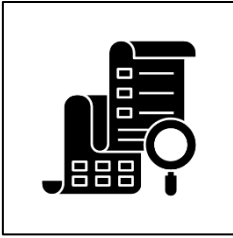
Additional information regarding communication assessments is available on the [TxSSN website](#)

According to NASDSE (2018) the areas that should be considered include:

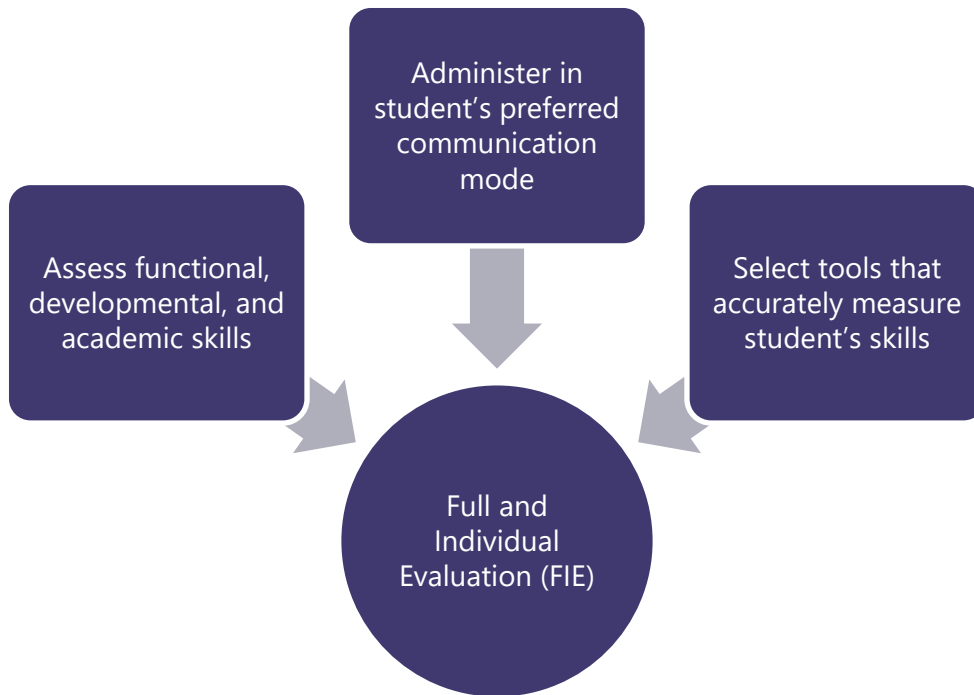
- Auditory status and auditory function
  - acuity
  - speech discrimination in quiet, noise, distance, and without visual access
  - performance and use of personal hearing instruments and hearing assistive technology (HAT)
  - auditory skill development
- Spoken Language (comprehension and production)
  - phonology (sounds)
  - vocabulary/semantics (word meanings) – receptive and expressive
  - syntax (grammar) receptive and expressive
  - morphology (word endings) – receptive and expressive
  - pragmatics (use of social language)
- American Sign Language vocabulary
  - fluency – receptive and expressive
  - phonology
  - semantics – receptive and expressive
  - syntax – receptive and expressive
  - morphology
  - pragmatics

## Component Two: Determining Educational Need

### Evaluation Procedures



IDEA requires the local education agency (LEA) to fully evaluate students in all areas of the suspected disability, and that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified” ([34 CFR §300.304](#)).





## Best Practice

Completing the communication assessment before the other components of the FIE as well as collaborating with the TODHH and the SLP will ensure the multi-disciplinary evaluation team is conducting the evaluations in the student's mode of communication and are using appropriate accommodations.

"A professional conducting an assessment with students who are deaf or hard of hearing must be proficient in the student's preferred language or communication mode. When such a professional is not available, an interpreter should be enlisted as a last resort. It is the responsibility of the [LEA] to ensure that the interpreter is qualified and has experience with educational assessments." (NASDSE 2018, 25)




## What functional needs should be assessed for students who are DHH?

In addition to assessing functional skills addressed for all students with a suspected disability, NASDSE (2018) recommends using the *Expanded Core Curriculum for Students who are Deaf or Hard of Hearing (ECC-DHH)* (Iowa Department of Education 2019) to address functional skills specific to students who are DHH. The ECC-DHH covers:

- audiology
- career education
- communication development
- family education
- functional skills for academic success
- self-determination and advocacy
- social emotional skills
- technology


## Determining Eligibility for Special Education and Related Services





### Important to note!

While the FIE may identify the presence of a disability and the impact of the disability on educational performance, only the ARD committee can determine whether a student requires specially designed instruction that requires special education and related services.



### What does "...adversely affects the child's educational performance" mean?

*"It remains the Department's position that the term 'educational performance' as used in the IDEA and its implementing regulations is not limited to academic performance." [Policy Letter to Clarke \(OSEP 2007\)](#)*

- "Each State must ensure that a [free and appropriate public education] FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade" ([34 CFR §300.101\(c\)\(1\)](#)).

## Additional Questions Related to DHH Eligibility



**Are the otological and audiological reports required to be on the school district's forms for eligibility, or can we use a medical report instead?**

- To determine initial documentation of an auditory impairment, [TAC §89.1040\(c\)\(3\)](#) requires an otological examination and an audiological assessment.
  - The requirement does not indicate that results must be on a specific form.
  - Required components that must be present
    - Otological –
      - results of the examination
      - doctor's signature, credentials, and date
    - Audiological –
      - audiologist's signature, credentials, and date
      - description of the implications of the hearing loss for the student's hearing, in a variety of circumstances, with or without recommended amplification



### **Important to note!**

Audiologists often share the "Familiar Sounds Audiogram" with the child's hearing levels plotted to help parents understand what sounds their can and cannot hear. This is NOT enough documentation for eligibility.



## If a student qualified as DHH because of ear infections that are now cleared up, do we dismiss the student from special education?

- The Office of Special Education Programs (OSEP) provides guidance through the [Policy Letter to Blodgett](#) (2014) stating that if the student's medical reports indicate that a conductive loss has been corrected, it is still imperative that the Full and Individual Evaluation address whether the need for special education and related services remains. Correction of the conductive loss does not automatically mean that language and academic needs have been resolved.
  - "The evaluation must be sufficiently comprehensive to identify the child's potential need for special education and related services, whether or not commonly linked to the disability category in which the child was previously identified ([34 CFR §300.304\(c\)\(6\)](#))."
  - "The child's language needs and whether he qualifies under the 'Speech or language impairment' category would be important considerations when evaluating that child's continued eligibility for services (OSEP 2014)".



## The audiologist is recommending an Auditory Brainstem Response (ABR), and the parents are asking us to pay for it. Are we required to do so, because it is a medical evaluation?

- Yes. To determine whether a student is DHH, [TAC §89.1040\(c\)\(3\)](#) requires an audiological assessment. An ABR may be required to obtain the audiological information. The LEA is responsible for obtaining the ABR if it is needed to determine whether the student is a student with a disability.
  - LEAs are required to ensure that students are "assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities" ([34 CFR §300.304\(c\)\(4\)](#)).



## Are otological and audiological evaluations required annually or every three years?

- The otological and audiological evaluations are required to determine the presence of the disability, which occurs during the initial evaluation. The admission, review, and dismissal (ARD) committee does not need to determine the continued presence of the disability, unless there have been changes to a student's auditory performance that may impact their IEP.
- The ARD committee is required to determine if the student's disability continues to adversely impact the student's education.
- It is best practice for a student who is DHH and uses amplification devices to be seen by an audiologist annually.

## References

- Anderson, Karen. 2017. "Impact of Hearing Loss on Child Development and School Performance". *Success for Kids with Hearing Loss*.  
<https://successforkidswithhearingloss.com/for-professionals/impact-of-hearing-loss-child/>.
- Balbani, Aracy P. S., and Jair C. Montovani. 2003. "Impact of Otitis Media on Language Acquisition in Children". *Jornal De Pediatria* 79 (5): 391-6. doi:10.2223/jped.1068.
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- National Association of State Directors of Special Education (NASDSE). 2006. *Meeting the Needs of Students Who Are Deaf or Hard of Hearing: Educational Service Guidelines* [PDF]. Alexandria: Author.
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- Office of Special Education Programs (OSEP). 2007. "Policy Letter: March 8, 2007 to Catherine D. Clarke - Individuals with Disabilities Education Act". *Individuals with Disabilities Education Act*. <https://www2.ed.gov/policy/speced/guid/idea/letters/2007-1/clarke030807disability1q2007.pdf>.
- Office of Special Education Programs (OSEP). 2014. "Policy Letter: November 12, 2014 To Tracy Blodgett - Individuals with Disabilities Education Act". *Individuals with Disabilities Education Act*. <https://sites.ed.gov/idea/idea-files/policy-letter-november-12-2014-to-tracy-blodgett/>.

## Additional Resources

[Individuals with Disabilities Education Act](#)

[Legal Framework](#)

[19 Texas Administrative Code §89.1040. Eligibility Criteria](#)

[Texas Education Code § 30.083. Statewide Plan](#)