

Eligibility Indicators

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A copy of this document may be downloaded by accessing the KSDE
Special Education Services web page: www.ksde.org

This guidance document will continue to be a working document and will be
periodically updated based on input from its use in the field.

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This document contains information about initial evaluation, including appropriate sources of data, eligibility determination, and includes Federal and State definitions of each exceptionality area. It also provides information regarding exclusionary factors that must be considered and examples of indicators of eligibility to assist school personnel as they make decisions. The purpose of the document is to provide guidance to evaluation teams as they seek to address the two-prong test of eligibility when determining if a student is eligible for special education. For further guidance and a more complete discussion of the initial evaluation process, see Chapter 3 in the Special Education Process Handbook. This important resource may be viewed and downloaded by accessing the following web page: www.ksde.org

Eligibility Determination

The initial evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. This includes information provided by the parent that may assist in determining whether the child is an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-986(b)(1)). The Special Education Process Handbook outlines two methods of evaluation, (i) "the child's response to scientific research-based intervention" and (ii) "a pattern of strengths and weaknesses", which are outlined in federal regulations with regard to the identification of students with specific learning disabilities. However, in Kansas, both are also appropriate to be used to determine eligibility for any of the areas of exceptionality. Regardless of the method chosen, evaluation teams will use existing and/or new data that comes from a variety of sources. The richest source of this information comes from the data collected in the provision of interventions. Interventions typically occur as a part of the General Education Intervention process, but may also be collected from interventions conducted during the initial evaluation process.

When interpreting evaluation data from either of the two methods of evaluation for the purpose of making an eligibility determination, the team must ensure that the child meets the definition of one of the categories of exceptionality and, as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8). This is known as the two-prong test of eligibility. If a child meets the definition of an exceptionality category but does not need special education and related services, s/he will not be determined to be eligible. If the child has a need for special education and related services but does not meet the definition of an exceptionality category, s/he will not be determined to be eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a Section 504 evaluation may be considered.

1. Determining Whether the Child is a *Child with an Exceptionality*

"Exceptional children" means children with disabilities and gifted children (KAR 91-40-1 (w)). "Child with a disability" means the following: (1) a child evaluated as having intellectual disability, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services; and (2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services ((KAR 91-40-1 (k); CFR 300).

When considering the first prong of the two-prong test of eligibility, the team reviews the initial evaluation and other data to determine whether or not the child is a child with an exceptionality. To do this, team members compare the data about the child to see if there is a match to one of the exceptionality categories defined in the regulations. However, even when the data points to a particular area of exceptionality, there are exclusionary factors that must be examined before determining the child is a child with an exceptionality.

Regulations are very clear with regard to the fact that a child must NOT be determined to be a child with an exceptionality if:

(a) the determinant factor is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA (NCLB) as phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies); or
- Lack of appropriate instruction in math; or
- Limited English proficiency; and

(b) the child does not otherwise meet the eligibility criteria as a child with an exceptionality (KSA 72-986(f); KAR 91-40-10(c); 34 CFR 300.306(b)).

In addition to these exclusionary factors which apply to all categories of exceptionality, there are exclusionary factors specific to certain disabilities that must also be ruled out. Those factors are contained in this document and guidance is provided to assist teams in their evaluation of these factors as they determine eligibility.

If the evaluation data indicates there is a match with a particular category of exceptionality and the team has ruled out the presence of any exclusionary factors, the team may determine that the child meets one of the requirements of eligibility as a child with an exceptionality (Prong 1 of the test of eligibility). If there is not a match or exclusionary factors are present, the team must determine that the child does not meet the eligibility of a child with an exceptionality. However, being gifted or having a disability does not necessarily qualify a child for special education services. Thus teams must also consider the component of the definition which states: "and who, by reason thereof, needs special education and related services."

2. Determining Whether the Child Needs Special Education and Related Services

The second prong of the test of eligibility is to determine whether or not the child needs special education and related services as a result of the exceptionality. It is helpful for teams to remember that by definition special education means specially designed instruction (KAR 91-40-1(kkk); 34 CFR 300.39(a)(1)), and, that specially designed instruction means adapting the content, methodology, or delivery of instruction to address the unique needs of a child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children (KAR 91-40-1 (lll); 34 CFR 300.39(b)(3)(i-(ii))). This implies that in order to have a need for special education, the child has specific needs which are so unique as to require specially designed instruction in order to access and progress in the general education curriculum.

Kansas regulations at KAR 91-40-7(c)(1-2), require that prior to referral for an initial evaluation the school must have data-based documentation of the following: (1) having provided appropriate instruction to the child in regular education settings that was delivered by qualified personnel (2) repeatedly assessing the child's academic achievement at reasonable intervals which reflect formal assessment of the child's progress during instruction; (3) having provided the assessment results to the child's parents; and, (4) that the assessment results indicate an evaluation is appropriate. Gone are the days where school teams can simply indicate the interventions tried with anecdotal remarks to indicate the need for evaluation. The data collected prior to referral must now be documented as indicated above and, if the child goes on for evaluation, that data becomes an integral part of the eligibility determination of need. Whether the school is implementing a system of school-wide multi-tiered model of intervention (MTSS) or uses an individual problem solving approach (SIT, SAT, CARE, etc.) to carry out interventions and document the child's progress, the school will have data regarding the child's needs related to the intensity of instruction and supports required for the child to be successful.

The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. Teams should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education.

If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). If the data suggests the child's needs for instruction can be provided within regular education without the support of special education and related services, the team must determine that the child is not in need of special education and related services.

Examples of Sources of Data

1. **General Education Interventions or Results of Screening/General Education Curriculum Progress**

Data that the child was provided appropriate instruction in general education settings, including repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction. This includes records of interventions attempted, data collected during monitoring, evaluation of interventions, and data collected through screening measures.

2. **Record Review**

Information provided by the parents, current classroom-based assessments, information from previous services providers, prior screenings, previous evaluations, reports from other agencies, portfolios, discipline records, cumulative file, health records, performance in relationship to curricular standards, and other records.

3. **Interview (Parent and other caregivers, Student, Teacher)**

Parents, teachers, and the child can all typically provide insight into areas of strengths and needs. Interviews can also provide information about significant historical events in the child's life as well as about his performance in the classroom and other settings. This may include instructional history, social history, medical information, and/or developmental history.

4. **Observation**

Structured observations, rating scales, ecological instruments, behavioral observations, functional analysis of behavior and instruction, anecdotal notes, and other observations (conducted by parents, teachers, related services personnel, and others). The purpose of the observation is to help the evaluation team understand the extent to which the child's skills are impacting his/her ability to participate and progress in a variety of settings.

5. **Tests**

Standardized norm-referenced tests are helpful if the information being sought is to determine how a child compares to a national group of children of the same age or grade. Criterion-reference tests are helpful in determining if the child has mastered skills expected of a certain age or grade level. Tests may include individual measures of ability or aptitude, curriculum-based assessments (e.g., CBA, CBM, or CBE), performance-based assessments (i.e., rubric scoring), or other skill measures such as individual reading inventories. Diagnostic testing which might include measures of reading, math, written language, other academic skills, tests of motor functioning, speech/language skills, adaptive behavior, self-concept, or appropriate tests of any domain of concern.

Autism

KAR 91-40-1

(f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, 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. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA (NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading (fluency including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality. 	Evidence shows that the student's learning difficulties are not due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.
<ul style="list-style-type: none"> The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. 	The team should rule out the presence of an emotional disturbance. If the data the team collects matches the indicators for emotional disturbance, the student should be identified as a child with an emotional disturbance rather than a child with autism.

Prong 1: Does the child exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:

1. Evidence

- Records contain medical information which provides evidence of autism
- Record review, interview, and/or observations indicate student's skills in verbal and nonverbal communication and social interaction are significantly different from peers
- Record review, interview, and/or observations provide information which substantiates student characteristics such as: engagement in repetitive activities and stereotyped movements; resistance to environmental change or change in daily routines; and unusual responses to sensory experiences which are significantly different than peers.
- Measures of the student's communication and social skills indicate skill level is markedly below that of peers
- Record review, interview and/or observations indicate concerns regarding the student's communication and social interaction skills were evident before age 3

2. Adverse effect

- Record review, interview and/or observation indicate that the student's condition adversely impacts his/her educational performance
- Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
- Student progress monitoring data shows student's educational performance is markedly below that of peers

Prong 2: Does the child need special education?

Indicators

- Student progress monitoring data indicate intense or sustained resources needed in order for student to demonstrate adequate progress
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions to address communication, social interaction, and/or academic skills.
- Student Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Developmental Delay (age 9 and younger)

KAR 91-40-1

(q) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:

- (A) Physical;
- (B) cognitive;
- (C) adaptive behavior;
- (D) communication; or,
- (E) social or emotional development

The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

Exclusionary Criteria:	
A child must <i>NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> • Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> • Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> • Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> • and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are not due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the three of the following categories:

1. Records indicate student is age 9 or under
2. Rate of skill acquisition as measured by progress monitoring is markedly different from peers
 - Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
 - Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions
3. Performance is significantly below developmental expectations in one or more developmental areas as measured by appropriate diagnostic instruments and procedures.
 - Performance is significantly below developmental expectations on a criterion referenced instrument in one or more developmental areas
 - Performance is significantly below normative sample on a standardized assessment in one or more developmental areas
 - Record review, interview, and/or observations demonstrate significant deviation from average development in one or more developmental areas
 - Student performance is significantly lower than peers on one or more benchmark assessments, curricular objectives, or state assessments.

Prong 2: Does the child need special education?

Indicators

- Student progress monitoring data indicates intense or sustained resources needed in order for student to:
 - physically negotiate and manipulate the environment, or
 - understand age appropriate information, reason, and solve problems, or
 - exhibit developmentally appropriate adaptive skills such as: self-care, home living, community use, self-direction, health and safety, and functional academics, or
 - convey and comprehend communication and social intent, or
 - positively impact relationships with peers and adults, or
 - initiate, respond to, and maintain positive social relationships, or
 - meet behavioral expectations (e.g., following directions, rules, and routines)
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more developmental areas.
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions to address communication, social interaction, and/or academic skills.
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Emotional Disturbance

KAR 91-40-1

(v) "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:

- (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;
- (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.

The term includes schizophrenia, but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> • Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> • Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> • Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> • and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.
<ul style="list-style-type: none"> • The student may not be socially maladjusted, unless it is determined that they also have an emotional disturbance 	Courts have interpreted social maladjustment to mean a conduct disorder. Teams should review records to rule out that the student has been identified as a student having a conduct disorder, unless other evidence that the student also has an emotional disturbance exists.

Prong 1: Does the child exhibit an exceptionality?

Indicators

For meeting this prong of eligibility the team must consider information and have data to support at least 1 indicator from each of the four following categories:

1. Characteristics of Emotional Disturbance
 - Record reviews, interviews, and/or observations indicate levels of physical symptoms or fears which are different from peers and are correlated with school problems
 - Record reviews, interviews, and/or observations indicate student exhibits inappropriate behaviors or feelings under normal circumstances
 - Record reviews, interviews, and/or observations indicate an inability to build or maintain satisfactory interpersonal relationships with peers and teachers
 - Record reviews, interviews, and/or observations indicate a pervasive mood of unhappiness or depression
2. Evidence that characteristics have been exhibited over a long period of time
Record reviews, interviews, and/or observations indicate that emotional difficulties have been exhibited over a long period of time
3. Evidence that characteristics are exhibited to marked degree
Assessments indicate behavioral and emotional characteristics are exhibited to a marked degree when compared to peers
4. Evidence that behavior adversely affects educational performance
 - Record reviews, interviews, and/or observations indicate that emotional characteristics are adversely affecting the student's educational performance
 - Record reviews, interviews, and/or observations indicate an inability to learn that cannot be explained by intellectual, sensory, or health factors
 - Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
 - Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions

Other Supporting Information

Records document a DSM-IV diagnosis that substantiates one or more of the following: an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems and includes schizophrenia

Prong 2: Does the child need special education?

Indicators

- Student progress monitoring data indicates intense or sustained resources needed in order for student to demonstrate adequate progress
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas
- Modifications of instruction, curriculum, and the environment have not adequately addressed the behaviors, feelings, relationships, moods, fears, or physical symptoms that adversely affect the student's educational performance
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum

Gifted

KAR 91-40-1

(cc) "Gifted" means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience and environment.

Prong 1: Does the child exhibit an exceptionality?
Indicators
For meeting this prong of eligibility the team must consider information and have data to support at least 1 indicator from each of the three following categories:
<ol style="list-style-type: none">1. Evidence of performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields<ul style="list-style-type: none">• Record reviews, interviews, and/or observations indicate student demonstrates superior reasoning and problem solving ability• Student progress monitoring indicates student's skill level in one or more academic areas is much above that of peers• GPA, classroom, portfolio, or rubrics indicate a significantly high level of intellectual ability and excellence in academics• District, state, and national assessments indicate a significantly high level of intellectual ability and excellence in academics• A rank of not less than the 95th percentile on national norms on a standardized, norm-referenced achievement test in one or more of the academic fields (mathematics, language arts (including reading), science, and social science), or evidence that such test scores do not adequately reflect the child's excellence in academics• College entrance exams indicate a significantly high level of intellectual ability and excellence in academics• Pre-tests consistently indicate student has already mastered end of unit/curricular objectives prior to instruction2. Evidence of being due to intellectual ability<ul style="list-style-type: none">• Record reviews, interviews, and/or observations indicate student shows persistent intellectual curiosity and asks searching questions• Record reviews, interviews, and/or observations indicate student shows initiative and originality in intellectual work• Ease of task completion indicates a significantly high level of intellectual ability and excellence in academics• Rate of acquisition and retention indicate a significantly high level of intellectual ability and excellence in academics• Products from home or school indicate a significantly high level of intellectual ability and excellence in academics• A composite rank of not less than the 97th percentile on an individually administered, standardized, norm-referenced test of intellectual ability, or evidence that the child's standardized, intelligence test score does not adequately reflect the child's high intellectual potential3. Evidenced that when compared to others of similar age, experience and environment<ul style="list-style-type: none">• Multiple characteristics of giftedness exhibited when interventions provide adaptations, enrichment, or acceleration• Persistence to task and generalization of knowledge gained indicate a remarkably high level of accomplishment• Coursework analysis indicates a significantly high level of intellectual ability and excellence in academics when provided with interventions• Performance significantly higher than peers on one or more areas on benchmark assessments, curricular objectives, or state assessments

Prong 2: Does the child need special education?

Indicators

- Student progress monitoring data indicates intense or sustained resources needed in order for student to demonstrate appropriate progress:
- Evidence of student's mastery of successive levels of instructional objectives or course requirements indicates the need for intensive adaptations or acceleration
- Student progress monitoring data show that targeted supplemental interventions are insufficient for student to demonstrate appropriate progress
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum at appropriate levels of instruction
- Intensive changes or modifications needed in instruction, curriculum, grouping, assignments, etc. for student to demonstrate appropriate progress
- Evidence of student's frustration with enriched instructional environments indicates the need for intensive adaptations or acceleration
- General education interventions such as alternative course selections or cross-age grouping are insufficient to support student progress

Intellectual Disability

KAR 91-40-1

(oo) "Intellectual Disability" means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

Exclusionary Criteria: A child must NOT be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; and 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the four following categories:

1. Information relating to sub-average general intellectual functioning
 - Student's rate of learning, as measured by progress monitoring, is markedly different from peers
 - Student's score is two or more standard deviations below the mean on an individually administered, standardized, norm-referenced test of intellectual ability
2. Information related to deficits in adaptive behavior
 - Records, interviews, and/or observations indicate student exhibits deficits in adaptive skill areas
 - Measures of adaptive behavior skills indicate significant deficits in two or more areas
3. Information related to initial occurrence during the developmental period
 - Records and/or interviews indicate deficits in adaptive behavior and low intellectual functioning were manifested during the developmental period
 - Records, interviews, and/or observations indicate adaptive behavior deficits have occurred over an extended period of time
4. Evidence of Adverse Effects on Educational Performance
 - Records, interviews, and/or observations indicate child's level of educational performance has been significantly below age or state-approved grade level standards.
 - Student's performance is significantly below age or state-approved grade level standards when measured on benchmark assessments, curricular objectives, or state assessments
 - Measures of academic achievement indicate significant delays across subject areas

Other Supporting Information

Records indicate a medical diagnosis of mental retardation

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum and environment, student's rate of learning is significantly less than peers
- Despite modifications in instruction, curriculum and environment, student's educational performance in various age appropriate environments is significantly below age or state-approved grade level standards.
- Despite modifications in instruction, curriculum and environment, student's adaptive behavior skills in various age appropriate environments is significantly delayed from peers
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Learning Disability

KAR 91-40-1

(mmm) "Specific learning disability" means a disorder in one of more of the basic psychological processes involved in understanding or 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 perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following: (1) Visual, hearing, or motor, disabilities; (2) Intellectual Disability; (3) emotional disturbance; or (4) environmental, cultural, or economic disadvantage.

KAR 91-40-11

(b)(1) A group evaluating a child for a specific learning disability may determine that the child has such a disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level: (i) Oral expression; (ii) listening comprehension; (iii) written expression; (iv) basic reading skill; (v) reading fluency skills; (vi) reading comprehension; (vii) mathematics calculation; and (viii) mathematics problem solving; and

(B)(i) The child does not make sufficient progress to meet age or state-approved grade level standards in one of more of the areas identified in paragraph (b)(1)(A) when using a process based on the child's response to scientific, research-based intervention; or (ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

<p>The determinant factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:</p> <ul style="list-style-type: none"> • A visual, hearing or motor disability; • emotional disturbance; • cultural factors; • environmental or economic disadvantage; • limited English proficiency; or • intellectual disability 	<p>Evidence shows that student information does not match indicators for visual, hearing, or motor disability, intellectual disability, or emotional disturbance indicating the presence of another disability is not the primary cause of learning problems. However, it should be recognized that learning disabilities can co-exist with other types of disabilities (i.e., co-morbidity).</p> <p>If any other factors (cultural, environmental or economic disadvantage, or limited English proficiency) are an issue for the student being evaluated, provide evidence that the student was provided with appropriate accommodations and interventions to address them. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, these factors are ruled out as the primary cause.</p>
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<p>Prong 1: Does the student exhibit an exceptionality? Indicators</p>
<p>For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the three following categories:</p>
<ol style="list-style-type: none"> 1. Observational Data Observation in the student's learning environment (which must include the general education classroom) provides evidence of the student's performance and behavior in the area of difficulty. [Note: This is required for all evaluations of students suspected of having a learning disability] 2. The child does not achieve adequately for the child's age or meet state-approved grade-level standards. <ul style="list-style-type: none"> • Measures of achievement in basic reading skills, reading fluency skills, and/or reading comprehension is significantly below age or state-approved grade level standards • Measures of achievement in math calculation or math problem-solving are significantly below age or state-approved grade level standards • Measures of achievement in written expression are significantly below age or state-approved grade level standards • Measures of oral expression and/or listening comprehension indicate student performance is significantly below age or state-approved grade level standards • Interviews indicate student demonstrates a high level of understanding during oral discussions but lacks mastery of basic skills • Student performance is significantly below age or state-approved grade level standards on one or more benchmark assessments, curricular objectives, or state assessments 3. Evidence of provision of learning experiences and instruction appropriate for the child's age and grade level. <ul style="list-style-type: none"> • Records of intervention indicate appropriate instructional decisions based on student data • Progress monitoring data displayed on charts or graphs show slow rate of growth in at least one achievement domain despite provision of intense, explicit instructional interventions • Progress monitoring data displayed on charts or graphs show student is a non-responder to increasingly intense instructional interventions. <p>Other Supporting Data Record reviews shows DSM-IV diagnosis (by clinical psychologist or other appropriately trained and qualified diagnostician) of learning disability or previous identification as having a learning disability or other diagnosis of perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, or developmental aphasia.</p>

Prong 2: Does the child need special education?

Indicators

- Student progress monitoring data indicates intense or sustained resources needed in order for student to demonstrate adequate progress
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.
- Despite modifications of instruction, curriculum, and environment, the student progress monitoring data shows variability across academic performance areas
- Student progress monitoring data shows that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Multiple Disabilities

KAR 91-40-1

(pp) "Multiple disabilities" means coexisting impairments, the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. The term shall not include deaf-blindness.

Exclusionary Criteria:	
A child must NOT be determined to be a child with an exceptionality if: the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.
The term shall not apply if a child's educational performance is adversely affected primarily because the child is a child with deaf-blindness	The team should rule out the presence of deaf-blindness. If the data the team collects matches the indicators for deaf-blindness, the student should be identified as a child with deaf-blindness rather than a child with multiple disabilities.

Prong 1: Does the student exhibit an exceptionality?

Indicators

- Record review and/or Interviews indicate the presence of co-existing impairments
- Measures of educational performance indicate the following:
 - the coexisting impairments are such that the student cannot be provided services appropriately in classrooms solely for students with one of the impairments; or
 - the coexisting impairments are such that the student cannot be provided services appropriately in general education classrooms without specific assistance, modifications, adaptations, or supports necessary to accommodate the multiple impairments

Other supporting information:

Records contain medical information which provides evidence of multiple disabilities

Prong 2: Does the child need special education?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from both of the following categories:

1. Despite modifications in instruction, curriculum and environment, student's rate of learning is significantly less than peers
 - Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from peers
 - Despite modifications in instruction, curriculum, and environment, student's adaptive behavior skills in various age appropriate environments is significantly delayed from peers
 - Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas
 - Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
 - Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.
2. Student progress monitoring data indicate intense or sustained resources are needed to support interventions (e.g., specific assistance, modifications, adaptations, or other supports) necessary to accommodate student needs resulting from coexisting impairments
 - Record review, interviews, and observations show that coexisting impairments adversely affect the child's participation and progress in the general curriculum or participation in age-appropriate activities
 - Information from multiple sources of data indicate that the student exhibits a combination of impairments which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments

Orthopedic Impairment

KAR 91-40-1

(tt) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance and includes impairments caused by any of the following: (1) congenital anomaly, such as clubfoot or absence of a limb; 2) disease, such as poliomyelitis or bone tuberculosis; and 3) other causes, such as cerebral palsy, amputation, and fractures or burns that cause contractures.

Exclusionary Criteria:	
A child must NOT be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:

1. Records contain medical information which provides evidence of orthopedic impairment
 - Records contain information substantiating an impairment caused by: congenital anomaly, such as clubfoot or absence of a limb; disease, such as poliomyelitis or bone tuberculosis; and, other causes such as cerebral palsy, amputation, and fractures or burns that cause contractures
 - Records and/or interviews indicate a history of orthopedic impairment
2. Records, interviews, observations, and/or tests show that the student's educational performance is much below that of peers
 - Records, interviews, observations, and/or tests show that the student's orthopedic condition adversely impacts his/her educational performance
 - Measures of motor skills indicate the student's skills are much below that of peers
 - Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
 - Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions.

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum, and environment, student's rate of learning is significantly less than peers
- Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from peers
- Despite modifications in instruction, curriculum, and environment, student's adaptive behavior skills in various age appropriate environments is significantly delayed from peers
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Other Health Impairment

KAR 91-40-1

(uu) "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 and that meets the following criteria: (1) is due to chronic or acute health problems, including 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 2) adversely affects a child's educational performance.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an <i>exceptionality</i> if the determinant factor is	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:

1. Records contain medical information which document chronic or acute health problems including: asthma; attention deficit disorder or attention deficit hyperactivity disorder; diabetes; epilepsy; heart condition; hemophilia; lead poisoning; leukemia; nephritis; rheumatic fever; sickle cell anemia; or Tourette syndrome.
 - Record review, interviews, observations, and/or tests show the student's strength, vitality, or alertness is/are significantly different from peers
 - Record review, interviews, observations, and/or tests show the student demonstrates limited alertness with respect to the educational environment
2. Record review, interviews, observations, and/or tests show that the student's condition adversely impacts his/her educational performance
 - Record review, interviews, observations, and/or tests show that the student's educational performance is much below that of peers
 - Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
 - Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions.

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum, and environment, student's rate of learning is significantly less than peers
- Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from peers
- Providing modifications in instruction, curriculum, and environment does not alleviate adverse effects on student's educational performance due to differences in strength, vitality, or alertness
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Sensory Impairments

KAR 91-40-1

(dd) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that does not constitute deafness as defined in this regulation.

(p) "Deafness" means a hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and adversely affects the child's educational performance.

(uuu) "Visual impairment" means an impairment in vision that, even with corrections, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(g) "Blindness" means a visual impairment that requires dependence on tactile and auditory media for learning

(o) "Deaf-blindness" means the combination of hearing and visual impairments that causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

THE FOLLOWING EXCLUSIONARY CRITERIA APPLY TO HEARING IMPAIRMENT, DEAFNESS, VISUAL IMPAIRMENT, BLINDNESS, AND DEAF-BLINDNESS

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

THE FOLLOWING INDICATORS APPLY TO HEARING IMPAIRMENT and DEAFNESS

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information from each of following categories:

1. Records contain information which provides evidence of deaf/hard of hearing.
 - Measures of deafness/hearing loss indicate the following:
 - a 25dB (or greater) sensorineural or mixed hearing loss across speech frequencies in the better ear with amplification
 - a 25dB (or greater) conductive hearing loss across speech frequencies in the better ear with amplification
 - a previous chronic condition exists which interferes with the auditory learning mode
 - congenital malformations of the auricle (e.g., absence of a pina or ear canal opening) that results in deafness or a hearing loss
 - Central Auditory Processing Disorder (CAPD) is difficulty in processing and interpreting auditory stimuli which often results from a problem in the brainstem or cerebral cortex.
 - Auditory Neuropathy is a disorder in which sound enters the inner ear normally, but the transmission of signals from the inner ear to the brain is impaired or virtually absent.
 - “Functionally Deaf” is when the structures of the ear are present and working; however, the student does not attend, respond, localize, or process sound: (a) to receive information from the environment; (b) to accurately interpret information about the environment; and/or (c) to accurately interpret meaning from sound to information provided linguistically with or without amplification.
 - Hearing losses are such that the student cannot be provided services appropriately in the general education classroom without specific assistance, modifications, adaptations, or supports necessary to accommodate the sensory loss.
2. Record review, interviews, observations, and/or tests show that the student’s loss adversely impact his/her educational performance.
 - Information from multiple sources of data indicate that the student exhibits a hearing loss, whether permanent or fluctuating, that adversely affects a child’s educational performance
 - Information from multiple sources of data indicates that the student exhibits a hearing loss that is so severe; it impairs a child’s ability to process linguistic information through hearing, with or without amplification, and adversely affects the child’s educational performance.
 - Record review, interviews, observations, and/or tests show that the student’s educational performance is much below that of his/her peers.
 - Progress monitoring data displayed on charts or graphs show a slow rate of growth in educational performance despite provision of intense, explicit instructional interventions.
 - Progress monitoring data displayed on charts or graphs shows the student is a non-responder to increasingly intense instructional interventions.

Other supporting information:

Records contain medical information which provides evidence that the student is deaf and/or hard of hearing.

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum, and environment, the student's rate of learning is significantly less than his/her peers
- Despite modifications in instruction, curriculum, and environment, the student's educational performance in various age appropriate environments is significantly delayed from his/her peers
- Student progress monitoring data indicate intense or sustained resources (e.g. specific assistance, modifications, adaptations, or supports necessary to accommodate the sensory loss) are needed in order for the student to demonstrate adequate progress.
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas.
- Student progress monitoring data shows that the student's behavior of concern is resistant to targeted supplemental and intensive interventions.
- Student progress monitoring data result of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

THE FOLLOWING INDICATORS APPLY TO BLINDNESS/VISUAL LOSS

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information from the following categories:

1. Records contain information which provides evidence of blindness/visual loss.
 - Measures of blindness indicate the following:
 - measured or estimated corrected visual acuity of 20/200 or greater in the better eye
 - visual field of 20 degrees or less than 20 degrees in the better eye
 - a previous chronic condition exists which interferes with the visual learning mode
 - ocular motor (e.g., muscle imbalance)
 - anophthalmus (absence of actual eyeball in both eyes)
 - Measures of visual loss indicate the following:
 - measured or estimated corrected visual acuity of 20/70 in the better eye
 - Visual field of 40 degrees or less in the better eye
 - a previous chronic condition exists which interferes with the visual learning mode
 - ocular motor (e.g., muscle imbalance)
 - anophthalmus (absence of actual eyeball in one eye)
 - Cortically Visual Impairment (CVI) is when the visual structures are present and working; however, the student does not track, localize, or process vision to receive information from the environment or accurately interpret information about the environment
 - Vision losses are such that the student cannot be provided services appropriately in the general education classroom without specific assistance, modifications, adaptations, or supports necessary to accommodate the student's visual loss.
2. Record review, interviews, observations, and/or tests show that the student's impairment adversely impact his/her educational performance.
 - Information from multiple sources of data indicate that the student exhibits a visual impairment, whether permanent or fluctuating, that adversely affects his/her educational performance.
 - Information from multiple sources of data indicates that the student exhibits a visual loss that, even with correction, adversely affects his/her educational performance.
 - Record review, interviews, observations, and/or tests show that the student's educational performance is much below that of his/her peers.
 - Progress monitoring data displayed on charts or graphs show slow rate of growth in educational performance despite provision of intense, explicit instructional interventions.
 - Progress monitoring data displayed on charts or graphs show the student is a nonresponder to increasingly intense instructional interventions.

Other supporting information:

Records contain medical information which provides evidence of blindness and/or visual loss.

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum, and environment, student's rate of learning is significantly less than his/her peers.
- Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from his/her peers.
- Student progress monitoring data indicate intense or sustained resources (e.g. specific assistance, modifications, adaptations, or supports necessary to accommodate the visual loss) are needed in order for student to demonstrate adequate progress.
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas.
- Student progress monitoring data shows that the student's behavior of concern is resistant to targeted supplemental and intensive interventions.
- Student progress monitoring data results of increasingly customized and individually tailored instruction, and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

THE FOLLOWING INDICATORS APPLY TO DEAF-BLINDNESS

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least one indicator from each of the following 3 categories:

1. Measures of hearing indicate the following:

- 25dB (or greater) sensorineural or mixed hearing loss across speech frequencies in the better ear with amplification
- 25dB (or greater) conductive hearing loss across speech frequencies in the better ear with amplification
- previous chronic condition exists which interferes with the auditory learning mode
- Congenital malformations of the auricle (e.g., absence of a pina or ear canal opening)
- Central Auditory Processing Disorder (CAPD) is difficulty in processing and interpreting auditory stimuli which often results from a problem in the brainstem or cerebral cortex.
- Auditory Neuropathy is a disorder in which sound enters the inner ear normally, but the transmission of signals from the inner ear to the brain is impaired or virtually absent.
- “Functionally Deaf” is when the structures of the ear are present and working; however, the student does not attend, respond, localize, or process sound; (a) to receive information from the environment ; (b) accurately interpret information about the environment; and/or (c) to accurately interpret meaning from sound to information provided linguistically with or without amplification.
- Hearing losses are such that the student cannot be provided services appropriately in the general education classroom without specific assistance, modifications, adaptations, or supports necessary to accommodate the sensory loss.

2. Measures of vision indicate the following:

- Measures of blindness indicate the following:
 - measured or estimated corrected visual acuity of 20/200 or greater in the better eye
 - visual field of 20 degrees or greater in the better eye
 - a previous chronic condition exists which interferes with the visual learning mode
 - ocular motor (e.g., muscle imbalance)
 - anophthalmus (absence of actual eyeball in both eyes)
- measures of visual loss indicate the following:
- measured or estimated corrected visual acuity of 20/70 in the better eye
 - visual field of 40 degrees in the better eye
 - a previous chronic condition exists which interferes with the visual learning mode
 - ocular motor (e.g., muscle imbalance)
 - anophthalmus (absence of actual eyeball in one eye)
- Cortically Visual Impairment (CVI) is when the visual structures are present and working; however, the student does not track, localize, or process vision to receive information from the environment or accurately interpret information about the environment
- Vision losses are such that the student cannot be provided services appropriately in the general education classroom without specific assistance, modifications, adaptations, or supports necessary to accommodate the visual loss.

3. Measures of educational performance indicate the following:

- The combined vision and hearing losses are such that the student cannot be provided services appropriately in classrooms solely for students with visual or hearing impairments; or
- The combined vision and hearing losses are such that the student cannot be provided services appropriately in general education classrooms without specific assistance, modifications, adaptations, or supports necessary to accommodate both sensory losses

Other Supporting Information:

Records contain medication information which provides evidence of deaf-blindness

Prong 2: Does the child need special education?

Indicators

For meeting this prong of eligibility, the team must consider information from both of the following categories

1. Despite modifications in instruction, curriculum, and environment, student's educational performance in various age-appropriate environments is significantly delayed from peers.
 - Student progress monitoring data indicate intense or sustained resources (e.g., specific assistance, modifications, adaptations, or supports necessary to accommodate the sensory loss) are needed in order for student to demonstrate adequate progress.
 - Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas.
 - Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions.
 - Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
 - Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.
 - Student progress monitoring data indicate intense or sustained resources (e.g., specific assistance, modifications, adaptations, or supports necessary to accommodate both sensory losses) are needed in order for student to demonstrate adequate progress.
2. Information from multiple sources of data indicate that the student exhibits a combination of hearing and visual impairments which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for the students who are deaf or students who are blind.

Speech or Language Impairment

KAR 91-40-1

(III) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an exceptionality if the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.

Prong 1: Does the student exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:

1. Record review, interview, observations, and/or assessments indicate student's voice, fluency, speech sounds, or language skills are not commensurate with age appropriate expectations
 - Record review, interview, observations, and/or assessments indicate student's communication skill level is much below that of peers
 - Record review, interview, observations, and/or assessments indicate student's communication skills have impacted development in other areas, e.g., social-emotional, cognitive
 - Student performance significantly lower than peers on measures of language which are related to curricular performance
2. Information from multiple sources of data indicates that the student exhibits stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects educational performance
 - Record review, interview, observations, and/or assessments indicate student's voice, fluency, speech sounds, or language skills have an adverse effect on the student's educational performance
 - Records and interviews indicate a history of academic difficulty relative to communication skills
 - Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions
 - Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions.

Prong 2: Does the child need special education?

Indicators

- Despite modifications in instruction, curriculum, and environment, student's rate of learning is significantly less than peers
- Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from peers
- Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas
- Student progress monitoring data show that the student's behavior of concern is resistant to targeted supplemental and intensive interventions
- Student progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the student needs specially designed instruction to access the general curriculum.
- Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Traumatic Brain Injury

KAR 91-40-1

(sss) "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 educational performance. The term shall apply to open or closed head injuries resulting in impairments in one or more areas, including the following: (1) cognition; (2) language; (3) memory; (4) attention; (5) reasoning; (6) abstract thinking; (7) judgment; (8) problem-solving; (9) sensory, perceptual and motor abilities; (10) psychosocial behavior; (11) physical functions; (12) information processing; and (13) speech. The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.

Exclusionary Criteria:	
A child <i>must NOT</i> be determined to be a child with an <i>exceptionality</i> if: the determinant factor is:	
Exclusionary Factor	How to Evaluate
<ul style="list-style-type: none"> Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA(NCLB)); 	Evidence shows that the student's previous reading instruction and curriculum addressed phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Lack of appropriate instruction in math; or 	Evidence shows that the student's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from (a) an evaluation of the school's basal curriculum and supplemental materials, and (b) that the student actually received instruction provided by highly qualified teachers using appropriate basal curriculum and supplemental materials.
<ul style="list-style-type: none"> Limited English proficiency; 	If the student being evaluated is an English Language Learner, provide evidence that the student was provided with appropriate accommodations and interventions to address it. Consider things such as: proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. Also consider whether the student's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, this factor is ruled out.
<ul style="list-style-type: none"> and the child does not otherwise meet the eligibility criteria as a child with an exceptionality 	Evidence shows that the student's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, etc.
The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.	The term TBI is not used for a person who is born with a brain injury. It also is not used for brain injuries that happen during birth. Evidence is provided that the brain injury was sustained after some period of normal development.
The term shall not include brain injuries that are the result of brain tumors, brain infections, cerebral vascular accident (strokes), or poisonings.	The term TBI is not used for a person who sustained a brain injury as a result of a brain tumor, brain infection, cerebral vascular accident (stroke), or poisoning. Evidence is provided that the brain injury sustained was not caused by these conditions. (Note: Students with these conditions may meet eligibility requirements under the category of "Other Health Impaired".)

<p>Prong 1: Does the student exhibit an exceptionality?</p> <p>Indicators</p> <p>For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:</p> <ol style="list-style-type: none"> 1. Record review, interview, observation, and/or tests indicates that the student has an acquired injury to the brain (applies to both open or closed head injuries, including near drowning) caused by an external physical force that has resulted in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance <ul style="list-style-type: none"> • Record review, interviews, observations, and/or tests in one or more areas (cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech) indicate student's skill level is much below that of peers • Record review and/or interview indicates the brain injury is not congenital or degenerative or induced by birth trauma • Record review and/or interview indicate the brain injury is not the result of brain tumors, brain infections, cerebral vascular accident (strokes), or poisonings. 2. Record review, interview, observation, and/or tests indicate the injury adversely affects the student's educational performance <ul style="list-style-type: none"> • Progress monitoring data displayed on charts or graphs shows slow rate of growth in educational performance despite provision of intense, explicit instructional interventions • Progress monitoring data displayed on charts or graphs shows student is a non-responder to increasingly intense instructional interventions. <p>Other Supporting Information: Records contain medical information which provides evidence of traumatic brain injury</p>
<p>Prong 2: Does the child need special education?</p> <p>Indicators</p> <ul style="list-style-type: none"> • Despite modifications in instruction, curriculum, and environment, student's rate of learning is significantly less than peers • Despite modifications in instruction, curriculum, and environment, student's educational performance in various age appropriate environments is significantly delayed from peers • Student progress monitoring data indicates intense or sustained resources are needed to support interventions (e.g. specific assistance, modifications, adaptations, or other supports) necessary to accommodate the needs resulting from the injury • Despite modifications of instruction, curriculum, and environment, the student does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas • Student progress monitoring data show that student's behavior of concern is resistant to targeted supplemental and intensive interventions • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas.

Reporting Requirements

When the initial evaluation and eligibility determination are completed, the evaluation team must prepare a written evaluation/eligibility report. The report must include not only the evaluation results, but also document the eligibility determination.

The evaluation report serves as the documentation of the child's eligibility. The evaluation report and the documentation of eligibility must be provided, at no cost, to the parent (KAR 91-40-10(b); 34 CFR 300.306(a)(2)). There are specific requirements for reporting the eligibility determination (KAR 91-40-10(a), (e); 34 CFR 300.311). The report must include a statement of:

- a. whether the child is a child with an exceptionality;
- b. the basis for making the determination;
- c. the relevant behavior noted during the observation of the child (and for LD the relationship of that behavior to the child's academic functioning); and
- d. the educationally relevant medical findings, if any;
- e. and for a child determined to have a learning disability, the report must also include documentation of the following:
 - (i) the child does not achieve adequately for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards,
 - (ii) AND
 - the child 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
 - 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.
 - (iii) The determinate factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
 - a visual, hearing or motor disability;
 - intellectual disability;
 - emotional disturbance;
 - cultural factors;
 - environmental or economic disadvantage; or
 - limited English proficiency.
 - (iv) If the child has participated in a process that assesses the child's response to scientific, research-based intervention, the report must also document
 - the instructional strategies used; and
 - the student-centered data collected.Documentation that the child's parents were notified about the process, including the following information:
 - the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - strategies for increasing the child's rate of learning; and
 - the parent's right to request an evaluation (K.A.R. 91-40-10(e), (f); K.A.R. 91-40-9(a)(2)(3); 34 C.F.R. 300.309(a)(3); 34 C.F.R. 300.311(a)).