

Why Some Students Don't Learn: The Role of Disability and Other Factors

Gene Edgar April 2007

Disability is often used as a reason that some children don't learn in school. So, let's take a look at disability, special education, and how this all may relate to learning. Let's start with a "truth in advertising" statement. This is going to be my story, there are other stories about disability and learning, and some of these stories may disagree with my story. Special education is a contested field.

While special education generally addresses the educational needs of children and youth with disabilities, there are major controversies about the nature of disability, who has a disability, and the best ways for schools to serve students with disabilities. There are many technical solutions proposed, but while it is necessary to understand these technical solutions, in and of themselves the technical solutions are not sufficient to resolve the issues of special education. Special education also has many laws governing the definition of disability and how children deemed having a disability should be served, and while it is imperative these laws be followed, total compliance with the laws will not resolve the fundamental issues in special education. I believe that teachers, parents, and the students themselves need to collaboratively work together at the local level (the building level) to develop the best educational programs for students with disabilities.

A major portion of special education is driven by the Federal Law (the Individuals with Disabilities Education Act -- IDEA). The types of children who are classified as having a disability as well as the criteria to be so classified and the procedural guidelines schools must follow are all a result of the law (first passed in 1975). There is not a lot you need to know about the legal mandates other than to be placed in special education a student must meet the criteria of one of the categories. Here is the big idea: not all kids with disabilities are in special education and many kids who are in special education do not have a disability! I will try to explain that in this paper.

Overview of Disability Categories

Here is a brief overview of the types of disabilities special education uses to classify students. The categories are an example of the medical model (symptoms and characteristics are used to form a category that is viewed as type of problem that can be identified and "diagnosed" as a specific issue (disease) that leads to a treatment- think stomach pain, fever, elevated white cell count equals appendicitis which leads to an appendectomy). Unfortunately that model doesn't work well in special education but we still use it. There are other models for thinking about disability which I will discuss later but we need to have a common understanding of the system that is now in use. There are 14 disability categories in special education used by the State of Washington (each state has slightly different categories). In the State of Washington about 12% of all school-aged children are classified as needing special education. This figure of 12% is pretty typical across the country, mainly because that is the number proposed in the federal law. I have included the legal definitions as an appendix if anyone wants to see them. Here are my brief definitions.

Hard core-quantifiable-low incidence (low numbers of cases).

These include 8 of the 14 categories, about 10% of all students in special education and, about 1% of all students in public schools in Washington. The categories include:

Sensory disabilities (4 of the 14 categories and about 2% of all special education students).

Visually impaired- includes students who have no vision (blind) and those with some vision but even with the best correction still presents educational problems.

Deaf – no hearing.

Hearing Impaired – major loss of hearing even with hearing aids that creates educational problems.

Deaf-Blind – Both deaf and blind.

Major cognitive impairment (3 of the 14 categories and about 7% of all special education students).

Mental retardation – IQ below 70 and low adaptive behavior (every day problem solving).

Multiple disabilities – in our state always means mental retardation and some other type of disability category (for example hearing impairment and mental retardation, or physically disabled and mental retardation).

Traumatic Brain Injury – usually a brain injury that happens later in life after normal development (car accident).

Physical Disability with no or minimal Mental retardation (cognitive impairment) (1 of the 14 categories and about 1% of all special education students)

Orthopedically Handicapped – students with serious physical disability often in a wheel chair by definition they do not have mental retardation.

Non-quantifiable- high incidence categories.

These include 4 of the 14 categories, about 76% of all the students in special education, and about 7.5% of all the students in public school in Washington.

Learning problems with a suspected neurological problem (2 of the 14 categories and 56% of all special education students).

Health Impaired- in our state many students with the medical diagnosis of Attention Deficit Disorders (ADD) or Attention Deficit Hyperactivity Disorders (ADHD) are in this category.

Specific Learning Disabilities (SLD) –Basically this category means that the student has a learning problem and no other known disability, this category includes students with dyslexia.

Speech problems and no other major disability (1 of the 14 and about 16% of all students in special education).

Communication Disorders- articulation problems, stuttering and stammering and other dysfluency in speech, other non-sensory related expressive and expressive problems. Almost all these students are under high school age (see the table on page 10).

Naughty Kids (1 of the 14 categories and about 4% of all special education students)

Emotional/Behavioral Disorders students who act out and cause problems and do not have another disability.

Tweeners a mix of quantifiable and non-quantifiable categories.

This includes 2 of the 14 categories, about 16% of all the special education students in Washington, and about 1.5 % of all the students in public schools in Washington.

Autism the new “hot” category in special education. About 3% of all special education students. Back in the day, these were kids with very severe involvement. Now many kids, often labeled Aspergers, a form of autism, who have relatively mild involvement, are included in this category. The best and most readable source on this type of disability is an article by Oliver Sax¹ entitled Anthropologist From Mars.

Developmentally Delayed is a category for children birth through age 8 that uses a discrepancy in developmental milestones as a method of eligibility without the need for a formal category. About 13% of all the students in special education in Washington are in this category. Most of the students in this category have significant disabilities.

Some concluding thoughts on categories.

So, there we have it, all the categories in special education. I have no doubt that the students in the quantifiable categories have serious disabilities that interfere with their learning. Additionally, many of the students in the non-quantifiable categories also probably have some form of disability that makes learning difficult. However, I believe many of the students in the “non-quantifiable categories” do not really have a disability but they are placed in special education because they are not learning for some reason. Most of the students in these categories are not identified as having a problem until they get to school and don’t evidence learning. They are “nominated” by their teachers as possible candidates for special education because they are not learning. Far too often those nominated are boys, students of color, and poor students.

This is one reason I believe that disability is a social construct. The medical/psychological model of viewing the world currently dominates special education. Disability resides within an individual, the disability can be diagnosed, and diagnosis leads to treatment. IDEA and most of traditional special education practices follow this model. There is an alternative viewpoint that is gaining adherents: the notion that disability is a social construct and can be redefined in ways that would provide different (and better) services to people so defined. Tom Skrtic² proposes that the medical model of defining disability is totally socially constructed to sort out children that are not learning in the system in order to keep a dysfunctional system afloat rather than alter the system to meet the needs of all children. Scott Danforth and Bill Rhodes³ present a nice overview of three different models of viewing disability, including the medical model and the consequences of using each of the models. Our current model for defining disability seems to

¹ Sacks, O. (1995). An anthropologist on Mars. Vintage Books: New York

² Skrtic, T. M. [1988]. The special education paradox: Equity as the way to excellence, Harvard Educational Review, 61, 148-206.

³ Danforth, S, & Rhodes, W. C. [1997]. Deconstructing disability. Remedial and Special Education, 18, 357-366.

put the onus on the individual student for not being successful in our society, including our schools. One does wonder why we don't put more emphasis on the systems that seem to be failing our students.

And this of course brings us to the main question, what impact does disability have on some children not learning. Here is my summary thought on that. I believe that even with the best education we know and under the best circumstances somewhere between 2% and 3% of all school children will not reach our academic standards because of their disability. Remember, over 12% of all school-aged children in Washington State are classified as special education, so what I am saying is that with good instruction and under perfect conditions all but 3% should be able to learn. What are some other reasons that might not be conducive for learning?

Some Thoughts on why some kids aren't learning in the schools.

I can think of many reasons why some students are not learning to the standards we hope. Some of these, like the isms (racism, sexism, classism) you have already thought about. I will not bore you with my thoughts on these issues other than to say I believe many of them are correct in accounting for why some students don't learn. Allow me to think aloud about another possible reasons some kids might not be learning.

Kids are not physically in school.

This might sound silly, or even self-evident, but lets think about being physically present in school. Granted, some kids skip school sometimes. But there are other kids who miss an extraordinary number of days at school. Some kids move a lot, like three or four times a year. That means they miss a number of school days with each move and they also end up in different curricula options at each school, which also causes learning issues. In some schools there is a 30-40% turnover of students every year. And, many of these students move many times a year. Other kids may miss school because of illness or school phobia or other family matters. Especially in the first three years missing school can cause a student to fall behind and never catch up. In high school missing a number of consecutive classes can cause a student to fall behind and never catch up. In many high schools there is a 20-day rule—if you miss more than 20 days in any semester you cannot get credit for the class. Students who miss more than 20 days just stop doing the work and trying to learn. Most of the kids who miss lots of school are poor kids. So, missing lots of school can be a cause of not learning.

Kids are not psychologically in school.

Some kids come to school but really aren't there. We all have been there. Something in our life is consuming our discursive thought and we wonder through our days, zombie like, not taking anything in. One of my students a few years ago was shadowing an eighth grade student as part of a class assignment. The day of the shadow was the first day in school after the young girl had received her first romantic kiss. She was really not in school that day, she was only thinking about that kiss, writing notes, talking to friends, totally consumed by that marker event in her life. My student commented that no matter how good instruction was that day, that young girl was not benefiting from it. Not a big deal if this is an occasionally thing, a real big deal if this is chronic. Not the first romantic kiss chronic but the "not being present chronic." Mental Health experts agree that on any given day about 10% of all students in public schools are dealing with an acute mental health problem. Acute means short term, but if the same student has multiple sequential acute mental health problems these will interfere with schooling. Family violence,

family break-ups, death and illness, and other life circumstances can impact learning. Some portion of kids miss crucial instruction over sustained periods of time because they are not psychologically present for school.

Mis-match of student learning style and form of instruction.

There are a few kids who can learn IF they are taught in a method that matches their learning style and will not learn if taught another way. Most kids will learn pretty well regardless of the way they are taught but for the few that need instruction that matches their learning style a mis-match is devastating. For example, I learned to read through a whole word technique and when my school switched to a phonics approach I struggled. Luckily I had learned enough through the whole word approach that I continued to be a good reader, I just failed at the phonics exercises. I don't believe there are many kids with this particular type of problem but enough to cause concern. The solution is for schools to keep frequent and accurate assessment data on kids learning and for kids who are not learning to change the mode of instruction. Very easy to say, hard to do.

Bad Teaching.

I wish it were not true but sometimes kids have bad (ineffective) teachers. With the number of kids and classrooms and teachers it is a simple matter of probability that there will be a few bad teachers. If the same child has a secession of bad teachers, like two or three years in a row, you can easily see how this would be a major impact on learning.

Basic intelligence.

The idea of intelligence, as measured by an IQ test is a controversial topic. Two good sources, for anyone who is interested are Steven Gould's *Mismeasure of Man*⁴ and *The Bell Curve* by Herrnstein and Murray.⁵ I really like the Gould book as a deep background on the idea of intelligence and our long-term obsession with trying to measure it and classify people as either good or bad based on some score. *The Bell Curve* was a very controversial book that received terrible reviews, mainly because of the authors' attempts to link race and IQ. However, the first half of the book did not address race and was, for me, persuasive in building a case that intelligence (think verbal ability and problem solving ability) are distributed across the general population much like any trait in a manner that some people have more and others have less but most are in the middle. Why would this be different for verbal and problem solving ability? In *The Bell Curve* the authors claim that to not address this phenomenon is equal to claiming one is "color-blind" as to race, and as we all know, race matters. So does verbal ability, I think. Given this belief, some children are not going to learn as much or as fast as other children because of the differences in ability. If this construct is true, some kids will not be able to earn to the established standards. How many kids do I think there are? Good question, maybe 3%-4%, or more. Some of this group are in special education, others are not.

At this point I also want to bring up the issue of the over-representation of boys, and poor kids, and kids of color in special education. Boys are over three times represented in special education, poor kids are twice as likely to be in special education as middle class kids, and students of color, especially African American boys are almost three times more likely to be in special education as all kids. Why is this? Clearly institutional racism is a factor, as is sexism

⁴ Gould, S. J. (1981). *The mismeasure of man*. New York: W. W. Norton & Company.

⁵ Herrnstein, R., & Murray, C. (1994). *The bell curve*. New York: Free Press.

(against boys), and classism. There are probably other reasons, such as boys typically have a harder time sitting still than do girls, most elementary teachers are white, middle class women, poor kids are more likely to have some of the moving too much problem, what we teach in schools is what white, middle class girls do best at, there is a miss-match of classroom expectations and class and gender, white middle class women and poor, boys of color miss-communicate with one another and develop negative interactions⁶, and more. The real issue here is not why so many poor, boys and kids of color are in special education but why general education doesn't do a better job with poor kids, and boys, and kids of color.

What Might This All Mean

I guess my main point is that why some children don't learn is a complex issue and if we are really sincere about trying to help all kids learn we must try different ideas and believe in different causes. No one solution is going to address all the causes.

Deep Background Information on Special Education Read Only if You are Really Really Interested

Basic Components of the Special Education Law (IDEA)

Free and Appropriate Public Education (FAPE).

No child may be excluded from public school because of their disability and there can be no extra charges because of the disability. Appropriate is defined as the parents and school signing the IEP.

Individualized Education Program (IEP).

Each child who is served by special education must first, meet the eligibility requirements as set forth by the State (in Washington these are found in the WACs [Washington Administrative Code]), second the IEP must be agreed upon by the school (special education teacher, general education teacher, school administrator) and the parents and the student, when appropriate. The IEP specifies the disability, the adverse educational impact, and the plan for delivering specially designed instruction (what the special education teachers will provide to address the disability). This is a legal document and forms the core of FAPE (the appropriate part) and will be the cornerstone of any due process hearing.

Due Process safeguards

The parents of a student in special education have specific rights and if they are not pleased they may request a due process hearing. There is NO reason a parent's request for a hearing can be denied. At the hearing an impartial hearing officer will determine the validity of the parental claim. The parents may be represented by legal counsel (and if the parent prevails—wins, the school district must pay the parents legal fees). During these hearings all the student's records are open and great attention is given to strict compliance issues. This is a major reason compliance issues are so important because if the paper work is not done properly the school

⁶ Delpit, L. D. (1988). The silenced dialogue: Power and pedagogy in educating other people's children. *Harvard Educational Review*, 58, 280-298.

district may end up paying large settlement fees to disgruntled parents and the money to pay those fees comes right out of the overall school district budget.

Least Restrictive Environment (LRE)

All children with disabilities should be educated with children without disabilities to the greatest extent possible. I believe this is true, sort of the default for all special education kids should be inclusion on the general education classroom with support and if that isn't working then consideration for other placements can be considered. This means, to me, that the general education teachers "own" the special education kids to the same degree as they "own" all the students in their classroom. We need to get away from the notion of "my kids and your kids."

Inclusion in all statewide testing and assessment systems

All special education students must be included in state-wide assessment systems and are required under No Child Left Behind Act (NCLB) to pass the state tests (WASL in Washington State) at the same rate of other students, i.e. all must pass by 2014. So this is a big deal now with NCLB and the notion of AYP (Adequate Yearly Progress). AYP holds each school building and district accountable to the performance of ALL the students in their building. Goals have been set for each building in the state and all kids must meet these standards or the building is found to be NOT MEETING APPROPRIATE YEARLY PROGRESS. When a school is designated an AYP school certain sanctions take place ending, in several years if no progress is made, with the students being able to transfer to any other school in the district at no cost and for no reason can be denied going to that school, including no room at that school. Data on each school building is disaggregated by different types of kids (race, social class [free-reduced lunch], gender, ELL and disability). Each of these groups MUST meet the state standard or the building is AYP. Note: there must be at least 40 students in each analysis cell. So, if you have 40 special education kids in the tenth grade of your school they will be counted on the WASL testing to determine if your school is AYP or not. This is big time news as many middle schools and high schools are doing ok with all their students except the special education students and this causes great concern and attention to what is happening to special education kids. For example, some high schools are trying to get their language arts teachers to teach remedial reading.

Other notions about special education

The law is an example of complex equity (think John Rawls and *A Theory of Justice*). How do we, as a society, make just decisions? Rawls talks about the "veil of ignorance," the notion that good people will make the right decisions if they are ignorant of the role (position) they will have in society (the classic example is dividing up a cake, the person who does the cutting gets last pick). Rawls advocates that when in doubt we should advantage those groups who have been traditionally disadvantaged (in terms of having power). So, the special education law that provides extra considerations and extra funding for kids with disabilities is an attempt to "make up" for the disadvantage kids with disabilities has in obtaining value from public schooling. The idea is to try to level the playing field for these kids.

On the other hand the law can be viewed as a top-down management system were bureaucrats, or managers, determine what is best and make lots of rules teachers and others must follow. This is sort of the notion that grew out of the scientific management model and holds that the common person is not smart enough to make good decisions in a complex world so "specially trained social scientists" who are smart about these sort of things, determines what is best and in great detail gives recipes for others to follow. Thus teaching becomes a technical skill.

I believe that the current situation in special education is a combination of both of these worldviews.

Special education, as all professional fields, has a rich history full of interesting characters and multiple interpretations. There was a lot of special education before the Law and before 1975. One of the anchor points in special education is the notion of individual worth and the belief that through education we can improve an individual's abilities, often highlighted by the story of Jean Itard⁷, a passionate, French advocate of the Enlightenment and his work with Victor, the wild boy of Aveyron. Itard attempted to "prove" the notion that each human is as capable of any other human. His "experiment" was on a feral child, Victor, believed to have been abandoned at birth and raised by wolves. Itard tried to teach Victor to be a gentleman. Victor was probably a child with moderate levels of retardation who had been recently abandoned (the notion of feral children, while tantalizing, is probably mythical). But Itard "invented" clinical teaching, which is sort of the main big idea of special education. In clinical teaching each child is viewed individually, a deep assessment is done on what the child knows, and what she/he needs to learn next. The next is "broken down" into small steps and each step is directly taught. Behavioral principles are most often used, but other teaching philosophies may also be used. Daily data are collected on how the student is doing. If they are not learning, instruction is changed. This type of data analysis happens frequently, perhaps bi-weekly. The teaching is individualized tenacious, in-your-face, never-quit, persistent.

Special Education Resources

Parents

Arc of Washington runs a State sponsored Parent/Professional Partnership Project. Sue Elliott is the director and is a wonderful resource for any issues concerning parents (Arc, Sue Elliott, 360-357-5596). PAVE is the PTI (Parent Training/Information Center) in Washington. This is a Federally Funded Project that helps parents of children with disabilities advocate for their children. (Jo Butts, 1-800-572-7368). There are many parent advocacy organizations by disability group that you may need to contact (Learning Disability Association 425-882-0792; Arc of Washington 360-754-1307; Arc of King County, 206-364-6337; C.H.A.D.D. Children and Adults with Attention Deficit Disorders 206-228-7820).

Autism This is a hot issue right now. Schools need to provide programs that will withstand a challenge from parents and advocates: this means good data systems and a program philosophy that is well articulated. Ilene Schwartz (206-616-3450,

⁷ Itard, J.M.G. (1962). *The wild boy of Aveyron*. (G. Humphrey & M. Humphrey, Trans.). New York: Appleton-Century-Crofts. (Original works published 1801 and 1806).

⁸ <http://www.indiana.edu/~intell/itard.shtml>

ilene@u.washington.edu) is a good contact. So are Steve Sulzbacher (206-526-2164, sis@u.washington.edu) and Geri Dawson (206-543-1051, dawson@u.washington.edu).

Attention Deficit Disorders This is a relatively new classification in special education. These students usually exhibit learning problems and some behavior problems. Good instruction (see learning disabilities) and good behavioral programs (including a school-wide civility program) and medication are things to keep in mind.

Behavior Disorders One of the perpetual problems in special education are students labeled Seriously Behaviorally Disordered (SBD). These are usually defined as acting out students and discipline procedures need to be attended to with great care. Medications are often a issue (MTA Cooperative Group. [1999]. A 14-month randomized clinical trail of treatment strategies for Attention-Deficit/Hyperactive Disorder. *Archives of General Psychiatry*, 56, 1073-1099.). I believe a school-wide program to teach civility is a great preventative program (see the Safe and Civil Schools program at your local ESD). Another good contact is Doug Cheney (206 221-3465, dcheney@u.washington.edu) Doug is the director of a statewide program for SBD students entitled The Beacons Project.

Learning Disabilities The single largest category of students in special education are students labeled Learning Disabled. Generally these are the students with normal intelligence but with learning problems, especially around reading. Joe Jenkins (206-685-7525, jjenkins@u.washington.edu) is the main resource in this area. He is especially good at developing early reading programs.

Moderately and Severely Disabled Programs These are programs for children with significant degrees of mental retardation. By definition these students do not benefit from the general education curriculum, yet inclusion is the current best practice. A tough issue, especially at the secondary level. Carol Davis (206-221-3462, cadavis@u.washington.edu) is a good resource. So is Cinda Johnson at the Center for Change in Transition Services cinda@seattleu.edu.

*Numbers and Percents in SPED**

	Pre 0-4	K-6 5-11	7-8 12-13	9-12 14-17	18-21	Total
Gen Ed	9819	526,496	161,771	317,882	0	1,015,968
DD	5214 (53%)	10,767 (2%)	0	0	0	15,981 (2%)
% SPED	72%	18%	0	0	0	13%
EBD	2	1649	1091	2053	261	5056
% SPED		3%	6%	6%	5%	4%
ORTHO	48	361	101	192	49	752
% SPED	1%	1%	1%	1%	1%	1%
Health I	170	7005	4125 (3%)	7001 (2%)	1107**	19408 (2%)
% SPED	2%	12%	21%	22%	20%	16%
SLD	1	17739 (3%)	10915 (7%)	18316 (6%)	2301***	49272 (5%)
% SPED		30%	56%	57%	41%	40%
MR	3	1602	954	2194	990	5743 (1%)
% SPED		3%	5%	7%	18%	5%
Multiple	29	721	400	867	550	2567
% SPED		1%	2%	3%	10%	2%
Deaf	27	185	72	148	46	478
% SPED					1%	
Hear I	31	417	158	277	29	912
% SPED		1%	1%	1%		1%
Vis I	16	135	54	92	18	315
% SPED						
Deaf/Bl	1	14	5	14	5	38
% SPED						
Comm	1494 (15%)	16654 (3%)	1070	431	23	19672 (2%)
% SPED	20%	28%	6%	1%		16%
Autism	182	1735	464	569	162	3112
% SPED	3%	3%	2%	2%	3%	3%
TBI	5	96	73	151	38	363
% SPED						
TOTAL	7224 74%	59,083 11%	19,484 12%	32,302 10%	5580	123,673 12.17%

*Data represent data reported by OSPI in Washington State.

General Education numbers are Oct. 2002, Sped numbers are Dec. 1, 2003

** 766 (69%) are 18 and probably seniors *** 1850 (80%) are 18 and probably seniors

Washington State Eligibility Criteria for Students with Disabilities

WAC 392-172-114 Definition and eligibility criteria for developmentally delayed. Definition and eligibility criteria for developmentally delayed are as follows:

(1) As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who:

- (a) Meet the eligibility criteria established in Part C of IDEA; or
- (b) Qualify for one of the other eligibility categories specified in this chapter; and
- (c) Are in need of early intervention services under Part C of IDEA. Children who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(2) As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between three and six years of age who demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

- (a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or
- (b) One and one-half standard deviations below the mean in two or more of the five developmental areas defined in WAC 392-172-116; or
- (c) Qualify for one of the other eligibility categories specified in this chapter; and
- (d) Are in need of special education and any necessary related services.
- (e) Children aged six to nine years who previously qualified as "developmentally delayed, three to six years," may at the option of the school district or other public agency, continue to be eligible under the criteria for "developmentally delayed, three to six years" until they are reevaluated, but not later than three years after the eligibility decision for "developmentally delayed, three to six years" was initially made.

(3) As used in this chapter, the term "developmentally delayed, six to nine years" shall mean those children between six and nine years of age who either continue to qualify under subsection (2)(e) of this section, or demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

- (a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or
 - (b) Qualify for one of the other eligibility categories specified in this chapter; and
 - (c) Are in need of special education and any necessary related services.
- (4) Children who qualify for special education as "developmentally delayed, six to nine years" must be reevaluated prior to the age of nine consistent with WAC 392-172-182 et seq. and a determination made that the child either:

- (a) Qualifies under the provisions of one of the other disabling conditions in this chapter; or
- (b) Is no longer in need of special education and related services.

(5) A school district or other public agency is not required to adopt and use the category "developmentally delayed" for children, three to nine, within its jurisdiction.

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

(7) School districts or other public agencies who use the category "developmentally delayed," may also use any other eligibility category at any time.

[Statutory Authority: 20 U.S.C. 1400 et seq., chapter 28A.155 RCW and RCW 28A.300.070. 01-24-049, § 392-172-114, filed 11/29/01, effective 12/30/01. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-114, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-114, filed 10/11/95, effective 11/11/95.]

WAC 392-172-116 Areas of developmental delay—Definitions. The five developmental areas for the purpose of applying eligibility criteria to developmentally delayed children are:

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

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

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

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

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

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-116, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-116, filed 10/11/95, effective 11/11/95.]

WAC 392-172-118 Definition and eligibility for emotionally/behaviorally disabled. (1) Students who are emotionally/behaviorally disabled are those who exhibit over a long period of time and to a marked degree, one or more of the following characteristics, which adversely affects their educational performance and requires specially designed instruction:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic.

(3) The term does not include students who are socially maladjusted, unless it is determined that they are also emotionally/behaviorally disabled.

(4) All students considered for special education and any necessary related services in this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-118, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-118, filed 10/11/95, effective 11/11/95.]

WAC 392-172-120 Definition and eligibility for communication disorder.

A student shall be considered to have a communication disorder if there is a documented speech or language impairment such as stuttering, voice disorder, language impairment, or impaired articulation which adversely affects a student's educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-120, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-120, filed 10/11/95, effective 11/11/95.]

WAC 392-172-122 Definition and eligibility for orthopedically impaired.

Students who are orthopedically impaired are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such conditions adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-122, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-122, filed 10/11/95, effective 11/11/95.]

WAC 392-172-124 Definition and eligibility for health impaired. Students with health impairments are those who have limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to chronic or acute health problems, such as a heart condition, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, lead poisoning, leukemia, or diabetes, that adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-124, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-124, filed 10/11/95, effective 11/11/95.]

WAC 392-172-126 Definition and eligibility for specific learning disability.

(1) Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(2) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(3) All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability in accordance with the procedures in WAC 392-172-106 through 392-172-111 in addition to the procedures set forth in WAC 392-172-128 through 392-172-132.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-126, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-126, filed 10/11/95, effective 11/11/95.]

WAC 392-172-128 Specific learning disability—Evaluation procedures. The group described in WAC 392-172-108 (2)(b) may determine that a student has a specific learning disability if:

(1) The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (2) of this section, if provided with learning experiences appropriate for the student's age and ability levels;

(2) The group finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading comprehension.
- (f) Mathematics calculations.
- (g) Mathematics reasoning.

(3) The group may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental retardation;
- (c) Emotional/behavioral disability; or
- (d) Environmental, cultural or economic disadvantage;

(4) At least one group member other than the student's general education teacher shall observe the student's academic performance in the general classroom setting;

(5) In the case of a student of less than school age or out of school, a group member shall observe the student in an environment appropriate for a student of that age;

(6) Written documentation that the student has an academic achievement problem in the general education program shall be available. Examples of data used for documentation may include:

(a) Student performance on daily classroom work and/or criterion-referenced tests;

- (b) Summary of past student performance;
- (c) Group test results;
- (d) Teacher observation and judgments; and
- (e) Performance on state established standards;

(7) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in this section shall be recorded. Such documentation shall conform to the requirements of WAC 392-172-132; and

(8) Tests used to assess the student's intellectual ability and academic achievement shall be:

- (a) Reliable as demonstrated by a reliability coefficient of .85 or above;
- (b) Normed on representative national samples; and
- (c) Selected and individually administered in accordance with the general requirements of WAC 392-172-106 through 392-172-108.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-128, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-128, filed 10/11/95, effective 11/11/95.]

WAC 392-172-130 Discrepancy tables for determining severe discrepancy under WAC 392-172-132. The superintendent of public instruction shall develop and publish discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-172-132. Such tables shall be developed on the basis of a regressed standard score discrepancy method which shall consider the following variables:

- (1) The reliability coefficient of the intellectual ability test;
- (2) The reliability coefficient of the academic achievement test; and
- (3) An appropriate correlation between the intellectual ability and the academic achievement tests.

The regressed standard score discrepancy method shall be applied at a criterion level of 1.55.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-130, filed 10/11/95, effective 11/11/95.]

WAC 392-172-132 Method for documenting severe discrepancy. (1) A severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-172-130.

(2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

- (a) A total or full scale intellectual ability score;
- (b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and
- (c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-172-128 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above. Where the evaluation results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables in WAC 392-172-130, the evaluation group, described in WAC 392-172-108 (2)(b), shall apply professional judgment in order to determine the presence of a severe discrepancy. In this event, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy. The written narrative must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement. If the prohibition against the use of specific tests or test results as provided in WAC 392-172-108 precludes the use of any of the tests referenced above, the evaluation group shall document the basis upon which the members decided that there exists a severe discrepancy.

(3) Each member of the evaluation group shall certify in writing whether the evaluation report in WAC 302-172-10905 (3) and (4) reflects his or her conclusion. If it does not, the group member must submit a separate statement presenting his or her conclusion.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-132, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-132, filed 10/11/95, effective 11/11/95.]

WAC 392-172-134 Definition and eligibility for mental retardation. Students with mental retardation are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-134, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-134, filed 10/11/95, effective 11/11/95.]

WAC 392-172-136 Definition and eligibility for multiple disabilities. Multiple disabilities means concomitant impairments which adversely affect education performance and require specially designed instruction (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-136, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-136, filed 10/11/95, effective 11/11/95.]

WAC 392-172-138 Definition and eligibility for deafness. Students who are deaf are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-138, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-138, filed 10/11/95, effective 11/11/95.]

WAC 392-172-140 Definition and eligibility criteria for hearing impairment.

Students with hearing impairments have impaired hearing, whether permanent or fluctuating, that adversely affects the student's educational performance and requires specially designed instruction but is not included under the definition of deafness.

All students being considered for eligibility for special education and any necessary

related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-140, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-140, filed 10/11/95, effective 11/11/95.]

WAC 392-172-142 Definition and eligibility for visually impaired/blindness.

Students with a visual impairment including blindness have an impairment that, even with correction, adversely affects the student's educational performance and requires specially designed instruction. The term includes both partial sight and blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-142, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-142, filed 10/11/95, effective 11/11/95.]

WAC 392-172-144 Definition and eligibility for deaf/blindness.

Students with deaf/blindness are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or blindness. The impairments adversely affect the student's educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-144, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-144, filed 10/11/95, effective 11/11/95.]

WAC 392-172-146 Definition and eligibility for autism. "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance and requires specially designed instruction. If a student

manifests characteristics of autism after age three, that student still could be diagnosed as having autism if the criteria in this section are satisfied.

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 does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in this chapter. The category of autism includes students with pervasive developmental disorders.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-146, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-146, filed 10/11/95, effective 11/11/95.]

WAC 392-172-148 Definition and eligibility for traumatic brain injury.

"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 and requires specially designed instruction. The term applies to open or closed head injuries resulting in impairments in one or more of the following areas such as: Cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-148, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-148, filed 10/11/95, effective 11/11/95.]