

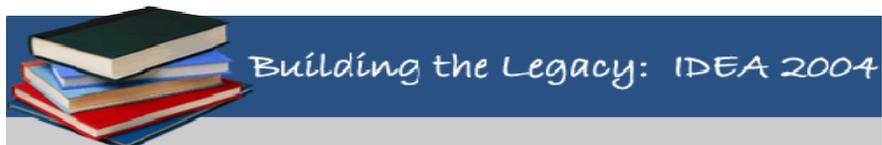
## SPECIAL EDUCATION IN NORTH DAKOTA

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# ***Guidelines: Identification and Evaluation of Students with Specific Learning Disabilities***



United States Department of Education, Office of Special Education Programs (OSEP)

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## Acknowledgements

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Special appreciation is also extended to Ms. Ida Schmitt, now retired from the Department of Public Instruction, for her contribution to the field of Specific Learning Disabilities in North Dakota. Ms. Schmitt's direct involvement and leadership in writing the original *Guide XI: Identification and Assessment of Students with Specific Learning Disabilities (1984)* established a solid foundation for identifying and serving children with learning disabilities in the State of North Dakota.

Ms. Schmitt, a true visionary, presented a view of special education in the mid 1980's that has stood the test of time. This original work included recommendations for collaboration, mutual respect, and dignity among all stakeholders including children, parents, and educators. In addition, the 1984 guideline document refers to "children requiring extensive assessment or support before a conclusion could be drawn regarding diagnosis or before other programming arrangements could be made...who required prolonged follow-up and support...who temporarily required diagnostic teaching..."

The 1984 guideline document also includes a description of a Building Level Support Team (BLST) with the intent to "assist classroom teachers in responding to the needs of all students whose apparent school difficulties require additional planning and/or **interventions** to personalize the environment and **individualize instruction.**" (emphasis added) This may be observed to be a precursor to the concept of a response to intervention (RTI) process and the resulting convergence with eligibility determination of a specific learning disability.

*Guide XI – Identification and Assessment of Students with Specific Learning Disabilities (1984)* continues to be an accurate, applicable and extremely valuable resource to personnel working in the field of special education today. Even though significant refinement and increased understanding continues to be developed in the field today, the basic information in *Guide XI* remains a useful resource and may still be referenced by educators.

Appreciation is extended to the Oregon Department of Education, Office of Student Learning & Partnerships, for allowing permission to use information from the document "Identification of Students with Learning Disabilities under the IDEA 2004," September 2005.

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## Introduction

Although several definitions for Specific Learning Disabilities (SLD) have been promoted since the 1970's, the codified definition of SLD has remained essentially unchanged since 1977, when P. L. 94-142 was implemented. The definition (34 CFR 300.7) has persisted through subsequent authorizations of IDEA. It is in the implementation of the definition that previous interpretations of a "discrepancy model" have been developed to establish eligibility criteria. Further it has been left up to states to determine how to measure the discrepancy between achievement and ability. Some states, including North Dakota, have left the method of determining discrepancy to individual school districts (Reschly et al., 2003).

When IDEA was reauthorized in 1997, the U. S. Department of Education, Office of Special Education Programs (OSEP) began a process to "carefully review research findings, expert opinion, and practical knowledge...to determine whether changes should be proposed to the procedures for evaluation of children suspected of having a specific learning disability" (Federal Register, 1999, p. 12541). This review resulted in a "Learning Disabilities Summit" wherein a series of white papers presented relevant developments in the field and provided empirical validation for the use of alternatives to traditional discrepancy models. Following the summit, a series of meetings resulted in the following consensus statements from the 2002 Learning Disabilities Roundtable report that directly influenced the 2004 reauthorization process:

- Identification should include a student-centered, comprehensive evaluation and problem solving approach that ensures students who have a specific learning disability are efficiently identified.
- Decisions regarding eligibility for special education services must draw from information collected from a comprehensive individual evaluation using multiple methods and sources of relevant information.
- Decisions on eligibility must be made through an interdisciplinary team, using informed clinical judgment, directed by relevant data, and based on student needs and strengths.
- Regular education must assume active responsibility for delivery of high quality instruction, research-based interventions, and prompt identification of individuals at risk while collaborating with special education and related services personnel.
- Based on an individualized evaluation and continuous progress monitoring, a student who has been identified as having a specific learning disability may need different levels of special education and related services under IDEA at various times during the school experience.

(Source: *Specific Learning Disabilities: Finding Common Ground*, pp. 29 – 30)

Consequently, IDEA 2004 and its 2006 regulations allow states to permit the use of an eligibility process based on a student's response to "scientific research-based intervention." 34 CFR 300.307 (a) (2). This process is commonly referred to as the Response to Intervention (RTI) process. RTI models vary, but they typically call for a system of increasingly intense levels of instruction. When progress is not indicated at one level, the student is moved to the next level of intensity. Ultimately, a lack of progress can lead to an eligibility determination such as a specific learning disability.

Guidelines for developing an intervention that may be considered to be "scientific, research based" can be found in the No Child Left Behind (NCLB) Act, which uses scientifically based research as one of its educational cornerstones. The term itself is defined at 20 USC 7801 (37), and repeated in the 2006 IDEA regulations at 34 CFR 300.35, to mean research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

The purposeful intersection of NCLB and IDEA 2004 reinforces the intent of the U. S. Department of Education as noted in the Discussion of 34 CFR 300.307:

Consensus reports and empirical syntheses indicate a need for major changes in the approach to identifying children with SLD. Models that incorporate RTI represent a shift in special education toward goals of better achievement and improved behavioral outcomes for children with SLD because the children who are identified under such models are most likely to require special education and related services.

Further Discussion of 34 CFR 300.307 noted:

While it is true that much of the research on RTI models has been conducted in the area of reading, 80 to 90 percent of children with SLD experience reading problems. The implementation of RTI in practice, however, has included other domains. RTI is only one component of the process to identify children in need of special education and related services.

The U. S. Department of Education further supported the use of RTI models in Discussion of 34 CFR 300.309:

We do not believe that eligibility criteria based on RTI models will result in dramatic increases in referrals and special education placements. Well-implemented RTI models and models that identify problems early and promote intervention have reduced, not increased, the number of children identified as eligible for special education services and have helped raise achievement levels for all children in a school. We believe that the regulations do provide sufficient checks to ensure that only children who need special education and related services are identified as having SLD.

It is important that North Dakota families, educators, and administrators understand why IDEA 2004 encourages and allows an alternative to the discrepancy approach. Adopting and implementing the RTI process requires that individuals release long held beliefs and practices and involves substantial effort and resources. RTI requires a way of thinking about instruction, academic achievement, and individual differences that makes it impossible to implement without fully involving general education.

This guidance document is focused on the additional requirements for the identification and evaluation of students with specific learning disabilities. A Response To Intervention Task Force was created with individuals representing various roles within the North Dakota education system. This task force was charged with creating and disseminating information on the topic of RTI. Comprehensive evaluation procedures to meet IDEA 2004 requirements are described in the North Dakota Department of Public Instruction *Guidelines: Evaluation Process*, (June 2007). Readers of this document, *Guidelines: Identification and Evaluation of Students with Specific Learning Disabilities*, (June 2007) are encouraged to consider all information in the context of the broader evaluation process in special education.

This document includes regulatory requirements specific to definitions and eligibility criteria for determining that a specific learning disability exists, including intervention team processes that may incorporate a response to intervention (RTI) process. The document also includes a description of steps within the processes for RTI models and discrepancy models that may be used for eligibility determination. Even though IDEA 2004 specifies that states may not **require** school districts to use a discrepancy formula in eligibility determination, the state may allow school districts to continue use of the discrepancy formula while also allowing the use of an RTI process for eligibility determination. By providing this guidance, the North Dakota Department of Public Instruction intends to allow the utilization of either option at the discretion of the local school district.

RTI models have the capacity to increase accuracy in eligibility determination while improving outcomes for and providing support to all students who are low achieving. Successfully implemented RTI models do, however, require substantial cooperation between regular and special education. They also require that procedures be used within general education to impact the general education curriculum and teacher practices. Widespread progress monitoring of all students, systematic intervening within general education, and collegial problem solving are highly beneficial for all students. Educators in North Dakota now have the opportunity to develop local leadership and capacity building for implementation of RTI models across the State.

More information related to RTI can be found at North Dakota Department of Public Instruction's website:

(<http://www.dpi.state.nd.us/speced/personnel/index.shtm> )

**Eligibility**

To be eligible for services in a special education program for students with specific learning disabilities, a student must be determined to have an identified learning disability and a team procedure must establish that the student requires specially designed instruction due to the specific learning disability.

**Definition of Specific Learning Disabilities**

The federal definition of specific learning disabilities as written in the 2004 reauthorization of Public Law 108-446, the Individuals with Disabilities Education Improvement Act (IDEA 2004) follows:

The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in 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.

The term 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.

**Criteria for Determining that a Specific Learning Disability Exists**

A multidisciplinary team may decide that a specific learning disability exists based on the criteria established in the IDEA 2004 for determining the existence of a Specific Learning Disability, and the North Dakota criteria stated below:

1. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
  - (i) Oral expression.
  - (ii) Listening comprehension.
  - (iii) Written expression.
  - (iv) Basic reading skill.
  - (v) Reading fluency skills.
  - (vi) Reading comprehension.
  - (vii) Mathematics calculation.
  - (viii) Mathematics problem solving.

- (2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section 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, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and
- (3) The student may *not* be identified as having a specific learning disability if the low achievement, lack of progress or severe discrepancy between ability and achievement is primarily the result of:
- (i) A visual, hearing, or motor disability;
  - (ii) Mental retardation;
  - (iii) Emotional disturbance;
  - (iv) Cultural factors;
  - (v) Environmental or economic disadvantage; or
  - (vi) Limited English Proficiency

***Intervention Team Process (BLST, RTI, or TAT process)***

The student does not achieve commensurate with his or her age and ability level in one or more of the areas listed when provided with learning experiences appropriate to the student's age and ability level. (Emphasis added.)

This document identifies the process not the name of the team or group that will be used to complete the process. Schools use BLST (Building Level Support Team), TAT (Teacher Assistance Team), RTI, Intervention Team, etc.

The Intervention Team Process is a general education support system for assisting teachers and principals to create differentiated instruction and/or educational adaptations in the classroom for all students. Intervention Teams are designed to provide prompt, relevant and accessible support to teachers. This collegial system is operated by the teachers, administrators and/or related service personnel within a school who have the mission of meeting the needs of all students.

The team engages in a structured process of reviewing data, conceptualizing the problem to be solved, identifying specific goals to be achieved, brainstorming intervention strategies, and developing an intervention plan including evaluation of the student's progress. When appropriate, the team may help a teacher initiate the referral process for special education or other support services.

During this part of the process, formal assessment of student progress consists of classroom based assessments used to assess all students in the classroom.

The Intervention Team should become involved when data indicates the potential for a student's needs not to be met. The Intervention Team Process is appropriate for all students and *is not limited to students who are suspected of having a disability*. For this reason the term "prereferral" which is frequently applied to such a process, is not used here. Prereferral terminology implies a routine step in preparation for referral. That is not the intent of Intervention Team Process. The intent is to assist classroom teachers in responding to the most obvious needs of *all* students whose apparent school difficulties require additional planning and/or interventions to personalize and individualize both the environment and instruction.

**What are the Purposes of Intervention Team Process?**

Intervention Teams provide educators with the opportunity to collaborate in a structured problem-solving process where they generate differentiated instruction practices and practical effective adaptations or interventions to support and assist teachers and administrators. Intervention Teams have five major purposes:

1. To meet the needs of all students within a school;
2. To provide preventive early intervention for students of all ages who appear at-risk for school failure;
3. To address classroom or building level concerns such as dealing with school wide discipline issues, planning for an entire classroom, making curricular adjustments, responding to the needs of bilingual students, generating ideas for working with parents, scheduling conflicts, or improving poor attendance;
4. To provide additional support to teachers; and
5. To document efforts that provide alternative classroom interventions before students are referred for a special education evaluation or other support services.

**Who is responsible to carry out the Intervention Team Process?**

The Intervention Team Process is a general education process with support from administrators, other teachers, Title 1 teachers, and related service providers. Special Education teachers may be included. Schools decide which staff will be involved in the Intervention Team Process.

**How does the Intervention Team Process relate to the identification of students with specific learning disabilities?**

The Intervention Team may determine it is necessary to refer a student for a comprehensive special education evaluation. This determination is made when intervention data indicates the student has been provided with evidence based interventions and is not achieving adequately and/or making sufficient progress for the child's age or to meet State-approved grade-level standards. State and federal rules and regulations require such documentation before a student can be referred for an individualized evaluation. Therefore, the intervention team process provides teachers with immediate assistance and support and generates the documentation required when a student is referred for an individual evaluation. For information on the evaluation process for all students with disabilities please refer to the North Dakota Department of Public Instruction *Guidelines: Evaluation Process*, (June 2007).

**Important Note**

While parents should have been aware of and involved throughout the Intervention Team Process it is at the point of referral to special education that parents need to be provided with their notice of Procedural Safeguards.

If the student is suspected of having a specific learning disability, the first assignment of the evaluation team will be to establish whether or not interventions have been adequately implemented. The next assignment is to review data based documentation of the student's progress during the interventions. The team will determine whether adequate personalizing of the environment and individualizing of instruction have been provided to satisfy the first criterion for establishing that a learning disability exists. In other words, the student does not achieve commensurate with his/her age or to meet State-approved grade-level standards or targeted benchmarks when provided with appropriate learning experiences. To accomplish this, general education and special education must share expertise and responsibility.

**When is it necessary to initiate a special education evaluation?**

A referral for special education should occur when data, from a minimum of 2 or 3 evidence based interventions implemented with fidelity, and over time indicates that the student is not achieving or progressing adequately for the student's age or to meet State-approved grade-level standards. Student progress in group and individual interventions is monitored and documented regularly. See *Parental Rights For Public School Students Receiving Special Education Services* (June 2007) for use in providing parents with a full explanation of procedural safeguards.

**What if a parent requests an evaluation for special education during an Intervention Team Process?**

When the LEA agrees with the parent that the child may be a child who is eligible for special education services the special education evaluation process will begin. The Intervention Team Process can not be used to delay a special education evaluation when the LEA and the parent agree the child may be a child who is eligible for special education services. "The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice as required under 34 CFR §300.503(a)(2) which states, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation. (*OSEP Q & A, Building the Legacy: IDEA 2004 website*)

**Additional Group Members**

The eligibility group for children suspected of having SLD to include the child's parents and a team of qualified professionals, which must include the child's regular teacher (or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age) or for a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (*8/14/06, Federal Register, Vol. 71, No. 156, page 46543*).

***Important Note***

The school or the special education unit has implemented an Intervention Team Process and now must choose which Eligibility Determination Process will be used; either the Response to Intervention (RTI) process or the discrepancy model. As discussed in the introduction, the evaluation process will be different if a team is using a process that assesses a student's response to evidence based intervention or whether a team is using the traditional discrepancy model. For a description of the similarities and differences between the RTI process and the Discrepancy Model please refer to Appendix B. At this point these guidelines will begin to define each process separately.

## Response to Intervention (RTI) Process

### Steps in Evaluation

The Department of Public Instruction *Guidelines: Evaluation Process*, (June 2007) detail federal regulations that apply to all aspects of the evaluation process. See also Appendix C, SLD Evaluation Process Checklist, which includes additional required procedures for evaluating children with specific learning disabilities.

For the initial evaluation of a student with a specific learning disability, all of the following steps must be completed and documented using the student profile, student demographics, assessment plan and integrated written assessment report. These steps need not necessarily be completed in the sequence presented here. The multidisciplinary team (MDT) must:

1. Validate the impact on the child's progress in the general curriculum by reviewing data from the intervention team process including at least one classroom observation. Three observations are recommended to verify patterns of learning and behavior. The observation may have been completed during the intervention process prior to referral to special education.
2. Determine that the child is not achieving adequately for the child's age or to meet State-approved grade-level standards 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 interventions.
3. Determine that the deficit is not primarily the result of mental retardation, sensory deficit, emotional disturbance, cultural, limited English proficiency, environmental or economic disadvantage.
4. Determine the primary disability after completing the Integrated Written Assessment Report (IWAR).

*All of the steps must be completed as outlined in each student's Assessment Plan before it can be determined whether the student meets either of the following criteria:*

1. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
  - (i) Oral expression.
  - (ii) Listening comprehension.
  - (iii) Written expression.
  - (iv) Basic reading skill.
  - (v) Reading fluency skills.
  - (vi) Reading comprehension.
  - (vii) Mathematics calculation.
  - (viii) Mathematics problem solving.
- (2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based intervention.

**Important Note**

RTI is only one component of the process to identify children in need of special education and related services. Determining why a child has not responded to research-based interventions requires comprehensive evaluation which will include data from an RTI process. *8/14/06 Federal Register, Vol. 71 No. 156, page 46647.*

**Determining  
Achievement  
Level  
(RTI)**

The purpose of this evaluation step is to determine the level of academic skills that the student has attained. It is a necessary step for two purposes:

- 1) determining eligibility for placement, and
- 2) planning a program of services.

To determine eligibility for special education, the multidisciplinary team must establish that *the student is not achieving adequately for the child's age or to meet State-approved grade-level standards and the student is not making sufficient progress to meet age or State-approved grade-level standards.* To plan appropriate services for any student whose performance is determined to fall below the expected level, the Individualized Education Program (IEP) team must establish as specifically as possible the level of that student's skill development. This information is the basis for the present levels of academic achievement and functional performance in the IEP.

The analysis of the student's achievement level and classroom performance will determine whether the student requires specially designed instruction. Careful study of the variations in a student's achievement can make the difference between an appropriate and therefore successful program, or an inappropriate and unsuccessful school experience.

**Types of Evaluation  
Information Needed  
to Determine  
Achievement Level  
(RTI)**

The MDT will complete the Student Profile which will document the current achievement level information and will identify the need for any additional information. The Assessment Plan will document specific additional information needed and how that information will be obtained.

Multiple sources are needed to determine the student's level of achievement. Some examples are listed below. The multidisciplinary team will decide which sources of information are needed for a specific student.

1. Classroom performance - Information regarding the student's classroom performance can be obtained through several informal measures, such as those listed below. See Appendix D for further information.
  - Observation
  - Work sample analysis
  - Student's attendance records
  - Task analysis
  - Inventories
  - Unit tests
  - Diagnostic probes
  - Diagnostic teaching
  - Checklists
  - Rating scales
  - Questionnaires
  - Error analysis (for example, miscue analysis in reading)
  - Cloze procedure for reading comprehension
  - Informal Reading Inventories
  - Curriculum Based measurements
2. If a specific learning disability is suspected, a minimum of one documented classroom observation is a required part of the evaluation process. This may have already occurred in the Intervention Team Process.
3. Information from parents, teachers, and others can be obtained through written or oral interviews in addition to the information available in the documents presented as part of Intervention Team Process.

Examples of information parents may be asked to provide are listed below.

- How well the student understands and follows directions in doing home chores, running errands, or conveying telephone messages
- Under what conditions the student appears to be most or least attentive
- Academic skills the student performs independently such as reading the directions for assembling a toy or playing a game, earning and handling money, writing letters, computer skills, completing projects that extend over a period of time
- Social and behavioral skills
- Any relevant medical or psychological information
- Culture, ethnic and family background
- Economic and environmental issues that may be impacting school performance

Examples of information teachers may contribute are listed below.

- The student's participation in class discussion
  - The student's ability to attend to task
  - The student's academic, social, and behavioral strengths
  - The student's preferred learning styles
  - Work initiation and completion
  - Other factors that may be inhibiting or enhancing academic performance
  - Academic, social and behavioral concerns
  - The student's interests
4. Standardized achievement tests - The instructional needs of a student cannot be determined by standardized tests alone. Also, it cannot be assumed that the skills assessed will necessarily be the same as the skills the student is expected to gain from the classroom curriculum. Standardized test results must be used in combination with informal information gathered from other sources. Although it is generally understood that scores on achievement tests cannot be viewed as an actual level of achievement, such scores are often quoted as though they are. Instead, such information should be used only in combination with other sources of information in determining an estimated range of skill achievement. The best use of standardized test results is in suggesting areas for further observation and study.

If there are substantial cultural differences in a student's language or exposure to concepts included in the test, the team cannot conclude that the test scores represent the individual's achievement. In this situation, the standardized achievement test lacks validity for such individuals and should not be used, or used only with extreme caution. This situation must be noted in the Integrated Written Assessment Report.

Examples of Standardized achievement tests are listed below.

- Criterion referenced tests (NWEA or MAP)
- State, district, and school assessments (NDSA)
- Woodcock Johnson Psycho-educational Battery Tests of Achievement

***Interpreting  
Achievement  
Information  
(RTI)***

The evaluation process is meant to be an analysis of each student's unique learning level. The following practices must be observed when interpreting achievement information.

1. State the student's achievement level as a range (e.g., average, above/below average) rather than a specific score, grade level, or percentile.
2. Analyze the relationship between the student's achievement with age level peers as it relates to state approved grade level standards. This relationship is analyzed through a review of progress monitoring data including data representing trend lines, aim lines, or goal lines etc.

3. Although not all of the information sources outlined earlier in this section will need to be used for each student, it is important that all of the significant information be gathered, documented, and carefully considered. It is the multidisciplinary team's responsibility to weigh the significance of information obtained through any of the sources.

### **Determination of Rate of Progress (RTI)**

Based on data from a process that assesses a child's response to scientific, research-based interventions, the MDT determines the child is not progressing adequately for the child's age or to meet State-approved grade-level standards.

Careful consideration of the child's progress over time, relative to expected progress, is required. The team reviews the intensity and duration of instruction in relationship to the skills gained. It is helpful to find a way to assign "weight" to both the intervention and the progress, perhaps visualizing each as rocks on a scale. Consider these examples:

Example A: A fourth grade student receives 10 minutes per day of fluency instruction that is in addition to the core reading program. Oral Reading Fluency grows from 90 to 103 words per minute during a three week period. The grade level target is 120 words per minute, and the student's progress is clearly following the aim line to hit the target. This intervention, relatively "light", could be pictured as a small rock on one side of a scale. The progress, fairly "heavy", could be pictured as a medium rock on the other side of the scale. In this case, the student is responding well to the instruction, with progress deemed to "outweigh" the intervention. In this example the student is responsive to the intervention at a sufficient rate of progress and likely not be identified as eligible.

Example B: A first grade student receives 45 minutes per day of decoding and fluency instruction that is in addition to the core reading program. Oral Reading Fluency grows from 6 to 10 words per minute in an 8 week period, while other children in the intervention group have gained an average of 22 words per minute during this same time. It is clear that this child is not on track to hit the expected level of performance by the end of first grade. In this case, the intervention is judged to be quite "heavy" and can be visualized as a large rock on the scale. The child's progress, in contrast, is "light", best visualized as a small pebble on the opposite side of the scale.

This child is resistant to instruction, failing to learn at a sufficient rate and may be considered eligible.

Keep in mind that the student must have both low achievement and lack of progress. Students with learning disabilities are those who, despite intervention too intense to be considered general education, demonstrate very low skills. The percentile used as a guideline for "how low" may vary depending on local norms, but will likely fall between the 20<sup>th</sup> and 30<sup>th</sup> percentiles. While this may seem relatively high performance given more traditional approaches that require a student to be at least below the 16<sup>th</sup> percentile, remember that our purpose is to catch students before they fall far behind, and to maintain their skills in a functional range. This is why the concept of a "weighty" intervention contrasted with a "light" response is so important.

Additionally, in cases of students receiving intensive intervention and achievement above this “very low” range, teams may document that without continued intervention the student’s achievement will fall below the targeted percentile.

Central to the concept of specific learning disabilities is the theory that individuals are prevented by those disabilities from acquiring skills they otherwise are able to learn.

### **Administration of Standardized Tests (RTI)**

The MDT determines what additional information may be needed as a part of the evaluation. This may include a cognitive ability test. Refer to Appendix E for discussion regarding intellectual or cognitive ability tests. Reliable, valid, intellectual or cognitive ability tests (e.g., Wechsler Intelligence Scales for Children – IV (WISC-IV), and Stanford-Binet) can be administered and interpreted only by qualified personnel who have been appropriately trained. Standardized tests must be validated for the specific purpose for which they are used and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producers of the test.

Cognitive ability tests used to estimate ability may be verbal and/or performance tests. Verbal abilities are more typically highly correlated with language learning, therefore it is especially important to remember that a verbal test score may be affected by a specific learning disability. The verbal test scores of a student with specific learning disabilities that affect oral language are not an accurate indicator of the student's general learning ability. Use of verbal test scores in such instances might eliminate from learning disabilities services those students most in need. For example, if a student with deficient oral language requiring extensive programming in language and conceptual areas is not identified as having a learning disability, that student may not receive this type of service emphasis and could therefore not be provided with an appropriate education.

### **How to assess a student’s response to scientific research-based intervention (RTI)**

Districts should establish decision points that meet the needs of all students. Decision points help districts follow a set criteria that will create a consistent means for moving students to more or less intense levels of interventions. This is a sample set of decision points:

1. Organize the lowest 20% of students in the group (class, grade level, or school) to receive interventions.
2. Students in group interventions are monitored regularly.
3. Change interventions when 4 consecutive data points do not meet the student’s goal line.
4. Move students to an individual intervention after two unsuccessful group interventions.
5. Students in individual interventions are monitored at least 1 time weekly.
6. Refer a student for special education after one unsuccessful individual intervention.

A flow chart describing how a student may move through this sample set of decision rules is found in Appendix F.

The following will describe the traditional discrepancy process to determine eligibility.

## Discrepancy Model Process

### **Steps in Evaluation (Discrepancy Model)**

The Department of Public Instruction *Guidelines: Evaluation Process* (June 2007) details federal regulations that apply to all aspects of the evaluation process. See also Appendix C, SLD Evaluation Process Checklist, in this document which includes additional required procedures for evaluating children with specific learning disabilities.

For the initial evaluation of a student with a specific learning disability, all of the following steps must be completed and documented using the student profile, student demographics, and assessment plan. These steps need not necessarily be completed in the sequence presented here. The multidisciplinary team (MDT) must:

1. Validate the impact on the child's progress in the general curriculum by reviewing data from the intervention team process including at least one classroom observation. Three observations are recommended to verify patterns of learning and behavior. The observation may have been completed during the intervention process prior to referral to special education.
2. Determine the child is not achieving adequately for the child's age or to meet State-approved grade-level standards
3. Determine ability level using a valid and reliable standardized measure of intellectual or cognitive ability administered by trained personnel *or* in the case of students whose ethnic group is not represented in the normed sample of the standardized test, using an appropriate alternate method.
4. Validate the impact on the child's progress in the general curriculum by conducting a minimum of one classroom observation. Three observations are recommended to verify patterns of learning and behavior.
5. Determine the discrepancy between ability and achievement.
6. Determine that the deficit is not primarily the result of mental retardation, sensory deficit, emotional disturbance, cultural, limited English proficiency, environmental or economic disadvantage.
7. Determine the primary disability after completing the Integrated Written Assessment Report (IWAR).

*All of the steps must be completed as outlined in each student's Assessment Plan before it can be determined whether the student meets either of the following criteria:*

1. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
  - (i) Oral expression.
  - (ii) Listening comprehension.
  - (iii) Written expression.
  - (iv) Basic reading skill.
  - (v) Reading fluency skills.
  - (vi) Reading comprehension.
  - (vii) Mathematics calculation.
  - (viii) Mathematics problem solving.

(2)(ii) 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, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.

**Determining  
Achievement  
Level  
(Discrepancy Model)**

The purpose of this evaluation step is to determine the level of academic skills that the student has attained. It is a necessary step for two purposes:

- 1) determining eligibility for placement, and
- 2) planning a program of services.

To determine eligibility for special education, the multidisciplinary team must establish *that a discrepancy exists between a student's ability and achievement levels*. To plan appropriate services for any student whose performance is determined to fall below the expected level, the Individualized Education Program (IEP) team must establish as specifically as possible the level of that student's skill development. This information is the basis for the present levels of academic achievement and functional performance in the IEP.

The analysis of the student's achievement level and classroom performance will determine whether the student requires specially designed instruction. Careful study of the variations in a student's achievement can make the difference between an appropriate and therefore successful program, or an inappropriate and unsuccessful school experience.

**Types of Evaluation  
Information Needed  
to Determine  
Achievement Level  
(Discrepancy Model)**

The MDT will complete the Student Profile which will document the current achievement level information and will identify the need for any additional information. The Assessment Plan will document specific additional information needed and how that information will be obtained.

Multiple sources are needed to determine the student's level of achievement. Some examples are listed below. The multidisciplinary team will decide which sources of information are needed for a specific student.

Classroom performance - Information regarding the student's classroom performance can be obtained through several informal measures, such as those listed below. See Appendix D for further information.

- Observation
- Work sample analysis
- Student's attendance records
- Task analysis
- Inventories
- Unit tests
- Diagnostic probes
- Diagnostic teaching
- Checklists
- Rating scales
- Questionnaires
- Error analysis (for example, miscue analysis in reading)
- Cloze procedure for reading comprehension
- Informal Reading Inventories
- Curriculum Based measurements

If a specific learning disability is suspected, a minimum of one documented classroom observation is a required part of the evaluation process. This may have already occurred in the Intervention Team Process.

Information from parents, teachers, and others can be obtained through written or oral interviews in addition to the information available in the documents presented as part of the Intervention Team Process.

Examples of information parents may be asked to provide are listed below.

- How well the student understands and follows directions in doing home chores, running errands, or conveying telephone messages
- Under what conditions the student appears to be most or least attentive
- Academic skills the student performs independently such as reading the directions for assembling a toy or playing a game, earning and handling money, writing letters, computer skills, completing projects that extend over a period of time
- Social and behavioral skills
- Any relevant medical or psychological information
- Culture, ethnic and family background
- Economic and environmental issues that may be impacting school performance

Examples of information teachers may contribute are listed below.

- The student's participation in class discussion
- The student's ability to attend to task
- The student's academic, social, and behavioral strengths
- The student's preferred learning styles
- Work initiation and completion
- Other factors that may be inhibiting or enhancing academic performance
- Academic, social and behavioral concerns
- The student's interests

Standardized achievement tests - The instructional needs of a student cannot be determined by standardized tests alone. Also, it cannot be assumed that the skills assessed will necessarily be the same as the skills the student is expected to gain from the classroom curriculum. Standardized test results must be used in combination with informal information gathered from other sources. Although it is generally understood that scores on achievement tests cannot be viewed as an actual level of achievement, such scores are often quoted as though as if they are. Instead, such information should be used only in combination with other sources of information in determining an estimated range of skill achievement. The best use of standardized test results is in suggesting areas for further observation and study. If there are substantial cultural differences in a student's language or exposure to concepts included in the test, the team cannot conclude that the test scores represent the individual's achievement. In this situation, the standardized achievement test lacks validity for such individuals and should not be used, or used only with extreme caution. This situation must be noted in the Integrated Written Assessment Report.

Examples of Standardized achievement tests are listed below.

- Criterion referenced tests (NWEA or MAP)
- State, district, and school assessments (NDSA)
- Woodcock Johnson Psycho- educational Battery Tests of Achievement

***Interpreting  
Achievement  
Information  
(Discrepancy Model)***

The evaluation process is meant to be an analysis of each student's unique learning level. The following practices must be observed when interpreting achievement information.

1. State the student's achievement level as a range (e.g., average, above/below average) rather than a specific score, grade level, or percentile. The estimated range of achievement can then be compared with the estimated range of ability.
2. Although not all of the information sources outlined earlier in this section will need to be used for each student, it is important that all of the significant information be gathered, documented, and carefully considered. It is the multidisciplinary team's responsibility to weigh the significance of information obtained through any of the sources.

## **Determination of Ability Level (Discrepancy Model)**

Central to the concept of specific learning disabilities is the theory that individuals are prevented by those disabilities from acquiring skills they otherwise are able to learn.

An estimate of ability level cannot be based solely on test results.

Teacher report, observations of classroom performance by someone other than the student's teacher, and the parents' observations all contribute information to be considered in determining ability level.

Many education professionals are accustomed to relying on standardized intellectual or cognitive ability tests when determining an individual's ability level. The need for extreme caution in the interpretation of test findings is re-emphasized here. An estimated *range of ability level* (e.g., average, above average), rather than using one score, should be determined after considering all sources of information.

It is possible that the more severe and pervasive the disability, the greater the effect may be on the student's ability test scores, and the more critical it becomes to rely on information other than test scores in determining ability level. Students suspected of having a specific learning disability must be observed in a variety of situations to seek out specific ways in which true ability can be demonstrated.

## **Determination of Discrepancy (Discrepancy Model)**

To identify a student as having a specific learning disability a multidisciplinary team must determine that the student is not functioning commensurate with age and ability, and *that a discrepancy exists between achievement and ability*.

In determining the existence of a discrepancy between ability and achievement in a given academic area, the team should consider the impact the discrepancy in that area has on the student's total functioning. When information from all sources is analyzed (e.g., teacher and parent observations) patterns of functioning, areas of need across settings and student compensation strategies may emerge. This type of responsive analysis, i.e., analyzing the way the student responds to the demands of his/her environment, and identifying changes required for the student to succeed, will help the team arrive at:

- The impact the discrepancy has on the student's total functioning, and
- Whether the discrepancy is correctable without special education.

## **Comparing Estimated Achievement with Estimated Cognitive Ability (Discrepancy Model)**

When cognitive ability and achievement results are determined to be valid, reliable, and an accurate and comprehensive representation of the student's overall functioning, a comparison of the range of cognitive ability with the range of achievement is appropriate. Based on all of the assessment results, the multidisciplinary team determines whether a discrepancy exists between ability and achievement. In making this determination, the following questions should be addressed.

1. Is there a significant gap between the student's performance on the measures of intellectual or cognitive ability and the measures of achievement? Note that the professional judgment of the team will be used to determine whether the discrepancy is significant. This determination should occur when assessment results are shared and the Integrated Written Assessment Report is prepared.
2. Is there a significant gap between the student's performance on achievement measures in comparison to the average performance of the student's classroom peers? Note that this determination can only be made using measures based on the student's classroom curriculum.
3. If formal means are used to measure achievement, do informal results confirm or contradict the formal results? Note that informal/curriculum-based results should support formal results before a conclusion can be drawn about the student's performance in the area of achievement. If results of informal measures do not support formal results, the team should consider whether additional informal information should be gathered. When the team has all the information needed, professional judgment should be used to integrate and reconcile conflicting information and make a determination regarding the existence of a discrepancy.

### ***Administration of Standardized Tests (Discrepancy Model)***

The MDT determines what additional information may be needed as a part of the evaluation. Refer to Appendix E for discussion on intellectual or cognitive ability tests. Reliable, valid, intellectual or cognitive ability tests (e.g., Wechsler Intelligence Scales for Children – IV (WISC-IV), and Stanford-Binet) can be administered and interpreted only by qualified personnel who have been appropriately trained. Standardized tests must be validated for the specific purpose for which they are used and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producers of the test.

Cognitive ability tests used to estimate ability may be verbal and/or performance tests. Verbal abilities are more typically highly correlated with language learning, therefore it is especially important to remember that a verbal test score may be affected by a specific learning disability. The verbal test scores of a student with specific learning disabilities that affect oral language are not an accurate indicator of the student's general learning ability. Use of verbal test scores in such instances might eliminate from learning disabilities services those students most in need. For example, if a student with deficient oral language requiring extensive programming in language and conceptual areas is not identified as having a learning disability, that student would not receive this type of service emphasis and would therefore not be provided with deprived of an appropriate education.

When either the verbal or performance score is substantially lower than the other, the low score will exert a masking effect upon the full scale or composite score. The test administrator may recommend, therefore, that the higher score be used in the calculation of discrepancy. This higher score will be the frame of reference when the team determines whether a specific learning disability exists.

There are statistical idiosyncrasies of certain standardized tests, including IQ tests, that will impact important placement decisions when the school is using the Discrepancy Model. One of these peculiarities occurs with cognitive tests that generate scores for tasks that are “verbal” or language oriented and tasks that are nonverbal (sometimes referred to as “performance tests”). Not using these discrepancies legitimately will result in misinterpretation of a Full Scale, Verbal and Nonverbal/Performance IQ score. When there is a statistical difference that is big enough to be reliable, that is, the difference between verbal and nonverbal, does not happen by chance, only one of the scores can be used as representing the person’s true cognitive (thinking) functioning. Typically the verbal score represents tasks that measure “crystallized” intelligence and the nonverbal scores represent “fluid” intelligence. An example: the K-BIT-2 scores include a Verbal, Nonverbal and IQ Composite (full scale). An eight year-old student obtains a Verbal score of 100, Nonverbal score of 81 and Composite score of 89. The V-Nv score difference is 19. The school psychologist refers to the table “Differences between Verbal and Nonverbal standard scores required for statistical significance by age.” For our child of 8 years of age, a difference of 15 to 18 points is significant at “ $p < .05$ .” This means that if the child is given the K-BIT-2 100 times, the difference will be between 15-18 points 95 times. At the “ $p < .01$ ” level the difference would need to be greater than 19 points. In this case we can legitimately report that the Verbal IQ is most reflective of the student’s cognitive ability because the Verbal and Nonverbal IQ are significantly discrepant. The score of 100 would be used in comparison to achievement test scores to denote whether there is a “significant discrepancy” and thus impacting the placement decision.

Other standardized tests of ability (e.g., cognitive section of the Woodcock-Johnson) administered by qualified personnel may be used when there is limited or no access to a school psychologist. It is critical that personnel be trained in both administration and interpretation of the specific instrument used.

**Important Note**

The following processes apply to all evaluations for all students when considering eligibility in the category of Specific Learning Disability, regardless of the process that is being used to identify.

**Influences of  
Social or  
Cultural  
Background**

It cannot be concluded that test scores represent the individual's learning ability if the child’s culture, language, or environmental exposures are substantially different from that inherent in the test instrument. The intellectual or cognitive ability test lacks validity for such individuals. (Further information regarding culture, environment, or economic disadvantage is found in Appendix G.) Extreme caution should be used when the student's ethnic group is not adequately represented in the norm sample. Information about the norm sample can be found in the test manual. Tribal and regional differences must be considered in determining whether the norm sample is representative when used for Native American students. For example, Turtle Mt. Chippewa norms would not necessarily be applicable to the Mandan-Arikara-Hidatsa people.

- Curriculum Based Assessment/Measurement
- Criterion Referenced Test
- Informal Inventories
- Observations
- Checklists
- Portfolios/work samples
- Ecological assessment

## ***Determining the Primary Disability***

### ***The Exclusionary Clause***

An exclusionary clause in the regulations to determine that a student has a specific learning disability states that the deficit must not be primarily the result of mental retardation, sensory deficit, emotional disturbance, cultural, limited English proficiency, environmental or economic disadvantage. The clause is not an absolute exclusion. Learning disabilities often occur along with other disabilities or environmental conditions. The National Joint Committee for Learning Disabilities in 1983, (amended by the Interagency Committee on Learning Disabilities in 1988,) clarified this concept by emphasizing that learning disabilities can occur with other disabilities or depriving conditions. To determine a diagnosis of specific learning disabilities when another disability is present, the student must show difficulties over and above those that the other disability could have caused.

If the student has another disability in addition to a specific learning disability, the multidisciplinary team must document which has been established as the primary disability. The primary disability is the one that the team determines has the greatest impact on the student's classroom performance. Every suspected disability must be explored so that all of a student's unique needs are adequately analyzed and documented, and receive attention in the IEP planning process.

## ***Preparing the Integrated Written Assessment Report***

The multidisciplinary team will write a report that integrates findings from all sources. The Integrated Written Assessment Report (IWAR) must be written in a manner that is understandable to parents and other professionals; it should not reiterate test scores that are not meaningful to parents or others. The school must provide a copy of the IWAR and the documentation of determination of eligibility to the parents.

Additional requirements that must be included in the IWAR are part of the process when evaluating children with specific learning disabilities. Each of these components must be included in the written report. These requirements are also included in Appendix C. SLD Evaluation Process Checklist.

The IWAR for a child with a specific learning disability must include:

- A statement of *whether the child has a specific learning disability*;
- A description of the *basis for the determination* that the child has a specific learning disability;
- A statement about any *relevant behavior* noted during the *observation* and the relationship of that behavior to the child's academic functioning;
- A description of any educationally relevant *medical information*;
- A statement about the child not achieving adequately for the child's age or to meet State-approved grade-level standards;
- A statement about the child not making sufficient progress to meet age or State-approved grade-level standards OR A statement of whether there is a *discrepancy* between ability and achievement that is *not correctable* without special education and related services; and
- The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level, and;
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
  - (i) The instructional strategies used and the student-centered data collected; and
  - (ii) The documentation that the child's parents were notified about--
    - (A) 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;
    - (B) Strategies for increasing the child's rate of learning; and
    - (C) The parents' right to request an evaluation.

***Appendices***

- A. Federal Register**
- B. Similarities and Differences**
- C. SLD Evaluation Process Checklist**
- D. Best Practices:**
  - Written Report**
  - Choice of Test Scores**
  - Kinds of Informal Assessments**
- E. Federal Commentary regarding Ability tests**
- F. Intervention Team Process**
- G. OSEP Response to Letter of Inquiry**

# **Appendix A**

Federal Register

**Evaluations and Reevaluations****Sec. 300.301****Initial evaluations.**

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the agree to a specific time when the evaluation will be completed.

**Sec. 300.302****Screening for instructional purposes is not evaluation.**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

**Sec. 300.303****Reevaluations.**

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

**Sec. 300.304****Evaluation procedures.**

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with

§ 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in

the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

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

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

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

**Sec. 300.305****Additional requirements for evaluations and reevaluations.**

- (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
- (1) Review existing evaluation data on the child, including—
    - (i) Evaluations and information provided by the parents of the child;
    - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
    - (iii) Observations by teachers and related services providers; and
  - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
    - (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
    - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
    - (ii) The present levels of academic achievement and related developmental needs of the child;
    - (iii)(A) Whether the child needs special education and related services; or
    - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—
  - (i) That determination and the reasons for the determination; and
  - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
- (e) Evaluations before change in eligibility.
  - (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.
  - (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
  - (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

**Sec. 300.306****Determination of eligibility.**

(a) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

**Additional Procedures for Identifying Children With Specific Learning Disabilities****Sec. 300.307****Specific learning disabilities.**

(a) General. A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—

- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);
- (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
- (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

**Sec. 300.308****Additional group members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—

- (a)(1) The child's regular teacher; or
  - (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
  - (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

**Sec. 300.309****Determining the existence of a specific learning disability.**

(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section 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, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

**Sec. 300.310****Observation.**

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

**Sec. 300.311****Specific documentation for the eligibility determination.**

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

- (1) Whether the child has a specific learning disability;
  - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);
  - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  - (4) The educationally relevant medical findings, if any;
  - (5) Whether—
    - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
    - (ii)(A) The child does not make sufficient progress to meet age or State approved grade-level standards consistent with § 300.309(a)(2)(i); or
    - (B) 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 consistent with § 300.309(a)(2)(ii);
  - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
  - (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
    - (i) The instructional strategies used and the student-centered data collected; and
    - (ii) The documentation that the child's parents were notified about—
      - (A) 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;
      - (B) Strategies for increasing the child's rate of learning; and
      - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

# **Appendix B**

## Similarities and Differences

### Similarities and Differences in Eligibility Determination of Historical and RTI Practices

Component	Historical System	RTI
LD eligibility criteria	Primarily based on ability-achievement discrepancy and consideration of SLD exclusion factors	Based on significant difference in performance compared to peers, low rate of progress even with high-quality interventions, special education need, consideration of SLD exclusion factors
Type of tests used	Global – ability and achievement tests, usually published	Specific – usually direct measures of specific skills needed for success in the classroom; may be published or unpublished
Comparison standards	Typically national norm	Typically regional, district, school or classroom standards; nationally normed tests used sparingly
Frequency of assessment	Typically administered at one or two sittings	Functional academic and/or behavioral data are collected over time
Nature of assessment targets	Presumed hypothetical constructs that have indirect or general relationships with classroom academic or behavioral problems (e.g., IQ, visual-motor integration, psychological processing, IQ-achievement discrepancy); assessment targets most often intrinsic to the person	Very specific skills are measured (e.g., phonemic awareness, reading fluency, monitoring meaning while reading, math computation); assessment targets most often related to what a person does (skills and performances)
Relationship of assessment instruments to the general curriculum	Usually minimal	Direct relationship
Relationship between eligibility assessment and intervention	Often little demonstrable relationship between assessments and effective interventions	Usually a direct link between assessed performance and instructional intervention
Use of information provided by parents and teachers	Typically supplemental to the eligibility decision	Typically central to the eligibility decision

# **Appendix C**

## **SLD Evaluation Process Checklist**

## SLD EVALUATION PROCESS CHECKLIST

School/Case Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Student Name: \_\_\_\_\_ Student Date of Birth: \_\_\_\_\_

### FEDERAL REQUIREMENTS FOR INITIAL EVALUATION AND REEVALUATION

This checklist is intended to be a helpful reminder of additional requirements when evaluating a child suspected of having a specific learning disability or reevaluating a child with an identified specific learning disability. Multidisciplinary team members must also follow evaluation procedures described in North Dakota Department of Public Instruction *Guidelines: Evaluation Process (June, 2007)*.

#### Additional Procedures for Evaluating Children with Specific Learning Disabilities (300.307-300.311)

1. Additional team members must include (300.308)
- \_\_\_\_\_ a. the child's regular teacher, or
  - \_\_\_\_\_ b. a regular classroom teacher qualified to teach a child of his or her age, or
  - \_\_\_\_\_ c. for a child less than school age, an individual qualified to teach a child of his or her age
- AND**
- \_\_\_\_\_ d. at least one person qualified to conduct individual diagnostic examinations of children
2. Observation (300.310)
- \_\_\_\_\_ a. at least one team member other than the child's regular teacher must observe the child's academic performance and behavior related to the areas of difficulty in the regular classroom setting; or
  - \_\_\_\_\_ b. in the case of a child less than school age or out of school, a team member must observe the child in an environment appropriate for a child of that age.
3. For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility will include (300.311):
- \_\_\_\_\_ a. whether the child has a specific learning disability;
  - \_\_\_\_\_ b. the basis for making the determination;
  - \_\_\_\_\_ c. the relevant behavior noted during the observation of the child;
  - \_\_\_\_\_ d. the relationship of that behavior to the child's academic functioning;
  - \_\_\_\_\_ e. the educationally relevant medical findings, if any;
  - \_\_\_\_\_ f. A statement about the child not achieving adequately for the child's age or to meet State-approved grade-level standards;
  - \_\_\_\_\_ g. A statement about the child not making sufficient progress to meet age or State-approved grade-level standards OR A statement of whether there is a *discrepancy* between ability and achievement that is *not correctable* without special education and related services;
  - \_\_\_\_\_ h. The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level, and;

- \_\_\_\_\_ i. If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
  - (a) The instructional strategies used and the student-centered data collected; and
  - (b) The documentation that the child's parents were notified about—
    - (A) 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;
    - (B) Strategies for increasing the child's rate of learning; and
    - (C) The parents' right to request an evaluation.
  
- \_\_\_\_\_ j. each team member will certify in writing whether the report reflects his/her conclusion, if it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

# **Appendix D**

## Best Practices

## Best Practices

Compiled by Dr. Lynne Chalmers, Professor/Coordinator of Special Education  
University of North Dakota, EHD/Special Education Department

### WRITTEN REPORT

- (1) Individual written reports, also known as diagnostic reports, are not required by the state, but may be required by individual special education units. This diagnostic report is not to be confused with the Integrated Written Assessment Report (IWAR). The information from all individual diagnostic report is integrated by the team to create the IWAR. The team then decides whether the student has a learning disability.

In analyzing and interpreting formal and informal data to share with the team, LD teachers may find the following process helpful:

1. Make 2 kinds of comparisons:
  - A. Interindividual – compare formal and informal performance results with other students' results or a set of norms OR compare the student's progress monitoring data with the performance of his peers/a benchmark/or a set of norms.
  - B. Intraindividual – compare the various formal and informal performance results of the individual student with his own overall performance and/or ability OR compare the student's progress monitoring data with his baseline performance and degree of progress or lack of progress.
2. For formal tests, discuss performance in ranges and DO NOT report scores
  - A. Above average – more than 2 Standard Deviations (SD) above the mean
  - B. High average – 1 to 2 SDs above the mean
  - C. Average – 1 SD above and below the mean
  - D. Low average – 1 to 2 SDs below the mean
  - E. Below average – more than 2 SDs below the mean
3. Include qualitative information you may have gathered from doing item analysis and other informal assessments including interviews with teachers, parents, and the student.
4. Discuss ways in which performance in one area may be affecting performance in another area.
5. Discuss the student's academic and social performance in the classroom
  - A. Can the student read and understand the classroom textbooks?
  - B. Are there social skills deficits apparent in the classroom?
  - C. Is the student able to listen effectively, participate in classroom discussions, follow directions, etc.?
  - D. Is the student able to make progress when evidence-based interventions are used?
6. Tie all formal and informal results together looking for
  - A. Themes
  - B. Patterns
  - C. Discrepancies

## Choice of Test Scores: Why Age/Grade/Scores/Equivalents Should Not Be Used

Age and grade scores only **appear** to provide precise and understandable information about a student's performance level. If a student earns a grade score of 5.4, this means that he has earned a raw score equivalent to that of fifth grade students in the norm group and not that the student is one month in second grade does not equal one month in grade nine. As an example, if a fourth grade student earns a math score 6.9 on a test, it does not mean that he has mastered the math processes taught in the sixth grade. He undoubtedly obtained the score largely by superior performance in fourth grade math. It certainly could not be concluded that he has the prerequisite skills for seventh grade math (Anastasi, 1988).

### KINDS OF INFORMAL ASSESSMENT

#### I. Direct and Unobtrusive Procedures

##### A. Observation

1. Anecdotal (continuous or narrative recording): the teacher observes and records all the behaviors a student exhibits during some set time period.
2. Sequence Analysis/ABC Analysis (antecedent, behavior, consequences): in addition to doing continuous recording, the teacher records events or actions that precede and follow each behavior to provide information about how events in the environment may influence a student's behavior.
3. Functional Behavior Assessment (why did the student do what he did?):  
a description of the undesirable behavior
  - a. a prediction of the times and situations when this behavior will and will not occur across daily routines
  - b. a description of the maintaining reinforcers that the behavior produces for the student
4. Specific Behavior Observation:
  - a. event recording—frequency of behavior is documented (every time the behavior occurs)
  - b. time sampling—student is observed at the end of a set interval (3 minutes or longer) and behavior is recorded as occurring or not occurring
  - c. interval recording—student is observed for an entire interval of time (usually 3-5 seconds) and behavior is recorded as occurring or not occurring. [for observing several students or behaviors at one time, for frequent behaviors such as talking with peers]
  - d. duration recording—observing length of time behavior occurs by recording the time a behavior begins and time the behavior ends
  - e. latency recording—time it takes to begin a behavior after stimulus has occurred (for example, the time it takes a student to begin working after being told to get to work)

##### B. Work Sample Analysis—actual examples of the student's work are used

1. Response Analysis: considers both the correct and incorrect responses of a student
2. Error Analysis: looks at only the errors a student makes and the error patterns

## II. Curriculum-based Measures Assessments

- A. Inventories—screening devices that assess selected portions of the curriculum
  - 1. Teacher-made and designed
  - 2. Published
    - a. Reading IRI's (informal reading inventories)
- B. Diagnostic Probes and Teaching—the systematic manipulation of instructional conditions to determine the most appropriate strategy for teaching a particular skill to a student
  - 1. Cloze and maze procedures for reading comprehension
  - 2. Curriculum-based measurement
  - 3. Timings (one minute probes of specific skills)
  - 4. Textbook checks (can the student read the text?)
    - a. fluency (speed and accuracy)
    - b. comprehension questions
      - (1) literal/factual
      - (2) inferential
      - (3) sequential

## III. Procedures Using Informants (teachers, parents, students, etc.)

- A. Checklists and Rating Scales—structured assessments that post specific questions in written form for informants to respond to orally or in writing
- B. Questionnaires and Interviews—also used to elicit information from informants, but may have more open-ended questions (often used with students as the informants)
  - 1. clinical interview—interview questions are designed to identify strategies the student uses when performing a task
  - 2. structured interview to obtain information from teachers and parents

## **Appendix E**

Federal Commentary regarding Ability Tests

**Federal Register** / Vol. 71, No. 156 / Monday, August 14, 2006 /  
Rules and Regulations page **46651**

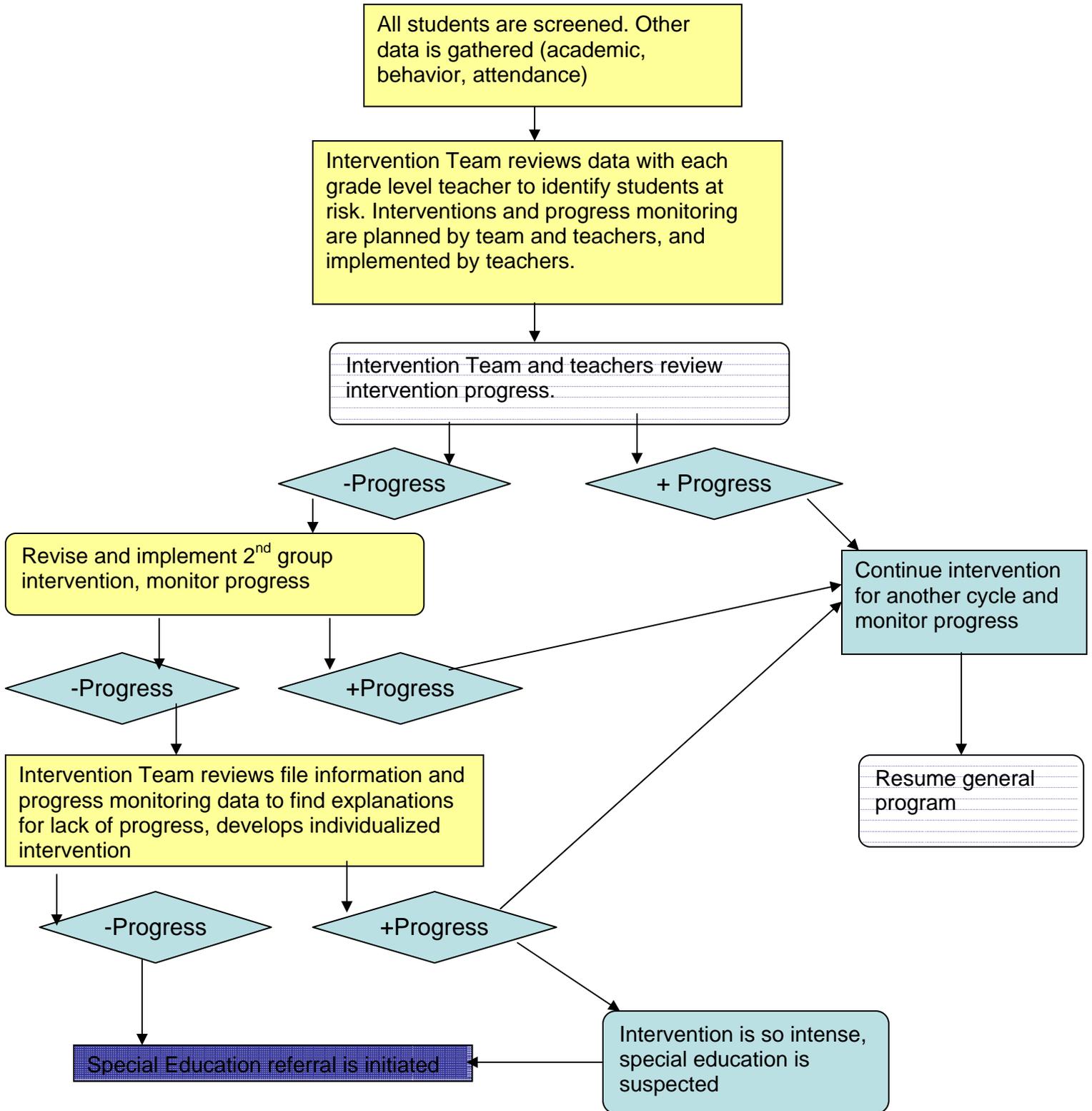
*Comment:* Many commenters recommended adding the concept of psychological processing disorders to the eligibility criteria in § 300.309. Several commenters noted that the criteria in § 300.309 do not fully address the definition of SLD in § 300.8(c)(10), which includes a processing disorder in one or more of the basic psychological processes. Several commenters stated that, without requiring documentation of a basic psychological processing disorder, the number of children identified with SLD will significantly increase and the use of assessment tools that have the potential to significantly guide instruction will decrease. Several commenters stated that failure to consider individual differences in cognitive processing skills reverses more than 20 years of progress in cognitive psychology and developmental neuroscience. One commenter stated that identifying a basic psychological processing disorder would help ensure that children identified with an SLD are not simply victims of poor instruction. One commenter stated that the shift away from requiring diagnostic assessments in the area of cognition would make it conceptually impossible to document that a child has a disorder in one or more of the basic psychological processes, as required in the definition of SLD in § 300.8(c)(10).

*Discussion:* The Department does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD. Further, in many cases, these assessments have not been used to make appropriate intervention decisions. However, § 300.309(a)(2)(ii) permits, but does not require, consideration of a pattern of strengths or weaknesses, or both, relative to intellectual development, if the evaluation group considers that information relevant to an identification of SLD. In many cases, though, assessments of cognitive processes simply add to the testing burden and do not contribute to interventions. As summarized in the research consensus from the OSEP Learning Disability Summit (Bradley, Danielson, and Hallahan, 2002), “Although processing deficits have been linked to some SLD (e.g., phonological processing and reading), direct links with other processes have not been established. Currently, available methods for measuring many processing difficulties are inadequate. Therefore, systematically measuring processing difficulties and their link to treatment is not yet feasible \* \* \*. Processing deficits should be eliminated from the criteria for classification \* \* \*.” (p. 797).<sup>3</sup> Concerns about the absence of evidence for relations of cognitive discrepancy and SLD for identification go back to Bijou (1942; 4 see Kavale, 2002) 5. Cronbach (1957) 6 characterized the search for aptitude by treatment interactions as a “hall of mirrors,” a situation that has not improved over the past few years as different approaches to assessment of cognitive processes have emerged (Fletcher *et al.*, 2005; Reschly & Tilly, 1999) 7.

# **Appendix F**

## Intervention Team Process

## Intervention Team Process



# **Appendix G**

OSEP Response to Letter of Inquiry

**NOTE!**

**These letters have been retyped for ease of reading. The original letters included the signatures of both parties.**

February 23, 1995  
FY95-0393

Dr. Thomas Hehir, Director  
Office of Special Education Programs  
United States Department of Education  
400 Maryland Ave. SW  
Washington DC 20202

RE: Letter of Inquiry  
Evaluation and Culture

Dear Dr. Hehir:

The purpose of this letter is to request clarification regarding 34 CFR 300.541(b)(4) which state:

- (b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of
1. A visual, hearing, or motor impairment;
  2. Mental retardation;
  3. Emotional disturbance; or
  4. Environmental, cultural or economic disadvantage.

In providing technical assistance to the Bureau of Indian Affairs the issues of environment, culture and economic disadvantages are always significant factors when evaluating a student for possible eligibility under special education or Section 504. Today, American Indian children are placed in classes for the cognitively delayed and learning disabled in greater proportions than Asian American, Hispanic, and Anglo children (O'Connell, 1987; Office of Technology Assessment, 1990). Environmental factors unique to Indian communities, physical problems common to Indian children, language differences and deficits, sociopolitical determinants, cultural differences, and social/personal domains may all influence the assessment process and outcome. (Dana, 1984; Conner and Ibrahim, 1989; McShane, 1980).

The following is an excerpt from a letter provided by a school psychologist at the Turtle Mountain Agency of the Bureau of Indian Affairs in North Dakota. This is typical of the discussions and concerns regarding evaluation on reservations throughout our service area:

"In eligibility decisions, the Multidisciplinary Team must consider whether the reasons for referral or placement of a student, i.e., low achievement, misbehavior, or academic delay, are the result of economic or environmental disadvantage or cultural or linguistic differences and determine if one or more of these conditions are causing the student to achieve lower, misbehave more, or have an academic delay.

There is no guidance given and little is written about the word culture and what was meant by this word when the regulations were written. Each person assumes that others know what it is, and they rule it out as a reason for the disability routinely. In fact, in the form we now use from BIA Multidisciplinary Team Summary Report there is one check off for all three of these considerations-environmental, cultural, and

economic disadvantage as if they were one concept. One side criticism is that culture should not be considered a disadvantage.

I've looked up just two definitions of culture to determine what this concept means and its relation to eligibility decisions.

Linton, 1945:

- The configuration of learned behavior and results of behavior whose components and elements are shared by members of a particular society.

Stephen Sanderson (1995) stated there is no universal agreement as to the meaning of this concept and defines culture in this way:

- Total life ways characteristic of the members of society, including tools, knowledge and patterned ways of thinking and acting, that are learned and shared and are not the direct product of biological inheritance.

He goes on to state that there are four primary characteristics of culture:

1. rests in symbols
2. is learned—does not depend on biological inheritance for transmission
3. is a system that is shared by members of society; and is representative of the members of a society considered collectively
4. is integrated—the component aspects fit together in such a way that they are consistent with one another.

Ethnicity has also been used in conjunction with culture. This has also been defined. Ethnicity is a term that seems to be used to mean a group that is distinct from others based on cultural factors, rather than biological, as in racial differences.”

Clarification to the questions listed below would assist in making proper decisions on eligibility to special education.

1. How does a Multidisciplinary Team really determine if culture, environment or economic disadvantage is the prime factor for the student's problems or if she/he is disabled and eligible for special education services?
2. Is it necessary to use standardized tests and determine severe discrepancy for American Indian students, since most do not include this group in the norming process and are invalid because of cultural issues?
3. How do we sort out the role of environment, language and culture in assessing student's performance on a standardized test?

The issues of culture, economic disadvantage and environment has been difficult for teams determining eligibility. The over-representation of minority students in special education is probably partially related to the evaluations inability to rule out these factors as causes for school problems.

Clarification of these questions and any other guidance will be extremely appreciated.

Sincerely,

John Copenhaver

JC/af

C: Paul Dauphinais

Mr. John Copenhaver  
Mountain Plains Regional Resource Center  
Utah State University  
1780 North Research Parkway, Suite 112  
Logan, Utah 84322-9620

Dear Mr. Copenhaver:

This is in response to your letters to the office of Special Education Programs dated February 23, 1995 and January 3, 1996. Please excuse the delay in issuing our response.

The focus of your inquiry is the regulation at 34 CFR §300.541(b)(4), which states:

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

4. Environmental, cultural or economic disadvantage.

According to your letter, staff of the Bureau of Indian Affairs have experienced difficulties in applying this regulation to determine whether a student has a specific learning disability (SLD). Therefore, your letter asks the following questions:

1. How does a Multidisciplinary Team really determine if culture, environment or economic disadvantage is the prime factor for the student's problems or if she/he is disabled and eligible for special education services?

Part B of the Individuals with Disabilities Education Act (Part B) specifies that each student's evaluation must be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability. 34 CFR §300.532(e). If a child is suspected of having a learning disability, the additional team members specified at 34 CFR §300.540 also must be included on this multidisciplinary team. The team must include in its evaluation report a determination of the effects of environmental, cultural, or economic disadvantage. 34 CFR §300.543(b)(7). In all instances, we believe that Part B contemplates that individual evaluation determinations must be made for each student. See 34 CFR §300.531 and §300.500(c).

We have found no explicit discussion of the issues raised by your inquiry in prior policy guidance. However, you may find instructive the following excerpt from the preamble to the final regulations on Procedures for Evaluating Specific Learning Disabilities, published in the Federal Register in 1977. In response to public comments seeking an explanation regarding the "procedural approach" taken in those regulations, the following response was provided by the former U.S. Office of Education:

**Response.** Those with specific learning disabilities may demonstrate their handicap through a variety of symptoms such as hyperactivity, distractibility, attention problems, concept association problems, etc. The end result of the effects of these symptoms is a severe discrepancy between achievement and ability. If there is no severe discrepancy between how much should have been learned and what has been learned, there would not be a disability in learning. However, other handicapping and sociological conditions may result in a discrepancy between ability and achievement. There are those for whom these conditions are the primary factors affecting achievement. In such cases, the severe discrepancy may be primarily the result of these factors and not of a severe learning problem. For the purpose of these regulations, when a severe discrepancy between ability and achievement exists which cannot be explained by the presence of other known factors that lead to such a discrepancy, the cause is believed to be a specific learning disability.

It was on this basic concept that these regulations were developed.

42 Fed. Reg. 65081, 65085 (Dec. 29, 1977) (emphasis added).

This explanation suggests that while environmental, cultural, or economic disadvantage could be relevant to the team in determining whether a child has a specific learning disability, they cannot be the primary factors underlying the team's determination. However, the ultimate determination of the effects of environmental, cultural, and economic disadvantage on a student's learning problems are left to each student's evaluation team.

2. Is it necessary to use standardized tests and determine severe discrepancy for American Indian students, since most do not include this group in the norming process and are invalid because of cultural issues?
3. How do we sort out the role of environment, language and culture in assessing student's performance on a standardized test?

Because these questions are related, we have combined our response. As with your previous question, OSEP has not addressed these specific questions in prior policy guidance. Part B permits evaluations of students to be accomplished by means of testing or other evaluation materials. Section 300.532 of the Part B regulations specifies that, at a minimum, testing or other evaluation materials:

- (1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
- (2) Have been validated for the specific purpose for which they are used; and
- (3) Are administered by trained personnel in conformance with the instructions provided by their producer.

34 CFR §300.532(a)(1)-(3).

In addition, 34 CFR §300.530 requires that "[t]esting and evaluation materials and procedures used for the purposes of evaluation and placement...be selected and administered so as not to be racially or culturally discriminatory."

Whether evaluations are to be accomplished by means of testing or other evaluation materials is a matter left to the discretion of the student's multidisciplinary team, provided that the particular test or evaluation material satisfies the requirements at 34 CFR §§300.530, 300.532, and any other applicable State or local requirements. OSEP does not interpret 34 CFR §300.532(a)(2) to mean that tests or other evaluation materials must be validated for use for particular populations of students, but only for the specific purpose for which they are being used—i.e., measuring intelligence.

While you are familiar with a number of resources in this area, we thought you might find helpful the discussion of the effect of culture in the assessment of the presence of a disability in children contained in publications of the National Information Center on Children and Youth with Disabilities (NICHCY). In the event that you have not reviewed these publications previously, we have enclosed copies of two pertinent NICHCY publications for your information.

We hope that this explanation and the enclosed information are helpful to you. Thank you for taking the time to write and sharing these challenging issues with us.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education Programs

Enclosure

**NICHCY News Digest**  
**Volume 4, Number 1, 1994**  
***Assessing Children for the Presence of a Disability***  
**by Betsey B. Waterman, Ph.D.**  
**State University of New York at Oswego**

**Section Four:**  
**Assessing Students Who Are Culturally and Linguistically Diverse**

It is a well-known fact that the demographics of American schools are changing. Many students come from ethnic, racial, or linguistic backgrounds that are different from the dominant culture, and this number is steadily increasing (National Center for Education Statistics, 1992). Much concern has been expressed in recent years about the overrepresentation of minority students in special education programs, particularly in programs for students with mild disabilities, and a great deal of research has been conducted to identify the reasons why. Many factors appear to contribute, including considerable bias against children from different cultural and linguistic backgrounds, particularly those who are poor (Harry, 1992). The style and emphasis of the school may also be very different from those found in the cultures of students who are racially or linguistically diverse. Because culture and language affect learning and behavior (Franklin, 1992), the school system may misinterpret what students know, how they behave, or how they learn. Students may appear less competent than they are, leading educators to inappropriately refer them for assessment. Once referred, inappropriate methods may then be used to assess the students, leading to inappropriate conclusions and placement into special education.

There is also a great deal of research and numerous court decisions (e.g., *Larry P. v. Riles*, 1979; *Guadalupe v. Tempe Elementary District*, 1972) to support the fact that standardized tests (particularly intelligence and achievement tests) are often culturally and linguistically biased against students from backgrounds different from the majority culture. On many tests, being able to answer questions correctly too often depends upon having specific culturally-based information or knowledge. If students have not been exposed to that information through their culture, or have not had the experiences that lead to gaining specific knowledge, then they will not be able to answer certain questions at all or will answer them in a way that is considered "incorrect" within the majority culture. This can lead to inappropriate conclusions about students' ability to function within the school setting.

Therefore, when students come from a nondominant culture or speak a language other than English, care must be taken in how they are evaluated. "All professionals involved in the assessment process need to be aware that their beliefs and perceptions may not match those of the population they serve" (Hoy & Gregg, 1994, p. 65). Because most cognitive, language, and academic measures are developed using standards of the majority English-speaking culture, their use with students who are not from that culture may be inappropriate. It is, therefore, imperative that the evaluation team collect the majority of their information about the student in other ways, such as through interviews, observations, and approaches such as dynamic assessment, which has shown promise for use with minority students (Lidz, 1987). "Professionals must attend carefully to the overall picture of a child's background and performance" states Harry (1992), and adds that "assessment cannot be complete without an understanding of whether prior instruction has been adequate and appropriate" (p. 87).

To this end, Ortiz (1986) recommends that such students first undergo the prereferral process mentioned earlier. Many schools are moving toward requiring a prereferral process before any individualized evaluation is done. The purpose of the prereferral process is "to determine if appropriate and sufficient approaches have been attempted" (Wallace, Larsen, & Elksnin, 1992, p. 467). This allows the school to adjust instruction or make other classroom modifications and see if these changes address the problem being noted. The prereferral process includes:

- direct observation of the student in the regular classroom;
- analyzing how the student behaves and interacts verbally in different settings; and
- reviewing the methods of instruction that are used in the regular classroom.

It is also important to interview people who are familiar with the student, for these individuals can provide a wealth of information about his or her intents, adaptive behavior, how he or she processes information and approaches learning, language ability, and (in the case of students who are not native speakers of English) language dominance. Interviewers should be aware, however, that the differing culture and/or language of those being interviewed can seriously affect the nature and interpretation of information gathered. Some understanding of how individuals within that culture view disability, the educational system, and authority figures will be helpful in designing, conducting, and interpreting a culturally sensitive interview. [See Harry, 1992, for an interesting discussion of the traditional worldviews of the African American, Hispanic, Native American, and Asian cultures; she defines a group's "worldview" as its members "underlying beliefs about humanity's purpose and place in the universe, beliefs that affect codes of personal and interpersonal behavior as well as attitudes to the health, life, and death of human beings (p. 25).] It may be particularly useful to gather information from the home environment, which will help the assessment team develop an understanding of the student within his or her own culture. To facilitate this, parents need to communicate openly with the school and share their insight into their child's behaviors, attitudes, successes and needs, and, when appropriate, information about the minority culture.

Before conducting any formal testing of a student who is a non-native speaker of English, it is vital to determine the student's preferred language and to conduct a comprehensive language assessment in both English and the native language. Examiners need to be aware that it is highly inappropriate to evaluate students in English when that is not their dominant language (unless the purpose of the testing is to assess the student's English language proficiency). Translating tests from English is not an acceptable practice either; the IDEA states that tests and other evaluation materials must be provided and administered in the child's primary language or mode of communication unless it is clearly not feasible to do so [34 CFR Section 300.532(a)(1)]. If possible, the evaluator in any testing situation or interview should be familiar to the child and speak the child's language.

When tests or evaluation materials are not available in the student's native language, examiners may find it necessary to use English-language instruments. Because this is a practice fraught with the possibility of misinterpretation, examiners need to be cautious in how they administer the test and interpret results. Alterations may need to be made to the standardized procedures used to administer tests; these can include paraphrasing instructions, providing a demonstration of how test tasks are to be performed, reading test items to the student rather than having him or her read them, allowing the student to respond verbally rather than in writing, or allowing the student to use a dictionary (Wallace, Larsen, & Elksnin, 1992, p. 471). However, if any such alterations are made, it is important to recognize that standardization has been broken, limiting the usefulness and applicability of test norms. Results should be cautiously interpreted, and all alterations made to the testing procedures should be fully detailed in the report describing the student's test performance. As mentioned earlier, it is also essential that other assessment approaches be an integral part of collecting information about the student.

A full discussion of the recommended procedures for evaluating students from culturally or linguistically diverse backgrounds is beyond the scope of this News Digest, yet it is a topic of great importance. We have listed many books and articles on the subject in the bibliographies on assessment we offer separately for families and for schools.

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