



Specific Learning Disabilities Evaluation Procedures

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Evaluation for Specific Learning Disabilities

Federal, State and SRES D Guidelines and Recommendations

Recent changes in federal special education rules and regulations indicate that states may consider the use of an RtI model for identifying students with specific learning disabilities as an alternative to the discrepancy model. Language from IDEA-2004, §300.307, states, in part:

(a) A State must adopt ... criteria for determining whether a child has a specific learning disability . . . In addition, the criteria adopted by the State –

(1) Must not require the use of severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability . . .

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; . . .

Language from IDEA implementing regulation 34 CFR 300.309 *Determining the existence of a specific learning disability*, states, in part:

(a) The group described in...300.306 may determine that a child has a specific learning disability...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...

(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...when using a process based on the child's response to scientific, research-based intervention; or

(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 determined by the group to be relevant to the identification of a specific learning disability...

In September, 2008, Michigan finalized rules to address the requirement that states adopt criteria for determining specific learning disability. Language mirrors federal language in §300.8(b)(10):

R 340.1713 Specific learning disability defined; determination.

Rule 13. (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the 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. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

(2) In determining whether a student has a learning disability, the state shall:

(a) Not require the use of a severe discrepancy between intellectual ability and achievement.

(b) Permit the use of a process based on the child's response to scientific, research-based intervention.

(c) Permit the use of other alternative research-based procedures.

R 340.1713 also adds the following language that mirrors federal language in §300.309:

- (3) A determination of learning disability shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:*
- (a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.*
- (b) At least 1 person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.*

In May 2010, the Michigan Office of Special Education and Early Intervention Services, published a document outlining SLD Criteria, including the use of the following procedures:

1. Response to Scientific, Research-Based Intervention Process
2. Pattern of Strengths and Weaknesses Process
3. Severe discrepancy may never be used alone to determine a student eligible as a student with a SLD.

In addition, the MDE OSE-EIS SLD Criteria state, to determine SLD eligibility, *student data must demonstrate inadequate achievement to meet age or State-approved grade-level standards in the areas above and insufficient progress or a pattern of strengths and weaknesses. Schools and evaluation teams must follow these criteria:*

- *The finding of an academic skill deficit and insufficient progress must not be based on any one measure.*
- *The findings of an academic skill deficit and insufficient progress must be based on the school district's established objective criteria as applied to data on a student's level of performance (these are commonly referred to as 'decision rules').*
- *The IDEA clearly states that one benchmark for considering a student's extent of adequate achievement must be age or Michigan-approved grade level standards.*
- *No single benchmark or measure is sufficient under Michigan criteria; the student should evidence inadequacy on multiple measures to be determined SLD eligible.*
- *The student's level of intellect must not be used to exclude the student from SLD eligibility if the student otherwise qualifies for and requires special education programs and services.*

SRES D Recommendation

Given federal and stated guidelines to the field, Michigan districts have options for establishing eligibility for students suspected of having a specific learning disability. As part of a comprehensive evaluation it is recommended that the evaluation team:

- Use the data from a response to intervention (RtI) process in its consideration of eligibility for SLD; or when RtI is not implemented,
- Use assessment results to determine whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development. The use of a severe discrepancy between achievement

and intellectual ability may be used as a portion of the data to establish a pattern of strengths and weaknesses.

Comprehensive Evaluation

Federal commentary makes it clear that RtI is only one component of the evaluation. “Determining why a child has not responded to research-based interventions requires a comprehensive evaluation,” and cites §300.304(b) which requires that a special education evaluation include a variety of assessments.

An RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§ 300.304 and 300.305. As required in § 300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services.

71 Fed Reg. 46,648

Comprehensive assessment requires:

- **“a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent,”**
§300.304(b)(1)
- **“assess[ment] in all areas related to suspected disability, including, if appropriate, health, vision, hearing, social/emotional status; general intelligence; academic performance; communicative status; motor abilities;”**
§300.304(c)(4)
- **“assessment 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.”**
§300.304(c)(6)
- **“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;”**
§300.306(c)(1)

The evaluation for SLD eligibility is completed for two purposes, to clarify eligibility and to define the starting point for further interventions. Words in the federal regulations include “relevant”, “if appropriate”, indicating the need for evaluation planning to determine the scope of an evaluation which must include “ruling in”:

- Inadequate achievement and progress in age and/or grade level content
- Adverse impact to the point that the child requires special education and/or related services.

and “ruling out”:

- Inadequate achievement due to other disabilities/factors
- Inadequate achievement due to lack of appropriate instruction

The evaluation provides the basis for further instruction by establishing the **present level of academic achievement and functional performance (PLAAFP)**, which includes:

1. Data and other specific descriptive information on the student's current academic performance, indicating both strengths and areas of need.
2. Data and other specific descriptive information on functional skills, including behavior, communication, motor, daily living or other skills related to school and age appropriate activities.
3. Defining specific needs that are a priority for the student's learning or support in the general education program.
4. Describing the impact of the characteristics of the student's disability on his/her performance and access to the general education curriculum and setting which will lead to decisions on supports, accommodations and modifications that are necessary for the student's participation in general education instruction and activities.

Initiation of Evaluations and Timelines:

1. The school district requests parental consent to evaluate in order to determine if the student has a SLD in the achievement area(s) of concern.
 - Before signing consent to evaluate, the parent is involved, as a member of the IEP team, in review of existing evaluation data and development of an evaluation plan to acquire the necessary information to make a determination of SLD.
 - When the parent signs consent to evaluate, the parent is consenting to the evaluation plan.
 - The Review of Existing Evaluation Data and Development of an Evaluation Plan document provides guidance and all necessary information to complete this process.
2. Receipt in the SRES D special education office of a parent signed referral begins day 0 of a 30 school day timeline to complete an evaluation by a multidisciplinary evaluation team (MET) and to hold an IEP meeting for determination of SLD eligibility, unless the parent and district mutually agree to extend the timeline.

NOTE: With implementation of the on-line IEP system, the SRES D office will automatically receive notice within 24 hours of a referral being generated, so the IEP timeline will unofficially begin and diagnostic staff assigned when the referral is generated. Follow up hard copies of referral forms will prove when signatures were obtained for the official statement of referral initiation.

- One reason for extension may be that the evaluation will address important RtI assessment after the request for an evaluation.
 - Whether eligibility can be determined will depend on whether the IEP team has the necessary rule-in, rule-out, and documentation data required for SLD identification.
3. At the completion of the evaluation process, the MET provides a recommendation for or against eligibility which the IEP Team considers when making its data based determination.
 - The evaluation for SLD eligibility is completed for two purposes, to clarify eligibility and to better define the starting point for further interventions.

IDEA 2004 Regulation Determining Specific Learning Disability

§300.309 serves as the key regulation in the framework of determining SLD eligibility and defines elements of the evaluation process.

I. Establish lack of achievement relative to age or state approved grade level standards, when provided with appropriate learning experiences and instruction.

Evaluation of current data and further evaluation must establish and document:

- Inadequate achievement relative either to age level or grade level standards.
- Appropriate instruction

Federal rule specifies that eligibility evaluation must address the age appropriate instruction that the student has received and the achievement of the student related to grade level standards. Although age is one variable, the emphasis on state approved grade level standards reflects the priority that all instruction for students address grade level content standards.

§ 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.

Although the federal regulations do not define standards for “appropriate instruction”, the USDOE does note that such instruction has the following characteristics:

- Scientifically research based
- Provided by qualified personnel
- Student progress data is systematically collected and analyzed

II. Demonstrate insufficient progress to meet age or grade level standards.

Documentation that the student is not making adequate progress, subsections 2(i) and (ii) may be completed in one of two ways: (1) determine that the student has not responded, despite the provision of high quality, individualized general education instructional interventions, or (2) by demonstrating a pattern of strengths and weaknesses, given appropriate instruction.

(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;

Response to scientific, research-based intervention (RtI):

The federal regulations do not specify what research based interventions must be used, and leave the State with flexibility to determine criteria to best meet local needs. Resources such as the Florida Center for Reading Research, at: www.fcrr.org, provide a listing of current research based interventions. Guidance on research based practices may also be found in Response to Intervention: Enhancing the Learning of All Children, published by the Michigan Assoc. of Administrators of Special Education.

Michigan's Integrated Behavior and Learning Support Initiative (MiBLSi) is an initiative through the Michigan Department of Education's Office of Special Education and Early Intervention Services and helps schools create a "culture" where staff teaches academic success and behavior success. Shiawassee county schools and districts are committed to the RtI process, with many districts utilizing MiBLSi training, with the goal of increasing student reading performance and behavior performance.

The MDE Criteria Document for SLD states that there must be documentation of student data that demonstrates inadequate achievement to meet age or State-approved grade-level standards in the specific achievement areas above and insufficient progress or a pattern of strengths and weaknesses. Schools and evaluation teams must follow these criteria:

- The finding of an academic skill deficit and insufficient progress must not be based on any one measure.
- The findings of an academic skill deficit and insufficient progress must be based on the school district's established objective criteria as applied to data on a student's level of performance (these are commonly referred to as 'decision rules').
- The IDEA clearly states that one benchmark for considering a student's extent of adequate achievement must be age or Michigan-approved grade level standards.
- No single benchmark or measure is sufficient under Michigan criteria; the student should evidence inadequacy on multiple measures to be determined SLD eligible.
- The student's level of intellect must not be used to exclude the student from SLD eligibility if the student otherwise qualifies for and requires special education programs and services.

Pattern of Strengths and Weaknesses:

Determining a pattern of strengths and weaknesses is the second option described by federal regulations. This option, although not required, may be used in districts when an RtI option is not appropriate or feasible. RtI often requires that the district systematically implement the methodology over a period of time, establish district norms and determine procedures for providing Tier 2 and 3 interventions. At this time, RtI is not possible for all areas included in the SLD definition. Also, there may be students arriving in the district in need of evaluation who have not had the opportunity to be evaluated with reference to a systematic intervention process.

The pattern of strengths and weaknesses alternative is based on assessment and a review of achievement scores and performance in a variety of academic areas, with documentation of patterns of strength as compared to other areas where the student demonstrates a pattern of significant academic concerns, relative to the child's expected abilities. Assessment documents the student's performance and achievement related to Michigan standards and benchmarks either at the student's age level, or assigned grade level. As with RtI, assessment includes review of research based interventions and student achievement on State approved content.

Districts must establish local standards for implementing either an RtI process or establishing a pattern of strengths and weaknesses (PSW). Shiawassee RESD has provided an RtI structure, as defined in this manual. Parameters for assessment results are provided as a way of standardizing PSW decision making within and among school districts. Local guidelines for PSW are included in the following documents:

1. Local Guidance for Determining SLD Eligibility: Using 'patterns of strengths and weaknesses'
2. Charting Patterns of Strengths and Weaknesses

This guidance is based on the following assumptions:

- All children must be offered age appropriate instruction that is directly related to grade level content expectations.
- Even though the school may not have the capacity to fully implement a RtI process, interventions are most appropriately offered based on a three-tier model.
- Establishing a pattern of strengths and weaknesses involves classroom performance documentation along with curriculum-based, criterion-referenced and/or norm referenced academic/intellectual assessment.

Selecting Response to Intervention (RtI) or Patterns of Strengths and Weaknesses (PSW)

As noted above, decision-making on which process to use to document achievement and learning needs will depend on district policies, status of RtI implementation; staff training, specific areas of concern, length of time the child has attended district programming, and grade level interventions. The following rules are suggested in determining whether to use RtI or PSW in establishing achievement levels and documenting interventions:

Rule #1: If you have the ability to use the RtI option, this is the default approach

Decision-making on which process to use to document achievement and learning needs will depend on district policies, status of RtI implementation; staff training, specific areas of concern, length of time the child has attended district programming, and grade level interventions.

Continue Using PSW until:

- District policies support the use of the RtI as an intervention approach; and,
- District implementation reflects the SRESO Operating Foundational Principles
- RtI is fully implemented in the skill area of suspected disability
- RtI is fully implemented at the child's grade level
- Also, use this approach whenever the parent requests a special education evaluation and will not extend timelines to accommodate recommended implementation of tier interventions and timelines.

Rule #2: Use PSW if:

- RtI is not being used or is not fully implemented in the skill area of suspected disability
- RtI is not being used or is not fully implemented at the child's grade level
- The parent requests a special education evaluation and will not extend timelines to accommodate recommended implementation of tier interventions and timelines.

Once a decision has been made as to which process to use, this choice by the IEP team should be reflected on the REED Plan.

Local Guidance for Determining SLD Eligibility: Using ‘patterns of strengths and weaknesses’

The new regulations (300.309(a)(2)(ii) state: “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.” (300.304 describes assessment requirements and 300.305 describes the evaluation planning process.)

Use of the RtI process is the default option when the LEA/PSA school culture sufficiently supports the use of RtI as an intervention approach. A SLD determination process based on a pattern of strengths and weaknesses approach will continue under the following conditions:

- When a school does not have the capacity to implement RtI with fidelity at the Tier 3 intervention level.
- In learning disability areas in which the school does not have a three-tier intervention process. For example, a school may use the three-tier intervention process for reading and math, but not for writing, oral expression or listening comprehension.
- In grades in which the school does not use a three-tier intervention process. For example, a school may use the three-tier process in grades K – 6, but not in grades 7 – 12.
- The parent requests a special education evaluation and will not extend timelines to accommodate recommended implementation of tier interventions and timelines.

Implementing the “Pattern of Strengths and Weaknesses” SLD Evaluation Process

The pattern of strengths and weaknesses alternative is based on assessment and a review of achievement scores and/or performance in a variety of academic areas. It requires documentation of patterns of strength as compared to other areas in which the student demonstrates a pattern of significant academic weaknesses relative to expected abilities. Assessment provides documentation of the student’s performance and achievement related to Michigan curriculum standards and benchmarks either at the student’s age level, or assigned grade level. As with RtI, assessment includes review of research based interventions and student achievement on State approved content.

- Even though the school may not have the capacity to fully implement a RtI process, interventions are most appropriately offered based on a three-tier model RtI model.
- Establishing a pattern of strengths and weaknesses involves classroom performance documentation along with curriculum-based, criterion-referenced and/or norm referenced academic/intellectual assessment.
- Use assessment results to determine whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development. The use of a severe discrepancy between achievement and intellectual ability may be used as a portion of the data to establish a pattern of strengths and weaknesses.

1. Definitions:

- Performance – actual performance in the classroom, as assessed by the students in-class assessment results, grades, teacher anecdotal records and observations.
- Achievement – results on curriculum-based measurement (e.g., DIBELS), criterion-referenced assessment (e.g., Brigance), norm-referenced (e.g., Woodcock-Johnson Achievement Tests), and state (MEAP) assessments.
- Intellectual Development – the student’s cognitive and functional skills, as assessed by IQ tests, functional skill surveys, interviews and observations.

2. The rubric for deciding evidence for a ‘pattern of strengths and weaknesses’ is provided in the PSW chart, a tool for the evaluation team to use.

When using this chart, a student must have at least 4 weakness boxes checked in any achievement area, and at least one other academic area considered a strength (with at least 3 boxes checked as being a strength) and/or the intellectual/functional performance box checked as a strength to be considered eligible for special education services. The IEP team shall determine if the student’s weakness warrant special education services

3. Other notes:

- a. When determining age-based achievement and performance, the evaluator should consider whether or not the student has received appropriate instruction for those age-based skills. For example, can a student retained in second grade be compared with third grade students if that student never received third grade instruction?
- b. If the student’s weak areas are primarily in performance rather than in achievement (i.e., the student has the academic skill but does not do the work in the classroom), then the school should consider different types of interventions other than academic (e.g., motivation).
- c. Probably the best way to actually ‘catch up’ the student’s academic skills with his peers is using a Tier 3 intervention (whether delivered in general education or special education) along with continued Tier 1 instruction.
- d. If a student is placed into special education and the intent of the school is to catch the student up academically, the student’s instructional time for that area should not be reduced from what it was when the student was only receiving general education services.

Rule out of exclusionary factors

Multidisciplinary evaluation teams (MET)s are required to consider what are commonly referred to as “exclusionary” factors in determination of SLD. If any of the following conditions are the primary determinant factor, R340.1713 states that a student may not be certified as having a SLD.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

To this list, IDEA regulations from §300.306 add the following exclusionary criteria under a “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 – these are explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies.)
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency.

In May 2010, the Michigan Office of Special Education and Early Intervention Services published “Michigan Criteria for Determining the Existence of a Specific Learning Disability”. In consideration of exclusionary factors, this document states that

It must be clearly understood that a student to whom one of these factors applies might still be appropriately determined as SLD eligible. The issue is one of “primary cause” for the SLD. With the changes in SLD eligibility criteria, serious consideration of these (exclusionary) factors has become even more important.

Means of Determining Exclusionary Factors

Presence of Other Disabilities/Factors

Visual, hearing or motor disability – Ruling these areas out as the primary cause of underachievement may involve district screening results; teacher and parent input; or evaluation by a family physician, ophthalmologist, optometrist, audiologist, otolaryngologist, or neurologist, OT, PT or other evaluation staff.

Cognitive impairment – The evaluation report must include data that would allow the IEP Team to determine whether cognitive impairment was the primary cause of the underachievement and either lack of progress or pattern of weakness. This could be done by affirmatively assessing for cognitive impairment or by record review information that would be contraindicative of cognitive impairment.

Emotional disturbance – The evaluation report must include data that would allow the IEP Team to determine whether an emotional impairment is the primary cause of the student’s learning problems. Again, this could be done by affirmatively assessing for emotional impairment or by record review information that would be contraindicative of this impairment.

Cultural, environmental or economic disadvantage – The evaluation must establish the primary cause of the disability and must rule out causative factors not related to disability, such as:

- Poor school attendance or frequent school changes causing lack of appropriate instruction due to inconsistent instruction or gaps in learning. Refer to individual school attendance policy.
- Family stressors, including pressures from family situations or poverty should be eliminated as factors causing interruption or interference in learning.
- Cultural or ethnic background different from the norm or majority group should be considered both as a factor which may cause interference in approaching learning or as a factor in the perceptions of those who work with the child.

Limited English proficiency – English language learners who do not achieve commensurate with other children their age, despite research based interventions may be referred for special education evaluation and services. However, assessment must consider the child’s cultural and language differences:

- Selection must be non-discriminatory with respect to race and culture
- Administration must be in the child’s native language or in a form that will best estimate the child’s abilities.

Lack of Appropriate Instruction

Federal guidance indicates that “children should not be identified as having a disability before concluding that their performance deficits are not the result of a lack of appropriate instruction.” Although the child is not required to have any *specific* research based instruction prior to identification, the evaluation team must be able to conclude that lack of appropriate instruction is not the determinant factor in the child’s underachievement. The student may be provided with interventions either prior to the evaluation or as a part of the evaluation process.

Specific learning disability eligibility requirements specify the need for documentation of appropriate instruction in the regular education setting by qualified personnel. The regulation notes that data may describe instruction prior to, or as part of the referral process.

Examples of appropriate instruction documents:

- Chronology of student’s educational history-
 - Teacher anecdotal records
 - Grade retentions
 - Attendance
 - Grades
- General Education Curriculum
 - 5 essential components of reading – phonemic awareness, phonics knowledge, fluency, vocabulary and comprehension
 - Math – conceptual understanding, computational and procedural fluency, fact fluency and problem solving skills.
 - Written Expression – formation of letters and numbers correctly, writing words spontaneously or from dictation, and organizing words into meaningful thoughts

- District's curriculum is aligned with state standards
- Fidelity of instruction
 - 80% of students within the classroom are meeting state/district standards
 - Differentiated instruction, universal design principles
 - Multi-tiered intervention practices
 - Individual instructional practices
 - Staff training in effective instructional programs / strategies.
 - Observation of classroom instruction or the use of checklists by teachers, peers or content specialists

Diagnostic intervention during evaluation demonstrates:

- Research-based intervention- nature, frequency and duration
- Highly qualified teachers
- Results of interventions

New to the SLD regulations is the requirement to provide *data based documentation of repeated assessments of achievement*, with the following characteristics:

- *Reasonable intervals*
- *Formal assessment of student progress during instruction*
- *Provided to parents*

NOT Just the MEAP: Language regarding reasonable intervals implies that yearly MEAP assessment would not meet this criterion. Rather, the district will want to demonstrate practices that might include universal screening, curriculum based measurement, and progress monitoring, the results of which are shared periodically with the parent.

It should also be noted that, although federal regulation §300.309(b) refers specifically to reading and math, the regulations also require that the student be provided with *learning experiences and instruction appropriate for the child's age or State-approved grade level standards* in all areas being considered for SLD eligibility. Best practice would indicate that the documentation required in §300.309(b) would also apply to instruction in the other areas of eligibility.

IDEA 2004 Regulation Observation Requirement

When considering the presence of a Specific Learning Disability, the district must ensure that observations document the student's academic performance and behavior in the area(s) of difficulty.

§ 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.

During the evaluation planning process, the evaluation team and the parent must determine whether the documentation of observations will include information gained prior to the initiation of the formal evaluation or if observations will be conducted as part of the evaluation plan. Observations must occur in the regular classroom, specific to the academic performance area of concern. Exceptions to observations occurring in the regular classroom include:

- Students who are out of school due to disciplinary or health reasons
- Older students who had previous eligibility but have been out of school for an extended period of time.
- Younger students who are not yet attending K-12 programming.

Regulations specify that, given exceptional circumstances, the child must be observed in an age appropriate environment.

§ 300.311 Documentation for Specific Learning Disability Determination

§ 300.311 provides a checklist for required elements of a written report documenting the evaluation team's decision regarding eligibility of SLD.

§ 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.

Documentation must include:

1. Statement of eligibility, or lack of eligibility, for specific learning disability
2. Basis for the determination of eligibility
3. Assurance that during the determination process the district:
 - a. Collected information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, information about the child's physical condition, social or cultural background and adaptive behavior.

- b. Documented and carefully considered information obtained from a variety of sources.
 - 4. Relevant behavior noted in observations, and the relationship of the behavior to the child’s academic functioning.
 - 5. Relevant medical findings.
 - 6. Achievement measured to age expectations or state-approved grade level standards.
 - 7. Progress monitoring related to age or grade level standards.
- or
- 8. Determination of a pattern of strengths and weaknesses in performance, achievement or both, relative to age, State-approved grade level standards or intellectual development.
 - 9. Determination of exclusionary factors
 - 10. If the child participated in a process that assesses the child’s response to scientific, research-based (or, if necessary, best practice) interventions, documentation of:
 - a. Instructional strategies utilized
 - b. Student-centered data collected
 - c. Parent notification about:
 - i. State policies regarding RtI criteria- data and services requirements (Note: the SLD rule, R 340.1713, is Michigan’s policy.)
 - ii. Strategies used for increasing the student’s rate of learning
 - iii. Parent right to request an evaluation.
 - 11. Evaluation team members and parent must certify whether the report reflects the member’s conclusion.
 - a. Members in disagreement must submit a separate statement presenting dissenting conclusions.

Guidance for Applying New Criteria in Re-Evaluations

To ensure compliance with the requirements of the Individual’s with Disabilities Education Act (IDEA 2004), three-year re-evaluation teams must systematically review the implementation and appropriateness of the IEP and the student’s progress in relationship to the goals and interventions established by the IEP.

- 1. Districts will use the Review of Existing Education Data (REED) format to determine the need to conduct a comprehensive re-evaluation.
- 2. If the student is demonstrating slow progress and requires extensive support from special education, then a re-evaluation may not be indicated, and must be documented on the REED.
- 3. If a parent or team member is requesting evaluation to consider a change in eligibility, a re-evaluation consisting of a full and individual evaluation must be conducted.
- 4. A re-evaluation IEP must be held within three (3) years of the initial or last re-determination IEP meeting, but more often if conditions warrant (i.e., at the request of the student’s parent or teacher).

Considerations:

- The team must work from the premise of “First, do no harm”.
- The team must always consider the student’s ability to benefit from instruction without special education services in making re-determination decisions.

Application of Previous Criteria: The team will need to review the criteria under which the student was initially identified as a student with a specific learning disability. If, when the criteria are applied relative

to present student performance, it appears to be most beneficial to the student to continue to apply the previous criteria, then the recommendation of the team must be to apply the previous criteria.

Application of New Criteria: If, the application of the new criteria, in combination with current performance data seems to provide a more relevant and appropriate schema for defining the student's ability to benefit from instruction and the student will not lose the benefits of a free appropriate public education by the change in criteria, then the team may choose to apply the new criteria.

Guidance for Addressing Recommendations from Outside Reports

When presented with reports from outside agencies that pose a diagnosis of a specific learning disability, there are steps the team may consider to ensure that decisions of the school are consistent with legal requirements and educationally relevant. There may be situations in which the recommendations from outside reports may be clinically meaningful but not relevant to schools. Definitions of specific learning disability in clinical settings are in accordance with diagnostic criteria that adhere to medical models. Schools must adhere to definitions of learning disability from Federal and State rules. Educational criteria of disability require extensive documentation of classroom performance. It is entirely possible for an individual to have characteristics of a handicapping condition but not be eligible for special education because the student is able to benefit from instruction in general education without special education services, supports, modifications or programs.

Teams must consider the information and recommendations from the outside report. This does not mean that the team must accept all recommendations as directions for their actions. The team has the responsibility to review the information relative to State and Federal rules, County guidelines, local district procedures, and within the context of the multiple information sources that are integral to the determination of a specific learning disability. The team may take the following steps to address recommendations from outside agencies.

- Schedule a meeting with school staff to review the information in the report.
- Seek information from existing school records and current classroom performance data.
- Review student progress toward State standards using state and local assessments.
- Obtain a report from the teacher on student performance.
- Request input from the parent.
- Determine the additional tests and evaluation components the team will need to complete the comprehensive assessment of the student.
- Conduct at least one classroom observation by a member of the team.
- Locate or collect repeated measures of student performance with results provided to parents.
- Apply County Guidance and local procedures to the analysis of all information.
- Answer the question, "Is the student able to benefit from instruction without special education?"
- The multi-disciplinary team will then offer the appropriate recommendation as to whether or not the student is eligible for special education.
- The IEP team will determine the eligibility and the IEP team will determine the goals, modifications, supports, services, and programs that are most appropriate to meeting the needs of the student.

Suggested Guidelines for Determining Strengths and Weakness

Assessment Type	Strength	Weakness
Progress monitoring	Meeting / exceeding aimline	Falling below aimline for at least 4 consecutive weeks on most recent tests.
CBM (Benchmark) screening	At 'benchmark' level or above grade-level median score if using local norms.	At 'at-risk' level or below 10%ile if using local norms.
Criterion-referenced assessment	Skills at or above grade level	Skills well below grade level
MEAP	Level 1 or Level 2	Level 3 or Level 4
Norm-referenced tests (Achievement, IQ)	Percentile rank \geq 30	Percentile rank $<$ 10
Curriculum assessments	Scores \geq 80%	Scores \leq 70%
Grades	A / B or 'meets / exceeds' expectations	D / E or 'does not meet' expectations
Teacher report	Based upon professional judgment of teacher in comparing student to others in classroom.	Based upon professional judgment of teacher in comparing student to others in classroom.
Observations – Academic	Student demonstrates average understanding of academic content in comparison to other students in classroom.	Student demonstrates that s/he does not understand the academic content.
Observations/Interviews/Scales - Functional	Student demonstrates typical functional skills in comparison to other students the same age or in the same grade. Percentile rank on scale \geq 30.	Most of the student's functional skills appear to be well below average in comparison to other students the same age or in the same grade. Percentile rank on scale \leq 9.

Examples of Published Assessments

(This is not a complete list)

Assessment Type	Examples:
Progress monitoring, Benchmark screening	DIBELS, AIMSweb, Yearly Progress Pro, EdCheckup, Easy CBM, DRA
Criterion-referenced assessments	Brigance
Norm-referenced achievement tests	WRMT-2/NU, Key Math 3, KTEA-2, WIAT-3, WJ-3/NU, DAB-3, OWLS, GORT-4, TERA-3, TEMA-3, TOWL-4, TOLD:P-4, TOLD:I-4, TWS-4, CASL, CELF-4
IQ tests	WISC-4, WAIS-4, KAIT-2, CTONI-2, KBIT-2, WASI, DAS-2, UNIT, WJ-3, WISC-NV, WPPSI,
Curriculum assessments aligned with CE's and classroom instruction	District assessments, Classroom assessments
Adaptive/functional behavior scales	Adaptive Behavior Evaluation Scale-2, Adaptive Behavior Inventory, AAMR Adaptive Behavior Scale-School, Vineland Adaptive Behavior Scales-2

