

# **Specific Learning Disabilities: Criteria for Identification**

**October 2012**



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# I. Purpose and Acknowledgements

This document is a revision of the August 2010 MAISD document,  
*Specific Learning Disabilities: Criteria for Identification.*

The purpose of this document is to provide criteria for the determination of eligibility for students exhibiting Specific Learning Disabilities in the Muskegon Area Intermediate School District (MAISD). These criteria are based on the Michigan Revised Administrative Rules for Special Education (March 2012) and the Individuals with Disabilities Education Act (IDEA 2004).

This document serves to clarify eligibility requirements in order to assure 1) consistency among school districts within the county, 2) compliance with current federal regulations and state administrative rules, and 3) the implementation of current “best” practices.

## Shift Away from the Discrepancy Model

A major shift in the reauthorization of IDEA in 2004 is movement away from the traditional model of identifying Specific Learning Disabilities (SLD) through an IQ-Achievement discrepancy known as “severe discrepancy.” Since its introduction in 1977, the reliability and validity of the severe discrepancy model in determining SLD eligibility has been challenged through extensive research. Concerns about use of this model include reliance on waiting for a student to “fail” prior to initiating an evaluation and the lack of information provided by this measure that is needed to guide instruction and intervention.

According to the Michigan Department of Education’s (MDE) Michigan Criteria for Determining the Existence of a Specific Learning Disability, May 2010:

*The continued use of severe discrepancy is discouraged. Severe discrepancy must never be used exclusively to determine the existence of a SLD. Severe discrepancy must not be used within a response to scientific, research-based intervention process.*

**For the purposes of determining eligibility for SLD in schools within the MAISD, the severe discrepancy model must not be used.**

The MAISD would like to thank the psychologists, staff and special education administrators from our constituent districts for their contributions in making this document accurate and useful.

### Eastern Service Unit:

Fruitport Community Schools  
Oakridge Public Schools  
Orchard View Schools  
Ravenna Public Schools

### North Service Unit

Holton Public Schools  
Montague Area Public Schools  
North Muskegon Public Schools  
Reeths-Puffer Schools  
Whitehall District Schools

### Mona Shores Public Schools

Muskegon Public Schools  
Muskegon Covenant Academy  
Muskegon Heights Public School Academy  
Muskegon Montessori Academy for  
Environmental Change  
Three Oaks Public School Academy  
Timberland Charter Academy

## II. Core Instruction

- ▶ Students must be provided appropriate instruction in the core curriculum before eligibility for special education services will be considered. ◀

### A. Critical Components of Appropriate Core Instruction

#### 1. Curriculum and Curriculum Materials

It is critical for school districts to be able to provide evidence that board-approved core curriculum and corresponding instruction, both core and supplemental, are scientifically-based (Elementary and Secondary Education Act [ESEA] of 2001). “Scientifically-based” is a term used to describe practices and programs that have been thoroughly and rigorously reviewed to determine whether they produce positive educational results in a predictable manner. This determination is made based on objective, external validation.

**Reading:** scientifically-based reading programs include the essential components of reading instruction (phonemic awareness, phonics, fluency, vocabulary, and comprehension), as defined in the ESEA.

**Math:** scientifically-based math programs include the essential components of math instruction (conceptual understanding, procedural fluency, strategic competence, adaptive reasoning, and productive response), as recommended by the National Research Council (2001).

**Writing:** instruction in writing should emphasize the learning of a wide range of writing strategies and use of different writing process elements to communicate with different audiences for a variety of purposes. Additionally, students should learn how to apply knowledge of language structure, language conventions (e.g., spelling and punctuation), media techniques, figurative language, and genre to create, critique, and discuss print and non-print texts (National Council of Teachers of English).

**Oral expression and listening comprehension:** the Common Core State Standards emphasize the teaching of skills that help students participate effectively in conversation and collaboration with diverse partners. Students should be able to ask and answer questions, paraphrase, summarize, present information clearly, evaluate a speaker’s point of view, create messages with digital media and visual displays of data, and adapt speech and presentations to a variety of contexts. Evidence that curricula and supplemental instruction are scientifically-based can be obtained from a variety of sources. The strongest evidence includes such sources as positive curriculum outcomes published in peer-reviewed journals, favorable reviews by panels of appropriately credentialed experts, and/or independent reviews that verify alignment of curriculum with the Common Core State Standards and Michigan Standards.

#### 2. Teacher Qualifications and Implementation Fidelity/Integrity

Teachers are required to meet ESEA highly qualified standards; it is also critical that they are trained to use the recommended curriculum materials with fidelity. Fidelity or integrity of implementation is the delivery of instruction in the way in which it was designed to be delivered. To assess the integrity with which the curriculum has been implemented, the five items listed below are recommended as ongoing focus points for the district leadership team, district school improvement process, curriculum review and adoption process, professional development plans, and school and classroom walk-throughs:

- a. The length of time the curriculum has been in place in the school.
- b. The amount of training the teachers have received in using the curriculum for primary and supplemental instruction.
- c. The degree to which the teachers are using the prescribed instructional procedures and materials associated with the core curriculum and supplemental instruction.
- d. The degree to which the teachers are using effective instruction methodologies and techniques (e.g., differentiation, formative assessment, scaffolding, frequent opportunities to respond with corrective feedback). All students receive core instruction, some students receive targeted strategic instruction, and a few students receive targeted intensive

instruction. Students should be provided with the appropriate intensity of instruction to meet their individual learning needs.

- e. The length of time the student was taught the curriculum.

### 3. Assessment of Student Achievement

To assess the impact of instruction on outcomes for all students, it is important that data such as the following be examined:

- a. Universal screening/benchmark data on all students collected multiple times during the academic year;
- b. Progress monitoring data collected in regular intervals (weekly/monthly) for individuals or groups of students receiving strategic interventions with formative assessment. Students receiving intensive interventions are assessed weekly. The school then uses the assessment data to evaluate and modify instructional programs accordingly;
- c. Local district-wide assessment based on national norms;
- d. State assessment data.

**Note that 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 is not considered to be an evaluation for eligibility for special education and related services. Screening data collected from Tier 1 activities and Tier 2 and 3 assessment data (e.g., curriculum-based evaluation) and progress monitoring data documenting student response to intervention neither require nor trigger procedural safeguards associated with comprehensive evaluations. See §300.302 in Appendix A for more information.

See pages 5 - 6 for guidelines that may be used to assist in determining appropriate instruction.

## Guidelines for Considering Appropriate Instruction

What/Who/How	Elements of Instruction	Evidence of Effectiveness
What	Documented curriculum	School district has a written curriculum that is aligned with State content expectations.
What	Core/intervention curriculum materials	Materials systematically teach and review skills and have scientific- research evidence of effectiveness.
What	Reading	Instruction emphasizes the following big ideas: phonemic awareness, phonics, fluency, vocabulary and comprehension.
What	Math	Instruction emphasizes the following big ideas: conceptual understanding, computational and procedural fluency, fact fluency and problem solving skills.
What	Writing	Instruction emphasizes the following areas: basic mechanics and conventions, the content aspects of writing that convey meaning, and higher-level cognitive processes involved in planning and revising.
What	Oral Expression	Instruction emphasizes the use of syntax, semantics and morphology.
What	Listening Comprehension	Instruction emphasizes the understanding of syntax, semantics and morphology.
Who	Teacher Qualifications	Teacher meets ESEA highly qualified standards and has been trained to use the curriculum materials.
How	Instructional techniques/strategies	When teaching new skills, teacher uses explicit instructional techniques.
How	Differentiated/tiered instruction	Students are provided with the appropriate intensity of instruction to meet their individual needs. All students receive core instruction, some students receive targeted, strategic instruction, a few students receive targeted intensive instruction.
How	Fidelity of instructional implementation	There is documentation that the core and intervention programs are implemented with fidelity.
How	Assessments / Use of data	School screens all students three times a year to assess their progress. Students receiving strategic interventions are assessed weekly/monthly with formative assessments (e.g., progress monitoring tests) and students receiving intensive interventions (through general or special education) are assessed weekly. Schools regularly use assessment data to evaluate their instructional programs and modify accordingly.

Other evidence of Effectiveness – At least 80% of all the school district's students within a grade are meeting district or state standards after being instructed with the district's core instructional program. At least 80% of students using an intervention within the school have showed improved progress. Observations of interventions during the evaluation period indicate that they are being implemented with fidelity.

## Guidelines for Considering Explicit Instruction and Systematic Curriculum

(from Pennsylvania Department of Education; Bureau of Special Education)

<b><u>Instructional</u> Characteristic</b>	<b>Evaluation Question</b>	<b>Well Met</b>	<b>Somewhat Met</b>	<b>Not Met</b>
Clear Instructional Targets	Are the purpose and outcomes of instruction clearly evident in the lesson plans?			
Clear Purpose For Learning	Does the student understand the purpose for learning the skills and strategies taught?			
Clear and Understandable Directions and Explanations	Are directions clear, straightforward, unequivocal without vagueness, need for implication, or ambiguity?			
Adequate Modeling	Are the skills and strategies included in instruction clearly demonstrated for the student?			
Guided Practice and Corrective Feedback	Do students have sufficient opportunities to practice new skills and strategies with corrective instruction offered as necessary?			
Instructionally Embedded Assessments	Are instructionally embedded assessments used to monitor student's mastery of skills and strategies and to pace student's learning?			
Summative Assessments	Are summative assessments used to monitor student's retention and reinforcement of skills and strategies following instruction?			

<b><u>Curriculum</u> Characteristic</b>	<b>Evaluation Question</b>	<b>Well Met</b>	<b>Somewhat Met</b>	<b>Not Met</b>
Instructional Scope	Does the curriculum include all key instructional content necessary to achieve the goals of instruction?			
Instructional Sequence	Is the curriculum sequenced in a logical order that builds skills from prior skills and extends skills in order to move students to independent mastery?			
Consistent Instructional Format	Are the instructional strategies consistent from lesson to lesson?			
Addresses Multimodality Instruction	Are a variety of instructional methods used to provide the student with auditory, visual, and hands-on learning activities?			

### III. Requirements for All Special Education Evaluations

When determining eligibility for special education services, analysis of data gained from students' responses to scientifically-based instruction and intervention (for example, multi-tiered systems of support [MTSS] or response to intervention [RTI]), represents a significant shift in practices used to identify students with disabilities. The focus shifts away from identifying and diagnosing characteristics that are internal to the student and moves to consideration of student achievement data in order to identify effective instruction and interventions.

#### A. Federal Regulations for Full and Individual Evaluation

Comprehensive evaluation requires:

- §300.304(b)(1) **“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(c)(4) **that the “child is assessed 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)(6) **“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”
- §300.306(c)(1) **“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”

► See Appendix A for IDEA regulations related to all evaluations and those specifically related to SLD.

#### B. Determinant Factors—All Disabilities

When determining eligibility for special education services, regardless of the type of disability suspected, the IEP team must apply the Special Rule for Eligibility Determination prescribed at 34 CFR 300.306(b), which states:

(b) A child may 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

**A student is *not eligible* for special education and related services if their lack of achievement is due *primarily* to either of the two reasons listed below:**

##### **1. Lack of appropriate instruction in reading and math, including the essential components of reading and math instruction.**

Although federal regulations do not define standards for “appropriate instruction,” the U.S. Department of Education notes that to rule out lack of appropriate instruction in reading and math, three key factors are examined: a) the degree to which the curriculum is scientifically-based, b) the degree to which the curriculum is implemented with integrity and provided by qualified personnel, and c) the impact of instruction on student outcomes as documented by systematically collected and analyzed student progress data.

Appropriate instruction, including scientifically research-based interventions, is provided at the student’s instructional level, and is informed by ongoing progress monitoring. Two key factors must be identified in terms of appropriate instruction:

- 1) the student’s availability for instruction and interventions
- 2) the quality of instruction provided

With regard to (1) availability for instruction and interventions, the evaluation team needs to determine whether there has been significant instructional time lost due to absenteeism, disciplinary sanctions, tardiness and/or frequent school transfers. It is recommended that attendance on 90% or more days of instruction means that the student was available for instruction. If attendance is below the 90% guideline, the evaluation team should use professional judgment in determining availability for instruction, looking at such factors as history, length, and patterns of absences, and the involvement of any outside agencies, if any.

With regard to (2) quality of instruction and interventions provided, there are a number of research-based factors associated with student proficiency, including active student engagement, significant amount of academic learning time, direct and explicit instruction, guided practice, practice to automaticity and integration.

## **2. Limited English Proficiency (LEP)**

It is important to understand that students with LEP may also be identified as having a disability and, if so, must receive services to address both aspects of their learning needs. However, students should not be identified as eligible for special education when the **primary** cause for their academic difficulties is LEP. Federal law requires that all students must be screened to determine if their primary home language is other than English. If so, the student's acquisition of and proficiency in the English language (listening, speaking, reading and writing) must be assessed and considered by school personnel.

To rule out LEP as a determinant factor for an individual student, it is important that the IEP team has evidence that the core curriculum is effective for most of the subgroup of students identified as LEP. Selection of assessments must be non-discriminatory with respect to race and culture as these assessments must be in the child's native language or in a form that will best estimate the child's abilities. To that end, the team examines data such as the following:

- a. State assessment data
- b. Local district-wide assessment data based on national norms.
- c. Local universal screening/benchmark data collected multiple times during the academic year.
- d. Progress monitoring data collected in regular intervals for individual or groups of students.

## **C. Review and Use of Existing Evaluation Data**

A requirement for all special education evaluations, regardless of the suspected disability, is the review of existing evaluation data (REED). The documentation of existing evaluation data is a required part of the full and individual evaluation. All data collected must be reported on the REED form. The term "if any" allows the IEP team, which includes the student's parents, the discretion to determine if further data are required or if the data already collected as a part of a multi-tiered process are sufficient to determine special education eligibility and entitlement to services.

- (a) *Review of existing evaluation data.* As part of an initial 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) Observation 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 [emphasis added], are needed to determine—
    - (i) (A) Whether the child is a child with a disability, and the educational needs of the child; or  
(B) In the 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.

## IV. Additional Procedures for Determining the Existence of a Specific Learning Disability

### A. Specific Documentation for Eligibility Determination must include the following:

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. Documented information from a variety of sources, including a review of the student's school file, the student's present level of academic performance, aptitude and achievement tests, parent input and teacher recommendations, educationally relevant medical information, and classroom observation relative to area of suspected disability.
  - 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 as measured by formative assessments as they compare to age expectations, state-approved grade level standards or when common core state standards are applicable.
7. Determination of exclusionary factors.
8. 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 collection
  - c. Parent notification about:
    - i. State policies regarding MTSS criteria-data and services requirements (Note: the SLD rule, R340.1713 is Michigan's policy and Michigan's Response to Intervention: Multi-Tiered Systems of Support document).
    - ii. Strategies used for increasing the student's rate of learning
    - iii. Parent right to request an evaluation.
9. If the child has not participated in a process that assesses the child's response to scientific, research-based interventions, then the determination of a pattern of strengths and weaknesses in performance, achievement or both, relative to age, state-approved grade level standards, common core state standards or intellectual development, must be used to establish eligibility.
10. Evaluation team members and parent must certify whether the report reflects the member's conclusion. Members in disagreement must submit a separate statement presenting dissenting conclusions.

### B. Guidance for Determining SLD Eligibility Using Multi-Tiered Systems of Support (MTSS)

Multi-tiered System of Supports (MTSS) is a term used to describe an evidence-based model of instruction that uses data-based problem-solving to integrate academic and behavioral instruction and intervention. **Note:** for the purposes of this document, the broader term MTSS, which includes RtI, will be used to describe tiered supports for students.

MTSS involves delivering integrated instruction and intervention to students in varying intensities (multiple tiers) based on student need. "Need-driven" decision-making seeks to ensure that district resources reach the appropriate students (schools) at the appropriate levels to accelerate the performance of ALL students to achieve and/or exceed proficiency.

The purpose of this section is to provide MAISD districts and schools with a framework for using MTSS to determine a student's eligibility for and entitlement to special education services. The purpose of this document is also to lay the foundation for the optional use of MTSS as part of the

evaluation procedures to determine special education eligibility for all students suspected of having a Specific Learning Disability.

It is imperative to put this document, and the identification of students who qualify for special education services, in the larger context of MTSS. MTSS is not only a process that is used to make eligibility and entitlement decisions. Even more importantly, MTSS is about creating learning environments that are effective and lead to improved outcomes for all students. Consequently, the MTSS framework outlined in this document is intended to have significant impact on instruction and assessment practices in MAISD schools.

A district should determine when a classroom, grade level, building, or district-wide MTSS is fully implemented. A sample implementation checklist/rubric worksheet can be viewed at [Center on Response to Intervention at American Institutes for Research](#).

When using a student's response to intervention as a basis for special education eligibility and entitlement decisions, the following questions are asked:

- ▶ What is the discrepancy of the student's performance with the peer group and/or standard?
- ▶ What is the student's educational progress as measured by rate of improvement?
- ▶ What are the instructional needs of the student?

There are many advantages to using data collected as part of an MTSS process to support eligibility decisions over more traditional models of disability identification (e.g., use of an IQ/achievement discrepancy), including:

- Student needs are addressed proactively. The monitoring of student progress is early and frequent, which allows for scientifically-based instruction and intervention to be delivered as soon as possible.
- The delivery of scientific, research-based instruction and intervention prior to finding a student eligible to receive special education services reduces the number of students who are identified as having a disability due to a mismatch between the curriculum and the student's needs.
- Staff members spend their time focusing on finding what works for students and the conditions under which they are most successful instead of attempting to identify problems that are internal to the student and presumed to be stable across environments and across time.
- Eligibility determination is based on educational need. Those with the greatest need are given the most support.
- The MTSS process continues once students receive special education supports, and the school team continues to work to find instruction and interventions that result in the greatest progress for the student. The team continues to make regular and ongoing instructional decisions based on data, including when special education resources may no longer be necessary.

When using MTSS to make eligibility and entitlement decisions, a variety of sources of information, including screening, progress monitoring, and diagnostic/prescriptive assessment data, can provide the evidence necessary for a) determining a student's performance discrepancy from the peer group, b) establishing a pattern of educational progress over time, and c) identifying the educational circumstances under which the student performs his or her best. This document provides MAISD schools and districts with detailed information on the process for the collection of student performance data in an MTSS framework (Section IV) and delineates how those data can be used to assist with eligibility and entitlement decisions (Section III).

Additional resources for supporting MTSS systems are available from the Muskegon Area ISD Instructional Services Department.

- ▶ See Appendices B and C for information on progress monitoring and gap analysis.

The IDEA 2004 regulations at §§300.301 and 300.304 through 300.306 delineate procedures for conducting an evaluation to determine eligibility for special education and related services. The regulations at §§300.307 through 300.311 prescribe additional procedures for determining whether students qualify for special education services under the category of SLD. These additional requirements include:

- Determining if the student is achieving adequately,
- Consideration of data related to appropriate instruction and repeated assessments to ensure that underachievement is not due to lack of appropriate instruction in reading or math,
- Observation of the student, and
- Specific documentation requirements for the eligibility determination.

This information, combined with the information described in the preceding Section III-B (Determinant Factors), is sufficient for determining whether a student has a SLD requiring special education or related services. Although the federal definition of SLD at §300.8(c) makes reference to “a disorder in one or more of the basic psychological processes,” the regulations at §§300.307 through 300.311 (Additional Procedures for Identifying Children with Specific Learning Disabilities) do not require assessment of psychological or cognitive processing, nor do they require assessment of intellectual ability.

### 1. Adequate Achievement

As set forth in §300.309(a), a “group of qualified professionals” and the parent may determine that a student has a SLD 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 Skills.
- (v) Reading Fluency Skills.
- (vi) Reading Comprehension.
- (vii) Mathematics Calculation.
- (viii) Mathematics Problem Solving.

**and**

- (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 [emphasis added];

**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.

- See Appendix D for descriptions of the 8 SLD areas.

Given the regulations cited above, when determining the existence of a SLD, consider:

- That students who are included for consideration of a SLD are those who do not achieve adequately for their age or do not meet State-approved grade-level standards.
- That only those students whose achievement falls significantly below (as defined locally) an age or grade-level state standard are eligible for consideration.
- That the eight areas listed above are the only academic areas inclusive of SLD. There are no other areas that are permitted in considering SLD. The requirement is that student

performance data focus on achievement, not processing deficits.

- The parameters for establishing an academic skill deficit suggested in the Michigan Criteria for Determining the Existence of a Learning Disability; described below:

### **Suggested Parameters for Establishing an Academic Deficit**

These are not intended to be absolute cut points and the convergence of multiple sources of data needs to be considered by the evaluation team. The decision as to what constitutes an academic skill deficit is a complex decision and will require a degree of professional judgment. The decision must be based on valid and reliable data.

- At least one measure needs to reflect a comparison to Michigan (or national) benchmarks or norms in order to provide some consistency across schools and districts in the interpretation of an academic skill deficit.
- Curriculum-Based Measurement (CBM) results that include at least 6 data points that are at or below the 9<sup>th</sup> percentile may be considered significant.
- Criterion Reference Measures (CRMs) compare a student's performance to the goals of the curriculum. These may be provided within program materials or set by teachers. An academic skill deficit could be indicated by results that are at or below 50% of the grade level expectancy. Thus, grade level criteria must be determined for CRMs. (For example, if the expectation is that a student answer grade level comprehension questions with 80% accuracy, and a student's accuracy through repeated trials is at 40% or less, than a deficit might be indicated.)
- When a measure is utilized that provides a percentile rank, such as an individually administered norm referenced test, a score at or below the 9<sup>th</sup> percentile may represent an academic deficit.

► See Appendix E for the full text of the Michigan Criteria for Determining the Existence of a Learning Disability.

## **2. Appropriate Instruction and Repeated Assessments**

The federal regulations at §300.309 require the following:

- 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—
- 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
- 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.

The explicit requirement for appropriate instruction and repeated assessment stated above is that the school/district must have some type of student data collection system that shows how the student has responded to appropriate instruction as measured by repeated assessments of the student's response to instruction. The responsibility rests with the school district to ensure that low achievement is not a function of curriculum mismatch and/or lack of effective instruction.

The emphasis of this entire section requires a focus on student achievement within the context of age and/or grade-level standards, and not on within-child deficits. This is a requirement that applies to all evaluations of students thought to have a SLD. Low achievement is not evidence of a SLD if appropriate curriculum choice and the delivery of effective instruction cannot be demonstrated. If it is determined that there has not been a sufficient provision of standards-aligned curriculum and instruction, these features should be put in place for the student in order to determine whether the features will result in improved academic achievement.

a. Data demonstrating the student was provided appropriate instruction from qualified personnel: IEP teams considering students for SLD eligibility must document the school's efforts to provide the student with scientifically-based instruction in the essential components of reading and mathematics. It is important that the team documents the extent to which the student has been provided with an appropriate standards-based core instructional program, delivered by personnel whose credentials demonstrate that they meet the highly qualified requirements of the ESEA, prior to being referred for evaluation. To meet this requirement, the team should provide the same evidence discussed previously under Section II Determinant Factors – All Disabilities of this section.

Procedures that districts may consider to assess the provision of appropriate instruction also include:

- The principal's observation of teachers' delivery of instruction through routine classroom visits and more formal observations conducted on a regular basis during the instructional period for the targeted content/subject area,
  - Checklists of integrity of instruction completed by teachers as self-check measures,
  - Checklists of integrity of instruction completed among teachers as peer-check measures, and
  - Checklists completed by content specialists or curriculum supervisors working with classroom teachers.
- According to research, 80% of students in a school will respond to a high-quality core curriculum and will make adequate progress throughout the school year. If less than 80% of students within a grade level are meeting district or state standards after receiving instruction in the core instructional program, a multidisciplinary evaluation team must take this into account in determining whether a student has a disability or simply has not received the quality/fidelity of instruction needed to achieve. In the context of instruction, documentation is also needed for the interventions that were provided during the early intervening period. It is important that the IEP team is able to ensure the following:
- Supplemental interventions used at the strategic (Tier 2) and intensive (Tier 3) levels of intervention are supported by scientific research, are based on the problem solving approach, and are appropriate for the group of students receiving the intervention.
  - Supplemental interventions have yielded successful responses and outcomes from other students receiving the intervention.
  - Staff implementing the supplemental interventions were adequately trained and demonstrate proficiency with the interventions.
  - The interventions were delivered with a high degree of fidelity, with sufficient intensity, and for a sufficient length of time, as evidenced by progress monitoring data (See Appendix F). Specific information about the frequency and intensity of the interventions delivered should be documented.
- According to research, at least 80% of students participating in an intervention within a school should show improved progress if the intervention is of high quality and delivered with fidelity. If less than 80% of students participating in an intervention are showing improvement, the multidisciplinary evaluation team must take this into account in determining whether a student has a disability or simply has not received the quality/fidelity of interventions needed to achieve.

b. Data-based documentation of repeated assessment of achievement: To meet this requirement, the IEP team will need to provide evidence of local universal screening/benchmark data that are collected on all students at multiple times during the academic year. Universal screening is a systematic process for the assessment of all students within a given grade, school building, or school district on critical academic skills.

Universal screening yields data to make decisions about needed enhancements in the core curriculum, instruction, and/or educational environment and about which students may need additional assessment and/or supplemental or intensive intervention and instruction beyond what is provided through core programming.

Communicating with parents and safeguarding their rights is an important part of the repeated assessment process. Accordingly, the IEP team must provide evidence that universal screening/benchmark data and progress monitoring data have been provided to the student's parents. The results of universal screening should be shared in easily understood language (parent-friendly), without jargon, and should report the student's performance data. In addition, the report should provide age- and/or grade-level expectations so that parents have a way to compare their child's performance.

### **3. Observation**

For any student under consideration as having a SLD, the federal regulations at §300.310 require the following:

- 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.

The regulations also require that the IEP team must either use information from an observation in routine classroom instruction and monitoring of the student's performance that was done prior to referral for a special education evaluation (and therefore does not require parental consent) or the team must have at least one team member conduct an observation after the student has been referred for an evaluation and parental consent is obtained.

This requirement makes clear that classroom observations conducted during the early intervening period are sufficient to comply with the provision and should be documented by the IEP team. However, if a classroom observation has not been conducted prior to written consent for evaluation, the team must conduct an observation in the general education classroom and provide appropriate documentation.

The focus of the observation must be tied directly to relevant academic performance in one or more of the eight areas listed previously under "Adequate Achievement" and the functional relationship of behavior to that academic performance.

Best practice suggests that structured classroom-based observations (*i.e.*, utilizing a pre-established objective format and/or checklist) should occur prior to written consent for evaluation. The observation(s) should assist in the documentation that appropriate instruction was provided and also serve to inform the decisions about recommended instructional changes. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

### **4. Specific documentation requirements for the eligibility determination using an MTSS framework (see section III A).**

In an MTSS framework, to be determined eligible for special education, students must exhibit significant deficiencies in their rate of learning based on progress monitoring data. A student's progress is compared to his or her performance during baseline data collection, to the normative rate of progress displayed by peers, and to the rate of learning required to close his or her performance gap with typical peers. Accordingly, the IEP team reviews:

- ▶ Results of progress monitoring data that are directly linked to the area of deficit and are completed over a period of time to assure reliability.
- ▶ Evidence that interventions provided to address the skill deficit were scientifically- or evidence-based and of sufficient intensity.

- ▶ Evidence that interventions were delivered with integrity (e.g., documentation of observations, interview checklists, or self-evaluation checklists that monitor integrity of intervention implementation).
- ▶ Evidence that interventions were implemented for a sufficient amount of time to promote a positive rate of improvement in the student's skill level (e.g., progress monitoring graphs). The length of time that is appropriate for students to receive early intervening services at Tiers 2 and 3 before referral for special education evaluation will vary depending on the following factors:
  - The student's initial or baseline performance level,
  - The student's prior history of effective interventions,
  - The stability of the student in the current school and instructional environment, and
  - The intensity of the interventions.

Data review, coupled with professional judgment, will support decision-making for the determination of number, duration and intensity of interventions provided to students.

- ▶ Evidence that an intervention has been identified that result in a positive rate of improvement (e.g., progress monitoring graphs) and/or evidence that changes were made to an intervention when data suggested the student was not making adequate progress (e.g., Instructional Planning Forms, progress monitoring graphs).

***5. An MTSS framework for determining eligibility for SLD may never be used to delay or deny the identification process.***

An OSEP letter distributed in January 2011 to state directors of special education states that "States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an MTSS strategy."

- ▶ See Appendix F for the full text of the OSEP letter.

The following charts on pages 17-19 are to be used to document the fidelity or integrity of the instructional interventions provided to students.

# Fidelity Checklist for Transitioning Among Tiers of Intervention

## Fidelity Checklist Tier 1

Student: \_\_\_\_\_ Teacher: \_\_\_\_\_

Grade: \_\_\_\_\_ Age: \_\_\_\_\_ School: \_\_\_\_\_

Scientific, research-based core curriculum, instruction and behavioral supports in general education have been implemented with fidelity for this student.

Yes       No      **Evidence of Quality Tier 1 Core Level Standards-Based Learning**

The student is placed in a general education classroom where a highly qualified teacher is providing appropriate curriculum and instructional strategies.

**Describe current practices in regard to fidelity:**

Yes       No      **Fidelity of Instruction**

The curriculum was implemented with fidelity for this student.

**Describe current practices in regard to fidelity:**

Yes       No      **Differentiation of Instruction**

Instruction is differentiated to include appropriate accommodations and scaffolds to meet the needs of the student.

**Describe current practices in regard to fidelity:**

Yes       No      **Repeated Measures of Student Performance**

Data for universal benchmark screening was collected at least three times a year and compared to grade-level peers in the district. The student scores in the lowest 25<sup>th</sup> percentile of his/her peer group based on this data.

**Describe current practices in regard to fidelity:**

**Administrator Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Fidelity Checklist for Transitioning Among Tiers of Intervention

## Fidelity Checklist Tier 2

Student: \_\_\_\_\_ Teacher: \_\_\_\_\_

Grade: \_\_\_\_\_ Age: \_\_\_\_\_ School: \_\_\_\_\_

Tier 2 targeted supplementary instruction was provided to this student as planned.

Yes  No **Evidence of Tier 2 Strategic Needs-Based Learning**

The student has received targeted scientific, research-based interventions for 4-9 weeks.

**Describe current practices in regard to fidelity:**

Yes  No **Fidelity of Intervention**

The intervention(s) was (were) implemented with fidelity for this student (including core curriculum, supplemental curriculum, and strategies).

**Describe current practices in regard to fidelity:**

Yes  No **Progress Monitoring Data**

The student's progress was monitored with repeated measures of the student's performance, which was reported to parents. Assessment data was compared to peers, and the student's scores are below the 15<sup>th</sup> percentile and/or less than 67% of benchmark proficiency.

**Describe current practices in regard to fidelity:**

Yes  No **Data-Based Decision Making**

The student's individualized or small-group interventions were reviewed, revised, and/or discontinued based on the student's performance and progress with 2 – 5 data points; performance is less than the 25<sup>th</sup> percentile.

**Describe current practices in regard to fidelity:**

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Fidelity Checklist for Transitioning Among Tiers of Intervention

## Fidelity Checklist Tier 3

Student: \_\_\_\_\_ Teacher: \_\_\_\_\_

Grade: \_\_\_\_\_ Age: \_\_\_\_\_ School: \_\_\_\_\_

Tier 3 direct, targeted, and intensive instruction was provided to the student with fidelity.

Yes  No **Evidence of Quality Tier 3 Intensive Needs-Based Learning**

The student has received targeted intensive, scientific, research-based interventions for 12-18 weeks.

**Describe current practices in regard to fidelity:**

Yes  No **Fidelity of Intervention**

The intervention(s) was (were) implemented with fidelity for this student (including core curriculum, supplemental curriculum, and strategies).

**Describe current practices in regard to fidelity:**

Yes  No **Progress Monitoring Data**

The student's progress was monitored with repeated measures of the student's performance, which was reported to parents. Assessment data was compared to peers, and the student's scores are below the 10<sup>th</sup> percentile or in the lowest 67% of the grade level peer group.

**Describe current practices in regard to fidelity:**

Yes  No **Data-Based Decision Making**

The student's individualized or small-group interventions were reviewed, revised, and/or discontinued based on the student's performance and progress with at least 12 weekly probes.

**Describe current practices in regard to fidelity:**

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## C. Guidance for Determining SLD Eligibility Using Patterns of Strengths and Weaknesses

The IDEA 2004 regulations at §§300.301 and 300.304 through 300.306 delineate procedures for conducting an evaluation to determine eligibility for special education and related services. The regulations at §§300.307 through 300.311 prescribe additional procedures for determining whether students qualify for special education services under the category of SLD. These additional requirements include:

- Determining if the student is achieving adequately,
  - Consideration of data related to appropriate instruction and repeated assessments to ensure that underachievement is not due to lack of appropriate instruction in reading or math,
  - Observation of the student, and
  - Specific documentation requirements for the eligibility determination.
1. The new regulations (300.309(a)(2)(ii)) state: “The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, related to age, state approved grade-level standards, common core state 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.)
  2. Definitions:
    - Performance – actual performance in the classroom, as assessed by the students in-class assessment results, grades, teacher anecdotes and observations.
    - Achievement results on curriculum-based measurement (e.g. DIBELS, AIMSWeb), criterion-referenced assessments (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 cognitive assessments, functional skill surveys, interviews, and observations.
  3. When to use ‘patterns of strengths and weaknesses’ to determine eligibility:
    - When a school does not have the capacity to implement intensive Tier 3 interventions.
    - In learning disability areas in which the school does not have an intensive intervention process. For example, a school may use the intensive intervention process for reading and math, but not for writing, oral expression or listening comprehension.
    - In grades in which the school does not use an intensive intervention process. For example, a school may use an intensive process in grades K – 6, but not in grades 7 – 12.
  4. Suggested requirements for using ‘patterns of strengths and weaknesses’ to determine SLD eligibility:
    - The school uses a scientifically, researched-based core program that was implemented with fidelity with the referred student.
    - The school tried differentiated instruction techniques with fidelity with the referred student for a period of 8 to 12 weeks.
    - The school tried a scientifically, research-based strategic Tier 2 intervention that was implemented with fidelity with the referred student for at least 12 weeks.
    - During the strategic intervention, the school used weekly progress monitoring to evaluate the effectiveness of the intervention and attempted to modify the intervention after each 3 – 4 weeks of poor grades.
    - That when using the ‘Charting the Patterns of Strengths and Weaknesses’ worksheet, a student shall have at least 4 weak boxes checked and at least one other academic area considered a strength (with at least 3 boxes checked as being a strength)
    - The intellectual/functional box can be checked as additional evidence to support a strength or a weakness to consider a student’s eligibility for special education services.

- See Appendix G for the Patterns of Strengths and Weaknesses worksheet (adapted from Specific Learning Disabilities Evaluation Procedures, Kalamazoo RESA, March 2009).

**Note:** When the criteria are not met to establish a pattern of strengths **and** weaknesses, a student is not eligible for special education services under the PSW model. Recommendations for instruction and interventions should be provided to the teacher/interventionist based on the students' specific academic needs.

a. Formulating decision guidelines (cut-off points) for SLD eligibility

- ❖ When determining **performance relative to grade-level content standards**, it is recommended that diagnostic teams use curriculum assessments (common assessment), classroom observations, teacher reports, and report cards. Furthermore, it is recommended that school psychologists use systematic, direct observation to determine students' behavior and performance compared to peers.
- ❖ For **achievement relative to age**, teams must use more technically adequate measures than curriculum assessments, observations, and report cards. Determination of achievement relative to age requires an individually administered standardized test of achievement with adequate reliability and validity. Such tests require greater knowledge to administer and interpret. For achievement relative to age, data from a norm-referenced achievement test must be included as part of a PSW evaluation.
  - 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 student if that student never received third grade instruction? This is not recommended since the student has not received third grade instruction.
  - 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).
- ❖ When determining **achievement relative to grade-level content expectations**, evaluation teams may use Michigan's state grade-level test (MEAP/MME) scores. Teams must use caution in interpreting MEAP/MME scores as these scores represent a summative assessment one-time measure of a student's skills) and due to the fact that this data, when available, is often 3-5 months old. Therefore, teams are encouraged to utilize more formative and dynamic assessments that provide current data to compare to past data in order to assess student progress. Examples include curriculum-based measures (e.g., DIBELS, AIMSWEB, CBM probes), progress monitoring data using CBM, and criterion-referenced assessments.
  - Probably the best way to actually 'catch up' the student's academic skills with his/her peers is using an intensive intervention (whether delivered in general education or special education) along with continued Tier 1 core instruction.
  - 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. The student must continue to receive core instruction within the general education classroom first, then special education support.

**D. An evaluation for a specific learning disability in multiple areas may include using both the MTSS and PSW processes to determine eligibility, for example, where MTSS is fully implemented for reading, but not for math.**

## V. Rule-Outs

### A. Establish and document the presence or absence of other disabilities/factors.

In order to establish and document the presence or absence of other disabilities and factors, the following data should be reviewed by the IEP Team:

- Visual, hearing or motor disability – data indicating whether a visual, hearing or motor disability is the cause of the student’s learning problems, including district screening results; teacher and parent input; evaluation by a family physician, ophthalmologist, optometrist, audiologist, otolaryngologist, neurologist, OT, PT or other evaluation staff.
- Autism Spectrum Disorder – data indicating whether autism spectrum disorder is the primary cause of the student’s learning problems; may involve assessing for autism spectrum disorder or a review of information from the student’s records that would be contraindicative of such an impairment.
- Cognitive Impairment – data indicating whether cognitive impairment is the primary cause of the student’s underachievement and either lack of progress or pattern of weakness; may involve assessing for cognitive impairment or a review of information from the student’s records that would be contraindicative of such an impairment.
- Emotional Impairment – data indicating whether an emotional impairment is the primary cause of the student’s learning problems; may involve assessing for emotional impairment or a review of information from the student’s record that would be contraindicative of such an impairment.
- Cultural, environmental or economic disadvantage – data indicating causative factors not related to disability, including but not limited to:
  - ◆ poor school attendance or frequent school changes that result in inconsistent instruction and gaps in learning;
  - ◆ family stressors, including pressures from family situations or poverty that causes interruption or interference in learning;
  - ◆ cultural or ethnic background which may cause interference in approaching learning.
- Limited English proficiency – data indicating that an English language learner is not achieving commensurate with other children their age despite participation in research-based interventions; may involve assessment of the child’s cultural and language differences:
  - ◆ selection of assessments must be non-discriminatory with respect to race and culture;
  - ◆ administration of assessments must be in the child’s native language or in a form that will best estimate the child’s abilities.
- ▶ See Appendix H for the Exclusionary Factors Worksheet [source: adapted from Specific Learning Disability Evaluation and Eligibility Determination Process, MAASE, November 2009].

### B. Establish the presence or lack of appropriate instruction.

Please refer to Section III, B 1, pages 7-8 for specific information on how to make the determination for this rule-out.

## **VI. Adverse Affect on Educational Performance Requiring Special Education Programs/Services**

This determination, whether using a pattern of strengths and weaknesses, MTSS, or a combination of the two processes of evaluation, involves reviewing the instructional needs that have been identified as beyond what can be met with general education resources alone. This is evident when curriculum, instruction, interventions, and/or environmental conditions need to be very different for the student as compared to the needs of other students in the general education environment. Thus, in order to be eligible for special education services, a student must:

1. Demonstrate performance that is significantly below the performance of peers or expected standards,
2. Exhibit significant deficiencies in his or her rate of learning based on progress monitoring data, and
3. Demonstrate that his or her needs in the areas of curriculum, instruction, and/or environmental conditions are significantly different than that of his or her general education peers and, in order to make educational progress, require interventions of an intensity or type that exceeds general education resources.

## VII. Re-evaluation and Determination of Continued Eligibility

Federal Register, p. 46648: States that change their eligibility criteria for SLD may want to carefully consider the reevaluation of children found eligible for special education services using prior procedures. States should consider the effect of exiting a child from special education who has received special education and related services for many years and how the removal of such supports will affect the child's educational progress... Obviously, the group should consider whether the child's instructional and overall special education program have been appropriate as part of this process. If the special education instruction has been appropriate and the child has not been able to exit special education, this would be strong evidence that the child's eligibility needs to be maintained.

Re-evaluations are planned in the same way as initial eligibility evaluations, with parents participating as team members. Similar to the initial evaluation, the Review of Existing Evaluation Data (REED) form is completed, and existing data are reviewed and documented.

As part of that data review, the first section of the REED form requires the documentation of existing evaluation data, including data from current classroom-based, local and state assessments and classroom observations. The IEP and re-evaluation team may decide to document that student progress data, as indicated by ongoing, repeated assessments of progress in response to intervention, in this section.

The re-evaluation team may choose to attach documents to the REED that include visual/graphic representations of the student's progress on curriculum-based, or other appropriate measures over time. The student's history of interventions could also be documented on this form. Thus, it is recommended that the REED form be used as an on-going documentation tool that is completed over time, much like other data-based tools which are being completed for general education students over time, as these students receive and respond to general education interventions. When the REED is used in this manner, much of the information required for the re-evaluation will already be documented when it comes time for the re-evaluation team to develop the re-evaluation plan.

Other sources of assessment data, in addition to progress monitoring data, need to be documented on the REED. These data include a summary of the student's grades, performance on state assessments such as the MEAP/MME, and other performance measures which may have been used (norm-referenced tests, common assessments, *etc.*). Classroom observation data that is relevant to the student's learning and programming needs should also be documented on this section of the REED form, as well as any existing evaluation information provided by the student's parent that is relevant to the student's learning and programming/planning needs.

The re-evaluation team's primary focus should be on using existing evaluation data to determine:

- 1) whether the student has or continues to have a disability;
- 2) the student's present level of academic performance and related developmental needs;
- 3) whether the student needs or continues to need special education and related services;
- 4) whether any additions or modifications to special education and related services are needed to meet IEP goals and participate in general education.

### 1) Whether the student has or continues to have a disability

Although it may be presumed that the student's initial evaluation process and initial eligibility was valid, the re-evaluation team needs to consider whether existing data suggest that the student continues to have a disability. Progress monitoring data, classroom performance data and the student's performance on norm-referenced and State assessments should be consistent in indicating that the student has on-going difficulties suggestive of a SLD. Of course, the re-evaluation team must also consider the effect of special education and related services the student has received when reviewing this data, and the timing and effect on the student of removing such services if there is a question regarding whether the student is a student with a disability. In some circumstances, the re-evaluation team may also need to determine if the student will qualify in additional SLD areas. In these circumstances, the evaluation of each SLD area that is being considered needs to meet the same requirements and criteria as required for an initial evaluation. In other words, if a new SLD area is being considered, the re-evaluation team will need to assess and document achievement levels, response to interventions or patterns of strengths and weaknesses, adequate instruction, repeated assessments, rule-out of other causative factors, and necessity for special education, before the student can be deemed eligible in the new SLD area.

### 2) The student's present level of academic performance and related developmental needs

The student's present level of academic performance should be determined from the on-going progress monitoring data that has been gathered. The re-evaluation team should also consider whether there are any specific and/or focused assessment or diagnostic questions that need to be addressed, as the re-evaluation offers an opportune time to address such issues. In this regard, the re-evaluation team may need to consult with other ancillary and diagnostic staff, outside agencies and service providers such as the student's therapist or counselor, physician, or other professionals in the community.

### 3) Whether the student needs or continues to need special education and related services

Review of the student's progress towards their IEP goals, present level of academic performance, classroom performance and performance on norm-referenced and State assessments should indicate whether the student needs or continues to need special education and related services. This issue is related to the issue of whether the student continues to have a disability. If the student is performing at or near the level of their non-disabled peers without significant special education supports, the re-evaluation team needs to carefully consider the student's continued need for special education, and the student's eligibility status. When the student is continuing to perform below expectations, the team needs to carefully consider the final issue (see below) addressed in the re-evaluation plan.

### 4) Whether any additions or modifications to special education and related services are needed to meet IEP goals and participate in general education

The re-evaluation team needs to carefully review the student's history of academic interventions and response to interventions to determine whether alternative interventions should be tried. Review of classroom observation and other outside evaluation data may also indicate that additional services are needed for the student to benefit from interventions. Data gathered from assessments addressing other diagnostic issues may also indicate that the student needs additional services in order to progress in the general curriculum.

If additional information is needed in order to address the above four components, the re-evaluation team documents this need on the REED, and documents the relevant assessments needed to gather the additional information. When additional information is not needed in a particular area (e.g., adaptive skills), the "None needed" box is checked in that section on the REED form. In some instances, no additional data will be needed to determine the student's continued eligibility, or any of the other three areas addressed in the re-evaluation. In these cases, the re-evaluation team needs to indicate the reason why no additional data is needed, either by checking the box indicating "Current curriculum data, evaluations and progress on goals/objectives are sufficient to determine eligibility", or the box indicating "Outside evaluations that have been conducted are being utilized", or by providing a narrative description as to why no additional data is needed in the space on the REED form designated "Other".

When an additional area of SLD eligibility is suspected, it must be determined through all the same criteria as for an initial evaluation.

### **Evaluations of Students Whose Initial or Most Recent Re-evaluation Occurred in Another State**

Occasionally evaluations will be need to be conducted for students who have moved in from another state, and whose initial or most recent re-evaluation was completed in another state.

For these students, the evaluation team must review existing evaluation information and complete the REED form. The evaluation team may find:

- a) there is sufficient data to determine eligibility according to Michigan rules, **or**
  - b) additional evaluation is needed to confirm eligibility, **or**
  - c) a comprehensive evaluation must be completed to determine eligibility.
- 
- a) If there is sufficient data to determine eligibility according to Michigan rules and no additional evaluation is necessary, the evaluation team should note this on the REED form. In this case the evaluation team does not need to complete a SLD Multidisciplinary Evaluation Team (MET) Form; eligibility will be recorded on the IEP form.
  - b) If additional evaluation is needed to confirm eligibility, the district must obtain parent consent and the evaluation team must conduct the evaluation. In this case, the evaluation team should write diagnostic reports, but the SLD MET Form does not need to be completed; eligibility will be recorded on the IEP form.
  - c) If a full and individual evaluation to determine eligibility must be completed, the district must obtain parent consent and the evaluation team must conduct the evaluation. In this case, the evaluation team should write diagnostic reports and complete the SLD MET Cover Sheet, checking that it is an initial evaluation as it is the initial time that eligibility is established in Michigan.

For a move-in student with an initial evaluation from another state (no re-evaluations have been completed) whose evaluation did not include interventions, repeated assessments, and/or demonstration of appropriate instruction, this information will need to be gathered. The evaluation team should attempt to complete this evaluation within the 30 school day time line. The evaluation team can request an extension if more time is needed, however, if the parent does not agree to the extension, the evaluation must be completed within the 30 school-day time line.

Some students who move in from out-of-state may have a current initial evaluation from Michigan or a re-evaluation that was completed in Michigan within the previous three years. In these situations, the IEP/evaluation team may determine that the student's previous Michigan eligibility is valid for three years from that evaluation date.

# Appendices

## **Appendix A**

### **IDEA Federal Regulations Related to Evaluations**

#### **§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 with 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 parent and subsequent public agency agree to a specific time when the evaluation will be completed.

#### **§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.

**§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.

#### **§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 material 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.

### **§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 educational 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.

### **§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 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.

### **§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 researched-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.

### **§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) 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.

### **§300.309 Determining the Existence of a Specific Learning Disability.**

(a) The group described in §300.306 may determine that 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 comprehension.
- (vi) Mathematics calculation.
- (vii) 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 by 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 §§300.302 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 with instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation.

### **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 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.

### **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 doesn't 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**

### **Progress Monitoring**

Progress monitoring is an ongoing, systematic process for gathering data to measure students' academic performance. Academic performance data is examined at established intervals to evaluate students' response to intervention for the purpose of making further decisions about instruction and intervention. Frequency of monitoring is dependent upon student needs. For the purpose of universal screening, frequency is three times per school year, however, a struggling student may be monitored as frequently as two times per week (see table below for recommended frequency of monitoring).

<b>Level of Support</b>	<b>Recommended Frequency of Monitoring</b>
Tier I - Benchmark	Universal Screening- 3 times per year.
Tier II - Strategic	Progress Monitoring- 2-4 times per month.
Tier III - Intensive	Progress Monitoring- 1-2 times per week.

Federal commentary makes it clear that MTSS is only one component of the evaluation. "Determining why a child has not responded to research-based interventions requires a comprehensive evaluation":

71 Federal Regulation 46, 648: An Rtl 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 Rtl process is used. The results of an Rtl 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.

## Appendix C UNDERSTANDING GAP ANALYSIS

From *Guidelines for Identifying Students with Specific Learning Disabilities*,  
Colorado Department of Education, 10-7-08

The following is an example of applying Gap Analysis in order to determine a student's response to an intervention, as well as determining what the intensity level of an intervention should be.

The Gap Analysis is calculated by dividing the expected benchmark (preferably based on national norms) by the student's current performance. The following steps provide a structure for determining the Gap along with the method of determining realistic grown expectations.

### EXAMPLE:

A student is in second grade and is reading 20 words per minute (wpm) based on an Oral Reading Fluency probe given during the winter screening.

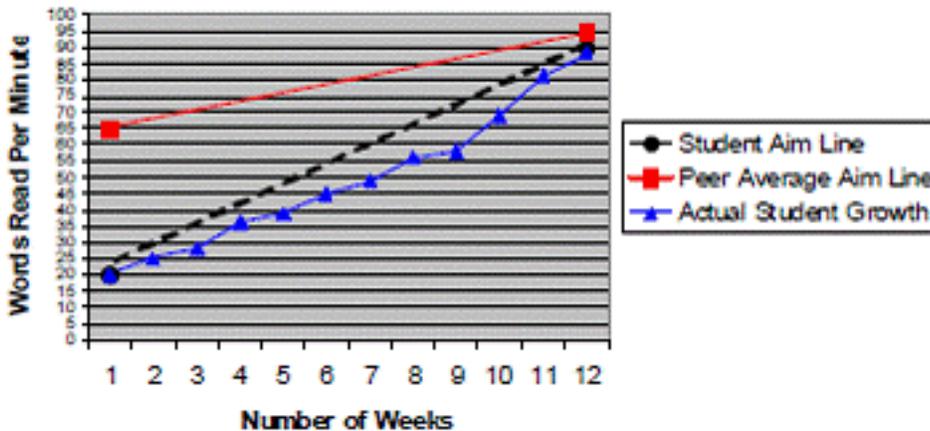
1. Determine the degree to which this student's performance differs from that of peers. If 75-80% of peers are achieving benchmark, then this student's performance is significantly different. If, however, this student's performance reflects the same level as 30% or more of the peers, then the problem-solving team would consider the role that core instruction plays in student performance first.
2. Determine the current benchmark expectation. For This student the benchmark is 68 wpm for the winter of 2<sup>nd</sup> grade.
3. Establish the Gap:
  - 68 wpm (the expected benchmark) divided by  
20 wpm (the student's current performance):  $68/20 = 3.4$ .
  - The student's performance is 3.4 times discrepant from that of grade-level peers.
  - The Gap the student has to close by the end of the year is greater than 3.4, since the benchmark will be higher at the end of the year.
4. Determine if the Gap is significant. Any Gap at or greater than 2.0 should be considered significant. For this student, considerable intervention will be needed to close the Gap since it is more than 2.0.
5. The next phase of Gap Analysis includes determining what constitutes "sufficient progress" that would be necessary to close the Gap.
  - To determine the necessary gain needed to close the gap, subtract the student's current performance from the expected benchmark in the next benchmark period (*i.e.*, end of the year).
  - For this student the calculation is as follows: 90 wpm (end of year benchmark) minus  
20 wpm (student's current performance) =  
70 wpm (necessary to close the Gap)
6. At this point, the problem-solving team determines what progress is needed and whether it is realistic for the student: 70 wpm (necessary gain) divided by  
15 (number of weeks for intervention) = 4.6 wpm (weekly gain needed)

The problem-solving team then considers whether this is a realistic goal for the student. If the weekly goal seems unrealistic, the team might change the number of weeks estimated to reach the target based on "reasonable" weekly growth. For example, if a more realistic anticipated gain is 3 words per week, the number of weeks to reach the target would equal 70 (necessary gain) divided by 3 wpm (weekly gain) to establish the anticipated length of intervention as 23 weeks. [It is important to note that the extended number of weeks may result in a slightly higher benchmark/target that would have to be considered.]

The following graphs provide examples of Gap Analysis charts and instructional decisions based on the data. The “Peer Average Aim Line” reflects national norms. The “Student Aim Line” reflects the rate of growth necessary to close the gap in the time specified.

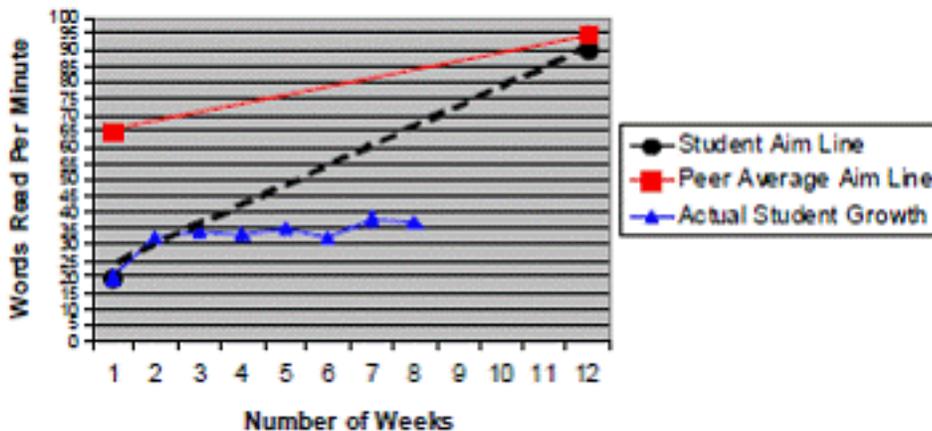
**Example of sufficient progress – Benchmark 90 (current level) minus 20 = 70 (gain needed to close the Gap); intervention resulted in the 4.6 wpm growth per week necessary to close the Gap with peers.**

**GAP ANALYSIS GRAPH**

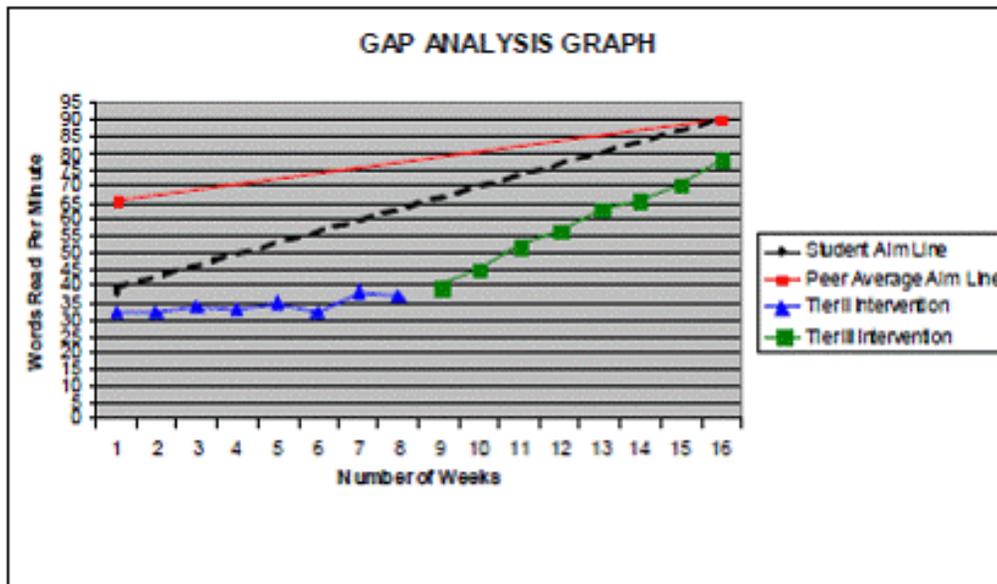


**Example of insufficient progress – Benchmark 90 (current level) minus 20 = 70 (gain needed to close the Gap); intervention did not close the Gap—student needs more time, intensity or a different intervention.**

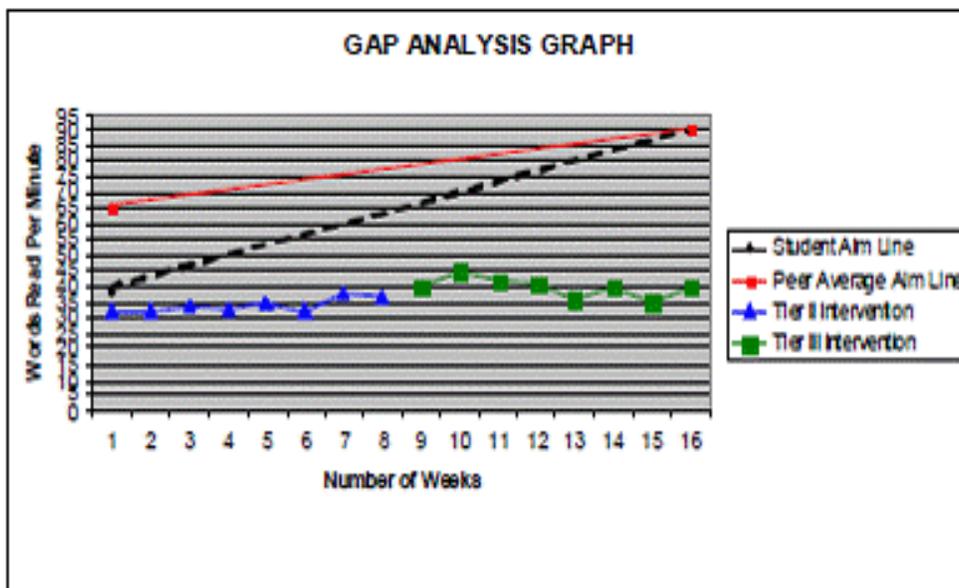
**GAP ANALYSIS GRAPH**



## Example of sufficient progress with intense intervention



## Example of insufficient progress with intense intervention



The following is an example of applying Gap Analysis in order to determine a student's response to an intervention, as well as determining what the intensity level of an intervention should be.

The Gap Analysis is calculated by dividing the expected benchmark (preferably based on national norms) by the student's current performance. The following steps provide a structure for determining the Gap along with the method of determining realistic growth expectations.

### EXAMPLE:

A student is in second grade and is reading 20 words per minute (wpm) based on an Oral Reading Fluency probe given during the winter screening.

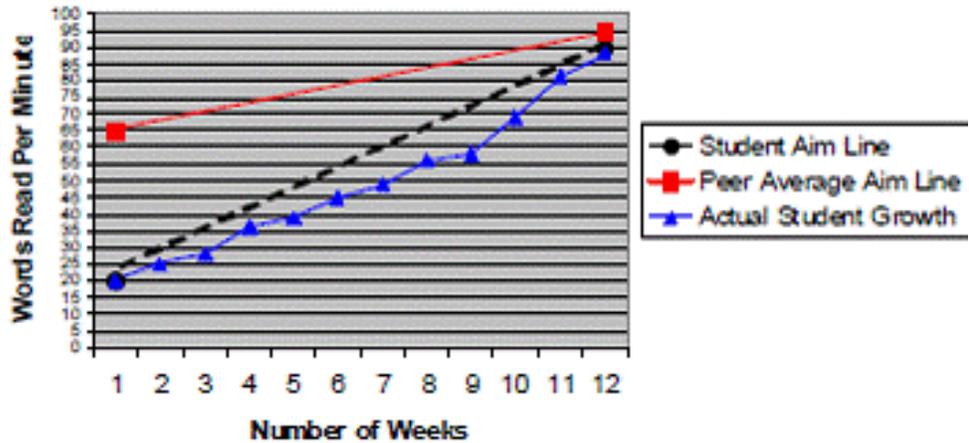
1. Determine the degree to which this student's performance differs from that of peers. If 75-80% of peers are achieving benchmark, then this student's performance is significantly different. If, however, this student's performance reflects the same level as 0% or more of the peers, then the problem-solving team would consider the role that core instruction plays in student performance first.
2. Determine the current benchmark expectation. For This student the benchmark is 68 wpm for the winter of 2<sup>nd</sup> grade.
3. Establish the Gap:
  - 68 wpm (the expected benchmark) divided by 20 wpm (the student's current performance):  $68/20 = 3.4$ .
  - The student's performance is 3.4 times discrepant from that of grade-level peers.
  - The Gap the student has to close by the end of the year is greater than 3.4, since the benchmark will be higher at the end of the year.
4. Determine if the Gap is significant. Any Gap at or greater than 2.0 should be considered significant. For this student, considerable intervention will be needed to close the Gap since it is more than 2.0.
5. The next phase of Gap Analysis includes determining what constitutes "sufficient progress" that would be necessary to close the Gap.
  - To determine the necessary gain needed to close the gap, subtract the student's current performance from the expected benchmark in the next benchmark period (*i.e.*, end of the year).
  - For this student the calculation is as follows: 90 wpm (end of year benchmark) minus 20 wpm (student's current performance = 70 wpm (necessary to close the Gap)
6. At this point, the problem-solving team determines what progress is needed and whether it is realistic for the student: 70 wpm (necessary gain) divided by 15 (number of weeks for intervention) = 4.6 wpm (weekly gain needed)

The problem-solving team then considers whether this is a realistic goal for the student. If the weekly goal seems unrealistic, the team might change the number of weeks estimated to reach the target based on "reasonable" weekly growth. For example, if a more realistic anticipated gain is 3 words per week, the number of weeks to reach the target would equal 70 (necessary gain) divided by 3 wpm (weekly gain) to establish the anticipated length of intervention as 23 weeks. [It is important to note that the extended number of weeks may result in a slightly higher benchmark/target that would have to be considered.

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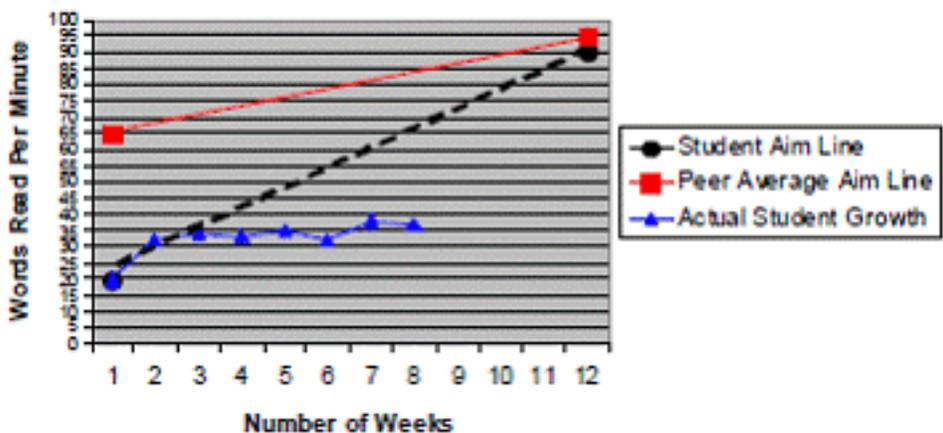
**Example of sufficient progress – Benchmark 90 (current level) minus 20 = 70 (gain needed to close the Gap); intervention resulted in the 4.6 wpm growth per week necessary to close the Gap with peers.**

**GAP ANALYSIS GRAPH**

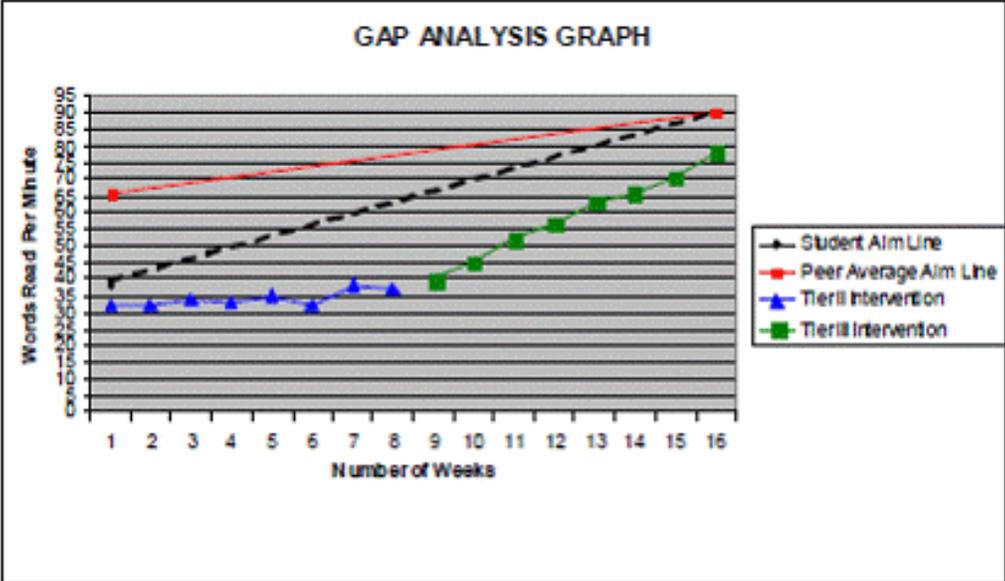


**Example of insufficient progress – Benchmark 90 (current level) minus 20 = 70 (gain needed to close the Gap); intervention did not close the Gap—student needs more time, intensity or a different intervention.**

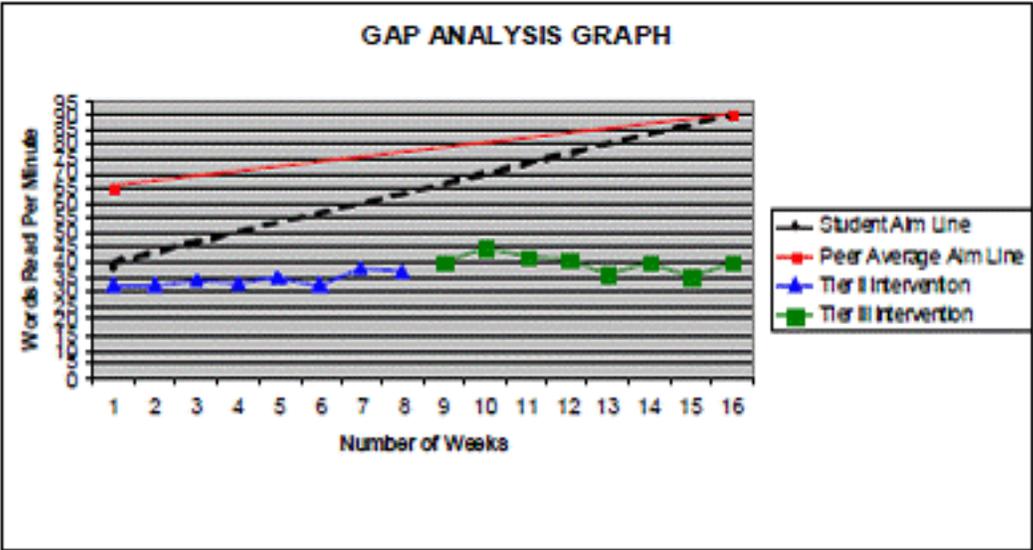
**GAP ANALYSIS GRAPH**



# Example of sufficient progress with intense intervention



# Example of insufficient progress with intense intervention



# Appendix D

## Descriptions of the 8 SLD Areas

**Basic Reading, Reading Comprehension and Reading Fluency** – a complex system of deriving meaning from print that requires all of the following:

**Phonemic Awareness** – awareness of and ability to manipulate sounds in words;

**Phonics** – knowledge of relationships between the letters of written language and the sounds of spoken language;

**Vocabulary** – recognizing and understanding the meaning of words in reading and writing as well as oral language;

**Fluency** – ability to read rapidly with phrasing, an important bridge to comprehension;

**Comprehension** – using a system of strategic actions, smoothly and in coordination, to get meaning while reading texts.

Although basic reading, reading comprehension and reading fluency are three different SLD subrules, they overlap in terms of reading proficiency.

*Basic reading* includes fundamental reading skills, processes, and strategies required to obtain meaning from written text, such as automaticity in word recognition (sight word vocabulary) and development of skills that enable students to break words into parts for decoding purposes.

*Reading comprehension* includes skills for constructing meaning, including 1) literal comprehension and 2) inferential comprehension. 1) Literal comprehension involves reading to understand information which appears directly in the written text, for example, answering questions based on answers that can be found directly in a written passage, or summarizing concrete ideas. 2) Inferential comprehension involves interpreting or generalizing from what has been read, and includes making predictions, noting cause-effect relationships and drawing conclusions.

*Reading fluency* provides the bridge between word recognition and comprehension. Fluent readers can focus their attention on understanding the text as they are able to recognize words and comprehend at the same time. Less fluent readers must focus their attention on figuring out the words, which interferes with their understanding of the text.

Refer to the common core anchor standards for increased understanding of what students must know and be able to do, depending on grade level, in the area of English Language Arts:

- 1) Read closely to determine what the text says explicitly and to make logical inferences from it: cite specific textual evidence when writing or speaking to support conclusions drawn from the text;
- 2) Determine central ideas or themes of a text and analyze their development; summarize the key supporting details and ideas;
- 3) Analyze how and why individuals, events, and ideas develop and interact over the course of a text;
- 4) Interpret words and phrases as they are used in a text, including determining technical, connotative, and figurative meanings, and analyze how specific word choices shape meaning or tone;
- 5) Analyze the structure of texts, including how specific sentences, paragraphs, and larger portions of the text (e.g., a section, chapter, scene, or stanza) relate to each other and the whole;
- 6) Assess how point of view or purpose shapes the content and style of a text;
- 7) Integrate and evaluate content presented in diverse media and formats, including visually and quantitatively, as well as in words;
- 8) Delineate and evaluate the argument and specific claims in a text, including the validity of the reasoning as well as the relevance and sufficiency of the evidence.
- 9) Analyze how two or more texts address similar themes or topics in order to build knowledge or to compare the approaches the authors take;
- 10) Read and comprehend complex literary and informational texts independently and proficiently.

## Descriptions of the 8 SLD Areas

### Basic Reading, Reading Comprehension and Reading Fluency, continued

It is important to consider that there is not always a direct correspondence between basic reading skills and reading comprehension. Frequently, learning disabled students will perform basic reading skill tasks poorly, while reading comprehension is relatively well developed. In other cases, the reverse situation is observed. As a result, it is important not to predict one type of reading ability from performance on the other, since they are semi-independent.

**Written Expression** – includes the processes of selecting, developing, and arranging ideas effectively through writing. These processes require students to write in a variety of forms for a variety of purposes and for a variety of audiences. Two major types of writing are 1) narrative writing and 2) informational writing. Areas and skills to look for in evaluating writing include:

Areas	Narrative	Informational
<b>Ideas</b>	Tells a story with ideas that are focused on the topic and thoroughly developed with specific, relevant details.	Ideas are focused on the task and are thoroughly developed with relevant details and examples.
<b>Organization</b>	Organization and connections between Ideas and/or events are clear and logically sequenced.	Organization and connections between Ideas are clear, logical and appropriate for the context.
<b>Style</b>	Command of language, including effective word choice and varied sentence structure, effective for the author's purpose and audience.	
<b>Conventions</b>	Conventions of grammar, usage, spelling, capitalization, and punctuation for the grade are correctly and consistently used.	

To write effectively requires ability in each of the above four areas. However, poor performance in only a portion of one area, for example, spelling, would not suggest a written expression disability. Also, the student's background knowledge and his/her motivation to communicate in writing must be considered.

Refer to the common core anchor standards (see above) for increased understanding of what students must know and be able to do in writing.

**Mathematics Calculation and Mathematics Problem-Solving** – a complex system of deriving meaning from numbers that requires all of the following:

**Adaptive reasoning** – capacity for logical thought, reflection, explanation and justification;

**Strategic competence** – ability to formulate, represent and solve mathematical problems;

**Conceptual understanding** – comprehension of mathematical concepts, operations and relations;

**Procedural Fluency** – skill in carrying out procedures flexibly, accurately, efficiently and appropriately;

**Productive Disposition** – habitual inclination to see mathematics as sensible, useful, and worthwhile, coupled with a belief in diligence and one's own efficacy.

Although mathematics calculation and mathematics problem-solving are two different SLD subrules, they overlap in terms of math proficiency.

*Mathematics calculation* includes the processes and strategies by which a student demonstrates 1) an understanding of the mechanics used to reach a mathematical conclusion and 2) the ability to apply mathematical facts, concepts, laws and operations to the solution of math problems.

## Descriptions of the 8 SLD Areas

### **Mathematics Calculation and Mathematics Problem-Solving**, continued

*Mathematics problem-solving*, which is both numerical and non-numerical, includes a sense of order and pattern, understanding of the nature of the problem, the ability to predict or fashion good solution strategies, investigation of a number of possible solutions, and the ability to choose and employ the most efficient strategy to reach the correct solution.

Refer to the common core anchor standards for increased understanding of what students must know and be able to do, depending on grade level, in the area of math:

- 1) Make sense of problems and persevere in solving them;
- 2) Reason abstractly and quantitatively;
- 3) Construct viable arguments and critique the reasoning of others;
- 4) Model with mathematics;
- 5) Use appropriate tools strategically;
- 6) Attend to precision;
- 7) Look for and make use of structure;
- 8) Look for and express regularity in repeated reasoning.

**Oral Expression** – the ability to express oneself utilizing speech and language. This includes:

Phonology - inventory of speech sounds and the permissible way in which those sounds can be combined with one another.

Morphology - the morphemes (smallest meaningful spoken units) of a language according to the roles that dictate their correct use.

Syntax - the correct sequence, combination and function of spoken language.

Semantics - meaningful language within a given context.

Pragmatics - functional language which is understandable and appropriate.

When evaluating oral expression, two other factors must be considered: (a) primary language spoken in the home and (b) relationship between language and thinking. In primary language, consideration must be given to students whose language includes other than standard American English. The relationship between language and thinking must take into account the student's level of intellectual levels.

**Listening Comprehension** – the ability to process and understand auditory information. This includes:

Phonology - auditory discrimination of the phonemes (speech sounds) of a language.

Morphology - morphemes (smallest meaningful spoken units) of a language and the rules which dictate their correct use.

Syntax - the sequence, combination and function of spoken language.

Semantics - the meaning of spoken language in a given context.

Pragmatics - the intent of functional language.

The primary characteristic of students exhibiting a listening comprehension deficit is their inability to comprehend the spoken word. *This inability to understand words must be differentiated from disorders related to distractibility or hearing impairment.*

When evaluating listening comprehension, as in oral expression, two other factors must be considered: (a) primary language, and (b) relationship between language and thinking.

## **Appendix E**

# **Michigan Criteria for Determining the Existence of a Specific Learning Disability May 2010**

**Michigan Department of Education  
Office of Special Education and Early Intervention Services**

## **PURPOSE**

This document establishes the criteria that must be followed in Michigan to determine the existence of a specific learning disability (SLD) for a student suspected to have a SLD. These criteria are used by the Multidisciplinary Evaluation Team (MET) to develop and produce an evaluation report and make a recommendation regarding eligibility to the Individualized Education Program (IEP) team. The MET evaluates a student suspected to have a SLD when a student has been referred for an initial evaluation or a change in eligibility as part of a reevaluation and the school district is in receipt of parental consent to evaluate.

A school district must not delay or deny an otherwise appropriate referral or request for an evaluation based on a district's use of a response to scientific, research-based intervention process. School districts that use this process must recognize a parent's right to refer and request an evaluation at any time. If school district personnel suspect that a student has a disability while the student is participating in this process, the school district must recognize the district personnel's right to refer and request an evaluation at any time.

Response to scientific, research-based intervention processes do not constitute a full and individual evaluation under the Michigan Administrative Rules for Special Education (MARSE) and the Individuals with Disabilities Education Act (IDEA) requirements for conducting evaluations and determining eligibility for special education programs and services. Response to scientific, research-based intervention processes provides record information that may be a component of an evaluation under the MARSE and the IDEA. Students and children have specific protections and due process rights under both the MARSE and the IDEA.

## **INTRODUCTION**

The Michigan Department of Education, Office of Special Education and Early Intervention Services (OSE-EIS), is committed to the provision of a quality education for all of Michigan's students and to the continuous improvement of Michigan's educational systems. The OSEEIS strives to assist and empower Michigan's schools to provide high-quality teaching and learning experiences for all students, in all grades, in all classrooms in Michigan. The OSEEIS believes that effective core instructional programs, services, evidence-based interventions, data-driven decision-making, and positive behavioral approaches should be available to all students, and intervention resources should be accessible based on each individual student's intensity of need. To ensure the provision of a quality education for all of Michigan's students, schools need the guidance and the tools necessary to identify individual student needs.

## **BACKGROUND**

The Elementary and Secondary Education Act (ESEA) of 2001 changed the landscape of education in the United States. The ESEA of 2001 established a heightened emphasis on the immediate and continuous improvement of our educational systems and focused improvement efforts on state and local accountability, student outcomes, parent involvement, data-driven planning and systems, and the use of scientific, research-based methods and interventions. The reauthorization of the IDEA in 2004 introduced a new and deliberate effort to connect federal special education legislation with federal general education legislation, the ESEA. This deliberate effort has resulted in an IDEA that embraces the use of data-driven decision-making and new educational methods based on scientific research. The use of data-driven decision-making processes includes the IDEA requirements for determining a student's eligibility for special education programs and services.

In Michigan, prior to the 2004 reauthorization of the IDEA, the identification of a student suspected to have a SLD was based on a single, specific method as defined in the MARSE. That method was the severe discrepancy model. The 2004 reauthorization of the IDEA expressly prohibits all states from requiring the use of the severe discrepancy model. As a result, the MARSE were revised in 2006. The MARSE for determining SLD eligibility provides schools with choices. Those choices include the use of methods for determining SLD eligibility based on the use of scientific, research-based interventions and patterns of strengths and weaknesses. The need to develop updated methods for determining SLD eligibility is the driving force behind development of these criteria.

## CRITERIA FOR DETERMINING SLD ELIGIBILITY

I. Consistent with the IDEA federal regulations at 34 CFR § 300.309 and the MARSE at R 340.1713, schools must use the following processes for determining the existence of a SLD:

- a student's response to scientific, research-based intervention
- a pattern of strengths and weaknesses

**A school district must not delay or deny an otherwise appropriate referral or request for an evaluation based on a district's use of a response to scientific, research-based intervention process.**

The continued use of severe discrepancy is discouraged. Severe discrepancy must never be used exclusively to determine the existence of a SLD. Severe discrepancy must not be used within a response to scientific, research-based intervention process.

## II. CRITICAL SCHOOL DISTRICT DECISIONS

School districts should be thoughtful and intentional when selecting processes and procedures for determining the existence of a SLD.

Each school district must determine which process, or combination of processes, it will use to determine SLD eligibility and ensure that the education community and parents are informed of the district's processes. Each school district must develop a systemic plan to operationalize the State criteria for the district's use.

In making the decision regarding the process to be used for determining the existence of a SLD, each school district must consider the extent to which it has implemented a process based on a student's response to scientific, research-based interventions.

- If a school district does not have a process based on a student's response to scientific, research-based intervention established in any of its schools, then the school district must utilize a pattern of strengths and weaknesses in determining the existence of a SLD.
- If a school in a district has a fully implemented response to scientific, research-based intervention process in select grades, the school must use data from its response to scientific, research-based intervention process to document interventions and student progress for the purpose of determining the existence of a SLD. The other grades in that school, and the other schools in the district, who have not fully implemented a response to scientific, research-based intervention process must use a pattern of strengths and weaknesses process until each grade is phased in to full implementation.
- If a school district is implementing a response to scientific, research-based intervention process on a school-by-school basis, the district must use data from its response to scientific, research-based intervention process to document interventions and student progress for the purpose of determining the existence of a SLD in the schools where the process is fully implemented. In schools that have not fully implemented a response to scientific, research-based intervention process, a pattern of strengths and weaknesses process must be used.

All federal and State regulatory requirements for evaluations for the purpose of determining a student's eligibility for special education programs and services as a student with a SLD still apply. These same requirements and all additional requirements for reevaluations for the purpose of determining continuing eligibility still apply.

### III. WHAT IS A SLD?

A specific learning disability is “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 the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia that adversely affects a student’s educational performance. A SLD does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or of environmental, cultural, or economic disadvantage.” (34 CFR § 300.8(c)(10)).

### IV. WHO EVALUATES FOR DETERMINATION OF SLD ELIGIBILITY?

In compliance with the MARSE, a MET conducts a full and individual evaluation of a student suspected to have a SLD. The MET, based upon its evaluation of the student, then makes its recommendation of eligibility to the IEP team. The student’s IEP team then determines SLD eligibility (R 340.1713).

### V. WHAT PROCESS OF EVALUATION IS USED TO DETERMINE SLD ELIGIBILITY?

Each Michigan school district will make a decision about the evaluation process the district will use to determine SLD eligibility. The MARSE and the IDEA give school districts choices and flexibility in determining the process to use for determining SLD eligibility (*see Section I of these criteria*).

Regardless of the process used to determine SLD eligibility, schools must follow all of the regulatory requirements in the IDEA, the MARSE, and Michigan laws, policies, and procedures for special education.

The following criteria apply to all methods used to determine SLD eligibility:

- A student must not be determined to be a student with a disability if the determinant factor for that determination is:
  - Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act) [including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency and oral reading skills, and reading comprehension strategies];
  - Lack of appropriate instruction in math; or
  - Limited English proficiency.
- A full and individual initial evaluation is a process conducted by the MET. Evaluation means procedures used in accordance with 34 CFR §§ 300.301 through 300.311 to determine whether a student has a SLD and the nature and extent of the special education and related services that the student needs. Evaluation includes the review of information from parents, existing data, and the results of assessment procedures used.

In interpreting evaluation data for the purpose of determining if a student is a student with a disability as defined in 34 CFR § 300.8, and the educational needs of the student, each public agency must:

- Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as information about the student’s physical condition, social or cultural background, and adaptive behavior; and
- Ensure that information obtained from all of these sources is documented and carefully considered.

The process of evaluation requires a synthesis of all available assessment information. A student's parents are an integral part of the evaluation process, including providing information about the student. Parents are members of the IEP team meeting held for the purpose of determining eligibility, determining the educational needs of the student, and development of the student's IEP. Parents provide valuable insight and information to teams who conduct assessments in order to complete full and individual evaluations.

## **VI. THE EVALUATION PLAN**

The "Review of Existing Evaluation Data (REED) and Development of an Evaluation Plan" document (published by the OSE-EIS) provides guidance and a general framework for the development of both initial evaluations and reevaluations. This document can be used with both the response to scientific, researched-based interventions and the pattern of strengths and weaknesses processes to develop and implement the evaluation plan for a student suspected to have a SLD.

Within a systemic plan it is essential to include a data-driven, decision-making process based on each individual student's needs.

Begin the development of an evaluation plan for determining SLD eligibility by collecting all pertinent data. The data used will be dependent upon the process (or processes) currently used in the district (and specific schools) for determining the existence of a SLD:

### **Response to Scientific, Research-Based Intervention Process:**

1. The student does not achieve adequately for the student's age or to meet State approved grade-level standards in one or more of the areas identified at 34 CFR §300.309(a)(1)(i) when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards; and
2. The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified at 34 CFR §300.309(a)(1)(i) when using a process based on the student's response to scientific, research-based intervention.

### **Pattern of Strengths and Weaknesses Process:**

1. The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the areas identified at 34 CFR §300.309(a)(1)(i) when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards; and
2. The student 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 MET to be relevant to the identification of a SLD, using appropriate assessments, consistent with the IDEA Evaluation Procedures and Additional Requirements for Evaluations and Reevaluations.

## **VII. DOCUMENTATION**

The school must document a student's achievement in one or more of the following areas:

- Oral expression;
- Listening comprehension;
- Written expression;
- Basic reading skill;
- Reading fluency skills;
- Reading comprehension;
- Mathematics calculation;
- Mathematics problem solving

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 (*see the box "Suggested Parameters for Establishing an Academic Skill Deficit" in these criteria*) and insufficient progress must not be based on any one measure.
- The finding 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.

### **Suggested Parameters for Establishing an Academic Skill Deficit**

These are not intended to be absolute cut-points and the convergence of multiple sources of data needs to be considered by the evaluation team. The decision as to what constitutes an academic skill deficit is a complex decision and will require a degree of professional judgment. The decision must be based on valid and reliable data.

- At least one measure needs to reflect a comparison to Michigan (or national) benchmarks or norms in order to provide some consistency across schools and districts in the interpretation of an academic skill deficit.
- Curriculum-Based Measurement (CBM) results that include at least 6 data points that are at or below the 9th percentile may be considered significant.
- Criterion Reference Measures (CRMs) compare a student's performance to the goals of the curriculum. These may be provided within program materials or set by teachers. An academic skill deficit could be indicated by results that are at or below 50% of the grade level expectancy. Thus, grade level criteria must be determined for CRMs. (For example, if the expectation is that a student answer grade level comprehension questions with 80% accuracy, and a student's accuracy through repeated trials is at 40% or less, then a deficit might be indicated).
- When a measure is utilized that provides a percentile rank, such as an individually administered norm referenced test, a score at or below the 9th percentile may represent an academic deficit.

## **VIII. SPECIAL CONSIDERATIONS**

When considering student results that rely on a student's response to scientific, research-based intervention, the MET needs to be able to ensure that:

- There was a research/evidence base for the interventions implemented; and
- The interventions were implemented with fidelity, i.e., implemented as intended or prescribed with attention to the what, how, and intensity of instruction.

When considering student results that rely on a student's pattern of strengths and weaknesses, the MET needs to be able to ensure that:

- They follow the district guidelines and decision rules for the analysis of strengths and weaknesses.

## **IX. OBSERVATION**

An observation conducted during an early intervening period may be used, and must be properly documented, by the evaluation team. If, however, an observation has not been conducted prior to the referral and request for evaluation or additional observation data is needed, at least one member of the evaluation team must conduct an observation and must properly document the observation.

An observation:

- Must address academic performance and behavior in the specific area(s) of difficulty
- Must be conducted in the child's learning environment as determined by the evaluation team
- Must be conducted in the general education setting unless the child is less than school age or does not participate in general education

The observations must be scheduled at a time when the child is engaged in the specific area of need identified in the evaluation plan. Existing observations must have been conducted while the child was engaged in the specific area of need identified in the evaluation plan.

The federal regulations and the MARSE do not prescribe the type of observation to be conducted; the following methods may be appropriate:

- Behavioral observation procedures that result in quantifiable results (e.g., event recording, time sampling, interval recording)
- Methods that relate student's classroom behavior to instructional conditions
- Informal or anecdotal recordings that address referral questions, instructional practice, and instructional fidelity

These observations may also help to document that appropriate instruction was provided, and will assist in recommending instructional changes. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

## **X. EXCLUSIONARY FACTORS**

The MET is required to consider what are commonly referred to as "exclusionary" factors. 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 factors has become even more important.

The IDEA requires that the determination of SLD eligibility must not be determined based on findings that are primarily the result of:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act);

- Lack of appropriate instruction in math;
- Limited English proficiency.

The determination of SLD eligibility must not be based on findings of inadequate achievement and insufficient progress or patterns of strengths and weaknesses that are primarily the result of:

- A visual, hearing, or motor disability;
- A cognitive impairment;
- An emotional impairment;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

## **XI. LACK OF APPROPRIATE INSTRUCTION**

The team needs to consider:

- The instruction that the student has been receiving;
- The qualifications and training of the person delivering the instruction; and
- The student's access to that instruction.

Since the determination of SLD eligibility requires documentation that a student demonstrates a skill deficit and insufficient progress, there should be evidence that appropriate instruction in the area(s) of concern has been provided, including fidelity of instruction and intervention implementation.

The team will also want to determine whether a student's access to core instruction, as well as to scientific, research-based interventions is:

- Impacted by poor attendance;
- Frequent moves between schools; or
- Other factors.

If a determination of SLD eligibility cannot be made due to lack of appropriate instruction, attempts must be made to ensure that appropriate instruction is provided and that the student's response to that instruction is documented.

## **XII. REQUIRED DOCUMENTS TO BE GIVEN TO PARENTS**

The school district must document that parents received specific information concerning their student's participation in any response to scientific, research-based intervention process. The information provided to parents must meet all of the IDEA regulation requirements specified at 34 CFR § 300.311. The information parents must receive includes:

- **Amount and nature of student performance data that will be collected and general education services that will be provided.**
- **Strategies for increasing the student's rate of learning.**
- **Parent's right to request an evaluation.**

## **XIII. USE OF OTHER ALTERNATIVE RESEARCH-BASED PROCEDURES**

The IDEA allows for the use of "Other Alternative Research-Based Procedures" in determining SLD eligibility. At this time, Michigan has not identified other alternative research-based procedures for determining whether a student has a SLD as defined in 34 CFR § 300.8(c)(10). In the future, Michigan may consider local school system proposed alternative research-based procedures for determining whether a student has a SLD.

## Appendix F

[Memo: OSEP Memo 11-07 Response to Intervention \(RTI\) \(January 21, 2011\)](#)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 21 2011

Contact Persons:

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OSEP 11-07

### MEMORANDUM

TO: State Directors of Special Education

FROM: Melody Musgrove, Ed.D.   
Director  
Office of Special Education Programs

SUBJECT: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)

The provisions related to child find in section 612(a)(3) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.

A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities.

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and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness.

While the Department of Education does not subscribe to a particular RTI framework, the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions.

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention<sup>1</sup>. See 34 CFR §300.307(a)(2). OSEP continues to receive questions regarding the relationship of RTI to the evaluation provisions of the regulations. In particular, OSEP has heard that some LEAs may be using RTI to delay or deny a timely initial evaluation to determine if a child is a child with a disability and, therefore, eligible for special education and related services pursuant to an individualized education program.

Under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §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 an SLD; (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 an SLD. Although the regulations specifically address using the process based on the child's response to scientific, research-based interventions (i.e., RTI) for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate.

The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-

<sup>1</sup> The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel - 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke - 5-28-08; and Copenhaver - 10-19-07. Guidance related to the use of RTI for children ages 3 through 5 was provided in the letter to Brekkan - 6-2-10. These letters can be found at <http://www2.ed.gov/policy/speced/guid/idea/index.html>.

300.311, to a child suspected of having a disability under 34 CFR §300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The LEA must provide the parent with notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c).

If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR §300.507 or filing a State complaint under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

We hope this information is helpful in clarifying the relationship between RTI and evaluations pursuant to the IDEA. Please examine the procedures and practices in your State to ensure that any LEA implementing RTI strategies is appropriately using RTI, and that the use of RTI is not delaying or denying timely initial evaluations to children suspected of having a disability. If you have further questions, please do not hesitate to contact me or Ruth Ryder at 202-245-7513.

References:

- Questions and Answers on RTI and Coordinated Early Intervening Services (CEIS), January 2007
- Letter to Brekken, 6-2-2010
- Letter to Clarke, 4-28-08
- Letter to Copenhagen, 10-19-07
- Letters to Ziakel, 3-6-07, 8-15-07, 4-8-08 and 12-11-08

cc: Chief State School Officers  
Regional Resource Centers  
Parent Training Centers  
Protection and Advocacy Agencies  
Section 619 Coordinators

## Appendix G

### Worksheet for Charting Patterns of Strengths and Weaknesses

	Academic achievement with respect to grade-level expectations				Academic achievement with respect to age-level expectations	Classroom performance with respect to grade-level expectations				Age-appropriate functional / intellectual skills
	Progress monitoring	CBM Screening	Criterion-referenced Assess.	MEAP Explore Plan MME	Norm-referenced achievement tests	Curriculum assessments	Grades	Teacher report	Classroom observation	Observation, interviews, cognitive assessment
Basic Reading	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	<b>S N W</b>
Reading Fluency	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Reading Comp.	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Math Calc.	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Math Prob. Solving	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Written Express.	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Oral Express.	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	
Listening Comp.	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	

S = Strength  
 N = Neither Strength/Weakness  
 W = Weakness

Area(s) of Strength – at least 3 ‘S’ checks for each area

Area(s) of Weakness – at least 4 ‘W’ checks for each area, including at least 1 individually administered academic achievement assessment

**Appendix G, continued**  
**Worksheet for Charting Patterns of Strengths and Weaknesses**

<b>Assessment Type</b>	<b>Strength</b>	<b>Weakness</b>
Progress monitoring	Meeting/exceeding aimline or a growth rate greater than the grade-level average	Falling below aimline for at least 4 consecutive weeks on most recent test or a growth rate less than the grade-level average
CBM (Benchmark) screening	At 'benchmark' level or above grade-level median score if using local norms	3 data points at the 9%ile or below if/when using local norms
Criterion-referenced assessment	Skills at or above grade level	Skills at or below 50% of grade level expectancy
MEAP*	Proficient	Not Proficient
MME/PLAN/EXPLORE	Proficient and/or percentile rank $\geq 25$	Not proficient and/or percentile rank $\leq 9$
Norm-referenced tests (Achievement, IQ)	Percentile rank $\geq 25$	Percentile rank $\leq 9$
Curriculum assessments	Scores $\geq 80\%$	Scores $< 70\%$
Grades	Meets/exceeds expectations	Does not meet expectations
Teacher report	Based upon professional judgment of teacher in comparing student to peers in the classroom	Based upon professional judgment of teacher in comparing student to peers in the classroom
Observations – Academic	Student demonstrates average understanding of academic content in comparison to other students in the 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 $\geq 25$	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 $\leq 9$

\*On state assessments also consider grade-level overall mean.

# Appendix H

## EXCLUSIONARY FACTORS WORKSHEET FOR SPECIFIC LEARNING DISABILITY

Mark each exclusionary factor checking yes or no. Each factor must be ruled out as the PRIMARY FACTOR for the student's inability to progress in the general education curriculum.

**1. Lack of instruction essential components of reading and math:**

Does information obtained during assessment indicate lack of appropriate instruction in reading and math as the determinant factor in this student's inability to progress in the general education curriculum? Report Page \_\_\_\_\_

**2. Limited English Proficiency**

Answer the following questions:

- Is there a language other than English spoken by this student?
- Is there a language other than English spoken by the student's home?
- Are there any specific dialect or cultural influences that would affect the student's ability to speak or understand English? Is limited English proficiency the primary reason for the students? Report Page \_\_\_\_\_

**3. Autism Spectrum Disorder**

Document all information gathered in assessment that would exclude cognitive impairment as the determinant factor for this student's academic deficits.

- Do you have evidence, through interviews, observations and/or testing that the student has an autism spectrum disorder? Report page \_\_\_\_\_

**4. Cognitive Impairment**

Document all information gathered in assessment that would exclude cognitive impairment as the determinant factor for this student's academic deficits.

- Does this student exhibit emotional difficulties that interfere with learning?
- Does the student have a medical history and/or school history of emotional difficulties? Is emotional disturbance the primary reason for the student's deficit scores? Report Page \_\_\_\_\_

**5. Emotional Impairment**

Document all information gathered in assessment that would exclude emotional impairment as the determinant factor for this student's academic deficits.

- Does the student exhibit emotional difficulties that interfere with learning?
- Does the student have a medical history and/or school history of emotional difficulties? Is emotional disturbance the primary reason for the student's deficit scores? Report Page \_\_\_\_\_

**6. Vision, Hearing, or Motor Impairments**

Document all information gathered in assessment that would exclude vision, hearing, or motor impairments as the determinant factor for this student's academic deficit?

- Do vision screening results indicate concern?
- Do hearing screening results indicate concern?
- Does the student have a history of significantly delayed motor development? Is visual, hearing or motor disability the primary reason for the student's deficit scores? Report Page \_\_\_\_\_

**7. Environmental, Cultural, or Economic Disadvantage**

Document all information gathered that would exclude environmental, cultural, or economic disadvantage as the determinant factor for this student's academic deficits.

**a. Lack of Opportunity**

- Does the assessment data indicate the lack of opportunity to learn due to environmental, cultural, or economic, disadvantage is not the cause of the student's academic deficits.

**b. Motivational Factors**

- Does the student attempt classroom assignments and/or homework?
- If no, is the student's performance on grade level during classroom activities?
- Are group achievement scores consistent with the student's grades?
- Does information gathered indicate lack of motivation is the determinant factor?

**c. Situational Trauma**

- Has the student's academic performance fallen dramatically within the last 6-12 months?
- Is there knowledge of situations within the student's family that would contribute to a drop in academic performance?
- Does information gathered indicate situational trauma is the determinant factor?

**d. Attendance**

- Does the student have a high absentee rate either due to illness, disciplinary issues or other factors?
- Does information gathered indicate that absences are the determinant factor?

Are environmental, cultural or economic disadvantage the primary reason for the student's academic deficits?

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# Appendix I

## Resources

### [Common Core State Standards](#)

### [Florida Center for Reading Research](#)

Guidelines for Identifying Students with Specific Learning Disabilities  
Guidelines can be found at the Colorado Department of Education, 10-7-2008

[Identifying Learning Disabilities in the Context of Response to Intervention: A Hybrid Model](#), Fletcher, J.  
RTI Action Network

Illinois Special Education eligibility and Entitlement Procedures and Criteria within a Response to Intervention (RtI) Framework: A Guidance Document  
Illinois State Board of Education, Special Education and Support Services, January 2010

Michigan Criteria for Determining the Existence of a Specific Learning Disability  
Criteria can be found at the Michigan Department of Education, May 2010

### [National Association of School Psychologists](#)

### [National Council of Teachers of English](#)

Pattern of Strengths and Weaknesses in Specific Learning Disabilities: What's It All About?  
Hanson, J., Sharman, L. and Esparaza-Brown, J. Oregon School Psychologists Association, SLD  
Pattern of Strengths and Weaknesses Committee Technical Assistance Paper

Response to Intervention (RtI); A Practioner's Guide to Implementation  
Information was taken for the Colorado Department of Education, 2008

Response to Intervention: Enhancing the Learning of All Children  
Information was taken from the Michigan Association of Administrators of Special Education, 2006

Responsiveness to Intervention (RtI): How to Do It, prepared by Evelyn Johnson, Daryl F. Mellard,  
Doug Fuchs, and Melinda A. McKnight for the National Research Center on Learning Disabilities

Specific Learning Disability Evaluation and Eligibility Determination Process  
Michigan Association of Administrators of Special Education (MAASE) SLD Work Group, November  
2009

Specific Learning Disability Evaluation Procedures  
Kalamazoo RESA, March 2009

Treatment integrity in learning disabilities intervention research: Do we really know how treatments  
are implemented? *Learning Disabilities Research & Practice*, 15(4), 198–205. Gresham, F.M.,  
MacMillan, D.L., Beebe-Frankenberger, M.E., & Bocian, K.M. (2000)