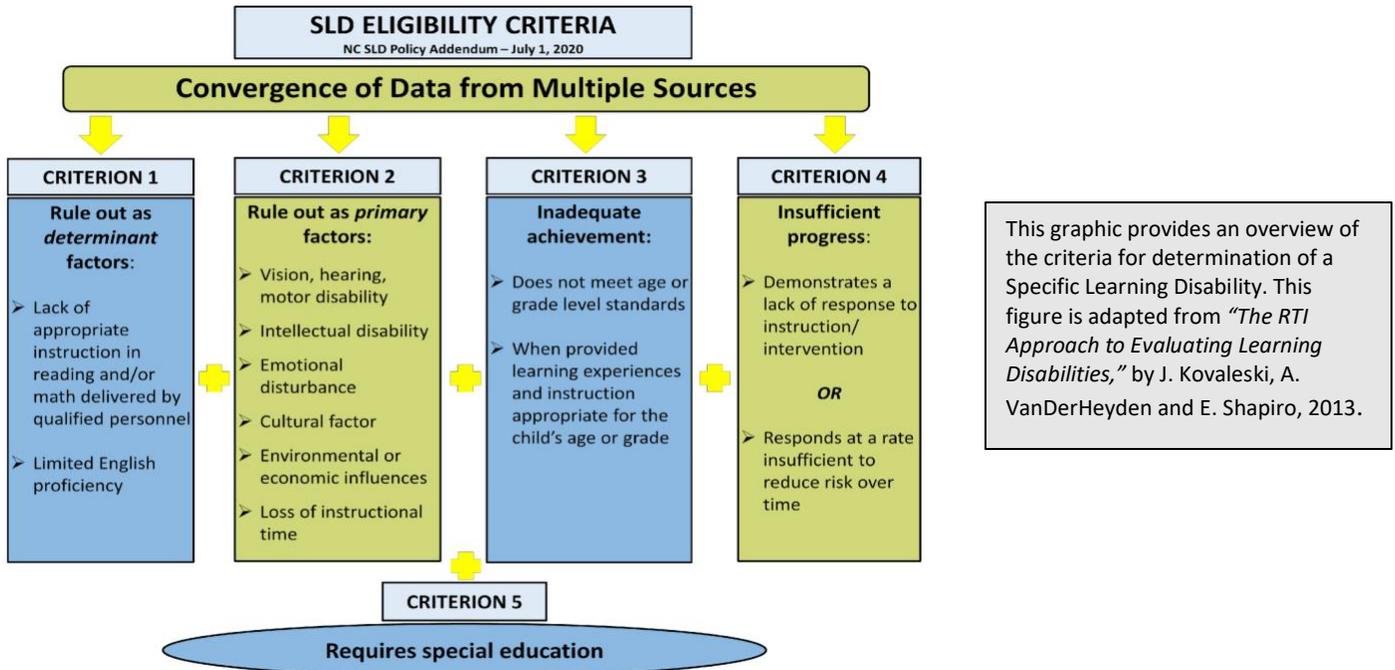


SLD POLICY FACT SHEET #2 – INSTRUCTION / INTERVENTION & LIMITED ENGLISH PROFICIENCY(LEP)

The Specific Learning Disabilities (SLD) Policy in the [NC Policies Governing Services for Children with Disabilities](#) became fully effective July 1, 2020. This fact sheet, the second in a [series](#), addresses Criterion 1, Ruling Out Lack of Appropriate Instruction/Intervention and Limited English Proficiency (LEP) as *determinant* factors when the IEP Team is determining eligibility for specific learning disabilities.



Criterion 1: Rule Out of Lack of Appropriate Instruction/Intervention and LEP as determinant

IDEA and *NC Policies Governing Services for Children with Disabilities* state:

“A child must not be determined to have a specific learning disability if the determinant factor for that determination is any of the following:

- Limited English Proficiency;
- Lack of appropriate instruction and evidence-based intervention in reading, including the essential components of reading instruction as defined in Section 1208(3) of the ESEA (i.e. phonemic awareness, phonics, vocabulary, fluency and comprehension); and/or
- Lack of appropriate instruction and evidence-based intervention in math.”

The assurance that the student has had the “opportunity to learn” through the provision of appropriate instruction is a required “special rule for eligibility determination,” for all areas of disability under IDEA 300.306(b)(1)(i-iii) and is not unique to the use of RTI as a component of a comprehensive evaluation. ***This criterion remains unchanged*** in the policy which became fully effective July 1, 2020.

This is an important issue, as it makes it clear that IDEA is intended to serve the needs of students with disabilities, not students for whom the provided educational program has not resulted in expected grade-level performance due to other situational factors (NCLD, 2020). Within a well implemented

“One of the primary vulnerabilities of the historical model of referring students for eligibility evaluations is that lack of adequate instruction was not ruled out as a cause of low achievement.”

Kovaleski, VanDerHeyden and Shapiro, 2013

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MTSS, the school/district will have documentation of student progress and fidelity of implementation which allows for effective problem solving across student groups to ensure the majority of students are responding to the provided instruction and intervention. In most instances, the assurance of the provision of appropriate instruction and intervention has been considered by problem-solving teams before an evaluation begins and is considered as *existing data* by the IEP team.

Examples of data that may be used to establish the delivery of appropriate instruction and intervention include the following:

- class and school wide data (e.g. universal screening, benchmark assessments) that indicate core instruction results in the majority of students reaching and/or accelerating growth toward grade level standards
- checklists, observation data, or other data documenting the integrity of instructional delivery
- evidence of teacher training and coaching in using evidence-based practices
- records of attendance
- progress monitoring data indicating students receiving intervention are responding at rates indicative of a successful return to core instruction alone

When LEP is a factor IEP Teams will be positioned for adequate decision-making when they connect back to adequate instruction and analyze academic data and implementation fidelity data specific to English learners.

Guiding questions for the IEP team may include:

- Has the general education curriculum and instruction succeeded in bringing a high percentage of English learners to proficiency, and/or is there a high percentage of EL students making growth?
- Are instructional best practices for EL students being implemented?
- Is intervention curriculum/program appropriate for EL students?
- Is there evidence that the majority of EL students receiving intervention are making adequate growth?

In summary, Criterion 1 requires that, to determine a child is eligible for special education services due to an SLD, IEP teams must first confirm that lack of appropriate instruction and intervention is not the *cause* of the student's learning difficulties.

Reference:

Whitaker, M., & Ortiz, S. (2019) *What a Learning Disability is Not- Examining Exclusionary Factors*. National Center for Learning Disabilities [White paper]. National Center for Learning Disabilities. <https://www.nclid.org/wp-content/uploads/2019/11/What-a-Specific-Learning-Disability-Is-Not-Examining-Exclusionary-Factors.12192019.pdf>

For additional information, contact the [North Carolina Department of Public Instruction Exceptional Children Division](#)