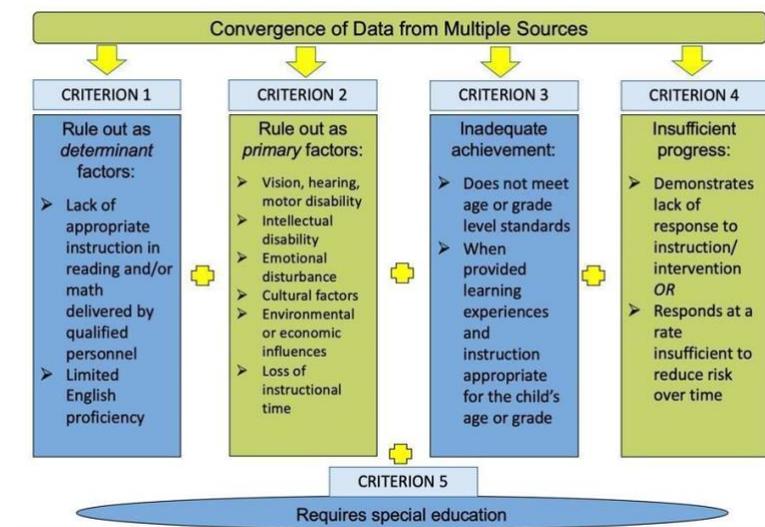


SLD POLICY FACT SHEET #9 – ENGLISH LEARNERS

The [NC Policies Governing Services for Children with Disabilities](#) became fully effective July 1, 2020, regarding the definition, evaluation and identification of students with Specific Learning Disabilities (SLD). This fact sheet, the [ninth in a series](#), addresses Criterion 1, the rule out of lack of appropriate instruction, but is specifically examining Limited English Proficiency (LEP). Please review [Fact Sheet #2](#) (Criterion 1) to establish the context for the details regarding English Learners provided in this Fact Sheet.

This graphic provides an overview of the criteria for determination of a Specific Learning Disability. The figure is adapted from “*The RTI Approach to Evaluating Learning Disabilities*,” by J. Kovalski, A. VanDerHeyden and E. Shapiro, 2013.



Special Rule for Eligibility Determination IDEA 300.306(b)(1)(i-iii)

“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.”

This “special rule for eligibility determination,” applies to all areas of disability and is not unique to students with SLD or the use of RtI as a component of a comprehensive evaluation within an instructional model.

English Language Proficiency and Learning Disabilities

The rule out of LEP for students who are experiencing academic failure is challenging. “Clearly children who immigrate or who grow up in households where the language at home is different from the language of instruction are at risk for achievement difficulties. It is not clear how to differentiate a child with achievement difficulties due to LDs from those due to minority language status (Fletcher, J. et al, 2019).”

The fundamental question is whether the student’s LEP is the determinant factor for inadequate achievement and insufficient progress. A student cannot be automatically excluded from consideration for special education based on the existence of LEP- it is entirely possible for LEP and an SLD to co-exist. The existence of Limited English Proficiency is not the issue; the issue is determining the *level of impact* that **this factor** has on a student’s learning struggles.

The consensus among researchers in the field is that diagnosis of a learning disability requires evidence of impairment in both languages, not just one. However, evidence of learning difficulties in both languages is not

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sufficient, by itself, to constitute a learning disability determination—especially in cases in which the child was not afforded native-language instruction. When evidence exists that an individual does not display learning difficulties in one language, they cannot have a learning disability. This would preclude the need for evaluation in the other language (NCLD, 2020).

The research literature suggests that the following considerations/questions can help determine whether an English Learner (EL) student’s academic difficulties are caused by a learning disability or by struggles with second-language acquisition:

Area(s) to Address:	Considerations:
Instruction Curriculum Environment	Is the student receiving instruction of sufficient quality to enable him or her to make the accepted levels of academic progress? Is there evidence that universal (core) instruction is effective with most students who share this student’s cultural characteristics and/or stage of English language proficiency? Is the instruction/intervention implemented determined to be culturally and/or linguistically appropriate? Has the student had appropriate support, structure, instruction for sufficient time, with enough intensity, to acquire necessary language, academic, and behavioral skills?
Academic growth (learner) Relevant group comparisons	How does the student’s progress in hearing, speaking, reading, and writing English as a second language compare with the expected rate of progress for his or her age and initial level of English proficiency? Does evidence exist that a student’s achievement and rate of progress differ significantly from that of culturally and linguistically similar students?
Cultural Factors/Differences	To what extent are behaviors that might otherwise indicate a learning disability considered to be typical for the child’s cultural background or to be part of the process of U.S. acculturation?
Additional Factors	How might socioeconomic status, previous education experience, transiency, fluency in his or her primary language, attitude toward school, and attitude toward learning English—impact the student’s academic progress?

When making data-informed decisions, consider the following (Rinaldi, C. et al.):

- Does student progress-monitoring data reflect a comparison to age- and grade-level state norms that represent the school population and comparison to a “true peer¹”?

¹ “True peer” represents students who can be used for comparison to the target student; students have similar language proficiency, culture, and experiential background (i.e., age, time in the United States and acculturation in adapting to a new environment, use of L1 and L2 at home, school and community, socioeconomic status, gender, educational programming or NC DPI Exceptional Children Division
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- Is there evidence that a student’s achievement (e.g., basic skills in reading, writing, listening, and speaking) differs significantly on grade-level standards from that of a true peer?
- Is there evidence that the rate of progress differs significantly from that of a true peer?
- Has the student failed to develop expected native language and English skills reasonable for developmental experiences and background despite appropriate instruction for the number of years the target student has received ESL supports as part of the general education?

In all instances of Limited English Proficiency as a factor, school teams should include at least one person who is knowledgeable about the development of English and related achievement skills for the student’s age and language/cultural background, and is knowledgeable about students with LEP who are identified with an SLD.

References and Resources

IES Practice Guide- [Effective Literacy and English Language Instruction for English Learners in the Elementary Grades](#)

Burr, E., Haas, E., & Ferriere, K. (2015). Identifying and supporting English learner students with learning disabilities: Key issues in the literature and state practice (REL 2015–086). Washington, DC: U.S.

Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory West. Retrieved from:
<https://www.wested.org/resources/identifying-and-supporting-english-learner-students-with-learning-disabilities/>

Fletcher, J.M., Lyon, G.R., Fuchs, L.S. & Barnes, M.A. (2019). Learning Disabilities: From Identification to Intervention. The Guilford Press. New York, New York.

Rinaldi, C., Ortiz, S., & Gamm, S. *RtI-Based SLD Identification Toolkit: Considerations for English Language Learners*. RtI Action Network. <http://rtinetwork.org/getstarted/sld-identification-toolkit/ld-identification-toolkit-considerations-for-ell>

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.nclld.org/wp-content/uploads/2019/11/What-a-Specific-Learning-Disability-Is-Not-Examining-Exclusionary-Factors.12192019.pdf>

IEP teams are encouraged to understand the guidelines of determinant factors related to English Language Learners.

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

For additional information regarding MTSS, contact your PSU’s MTSS Coordinator or building level system of support team.

language service plan such as dual language instruction, transitional bilingual instruction, ESL services, or sheltered-English instruction) (Brown & Doolittle, 2008). NCLD RtI-Based SLD Identification Toolkit