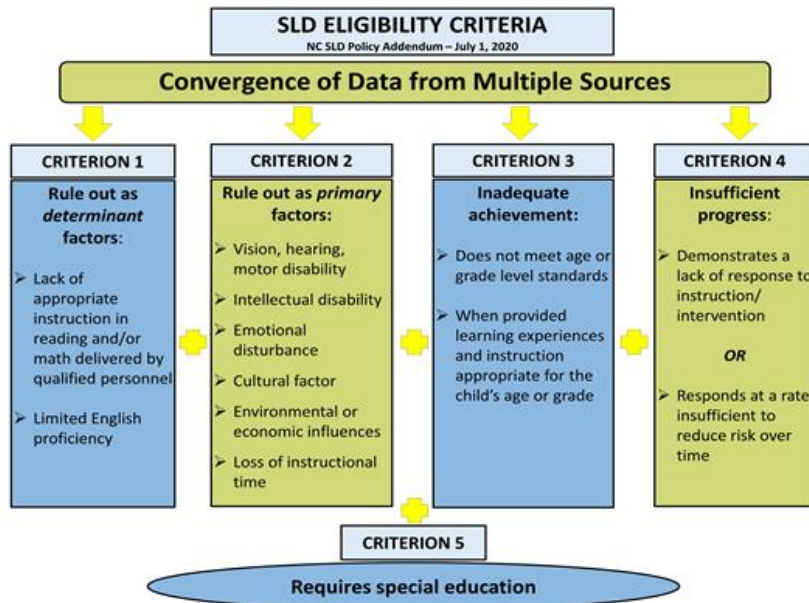


SLD FACT SHEET #10 – FREQUENTLY ASKED QUESTIONS

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 [tenth in a series](#), addresses frequent questions that continue to arise regarding the policy.



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

REFERRALS

Must a student receive intervention prior to initiating a referral?

No. When a disability is suspected, by teachers, parents or others, a review of existing data and consideration of a referral for a special education evaluation must be conducted by the IEP team.

The IEP team will determine whether or not there is evidence to support suspicion of a disability based on available information and if an evaluation will be conducted. If the determination is made that an evaluation will be conducted for the purposes of determining eligibility for special education and related services, interventions and progress monitoring will run concurrently with the evaluation process. At no time should an evaluation be delayed or denied pending intervention if a disability is suspected.

In an instructional model of evaluation for SLD, there is no requirement that prescribed steps be completed prior to an evaluation, including that a student “go through” tiers of intervention, meet criteria within a flow chart or that students receive intervention. Problem-solving is an important component of an MTSS to effectively identify the problem and determine interventions that will meet a student’s need(s). Teams must examine multiple sources of data to arrive at valid solutions. **No one data source should ever be used in isolation.** Support is matched to student need, not to prescribed formulas or processes.

Problem-solving teams have the obligation to ask the question, “Is a disability suspected?” If yes, a referral **must** be made regardless of whether or not the child is responding to interventions.

If a student has not participated in any interventions or the student has only received intervention for a short period of time, can the parent request an evaluation?

Yes. The public agency then reviews the specific presenting concerns and the child’s current strengths and needs. This would include any evaluations the parent provided from private providers.

- If the IEP team reviews the information presented and agrees that the student may be a student with a disability requiring special education and related services, then the public agency must provide notice of the intent to conduct an evaluation, obtain written parental consent, and conduct the evaluation within the prescribed timelines.
- If the IEP team does not suspect the child has a disability and denies the request for an initial evaluation, a written notice must be provided to the parents that informs them of this decision and explains the reasons why it has been determined an evaluation will not be conducted. The parent can challenge the decision by filing a state complaint, requesting mediation and/or filing a due process petition to resolve the disagreement about the need for an evaluation.

Interventions must be provided and continue throughout the evaluation period. The IEP team must explain the support and interventions the student will receive during the evaluation period. The intervention data gathered becomes part of the school team’s evaluation plan and used as part of the evaluation.

Schools may not use an RtI process, including the fact that the student has not received intervention, as a reason to delay or deny an evaluation of a student suspected of having a SLD, if suspicion of a disability has been established¹.

How do we address “lack of appropriate instruction” in schools where large numbers of students are at risk and not meeting grade level expectations?

Low achievement is not a unique marker for the presence of an SLD. All children with a learning disability have low achievement, but not all children who have low achievement have a learning disability (Kovaleski et al, 2013). There are many factors that may result in a student not demonstrating achievement that is adequate for the child’s age or the attainment of State-approved grade-level standards, including instruction, curriculum or environmental factors. Analysis of data that illuminates the impact of changes put into place to improve core instruction, as well as subgroup data can support teams in determining if the learning difficulty is unique to the learner.

Although these factors increase the complexity in identification of specific learning disabilities, it is ultimately, the IEP team’s obligation to ensure that these factors do not exclude students that are suspected of having learning disabilities from being identified.

Can we identify students with learning disabilities in schools where the majority of students are performing poorly?

Yes. The identification of a disability for the purposes of special education and related services is based on multiple sources of data. Therefore, a child may be suspected as having a disability even if the majority of students are performing poorly. Although group comparison data are important in establishing effective core instruction and struggles that are unique to the learner, these comparisons are not the only data applied in these decision points.

¹ <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>

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Criterion 1, the rule out of lack of appropriate instruction as a determinant factor, is placed first in North Carolina’s SLD criteria to underscore that it is everyone’s responsibility to address the instructional, curricular and environmental factors that contribute to low proficiency and growth rates, particularly in schools with large numbers of students who are not meeting grade level standards. It is not placed first to exclude any child from their right to a comprehensive evaluation if a disability is suspected.

If the student is meeting grade-level standards and/or receiving passing grades, does this mean a suspicion of a disability cannot be established and the team cannot move forward with an evaluation?

No. According to NC Policy 1501-1.1(c) and IDEA regulation 300.101(c), the school must ensure FAPE is available to any child who needs special education and related services “even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.” Any time a problem-solving team suspects a disability, regardless of meeting grade-level standards and/or receiving passing grades, the child must be referred to special education. Then, the IEP Team will determine whether or not a formal evaluation, for determining the presence of a disability, is to be conducted.

Teams should use multiple sources of data in making eligibility decisions, including information provided by the parents. Children with passing grades might be doing so because of extensive support provided through private tutoring. In some cases, the grade may reflect participation and tremendous effort on the part of the student rather than mastery of the grade-level standards.

Interventions

To meet eligibility requirements for additional areas of a Specific Learning Disability, must evidence-based interventions be implemented for each potential area of eligibility?

No. An instructional model of evaluation focuses on determination of the instruction/intervention the child requires to reduce achievement gaps as well as determination of eligibility status. The use of a process that examines whether the child responds to evidence-based interventions is intended to provide information to assist the IEP team in problem solving to ensure the child has had the benefit of instruction that was appropriately targeted to the child’s needs and ultimately in determining if, in fact, the child has an SLD. If a child is determined to be eligible as a student with an SLD, the IEP Team will utilize all data available to design the IEP based on the student’s unique needs. If a student is found eligible in one of the eight areas of an SLD, then the student may also be found to need special education in other areas. Learning disabilities often overlap and deficits in one area may impact another (e.g. reading comprehension and written expression). Information gathered during the evaluation can aid the IEP team in making determinations of need for specially designed instruction. It is not appropriate to delay an evaluation to ensure interventions are in place for each area of concern. In some instances, norm-referenced standardized measures of achievement can support the need for specially designed instruction in additional areas. This may include more complex areas such as reading comprehension and written expression. For additional information on this topic, the reader is referred to the following resource: [MTSS and Students with Disabilities - Guidelines for Decision-Making and Evaluation](#).

With the recent policy revisions, what are the intervention requirements?

The policy revision de-emphasized the number of interventions in order to promote the quality of interventions used. The adjustments of interventions, including the intensification of intervention through data-based individualization (DBI) yields valuable data when determining a child’s instructional needs. It was determined that a single intervention, when intensified appropriately, was sufficient to determine a lack of response. There is no empirical data specifying the importance of more than one intervention intensified in a systematic way (unless that intervention was determined to be an inappropriate match, which may or may not be the case). For further

information about Data-based Individualization and intensifying interventions, see the resources provided at the [National Center for Intensive Intervention](#).

Psychological Evaluations

Are psychological evaluations, including measures of intellectual ability, prohibited?

No. [NC Policies](#) defines a psychological evaluation as *an assessment of cognitive functioning, which may also include, but not be limited to, assessments of educational performance, social/emotional/behavioral functioning, and adaptive behavior. Procedures used by the psychologist may include formal and informal assessment measures, observations, interviews, and other techniques as deemed appropriate by the psychologist. The assessment of cognition may include intelligence, memory, reasoning, problem solving, attending, and processing.*

Within [NC Policies](#) for Evaluation Procedures:

- A psychological evaluation, including measures of intellectual ability, as a required component in the evaluation of SLD, is removed from policy.
- The use of cognitive discrepancy formulas of any type for the purposes of determining eligibility for SLD are prohibited.
- The use of cognitive assessments that lead to important instructional decisions is permitted.
- Multiple sources of educational data, including formal and/or informal diagnostic data, are required.

There is nothing in the federal regulations that requires the use of a psychological measure in the evaluation of SLD. In fact, the Public Comments section of the *Federal Register*/Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations pg. 46651 states the following:

Discussion: The Department does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD. Further, in many cases, these assessments have not been used to make appropriate intervention decisions.

Additionally, Fletcher and Lyon (2008, pg 29) state, “...there is no converging scientific evidence that such measurement is important in the identification of LDs, including dyslexia (Fletcher & Lyon, 2008, pg. 29).”

While measures of cognitive processing are not necessary nor required to establish the existence of a learning disability, there may be times within an instructional model of evaluation that measures of cognitive processing may be of value in determining the specific instructional needs of the child. When the IEP team makes a determination of assessment information needed beyond the required screenings and evaluations, two questions are important to consider:

1. Would the assessment of a student’s cognitive processes improve the accuracy of identifying students with SLD?
2. Would an assessment of a student’s cognitive processes lead to robust interventions that would improve the academic performance of the student? (Kovelski, Shapiro and Vanderheyden, 2013).

Is permission required for diagnostic assessments or screenings prior to a referral?

It depends. Diagnostic assessments used by a teacher or specialist to determine appropriate instructional strategies for general education curriculum implementation do not require written parental consent. However, parent involvement in their child’s educational progress is essential and absence of parental written consent should not be interpreted as absence of parent participation and communication.

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Diagnostic assessment(s) conducted to assist in establishing suspicion of a disability, determining eligibility and/or the need for specially designed instruction require written parental consent.

CAUTION: Upon determining additional diagnostic information is needed for an individual student, the problem-solving team should consider whether or not there is suspicion of a disability. If there is suspicion of a disability, all procedural safeguards are applicable. (See [NC Policies](#) definition of screening).

Students enrolled in private or home-schools

How will we evaluate students enrolled in private or homeschools under the 2020 SLD Policy?

IDEA requires that in making an SLD eligibility determination for students enrolled in private schools, the same evaluation components and eligibility procedures apply. It would be inconsistent with the IDEA evaluation provisions in 34 CFR §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private/home school has not implemented interventions or RtI with a child suspected of having learning disabilities.

For some students, only minimal information may be available, and some or all of this information will need to be gathered after the referral for evaluation has been made. The school district will need to work with the private school educators and/or parents to gather as much of this information through the intervention and assessment process as possible, recommend any additional assessments as necessary, and make the eligibility decision to the best of the team's ability.

Local Education Agencies (LEAs) may want to provide information (e.g., workshops, brochures) to private school and home school educators on the use of an instructional model of evaluation for special education eligibility and eligibility decisions. While private schools and homeschool settings are not required to provide early intervening services or special education, knowledge of an instructional model of evaluation will assist both the LEA and the student's private or home school in communicating and working with one another.

Are there prescribed decision rules (i.e. cutpoints, length of time in intervention, number of data points, etc.) that must be used for eligibility decisions?

No. At no time has the IDEA or *NC Policies Governing Services for Students with Disabilities* enumerated prescriptive eligibility criteria for SLD. Consistent with the requirements when a disability is suspected, the IEP Team must review the preponderance of data available at the time when making any decision of eligibility. IEP teams should carefully review the multiple sources of data and information, including information presented by the parent, when making eligibility decisions and the need for special education and related services.

A single data point, single test or single criterion may not be used to establish a disability. Fixed cut points are also arbitrary and should not be used. "There is no natural demarcation between scores indicative of SLD and scores not indicative of SLD; students close to the cut point will be very similar. Districts should not use strict thresholds as a gatekeeper for SLD (Fletcher and Miciak, 2019)." Fletcher and Miciak go on to recommend the use of confidence intervals.

Observations

Is parent permission required to conduct an observation prior to a referral for an evaluation?

It depends. The answer would be similar to the consideration of whether or not a screening requires parental consent. So, we pose these questions:

- What is the purpose of the observation?
- How will the information be used?
- Is the observation focused on one student's response or the group's response to instruction/intervention being provided?

If the purpose of the observation is focused on a group's response to instruction at the core, supplemental, or intensive level, and the results of the observation will be used to inform instructional, curriculum, or environmental changes for the group or to measure effectiveness of instruction (fidelity), then parental consent is not needed.

Observation of an individual child for the purpose of confirming or removing possible suspicion of a disability requires parental consent. When in doubt or the purpose is not clear, it is always best to obtain parental consent. (For further information regarding the observation requirements for special education evaluations, see page 15 of [NC Policies](#) {general observation requirements}.

References and Resources

IEP teams are encouraged to understand reference materials and documents throughout the Fact Sheet series, as well those available to system of support teams, to increase consistency in understanding and application of effective SLD evaluation and identification practices aligned with policy requirements.

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.