

Specific Learning Disabilities  
Evaluation Procedures and  
Eligibility Guidelines

Prepared by  
Lewis Cass Intermediate School District  
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## Endorsement

The undersigned certify:

That representative(s) from my school district have been involved in or apprised of the Specific Learning Disability Guidelines, which were developed and/or modified to assist in the evaluation and eligibility determination of students with specific learning disabilities within the Lewis Cass Intermediate School District. My signature certifies that my district will use and implement the Specific Learning Disability Guidelines.

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## Introduction

The importance of educating all children to reach age- and grade-level expectations has become an educational priority. Recent federal and state regulations (i.e., NCLB and IDEA) have stressed the importance of providing *appropriate instruction* in the *least restrictive environment* to ensure that each student meets grade-level standards. To meet this challenge, schools must develop systems and practices which will allow them to meet the needs of a diverse population of students and teach all children successfully.

Fortunately, growing evidence suggests schools that implement a systematic, problem solving approach (i.e., a Response to Intervention model) in which research-based instruction is provided with fidelity, and data-based decisions are used to match increasing levels of support to student need, can maximize the learning outcomes for all students. The majority of students who are identified as “at risk” will respond to general education interventions. However, after carefully planned and documented educational interventions, some students will not make expected educational progress leading to less than optimal learning outcomes. This small minority, estimated to be approximately 5% of the student population, may require additional support. Not all of these students have disabilities, but intervention teams may have data that will lead them to suspect that some of the inadequately responding students may have a disability and need to be referred for a special education evaluation.

This document is designed to provide guidance for the identification of individuals eligible for Specific Learning Disability (SLD). The document is divided into five major sections:

- I. **Regulatory Background** – reviews federal, state, and local guidelines related to the identification of Specific Learning Disabilities
- II. **Providing a System of Appropriate Instruction** – provides resources for schools to document and plan instruction to meet the needs of students prior to a special education referral
- III. **Review of Existing Evaluation Data (REED) and Evaluation Planning** – resource for schools to use when reviewing existing data in the development of an evaluation plan
- IV. **SLD Eligibility Determination Guidelines** – delineates the specific issues that need to be considered, and evaluation procedures that should be used, when determining whether a student meets eligibility for a SLD
- V. **Resources** – helpful tools that schools and evaluation team members can use prior to and during an evaluation for a specific learning disability

## Regulatory Background: Federal, State, and Local Regulations

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

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

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

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

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

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

*(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards...*

*(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas...when using a process based on the child's response to scientific, research-based intervention; or*

*(2)(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development determined by the group to be relevant to the identification of a specific learning disability...*

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

*R 340.1713 Specific learning disability defined; determination.*

*Rule 13. (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.*

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

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

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

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

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

*(3) A determination of learning disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:*

*(a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.*

*(b) At least 1 person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.*

In a letter of clarification to the field, dated January 22, 2009, Dr. Jacquelyn Thompson, Michigan Director of the Office of Special Education and Early Intervention Services, indicates three processes that may be used by the field in the evaluation of Specific Learning Disabilities including the following:

- 1) **Consideration of a severe discrepancy**, *“but only as one part of a full and individual evaluation. Severe discrepancy may never be used alone to determine a student eligible as a student with a SLD.”*
- 2) **Response to scientific, research based intervention**. Dr. Thompson notes that, *“depending on the local district’s practice, this process may have a variety of names; e.g., Instructional Consultation Team, Response to Intervention, Michigan’s Integrated Behavior and Learning Support Initiative. The Michigan Department of Education (MDE) does not mandate any specific scientific, research-based intervention process.”*
- 3) **Pattern of strengths and weaknesses**. *“The MDE does not mandate any specific process to determine a pattern of strengths and weaknesses. Any determination of SLD requires a full comprehensive evaluation according to the evaluation procedures in the federal regulations at §300.301 – §300.311, including those particular to a student suspected of having a SLD in §300.307 – §300.311.”*

LCISD Recommendation:

Use the data from a response to intervention (RtI) process in its consideration of eligibility for Given federal and state guidelines to the field, Michigan districts have options for establishing eligibility for students suspected of having a specific learning disability. As part of a full and individual evaluation it is recommended that the evaluation team:

- SLD; or when RtI is not implemented,
- Use assessment results to determine whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development. The use of a severe discrepancy between achievement and intellectual ability may be used as a portion of the data to establish a pattern of strengths and weaknesses.

## FULL AND INDIVIDUAL EVALUATION

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

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

71 Fed Reg. 46,648

Full and individual assessment requires:

- **“a variety of assessment tools and strategies** to gather relevant functional, developmental and academic information about the child, including information provided by the parent,” §300.304(b)(1)
- **“assess[ment] in all areas related to suspected disability**, including, if appropriate, health, vision, hearing, social/emotional status; general intelligence; academic performance; communicative status; motor abilities;” §300.304(c)(4)
- **“assessment sufficiently comprehensive** to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” §300.304(c)(6)
- **“information from a variety of sources**, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior;” §300.306(c)(1)

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

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

and “ruling out”:

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

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

1. Data and other specific descriptive information on the student’s current academic performance, indicating both strengths and areas of need.

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

#### INITIATION OF EVALUATIONS AND TIMELINES:

*(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 § 300.301 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 instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and  
(2) Whenever a child is referred for an evaluation.*

Michigan rules, which specify 30 school days from initial consent to holding an IEP meeting, must be followed unless the parent and district mutually agree to extend the timeline. This request can be made in the event that the evaluation will address response to intervention after the request for an evaluation.

Further, the district is required to address the question of disability if a student has not made progress after an appropriate period of time with appropriate intervention. The length of time may vary, depending on the circumstances, but the district should not delay unnecessarily once a disability is suspected.

Although extended evaluation timelines may be requested in order to implement appropriate interventions and collect data on the student's response, if a parent does not agree to extend the timeline, then the evaluation must proceed and an IEP team meeting convened within the 30 school days allowed under state rules. Whether eligibility can be determined will depend on whether the IEP team has the necessary rule-in, rule-out, and documentation data required for SLD identification.

#### 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

## Providing a System of Appropriate Instruction

A key element to both NCLB and IDEA is that schools must ensure that students are provided with *appropriate instruction*. Among other things, appropriate instruction involves:

- Research-based instruction that is delivered by highly qualified personnel in the general education setting
- 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 delivered by highly-qualified teachers
- Explicit and systematic instruction in math and reading (including the core components of effective reading instruction: phonemic awareness, phonics, vocabulary development, reading fluency and oral reading skills, and reading comprehension strategies)

Accordingly, when a student is being considered for an evaluation, a school must be able to provide evidence that appropriate instruction in the area(s) of concern was provided. In addition, schools need to have data to rule out whether other factors/disabilities are the primary cause of a student's learning difficulties. A helpful tool for collecting this information, and identifying areas in which interventions need to be planned is the *Student Information and Data Review (SIDR) Form*. In the event that an intervention needs to be designed for the student, the School-Based Intervention Team process offers a procedural way to design interventions with all of the required components. Both of these tools are described below:

### STUDENT INFORMATION AND DATA REVIEW (SIDR) FORM

The Student Information and Data Review (SIDR) Form is a Microsoft Office based electronic file (Word, Excel) that serves to document relevant factors affecting the at-risk student's educational performance over time. Because it is an ongoing data review, the SIDR helps teams document elements of appropriate instruction that have been provided and identify any areas that may still need to be addressed. Accordingly, the SIDR may highlight when building level teams need to design an intervention for a student that is at-risk. For an effective tool in designing interventions, please see the School-Based Intervention Team (SBIT) model in the appendix.

The SIDR is a helpful tool when a student is referred for a special education evaluation because of a suspected disability. Information collected with the SIDR is critical in completing a review of existing evaluation data (REED), which is required as a prelude to a special education evaluation.

#### **Who completes the SIDR?**

In most cases, the school psychologist will work in collaboration with members of the building intervention team (e.g., School-Based Intervention Team, child study team, student assistance team, teacher assistance team, etc.) to gather information used to complete the ongoing data review form.

#### **When is the SIDR completed?**

When a student is first identified as being at-risk either behaviorally or academically, it is not unusual for an intervention team (e.g. child study team, student assistance team, School-Based Intervention Team, Rtl team) to conduct a record review as part of its problem solving /intervention process. With increased use of response to intervention models it is becoming ever more apparent that this single snapshot is an inadequate tool for ongoing planning. At-risk students may require a series of increasingly intense interventions before they are successful. Other students may respond to interventions at one point in

their career but reemerge as at-risk at a subsequent time. A smaller number of students may not respond adequately to general education interventions and ultimately present with a suspected disability. In the case of a suspected disability, a district must have data either prior to, or as part of the referral/evaluation process, that any underachievement in reading or math being used as a basis for eligibility is not primarily the result of lack of appropriate instruction. Ongoing documentation of appropriate instruction is extremely useful in this context because it eliminates the need to reconstruct a student's educational history.

### **How do we complete the SIDR?**

Instructions for completing the SIDR, and the form itself, are available electronically at the MAASE website (<http://maase.pbworks.com/Student-Information-and-Data-Review>). A copy of the SIDR can be found on page 25.

SCHOOL-BASED INTERVENTION TEAM (SBIT)

### **What is the SBIT process?**

The School-Based Intervention Team process (adapted from the Syracuse, NY model) is a tool for building intervention teams to design and plan an academic or behavior intervention for a struggling student. Through use of the SBIT process, building intervention teams are able to design a comprehensive evaluation in which specific skills are targeted, goals are established, and a plan for monitoring the student's progress is developed. Accordingly, intervention teams are able to determine if the student is responding to instruction or if modifications/revisions to the intervention need to be made. Furthermore, the SBIT process provides a framework for providing an intervention with integrity by addressing implementation issues upfront and ensuring teachers have the necessary resources and coaching during the intervention process.

In the event that a student fails to respond to a series of interventions that have been implemented with integrity, schools that use the SBIT process will have the mandatory data (in accordance with NCLB and IDEA) that needs to be considered in the event of an evaluation for special education eligibility.

### **When should the SBIT be used?**

Each building will likely use the SBIT process at different stages in their system of service delivery, depending on the resources available and the multi-tier system the school has established. In actuality, the SBIT could be used at any tier to develop an intervention or differentiate instruction. However, many schools will likely use the SBIT model primarily to design strategic (tier 2) and intensive (tier 3) interventions. It is recommended that schools beginning the SBIT process start with students that need more intensive support.

### **How do we use the SBIT?**

The SBIT manual that explains the process and offers case examples is on page 54.

## Review of Existing Evaluation Data (REED) and Evaluation Planning

The majority of students who are identified as at risk will respond to general education interventions. However, there are a small minority, estimated to be approximately 5% of the student population, who do not respond adequately to increasingly intense general education interventions. Not all of these students have disabilities, but intervention teams may have data that lead them to suspect that some of the inadequately responding students may have a disability and need to be referred for a special education evaluation. According to Michigan Administrative Rules for Special Education, this referral triggers the duty of the school to provide notice of the referral and to present an evaluation plan to the parents for consent within 10 calendar days of the referral. Federal special education regulations require that Individualized Education Program (IEP) Team members conduct a review of existing evaluation data and then determine what, if any, additional information is required to determine eligibility. This review of existing evaluation data is known as the "REED". Districts within Lewis Cass ISD conduct a REED for initial evaluations as a matter of best practice.

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

Within a systematic plan it is essential to include a data-driven, decision-making process based on each individual student's needs. Best practice dictates the development of an evaluation plan for determining SLD eligibility by reviewing all pertinent data that has been collected. After reviewing existing data, the evaluation team will need to develop an evaluation plan for collecting any missing information that may be needed to determine, or rule out, SLD eligibility. If there is the need for additional data, the team is to record the data needed and describe how the data will be obtained.

To make appropriate decisions about what, if any, additional information is needed to determine SLD eligibility and fulfill requirements for a comprehensive (i.e., "full and individual") evaluation, IEP Team members match existing data with a "checklist" of SLD requirements. The use of the checklist will allow the IEP team to:

1. Compare existing data with required data to identify additional data needs.
2. The IEP team records additional data needs on the Evaluation Plan page, indicating the data needed and the means that will be used to obtain the data. If no additional data is needed for either SLD eligibility determination or IEP content, the team will check the box "No Additional Data Needed" and provide a written explanation of why that determination was made.

## SLD Eligibility Determination

IDEA 2004 §300.309 serves as the key regulation in the framework of determining SLD eligibility and defines elements of the evaluation process.

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

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

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

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

*§ 300.309 Determining the existence of a specific learning disability.*

*(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—*

*(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:*

*(i) Oral expression.*

*(ii) Listening comprehension.*

*(iii) Written expression.*

*(iv) Basic reading skill.*

*(v) Reading fluency skills.*

*(vi) Reading comprehension.*

*(vii) Mathematics calculation.*

*(viii) Mathematics problem solving.*

Reading fluency has been added to the list of potential LD concerns, further defining areas in the reading process. USDOE discussion accompanying issuance of the IDEA 2004 implementing regulations notes that fluency assessments are “very brief and highly relevant to instruction”. However, USDOE discussion also supports the relevance of standardized testing, stating that, “nothing in the Act or these regulations would preclude the eligibility group from considering results from standardized tests when making eligibility determinations.”

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

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

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

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

*(2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305;*

RESPONSE TO SCIENTIFIC, RESEARCH-BASED INTERVENTION (RTI):

Response to Intervention is a school-wide, problem-solving approach that provides a systematic framework in which schools use data-based decisions to ensure all students achieve success with research-based instruction. RTI involves frequent monitoring of student performance to ensure that all students are provided with high-quality instruction and interventions matched to their need. In addition, schools use student outcome data, as well as system and process measures, to inform instructional decisions and ensure staff have the resources and training needed to provide research-based instruction with fidelity.

Although federal and state regulations do not mandate a specific response-to-intervention model, RTI approaches share the following core principles:

### **RTI Core Principles (NASDE, 2005, p. 3)**

- I. We can effectively teach all children
- II. Intervene early by identifying at-risk students through universal screening
- III. A multi-tier model of service delivery provides a systematic approach to support student learning
- IV. Use a problem-solving model to make decisions within a multi-tier model [e.g., *School-Based Intervention Team (SBIT) model*]
- V. Use scientific, research-based validated interventions/instruction
- VI. Monitor student progress to inform instruction
- VII. Use data to make decisions
- VIII. Use assessment for three different purposes
  - a. Screening to identify students at-risk for academic/behavior difficulties
  - b. Progress monitoring to assess a student's response to instruction/interventions
  - c. Diagnostic assessments to identify skills a student has mastered and those that need to be taught

Neither federal nor state regulations mandate specific research-based interventions that must be used, and leave the state and local school districts with flexibility to determine which instructional programs best meet local needs. However, the instructional practices chosen must meet the guidelines of appropriate instruction under NCLB and IDEA and be research-based. Guidance on research-based practices may be found in Response to Intervention: Enhancing the Learning of All Children, published

by the Michigan Association of Administrators of Special Education (MAASE). Resources such as the Florida Center for Reading Research ([www.fcrr.org](http://www.fcrr.org)) and the Oregon Reading First Center (<http://oregonreadingfirst.uoregon.edu/>) also provide information and reviews of current research-based interventions and programs.

All of the local school districts in Cass County have a school building(s) participating in Michigan's Integrated Behavior and Learning Support Initiative (MiBLSi). MiBLSi is an initiative through the Michigan Department of Education's Office of Special Education and Early Intervention Services (OSE-EIS) that helps schools develop a school-wide, RtI model for reading and behavior. The program does this by providing professional development and technical assistance to building leadership teams with coaching support provided from the local, district, and state level. The mission of MiBLSi is to develop support systems and sustained implementation of a data-driven, problem-solving RtI model in schools to help students become better readers with social skills necessary for success.

With support from MiBLSi, staff is provided training and resources to implement a structure of systematic and explicit instruction for reading and behavior using research-based instructional strategies. Staff is also trained to:

1. Monitor student reading and behavior performance
  - Access dynamic data collection systems that provide staff with performance indicators in reading and behavior that are accurate and timely – for example, the School Wide Information System (SWIS™) and the Dynamic Indicators of Basic Early Literacy Skills (DIBELS™).
2. Make decisions based on data
  - Develop and implement reading and behavior interventions using student performance indicators, as well as process and system measures
  - Evaluate intervention effectiveness through ongoing data collection and progress monitoring

#### PATTERN OF STRENGTHS AND WEAKNESSES:

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

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

Districts must establish local standards for implementing either an RtI process or establishing a pattern of strengths and weaknesses (PSW). Lewis Cass ISD has provided guidance on an appropriate RtI structure, as defined in this manual. Parameters for assessment results are provided as a way of

standardizing PSW decision making within and among school districts. Local guidelines for PSW are included in the following documents:

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

This guidance is based on the following assumptions:

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

#### SELECTING RESPONSE TO INTERVENTION (RTI) OR PATTERNS OF STRENGTHS AND WEAKNESSES (PSW)

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

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

- District policies support the use of the RtI as an intervention approach; and,
- District implementation reflects the 8 core principles (see box above on page 13).
- If the local district and LCISD have cooperatively determined that RtI has been fully implemented with sufficient duration at a given student's grade-level prior to the use of this data as part of a full and individual evaluation

Rule #2: Use PSW if:

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

**NOTE:** While many districts within LCISD are using components of the RtI process, presently none have reached full implementation at a building or grade level. Consequently, PSW will be used exclusively at this time.

## LOCAL GUIDANCE FOR DETERMINING SLD ELIGIBILITY: USING PATTERNS OF STRENGTHS AND WEAKNESSES

1. The new regulations (300.309(a)(2)(ii)) state: “The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 300.304 and 300.305.” (300.304 describes assessment requirements and 300.305 describes the evaluation planning process.)
2. Definitions:
  - a. Performance – actual performance in the classroom, as assessed by the students in-class assessment results, grades, teacher anecdotes and observations.
  - b. Achievement – results on curriculum-based measurement (e.g., DIBELS), criterion-referenced assessment (e.g., Brigance), norm-referenced (e.g., WIAT-III), and state (MEAP) assessments.
  - c. Intellectual Development – the student’s cognitive and functional skills, as assessed by IQ tests, functional skill surveys, interviews, and observations.
3. When to use ‘patterns of strengths and weaknesses’ to determine eligibility:
  - a. When a school does not have the capacity to implement a system of tiered interventions (RtI).
  - b. In learning disability areas in which the school does not have a RtI intervention process. For example, a school may use the three-tier intervention process for reading and math, but not for writing, oral expression or listening comprehension.
  - c. In grades in which the school does not use a RtI intervention process. For example, a school may use the RtI 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:
  - a. The school uses a scientifically, research-based core program that was implemented with fidelity with the referred student.
  - b. The school tried differentiated instruction techniques with fidelity with the referred student for a period of 8 to 12 weeks.
  - c. The school tried a scientifically, research-based Tier 2 intervention that was implemented with fidelity with the referred student for at least 12 weeks.
  - d. During the Tier 2 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 progress.
  - e. When using the ‘Charting the Patterns of Strengths and Weaknesses’ page, a student shall have at least 4 weak boxes checked (at least 2 of which are individually-administered assessments of academic achievement) and at least one other academic area considered a strength (with a min. of 3 boxes checked as being a strength) and/or the intellectual box checked as a strength to be considered eligible initially for special education services. For re-evaluations, 3 weak boxes (min. of 1 individually-administered assessment) need to be checked and at least 3 strength boxes need to be checked to be considered a weakness or strength, respectively. The IEP team shall determine if the student’s weakness warrant special education services.
5. Other notes:
  - a. When determining age-based achievement and performance, the evaluator should consider whether or not the student has received appropriate instruction for those age-based skills. For example, can a student retained in second grade be compared with third grade students if that student never received third grade instruction?
  - b. If the student’s weak areas are primarily in performance rather than in achievement (i.e., the student has the academic skill but does not do the work in the classroom), then the school should consider different types of interventions other than academic (e.g., motivation).
  - c. Probably the best way to actually ‘catch up’ the student’s academic skills with his/her peers is using a Tier 3 intervention (whether delivered in general education or special education) along with continued Tier 1 instruction.
  - d. If a student is placed into special education and the intent of the school is to catch the student up academically, the student’s instructional time for that area should not be reduced from what it was when the student was only receiving general education services.

## RULE OUT OF EXCLUSIONARY FACTORS

The evaluation team must address and rule out other factors as the primary cause of the child's learning difficulties, including:

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

### *PRESENCE OF OTHER DISABILITIES/FACTORS*

*(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.*

The eligibility team is required to take into consideration the effects of what are commonly referred to as "exclusionary" factors. However, it must be clear that a student, for whom one of these factors applies, could also be appropriately identified as having a Specific Learning Disability. The issue is one of "primary cause" of the learning difficulties. With the changes to SLD Criteria, serious consideration of these factors has become even more important than in the past.

Federal Regulations, require that the multidisciplinary team determine that its findings (that address the criteria for SLD) are not PRIMARILY the result of – "visual, hearing, or motor disabilities; cognitive impairment (CI); emotional impairment (EI); cultural factors; environmental or economic disadvantage; or limited English proficiency."

The effects on the determination of SLD cannot be considered in the same manner for all the exclusionary factors. Vision, hearing, and motor disabilities, as well as CI and EI, are all special education disability categories. The team must determine whether the primary reason for learning difficulties is the presence of one of these other disabilities or SLD. It is possible for a team to conclude that SLD is the primary disability, even if the child, for example, also has a visual impairment. Some LEAs exercise the option of determining a secondary disability. It is not necessary to do so; however, all educational needs that significantly impact the child's progress in the general education curriculum must be addressed. For example, a student with a motor impairment may also have a reading deficit that requires specialized instruction in basic reading skills.

Cultural, economic and environmental factors are more complex and, thus, more difficult to address in examining the primary cause of poor achievement. Basically, these conditions do potentially influence the development of cognitive and linguistic skills that are necessary for academic learning and can co-exist with specific learning disabilities. (Fletcher et al., 2007)

It is critical to keep in mind that special education eligibility under any disability category entitles the child's special education needs to be addressed through the IEP, whether or not those needs are typically associated with the identified disability.

### *Visual, hearing or motor disability -*

As with some of the other "exclusionary factors," these disabilities may co-exist with specific learning disabilities and must be addressed in instructional/intervention planning if they are present. It is the

decision of the eligibility team to determine if the underachievement is due primarily to one of these disabilities or a Specific Learning Disability. The mere presence of one of these disabilities should not preclude a determination of SLD as the primary disability.

A student with a primary educational disability in the area of vision, hearing and/or physical disabilities may be considered as also having a learning disability if the identified learning deficits are significantly greater than what can be reasonably expected as a result of the primary disability (e.g., hearing loss) alone. Again, all the identified needs of the child must be addressed, whether or not typically linked to the child's primary disability.

#### *Cognitive Impairment -*

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

#### *Emotional disturbance-*

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

#### *Cultural, environmental or economic disadvantage-*

The evaluation must establish the primary cause of the disability and must rule out causative factors not related to disability, such as:

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

#### *Limited English proficiency-*

In order to rule out limited English proficiency as the primary cause of learning difficulties, there are several questions that must be answered affirmatively:

- Has this student been given an English language proficiency test?
- Is this student receiving or has this student received English Language Acquisition (ELA) services in accordance with the district's developed program?
- Have targeted interventions been implemented in addition to English language acquisition services? English language acquisition services, although important, should not be considered to be "interventions."
- Has progress been monitored and compared with the progress of a comparable group of English language learners? It is important to compare students to similar peers (students should be from the same culture, language, age and immigrant groups)
- Has progress been markedly lower than that of English language learner peers? English language learners demonstrate similar acquisition patterns. It must be shown that a student demonstrates atypical growth for his/her peer group in all areas of language (speaking, listening,

reading and writing) in order for language acquisition to be ruled out as the cause of the difficulties.

- Have ELA and other services been provided for a sufficient length of time so that growth can be measured? Students who are newly arriving immigrants will move through a stage of culture shock and adjustment to the U.S. school system. They may appear to have signs and symptoms of a disability, when in reality they have not yet adjusted to the school system. Although there is not a specific time frame for students to adequately adjust to schooling in the U.S., teams should carefully consider whether the time has been adequate enough to learn basic vocabulary, hear and discriminate the English sounds and symbols, follow basic directions and practice learned skills.

*LACK OF APPROPRIATE INSTRUCTION:*

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)
  - Appropriate instruction in reading defined as 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

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

*(b) To ensure that under achievement 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.*

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

Examples of appropriate instruction documents:

- Chronology of student’s educational history-
  - Teacher anecdotal records
  - Grade retentions
  - Attendance
  - Grades
- General Education Curriculum

- 5 essential components of reading- phonemic awareness, phonics knowledge, fluency, vocabulary and comprehension
- Math- conceptual understanding, computational and procedural fluency, fact fluency and problem solving skills.
- District's curriculum is aligned with state standards
- Fidelity of instruction
  - 80% of students within the classroom are meeting state/district standards
  - Differentiated instruction, universal design principles
  - Multi-tiered intervention practices
  - Individual instructional practices
  - Staff training in effective instructional programs / strategies.
  - Observation of classroom instruction or the use of checklists by teachers, peers or content specialists
  - Routine collection and review of system and process measures (i.e., PET-R, BoQ, SET, EBS-TIC) to guide instruction, professional development, and allocation of resources

Intervention prior to or as a part of the evaluation demonstrates:

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

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

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

See 'Local Guidance for Determining SLD Eligibility: Using 'patterns of strengths and weaknesses' on page 16 for guidance on these characteristics.

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

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

IDEA 2004 REGULATION, §300.310, OBSERVATION.

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

§ 300.310 Observation.

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

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

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

Regulations specify that, given exceptional circumstances, the child must be observed in an age appropriate environment. Documentation must include the relationship of the behavior to the child's academic functioning (i.e. avoidance of work, time attending to the task, requests for help).

§ 300.311 DOCUMENTATION FOR SPECIFIC LEARNING DISABILITY DETERMINATION

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

§ 300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

- (1) Whether the child has a specific learning disability;
  - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);
  - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  - (4) The educationally relevant medical findings, if any;
  - (5) Whether—
    - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
    - (ii)(A) The child does not make sufficient progress to meet age or State approved grade-level standards consistent with § 300.309(a)(2)(i); or
    - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);
  - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
  - (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
    - (i) The instructional strategies used and the student-centered data collected; and
    - (ii) The documentation that the child's parents were notified about—
      - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
      - (B) Strategies for increasing the child's rate of learning; and
      - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Documentation must include:

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

## Resources

The following resources are available upon request from the Special Education Department at Lewis Cass Intermediate School District, 61682 Dailey Road, Cassopolis, Michigan 49031.

### **Student Information and Data Review (SIDR Form)**

#### **Exclusionary Factors Worksheet**

#### **Worksheet to Determine Appropriate Instruction**

#### **Effective Instruction Checklist**

#### **Opportunities to Respond Observation Sheet**

#### **Observation Checklist for Pre-academic/Academic Areas of Concern**

*Pre-k/Kindergarten*

*Grades 1-4*

*Grades 5-8*

*Grades 9-12*

#### **School-wide Assessment Tool for an RtI Model**

#### **School-Based Intervention Team Process**

#### **Worksheet for Charting a Pattern of Strengths and Weaknesses**