
Determining Special Education Eligibility for Specific Learning Disabilities

Department of Education, Office of Special Education



This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document contact nde.guidance@nebraska.gov

It is the policy of the Nebraska Department of Education not to discriminate on the basis of gender, disability, race, color, religion, marital status, age, national origin or genetic information in its education programs, administration, policies, employment or other agency programs.

Introduction

The 2004 Individuals with Disabilities Education Improvement Act (IDEA) and subsequent regulations published in 2006 have significantly changed the identification process for students suspected of having specific learning disabilities. Rather than using a discrepancy model contrasting intellectual and achievement test results, multi-disciplinary teams are now encouraged to consider a variety of methods to identify specific learning disabilities, including response-to-intervention (RTI)/Multi-tiered System of Supports (MTSS) that incorporates deeply implemented problem solving, cognitive processing approaches, and the determination of a pattern of strengths and weaknesses.

Special Education Eligibility for Specific Learning Disabilities

This technical assistance document provides general guidance for parents, teachers, special education personnel, administrators, and other professionals with information on the identification and determination of eligibility for special education services for children with specific learning disabilities (SLD).

This category of children has been defined by both federal and state regulations. A three-part eligibility requirement for a child to be verified as a child with a specific learning disability is as follows:

- Meet eligibility guidelines (92 NAC 51);
- Documentation of adverse effect on educational performance; and
- Determination that there is a need for special education.

Since 1975, when the first special education law (PL 94-142) was authorized by Congress and Nebraska Rule 51 was written and approved, children with SLD in Nebraska have been identified by using a “Severe Discrepancy” between intellectual ability (as measured by an intelligence test as resulting IQ score) and academic achievement. In recent years, the validity and reliability of this process have been questioned at the federal, state, and local educational levels.

When the federal law was reauthorized in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), the developers allowed states more flexibility in the identification of children with SLD. The following language, which provides states with three different options in the identification of SLD, is included in IDEA:

Additional Procedures for Evaluating Children with Specific Learning Disabilities: Sec. 300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with Sec. 300.309, criteria for determining whether a child has a specific learning disability as defined in Sec. 300.8. In addition, the criteria adopted by the State—

*(1) Must not require the use of a **severe discrepancy** between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in Sec. 300.8(c)(10);*

*(2) Must permit the use of a process based on the child's **response to scientific, research-based intervention**. Section 300.304; and*

*(3) May permit the use of **other alternative research-based procedures** for determining whether a child has a specific learning disability as defined in Sec. 300.8(c)(10).*

The evaluation of a child suspected of having SLD must include a variety of evaluation and assessment tools to gather relevant functional developmental and academic information about the child, including information provided by the parent that may assist in determining eligibility. No single measurement or assessment may be used as the sole criterion for determining whether the child has a disability and for determining an appropriate educational program for the child.

In 2019 joint principles regarding “Eligibility for Special Education Under a Specific Learning Disability Classification” were developed through collaboration with multiple national organizations (e.g., ASHA, CASE, CEC, LDA, NASP, NCLD, CLD, and more). These principles outline critical elements of an evaluation process when SLD is suspected, and are embedded within this technical assistance document. The principles as defined by the partner organizations are as follows and can be found at this link: <https://www.nclld.org/wp-content/uploads/2019/07/Eligibility-for-Special-Education-under-a-Specific-Learning-Disability-Classification-Final.pdf>.

Principles for All Students:

Principle 1: All students should have access to general education that includes rigorous, differentiated, universally designed core instruction, as well as supplemental, evidence-based interventions designed to respond to students’ individual needs.

Principle 2: Education professionals—working as a team—should have the preparation, ongoing training, and resources required to: collect and use universal screening information; select and administer assessments to measure student learning and monitor progress; and provide evidence based instruction and interventions to support students in accessing the core general education curriculum.

Principle 3: Teams of education professionals should establish and maintain clear lines of communication with families to gain valuable input related to a student’s strengths as well as academic, social, behavioral, and health needs to ensure that families, students, and service providers can participate in collaborative decision making about future instruction.

Principle When a Disability is Suspected:

Principle 4: An evaluation must lead to a clear, unbiased, and timely decision regarding special education eligibility and inform future instruction, whether the student requires special education or not.

Principles When Special Education Eligibility is being Determined and SLD is Suspected:

Principle 5: Policies for determining student eligibility for special education services under the SLD classification should require the use of valid and reliable measures and ensure consistency across school districts.

Principle 6: Comprehensive evaluations for special education eligibility under the SLD category must include data from targeted, valid, and reliable measures that are tailored to the unique learning and behavioral profile of each student. The selection of measures and an eligibility determination must consider both best practice and professional judgment.

Principle 7: Assessments that measure aspects of cognitive functioning may be used to rule out intellectual disabilities or to inform educational decisions by documenting areas in which the student is struggling or excelling.

Principle 8: Teams of education professionals should use the data collected on how a student responds to evidence-based interventions as an essential part of the evaluation. School personnel must not use response to intervention (RTI) procedures to delay a comprehensive evaluation and the determination of eligibility for special education services.

Section 1: Criteria for Determining Eligibility

The MDT may determine that a child has a specific learning disability after documentation of careful consideration of the following six criteria (these criterion may look different within each local educational agency based on their written policies and procedures as well as the methodology selected by the evaluation team):

CRITERION 1: Failure to meet age- or grade-level state standards in one of eight areas when provided appropriate instruction:

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

The first criterion for identification of SLD requires a determination that the student is failing to meet age- or grade-level state standards in one of eight areas (see definitions). A student needs to meet this criterion in only one of the eight areas but may potentially meet criteria in multiple areas. The school team should identify the area(s) of concern during its review of existing data. The area(s) of low achievement that have not been responsive to instruction/ interventions of varying intensities should be what prompted referral for evaluation for the possible presence of SLD.

Existing data from a variety of sources, to determine the degree of underachievement or difference between the student's current performance and age- or grade-level state standards, at a minimum could include the following:

-
- Performance on state assessments. These are the state’s general assessments aligned to state academic content standards for the student’s grade.
 - Universal screening. Benchmark testing of all students, typically administered three times per year, focusing on foundational skills and aligned with state standards.
 - Formative and progress-monitoring assessments. Aligned with grade-level state standards, the assessments are used to monitor what students are expected to learn when provided with robust instruction within the general education setting.
 - Norm-referenced assessments of academic achievement correlated to state standards.
 - One or more classroom-based observations by teachers (other than the student’s teachers) and related services providers in the instructional environment(s) and during instruction in the area of concern.
 - Information provided by the student’s parents that the student has a history of not meeting age- or grade-level state standards, as evidenced by data from prior evaluations, developmental history questionnaires, other information, and/or that there is a family history of SLD, other family members with SLD, and/or delayed acquisition of reading and/or math skills.

To determine eligibility for special education under Criterion 1, the team should consider a variety of data sources related to any of the eight areas of academic functioning. Within a problem solving process, districts establish decision rules based on their student population, evidence-based assessment tools, and their chosen curriculum.

A variety of data must be considered within the context of these two important elements:

- **Assessments.** Norm-referenced assessments (e.g., NWEA MAP) provide an indicator of the average performance of a student in the same grade in comparison with other students across the country. Local norms are based on grade-level state standards, and a state's norms may vary in relation to the overall progress of students nationwide. The NSCAS is an example of a criterion-referenced test that measures student performance on Nebraska state grade-level standards.
- **Cultural and linguistic sensitivity.** If differences in culture or language are not considered when interpreting assessment data, the result may be an inappropriate disability designation.

For students whose primary language is not English, an evaluation of their current oral communication and literacy levels is recommended in order to assess their level of English proficiency.

Determining Extent of Student Underachievement

Additional data may be needed to verify the extent of the student's underachievement. Such data will likely need to be obtained through more in-depth assessments as discussed below.

To comply with IDEA's requirements, assessment tools used for this purpose must be carefully selected and administered so as not to be discriminatory on a linguistic, racial, or cultural basis, and must be administered in a form and language that allows accurate data to be collected. §300.304(c)(1)

A useful tool to provide a closer look at student achievement may include classroom-based formative assessments that are very closely tied to the curriculum (aligned with grade-level and age-level state standards) or skill area where the instruction or intervention is focused. In many cases norm-referenced tests may also be used to gather additional data on the student's academic achievement (discussed further below). The goal is to determine the magnitude of difference between the student's current skills and what is expected for his or her age and grade (Deno, 2003).

Regardless of the assessment tools used, confidence intervals should be considered to take into account the measurement error of the tests and to permit the expression of a range of scores, not a set cut-point. Confidence intervals provide a range within which the student's actual performance or skill level is likely to fall, thus providing a discussion focused on the student's range of achievement and opportunity for growth. District's should determine the degree of error that will be utilized on standardized, norm-referenced assessments to adequately determine the student's achievement level.

Validating Provision of “Appropriate Instruction”

The team must also satisfy the requirement expressed in Criterion 1 regarding a determination that the student's lack of academic achievement has occurred within the delivery of “appropriate instruction.” This is an important element as it serves as a stopgap for identifying students as having an SLD who might actually be underperforming due to a lack of or inadequate instruction. In fact, it reiterates a requirement in IDEA's broader requirements for eligibility that states the following special rule for eligibility determination:

§ 300.306 (b)(1)(i-iii) A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

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

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency

Evidence of class wide, grade wide, or school wide low achievement in the academic area of concern could lead the team to a determination that instruction (e.g., quantity, quality, relevance, alignment with standards) may have a strong relationship to the student's lack of achievement. Only when the team can determine that the referred student's academic problems persist while most students in the same demographic (e.g., English Language Learners, race/ethnicity), class, school, or district are performing satisfactorily can lack of appropriate instruction be ruled out. For example, when approximately 80% of students in the referred student's class or grade, or other subgroup, are meeting the age- or grade-level state standards, then the referred student's lack of achievement can be recognized as unique and not a result of the lack of instruction.

Guiding Questions for Criterion 1:

- **What standard(s) or benchmark(s) are used for points of comparison for students?**
- **Are most students (80-90% performing at grade level proficiency without the use of supplemental instruction and intervention?**
- **Is the student performing at or above grade level proficiency?**
- **Is the student's instructional response below benchmark on multiple measures?**
- **Is the student capable of performing at an adequate level as measured on some data sources and not others, and if so, why?**

CRITERION 2: Lack of progress in response to scientific, research-based intervention.

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 34 *C.F.R.* 300.309(a)(1) and 92 NAC 51 when using a process based on the child's response to scientific, research-based intervention; or 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 92 NAC 51 and 34 *C.F.R.* 300.304 and 300.305.

While federal regulations provide two options for determining that the student is not making sufficient progress, this guide focuses exclusively on the use of response to scientific, research-based intervention when making a determination regarding Criterion 2.

Validating Delivery of Scientific, Research-Based Interventions

First, documentation is needed regarding the scientific, research-based interventions that were provided to supplement core-curricular instruction during the intervention period.

The school team should document that the interventions are supported by scientific research. A standard intervention protocol should be developed with interventions that:

- are appropriate for the group of students receiving the intervention and aligned to the student's area of need,
- have yielded successful responses and outcomes from other students for whom the interventions are appropriate,
- have been implemented by staff who were adequately trained and have demonstrated proficiency providing the interventions, and
- were delivered with a high degree of fidelity (as intended by the program authors) and for a sufficient length of time and intensity, as evidenced by progress monitoring data.

Issues that arise during the process of validating delivery of scientific, research-based interventions—such as fidelity—should be addressed before the school team proceeds to evaluation and eligibility determination.

“The most common reason for a lack of response to an evidence-based intervention well matched to a student and skill area is the failure to implement the intervention as designed” (VanDerHeyden & Tilly, 2010).

Evidence-based practices (EBPs) are instructional techniques with meaningful research support that represent critical tools in bridging the research-to-practice gap and improving student outcomes (e.g., Cook, Smith, & Tankersley, in press; Slavin, 2002 as cited by Cook & Cook, 2011). To be considered evidence based, a practice must have multiple demonstrations of effectiveness for the population intended from high quality experimental studies. There are many resources available to help guide decisions regarding evidence-based practices. Please see the Appendix at the end for resources.

Elements Needed to Document High Quality Intervention under Criterion 2

Essential Component	Required Actions
Universal screening data to determine need for intervention	Student was identified for intervention from one or more sources of screening data utilizing a systematic problem solving process and established decision rules
Established baseline	Baseline data point(s) established from initial data collection
Established goal	<ul style="list-style-type: none"> • SMART (Specific, Measurable, Attainable, Realistic, Timely) • Numerical, graphable goal, matched to student need
Evidence based intervention	Intervention has sufficient research to suggest it is likely to be effective for the student's specific area of need. Student participates in one or more intervention/instruction of increased intensity for the amount of time necessary for the MDT to make a determination of eligibility for special education.
Implementation with fidelity	Fidelity monitored during intervention with at least 80% of intervention components implemented consistently. The rigor of the fidelity check should match the rigor of the decision being made based on intervention response. Evidence exists that staff have been appropriately trained to administer the intervention as intended.
Individual progress monitoring	Progress monitored daily or weekly depending on the nature of the intervention and significance of the problem. Progress monitoring tools have adequate reliability and validity for regular ongoing progress monitoring.

Decision Rules	Written decision rules are established and implemented to provide guidance for teams to: (1) determine which students will receive intervention, (2) how to set goals and monitor student progress, (3) determine if the intervention is working, (4) how to intensify intervention/instruction when needed. The intervention should be carried out with a sufficient number of data points to make a <u>sound</u> decision about the student’s responsiveness and whether the intervention should be maintained, intensified, and/or faded. Teams should not establish a fixed duration (e.g., 8-10 weeks) that is applicable to all students. Rather, teams must utilize data-based decision making to establish duration and, ultimately, determine the student’s response to intervention.
Multiple levels of supports increasing in intensity and frequency as needed	At least 1 phase change (i.e., point in time where intervention was changed based on review of progress monitoring data) within an intervention or a change to a different intervention program with sufficient time given to be able to demonstrate student response.
Parent participation and input	Parents notified that student is receiving intervention, about their progress/screening data, and rights for requesting an evaluation

Evaluation Timeline

The school district or approved cooperative 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 92 NAC 51, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51:

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 92 NAC 51; and
2. Whenever a child is referred for an evaluation.
3. Teams are encouraged to review the Clarification on guidance for 92 NAC 51 – 009.04 and IDEA 60 Day Timeline for School Age Children which is linked here: [45 Day vs 60 Day Timeline](#)

Guiding Questions for Criterion 2:

- To what level are we expecting students to achieve (e.g., benchmark or a threshold beyond a risk range)?
- How long will it take for the student to reach proficiency (e.g., 25th, 40th, 50th percentile ranks)? What is the typical rate of improvement expected for peers?
- What is the target student's attained rate of improvement?
- What is the necessary rate of improvement in order to achieve the benchmark expectation; how much growth is needed to close the gap?
- Is the students rate of improvement substantially deficient?
- How is the rate of improvement established (e.g., slope, median of points, etc.; whole year or half year calculations)?

CRITERION 3: The MDT determines that its findings under 92 NAC 51 are not primarily the result of –

- (i) A visual, hearing, or motor disability;
- (ii) Intellectual Disability*;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

§300.309(a)(3) This step in the SLD identification process is designed to ensure that students are not identified as having SLD when their lack of academic achievement (Criterion 1) and lack of response to scientific, research-based intervention (Criterion 2) are *primarily* the result of other factors.

The fundamental question is whether the poor performance is primarily the result of any of these factors. It is possible for one or more of these factors to be contributing to a student's lack of achievement and response to intervention and for the student to have SLD. Therefore, the school team must determine the degree to which each factor affects the student's performance. The existence of the factors is not the issue; the issue is the degree to which each factor adversely affects performance.

A full evaluation may not be necessary for each factor. In many cases the data gathered during the problem solving process may be sufficient to determine that environmental, cultural, or economic factors and LEP are not the primary cause of a lack of academic achievement and lack of response to scientific, research-based intervention. This can be determined if there is documentation that the majority of students from similar demographics are meeting expectations.

Considerations specific to each factor are discussed below.

This does not mean the MDT team must completely rule out each of these factors. It is entirely possible for one or more of these factors to be influencing a student's lack of achievement and response to instruction/intervention and for the student to have a specific learning disability. The MDT team must determine the degree to which each factor affects the student's performance. The existence of the factors is not the issue; the issue is the degree to which each factor adversely affects performance. The fundamental question is whether the poor performance is primarily the result of any of these factors. With the exception of "loss of instructional time" all of the above exclusionary factors exist in current regulation. However, loss of instructional time is an important factor to consider and directly relates to consideration that the student's inadequate achievement is not primarily the result of lack of appropriate instruction and/or the opportunity to learn. Loss of instructional time may be the result of factors that include, but are not limited to, absences, tardies, high mobility rates, disciplinary removals and suspensions that could be a result of one or more of the exclusionary factors..

Visual Disability

Screening for vision problems is routine in most public schools. If a vision screening indicates normal vision, a visual problem can be ruled out as the primary cause of the student's academic underachievement unless an evaluation from an appropriate credentialed provider (e.g., optometrist/ophthalmologist) provides evidence to the contrary. If screening indicates a potential vision problem (i.e., poor visual acuity), then additional evaluation must be conducted to determine the extent of the problem.

Hearing Disability

Similar to the process for vision problems, hearing screenings are generally performed in schools. If a hearing screening indicates normal hearing, a hearing loss can be ruled out as the primary cause of the student's academic underachievement unless an evaluation from an appropriate credentialed provider (e.g., audiologist) provides evidence to the contrary. If the screening indicates a potential hearing problem, further evaluation is required.

Motor Disability

Unlike vision and hearing screenings, schools don't generally screen for motor difficulties. Motor problems—also known as orthopedic impairments—can interfere with typical school tasks such as handwriting and walking. Assessments to measure motor skills may be necessary to determine if such difficulties are interfering with academic achievement. As with vision and hearing issues, if the problem is corrected and achievement improves, motor difficulties can be considered as the primary cause of underachievement and the school team could consider eligibility under the orthopedic impairment category of IDEA. If the achievement problems persist after application of prosthetic devices or intervention, the school team should consider SLD as the primary cause of underachievement.

A student with a primary disability in the area of vision, hearing, and/or orthopedic impairment may be considered as also having a SLD 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.

Questions to Consider: Vision/Hearing/Orthopedic Impairment

- **Has the child been diagnosed with a medical/health condition? If so, what is the medical/health condition?**
- **What types of interventions/treatments is the child receiving?**

Intellectual Disability

This is the one factor that cannot co-exist with SLD. Students with intellectual disabilities (ID) exhibit significant deficits in measured intelligence and adaptive behavior. Teams are encouraged to review Nebraska Department of Education Rule 51 Section 006.04G for guidance on qualifying for special education in the category of Intellectual Disability.

Emotional Disturbance

Students with SLD often display inappropriate and disruptive classroom behavior. Other students may have emotional problems that do not manifest themselves in externalizing behaviors. For students who display behavior problems, the evaluation team must determine whether the student's learning problems are causing the behavior problems, or whether underlying emotional problems are affecting the student's ability to acquire academic skills. The task of determining which condition is primary in terms of explaining the academic deficit(s) is often difficult. When social or emotional behavior is a concern, the school team may consider data regarding:

- student performance in academic area(s) of concern when individual positive behavior support or instruction in social/emotional behavior is implemented (see the [Technical Assistance Center on Positive Behavioral Interventions and Supports](#) and the [National Center on Intensive Intervention](#) for more information);
- parent and teacher behavior ratings and observations;
- behavior checklists and behavioral rating scales;
- whether teaching is at the student's instructional level; and
- differences in student performance across school subjects, settings, or teachers.

The above list is not exhaustive - the student's educational team should determine an appropriate evaluation plan that may include a variety of these items for review

Questions to Consider: Emotional Disturbance

- **Are there particular behaviors that are interfering with the child completing assignments, tasks?**
- **Has a functional behavioral assessment been completed for the child's behaviors?**
- **Does the child have a behavior intervention plan? What is the plan? How is the child responding to this plan?**
- **Does the child exhibit a lack of particular social skills that affect his/her interpersonal relationships?**
- **In what types of social skills instruction has the child participated?**

Cultural Factors

Prior to referring a student who is acquiring English language for a special education evaluation, teams must ensure the student has been provided appropriate opportunities to learn through the delivery of culturally and linguistically responsive instruction. Educators knowledgeable about the stages and behaviors of second language acquisition should be part of the problem solving team determination.

The impact of cultural factors can also be difficult to ascertain. Cultural factors that may affect a student's school performance include:

- communication patterns,
- behavioral expectations,
- gender-based family roles, and
- prescribed cultural practices.

Information from interviews with parents (and other community members who share the student's cultural and linguistic background) would be particularly helpful in determining the impact of cultural factors as well as an in-depth family social history, if warranted.

A separate, but related, consideration is whether data indicate that the student's general education instruction and interventions are culturally appropriate and whether the student functions differently from classroom to classroom, year to year, from intervention setting to general education classroom, or between home and school.

In determining the impact of cultural factors, data might indicate that most students of a particular cultural or ethnic group are achieving at acceptable levels in response to general education and intervention. If a particular student is receiving the same instruction in a similar learning environment, but not achieving similarly to peers from the same cultural background, a determination that the learning difficulties are not due to cultural factors might be made.

The influence of cultural factors is closely related to linguistic factors, such as LEP, discussed next.

Limited English Proficiency (LEP)

To adequately make the determination that LEP is not the primary cause of the student's academic difficulties, the school team 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 a specific learning disability. Research has indicated that students who are English Learners (ELs) take approximately 2–3 years to acquire basic interpersonal communication skills and between 5 and 7 years to acquire the cognitive academic language proficiency that is required to function effectively in academic content subjects (Brown & Ortiz, 2014; Cummins, 1981; Cummins, 1981; Klingner & Eppolito, 2014; Rhodes, Ochoa, & Ortiz, 2005). However, this should not be cause for delay when a disability is suspected.

Schools are required to identify all students with primary home languages other than English. This is typically achieved through a parent home language survey. Additional screening and summative assessment is completed in Nebraska to determine the student's proficiency with English language skills. Nebraska's English Language Proficiency Assessment for the 21st Century (ELPA21) is the tool utilized by Nebraska specialists for this purpose (additional information can be found on the Nebraska Department of Education Website: English Learner Programs <https://www.education.ne.gov/natlorigin/>). School teams must have access to and consider such evaluations in order to determine if LEP is the major contributing factor.

Students who are in the process of learning English will often display academic gaps that may look like deficiencies, especially if their education has been disrupted during an immigration experience. Similarly, students may be particularly at risk for lack of appropriate instruction issues if language instruction has not been provided that addresses the student's language development needs. Given the paucity of research on appropriate interventions, assessment, and response rates for students who are learning English, it can be difficult for school teams to differentiate SLD from characteristics of second language acquisition (Zumeta, Zirkel, & Danielson, 2014). For additional information, teams may choose to review the WIDA: Can Do Descriptors (2014) that provide important suggested indicators of

expected behaviors associated with specific language proficiency levels as a resource to differentiate language acquisition from a potential specific learning disability.

Below are questions the school team might consider when determining the impact of LEP on a student's academic achievement:

- What is the student's native (home) language and culture?
- Is the student proficient in his or her native (home) language based on a formal assessment of language proficiency in the native language?
- Is the student's academic language level consistent with the language levels necessary to be successful with core curriculum and interventions?
- Has the student failed to develop age-appropriate native language skills despite opportunities to learn?
- Was the student provided with sufficient opportunities to learn by implementing necessary differentiations to address cultural and linguistic features?
- What is the gap between the student's proficiency in English and his or her native language?
- Has the student failed to gain English language skills despite instruction?
- Is there a difference in the student's performance by subject area, with higher performance in areas that are less related to language proficiency?
- Are the student's learning difficulties pervasive in both his or her native language and English?
- Are the expectations of the student's home culture consistent with school expectations?
- What is the performance of other ELLs with similar levels of proficiency in this school/district and subject area?
- Can any social or psychological factors (e.g., refugee or immigrant status; mental health concerns; racial or ethnic bias) be identified?

-
- Did someone with expertise in the student's dominant culture and language AND someone who is knowledgeable about students with LEP who are identified with an SLD participate in the school team?
 - Was someone with expertise in the student's dominant culture and language AND someone who is knowledgeable about students with LEP who are identified with an SLD involved in conducting and interpreting the evaluation data?

Questions to Consider: English Language Learners

- **What is the child's level of language in his/her native language?**
- **Is the child enrolled in English Language Learner (ELL) classes/Limited English Proficiency (LEP)?**
- **What is the child's mastered ELL level?**

Environmental or Economic Disadvantage

The last factor to examine is that of environmental or economic disadvantage. Situations such as homelessness, child abuse, poor nutrition, socioeconomic status (SES), and other factors may adversely impact a student's ability to learn.

SES is defined as an economic and sociological combined total measure of a person's work experience and of an individual's or family's economic and social position in relation to others, based on income, education, and occupation. As detailed in the [Education and Socioeconomic Status Fact Sheet](#) from the American Psychological Association, research continues to link lower SES to lower academic achievement and slower rates of academic progress as compared with higher SES communities. Therefore, careful consideration of a student's SES is critical to this factor.

If needed supports are provided and the student's academic achievement improves, then environmental and economic disadvantages cannot be ruled out as primary contributors. However, if supports implemented with fidelity fail to produce improvements in learning, particularly if other students with similar environmental or economic situations are performing adequately to general education and interventions, then the student should be considered for SLD eligibility.

Ultimately, Criterion 3 of SLD identification may well be the most difficult and complicated of all. There are no straightforward guidelines, a wide variety of relevant factors, significant interaction among a host of variables, and a relative lack of research upon which to base decisions, making assessing the contribution of these factors extremely error-prone.

It is important to not exclude a student from SLD eligibility simply because of the existence of one or more of these factors. On the other hand, it is equally critical not to identify a student as having SLD and being in need of special education when, in fact, one or more of these factors is the primary cause of poor academic performance.

Efforts to determine the relative contribution of visual, hearing, motor, and intellectual disabilities as well as cultural factors, environmental or economic disadvantage, and LEP as factors in poor school performance and lack of response to interventions should include systematic strategies that have been shown to be effective for students with similar needs and characteristics. For example, if many students presenting with similar factors (e.g., LEP) are able to make adequate progress with core instruction and systematically applied support, this gives the school team more confidence that a particular child's struggles are not due to a lack of appropriate instruction.

Should the school team find that one (or more) of these factors is the primary cause of a student's lack of achievement, efforts to address the student's needs through interventions in general education must continue.

Questions to Consider: Environmental and other factors

- **Has a determination been made that the child's environmental, cultural, and/or economic factors contributed to the child's low achievement?**

Summary Table: Exclusionary Factors

Exclusionary Factor	Source of Evidence
Visual, Motor, or Hearing Disability	Sensory screening, medical records, observation
Intellectual Disability	Classroom performance, academic skills, language development, adaptive functioning (if necessary), IQ (if necessary)
Emotional Disturbance	Classroom observation, student records, family history, medical information, emotional/behavioral screenings (if necessary)
Cultural Factors	Level of performance and rate of progress compared to students from same ethnicity with similar backgrounds
Environmental or Economic Factors	<p>Level of performance and rate of progress compared to students from similar economic backgrounds, situational factors that are student specific</p> <p>Due to excessive absenteeism - Chronic absenteeism is defined in the Nebraska ESSA Plan as 10% or more of membership days</p> <p>Due to lack of implementation of evidence-based practices with fidelity. Were interventions used matched to student need? Were interventions implemented with fidelity?</p>
Limited English Proficiency	Measures of language acquisition and proficiency (i.e., BICs and CALPs), level of performance and rate of progress compared to other EL students with similar exposure to language and instruction

Guiding Questions for Criterion 3:

- **Were each of the following considered: vision, hearing, motor disability, intellectual disability, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency?**
- **Is formal evaluation warranted for any of these areas?**
- **Are any of these conditions deemed to be *the primary cause* of a student performing below grade (or age) level standards? If so, then SLD cannot be a consideration.**

CRITERION 4: Ensure that underachievement is not due to lack of appropriate instruction in reading, writing, or math.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child’s parents. §300.309 (b).

This step in the SLD identification process is designed to ensure that students are not identified as having an SLD and needing special education when lack of appropriate instruction is the cause of the student’s underachievement. This is required for all eligibility methods.

Making a determination of eligibility for special education is a **high-stakes decision** for students. As such, it is imperative that this criterion be given considerable attention. It would be inappropriate for the school team to simply check a box indicating that the student’s underachievement is not due to lack of appropriate instruction in reading or math.

A second component of Criterion 4 is to document the school’s use of repeated assessments with the referred student and the communication to parents about these assessments. These repeated assessments should include universal screenings, diagnostic assessment (when appropriate), and progress monitoring data that is being used for eligibility determination. Documentation should include what data were reported to parents and at what frequency.

School teams should note that the requirement to determine the existence of appropriate instruction also appears in Criterion 1: “Failure to meet age- or grade-level State standards in one of eight areas when provided appropriate instruction...” The requirement in Criterion 4 also aligns with a provision in IDEA’s broader requirements regarding determination of eligibility. Known as a “special rule for eligibility determination,” §300.306 (b) states that:

A child must *not* be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency (300.306 (b))

Please refer to other sections of this document for information about determining sufficiency of core instruction.

Guiding Questions for Criterion 4:

- **To what degree was the student included in and benefited from core instruction?**
- **To what degree was core instruction delivered in accordance with the district-determined curriculum expectations?**
- **Is the core instruction that this student is participating in benefiting at least 80% of students?**
- **To what degree was core instruction differentiated to meet the individual needs of the student?**
- **Were interventions delivered with fidelity in accordance with the expectations of intervention program and/or student’s individualized intervention plan?**
- **Was the intervention empirically based? Delivered by qualified, trained personnel?**
- **Was core instruction and intervention instruction delivered with adequate frequency and sufficiency?**
- **On what date were parents notified of their child’s screening data?**
- **On what date were parents provided information about their child’s progress monitoring data?**
- **On what date were parents notified of the right to request evaluation?**

CRITERION 5: Observation

Observing student behavior in the classroom offers opportunities for teams to better understand the educational ecology within which student learning is occurring. This ecology might include the student's rate of active engagement, rate of correct responses to instruction, and the student's opportunity to respond and practice skills within the suspected area(s) of difficulty. Observations also provide opportunity to determine the quality of instruction and implementation of curriculum and instructional strategies.

The district 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.

Per 92 NAC 51, the MDT, 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 MDT 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 92 NAC 51, is obtained.
3. In the case of a child less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

This requirement makes clear that information from an observation from either prior to or after a student's referral for suspected SLD must be gathered as part of the data used for eligibility decision making. Such observations could have been done during general education instruction/interventions conducted through the or MTSS process. However, if the observation conducted prior to referral did not provide information specific to the area(s) of academic difficulty (i.e., those areas listed in Criterion 1) for which the student has been referred, the school team should require an additional observation. There are many types of classroom

observations. While the regulations do not prescribe the type of observation to be conducted, the following methods may be appropriate:

- behavioral observation procedures (e.g., event recording, time sampling, interval recording) that result in quantifiable results;
- methods that relate the student’s classroom behavior to instructional conditions, and teaching practices and opportunities for engagement;
- methods that address referral questions, instructional practices, and instructional fidelity (see sample questions below).

Criterion 5 (Observation) specifically requires that the student be “observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the area(s) of difficult academic performance and behavior” (§300.310 (a)). Thus, the school team should necessarily consider the observation data as part of a determination regarding this factor.

Information gathered during direct observation(s) should assist in the documentation (Criterion 6) to determine the involvement of other factors relative to the student’s underachievement and lack of response to intervention (Criterion 3) and whether appropriate instruction was provided (Criterion 4).

Most important, the observation should provide information that is data driven, empirical, and objective. The observation should, with clarity, produce a detailed description of relevant behaviors that inform the educational team of the student’s academic engagement and responsiveness to instruction. Simple narratives do not provide adequate or objective information. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members. The observations must be conducted by a qualified observer. In all cases the observation must not be conducted by the person delivering instruction.

"Qualified" refers to an individual who has received direct instruction in a particular skill, has received feedback on the performance of that skill by an individual who has mastered the skill, and has had the opportunity to practice that skill in order to perform it accurately in a consistent manner.

A primary purpose of the observation is to determine the relationship between behavior and student academic performance (SLD is an academic performance–based disability). Therefore, all data collected should be in the context of academic performance. Specifically, when student behavior is observed during academic tasks, data on the accuracy, amount, and completion rates of the academic performance should be collected concurrently. Clearly, some students may present with high rates of off-task behavior, yet answer questions accurately, complete written work accurately, and do so with sufficient levels of productivity. The collection of student behavior data without the collection of student academic performance data will likely result in false-positive errors (e.g., assuming the behavior interfered with academic performance/accuracy when it did not).

Given recent findings by researchers indicating that poor intervention integrity is the rule rather than the exception, an observation to determine that the intervention was implemented with fidelity and that the student was well engaged during the intervention would provide critical additional information (Kovaleski et al., 2013).

Guiding Questions for Criterion 5:

- **Was the student’s performance and behavior in the area of concern “typical” during the observation compared with how the student performs at other times?**
- **What learning skills were difficult for the student?**
- **What student strengths were noted during the observation?**
- **Was the student engaged and cooperative during instruction in comparison to peers? To what degree was the student actively versus passively engaged?**
- **Did the students have opportunities to participate or respond in the instructional dialogue and activities?**
- **Did the student’s behaviors interfere with learning to such an extent that they might be the primary reason the student is not making sufficient progress?**
- **Did the student have the prerequisite skills to perform the tasks being observed?**
- **Are the data collected during the observations consistent with other formal and informal data about the student in the area(s) of concern?**
- **What is the relationship between the targeted student’s performance and behavior to other students?**
- **How is the student’s behavior similar or different from classroom peers?**
- **For IEP development, what information can be gathered from the observation to address the student’s deficits?**
- **How might the interactions observed between teacher and student impact a student’s learning?**

CRITERION 6: Documentation

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility 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 92 NAC 51; and Nebraska eligibility determination guidelines.
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 progress commensurate with the child's age;
 - (ii) The child does not achieve progress to meet age or State-approved grade-level standards consistent with 92 NAC 51;
6. The determination of the MDT concerning the effects of visual, hearing, or motor disability; intellectual disability; behavior disorder; 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 child-centered data collected; and
 - (ii) the documentation that the child's parents were notified about:
 - (A) The school district'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 parent's right to request an evaluation.

(b) Each MDT member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting his/her conclusions.

Addressing the requirements of the specific documentation for eligibility determination involves a compilation of the information gathered to address Criteria 1–5.

Ultimately, the school team must make a determination of the existence of SLD and the need for special education through a careful evaluation of multiple sources of data. Special education eligibility is a high-stakes decision for students. As such, it must be made in a comprehensive manner. A student's complete data profile (i.e., progress monitoring data, benchmarking tests, state test data, information from observations, interviews, and diagnostic testing) must all be used for decision making about eligibility.

Documentation of scientifically, research-based interventions, intensity, fidelity, and lack of sufficient achievement and progress, in best practice, would be included within the MDT report. A Prior Written Notice (PWN) indicating the student's eligibility determination must also be completed.

A student whose characteristics meet the definition of a student having a specific learning disability may be identified as a student eligible for special education services if:

1. All of the aforementioned eligibility criteria are met; and
2. There is evidence, including observation and/or assessment, indicating how the specific learning disabilities adversely impact the student's performance in or access to the general education curriculum.
3. The student demonstrates a need for specialized instruction and supports.

Guiding Questions for Criterion 6:

- Are all required elements for eligibility determination documented appropriately?

Documentation Requirements	Sources of Information
<p>§300.311 Specific documentation for the eligibility determination.</p> <p>(a) For a child suspected of having an SLD, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of—</p> <p>(1) Whether the child has a specific learning disability;</p>	<p>While stated as the first requirement, a statement of whether the child has a specific learning disability is actually one of the final steps in the eligibility determination process.</p>
<p>(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1)</p>	<p>§300.306 (c)(1) states that:</p> <p>In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior;</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p>

<p>(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;</p>	<p>This information is drawn from Criterion 5: Observation.</p>
<p>(4) The educationally relevant medical findings, if any;</p>	<p>Information on relevant medical findings will most likely be drawn from documented medical data obtained from the student's parent(s). Documentation should indicate that existing medical findings were considered, even if the team determined the information is not relevant to the final determination.</p>
<p>(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,</p>	<p>Information is drawn from Criterion 1: Failure to meet age- or grade-level state standards in one of eight areas when provided appropriate instruction and includes specific information on the area(s) in which the student is failing to meet age- or grade-level state standards.</p>
<p>(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</p>	<p>Information is drawn from Criterion 2: Lack of progress in response to scientific, research-based intervention.</p>

<p>(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);</p>	<p>This optional criterion (available in lieu of (ii)(A)) does not apply to an MTSS-based SLD evaluation process.</p>
<p>(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level</p>	<p>Information is drawn from Criterion 3: The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—</p> <ul style="list-style-type: none"> (i) A visual, hearing, or motor disability; (ii) Intellectual disability; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.

	<p>In such cases specific documentation should be provided for any relevant factors and include information on whether these factors were excluded from consideration as a result of screening or whether more extensive evaluations were conducted. To the extent that information regarding these factors may inform the development of an individualized education program for the student, this process should not be a “check yes or no” procedure. Instead, the process must include a determination of whether any of these factors are the primary cause of the lack of achievement and lack of adequate progress, not whether the factors exist at all.</p>
<p>(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</p>	<p>This information is drawn from Criterion 2: Lack of progress in response to scientific, research-based intervention.</p>

<p>(ii) The documentation that the child’s parents were notified about—</p> <p>(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;</p> <p>(B) Strategies for increasing the child’s rate of learning; and</p> <p>(C) The parents’ right to request an evaluation.</p>	<p>This information should include the specific data shared with the student’s parents, how frequently the data were provided, how the data were shared (such as graphical formats), how the parents (and student, as appropriate) were involved and engaged in the RTI/MTSS process, and what information the parents have provided to the school team.</p>
<p>(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.</p>	<p>Group members include the child’s parents and a team of qualified professionals, which must include—</p> <p>(a)</p> <ol style="list-style-type: none"> (1) The child’s regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and <p>(b) At least one person qualified to conduct individual diagnostic assessments of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p> <p>Ideally, the group members should be those who have been involved in the problem solving process and are familiar with the student’s data.</p>

Section 2: Eligibility Determination Guidelines

According to (92) Nebraska allows for options in determining eligibility for special education. One of which is to use data to determine performance that falls below grade level, another might be to determine the lack of response to well-designed interventions or utilizing the severe discrepancy model.

Some may refer to this as lack of response to intervention or identification through a Multi-tiered System of Support (MTSS) framework. Districts do not have to apply for or be approved to use eligibility criteria under a MTSS system; however, they are encouraged to have a documented problem solving process prior to utilizing this approach. Many schools maintain use of discrepancy criteria for instances where data and application of a MTSS system are not in place and implemented with fidelity. Districts are not required to report which criteria they are using for eligibility in the written MDT report; however, it is encouraged that districts maintain documentation that assurances affiliated with deeply implemented problem solving are met.

Districts may also elect to document the lack of adequate achievement for the child's age through use of a severe discrepancy model. It is up to the MDT to determine whether any identified discrepancy between cognitive ability and academic achievement is significantly different from what is expected and therefore representative of a lack of adequate achievement. This TA document intentionally does not include a recommended cut score (e.g., 20 points or more difference between cognitive ability and academic achievement) because districts must ensure no single measure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child (92 NAC 51-006.02C9). Even with use of the discrepancy model to determine eligibility, teams must utilize a problem solving approach within the multidisciplinary team framework to determine whether or not the student meets criteria for, as well as whether or not they need, special education.

While technically allowed according to 92 NAC 51, use of a pattern of strengths and weaknesses in performance, achievement, or both that is relevant to the identification of a specific learning disability is not widely utilized in Nebraska.

Districts should clearly articulate their process for special education decision making within these methodologies in their written policies and procedures.

State Definition: 92 NAC 51-006.04K1

Specific Learning Disability – To qualify for special education services in the category of specific learning disability, the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of behavioral disorders; or of environmental, cultural, or economic disadvantage.

Important: The medical and mental health communities use the terms “dyslexia” and “reading disorder” to narrowly define poor reading achievement, i.e., accurate decoding and fluent reading speed. A medical diagnosis of a disorder is not synonymous with disability as defined in the Reauthorized Federal IDEA 2004. Nor does a medical diagnosis alone assure eligibility for Special Education Services. School evaluation teams must adhere to IDEA, which helps educational professionals determine which individuals have a disability that significantly adversely impacts educational performance. For more information on Dyslexia, please see the [NDE Dyslexia Technical Assistance Document](#).

Section 3: Referral Procedures

For a school age student, a general education *problem-solving team* shall be used prior to referral for multidisciplinary team evaluation. A problem-solving team shall utilize and document problem solving and strategies for intensifying instruction to assist the teacher in the provision of general education. If the student problem-solving team has determined and documented that all reasonable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed (adapted from 92 NAC 51-006.01B3). The school or grade level team may fulfill the requirements of the Student Assistance Team, or *comparable problem-solving team*. A student may be referred for multidisciplinary team evaluation at any time within a problem solving process (e.g., MTSS), **in no way should the MTSS process delay the initial evaluation of a student that is suspected of having a disability.**

A referral for a special education evaluation will include (at a minimum):

- Parent input to include any pertinent familial information, family/student medical history, etc.;
- Teacher input to include an indirect observation, work samples, documentation of differentiated instruction, etc.;
- Documentation of the problem to include classroom-based performance assessments, standardized testing results, and other relevant assessment data;
- A detailed description of the intervention (intensifying instruction) process to include evidence-based practices used, attendance, frequency of implementation, duration of implementation, and fidelity monitoring;
- Progress monitoring data indicating the student has responded inadequately to instruction of increasing intensity (intervention)
- Evidence of fidelity within implementation of core instruction and intervention

Section 4: Multidisciplinary Team (MDT) Composition

The Multidisciplinary Team (MDT) should include at least:

- The child's parent(s);
- For a school age child, the child's regular teacher(s) or a regular classroom teacher qualified to teach a child of that age;
 - For a child below age five, a teacher qualified to teach a child below age five;
- Special educator with knowledge in the area of specific learning disabilities;
- A school district administrator or a designated representative; and
- At least one person qualified to conduct individual diagnostic examinations of children in their specific area of training (i.e., school psychologist, speech language pathologist, or other instructional specialist).

Section 5: Procedures to Determine Adverse Effect on Development/ Educational Performance

FACTORS TO CONSIDER

Many factors should be considered in determining if a specific learning disability is causing, or can be expected to produce significant delays in the child's development or educational performance. The factors include, but are not limited to:

- ❖ Child Characteristics
 - Medical history, current health status, medications
 - Social skills and behavior
 - Communication skills
 - Physical health
 - Motor skills
 - Mental health
 - Cognitive skills
 - Motivation
 - Current age
 - History of developmental milestones

- ❖ Educational Variables
 - Current educational placement
 - Classroom environment
 - Instruction
 - Curriculum
 - History of modifications and/or accommodations used
 - Intervention and response
 - Results of previous assessments/evaluations

- ❖ Relevant family history
 - Culture
 - Language

Examination of each of these factors may lead to additional factors to consider. School Psychologists, teachers of children with learning difficulties, and speech language pathologists are the primary professionals who can determine how these learning difficulties

may impact the child. Parents, medical professionals, teachers, and the child him/herself can also provide information important in determining the impact of the learning difficulties.

The team needs to consider data that are accurate, consistent, comprehensive, and objective. Possible assessment approaches for obtaining information about the child are:

- ❖ Review of existing records and work samples
 - Teacher-anecdotal notes
 - Grades
 - Cumulative file review
 - Class assignments and homework

- ❖ Interviews
 - Parent interviews/rating scales
 - Teacher interviews/rating scales
 - Child interviews/rating scales

- ❖ Observations (in setting(s) where concern is occurring)

- ❖ Tests
 - Criterion-referenced tests
 - Norm-referenced tests
 - District-wide assessments
 - Curriculum-based assessments
 - State and district-wide assessments

Professional judgment is used to carefully analyze data to determine if the child meets the eligibility criteria for specific learning disability and whether or not the identified disability adversely impacts the child's developmental or educational performance.

Section 6: Other Considerations for Eligibility Determination

Evaluating Instructional Need

To qualify for special education, students should not only meet eligibility criteria, but should also *need* special education services. Evaluating needs is probably the most difficult to determine but most critical to the decision. The team needs to determine what interventions are going to be necessary for the student to learn:

Consider Curriculum

- What specific skills or strategies will be needed in order for the student to access core curriculum?

Consider Instruction

- What specific strategies assist the student in linking new learning to old learning?
- How many repetitions of new concepts are required when introducing new concepts?
- Are there specific instructional techniques that have been proved to be effective for this student?
- Is the method for delivering instruction (content and intensity) for this student very different from typical general education peers?

Consider Environment and Accommodations

- What environmental conditions are related to improved student success (e.g., time of day, instructional set-up, room arrangement)?
- Which incentives promote optimal performance for the student?
- What antecedents and consequences have been identified that sustain the student's behavior?
- What is the function of the behavior?
- Are there accommodations needed to participate in general education?
- Have accommodations been validated or is there evidence to suggest an accommodation is needed?

Using MTSS Data to Develop an Individualized Education Plan (IEP)

If the MTSS process is conducted well, data from the process can link directly to the development of the IEP. Existing information from MTSS should include instructional strategies and assessment data that can inform various sections of the IEP. Present levels of academic and functional performance can be identified through the comprehensive evaluation; the team should be able to identify what skills students are expected to do and what the student's current levels are from data gathered through MTSS. IEP goals can be designed from intervention targets during the MTSS process. Goals can target skill acquisition, fluency building, or generalization so that effective instructional strategies can be identified (Kavaleski et al. 2013). Finally, progress monitoring techniques used as part of the MTSS process can be continued in special education to encourage regular data collection and decision making within special education.

Special Education Re-evaluation

Beginning with the 1997 reauthorization of IDEA, districts **have not been required** to conduct the same comprehensive evaluation for re-evaluation as required for initial verification.

Re-evaluation data must answer the following questions:

- Does the student continue to be a student with a disability? What are their educational needs?
- What are the present levels of academic achievement and functional performance of the student?
- Does the student continue to need special education and related services?
- What additional or modifications (if any) are necessary to the student's special education and related services in order to enable the student to meet IEP goals and objectives and to participate, as appropriate, in the general education curriculum?

Members of the student's IEP team (including parents) review existing evaluation data to include the following: current data gathered through ongoing progress monitoring, classroom observations, information provided by the parent, student performance on local, district, state

assessments, and determine whether additional information is necessary in order to determine responses to the questions stated previously.

Students continue to benefit from the MTSS Framework until effective evidence-based interventions have been identified and growth can be maintained.

Data gathered through the MTSS Framework/progress monitoring may inform the re-evaluation process and assist the IEP team with determining continued eligibility as well as the educational and behavioral needs of the student. This data can also support the IEP team with documentation that the student's lack of academic or social-emotional progress is not the result of ineffective instruction.

Dismissal from Special Education

Students may move from special education interventions to general education interventions if there is sufficient evidence to suggest that the student no longer needs special education services (i.e., students progress within individualized interventions, accommodations, and modifications). Movement from special education to general education will be supported by multiple sources of data including ROI, gap analysis, evidence of meeting IEP goals, and student need. The goal is for all students to be served at their level of need within the least restrictive environment. MTSS provides students moving from special education to general education with continued supports with decreasing intensity on a continuum. Best practice would suggest that an intervention plan for the student should be in place before the IEP is discontinued. The plan should include criteria for changing intervention or tiers of service. Additionally, all students who exit special education should be considered for a 504 plan if continued accommodations are needed and the student is determined to have a physical or mental impairment that substantially limits the student in one or more major life activities.

Technical Adequacy of Measurement Tools Used for Decision Making

All decisions made in an MTSS process must be made with data from measurement tools with adequate reliability and validity. A reliable tool provides consistent results, and a valid tool measures what it is intended to measure. Teams should carefully examine the technical

adequacy of all tools, including tests, observations, and interviews, to ensure they are providing reliable information and that the tools used for decision making are valid for the purpose (i.e., screening, progress monitoring, disability diagnosis, measure of non-verbal intelligence) intended.

Section 7: Methodology Options for Eligibility Determination

Nebraska has two options for determining eligibility for special education services in addition to the severe discrepancy model. The Nebraska Department of Education has determined that the severe discrepancy model, when properly administered and utilized as part of a comprehensive evaluation, fulfills the requirements of IDEA and 92 NAC 51 - 006.04K3.

Within 92 NAC 51, there is also the option of use of data determining below grade level performance, lack of response to well-designed interventions and a weakness in a basic psychological process that is consistent with low achievement. Some may refer to this as lack of response to intervention (RtI) or identification through a Multi-tiered System of Support (MTSS) framework. Districts do not have to apply for or be approved to use eligibility criteria under a MTSS system; however, they are encouraged to have a documented **problem solving process** prior to utilizing this approach. Districts are not required to report which criteria they are using for eligibility; however, it is encouraged that districts maintain documentation that assurances affiliated with deeply implemented problem solving are met should they choose to utilize MTSS for eligibility decisions. The second option is use of other alternative research-based procedures otherwise known as A Pattern of Strengths and Weaknesses. Regardless of the method used to determine eligibility, district's should outline their methodology within their policies and procedures as well as be able to describe their methods within the MDT report as outlined in 92 NAC 51 - 006.03F.

Response to Scientific, Research-Based Intervention and Other Alternative Research-Based Procedures

Nebraska has identified a process based on the child's response to scientific, research-based intervention (intensified instruction) as special education eligibility through the use of *Multi-Tiered System of Support (MTSS)*. **In order to use deeply implemented problem solving within a MTSS framework for the identification of a specific learning disability, the school or district must meet [NeMTSS assurances](#) for full implementation of a MTSS Framework (scientific, research based intervention 42 NAC 51, 006.04K3b and 006.04K3b).** Districts do not need to submit written assurances to the Nebraska Department

of Education, but should maintain ongoing evidence and documentation that NeMTSS assurances are met.

Multi-Tiered System of Support (MTSS)

MTSS is an educational service delivery system designed to provide effective instruction for all students using a comprehensive and preventive problem-solving approach. It employs a continuum of instructional delivery, in which the core curriculum addresses and meets the needs of most students, additional instruction is provided for those needing supplementary intervention support (intensifying instruction), and intensive and individualized services are provided for the students who continue to demonstrate more intensive needs. At its foundation, MTSS includes measuring performance of all students, and basing educational decisions regarding curriculum, instruction, and intervention intensity on student and implementation data.

Stakeholders in Nebraska have identified six essential elements which are critical within the NeMTSS framework: Shared Leadership; Communication, Collaboration, and Partnerships; Evidence-Based Practices: Curriculum, Instruction, Intervention and Assessment; Building Capacity/Infrastructure for Implementation; Layered Continuum of Supports; and Data-Based Problem Solving and Decision Making. Additional information regarding the Essential Elements can be found at <http://nemtss.unl.edu/essential-elements/>.

The focus of MTSS is on improved student outcomes for all students through the provision of high-quality scientifically/research-based instruction and intensifying instruction (interventions) that are matched to student academic or behavioral needs. Through this framework, the MTSS process enables districts to provide early support and assistance to students who are struggling to attain or maintain grade level performance. MTSS provides a consistent model and procedures to make collaborative data-based educational decisions for all students. MTSS is designed to meet students' needs and proactively address learning problems *before* special education is necessary, as well as demonstrate the need for specially designed instruction through special education.

Drawing data from the MTSS process is one component of the information reviewed as a part of the comprehensive evaluation for the identification of SLD. **Conclusions regarding special education eligibility are drawn from multiple sources** (Refer to Section 4: Eligibility Determination Guidelines using MTSS). A student may be referred for multidisciplinary team evaluation at any time within the MTSS Framework; in no way should the MTSS process delay the initial evaluation of a student that is suspected of having a disability.

A Pattern of Strengths and Weaknesses

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 team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

The process based on a child's pattern of strengths and weaknesses tends to rely more heavily on the results of norm-referenced tests and other assessments. Evaluation teams must decide which tests are appropriate to use given the referral question and what type of assessment is needed to answer questions about an individual student's need for intervention and support. As described before, evaluations must be individually planned based on the presenting concern and review of existing data. The automatic administration of any assessments, including intelligence or achievement tests, for an evaluation is not an appropriate practice. If the evaluation team determines that intelligence or achievement tests are needed, then these measures are analyzed to identify patterns within academic skills or cognitive functions. The administration of intelligence and achievement tests solely to examine the discrepancy is not necessary since discrepancy is not an eligibility requirement. If achievement or intelligence tests are administered, they should be interpreted in combination with other relevant data to identify the child's strengths and weaknesses, including the child's approach to tasks, characteristic patterns of learning, and difficulties in processing information.

The richest source of this information comes from the data collection conducted during the problem solving process, as well as data regarding interventions conducted during the evaluation process. Teams analyze and interpret this information to determine whether the pattern of strengths and weaknesses is characteristic of a child with a disability and to determine and describe the child's educational needs.

Severe Discrepancy Model

As part of the comprehensive eligibility evaluation and in accordance with federal and state statute, the Multidisciplinary Evaluation Team (MDT) may employ the severe discrepancy model to determine special education eligibility. The severe discrepancy model may be used until such time that the school district has made the transition to full implementation of a MTSS process for the identification of a specific learning disability.

In order for a determination of eligibility using the severe discrepancy model to be made, the child must demonstrate a severe discrepancy between academic achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards. All test scores used in determining eligibility shall assume a mean of 100 and a standard deviation of 15 points and adequate reliability for the overall or composite test score (e.g., reliability at or above .90 in accordance with Salvia & Ysseldyke, 2007). Professionals qualified to administer and interpret the standardized assessment tool (as determined by the assessment publisher) may utilize guidance included in the corresponding examiner's manual to determine whether composite or other scores can be used in educational decision making.

Assessed achievement level(s) that result in a standard score in one or more area(s) as defined by 92 NAC 51-006.04K3 that is significantly different or discrepant from the child's assessed intellectual ability may be considered by the MDT when determining eligibility. The

academic achievement test must have adequate reliability for the total test score (e.g., reliability at or above .90 in accordance with Salvia & Ysseldyke, 2007), and if composite scores are used, they must also have adequate reliability and be valid for the decision being made.

Section 8: Frequently Asked Questions

1. What methods can be used in Nebraska to determine eligibility for a Specific Learning Disability?

92 NAC 51 permits schools to use two options for determining eligibility for Specific Learning Disability in addition to a severe discrepancy model.

The MDT may determine that a child has a specific learning disability if:

- a. 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; oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.
- b. 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 92 NAC 51 when using a process based on the child's response to scientific, research-based intervention; or
 - i. 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 team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51.

The Nebraska Department of Education has determined that the severe discrepancy model, when properly administered and utilized as part of a comprehensive evaluation, fulfills the requirements of IDEA and Rule 51.

2. What is the role of assessing cognitive processing in SLD identification?

The role of cognitive assessment in the evaluation for a specific learning disability depends, largely, on the methodology used by the school district's policy and practices. The evaluation team should consider appropriate assessments and measures - which may include intelligence assessment - to provide a thorough evaluation designed to address the unique needs of the student. As mentioned in other sections of this document, all data collected as part of the evaluation should help inform the student's educational team and help provide information to create an instructional plan designed to meet the student's identified needs - regardless of evaluation outcome.

3. Can an eligibility determination of SLD be made using only information that was collected through an MTSS process?

The NeMTSS process includes the need for comprehensive evaluation. Teams must have evidence and multiple sources of data to sufficiently address the SLD requirements as outlined in 92 NAC 51. Teams will need to review documentation gathered through MTSS and determine what, if any, additional information is needed to satisfy comprehensive evaluation requirements.

4. If a child has learning problems primarily due to the result of a visual impairment, hearing impairment, orthopedic impairment, intellectual disabilities, behavior disorder; or of environmental, cultural, or economic disadvantage, can the child be verified as a child with a specific learning disability?

No. Specific learning disability does not include learning problems that are primarily the result of a visual impairment, hearing impairment, orthopedic impairment, intellectual disability, behavior disorder, or of economic disadvantage.

5. At what age should a child be assessed for a specific learning disability?

If with intense intervention the child does not make appropriate progress in his or her learning, the problem solving team and/or parents may recommend an evaluation to determine eligibility for special education. Regardless of age, districts must address the unique needs of each child using a problem-solving process. All school districts have the obligation to timely evaluate a student as deemed appropriate based upon that student's unique needs and circumstances. In Nebraska, Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age nine. School age students identified with a disability can be eligible under the category of Specific Learning Disability.

6. How can progress monitoring data be used in the SLD verification process?

Progress monitoring data are critical for determining whether a child has made sufficient progress in response to a scientific, research-based intervention process; however, they are not the sole basis for identifying a specific learning disability.

7. There are eight achievement areas listed in federal and state laws in which children may verify as having a specific learning disability. Are these the only areas in which the child may verify?

Yes. Both federal and state laws state that the child must meet the verification guidelines for one or more of these eight areas of achievement: Oral expression; Listening comprehension; Written expression; Basic reading skills; Reading fluency skills; Reading comprehension; Mathematics calculation; and Mathematics problem solving.

If the child has other difficulties, the child may be evaluated to determine if he/she may meet criteria for special education in another disability area as outlined in Rule 51.

8. Must a child have average or higher intelligence in order to be verified as a child with a disability in the category of specific learning disability?

No, but if there is a reason to suspect that the child may have an intellectual disability, then that verification category must be ruled out.

9. Can a student with dyslexia be identified as having a specific learning disability through MTSS?

Yes. Per Nebraska Revised Statute, Dyslexia is a Specific Learning Disability. The earlier children who struggle are identified and provided systematic, intense instruction, the less severe their problems are likely to be (National Institute of Child Health and Human Development, 2000; Torgesen, 2002). The MTSS process includes the need for comprehensive evaluation. The MDT must use a variety of data gathering tools and strategies even if an MTSS process is used. The results of an MTSS process will be one component of the information reviewed as part of the evaluation procedures required.

10. How should outside evaluation data be incorporated into the MTSS process for SLD identification?

It is the problem-solving team's decision to determine if outside evaluation data should be incorporated into the process for identification. At a minimum, teams are required to consider all information provided by the parent. The team's decision should be based on the best interests of the student and how the outside evaluation data, in conjunction with the district's evaluation data, support the creation of an instructional plan designed to meet the student's identified needs.

REFERENCES

- Aikens, N. L., & Barbarin, O. (2008). Socioeconomic differences in reading trajectories: The contribution of family, neighborhood, and school contexts. *Journal of Educational Psychology, 100*(2), 235.
- Brown, J.E., & Ortiz. S. O. (2014). Interventions for English language learners with learning difficulties. In J. T. Mascolo, D.P. Flanagan, & V.C. Alfonso (Eds.) *Essentials of planning, selecting and tailoring intervention: Addressing the needs of the unique learner*. Hoboken, NJ: Wiley.
- Canivez, G. L., Watkins, M. W., & Dombrowski, S. C. (2017). Structural validity of the Wechsler Intelligence Scale for Children—Fifth Edition: Confirmatory factor analyses with the 16 primary and secondary subtests. *Psychological assessment, 29*(4), 458.
- Deno, S. L. (2003). Developments in curriculum-based measurement. *The Journal of Special Education, 37*(3), 184-192.
- Feldman, R. (n.d.). RTI Action Network. Retrieved from <http://www.rtinetwork.org/>
- Kovaleski, J., VanDerHeyden, A., & Shapiro, E. (2013). *The RTI approach to evaluating learning disabilities*. New York, NY: Guilford.
- Lipsey, M. W., Puzio, K., Yun, C., Hebert, M. A., Steinka-Fry, K., Cole, M. W., ... & Busick, M. D. (2012). Translating the Statistical Representation of the Effects of Education Interventions into More Readily Interpretable Forms. *National Center for Special Education Research*.
- McGill, R. J., & Busse, R. T. (2017). When theory trumps science: a critique of the PSW model for SLD identification. *Contemporary School Psychology, 21*(1), 10-18.

Palardy, G. J. (2008). Differential school effects among low, middle, and high social class composition schools: A multiple group, multilevel latent growth curve analysis. *School Effectiveness and School Improvement, 19*(1), 21-49.

Snyder, T. D., Dillow, S. A., & Hoffman, C. M. (2009, March). Digest of Education Statistics 2008. Retrieved from <https://nces.ed.gov/pubs2009/2009020.pdf>

Torgesen, J. K. (2002). The prevention of reading difficulties. *Journal of school psychology, 40*(1), 7-26.

VanDerHeyden, A. M., & Tilly, W. D. (2010). *Keeping Rtl on track: How to identify, repair, and prevent mistakes that derail implementation*. Horsham, PA: LRP Publishing. Retrieved from <http://www.rtinetwork.org/getstarted/sld-identification-toolkit/ld-identification-toolkit-references>

Zumeta, R. O., Zirkel, P. A., & Danielson, L. (2014). Identifying specific learning disabilities: Legislation, regulation, and court decisions. *Topics in Language Disorders, 34*(1), 8-24.

Glossary of Terms

Assessment: Assessments are the multiple measures (formative, interim, and summative) used to gather evidence of student learning relative to content area standards.

Benchmark: A standard or point of reference against which things may be compared or assessed.

Classroom Instruction: During classroom instruction, a teacher implements the locally-determined curriculum, including instructional materials, and uses evidence-based teaching methods and strategies to engage students to support student learning of content area standards.

Content Area Standards: Content area standards describe what students are expected to know and be able to do. Content area standards outline the content and process skills students will learn in grades K-12. Nebraska content area standards include two components: standards and indicators.

Continuous Improvement Process (CIP): Typically associated with school improvement activities.

Curriculum: A curriculum is determined locally and reflects “how” teachers help students learn the content within content area standards. A curriculum outlines the intended outcomes, content, experiences, assessments, and resources for measuring student learning, and it also includes the scope and sequence of what is taught in grades PreK-12.

Decision Rules: The systematic procedures by which patterns of data are analyzed. This data analysis assists in making a decision about the effectiveness of an intervention.

Implementation Fidelity: The degree to which an intervention is delivered as intended and is critical to successful translation of evidence-based interventions into practice.

Instructional Materials: Instructional materials are the tools and resources that are used as part of a locally-determined curriculum.

Intervention Response Rules: The systematic procedures by which patterns of data are analyzed to assist in making decisions about the effectiveness of an intervention for an individual.

Leadership Team: A team that utilizes data analysis to provide infrastructure and professional development plans for the strategic implementation of MTSS at a system-wide level.

NeMTSS or MTSS: A service delivery system based on a concept that ALL students require early and powerful general education instruction with the potential for interventions of increasing intensity.

MTSS Implementation: The process of integrating and supporting a system of evidence-based curriculum, instruction, intervention, and assessment to meet the needs of all students through a tiered system of support.

MTSS Team: A group of individuals who analyze individual student data and participate in progress monitoring to make decisions about the effectiveness of instruction for a student or group of students.

Professional Development (PD): A broad term that describes processes used to build skills needed for one's job expectations within education, and is also called *Professional Learning, Continuous Learning, Continuing Education, and Staff Development*.

Progress Monitoring: A process used to assess student's academic performance, to quantify a student rate of responsiveness to instruction, and to evaluate the effectiveness of instruction.

Response to Intervention (RtI): Practices consistent with MTSS used to determine eligibility for special education or a specific learning disability.

Tier 1 - CORE (ALL STUDENTS): The key component of tiered instruction; all students receive instruction within an evidence-based, scientifically-researched core program.

Tier 2 - INTERVENTION (SOME STUDENTS): Some children who fall below the expected levels of accomplishment (benchmarks) and are at some risk for failure, but who are still above levels considered to indicate a high risk for failure. Instruction is provided in smaller groups or individually supplementing and supporting the Core Program.

Tier 3- INTENSIFIED INTERVENTION (FEW STUDENTS): Few children who are considered to be at high risk for failure and were not responsive to previous instruction, according to expected levels of accomplishment (benchmarks) and require more intensive individualized instruction to supplement and support Tier 1 and/or Tier 2 programs.

Targeted Improvement Plan (TIP): Should be aligned to a district's school improvement plan.

Universal Screening: Screening conducted to identify or predict students who may be at risk for poor learning outcomes.

APPENDIX/RESOURCES

[CEC Standards for Evidence-Based Practices](#)

[Education and Socioeconomic Status Fact Sheet](#) from the American Psychological Association

Evidence-Based Practices: [Nebraska Reads](#)

[National Center on Intensive Intervention](#)

Nebraska Department of Education Website: English Learner Programs <https://www.education.ne.gov/natlorigin/>

[NeMTSS Self Assessment](#)

[NeMTSS Assurances Document](#)

[REL Midwest Alignment of Evidence-Based Clearinghouses](#)

[Technical Assistance Center on Positive Behavioral Interventions and Supports](#)