



# Local Plan to Implement Michigan Criteria for Determination of Specific Learning Disability

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## MDE REQUIREMENT FOR LOCAL PLAN OF SLD DETERMINATION

In May 2010, the Michigan Office of Special Education and Early Intervention Services under the Michigan Department of Education (MDE) published “Michigan Criteria for Determining the Existence of a Specific Learning Disability” (hereafter referred to as MDE Criteria Document for SLD). This document issued the following requirement of local school districts.

*On or before September 1, 2010, each local educational agency (LEA) and public school academy (PSA) must publicly post on their web site, or make public through other means, the process or combination of processes which will be used by the LEA or PSA to determine the existence of a SLD. (§ 300.307(b) and § 300.600(d)(2)).*

This requirement greatly reduces the previous reliance on use of “severe discrepancy” formulas and requires consideration of a Response to Intervention (RtI) model for identifying students with specific learning disabilities as an alternative to the discrepancy model.

In part, federal regulation § 300.307(a) of IDEA states:

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

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

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

## LOCAL STATEMENT OF PLAN ADOPTION

The constituent local education agency (LEA) superintendents of the SRES D have adopted the following shared guidelines for determination of SLD as currently most appropriate for their individual districts. (See Appendix A for definition of SLD.) Public school agencies (PSA)s will likewise adopt this plan. It is understood that there will be on-going developments in our understanding of how to best discover and address the unique needs of diverse learners. Whenever significant changes in the process of how students with SLD are identified, this plan will be up-dated to best reflect the change. If methods and processes develop to the point of becoming truly unique within any LEA or PSA, these differences will be clearly stated so as to provide the most useful, current information possible for families and instructional staff of that district.

## LOCAL PLAN FOR MAKING FEDERAL AND STATE CRITERIA OPERATIONAL

The primary goal in evaluation of students is to assist provision of the best possible interventions to resolve learning difficulties rather than simply to classify the learning problem. So, to the extent possible, differentiated instruction guided by a RtI approach to problem solving will be used at every phase of intervening on behalf of students. (See the companion document “RtI Implementation Model – Academic” for additional information on RtI.) Although classification for access to special education services is necessary for students with a certifiable SLD, schools in the Shiawassee county area are not yet ready for exclusive reliance on the RtI process for this purpose. ***The choice of SRES D constituent LEAs and PSAs at the present time is to use a Patterns of Strengths and Weaknesses as the primary decision process for determination of SLD.***

Use of the RtI process is the default option when the LEA/PSA school culture sufficiently supports the use of RtI as an intervention approach. A SLD determination process based on a pattern of strengths and weaknesses approach will continue under the following conditions:

- When a school does not have the capacity to implement RtI with fidelity at the Tier 3 intervention level.
- In learning disability areas in which the school does not have a three-tier intervention process. For example, a school may use the three-tier intervention process for reading and math, but not for writing, oral expression or listening comprehension.
- In grades in which the school does not use a three-tier intervention process. For example, a school may use the three-tier process in grades K – 6, but not in grades 7 – 12.
- The parent requests a special education evaluation and will not extend timelines to accommodate recommended implementation of tier interventions and timelines.

## I. Instructional Responsibilities for Low Achieving Students

- For all low achieving students, including those with learning disorders, early intervention with appropriately differentiated instruction provides the best opportunity to prevent repeated failure and later, more extensive remediation
- Implement RtI is a best practice means of detecting and addressing learning difficulties early with appropriate instruction by qualified personnel. Although the federal regulations do not define standards for “appropriate instruction”, the United States Department of Education (USDOE) does note that such instruction has the following characteristics:
  - It is informed by a scientific research base
  - It is provided by qualified personnel
  - Systematically collected and analyzed student progress data assists appropriate adaptation to more effectively address individual student learning needs
  - Progress data is shared with the parent(s)
  - More specifically, the “implementation of RtI” for the purpose of providing appropriate instruction means the following:
    - The school uses a scientifically, research-based core program that was implemented with fidelity with the referred student.
    - The school implemented differentiated instruction techniques with fidelity with the referred student for a period of 8 to 12 weeks.
    - The school implemented a scientifically, research-based Tier 2 intervention that was implemented with fidelity with the referred student for at least 12 weeks.
    - During the Tier 2 intervention, the school used weekly progress monitoring to evaluate the effectiveness of the intervention and attempted to modify the intervention after each 3-4 weeks of poor progress.
- Document student data that includes
  - Basic description of any interventions or specially designed, differentiated instruction that was attempted in response to student achievement concerns
  - Length of time implemented
  - Whether age level or Michigan approved grade-level standards were met in basic achievement areas
  - Whether achievement progress was sufficient in response to intervention
- Using progress monitoring data, and in discussion with parents, determine which students are at risk of continued failure by not responding sufficiently to appropriate instruction at a RtI Tier 2 level.

## II. Suspecting a Disability – Factors to Consider in Deciding to Request SLD Evaluation

- Could the student’s current learning difficulties be the result of not having received appropriate instruction? This has to be objectively ruled out when considering SLD eligibility. Consider this systematically by using an assessment tool such as the SRES “Worksheet to Determine Appropriate Instruction”.
- If a student is certified as having a SLD, it does not mean that there will be any less commitment to education within the general education setting. There will also continue to be strong commitment to making substantial progress in the general education curriculum. Accountability for meaningful progress in the identified low achievement areas will continue in all settings with all instructional staff.
- The district is required to address the question of disability if a student has not made progress after a reasonable period of time receiving appropriate instruction at a Tier 2 or Tier 3 level of intervention efforts.
- The length of time that instructional interventions occur before a SLD is suspected may vary, depending on the circumstances agreed upon by an instructional team that includes parents when regularly informed of data based progress by the school.
- According to “Michigan Criteria for Determining the Existence of a Specific Learning Disability” issued in May 2010 by the OSE-ESI office of the MDE, the following applies:

*A school district must not delay or deny an otherwise appropriate referral or request for an evaluation based on a district’s use of a response to scientific, research-based intervention process.*

*School districts that use this process must recognize a parent’s right to refer and request an evaluation at any time.*

*If school district personnel suspect that a student has a disability while the student is participating in this process, the school district must recognize the district personnel’s right to refer and request an evaluation at any time.*

### **III. Initiation of Evaluations and Timelines**

1. The school district requests parental consent to evaluate in order to determine if the student has a SLD in the achievement area(s) of concern.
  - Before signing consent to evaluate, the parent is involved, as a member of the IEP team, in review of existing evaluation data and development of an evaluation plan to acquire the necessary information to make a determination of SLD.
  - When the parent signs consent to evaluate, the parent is consenting to the evaluation plan.
  - The Review of Existing Evaluation Data and Development of an Evaluation Plan document provides guidance and all necessary information to complete this process.
2. Receipt in the SRES D special education office of a parent signed referral begins day 0 of a 30 school day timeline to complete an evaluation by a multidisciplinary evaluation team (MET) and to hold an IEP meeting for determination of SLD eligibility, unless the parent and district mutually agree to extend the timeline.

NOTE: With implementation of the on-line IEP system, the SRES D office will automatically receive notice within 24 hours of a referral being generated, so the IEP timeline will unofficially begin and diagnostic staff assigned when the referral is generated. Follow up hard copies of referral forms will prove when signatures were obtained for the official statement of referral initiation.

- One reason for extension may be that the evaluation will address important RtI assessment after the request for an evaluation.
  - Whether eligibility can be determined will depend on whether the IEP team has the necessary rule-in, rule-out, and documentation data required for SLD identification.
3. At the completion of the evaluation process, the MET provides a recommendation for or against eligibility which the IEP Team considers when making its data based determination.
    - The evaluation for SLD eligibility is completed for two purposes, to clarify eligibility and to better define the starting point for further interventions.

#### IV. Implementing the “Pattern of Strengths and Weaknesses” SLD Evaluation Process

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

- Even though the school may not have the capacity to fully implement a RtI process, interventions are most appropriately offered based on a three-tier model RtI model.
- Establishing a pattern of strengths and weaknesses involves classroom performance documentation along with curriculum-based, criterion-referenced and/or norm referenced academic/intellectual assessment.
- Use assessment results to determine whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development. The use of a severe discrepancy between achievement and intellectual ability may be used as a portion of the data to establish a pattern of strengths and weaknesses.
- Definitions:
  - Performance – actual performance in the classroom, as assessed by the students in-class assessment results, grades, teacher anecdotal records and observations.
  - Achievement – results on curriculum-based measurement (e.g., DIBELS), criterion-referenced assessment (e.g., Brigance), norm-referenced (e.g., Woodcock-Johnson Achievement Tests), and state (MEAP) assessments.
  - Intellectual Development – the student’s cognitive and functional skills, as assessed by IQ tests, functional skill surveys, interviews and observations.
- **The rubric for deciding evidence for a ‘pattern of strengths and weaknesses’ is provided in the following chart.**

When using this chart, a student must have at least 4 weakness boxes checked in any achievement area, and at least one other academic area considered a strength (with at least 3 boxes checked as being a strength) and/or the intellectual/functional performance box checked as a strength to be considered eligible for special education services. The IEP team shall determine if the student’s weakness warrant special education services.

## Worksheet for Charting Patterns of Strengths and Weaknesses

	Academic achievement with respect to grade-level expectations.		Academic achievement with respect to age-level expectations.	Classroom performance with respect to grade-level expectations.				Age-appropriate functional / intellectual skills	Basic Psych. Processes
	Progress monitoring, CBM screening or criterion-referenced assessments	MEAP	Norm-referenced achievement tests	Curriculum assessments	Grades	Teacher report	Classroom observation	Observation, interviews, IQ assessment	
<b>Basic Reading</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W	S N W
<b>Reading Fluency</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Reading Comp.</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Math Calc.</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Math Prob. Solving</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Written Express.</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Oral Express.</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		
<b>Listening Comp.</b>	S N W	S N W	S N W	S N W	S N W	S N W	S N W		

S = Strength

N = Neither Strength/Weakness

W = Weakness

Area(s) of Strength (at least 3 'S' checks for each area): \_\_\_\_\_

Area(s) of Weakness (at least 4 'W' checks for each area, including at least 1 individually administered academic achievement assessment): \_\_\_\_\_

## Guidelines for Determining Strengths and Weakness

Assessment Type	Strength	Weakness
Progress monitoring	Meeting / exceeding aim line	Falling below aim line for at least 4 consecutive weeks on most recent tests.
CBM (Benchmark) screening	At 'benchmark' level or above grade-level median score if using local norms.	At 'at-risk' level or below 10%ile if using local norms.
Criterion-referenced assessment	Skills at or above grade level	Skills well below grade level
MEAP	Level 1 or Level 2	Level 3 or Level 4
Norm-referenced tests (Achievement, IQ)	Percentile rank $\geq$ 30	Percentile rank $<$ 10
Curriculum assessments	Scores $\geq$ 80%	Scores $\leq$ 70%
Grades	A / B or 'meets / exceeds' expectations	D / E or 'does not meet' expectations
Teacher report	Based upon professional judgment of teacher in comparing student to others in classroom.	Based upon professional judgment of teacher in comparing student to others in classroom.
Observations – Academic	Student demonstrates average understanding of academic content in comparison to other students in classroom.	Student demonstrates that s/he does not understand the academic content.
Observations/Interviews/Scales - Functional	Student demonstrates typical functional skills in comparison to other students the same age or in the same grade. Percentile rank on scale $\geq$ 30.	Most of the student's functional skills appear to be well below average in comparison to other students the same age or in the same grade. Percentile rank on scale $\leq$ 9.

- Additional considerations
  - When determining age-based achievement and performance, the evaluator should consider whether or not the student has received appropriate instruction for those age-based skills. For example, can a student retained in second grade be compared with third grade students if that student never received third grade instruction?
  - If the student's weak areas are primarily in performance rather than in achievement (i.e., the student has the academic skill but does not do the work in the classroom), then the school should consider different types of interventions other than academic (e.g., motivation).
  - Probably the best way to actually 'catch up' the student's academic skills with his peers is using a Tier 3 intervention (whether delivered in general education or special education) along with continued Tier 1 instruction.
  - If a student is placed into special education and the intent of the school is to catch the student up academically, the student's instructional time for that area should not be reduced from what it was when the student was only receiving general education services.

## V. Full and Individual Evaluation Requirements for SLD

There are extensive requirements for evaluation of students suspected of having any disability. These set an expectation of quality standards in assessment to meet as a due process right whenever a child is suspected of having a disability. See Appendix B for a complete statement of these requirements.

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

*An RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§ 300.304 and 300.305. As required in § 300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services. (71 Fed Reg. 46,648)*

## VI. Framework for SLD Evaluation

Federal regulation §300.309 provides direction for determining SLD eligibility and defines elements of the evaluation process.

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

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

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

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

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

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

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

- (i) Oral expression.*
- (ii) Listening comprehension.*
- (iii) Written expression.*
- (iv) Basic reading skill.*
- (v) Reading fluency skills.*
- (vi) Reading comprehension.*
- (vii) Mathematics calculation.*
- (viii) Mathematics problem solving.*

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

Documentation that the student is not making adequate progress subsections 2(i) and (ii) may be completed in one of two ways:

(1) Determine that the student has not responded, despite the faithful provision of high quality, individualized general education instructional interventions, or

(2) Demonstrate a relevant pattern of student strengths and weaknesses in achievement or performance, given appropriate instruction.

*§ 300.309 (2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or*

*(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that*

*is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305.*

**a. Response to Scientific, Research-Based Intervention (RtI)**

Federal regulations do not specify what research based interventions must be used, and leave the State with flexibility to determine criteria to best meet local needs. Resources such as the Florida Center for Reading Research, at: [www.fcrr.org](http://www.fcrr.org), provide a listing of current research based interventions. Guidance on research based practices may also be found in Response to Intervention: Enhancing the Learning of All Children, published by the Michigan Association of Administrators of Special Education.

Michigan's Integrated Behavior and Learning Support Initiative (MiBLSi) is an initiative through MDE that helps schools create a "culture" in which staffs teach for academic success and success in behavior adjustment. Shiawassee county schools are committed to the RtI process. In order to learn how to fully implement this process, many districts utilize the training offered with assistance of the MiBLSi grant to achieve the goals of increasing student reading performance and behavior performance.

The MDE Criteria Document for SLD states that there must be documentation of student data that demonstrates inadequate achievement to meet age or State-approved grade-level standards in the specific achievement areas above and insufficient progress or a pattern of strengths and weaknesses. Schools and evaluation teams must follow these criteria:

- The finding of an academic skill deficit and insufficient progress must not be based on any one measure.
- The findings of an academic skill deficit and insufficient progress must be based on the school district's established objective criteria as applied to data on a student's level of performance (these are commonly referred to as 'decision rules').
- The IDEA clearly states that one benchmark for considering a student's extent of adequate achievement must be age or Michigan-approved grade level standards.
- No single benchmark or measure is sufficient under Michigan criteria; the student should evidence inadequacy on multiple measures to be determined SLD eligible.
- The student's level of intellect must not be used to exclude the student from SLD eligibility if the student otherwise qualifies for and requires special education programs and services.

**b. IDEA 2004 Regulation Observation Requirement**

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

*§ 300.310 Observation.*

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

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

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

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

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

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

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

Regulations specify that when these types of exceptional circumstances exist, the child must still be observed in an age appropriate environment.

### **3. Completing diagnostic assessment for likely eligible students**

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

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

## VII. Exclusionary Factors

Multidisciplinary evaluation teams (MET)s are required to consider what are commonly referred to as “exclusionary” factors in determination of SLD. If any of the following conditions are the primary determinant factor, R340.1713 states that a student may not be certified as having a SLD.

*Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.*

To this list, IDEA regulations from §300.306 add the following exclusionary criteria under a “special rule for eligibility determination”.

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 – these are explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies.)
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency.

In May 2010, the Michigan Office of Special Education and Early Intervention Services published “Michigan Criteria for Determining the Existence of a Specific Learning Disability”. In consideration of exclusionary factors, this document states that

It must be clearly understood that a student to whom one of these factors applies might still be appropriately determined as SLD eligible. The issue is one of “primary cause” for the SLD. With the changes in SLD eligibility criteria, serious consideration of these (exclusionary) factors has become even more important.

### *Means of Determining Exclusionary Factors*

#### Presence of Other Disabilities/Factors

*Visual, hearing or motor disability* – Ruling these areas out as the primary cause of underachievement may involve district screening results; teacher and parent input; or evaluation by a family physician, ophthalmologist, optometrist, audiologist, otolaryngologist, or neurologist, OT, PT or other evaluation staff.

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

*Emotional disturbance* – The evaluation report must include data that would allow the IEP Team to determine whether an emotional impairment is the primary cause of the student’s learning

problems. Again, this could be done by affirmatively assessing for emotional impairment or by record review information that would be contraindicative of this impairment.

*Cultural, environmental or economic disadvantage* – The evaluation must establish the primary cause of the disability and must rule out causative factors not related to disability, such as:

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

*Limited English proficiency* – English language learners who do not achieve commensurate with other children their age, despite research based interventions may be referred for special education evaluation and services. However, assessment must consider the child’s cultural and language differences:

- Selection must be non-discriminatory with respect to race and culture
- Administration must be in the child’s native language or in a form that will best estimate the child’s abilities.

### ***Lack of Appropriate Instruction***

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

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

Examples of appropriate instruction documents:

- Chronology of student’s educational history-
  - Teacher anecdotal records
  - Grade retentions
  - Attendance
  - Grades
- General Education Curriculum
  - 5 essential components of reading – phonemic awareness, phonics knowledge, fluency, vocabulary and comprehension

- Math – conceptual understanding, computational and procedural fluency, fact fluency and problem solving skills.
- Written Expression – formation of letters and numbers correctly, writing words spontaneously or from dictation, and organizing words into meaningful thoughts
- District’s curriculum is aligned with state standards
- Fidelity of instruction
  - 80% of students within the classroom are meeting state/district standards
  - Differentiated instruction, universal design principles
  - Multi-tiered intervention practices
  - Individual instructional practices
  - Staff training in effective instructional programs / strategies.
  - Observation of classroom instruction or the use of checklists by teachers, peers or content specialists

Diagnostic intervention during evaluation demonstrates:

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

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

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

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

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

### **VIII. Reconsidering When to Use RtI as the SLD Eligibility Decision Making Process**

Decision-making on which process to use to document achievement and learning needs will depend on district policies, status of RtI implementation; staff training, specific areas of concern, length of time the child has attended district programming, and grade level interventions.

Continue Using PSW until:

- District policies support the use of the RtI as an intervention approach; and,
- District implementation reflects the SRESO Operating Foundational Principles
- RtI is fully implemented in the skill area of suspected disability
- RtI is fully implemented at the child's grade level
- Also, use this approach whenever the parent requests a special education evaluation and will not extend timelines to accommodate recommended implementation of tier interventions and timelines.

## Appendix A: Current Michigan Definition of SLD

R 340.1713 (Rule 13) “Specific learning disability” defined; determination.

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

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

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

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

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

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

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

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

\* The IDEA allows for the use of “Other Alternative Research-Based Procedures” in determining SLD eligibility. At this time, Michigan has not identified other alternative research-based procedures for determining whether a student has a SLD as defined in 34 CFR § 300.8(c)(10). In the future, Michigan may consider local school system proposed alternative research-based procedures for determining whether a student has a SLD.

Achievement areas that must be considered for SLD are:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

## **Appendix B: Full and Individual Assessment Requirements**

IDEA § 300.304 Evaluation procedures defines what is required to complete a full and individual assessment.

... (b) Conduct of evaluation.

In conducting the evaluation, the public agency must—

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—(i) Whether the child is a child with a disability under § 300.8; and (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- (2) Not use any single measure or assessment 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; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures.

Each public agency must ensure that—

- (1) Assessments and other evaluation materials used to assess a child under this part—
  - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

## Appendix C: Documentation for Specific Learning Disability Determination

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

§ 300.311 Specific documentation for the eligibility determination.

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

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

Documentation must include:

1. Statement of eligibility, or lack of eligibility, for SLD
2. Basis for the determination of eligibility
3. Assurance that during the determination process the district:
  - a. Collected information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, information about the child's physical condition, social or cultural background and adaptive behavior.
  - b. Documented and carefully considered information obtained from a variety of sources.
4. Relevant behavior noted in observations, and the relationship of the behavior to the child's academic functioning.

5. Relevant medical findings.
6. Achievement measured to age expectations or state-approved grade level standards.
7. Progress monitoring related to age or grade level standards.

or

8. Determination of a pattern of strengths and weaknesses in performance, achievement or both, relative to age, State-approved grade level standards or intellectual development.
9. Determination of exclusionary factors
10. If the child participated in a process that assesses the child's response to scientific, research-based (or, if necessary, best practice) interventions, documentation of:
  - a. Instructional strategies utilized
  - b. Student-centered data collected
  - c. Parent notification about:
    - i. State policies regarding RtI criteria- data and services requirements (Note: the SLD rule, R 340.1713, is Michigan's policy.)
    - ii. Strategies used for increasing the student's rate of learning
    - iii. Parent right to request an evaluation.
11. Evaluation team members and parent must certify whether the report reflects the member's conclusion.
  - a. Members in disagreement must submit a separate statement presenting dissenting conclusions.

## Appendix D: Guidance for Applying New Criteria in Re-Evaluations

To ensure compliance with the requirements of the Individual's with Disabilities Education Act (IDEA 2004), three-year re-evaluation teams must systematically review the implementation and appropriateness of the IEP and the student's progress in relationship to the goals and interventions established by the IEP.

1. Districts will use the Review of Existing Education Data (REED) format to determine the need to conduct a comprehensive re-evaluation.
2. If the student is demonstrating slow progress and requires extensive support from special education, then a re-evaluation may not be indicated, and must be documented on the REED.
3. If a parent or team member is requesting evaluation to consider a change in eligibility, a re-evaluation consisting of a full and individual evaluation must be conducted.
4. A re-evaluation IEP must be held within three (3) years of the initial or last re-determination IEP meeting, but more often if conditions warrant (i.e., at the request of the student's parent or teacher).

Considerations:

- The team must work from the premise of "First, do no harm".
- The team must always consider the student's ability to benefit from instruction without special education services in making re-determination decisions.

Application of Previous Criteria: The team will need to review the criteria under which the student was initially identified as a student with a SLD. If, when the criteria are applied relative to present student performance, it appears to be most beneficial to the student to continue to apply the previous criteria, then the recommendation of the team must be to apply the previous criteria.

Application of New Disability Determination Criteria: If, the application of the new criteria, in combination with current performance data seems to provide a more relevant and appropriate schema for defining the student's ability to benefit from instruction and the student will not lose the benefits of a free appropriate public education by the change in criteria, then the team may choose to apply the new criteria.

### ***§ 300.305 Additional requirements for evaluations and reevaluations.***

#### ***(a) Review of existing evaluation data.***

*As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—(1) Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services*

*are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.*

*(b) Conduct of review.*

*The group described in paragraph (a) of this section may conduct its review without a meeting.*

*(c) Source of data.*

*The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.*

*(d) Requirements if additional data are not needed.*

*(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—(i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.*

*(e) Evaluations before change in eligibility.*

*(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability. (2) The evaluation described in paragraph (e) 1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.*

**§ 300.306 Determination of eligibility.**

*...(b) Special rule for eligibility determination.*

*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; and (2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).*

*(c) Procedures for determining eligibility and educational need.*

*(1) 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—(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; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. (2) If a determination is made that a child has a disability and needs special education and related*

*services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.*

- Seek information from existing school records and current classroom performance data.
- Review student progress toward State standards using state and local assessments.
- Obtain a report from the teacher on student performance.
- Request input from the parent.
- Determine the additional tests and evaluation components the team will need to complete the comprehensive assessment of the student.
- Conduct at least one classroom observation by a member of the team.
- Locate or collect repeated measures of student performance with results provided to parents.
- Apply County Guidance and local procedures to the analysis of all information.
- Answer the question, “Is the student able to benefit from instruction without special education?”.
- The multi-disciplinary team will then offer the appropriate recommendation as to whether or not the student is eligible for special education.
- The IEP team will determine the eligibility and the IEP team will determine the goals, modifications, supports, services, and programs that are most appropriate to meeting the needs of the student.

## **Appendix E: Addressing Recommendations from Outside Reports**

When presented with a report from an outside agency that proposes a diagnosis of a learning disorder or learning disability, the school district's multidisciplinary evaluation team must follow a process that gives due consideration to validation of whether the criteria for a SLD is in evidence in the school setting. There are steps the team takes to ensure that decisions of the school are consistent with legal requirements and educationally relevance. There may be situations in which the recommendations from outside reports may be clinically meaningful but not relevant to the child's essential functioning in the school setting. Definitions of SLD in clinical settings are in accordance with diagnostic criteria that adhere to medical models. In contrast, schools must adhere to definitions of learning disability from Federal and State rules that validate the nature and extent to which learning difficulties are expressed in the school setting. Educational criteria of disability require extensive documentation of classroom performance. It is entirely possible for an individual to have characteristics of a handicapping condition but not have a certifiable eligibility for special education because the student is able to demonstrate real benefit from instruction in the general education setting without special education services, supports, modifications or programs.

Teams must consider information and recommendations from outside reports within the required context of reviewing multiple information sources that are integral to determination of a SLD according to §300.304 of the federal regulations for IDEA 2004. As a result, this makes it impossible to simply accept outside recommendations as sufficient direction for diagnostic or instructional team actions. The team has the responsibility to review the information relative to State and Federal rules, as well as local operational guidelines and regulations. The team may take the following steps to address recommendations from outside agencies in order to carry out responsibly complete preparation for disability determination by the IEP Team in an appropriately individualized manner.

- Schedule a meeting with school staff to review the information in the report.
- The report is then carefully reviewed. Reports that appeal to clinical judgment not directly related to high quality assessment practices would provide evidence that is not sufficiently reliable or valid for determination of a school related disability.
- Review of information must include attention to high quality standards of technical adequacy and comprehensiveness of the evaluation process according to IDEA 2004 federal regulation §300.304 – §300.306. In part these regulations state the following:

## Appendix F: Selected Examples of Published Assessments

Assessment Type	Examples:
Progress monitoring, Benchmark screening	DIBELS, AIMSweb, Yearly Progress Pro, EdCheckup, Easy CBM, DRA
Criterion-referenced assessments	Brigance
Norm-referenced achievement tests	WRMT-2/NU, Key Math 3, KTEA-2, WIAT-3, WJ-3/NU, DAB-3, OWLS, GORT-4, TERA-3, TEMA-3, TOWL-4, TOLD:P-4, TOLD:I-4, TWS-4, CASL, CELF-4
IQ tests	WISC-4, WAIS-4, KAIT-2, CTONI-2, KBIT-2, WASI, DAS-2, UNIT, WJ-3, WISC-NV, WPPSI,
Curriculum assessments aligned with CE's and classroom instruction	District assessments, Classroom assessments
Adaptive/functional behavior scales	Adaptive Behavior Evaluation Scale-2, Adaptive Behavior Inventory, AAMR Adaptive Behavior Scale-School, Vineland Adaptive Behavior Scales-2