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State Eligibility Requirements for Specific Learning Disabilities

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Introduction

Reauthorization of the Individuals with Disabilities Education Act (IDEA) in 2004 and the IDEA regulations issued in 2006 revised the requirements for identifying students under the category of specific learning disabilities (SLD). Each state must adopt criteria based on the new requirements for determining whether a child has an SLD and local educational agencies (LEAs) must use the criteria adopted by their state. This document reports on the status of changes in states to comply with the revised federal requirements. Project Forum at the National Association of State Directors of Special Education (NASDSE) conducted this analysis as part of its cooperative agreement with the U. S. Department of Education Office of Special Education Programs (OSEP).

BACKGROUND AND METHODOLOGY

Federal Requirements on SLD

The first version of what is now IDEA was passed in 1975 as P. L. 94-142.¹ That law contained a definition of “children with specific learning disabilities,” but the law did not include specific criteria for identifying these students. Rather, the last section of the law ordered that:

(b)(1) The Commissioner of Education shall, no later than one year after the effective date of this subsection, prescribe—

(A) regulations which establish specific criteria for determining whether a particular disorder to condition may be considered a specific learning disability for purposes of designating children with specific learning disabilities;

(B) regulations which establish and describe diagnostic procedures which shall be used in determining whether a particular child has a disorder or condition which places such child in the category of children with specific learning disabilities; and

(C) regulations, which establish monitoring procedures which will be used to determine

¹ Laws and regulations mentioned in this document are cited with their links in the Reference List.

if State educational agencies, local educational agencies, and intermediate educational units are complying with the criteria established under clause (A) and clause (B).

The regulations for SLD were finalized on December 29, 1977. The criteria for SLD were:

“(a)(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child’s age and ability levels; and,

(a)(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following:

- (i) Oral expression;*
- (ii) Listening comprehension;*
- (iii) Written expression;*
- (iv) Basic reading skill;*
- (v) Reading comprehension;*
- (vi) Mathematics calculation; or*
- (vii) Mathematical reasoning.*

(b) The team may not identify a child if the severe discrepancy between ability and achievement is primarily the result of:

- (1) a visual, hearing or motor handicap;*
- (2) Mental retardation;*
- (3) Emotional disturbance; or*
- (4) Environmental, cultural or economic disadvantage.”*

The draft that had been issued for comment contained a formula to be used as part of the diagnostic criteria and the final regulations note that most concerns expressed by those who commented were about the use of that formula. It was not included in the final version of the regulations.

The final regulations issued in August 2006 after the reauthorization of IDEA 2004 made extensive changes in this section of the law from the original (see Appendix A for a copy of the 2006 regulations [§§300.307-311] on SLD). The most significant change in the 2006 regulations pertaining to SLD is the new requirement that a state “must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.” OSEP explained further in a policy letter that, “while a State cannot require the use of a severe discrepancy model, a State may prohibit, or make optional, the use of a severe discrepancy model” (Letter to Zirkel, 2007). The regulations also provide that a state “must permit the use of a process based on the child’s response to scientific, research-based intervention,” and “may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability” [§§300.307(a)(2)-(3)]. In addition, under the IDEA 2006 regulations for all evaluations [§300.304], a public agency must “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” [34 CFR §300.304(b)(2)]. Additional OSEP letters of clarification on the new SLD requirements are listed in the references at the end of this document.

States have been in the process of revising their special education regulations to comply with the new federal requirements since the revisions were adopted. The remainder of this document provides a summary and brief analysis of the decisions states have made in this process.

Methodology

A survey was sent to all states and non-state jurisdictions on March 14, 2008. Respondents could reply by using the Zoomerang[®] version of the survey (a web-based survey tool) or by faxing or emailing responses to a paper version.

Responses were received from 49 states. A copy of the survey is included in Appendix B.

SURVEY RESULTS

State SLD Regulatory Actions

The first item on the survey asked respondents if their state regulations/policies on student eligibility under the category of SLD had changed in response to the federal IDEA regulations issued in August 2006. The responses were: Yes - 42; No - 7. However, analysis of the additional information on the surveys revealed that the division is not as clear cut as the answers suggest. The seven negative responses were from states that were actually in the process of changing their policies, but most had not yet completed final action. In addition, three of those who responded in the positive added comments that they also had not yet completed the final adoption for their revised regulations. The actions by the seven states that indicated they had not yet changed their regulations are illustrated in the following comments:

- *Connecticut* [CT] is in the process of revising its guidelines for determining eligibility for learning disabilities. As of July 1, 2009, CT will no longer permit the use of severe discrepancy formulas and will require that districts incorporate data from our response to intervention process (called Scientific Research Based Intervention [SRBI]) into a comprehensive evaluation.”
- *Hawaii* is in the process of changing our state regulations to reflect the requirements in IDEA 2004. Even though our regulations have not changed, we have changed the the practice in the schools to be in line with the SLD requirements.”
- *Illinois* – “Our state is in the process of finalizing our state criteria.”
- *Louisiana* – “We will probably go with a modified process without the severe discrepancy. We are writing our proposed regulations now and plan to advertise in late summer. We will begin training after that.”
- *Maryland* has not changed its regulations. We have issued a task force report that includes guidance for locals permitting either the RTI [response to intervention] or the use of the discrepancy model. We are providing training and have established ongoing opportunities through a department-wide initiative to identify interventions.”
- *Massachusetts* – “We have not changed regulations, but have put out policy guidance on the subject that allows the use of either response to scientific, research-based intervention

or severe discrepancy in establishing eligibility for SLD (i.e., the LEA chooses which approach to use for all such determinations).”

- *Wisconsin* – “We have informed LEAs the state may no longer require the use of significant discrepancy, but have recommended they do so until such time as the state establishes rules for the use of RTI to identify children with specific learning disabilities.”

The three states that responded affirmatively about a regulations change, but also indicated that the process was not yet complete added the following comments about their status in that process:

- *Indiana*’s special education rule is in the revision process and the state advisory council and state board of education have been heavily involved. A revised rule could be in effect by late summer.”
- *Nebraska* – “Final approval is pending authorization from Attorney General/Governor’s office.”
- *Virginia* – “The “Regulations Governing Special Education Programs for Children with Disabilities in Virginia” are currently being revised in accordance with Virginia’s Administrative Process Act (APA). Virginia’s APA is a statute that outlines the process by which new regulations may be promulgated, and Virginia’s special education regulations are about half-way through what will likely be a 2 ½ year process. The public comment period regarding the proposed Virginia regulations is expected to begin on April 28, 2008. It is anticipated that new special education regulations will be formally adopted by Virginia’s Board of Education in fall 2008, and that they will become effective in early 2009. However, in the interim, the Virginia Department of Education (VDOE) has provided guidance to local school divisions outlining the impact of IDEA 2004 and the 2006 federal special education regulations on Virginia’s current special education regulations.”

Thus, analysis of the responses suggests that the more accurate interpretation is that all 49 responding states have made, or are in the process of making, changes in their regulations and/or policy to comply with the changes in the 2006 IDEA regulations on SLD eligibility.

Revisions in State SLD Eligibility Procedures

The majority of states have decided to allow the use of either response to scientific, research-based intervention or a severe discrepancy model in establishing eligibility for SLD, (i.e., the LEA chooses which approach to use for all such determinations). A summary of the responses received from the 42 states that indicated they had revised their regulations is contained in Table 1.

Table 1
Options in Revised SLD Eligibility Requirements

Options in Revised Regulations	N	States
Our regulations require the use of response to scientific, research-based intervention and do not allow use of severe discrepancy in establishing eligibility for SLD.	6	<i>Colorado, Delaware, Georgia, Indiana, Iowa, West Virginia</i>
Our regulations allow the use of either response to scientific, research-based intervention or severe discrepancy in establishing eligibility for SLD (i.e., the LEA chooses which approach to use for all such determinations).	26	<i>Alaska, California, Idaho, Kentucky, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, Wyoming</i>
Our regulations allow response to scientific, research-based intervention, severe discrepancy or any other research-based alternative to be used in establishing eligibility for SLD.	10	<i>Alabama, Arkansas, Florida, Kansas, Michigan, Nebraska, New Hampshire, Ohio, Oregon, South Carolina</i>

As indicated above, some of the states that have not yet completed action on their regulations did comment about an interim or eventual choice for their changed requirements. For example, *Connecticut* and *Louisiana* will adopt the first option in the table above, while *Maryland* and *Massachusetts* have issued guidance indicating their practice decision falls into the second choice in the table. A decision was not indicated by the three other responding states (*Hawaii, Louisiana and Wisconsin*).

Criteria for SLD Eligibility

The survey asked what criteria the state’s IEP teams must use to establish eligibility for SLD after using the state’s procedures for evaluation. The IDEA regulations at §300.309 (see Appendix A) list a set of criteria for determining the existence of an SLD. Essentially, those criteria include a finding that there is a lack of adequate achievement for the child’s age or failure to meet the state’s grade-level standards or a pattern of strengths and weaknesses in performance and/or achievement that is determined to be relevant to SLD that are not primarily the result of visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency. The team must also find that the child received adequate instruction that was measured by repeated assessments.

All respondents acknowledged application of the federal requirements in the criteria that they use. As *Arkansas* noted: “Everything discussed in the regulations that is required to be addressed in the decision-making process must be supported by evidence.” Some emphasized aspects of

those requirements, especially the influence of the child's progress on state academic standards, that expanded on aspects of their specific process. Others said their criteria were under revision.

The connection between the prereferral process and the determination of an SLD was mentioned by states in different ways, especially the connection to various response to intervention approaches (e.g., the *New Mexico* dual discrepancy approach and the detailed step-by-step approach followed in *Montana*). Two illustrations of this type of response are:

- *Tennessee* - "State standards have built in for both RTI and IQ/Discrepancy standards a systematic means for determining whether or not the student has received early intervening instruction in the problem area using scientifically validated instruction, progress monitoring, and the rule out of other reasons for academic struggles (not primarily due to [mental retardation] MR, [emotional disturbance] ED, [visual impairments] VI, [hearing impairments] HI, cultural/language factors, situational trauma, and motivational factors). Additionally, the student's progress in meeting state standards and results of assessments are considered."
- *Iowa* - "The IEP team must use multiple sources of data through a process called RIOT (review of information, interviews, observations, and assessment data) to determine the: 1) educational progress (rate of growth), 2) educational discrepancy (individual versus age- or grade-level expectations) and 3) the instructional needs (supports and services) in order for the child to benefit educationally. The exclusionary factors are also considered along with the instruction, curriculum and environment being provided to the student."

Some states referred to the professional judgment applied to the review of evidence to determine the finding of SLD. The *Georgia* response is an example: "To determine the existence of SLD, the group must summarize multiple sources of evidence to conclude that the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards and intellectual development. SLD is determined through professional judgment using multiple supporting evidences."

The *Maine* regulations prescribe more precise criteria than other states. The state's response to this item was:

"Procedure for Determination. All steps below are required.

(a) The IEP Team may determine that a child has a specific learning disability if:

(i) Data from the prereferral procedures (e.g. response to intervention), if appropriate, utilizing research based intervention techniques indicate that the response to general education intervention is not adequate.

(ii) The child scores 1.5 or more standard deviations below the mean for the child's age on tests in one area of psychological processing, or one or more standard deviations below the mean in two or more areas of psychological processing. Instruments used for determining processing disorders must have peer reviewed, scientific research documentation, independent of that provided in the test manual that supports a correlation between the processing problem and the academic deficit. Such tests may include

measures of memory, phonological skills, processing speed as well as other measures which explicitly test phonological psychological processing and

(iii) For children in grades 4-12, the following criteria must also be met: The child obtains a composite standardized score that is no lower than 1.5 standard deviations below the mean on at least one index/scale of cognitive functioning from a standardized measure of general cognitive ability. The index/scale must include at least three subtests and the score must be interpretable according to the test used.”

Training and Technical Assistance

Of the 42 states that said they have revised their regulations, 34 said that they have provided training and/or technical assistance for their LEAs. However, as mentioned above, the remaining responding states were in the process of revising their policies and they also provided some information about training they have delivered or are planning to make available on the topic of SLD.

The survey listed five types of training and allowed respondents to describe any other training activities they have performed. The responses are summarized in Table 2:²

**Table 2
Training and Technical Assistance Provided**

Type of Training/TA	N	Percent
Written explanations of state policy and procedures to be followed	31	91%
Statewide or regional training sessions to explain the new requirements	28	82%
As requested/needed training or technical assistance	28	82%
Web-based trainings such as webinars, on-demand programs, etc.	8	24%
Training of intermediate unit trainers (training of trainers)	12	35%
Other (please describe)	8	24%

The following were mentioned as “other” activities related to implementation of changes in SLD procedures:

- providing response to intervention coaches;
- conducting conferences;
- surveying LEAs on the type of guidance needed;
- demonstrating implementation of response to intervention;
- designing pilot activities for new approaches;
- developing new forms and explanations; and

² Totals are greater than 100% because respondents could indicate more than one option.

- collaborating with other organizations such as a joint session with the state's school psychology association.

OBSERVATIONS AND CONCLUSIONS

The results of the survey on state SLD eligibility provide some insight into the process of changing state regulations and/or policies. At least 10 states are still in the process of finalizing necessary changes to comply with IDEA regulations issued in 2006. The implementation of state policy change requires a significant amount of time to complete and changes in special education procedures are complex.

One area a few states mentioned, especially related to training activities, is the involvement of general education. The type of changes that are being implemented for SLD—especially those related to response to intervention—entail close coordination and integration of special education and general education staff as an essential component. Successful implementation will rely on more extensive planning and training, including teachers, service delivery personnel and administrative personnel. Especially critical will be appropriate preparation of IEP team members including parents.

Increased use of the Internet was also mentioned by states. It will allow for more complete dissemination of training in the form of documents and presentations that can be made permanently available for current and future staff. For example, Massachusetts has uploaded its SLD training materials to its website (<http://www.doe.mass.edu/sped/cspd/mod5.html>).

The survey findings demonstrate that virtually every state is taking a close look at this change in the law, which is considered to be one of the most significant changes, and is taking steps to develop new state policies and procedures and deliver training as deemed necessary to implement these changes.

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APPENDIX A

Extract from IDEA Regulations Issued August 2006

Additional Procedures for Identifying Children With Specific Learning Disabilities

§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). 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 §300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; 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 §300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a)(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

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§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) (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; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--

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

(b) 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.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)--

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§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.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§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.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

APPENDIX B
Survey on State Policy Changes for Identifying SLD

Respondent: _____ **State:** _____ **Email Address:** _____

1. Have your state regulations/policies on eligibility of students under the category of specific learning disabilities (SLD) changed in response to the federal IDEA regulations issued in August 2006?

- _____ YES
- _____ NO (skip to Item #6)

2. Please choose **ONE** item from the following list that describes your changed requirements:

A) _____ Our regulations **require** the use of response to scientific, research-based intervention and do **not** allow use of severe discrepancy in establishing eligibility for SLD.

B) _____ Our regulations require the use of **both** response to scientific, research-based intervention **and** severe discrepancy in establishing eligibility for SLD.

C) _____ Our regulations allow the use of **either** response to scientific, research-based intervention **or** severe discrepancy in establishing eligibility for SLD (i.e., the local education agency chooses which approach to use for all such determinations).

D) _____ Our regulations allow response to scientific, research-based intervention, severe discrepancy **or** any other research-based alternative to be used in establishing eligibility for SLD.

3. What **criteria** (e.g., review of assessments, progress in meeting state standards, professional judgment, etc.) must the IEP team apply to establish eligibility for SLD using the procedures your regulations allow?

4. Has your state education agency provided training and/or technical assistance to LEA staff on the new requirements for SLD eligibility?

- _____ YES

____NO (skip to Item #6)

5. Please check any of the following types of training and/or technical assistance that your SEA provided to LEA staff/IEP team members to implement the new eligibility requirements for specific learning disabilities:

- A) ____ Written explanations of state policy and procedures to be followed
- B) ____ Statewide or regional training sessions to explain the new requirements
- C) ____ As requested/needed training or technical assistance
- D) ____ Web-based trainings such as webinars, on-demand programs, etc.
- E) ____ Training of Intermediate Unit trainers (trainer of trainers)
- F) ____ Other: Please describe.

6. Please add any details about your state’s activities or plans for revising SLD eligibility identification requirements:

As always, thank you for your support of Project Forum @ NASDSE’s work!

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