

The Individuals with Disabilities Education Act (IDEA 2004) — and the newly released federal regulations that provide guidance to states on how to implement the Act — contain important changes to the way schools can evaluate students suspected of having specific learning disabilities (SLD).

Definition of Specific Learning Disability (SLD) under IDEA 2004

Both IDEA 2004 (effective July 1, 2005) **and IDEA 2004 federal regulations** (effective October 13, 2006) **maintain the same definition of SLD as previous versions of the law and regulations.** That definition, found in United States Code (20 U.S.C. §1401 [30]), reads as follows:

“The term ‘specific learning disability’ means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

Such term **includes such conditions as** perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Such term **does not include a learning problem that is primarily the result of** visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.”

While the definition of SLD remains unchanged in IDEA 2004, changes to the ways that schools can determine whether a student has an SLD are sure to have significant impact on school identification practices and procedures.

Significant Changes to SLD Identification Requirements under IDEA 2004

By far the most significant change included in IDEA 2004 is the elimination of the requirement for a student to show a “severe discrepancy” between intellectual ability and academic achievement in order to be identified as having an SLD.

Before IDEA 2004, such a discrepancy had to be found in one or more of the following areas:

- oral expression
- listening comprehension
- written expression
- basic reading skill
- reading comprehension
- mathematics calculation
- mathematics reasoning

This “**discrepancy requirement**”, which has been part of federal special education regulations since 1977, has been under attack for some time. Critics charge that, by using this approach to identifying SLD, students must fail for long

periods of time before they will show sufficiently large deficits in academic achievement to satisfy the “severe discrepancy” requirement and begin receiving special education services. Equally important was the growing evidence that such a requirement was particularly problematic for students living in poverty, students of culturally different backgrounds, or those whose native language was not English.

Recognizing that the “discrepancy” approach was resulting in both late identification and misidentification of SLD, Congress included a new provision in IDEA 2004 stating that **school districts are not required to take into account a severe discrepancy between ability (IQ) and achievement when determining whether a student has a specific learning disability.** In updating IDEA Congress clearly indicated a strong desire to see schools begin to use procedures to identify SLD that are more relevant to the instruction students receive in the classroom. To encourage such change, IDEA 2004 included an additional provision stating that school districts could use a process designed to determine if a student responds to scientific, research-based intervention as a part of the evaluation procedures.

A current example of such processes is known as “**Responsiveness to Intervention**” (“Response to Intervention,” or “RTI”). In an RTI process, students who show signs of learning difficulties are provided with **a series of increasingly intensive, individualized instructional or behavioral interventions.** These kinds of interventions are designed and delivered by general education staff in collaboration with other experts such as special educators and school psychologists and are based on reliable research. This type of intervention process **includes systematic monitoring of the student’s progress. Students who do not show improvement, or “responsiveness,” to this series of interventions are considered to be “at risk”** for learning disabilities and possibly in need of special education services in order to receive educational benefit from instruction.

Federal Procedures for Determining if a Student Has an SLD

Procedures for determining the existence of a specific learning disability are found in the federal regulations for IDEA 2004, which are effective October 13, 2006. It is important to note that **these procedures are in addition to — not in place of — all IDEA requirements relating to evaluation and eligibility** for all students suspected of having a disability and needing special education and related services.

Determining if a student has a specific learning disability, like any other disability determination under IDEA, cannot be based on any single criterion – meaning a single test, assessment, observation, or report. An **evaluation of a student suspected of having SLD must include a variety of assessment tools and strategies.** The evaluation must include input from the student’s parents as well as an observation of the student’s academic performance and behavior in the

general education classroom. Once all agreed-upon assessments and evaluation measures have been completed and the student's parents have received copies of the evaluations along with full explanations of the findings, the eligibility group (see box below) meets to make its determination.

Makeup of the Group that Determines Eligibility for Special Education

As with any eligibility determination, the determination of whether a student has an SLD and requires special education is made by a group that includes the student's parents and a team of qualified professionals. Those professionals must include the student's regular education teacher (or a regular teacher qualified to teach a child of the student's age) and others qualified to conduct diagnostic examinations. These individuals could be a school psychologist, a speech-language pathologist, or a remedial reading teacher. The individuals that make up the group may vary depending on the nature of the student's suspected disability.

Steps Schools Must Now Take to Determine If a Student Has an SLD

Step 1: Determination of Underachievement

Does the student fail to achieve adequately for his age in one or more of the following eight areas:

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

This determination will be based on the student's mastery of grade-level content appropriate for the student's age, including performance against the state's academic content standards in reading and math. For a student who has been retained in a grade or is otherwise not in the grade typical for his age, achievement against the state's grade-level academic standards for the student's enrolled grade might be used to determine underachievement.

Step 2: Determination of Response to Interventions or a Pattern of Strengths and Weaknesses (or Both)

In determining a student's response to interventions, the following question must be asked: **Does the student fail to make sufficient progress in achievement considered adequate for his age** (or enrolled grade-level standards) when provided with a series of scientific, research-based interventions?

Documentation of a student's progress during a process of increasingly intensive interventions, such as those that occur in the RTI approach, can provide useful information for determining whether a student has an SLD and needs special education. Note that:

- This documentation of progress is generally done using curriculum-based measurements (CBM).
- An intervention process generally takes place prior to referring a student for a complete evaluation.
- Determining **why** a student has not responded to research-based interventions requires a comprehensive evaluation.

As an alternative — or in addition — to an RTI approach, the following question may be asked: **Do the results of the student's assessments and evaluations show a pattern of strengths and weaknesses** in her academic performance, achievement (or both), or in intellectual development? Patterns of strengths and weaknesses commonly refer to the examination of profiles across or within tests that have typically been used to determine SLD, such as standardized achievement tests and aptitude (IQ) tests. Sometimes referred to as intra-individual differences or variability, these patterns of strengths and weaknesses are particularly relevant to the identification of SLD. Recognition of a discrepancy between ability and achievement, previously required for SLD identification, could also be considered as part of this step.

Step 3: Determination of Appropriate Instruction

Prior to a child's being suspected of having an SLD, **the school or district must provide documentation that proves that the student has been provided appropriate instruction by qualified personnel.** Students whose lack of achievement can be attributed to a lack of appropriate instruction in reading or math should not be determined to have an SLD. Such students should be provided with appropriate instruction in general education as well as scientific, research-based interventions. Appropriate instruction in reading must include the essential components of reading instruction* defined in the No Child Left Behind Act. These essential components include explicit and systematic instruction in:

- phonemic awareness,
- phonics,
- vocabulary development,
- reading fluency, including oral reading skills, and
- reading comprehension strategies.

*Source: Elementary and Secondary Education Act of 1965 § 1208(3)

The school or district should also provide data-based documentation of frequent assessments of the student's progress, to measure effectiveness of that instruction. In addition, that **documentation should be provided to the**

student's parents in a timely manner. A student's progress should be documented by using an objective and systemic process administered at reasonable intervals. In other words, **information such as teacher reports and teacher-made tests, while helpful, are not adequate for this determination.** Data should be used to determine the effectiveness of a particular instructional strategy or program and should be provided to parents in order to keep them informed of their child's progress, so that they can support instruction and learning at home.

If the group charged with determining whether a student has an SLD decides that this documentation is not adequate, a decision may be made to delay making a final determination and continue to collect additional information about the student. In order to extend the time by which the evaluation will be completed, parents must consent to the time extension. The evaluation process must be completed within 60 calendar days from their consent, unless their state has a different requirement.

Step 4: Determination of Influence of Other Factors

Students whose lack of achievement (as determined in Step 1) can be attributed primarily to one of the following factors should not be determined to have an SLD.

- visual, hearing, or motor disability
- mental retardation
- emotional disturbance
- cultural factors
- environmental or economic disadvantage
- limited English proficiency

Such students can be served in other disability categories of IDEA or through programs for at-risk or disadvantaged students, such as Title I of the No Child Left Behind Act.

Determination and Documentation of Eligibility for Special Education Services

It's important to remember that eligibility is a two-pronged decision. Those involved must decide (1) does the student have a disability, in this case SLD, and (2) because of the impact of that disability, does the student need special education in order to benefit from instruction? It is possible that a student might be found to have a disability, such as SLD, but **not** to need special education to benefit from instruction.

Drawing upon all of the information provided by the evaluations and other forms of information, the group (the student's parents and qualified professionals) must develop written documentation of their determination of the presence of SLD and eligibility for special education. The documentation must contain statements

explaining the group's findings with regard to Steps 1-4. **Documentation must also show that the student's parents were fully notified about the policies, strategies, and services provided as part of an intervention process, such as RTI, including the parent's right to request a formal evaluation as prescribed by IDEA at any point during an intervention process.**

Each member participating in the determination must provide written certification that the documentation reflects the member's conclusion. If any member(s) disagree with the conclusion, a statement of that member(s) conclusion must also be included in the documentation.

Parents must be given a copy of the evaluation report and the documentation of determination at no cost. If parents disagree with the determination, they may seek resolution through the dispute resolution provisions of IDEA. These provisions are part of the Notice of Procedural Safeguards that must be provided to parents prior to the evaluation of a student suspected of having a disability.

How New IDEA Provisions Affect Students Already Determined to Have an SLD

By implementing significant changes in the procedures for identifying students with SLD, both Congress and the U.S. Department of Education have sent a clear message to states and local school districts that it is time for a major shift in the approach used for determining SLD in school-aged children. At the same time, **students who have been found eligible for special education using prior procedures should not be subjected to a new process** as a condition of continuing special education services. The U.S. Department of Education has urged states to consider the effect of discontinuing special education and related services on student who have received such services and supports for many years and how the removal of such supports might impact the student's educational progress, particularly in the final years of high school.

States Develop Their Own Criteria for SLD Determination

IDEA 2004 federal regulations instruct every state to develop criteria to be used throughout the state for determining whether a student has a specific learning disability. While much of the detail of such criteria is left up to each individual state, **the criteria:**

- must **not** require a school to use a "severe discrepancy" between intellectual ability and achievement for LD determination
- must allow the use of a process designed to determine if a student responds to scientific, research-based intervention (such as RTI) or other alternative research-based procedures

- must align with the criteria established by IDEA 2004 federal regulations, as stated above

Beyond these requirements, states are free to establish criteria that might, in fact, prohibit the use of an ability-achievement discrepancy. **Given this state-level flexibility, parents will need to closely follow their state's policies for SLD identification.** For more information about your state's policies and procedures, parents are urged to communicate with:

- Your state department of education (For your state's contact information go to: http://wdcrobcolp01.ed.gov/Programs/EROD/org_list.cfm?category_ID=SEA)
- Your state's Parent Training and Information Center (for your state's contact information go to <http://www.taalliance.org/Centers/index.htm>)

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