

# Oakland Schools Guidance: Eligibility Determination for a Specific Learning Disability



## Frequently Asked Questions



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Special Education  
2111 Pontiac Lake Road  
Waterford, MI 48328-2736  
248.209.2314  
[www.oakland.k12.mi.us](http://www.oakland.k12.mi.us)

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### For further information on this document, contact:

Special Education  
Oakland Schools  
2111 Pontiac Lake Road  
Waterford, MI 48328  
248.209.2314

### For information on Specific Learning Disabilities (SLD), visit:

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# Purpose

The *Oakland Schools Guidance: Eligibility Determination for a Specific Learning Disability Frequently Asked Questions* document (herein OS SLD Guidance FAQ) is designed as a supplement and companion tool for the *Oakland Schools Guidance: Eligibility Determination for a Specific Learning Disability* document (herein OS SLD Guidance). While the OS SLD Guidance document is intended to assist districts in complying with all state rules and federal regulations regarding SLD, the OS SLD Guidance FAQ provides additional detail and examples connected to the information in the OS SLD Guidance document. The questions contained in the FAQ were developed, in part, by questions raised by the stakeholder groups as well as questions introduced by individuals during the review process. This supplemental tool also provides ongoing clarification of SLD procedures based on the results of case law. Therefore, this OS SLD Guidance FAQ document is ongoing and dynamic. The document will be regularly reviewed and updated as needed. The latest copy of this document is located at <http://www.oakland.k12.mi.us/sld>.





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## Chapter 2: Evaluation Procedures

### 1. What are some strategies to conduct an observation?

Neither the IDEA Federal Regulations nor the MARSE require a specific type of observation. This remains at the discretion of the Multidisciplinary Evaluation Team (MET). Observation is one of the most widely used assessment procedures. Observation techniques can be particularly useful in gathering relevant functional information on student behavior and performance patterns. The use of the observation methods is broader than observing the learner alone, and also includes observing the interaction of the learner, the curriculum, the environment and instructional variables (see *Chapter 2: Evaluation Procedures* for more details). With new requirements in IDEA 2004, observation is also critically important to assist in the documentation requirements of appropriate instruction, gathering data about instructional strategies, instructional fidelity, and to document a student's response to intervention. Table 2.1 describes the data outcomes that can be derived from employing observation procedures on a variety of assessment domains.

Data Outcomes	
<b>Instruction</b>	Teaching practices and expectations Modifications in materials Classroom routines and behavior management
<b>Curriculum</b>	Alignment of curriculum materials & tasks Task related skills required to display learning
<b>Environment</b>	Interaction Patterns <ul style="list-style-type: none"> <li>• Student-peer</li> <li>• Student-teacher</li> </ul> Setting conditions (physical environment like seating, noise, etc.)
<b>Learner</b>	Target Behaviors Present level of performance Dimensions of the problem within the school setting Response to intervention as reflected in progress monitoring

Table 2.1. Assessment by observation adapted from Howell & Nolet, 1999.

There are two general categories of observation that are focused on the learner: naturalistic and systematic, direct approaches. Both general types of observation methods are discussed as well as examples of the methods. Please see Hintze, Volpe, & Shapiro (2008) for a detailed discussion on conducting observations.

**Naturalistic Observations.** Naturalistic observations are more qualitative in nature. In general, naturalistic observation refers to observing the student in their natural setting (e.g., classroom, gym, recess, or playground) and keeping an anecdotal record of the behaviors that seem most important. Recording of the behavioral events are typically in chronological time or by use of an A-B-C (antecedent-behavior-consequence) chart. Naturalistic observations can include observing for behaviors related to the referral question, treatment integrity and procedural fidelity. Naturalistic observations do have the advantage of ease of use and little training requirements. The goal is to have a complete description of many behaviors in the context in which they occurred.

Often, observations are guided by procedural checklists, organizers, or interviews that ensure that the observation includes key instructional variables (content, instructional match, instructional delivery techniques, classroom environment, motivational strategies, etc.). Below are several examples of resources that can aid in conducting naturalistic observations:

- The Functional Assessment of Academic Behavior (Ysseldyke and Christenson, 2002) contains several types of organizers and checklists that can be used to ensure the observation addresses key instructional factors. This resource also contains instructionally relevant interviews for a parent, teacher or student.
- The Classroom / Academic Observation Checklist by the Kalamazoo Regional Education Service Agency is a checklist on a variety of academic and skills domains that can assist in problem identification and problem clarification. These checklists can be combined with a teacher interview. See KRESA website under special education for the SLD Evaluation Procedures manual which contains copies of these forms (<http://kresa.schoolwires.com/105710619131720403/site/default.asp>).

- The Instructional Variables Checklist: Variables to Consider When Evaluating Response to Instruction in *Chapter 6: Evaluating Response to Scientific, Research-Based Intervention*. This worksheet can be helpful in observing a student's response to general classroom instruction, strategic or intensive interventions, and in guiding the steps of the problem-solving process with teachers when instructional adjustments are necessary.
- The Oregon Reading First developed a Five Minute Observation Form that can assist in gathering information about instructional delivery (see *Chapter 6: Evaluating Response to Scientific, Research-Based Intervention* for a copy of the Five Minute Observation Form).
- General implementation integrity checklists that can be used when observing instruction and the classroom environment are available at the Heartland Area Educational Agency [http://www.aea11.k12.ia.us/educators/idm/Day6\\_10/effective\\_adol.pdf](http://www.aea11.k12.ia.us/educators/idm/Day6_10/effective_adol.pdf). Examples of observing specific program procedural integrity can be found at the Heartland Area Education Agency (<http://www.aea11.k12.ia.us/idm/checklists.html>).

**Systematic, Direct Observation.** Systematic direct approaches to observation are more quantifiable. Systematic, direct observations have five specific characteristics: a) the goal is to measure specific behaviors, b) which have been selected in advance, c) that have been operationally defined, d) are conducted with standardized procedures and at times or places where the behavior of interest is thought to occur or not occur, and e) the scoring and summarizing of the data is standardized. Systematic observation techniques have the advantage of being quantifiable and are more easily used to compare an increase or decrease in performance over time.

Systematic, direct observational techniques:

- Frequency or event recording refers to counting the number of occurrences of a target behavior within a specified time period). The observer would compare the rate of behavior across observational periods.
- Time sampling recording includes
  - Duration recording refers to recording the duration of a target behavior
  - Latency recording refers to the elapsed time between the onset of the stimulus, like a verbal directive, and the target behavior (the response).
  - Interval recording refers to recording whether target behavior occurred or did not occur within equal intervals (e.g., every 15 seconds) during a block of time (20 minutes). Recording can occur through the whole, partial or momentary time sampling. The Behavioral Observation of Students in School (BOSS) provides systematic observation using both partial – interval and momentary time sampling techniques and gathers normative data from same-aged peers (Shapiro, 2011). It is primarily designed for monitoring academic engaged time, off-task behaviors, and teacher-directed instruction.

## **2. Are there recommended procedures for decertifying students who no longer need special education programs and services?**

Reintegration is a promising practice that utilizes progress monitoring data to determine when it is appropriate to fade and eventually remove special education services for a student (Powell-Smith & Ball, 2008). The process of reintegration occurs on a trial basis and prior to a more permanent exit from special education. Although a degree of service is discontinued during this reintegration period, the student still has an IEP and continues to receive some level of special education services. The process of reintegration may eventually result in an exit from all special education and related services. Reintegration is best viewed along a continuum, in which services may be gradually faded. Decisions are based on data that demonstrate the student is making adequate progress and is capable of meeting general education expectations within an acceptable range. As supports and accommodations are faded, progress monitoring data is collected to ensure that the student remains successful. If the student is able to maintain adequate performance as the supports are faded, the student is recommended for reevaluation in order to exit special education. Exit is defined as the point at which an entitled individual no longer receives special education services. The student no longer has an IEP or a guarantee of special education due process but they may receive services under a 504 Plan or general education plan. A complete discussion of reintegration may be found in the article Best Practices in Reintegration and Special Education Exit Decisions (Powell-Smith & Ball, 2008).



## Chapter 4: Determining Inadequate Achievement

### 1. Why was the 9th percentile chosen as the criterion for determining inadequate achievement (academic deficit)?

Oakland Schools followed the MDE guidance, which established guidelines for inadequate achievement at the 9th percentile. Scores at this level or below are approximately 1.5 standard deviations below the mean, and have confidence intervals which fall entirely below the average range of achievement. Furthermore, studies of students already identified as having a SLD consistently show patterns of academic achievement in specific academic skill areas at or below the 9th percentile.

### 2. What data can a district use to document that a student's inadequate achievement is considered uncommon?

Knowing the severity of a student's inadequate achievement is essential to make a SLD identification. It is also important to understand how frequently problems of a particular magnitude occur in the learning environment. Therefore, not only must the MET understand the severity of the deficit, it must also interpret the meaning of that deficit within the context of how commonly it occurs in the local environment. For example, a student with a severe academic deficit (scoring at the 10th percentile on a nationally-normed test) certainly exhibits a severe skills deficit, but having the added context of knowing that only 2% of the local student population have scores this low reinforces just how uncommon and unexpected deficits of this severity are in the local environment. Combining severity data with incidence data from the local district provides essential context that allows the MET to make decisions with greater confidence and accuracy. Of course, the reverse situation may also occur in the context of a low achieving school or district. For example, if 30-40% of local students have scores at or below the 10th percentile on a nationally-normed test, then the likelihood of an individual student scoring at that level is neither uncommon nor unexpected. Therefore, the probability of this student's severe skills deficit actually being due to the presence of a SLD is very low.

The Data for Student Success website (<http://data4ss.org/>) is available to districts to aid in conducting analyses of MEAP data. In most districts, Assessment Coordinators have access to this website. For the purposes of documenting inadequate achievement, the MET may wish to utilize the Data for Student Success website to compare an individual student's MEAP results to the district average, as well as to compare a student's performance to relevant disaggregated data (i.e., LEP, economic disadvantage). In addition, when using CBM, the MET should compare the student's performance to the grade-level mean, and the number of students who demonstrate similar performance (the fewer the cases, the more uncommon the problem). Questions to consider include: When reviewing classroom work, how does the work of students who meet the minimum level of proficiency compare with the target student's work? How many students in the classroom perform at the same level (very few = uncommon). Examining the frequency of occurrence of specific academic problems within the local learning environment assists the MET in understanding the effectiveness of the general education instruction for most students, as well as clarifying the intensity of educational needs exhibited by the target student suspected of having a SLD.

### 3. Where can I get more information about tools to use for Progress Monitoring?

Information on Curriculum Based Measurement (CBM) tools that are specifically designed as valid and reliable progress monitoring measures are available online. Included in these resources are tools that may be used through the eighth grade level, which would be appropriate to use with secondary students with whom the focus of intervention is providing explicit instruction in reading, writing and mathematics. The National Center for Progress Monitoring (<http://www.studentprogress.org/technical.asp>) has created a chart of scientifically based tools that can be used to measure student's progress. The National Center on Response to Intervention (NCRTI [www.rti4success.org](http://www.rti4success.org)) has developed a chart of CBM tools that gives a review of the tools available. In addition, this site also has information on interventions and other resources for use with both elementary and secondary students. Another source for information is the Center on Instruction ([www.centeroninstruction.org](http://www.centeroninstruction.org)). This site has information on CBM tools, and also provides information on researched-based programs and strategies.

## Chapter 5: Evidence of Appropriate Instruction

### 1. What about poor student attendance?

For the individual student, participation in the general education curriculum is required to determine if the student's low achievement is due to a disability or due to lack of instruction from missing school. According to the Michigan SLD Criteria, if the student has missed significant instruction due to poor attendance, frequent moves between schools, or other factors, the team must implement a plan to provide instruction and assess the student's response. The plan may involve behavioral interventions with the student and family to ensure school attendance and to focus on the student's instructional needs.

### 2. How do we document appropriate instruction for students who have attended a school other than the current district?

Documenting appropriate instruction is more challenging for a MET when the child has been attending a school other than the school where the evaluation is taking place (e.g., home-schooled, move in from another district). In these cases, there may be a lack of information to determine appropriate instruction. The federal law does not provide leeway in these circumstances. "For children who attend private schools or charter schools or who are home-schooled, it may be necessary to obtain information from parents and teachers about the curricula used and the child's progress with various teaching strategies. The requirement for special education eligibility or the expectations for the quality of teachers or instructional programs are not affected, and do not differ, by the location, or venue of the child's instruction" (Federal Register p. 46656). The MET may need to use information from current classroom-based assessments, and classroom observations, and begin to collect data to assess the student's response to high quality general education instruction. If a team determines that appropriate instruction was not provided prior to the referral, the MET must begin to provide appropriate instruction (which may include supplemental or remedial instruction such as Tier Two and Tier Three intervention), and gather further diagnostic information within the general education setting as part of the evaluation process in order to determine:

- a) the degree to which exposure to appropriate instruction results in improved academic performance, and
- b) what conditions may be either facilitating or impeding the learning process.

This information must be collected within State requirements of evaluation timelines.

### 3. How do we determine if the student has received appropriate instruction when they just moved into our district?

In some instances, the parent has requested an evaluation prior to the district determining adequacy of instruction. In this case the following guidance is provided by the Draft Notice and Consent Procedures released by the MDE in November 2010:

LEAs should have a written procedure to respond to parents who contact the school in writing or verbally to request an initial evaluation for their child. The LEA has 10 school days to decide if a request for an initial evaluation is warranted and request parental consent for an evaluation. During this time, the LEA should collect data and information regarding the suspected disability. The REED process would be helpful in this situation.

The district may:

- 1) Agree for the need for an evaluation and request parental consent. The written notice shall contain:
  - a) The reason or reasons the evaluation is being sought and the nature of the evaluation.
  - b) A description of the types of special education programs and services currently available within the ISD.
  - c) All the requirements of Prior Notice.
- 2) Disagree with the need for an evaluation because either it:
  - a) Met with the parent and discussed the options for early intervening activities (e.g., Rtl, Child Study) and agreed to review progress at a further date.
  - b) Reviewed the current data and determined the data did not support that the student is a student with a disability. The LEA must provide the parent with written notice."

If consent for a special education evaluation has been signed by the parent, the district is obligated to hold an IEP meeting and offer FAPE within 30 school days of receipt of the consent to the evaluation plan. Information on appropriate instruction must be gathered within this timeline unless an extension is agreed to by both the district and the parent. When appropriate instruction is in question, an extension may be preferable to the determination of ineligibility based on an exclusionary factor. This is permissible according to the MDE draft procedures.

**4. If a school does not have effective core instruction, does that mean that no student may be found to have a SLD?**

Examination of additional instructional data (e.g., progress monitoring data from Tier Two and Tier Three interventions) is necessary to assist in this SLD determination, especially in low-performing districts. The purpose in examining adequacy of instruction is to help distinguish low achievement from disability. School districts with high numbers of students who are underperforming should examine two critical pieces of data to consider evidence of appropriate instruction: 1) Is the referred student's performance different in relation to his or her grade-level peers? and 2) What has been the student's response to high quality supplemental intervention?

For example, 54% of the fourth grade students at SAMPLE Elementary School were proficient in reading on the 2009 MEAP. If the student's achievement data is not significantly discrepant from his or her general education peers (or his response to intervention is similar to other students who are participating in intervention), regardless of the performance level of the peers, it is difficult to defend a decision finding the student eligible for special education services due to SLD. These scenarios suggest evidence for lack of appropriate instruction. If, however, the referred student had insufficient progress when other students are responding, this may be defensible evidence that appropriate instruction is not the primary reason for underachievement, and a true SLD exists.

**5. Why is written expression not listed as needing evidence of appropriate instruction?**

It is not in the law. Best practice would indicate that documentation required in § 300.309(b) would apply to instruction in other areas of eligibility.

**6. How do I gather data about a high school student receiving appropriate instruction when basic skills instruction occurred so long ago?**

On rare occasions, a student is referred for an initial SLD evaluation in high school. There are several reasons why this might occur:

- a. The academic demands in high school exceed the student's skill level resulting in a SLD referral by the MET or parent.
- b. The student's skill deficits were masked by accommodations and supports provided informally by the school and/or parent, and these supports are no longer available.
- c. The parent requests a SLD evaluation in part to explore the use of accommodations for MME and college entrance exams.
- d. A student attended a private school K-8, was home schooled, or moved from out of state and has now transferred to a public school and does not have the pre-requisite skills to succeed in general curriculum coursework.

The MET needs to demonstrate that the student has received appropriate instruction as one component of the evaluation. To document appropriate instruction, the MET gathers data, such as a history of highly qualified teachers, evidence of curriculum alignment with state standards, and student outcome data including overall instructional effectiveness using performance data (MEAP scores) and student participation (attendance records). However, knowledge of scientifically-based early reading or mathematics instruction may be difficult for the team to find evidence. This information is archival and occurred 5-10 years prior to the referral. In such cases, teams may need to provide intervention to the student and assess the student's response under the conditions of appropriate instruction. In high school, it becomes very difficult to provide additional instruction without jeopardizing credit. In the absence of a tiered system in which basic skill instruction of at-risk students is a priority during the school day, districts may wish to consider options such as providing basic skills instruction before or after school, providing basic skill instruction and/or credit recovery during summer school, or utilizing other credit recovery options such as online learning, in order to have time to provide basic skills instruction during the regular school day.

**7. How does the MET satisfy the requirement of, “data-based documentation of repeated assessments of achievement at reasonable intervals of student progress during instruction was available and provided to the parents,” if no CBM tools are being used at secondary?**

There is no requirement for using progress monitoring tools for all students; however, progress monitoring is required for students who are suspected of a disability. The district may wish to develop flexible options for interventions so that students who are at-risk for a disability can access instruction in basic skills. Progress monitoring would be completed within the area of concern during the intervention period, and the data would be used as part of the evaluation. Schools that do not have flexible options for interventions in place may begin to direct their efforts towards developing an intervention system for struggling students.

**8. How would you use supplemental intervention during the evaluation timelines as evidence of appropriate instruction without placing the student in danger of losing credits in the high school?**

Some districts have been tackling these problems by re-engineering service delivery options such as a) providing learning support rooms staffed by special education teachers who would provide short-term interventions if needed, b) after-school interventions delivered by staff whose contract ends 40 minutes after the school day, c) block scheduling (90 minute classes) intermixed with other classes that run 45 minutes and which may be remediation/ intervention classes. In addition, block scheduling allows more credit options for high school students, allowing them to take intervention classes and still have enough credit to satisfy graduation requirements. See Table 5.1 for options for scheduling at the secondary level from the Kansas Multi-Tier System of Supports (Kansas State Department of Education, 2010) (Allain, 2009).

Option 1	Option 2	Option 3	Option 4
<ul style="list-style-type: none"> <li>• All English/Language Arts (ELA) classes are scheduled throughout the school day and are heterogeneously grouped.</li> <li>• A reading support elective (mandatory) is added to the schedule to allow for enrichment for Tier One or Tier Two intervention.</li> <li>• Students in need of Tier Three intervention receive two periods of intense instruction in addition to the ELA class.</li> <li>• Intervention classes are blended across grades and populations based on student need.</li> <li>• Tier Two and Tier Three intervention classes are scheduled during the same period as much as possible.</li> </ul>	<ul style="list-style-type: none"> <li>• ELA classes are scheduled throughout the day.</li> <li>• ELA classes are heterogeneously grouped.</li> <li>• Students are pulled out for Tier Two or Tier Three intervention during other classes (one period for Tier Two and two periods for Tier Three).</li> <li>• Tier Two intervention may occur within another class (e.g., social studies).</li> <li>• Intervention classes are homogeneously grouped based on student need.</li> <li>• Intervention classes are blended across grades and populations.</li> </ul>	<ul style="list-style-type: none"> <li>• ELA classes are double blocked (one period core credit and one period elective).</li> <li>• ELA classes are scheduled at the same time of the day as much as possible.</li> <li>• ELA classes are homogeneously grouped based on assessed need and grade level.</li> <li>• Pacing, intensity, content, exposure to the core and explicit instruction are based on assessed student need.</li> <li>• Classes are blended across populations.</li> <li>• This option is useful when large numbers of students need intervention.</li> </ul>	<ul style="list-style-type: none"> <li>• ELA classes are heterogeneously grouped for students in Tier One and Tier Two.</li> <li>• ELA classes are scheduled throughout the day.</li> <li>• Students requiring Tier Three intervention are removed from grade level curriculum and receive two blocked periods of intense intervention. The class counts for one grade level and one elective class. Classes are blended across grade levels and populations.</li> <li>• Tier Two classes are homogeneously grouped and replace one elective class. Classes are blended across grade levels and populations.</li> <li>• Tier Two and Tier Three classes are parallel scheduled as much as possible.</li> </ul>

Table 5.1. Options for scheduling at the secondary level.

## Chapter 6: Response to Scientific, Research-Based Intervention

### **1. Are screening and progress monitoring tools all I need to meet the requirements of a complete a full and individual evaluation?**

It is important to note that screening or progress monitoring tools do not provide all the information necessary to determine SLD eligibility, even if utilizing the Rtl option. For example, other tools may be required to meet the requirements of inadequate achievement, or to obtain information to develop an instructional plan. While progress monitoring data is essential to determine if an intervention is benefiting the student, additional diagnostic assessments may be needed to inform instruction. Determining response to intervention is only one part of the information needed to determine SLD eligibility.

### **2. How do I know when I should be comparing performance to national data or local peers?**

Teams should always be looking at both national and state benchmarks and standards and local norms for student progress when making comparisons to the target student. Comparisons to local norms are particularly important in low achievement environments, because students with low achievement who are progressing at average rates for their local classroom, grade level, or district are not likely to actually have a SLD.

### **3. Can parents require an evaluation while their child is involved in an Rtl process?**

Yes. Parents can request an evaluation for special education at any point during the Rtl process.

### **4. If our district adopts Rtl for SLD determination, can a referral for an evaluation by a parent be delayed so that the student can benefit from multi-tiered interventions?**

The use of Rtl does not excuse the duty to evaluate a student suspected of a disability. The use of Rtl does not diminish a district's obligation under the IDEA to obtain parental consent and evaluate a student in a timely manner. When there is reason to suspect that the student may have a disability and need special education and related services as a result, the IDEA's initial evaluation provisions kick in, regardless of whether the district plans to or already utilizes Rtl strategies with the student (OSEP, 2011; 56 IDELR 50).

### **5. How do we use response to scientific, researched-based instruction if we receive a request for an evaluation from a student who is parentally placed in private school?**

The IDEA does not require a district that uses Rtl to also implement it to identify children who have been placed by their parents in a private school, as stated by the OSEP. Districts that include Rtl as a component of their SLD identification procedures may have to change their approach when it comes to determining the eligibility of parentally placed private school children. The OSEP explained that if a private school within the district's jurisdiction does not utilize Rtl, the district is neither required to implement it with the private school student nor entitled to deny a referral or delay the evaluation because the private school does not use it. Moreover, regardless of whether the private school has used Rtl, unless the district believes that there is no reason to suspect the child is eligible to receive special education services, it must respond to a referral from the school or parent by conducting an evaluation within the 30 day timeframe (US Department of Education, Office of Special Education Programs (OSEP, 2011; 56 IDELR 140).

### **6. Are CBM tools available at the secondary level?**

CBM assessment tools have been designed and validated for two assessment purposes. First, as universal screening assessments to identify who is at-risk for academic failure in reading and mathematics, and second, as formative assessments (progress monitoring) for monitoring the general progress of students in reading, writing and mathematics interventions. There is strong evidence of the reliability and validity of the use of CBM tools for these purposes through middle school (grades 6-8, depending on the specific tool in use). By design, research confirms that the use of CBM tools for these purposes reaches a ceiling at an end of 8th grade performance level. New CBM reading and mathematics tools at the high school level are currently under development.

The question of how to accomplish the screening and formative assessment purposes for high school students is a special case. With regard to screening for academic risk at high school, there is no need to employ yet another mandated universal assessment to screen for risk at this late stage. By this time numerous universally mandated assessments in reading and mathematics have already been administered over several years of testing. Comparisons of performance should be made to a district-established grade level standard. At the high school level, local districts may choose to develop screening criteria using existing valid and reliable assessments already in use. For example, screening criteria may be developed using the 8th Grade Explore Test as the universal screening assessment. A criterion performance level on the Explore may be set to determine who is at-risk for reading and mathematics problems in 9th Grade. District teams could then follow up with additional assessments for students falling into the at-risk range of performance, for example, performance in the bottom quartile for reading or mathematics. In the case of a reading problem, for instance, teams may follow up with a suite of CBM assessments, including Oral Reading Fluency, reading accuracy, and reading maze comprehension measures. High school students who are being considered for an initial SLD evaluation must be assessed in the area of their suspected disability (reading and/or mathematics). In addition to norm-referenced achievement tests these students could be assessed at an end of the 8th Grade level of CBM material. The question the MET would be asking is this: Can the student perform on the 8th grade CBM at the 40th percentile or above compared to end of 8th grade norms? If students meet or exceed the 40th percentile criteria, they may be considered to have a high school performance level. In this instance, they would not be considered to have inadequate achievement, and they would probably not qualify as SLD.

Putting such a process in place would enable the creation of local norms and allow for local comparisons to be made; for example, comparing individual CBM performance to the average performance of students with disabilities (or other subgroups) on the same measures. In this way, local criteria for identifying students with severe academic deficits may be established. Using local normative data can assist the MET in determining how discrepant a student's skills are from both the expected performance (grade-level standard), and the typical performance of comparison groups within the district. Finally, with the context that this local data provides, special educators and general education interventionists are better positioned to make sound educational decisions regarding setting goals and monitoring student progress in response to interventions that are intended to close the achievement gap between students with SLD and their general education peers.

### **7. Should students who are English Language Learners be included in universal screening (i.e., DIBELS) in an RtI model?**

The big idea of Dynamic Indicators of Basic Early Literacy Skills (DIBELS) is screening and progress monitoring of all students learning to read in English. If reading instruction is in another language, then DIBELS is not an appropriate tool. If the student does not have enough English language proficiency to benefit from reading instruction in English, then DIBELS would be inappropriate. This is the case for English Language Learners who score at BASIC (B) on the ELPA or ELPA initial screener and they should not be screened with DIBELS. When a student's oral language progress indicates that reading instruction provided in English is possible, then formative assessments like DIBELS may be used. If reading instruction is in English, then teachers are recommended to assess English Language Learners with formative measures that include DIBELS. For a more detailed discussion, see the Institute of Educational Sciences Effective Literacy and English Language Instruction for English Learners in the Elementary Grades Practice Guide (Gersten, Baker, Shanahan, Linan-Thompson, Collins, & Scarcella, 2007).

As part of a universal screening procedure, all students in a school are tested, including students with IEPs, students who are English Language Learners, and students receiving Title One services. The considerations that we would make regarding appropriate use of CBM assessments (i.e., DIBELS) with special populations are the same considerations made using other formative assessments commonly used in schools, like MLPP. Being certain that the student understands the directions and the task expectations is critical for a valid assessment. If the student does not understand the directions with the accommodations permitted, then the administration of that particular measure should be discontinued. For example, this may be the case for students who initially score Basic on the ELPA and thereby have limited or no understanding of English. If the student does not have enough English proficiency skills to produce a valid assessment, it is inappropriate to administer the measure. CBM measures would not be different than any other formative assessment used in schools in this regard.

### **8. How can we provide information to parents about our RtI processes?**

Districts need to create provisions to ensure that parents are involved in all phases of the RtI process. Schools should have written documents available for parents regarding the overall RtI approach in their school, including informing parents of their right to refer their child at any time for a special education evaluation as guaranteed under the IDEA 2004. See Florida's Response to Instruction and Intervention website (<http://www.florida-rti.org>) for many examples. Another useful resource is the National Center for Response to Intervention (<http://www.rti4success.org/>) which maintains a RtI state database that profiles information and resources for each state. For example, the page featuring Oregon has many useful parent related resources ([http://state.rti4success.org/index.php?option=com\\_state&stateid=141](http://state.rti4success.org/index.php?option=com_state&stateid=141)).

## Chapter 7: Pattern of Strengths and Weaknesses

### 1. Why is there not a formula to determine a Pattern of Strengths and Weaknesses?

In calculating a pattern of strengths and weaknesses, having a formula or guideline (such as, “a minimum of 4 data points are used to determine a weakness”) has both advantages and disadvantages. An advantage to this approach is that it allows districts to set concrete parameters for consistency in data used for considering a strength or weakness. Disadvantages include a) failing to consider the relative weight assigned to individual data sources despite the wide disparities in reliability and validity between one assessment tool and another, and b) promoting the use of formulas, which may unintentionally distract MET teams from the analysis, integration and summary of multiple data sources and the subsequent pattern of results.

According to the Learning Disabilities Roundtable report which provided guidance to the IDEA 2004 and recommended by the PSW language, the guideline is “not meant to encourage use of formulas or a rigid approach to interpreting strengths and weaknesses”. The guidance is dependent on the convergence of data. Reducing the pattern to cut scores will not improve the identification practice. The MET is aided in making the eligibility decision by utilizing the guiding questions found in the *Table 10.1 Eligibility Guide: Key Questions in SLD Decision-Making* located in *Chapter 10: Determining Eligibility*. Consequently, this guidance document deliberately does not require a formula for calculating strengths and weaknesses, rather the MET is encouraged to weigh sources of data, look for convergence of the data when possible, and consider the functional impact of the academic skills on the student’s overall performance.

### 2. What if the student does not demonstrate academic skills deficits, but demonstrates only performance problems, as evidenced by poor grades, inadequate assignments, poor classroom test scores?

The MET needs to consider all the components of SLD eligibility. In this case, the student would not be a student with a SLD because the student would not meet the criteria for inadequate achievement (§ 300.309(a)(1)). Fundamental to the identification of students with a SLD is the presence of inadequate achievement that is severe, unexpected, and uncommon. For students exhibiting a SLD, academic skill deficits are manifested to various degrees in the student’s classroom performance (poor work quality and production, low test scores, and poor grades), depending on the grade and situational demands. However, a student is not considered to have a SLD on the basis of performance deficits alone. Poor academic performance in the presence of adequate academic skills does represent a serious learning difficulty. This student will most likely require behavioral/motivational intervention, including the possible exploration of special education eligibility in areas other a SLD.

### 3. What about when a student has been retained?

When comparing a student’s achievement and performance to grade-based normative data, the MET must consider if this comparison makes sense when the student has already received appropriate instruction that might reasonably lead to the acquisition of those grade-based skills.

For example, should a student who is retained in second grade be compared with second grade normative data? The federal commentary addresses this issue as follows:

Furthermore, using grade-based normative data to make this determination is generally not appropriate for children who have not been permitted to progress to the next academic grade or are otherwise older than their peers. Such a practice may give the illusion of average rates of learning when the child’s rate of learning has been below average, resulting in retention. A focus on expectations relative to abilities or classmates simply dilutes expectations for children with disabilities (71 Fed. Reg., p. 46652).

Such a student is likely to be considerably older than his peers and would have previously been provided with repeated opportunities to learn. Comparing the older, retained student to younger peers just entering second grade, only serves to disguise his learning problems. In this situation, age-based comparisons more accurately reflect the actual rate of growth in the student’s academic skills.

**4. How does a student’s intellectual ability impact SLD eligibility?**

Students who have a SLD may have global cognitive abilities that range from the borderline impaired range to the superior range. In fact, global measures of intellectual ability have proven to provide little useful information for determining which students have or do not have a SLD or in predicting who might respond positively to instructional interventions. One major shift in policy in the IDEA 2004 is that measures of global intellectual ability for SLD eligibility determination are not required. If the MET suspects that the student’s poor achievement may be the result of an overall cognitive impairment impacting all areas of academic achievement, the team is required to assess cognitive ability, academic skills, and adaptive behavior. Otherwise, a student may be a student with a SLD if there is evidence of normal development in the social, language, cognitive, and adaptive domains (Lichtenstein, 2008). This is consistent with Michigan’s SLD Criteria that states: “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” (p. 7).

**5. On the chart entitled “Guidelines for Determining a Strength or a Weakness in a PSW Model,” why was the 40th percentile chosen for an academic strength and why was the 9th percentile chosen for a weakness?**

Throughout the State of Michigan, there are different guidelines issued for determining a PSW. These guidelines are arbitrary. The SLD construct is dimensional and its manifestations vary in degree of severity due to the complex interaction of both within-student and environmental variables. Oakland Schools selected the 40th percentile as the criteria for an academic strength as it represents scores that are solidly within the average range of achievement; it corresponds with criteria set for passing CBM Benchmark tools, and it is supported by validity studies that indicate that 90-95% students achieving at the 40th percentile or above on academic testing meet or exceed the grade level standards assessed on state-mandated assessments. Scores between the 30th and 10th percentile do identify students that may be at-risk for learning difficulties. With regard to identifying academic deficits or weaknesses, Oakland Schools followed MDE guidance which established guidelines for inadequate achievement at the 9th percentile. Scores at this level or below are approximately 1.5 standard deviations below the mean, and have confidence intervals which fall entirely below the average range of achievement. Furthermore, studies of students already identified as having a SLD consistently show patterns of academic achievement in specific academic skill areas at or below the 9th percentile. For all of these reasons, Oakland Schools established the 9th percentile as the criterion for academic weakness.

**6. On the chart entitled “Guidelines for Determining a Strength or a Weakness in a PSW Model,” why was the 25th percentile chosen as the criterion for identifying strengths in language and intellectual domains?**

The criteria for identifying strengths in the non-academic domains of social, language, intellectual and adaptive development is less rigorous than that established for the academic domain. In this case, the standard was established to include as strengths evidence of development falling within the full range of normal variation in these non-academic domains. This criterion allows the MET to make identification decisions consistent with a research-based conceptualization of SLD, which has, at its core, the concept of “unexpected” severe academic skill deficits in the presence of an otherwise normal developmental profile. In this view, students who are developing normally in the social, language, intellectual and adaptive domains are considered to be capable of progressing similarly in the academic domain. In the context of otherwise normal development, the presence of severe academic skill deficits is considered to be evidence supporting the identification of a SLD. The 25th percentile represents the lower end of the average range on the normal bell curve.

**7. How do the Guidelines for Determining Strengths and Weaknesses align with the universal screening criteria used in Rtl systems?**

Most Rtl systems use CBM measures, such as DIBELS and AIMSweb, as universal screening tools for initial identification of student risk status and instructional recommendations for reading and mathematics. Typically, students are described using a three-tier system that describes achievement levels and instructional needs as follows:

Risk Status	Criterion Score Range	Instructional Recommendation
Benchmark (Low Risk)	40th Percentile and Above	Continue High Quality Core Instruction
Emerging Skills (Some Risk)	21st – 39th Percentile	Strategic or Supplemental Intervention
Deficit (High Risk)	20th Percentile and Below	Intensive Intervention

*Table 7.1. A description of student performance using typical Curriculum-Based Measurement (CBM) criteria.*



The criterion scores and ranges listed in Table 7.1 are based on the normative samples collected by DIBELS and AIMSweb. Risk status is determined by comparing student raw scores on the CBM measure to the percentile rank score it earns in reference to the norms. Scores are then described as seen above based on the range of scores that it falls into. The guidelines for determining strengths in a PSW model are directly aligned with Benchmark criteria used in RtI systems. Students with scores falling into the Benchmark category have a 90-95% probability of meeting grade level expectations in the academic skill area being measured (reading or mathematics). Conversely, students in the Deficit range (20th percentile and below) have Intensive Instructional needs, and a 90-95% probability of not meeting grade level expectations. The lower the score, the less likely it is the student will meet expectations. Not all Intensive needs students are students with SLD, but those who have academic skills deficits at or below the 9th percentile have a high probability of being SLD, and an extremely high probability of not meeting grade level expectations without the long-term intensive support. This is the reason for setting the criterion for determining inadequate achievement at the 9th percentile and below.

**8. If a student is receiving adjusted grades, can I consider her academic performance as a strength?**

When determining if a student has academic strengths, “A” and “B” grades based on modified grading practices may not be considered to be a strength because the grade is not a valid representation that the student is meeting grade-approved standards. However, for the student who is achieving satisfactory grades (meeting standards) with accommodations, the MET may consider the academic performance as a strength.

**9. How do I consider the student’s special education support services as part of a reevaluation using the PSW option as a component of the decision-making process?**

A major consideration in the reevaluation process should be the student’s ability to successfully engage with grade level instructional demands without special education support. During the reevaluation process, the MET needs to consider the functional impact of the student’s skills within the context of any assistance that the student has received in special education. This is especially important when interpreting data sources such as classroom grades, observational data, and teacher ranking of the student’s skills as they pertain to identifying academic strengths and weaknesses. Consideration should be given to IEP-mandated accommodations, modifications, grading practices, and classroom placement, and how this has facilitated access to and progress in the general education curriculum.

For example, a student was initially identified with a specific learning disability in basic reading skills and began receiving special education services to remediate the reading deficits. Three years later, basic reading skills have improved, but the student’s independent reading skills are still significantly below grade level. Consequently, because of her reading difficulties, the student continues to require accommodations to access and progress in the general education curriculum. With these accommodations in place, the student earns “A” and “B” grades on her report card. Despite the provision of standard accommodations, however, the student is not able to pass MEAP Reading. Such data would strongly indicate the continued presence of academic weaknesses, and the need for continued support and intervention in order to access and progress in the general education curriculum.

**10. Even though the law no longer requires cognitive processing testing as part of an evaluation, colleges and Michigan Rehabilitative Services (MRS) often ask for this information. Should I continue to do IQ testing so that this information is available to parents or agencies?**

Requests for these types of evaluations are a frequent occurrence. IQ tests, or cognitive assessments, are not required for either an initial evaluation or a reevaluation for a student with a SLD unless deemed necessary by the team. The IEP team should consider the questions on a REED that will help the IEP team determine if there is an educational reason to complete such a request for cognitive assessments. If by completing a REED, the team concludes that there is no educational reason why the school needs this information, the request may be denied. Districts should have a clear policy detailing the process of handling these requests.

## Chapter 8: Need for Special Education and Related Services

### 1. What if the student has a disability but does not require specialized instruction?

Under Section 504 of the ADA, all qualified persons with disabilities within the jurisdiction of a school district are entitled to a Free Appropriate Public Education (FAPE). Section 504 regulation defines a person with a disability as any person who:

- has a physical or mental impairment which substantially limits one or more major life activities,
- has a record of such an impairment, or
- is regarded as having such an impairment.

The IDEA and the ADA share a common goal of assuring free and appropriate public education (FAPE) to students with disabilities; they are different, however, in important ways.

Section 504	IDEA
Broad legislation applying to any individual who meets the definition of a person with a disability.	Pertains only to students ages birth through 21 years determined to be eligible for special education
Entitles students who meet the definition of a person with a disability to appropriate accommodations.	Entitles students who demonstrate specified characteristics to specialized instruction and related services as identified in legislation.
Has no specified process for determination of disability.	Has a prescribed process for determining a disability.
Identification of disability is not dependent on evaluation or assessment by school district personnel.	Identification of eligibility is dependent upon evaluation of the student by the school district.
Accommodation plan developed	Individualized Education Program (IEP) developed

*Table 8.1. Several important differences between Section 504 & IDEA.*

In determining which federal law should guide how an individual student is supported, the following questions can be considered. These guidelines have been adapted from the Section 504 and the ADA: Promoting Student Access: A Resource Guide for Educators (Council of Administrators of Special Education, 2006).

- Does the student’s disability substantially limit one or more major life activities?
  - If so, gather data about the impact of the disability and determine the types of accommodations that are needed.
- Does the student’s disability adversely affect their access to and performance in the general education curriculum?
  - If so, eligibility for special education should be evaluated as specified in the IDEA.

Once a disability is established and its impact on the student is understood, instructional and/or physical accommodations must be put in place in the form of an accommodation plan.

Visit the Oakland Schools Compliance page on the OS website for more information regarding Section 504 (<http://www.oakland.k12.mi.us/Services/SpecialEducation/Services/ComplianceSupportServices>).

## Chapter 9: Exclusionary Factors

### **1. Can an ELL who is assigned an English proficiency rating of less than 5 “Proficient” (Levels 1 – 4) be found eligible for special education under SLD?**

Yes, an ELL who may not yet have established proficiency with English may be eligible for special education services as SLD. While language acquisition factors are surely present in these particular ELLs, if there is evidence of a history of difficulties learning the primary language from early on (i.e., before English exposure) as well as learning English, and the difficulties in the primary language are explained by a true language disability that is atypical of students learning English as a second language, then the primary cause of the learning difficulty may be an underlying SLD.

### **2. Do ELLs who are found eligible under SLD typically have underlying oral language disability in their primary language?**

Just as in students who speak only English, oral language disabilities frequently lead to written language disabilities. However, there may be some ELLs for whom oral language acquisition in the primary language developed typically and written language acquisition in the primary language and in English seems to be the biggest learning difficulty. In these cases, the ELL would be eligible for SLD and not have underlying language impairment.

### **3. If LEP is ruled out as the primary cause of an ELL’s learning difficulties, must the MET ensure appropriate ELL instruction before a determination of SLD can be made?**

Yes. If LEP is determined not to be the primary cause of the ELL’s learning difficulties, special education certification may be appropriate if all of the inclusionary criteria for SLD are met. For example, the MET must ensure that appropriate instruction is in place for the ELL to determine whether it will result in improved academic performance.

### **4. How is LEP ruled in or out as the primary cause of an ELL’s learning difficulties in situations where the student is determined to have no one primary language (e.g., two different languages are spoken at the same time or intermixed, in superficial speaking patterns)?**

At times an ELL may not have access to deep language exposure in any language (e.g., he may be the youngest family member and living in a household where older school-age siblings speak English to each other and to the parents, and the parents speak another language back or a mixture of English and another language). For these students, language acquisition in either language is more prolonged and BICS and CALP are likely to take longer than the general guidelines. In these situations, it is extremely difficult to determine that LEP is not the primary cause of learning difficulties, and special education certification is often inappropriate unless evidence of a specific impairment present from birth or early on exists.

### **5. What are some methodological considerations when using standardized, norm-referenced testing with ELLs?**

The MET may be tempted to use standardized, norm-referenced tests when attempting to determine a SLD with ELL’s. Assessment of culturally and linguistic diverse students using standardized tests is fraught with validity and reliability issues for three major reasons: 1) lack of representation in the norm sample, 2) cultural loading in any given test, and 3) linguistic demands required by the test.

**Lack of Representation in the Norm Group during Test Construction.** Norming samples used in standardized tests developed in the United States do not typically represent the background, cultural values, language, and experiences of ELLs and therefore are rarely applicable to the majority of culturally and linguistically-diverse students being assessed. If norms from these assessments are used as a comparison for performance, the results are likely invalid and lead to over-identification of culturally and linguistically-diverse students. As a strategy, examiners are tempted to employ an interpreter to administer the assessment to overcome issues of bias or linguistic demands of the test. Direct translation of standardized, norm-referenced tests does not circumvent the fundamental norming issues and is psychometrically defenseless. Norm-referenced tests must always be administered in the standardized way and therefore cannot be translated. Informal assessments administered in the ELL’s primary language should be used to gauge proficiency in the primary language.

**Cultural Loading.** While tests try to eliminate cultural bias, all tests are influenced by culture. This means that all tests have some degree of cultural bias. For example, basing a test on what a 10 year-old English-speaking student in U.S. schools is expected to have learned (either formally or informally) is only valid when the student has had 10 years of exposure to the U.S. culture. In contrast, an ELL student who is the same age and has not had the same cultural experiences cannot be expected to demonstrate the same cultural knowledge. The ELL's score will undoubtedly be lower and may lead to erroneous assumptions about what a student does or does not know. Therefore, when a student's background experiences are different than the normative sample on which the test was based, the use of the test is inappropriate.

**Linguistic Demands.** Nonverbal assessments are often sought as a way to circumvent the linguistic demands of typical standardized tests. Nonverbal assessments tend to tout no cultural or language bias. This is an illusion when evaluating ELL students. Nonverbal tests do not eliminate the issue of lack of norm sample representation and cultural bias previous discussed. Most importantly, closer examination of these tests reveals that while the expressive language demands decrease with the use of nonverbal assessments, the receptive language requirements remain the same. Thinking is mediated by language and nonverbal tests that use physical gestures, facial nuances and subtle body movements to convey directions are using forms of communication that still are culturally bound. Examiners need to be aware of the limits of using a nonverbal assessment approach for measuring a student's skills.

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