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# Frequently Asked Questions about Making Specific Learning Disability (SLD) Identification Decisions

This document is part of the department’s guidance on implementing Wisconsin specific learning disability (SLD) criteria. It provides answers to frequently asked questions regarding the criteria set forth in Wisconsin’s SLD rule, [PI 11.36 \(6\)](#) and applicable definitions at [PI 11.02](#).

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## Definition and General Requirements

1. What is required before a student can be identified as having a specific learning disability (SLD)?

When considering SLD criteria for the first time, the IEP team may identify a student as having SLD if the student demonstrates both insufficient progress and inadequate classroom achievement after the student has received at least two intensive, scientific, research-based, or evidence-based interventions (SRBIs). In addition, the IEP team must determine that the insufficient progress and inadequate classroom achievement are not primarily due to one of the exclusionary factors listed in the rule. If the student is found to have a SLD, the IEP team must consider whether the student has a need for special education. A student must be found to have both met the criteria for a SLD and a need for special education to be identified as a student with a disability. Once a student has been identified as having a SLD and a need for special education, the reevaluation criteria in Wis. Admin Code, § PI 11.36(6) (h) apply.

2. What is the definition of SLD and how are the definition, and its list of conditions, used when determining special education eligibility?

The Individuals with Disabilities Education Act (IDEA) defines SLD as “a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, motor disabilities, cognitive disabilities, emotional disturbance, cultural factors, environmental, or economic disadvantage.”

This general definition of SLD has been part of federal special education regulation since 1977 and is mirrored in Wisconsin rules at Wis. Admin Code, § PI 11.06(6)(a). IEP teams use disability category criteria, rather than the definition itself, to determine whether a student has a SLD. The diagnostic labels listed in the general definition include those historically used to describe conditions similar to the educational definition of SLD. Some of these terms are no longer used.

Students with non-educational diagnoses, such as those listed, may be considered for eligibility under IDEA but must meet Wisconsin disability category criteria for the “impairment” of SLD (or another disability category criteria) **and** demonstrate a “need for special education” as a

result of meeting SLD criteria prior to being identified as a student with a disability.

3. Is there an age requirement for identifying students as SLD? Could a preschool student be found as having the disability category of SLD?

There is no age requirement for identifying students with SLD. However, given the wide variation of typical development, paired with the limited amount of time most children from age three through second grade have had to develop and demonstrate the academic skills addressed in the SLD rule, IEP teams should be cautious in identifying SLD in this age group. Before identifying any student with SLD, at least two SRBIs must be implemented and there must be evidence of insufficient progress and inadequate classroom achievement compared to the expectations for age or grade level peers, in one or more of the eight potential areas of concern. In addition, exclusionary factors must be considered including whether the student has received appropriate instruction in the area(s) of concern. It is not unusual for young students to have not yet received explicit instruction in one or more of the academic areas listed in the rule. When a student demonstrates significant delay, but there is not enough information to determine if the student meets the SLD criteria, the impairment of Significant Developmental Delay (SDD) may be considered for children ages 3 through 9. General education interventions should also be considered and implemented as appropriate. It is anticipated the prevalence of SLD in preschool through early elementary age children will remain extremely low.

4. What are the eight areas of SLD concern?

The eight areas are oral expression; listening comprehension; written expression; basic reading skill; reading fluency; reading comprehension; mathematical calculation; and mathematical problem solving. A student must be found to have insufficient progress and inadequate classroom achievement in at least one of these areas of concern in order to meet the criteria for a SLD.

5. Are there any special considerations when addressing concerns in the areas of oral expression and listening comprehension?

Yes. Students being considered for potential SLD often exhibit language concerns. If the only area(s) of concern are oral expression, listening comprehension, or both, the IEP team may decide to consider whether the student has a [speech or language impairment](#) only. Before identifying any student with a SLD, at least two SRBIs must be implemented in the area of concern and there must be evidence of

insufficient progress and inadequate classroom achievement compared to the expectations for age or grade level peers, in one or more of the eight potential areas of concern. In addition, there must be data demonstrating the student has received appropriate general education instruction in the area of concern. When the areas of oral expression or listening comprehension are considered as part of an evaluation considering the disability category of SLD, it is recommended a speech and language pathologist (SLP) be included on the IEP team. An SLP must be included on the IEP team if the disability category for a speech and language impairment is being considered. A speech and language impairment may co-exist with SLD and is not considered exclusion to SLD identification.

6. Do the same SLD criteria rules apply to public charter schools, including virtual charter schools?

Yes. All charter schools are public schools. The same criteria and standards for determining SLD apply to students enrolled in public charter schools, including virtual charter schools. It is up to the Local Educational Agency (LEA) to determine how the required interventions are provided and progress monitoring data are collected for students attending public charter schools, including virtual charter schools. If the virtual school is a private school, please see questions [70-75](#) for further information on evaluations considering a SLD for private school students.

7. May an IEP team determine if a student does not meet specific learning disability criteria if there is evidence, at the time of the review of existing data, that the student is performing at or above age or grade level expectation in the area(s) of concern?

Pursuant to Wis. Stats. §115.782, if, upon the review of existing evaluation data, the IEP team determines the student demonstrates adequate classroom achievement and sufficient progress needed to meet age or state-approved grade-level standards, the IEP team may move forward and conduct an IEP team meeting to complete the evaluation and make a special education eligibility decision based on existing data. Existing data reviewed by the IEP team include assessments and information provided by the student's parents; previous interventions and the effects of those interventions; current classroom-based, local, or state assessments; classroom-based observations; and observations by teachers and related services providers. The IEP team must meet to conduct an evaluation and determine special education eligibility and must document the basis of its eligibility decision. Appropriate notice must be provided before the IEP team meets to make an eligibility decision. The LEA must take steps

to ensure that one or both of the student's parents are present at the IEP team meeting to determine special education eligibility or are afforded the opportunity to participate by other means. LEAs are cautioned that this option is expected to be used rarely and only when there is a preponderance of existing data supporting adequate achievement and sufficient progress in the area(s) of concern identified by the individual(s) making the initial referral.

8. Must a student meet SLD criteria in an area of concern to receive special education services in that area? Is a reevaluation required before adding services in another area?

Once the IEP team determines a student has met the SLD criteria and has a need for special education, the IEP team develops the student's IEP. In doing so, the IEP team considers all information gathered during a comprehensive, full, and individual evaluation of the student and determines the IEP goals and services needed to address the individual student's disability-related needs. This includes involvement and progress in the general education curriculum and environment with students who do not have disabilities, participation in non-academic and extracurricular activities, and any other identified educational needs. Disability category criteria alone do not define the full extent of an individual student's disability-related needs and do not define which special education services a student may or may not receive. A student does not need to meet SLD criteria in a specific area of concern to receive special education services or support in that area. An IEP is individualized for each student and is not disability category specific. A reevaluation is required every three years (unless the parents and LEA determine one is not needed), or sooner if the student's parent or teacher requests a reevaluation, or if the LEA determines one is needed. A reevaluation is not required before adding or changing IEP services with the exception of occupational and physical therapy.

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## Referral and Evaluation Timelines

9. Is an evaluation timeline extension allowable when conducting an initial evaluation when SLD is being considered and assessed?

Yes. In addition to the two timeline extensions that apply to all evaluations (student transfers to a new LEA prior to the evaluation being completed and student repeatedly not made available for testing), a timeline extension specific to initial evaluations when an SLD is being assessed may be granted to allow for the collection of

necessary data when the student has not received two SRBIs with weekly progress monitoring at the time of referral. The decision to extend the timeline for this reason must be made by written agreement of the IEP team, including the parent. The agreement should also include a date when the evaluation will be completed. If the student is being considered for other disability categories in addition to SLD, and the parent and other members of the IEP team agree to extend the 60 day timeline to collect needed data for an SLD determination, the timeline extension applies to the entire evaluation.

10. Is there any limit on how long of an extension can be agreed to after a referral has been made?

No, neither state nor federal law limits the amount of time for which an evaluation may be extended. Timeline extensions may not be used to unnecessarily delay special education evaluations.

11. Do any of the eight areas of SLD concern need to be specified on the referral form in order to begin the evaluation process to consider SLD as the student's reported (i.e., primary) disability category?

No. A referral must include the reasons why the person making the referral believes the student is a student with a disability. There is no requirement to specify either a specific category of suspected disability or any of the eight areas of academic achievement listed in the SLD rule. Additional information about specific areas of concern is often provided after the referral is made as the IEP team reviews existing data and determines what additional data and assessments are needed to proceed. The particular area(s) of concern to address during comprehensive special education evaluation are identified as a result of the review of existing data, including the referral and information provided by the parent.

12. Can an LEA delay accepting a referral for a special education evaluation to consider SLD, if the school has started, but not finished, implementing an intensive intervention with the student when the referral is made?

No. The federal Office of Special Education (OSEP) has made it clear that a district's failure to provide interventions as part of a district's multi-level system of support cannot be used to deny or delay special education referrals. A special education referral cannot be denied or delayed to allow a school to implement, or finish implementing an intervention. The LEA must process all special education referrals. Once a referral is made, the LEA notifies the parent and assigns an IEP team to

review existing data. Following the review of existing data, if the IEP team finds additional information is needed, such as progress monitoring data from intensive intervention, the LEA must request consent to collect the additional data. If the IEP team, including the parent, agrees that additional time is needed to implement the intervention(s) and collect the necessary data, they may agree to an extension of the 60-day timeline.

13. May a timeline extension be granted after parental consent has been given for additional testing, but before a final special education eligibility decision is made? For example, may the timeline be extended if it is determined there will not be enough time to complete required intensive interventions or to collect needed progress monitoring data?

Yes, the IEP team may request an extension to allow for the completion of required SRBIs and collection of progress monitoring data that meet the standards described in the rule. If the parent does not agree to an extension, the IEP team must meet and complete the evaluation using the data collected to date. If the IEP team does not have sufficient data to determine whether the student meets the SLD criteria, it may find the student not eligible. In all cases, LEAs should complete timely evaluations.

If a special education eligibility decision is delayed because data needed by the IEP team were not collected in a manner consistent with the rule or because the LEA unnecessarily delayed the implementation of SRBIs and collection of progress monitoring data following an SLD referral, the LEA may be required to consider whether compensatory services are needed if the student is found eligible for special education services.

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## **Intensive Intervention**

14. What interventions are required by the SLD rule?

All special education evaluations of public school students to determine if students meet criteria for SLD for an initial evaluation must be based, in part, on an analysis of student progress data collected during at least two intensive, scientific-research or evidence-based interventions (SRBIs) in each area of SLD concern. Generally speaking, an intervention is “the systematic use of a technique, program or practice designed to improve learning or performance in specific areas of pupil need.” The SLD rule specifies standards for the interventions that must be implemented

before an IEP team can determine if the student meets the criteria for SLD. The standards for SRBIs used when applying the SLD criteria are:

- Scientific research-based or evidence-based
- Use with individual or small groups
- Focus on single or small number of discrete skills closely aligned to individual learning needs (consistent with the area of SLD concern)
- Culturally appropriate
- A substantial number of instructional minutes beyond what is provided to all students
- Implemented with adequate fidelity
- Applied in a manner highly consistent with its design
- At least 80% of the recommended number of weeks, sessions, minutes

[Wis. Admin. §§ PI 11.02 (1), (4e), (6m), (12) and PI 11.36 (6) (f)4.]

#### 15. Who is responsible for selecting SRBIs when a SLD will be considered?

Intervention selection is a local school district decision. Schools may choose to have a group of individuals, such as a student support team, grade level team, or intervention team responsible for selecting interventions. The selection of interventions for students who are not receiving special education, is a general education responsibility.

#### 16. How should SRBIs be selected?

Interventions should be appropriately matched to identified student need(s) and have evidence of effectiveness in the area of concern. When selecting interventions, those responsible for making such decisions should first consider the student's needs using teacher or parent reports, screening and classroom data, and other student specific information related to the area(s) of concern. When reviewing research on interventions, school personnel should look for information such as the age/grade of students, length and number of sessions, implementation conditions, outcome measures used, and effect size or other statistics supporting a positive effect on student achievement. The goal should be to accelerate student progress. When SLD is being considered as part of a comprehensive special education evaluation, the progress monitoring data used to determine insufficient progress must have been collected at least weekly during SRBIs that meet the standards in the rule. Districts are encouraged to put in place systems to ensure SRBIs are selected appropriately.

17. What is meant by “a single or small number of discrete skills closely aligned with student need?”

There is no specific definition of “discrete skills” in the SLD rule. For the purpose of SLD identification, “discrete skills” should be aligned with one or more of the eight areas of concern listed in the rule; the interventions should be sufficiently focused to address the area of concern identified by the IEP team. Depending on the areas of concern and the intervention, it is possible for one intervention to address more than one area of concern. When progress data collected during SRBIs is to be used to make an SLD determination, the data must be sufficient to address the area(s) of concern. The individuals or group responsible for selecting SRBIs should be aware it is possible for an intervention to be too limited or too broad. For example, an IEP team may have difficulty analyzing a student’s progress in the area of basic reading if the intervention was limited to improving rhyming skills. Similarly, the IEP team may be unable to analyze progress in this area if the intervention was broadly targeted at general reading skills and did not include explicit instruction in decoding skills.

18. Must separate interventions be implemented for each area of concern if there is more than one area of concern (e.g., reading decoding and reading fluency)?

The IEP team must consider at least two SRBIs for each area of concern. If an intervention addresses more than one area of concern, it may be used. For example, if an SRBI used with the student addresses both reading decoding and reading fluency and meets the standards set in Wis. Admin. Code § PI 11.36 (6)(c)2.b., it can be used as one of the two required interventions for both reading decoding and reading fluency. Interventions for any one area of concern must be implemented consecutively. However, if there is more than one area of concern, the two interventions for each area may be implemented concurrently.

19. What is considered a “substantial number of instructional minutes in addition to those provided to all pupils?”

There is no specific standard for defining a “substantial number of instructional minutes.” The intent of this requirement is to ensure the student has received intensive intervention beyond core (universal) instruction before considering a SLD. What is “substantial” may be defined within the intervention guidelines or may be left to professional judgment. It may be assumed, if an SRBI has been implemented with fidelity, a “substantial number of instructional minutes” have been provided. Districts are encouraged to put in place systems to monitor fidelity to ensure students receive SRBIs and progress data are collected



in accordance with the rule prior to making the SLD determination. Ultimately, the IEP team determines if the data provided are sufficient for the purpose of determining if the student meets the criteria for SLD. However, it is the responsibility of the LEA to ensure SRBIs are properly implemented and progress monitoring data used by IEP teams are collected in a manner consistent with the rule. Any concerns about the implementation of SRBIs should be addressed well before an IEP team evaluation meeting is held to determine special education eligibility that determines whether or not the student meets the criteria for SLD and requires specially designed instruction.

20. For how long must an SRBI be implemented?

Wisconsin's SLD rule requires SRBIs be implemented with adequate fidelity. Generally speaking, this means the intervention should be implemented as intended and for a long enough period so it can be determined if the intervention is effective. Specific to the SLD rule, this means interventions must be provided in a manner highly consistent with their design and for at least 80 percent of the recommended number of weeks, sessions, and minutes per session. Published SRBIs frequently provide information about the recommended intervention schedule in the intervention manual or guide. In addition, research on the intervention often includes information about the intervention schedule under which the study occurred. This information can provide additional guidance for determining the number, length, and duration of intervention sessions needed to achieve a positive effect. Finally, the duration of the intervention must be long enough to allow for enough progress monitoring data points to be collected to establish a reliable trend line and provide the data the IEP team uses to reliably decide if the student's progress has been sufficient.

21. Under what circumstances may an LEA implement, or continue implementing, the same program, practice, or technique as the second of the two required interventions for each area of SLD concern?

It is possible to utilize the same program, practice or technique for both of the required SRBIs under certain circumstances. Some interventions are designed such that, based on the student's response, the frequency or intensity of the intervention may be adjusted following a first round of intervention (such as moving from a small group to an individual implementation or changing the person conducting the intervention). These adjustments to the first intervention would mean the student is, in effect, receiving a new intervention. Such adjustments should be made in accordance with the design of the intervention. School personnel implementing interventions should refer to the

implementation manual or protocol for what is allowable. Information from research on intervention efficacy may also be helpful.

Districts are encouraged to put a system in place to monitor student progress at all levels of a school's multi-level system of support (MLSS)/RtI system. As part of this system, it is appropriate to identify specific checkpoints when student progress will be analyzed and decisions made about changing, continuing, or discontinuing specific interventions. As with any decision about a student's need for an intervention, the decision about the second SRBI, as referenced in the SLD rule, should be based on an analysis of the student's progress during the first intervention cycle.

Such decisions depend on a number of factors including the design of the intervention itself, the number of data points collected, and, of course, the appropriate match to student need. While ultimately, the student's IEP team determines whether the data used to make an SLD identification decision were collected under conditions meeting the required standards, it is the responsibility of the LEA to ensure the required SRBIs are implemented and data are collected consistent with the rule.

22. What if an SRBI is started and after a few weeks, it is determined the intervention should be changed? Can this intervention count as one of the two required SRBIs?

The selection of an SRBI is important. It is assumed an SRBI is selected to address a particular area of concern and is appropriate for the student. Despite this, there may be times when, after an intervention is started, it becomes clear there is a mismatch between the intervention and the student's needs or learning style and it would not be appropriate to continue the intervention. Such interventions may be stopped so as not to delay unduly a special education eligibility decision. Interventions that are not matched to student need should not be continued solely for the purpose of data collection. When a decision is made to stop an intervention for any reason before the end of the intervention cycle, the data collected during the intervention cannot be used to determine whether the student demonstrated insufficient progress as defined in the rule, since the intervention was not implemented with fidelity.

23. Must parents be notified before beginning to implement an intervention when a referral for a special education evaluation has not been made?

No. There is no legal requirement to notify parents before providing general education interventions. However, as part of a special education evaluation when SLD is considered, the IEP team must document the parent was notified of the progress monitoring data collected and the

strategies used for increasing the student's rate of learning, including the intensive interventions. While there is nothing in the law that requires such notification prior to a special education referral, it would be recommended practice for schools to develop a system in which parents are notified of the general education instruction (including interventions) used with their children. Additional information about notification and consent within a multilevel system of support (MLSS/RtI) is available at [Consent and Notification in a Multilevel System of Support \(Response to Intervention\)](#)

24. If SRBIs were not implemented or weekly progress monitoring data were not collected prior to referral, how should the IEP team proceed?

The LEA must process all special education referrals and must initiate an evaluation upon receipt of a written referral. Following the review of existing data, if the IEP team finds the required SRBIs were not completed and weekly progress monitoring data were not collected during SRBIs, the IEP team must request consent to collect the required progress monitoring data during intensive intervention. If the IEP team, including the parent, agrees additional time is needed to implement SRBIs and collect the necessary data, they may agree to an extension of the 60-day timeline. If more time is needed and there is no agreement to an extension, the IEP team must hold an IEP team meeting to determine special education eligibility within the 60-day timeline. In such cases, the team may find there is insufficient data to determine the student is a student with a SLD. IEP teams may also consider other disability categories to determine whether or not the student meets one or more of the disability category criteria outlined in Wisconsin state rule. If the student meets criteria for one or more the disability categories, the IEP team must then determine if the student requires specially designed instruction as a result of the disability.

25. What if an SRBI meeting the standards in the SLD rule does not exist for an area of concern?

When considering SLD, the LEA should make every effort to locate and use interventions that meet the standards in the rule. If it is not possible to find an SRBI to address an area of concern, the most technically adequate intervention should be used. LEAs should be prepared to support their choice of SRBIs and progress monitoring tools. Such support may include evidence that the LEA considered research supporting the use of the intervention with students of the same age and grade implemented under similar conditions that have resulted in positive effect on student achievement. When reviewing research on interventions educators should look for information such as the age or

grade of students, length and number of sessions, implementation conditions, outcome measures used, and effect size or other statistics. Districts are encouraged to put in place systems to ensure students receive SRBIs and progress data are collected in accordance with the rule. The LEA is responsible for ensuring IEP team special education eligibility decisions are made in accordance with state and federal requirements. This includes ensuring SRBIs are implemented with fidelity. Additional guidance and resources on selecting interventions, including SRBIs, is available on the Wisconsin DPI [SLD web page](#).

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## Intervention Fidelity

### 26. What is “adequate fidelity?”

For the purpose of determining insufficient response to intensive, scientific, research-based or evidence-based intervention, “adequate fidelity” means the intervention has been applied in a manner highly consistent with its design and was provided to the pupil at least 80 percent of the recommended number of weeks, sessions, and minutes per session.

The highest quality intervention with the strongest evidence base will not likely produce a positive effect without adhering closely to the details of its implementation guidelines. Decisions about what is “highly consistent with its design” and “recommended number of weeks, sessions and minutes per session,” can be based on publisher recommendations or on research support for the amount of intervention required before the SRBI can be reliably expected to have a positive impact on the student’s performance. When reviewing research to guide fidelity decisions, school personnel should look for information such as the age or grade of students, intervention schedule, implementation conditions, outcome measures used, and effect size or other statistics. The goal is always to implement the intervention for 100% of the recommended amount of time. For the purpose of making SLD identification decisions, 80% is an acceptable minimum level of implementation.

### 27. Are there specific requirements for documenting fidelity?

The rule does not specify how implementation fidelity should be monitored or documented. Monitoring intervention fidelity is a school-wide process. It is strongly recommended that LEAs develop a system for monitoring intervention implementation including how intervention implementation fidelity will be documented and by whom. Ultimately,

the IEP team determines whether the progress data provided are sufficient for the purpose of making an SLD identification decision and were collected under conditions meeting the required standards. However, it is the responsibility of the LEA to ensure SRBIs are implemented with fidelity and progress monitoring data used by IEP teams are collected in a manner consistent with the rule. IEP teams should be able to assume interventions were implemented with fidelity and the data were collected for the purpose of making an SLD identification decision in accordance with state and federal requirements.

#### 28. Who is responsible for ensuring SRBIs are implemented with fidelity?

The rule does not specify how fidelity should be monitored or documented, or by whom. Implementing interventions is almost always the responsibility of general education, as is the monitoring of fidelity. Districts are encouraged to put in place systems to monitor fidelity to ensure students receive SRBIs and progress data are collected in accordance with the rule. School personnel responsible for implementing interventions should be appropriately licensed and have sufficient training specific to the intervention. IEP teams should be able to assume interventions were implemented with fidelity and the data were collected for the purpose of making SLD determination decisions in accordance with state and federal requirements. While ultimately, the IEP team determines whether the progress data collected are sufficient and were collected under conditions meeting the required standards, it is the responsibility of the LEA to ensure SRBIs are implemented with fidelity and progress monitoring data are collected consistent with the rule. Questions or concerns about the implementation of an SRBI or the collection of progress monitoring data should be addressed well before an IEP team evaluation meeting.

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### Who Can Implement SRBIs

#### 29. What are the qualifications for an individual implementing an SRBI?

SRBIs must be provided by appropriately licensed school personnel. At the elementary level, this generally means classroom teachers whose certifications include the content area in question (for example, a Regular Ed EC, EC-MC, MC-EA 1777 license, Elementary Ed 1-6, K-6, PK-6 1088 license, and Elementary Ed K-9 2088 license includes both reading and mathematics instruction). Teachers providing reading interventions for multiple class periods per day must have a Reading Teacher (1316) license. At the secondary level, only a teacher licensed

in the corresponding content area should be delivering interventions in that area. Because most content area certifications at the secondary level do not include reading instruction, highly qualified individuals providing reading SRBIs will likely hold a Reading Teacher license.

30. Can a special education teacher implement the intensive interventions if the interventions will begin after the student has been referred for an evaluation?

Generally, a special education teacher cannot implement the intensive interventions if the interventions will begin after the student has been referred for an evaluation. Intensive interventions as referenced in the SLD rule are part of general education instruction and, therefore, must be provided by appropriately licensed general education teachers. The IEP team uses data collected during such general education interventions as part of the special education evaluation process. For more information regarding special education teachers working with students without disabilities, see [Guidance Related to OSEP's Letter to Couillard](#).

If a student has already been identified as a student with a disability and the student's existing IEP already calls for special education programming in an area of concern being considered as part of an initial SLD identification decision, the special education teacher may implement the two required intensive, scientific research or evidence-based interventions with the student. The SRBIs and progress monitoring data collected must meet the standards in the SLD rule.

31. Can a general education paraprofessional support the implementation of intensive intervention?

Yes. A general education paraprofessional may support, reinforce, or follow-up on the provision of instruction provided by and under the supervision of an appropriately licensed general education teacher. This may include supporting the implementation of intensive intervention with students.

Supervision means regular, continuing interaction between the appropriately licensed general education teacher and the paraprofessional. There must be sufficient contact between the general education teacher and the paraprofessional, and between the general education teacher and the student, to monitor the interventions. An appropriately licensed general education teacher is ultimately responsible for implementing the intervention with the student.

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## **Insufficient Progress**

32. What is “insufficient progress” as defined by the SLD rule?

Insufficient progress is defined as an insufficient response to intensive, scientific, research-based or evidence-based intervention. A student demonstrates insufficient progress when the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas of SLD concern when using a process based on the student’s response to intensive scientific, research-based or evidence-based interventions.

33. How is the insufficient progress criterion determined?

For all initial special education evaluations where SLD is being considered for students enrolled in Wisconsin public schools, IEP teams use progress monitoring data collected using probes during at least two intensive, scientific research-based or evidence-based interventions (SRBIs) in each area of concern to determine insufficient progress. To make a determination that a student has an SLD, the referred student must demonstrate insufficient response to SRBIs in one or more of the eight areas of SLD concern. All SRBIs and progress monitoring probes from which data will be used by IEP teams to determine whether the student meets the insufficient progress criterion must meet the standards described in the rule. See the section on private school and home-based private education (homeschooled) students for potential exceptions to this requirement. See section “Rate of Progress” for answers to specific questions about analyzing data related to the insufficient progress criterion.

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## **Progress Monitoring**

34. What is “Progress Monitoring?”

Progress monitoring is a scientifically based practice to assess student response to interventions.

35. Can a district use locally developed progress monitoring tools that do not have normative data and are not supported by formal reliability and validity research?

Progress monitoring requires the use of a scientifically based tool called a probe. For the purpose of making SLD identification decisions, “probes” are brief, direct measures of specific academic skills, with multiple equal or nearly equal forms, that are sensitive to small changes in pupil performance, and that provide reliable and valid measures of pupil performance during interventions. Given this definition, district-developed progress monitoring tools will not likely meet the required standard for considering the insufficient progress criterion using data collected during intensive interventions. Districts are encouraged to put in place systems to ensure progress data are collected in accordance with the rule. Ultimately, the IEP team determines whether the progress data under consideration meet the requirements set out in the rule. However, it is the responsibility of the LEA to ensure progress monitoring data used by IEP teams are collected in a manner consistent with the rule.

36. What if an intensive intervention is scientific research-based or evidence-based, but the accompanying progress monitoring probe calls for bi-weekly progress monitoring? Can it still be used?

No. The rule states that IEP teams shall use weekly or more frequent progress monitoring to evaluate the rate of progress. Bi-weekly progress monitoring does not meet this standard. In this case, the intervention may be appropriate, but another reliable and valid progress monitoring probe would need to be used to collect progress data during the intervention.

37. What if a reliable and valid probe does not exist to assess a student’s response to intervention in an area of concern?

When making SLD identification decisions, the LEA should make every effort to locate and use progress monitoring probes that meet the standards in the rule. If it is not possible to find technically adequate probes for an area of concern appropriate for the student’s grade, the most technically adequate progress monitoring tools should be used. LEAs should be prepared to support their choice of progress monitoring tools.

Ultimately, the IEP team decides whether the data collected are sufficient for making an SLD identification decision or whether additional data are needed. The IEP teams must document the basis for its identification decision and document how the student met disability category criteria as part of documenting the results of a special education evaluation. However, it is the responsibility of the LEA to ensure progress monitoring data used by IEP teams are collected in a



manner consistent with the rule. Districts are encouraged to put in place systems to ensure progress data are collected in accordance with the rule.

38. Must progress monitoring always be conducted at the student's age level?

The SLD rule defines insufficient progress as “the student does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas.” The rule further requires the student's progress during intensive interventions be compared to that of the student's same age peers. Most progress monitoring probes are developed based on grade placement. Therefore, when data will be used for making an SLD identification decision, probes intended for the student's age or grade placement must be used to collect data. If a progress monitoring probe meeting the standards in the rule only includes grade norms, such norms may be used for data analysis. Schools may additionally use probes at a student's instructional level for making instructional decisions outside of SLD identification.

39. What norms should be used when an intervention is started in one school year and completed in the next school year?

The rule does not specifically address this question. However, it is possible for an intervention to be started one year (e.g., in spring) and be completed the following year. In such cases, a decision should be made as to which grade level probes and norms will be used throughout the intervention as probe data from different grades cannot be reliably analyzed on one trend line. For example, if an intervention is started in the spring of grade 2 and more than half of the sessions will need to be completed in grade 3, the grade 3 probes and norms will likely be the appropriate choice to use for trend line analysis for this intervention.

40. The rule requires three probes be administered to establish a baseline. How close together or far apart must these probes be administered?

The rule does not specify how much time should elapse between the administrations of probes used to establish the baseline. It is recommended that the baseline probes be administered over a short period of time. These probes may be administered on the same day, or within the course of about a week.

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## Rate of Progress

41. How does the IEP team decide if a student demonstrates insufficient progress using data collected during SRBIs?

The IEP team considers progress monitoring data collected during two SRBIs. For each intervention, the median score of three probes is used to establish a baseline. Weekly or more frequent progress monitoring data are then collected during the interventions. Using the baseline and progress data collected during each intervention, the IEP team compares the student's progress from baseline using least squares regression to analyze whether the student's progress is insufficient. The student's progress is considered insufficient only when the IEP team determines one of the following is true:

- The rate of progress of the referred student is the same or less than that of his or her same age peers;
- The referred student's rate of progress is greater than that of his or her same-age peers but will not result in the referred student reaching the average range of his or her same-age peer's achievement for that area of concern in a reasonable period of time; or
- The referred student's rate of progress is greater than that of their same-age peers, but the intensity of the resources necessary to obtain this rate of progress cannot be maintained through general education instruction and interventions.

42. What is "least squares regression" and how is it used to determine rate of progress?

Rate of progress is determined by analyzing the slope of the trend line using least squares regression on the baseline and all subsequent data points during each intensive intervention. Least squares regression is a statistical method for finding a line that summarizes the relationship between the two variables. In this case, it is used to help IEP teams analyze the student's rate of progress by putting a student's scores from progress monitoring over time on a line and depicting progress as a "slope" (or incline). A steeper slope means a greater change in achievement from baseline and a flatter slope means a smaller change from baseline. Additional guidance on determining rate of progress is available on the [SLD web page](#) on the Wisconsin DPI website. The department has developed a [graphing tool](#) IEP teams may wish to use to assist with the analysis of progress data when making SLD identification decisions.

43. How many data points are needed to establish a valid and reliable trend line?

The rule does not provide for a specific number of data points. All special education eligibility decisions must be made using valid and reliable information. When considering the insufficient progress criterion, the IEP team must be confident the student received a sufficient amount of intensive intervention. There also needs to be enough progress data collected to establish a reliable trend line so progress can be analyzed in accordance with the rule. A very good data set is one in which a stable trend line has been established. There is no hard and fast rule for the exact number of data points needed to establish such a trend line. As a general rule, 12-14 probes will establish the technical adequacy needed to evaluate the effects of an intervention. The number of weeks will be dependent on the specific skill being measured and the intervention being provided. For example, reading fluency probes may be conducted twice within a week because they are sensitive enough to detect changes in skill at that rate. Measuring skills such as math problem solving or written expression should be monitored weekly, as response to intervention in these areas is slower than that of basic reading or reading fluency. In all cases, the trend line must be stable and the intervention itself must always be implemented long enough with fidelity so to be expected to have a positive result.

44. Does a student's intellectual ability affect how the IEP team looks at the student's rate of progress to determine insufficient progress? Is a different rate of progress acceptable for students with measured low cognitive ability?

No. A student's cognitive ability is not a factor when analyzing insufficient progress. A student should be evaluated in all areas of suspected need. If a student's cognitive ability is suspected to be significantly below the average range, the IEP team may wish to consider [intellectual disability](#) as a possible disability category.

45. When analyzing insufficient progress, how can one determine whether the intensity of resources needed to maintain the student's rate of progress cannot be maintained in general education?

This is an IEP team decision. The IEP team includes participants knowledgeable about general education resources and the student's needs. When making its decision, the IEP team considers these factors in light of formal and informal assessment data collected during the evaluation, including the data collected during intensive intervention,

to determine if the student demonstrates insufficient progress, given the resources required.

46. How do we explain the insufficient progress analysis to parents?

The IEP team must include an individual qualified to assess and interpret individual progress data. This individual should be able to help explain the data analysis process and results to parents. In addition, there are programs available to help chart data and make it easier to explain to parents. The department has developed such a tool and other related resources posted on the Wisconsin DPI [SLD web page](#).

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### Inadequate Classroom Achievement

47. Does a student's cognitive ability affect how the IEP team applies the inadequate classroom achievement criterion?

No. A student's achievement is considered inadequate when the student's score, after intensive intervention, on one or more assessments of achievement is equal to or more than 1.25 standard deviations below the mean in one or more of the eight achievement areas, unless the IEP team determines that the student cannot attain valid and reliable standard scores. This standard applies regardless of a student's cognitive ability. If the student meets criteria as having an [intellectual disability](#), it would exclude the student from being identified as having a SLD.

48. Are there any exceptions to the 1.25 standard deviation (SD) criterion for determining inadequate classroom achievement?

Yes. The IEP team may consider scores within 1 standard error of the measurement of the 1.25 SD cut-score by age to meet the inadequate classroom achievement criterion, if the IEP team determines the student meets all other criteria.

The 1.25 SD requirement may not be used if the IEP team determines the student cannot attain valid and reliable standard achievement scores because of test behavior, language proficiency, another impairment that interferes with the attainment of valid and reliable scores, or the absence of individually administered standardized assessments appropriate for the student's age. If the IEP team makes this determination, it must document the reasons why it was not appropriate to consider standardized achievement testing, and that

inadequate classroom achievement exists in at least one of the eight areas using other empirical evidence.

49. Should age or grade norms be used to determine inadequate classroom achievement?

Age norms should be used for calculating achievement test scores unless there is compelling evidence that using age norms will result in an invalid analysis (e.g., when a student's age is well outside the range for students in the same grade such as when a student has been retained multiple times).

50. Should the evaluator wait to administer the required achievement test until after both SRBIs have been implemented with the student?

Yes, the intent of the SLD rule is for the individually administered, valid, reliable and norm-referenced test of academic achievement to be administered following the implementation of SRBIs in the area(s) of concern. This is intended to elicit an achievement score that most accurately reflects the student's level of achievement relative to same age peers and assist the IEP team in determining whether the student has received adequate instruction in the area(s) of concern.

51. If a student was administered a standardized achievement test sometime before receiving intervention, can the scores from this test be used to decide if the student meets the inadequate classroom achievement criterion?

No. The decision that a student demonstrates inadequate achievement must be based on scores from testing administered **after** intensive interventions are completed.

52. Must all eight SLD achievement areas be assessed using a standardized achievement test for every initial special education evaluation when SLD is being considered?

No. IDEA requires a full and individual initial evaluation be conducted before the initial provision of special education and related services to a student with a disability. In conducting the evaluation, the LEA must use a variety of assessment tools and strategies to gather relevant information. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs whether or not commonly linked to the disability category under consideration. During the review of existing data, the IEP team determines the areas of concern and identifies what additional

information, if any, is required to complete the evaluation. This would include the extent of standardized achievement testing needed to make an SLD identification decision.

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## Exclusions

53. How should the IEP team apply the exclusionary factors requirement when determining special education eligibility for a student who qualifies as having a SLD?

The IEP Team may not identify a student if an exclusionary factor applies. When applying this requirement, the IEP team should consider whether findings of insufficient progress or inadequate classroom achievement are **primarily** due to any of the following:

- Environmental, economic disadvantage, or cultural factors;
- Lack of appropriate instruction in reading, including in the essential components of reading instruction;
- Lack of instruction in math;
- Limited proficiency in English;
- Any of the other impairments (i.e. disability categories); or
- Lack of appropriate instruction in the area(s) of potential specific learning disability under consideration.

54. Must IEP teams consider lack of “appropriate instruction” in each of the eight areas of potential specific learning disabilities, when applying exclusionary factors?

No. The IEP team may not identify a student as having a specific learning disability if it determines that the findings of insufficient progress and inadequate classroom achievement were due to a lack of appropriate instruction **in the area(s) of concern**. Wis. Admin Code, § PI 11.36(6) (d) 1. b. and (2). The IEP team considers appropriate general education instruction in the area(s) of concern specific to the evaluation. The team does not need to document appropriate instruction in all eight areas when considering SLD.

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## Observation

55. What is the purpose of observation in the SLD rule?

The SLD rule requires a minimum of two systematic observations related to the area(s) of concern identified by the IEP team. The first is during routine classroom instruction (general education core instruction/universal instruction). The second is during at least one of the SRBIs. The purpose of the observations is to gather additional information related to the area(s) of concern. The IEP team examines the results of systematic observations of the student during routine classroom instruction and intervention in relation to other formal and informal assessment data collected about the student. The observations are conducted by individual(s) not responsible for implementing instruction and SRBIs with the student.

56. Where is information from the required observation documented?

Following the evaluation, the IEP team must develop an evaluation report. All required documentation, including a summary of the results of required observation, may be included anywhere in the report. The department has developed a model evaluation report (ER-1) and SLD disability category identification forms (ER-2A, 2B, and 2C) to assist the IEP team in documenting SLD identification decisions. Documentation of the results of observations may be included on any of these forms or any other attachment to the report.

57. Do observations need to be completed for each suspected area of concern?

Yes. In making its identification determination, the IEP team must use information from systematic observation of routine classroom instruction and monitoring of the student's performance in each area of concern. An observation may address multiple areas of concern.

58. Must an observation be completed during each of the two SRBIs?

No. The rule requires one observation during intensive intervention. When considering the insufficient progress criterion, the IEP team must use information from a systematic observation during intensive intervention in the area(s) under concern. The observation must be conducted by an individual who is not responsible for implementing the SRBIs with the student. The individual making the observation during the SRBI must be included as a member of the IEP team.

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## Documentation

59. Where do we document all the data required by the SLD rule?

Documentation of the IEP team's SLD identification decision, including the basis for the determination, must be included in the evaluation report. The department has developed model forms for LEAs to use to meet state and federal documentation requirements including the ER-1 *Evaluation Report* and three options for documenting SLD identification decisions, ER-2A, *Required Documentation for SLD-Initial Evaluation*, ER-2B, *Required Documentation for SLD-Reevaluation* and ER-2C, *Required Documentation for SLD-Initial Evaluation using Significant Discrepancy*. All DPI model forms are available at [Sample Special Education Forms page](#). The department has also provided guidance and instructions for completing the SLD forms at the Wisconsin DPI [SLD web page](#).

60. Should the IEP team evaluation report include the standardized achievement test scores and progress monitoring data used to determine if SLD can be identified as the student's reported disability category?

While the rule does not specify the extent of specific information required in an IEP team evaluation report, the IEP team must document how the student meets the criteria for any identified disability category. Given the criteria outlined in the SLD rule, it would be best practice to include the achievement test scores and progress monitoring data used to support an SLD identification decision. This information could be included on the ER-1 *Evaluation Report*, the ER-2A, *Required Documentation for SLD-Initial Evaluation*, or on attachment(s) to the report. The department has provided guidance and instructions for completing the SLD forms at the Wisconsin DPI [SLD webpage](#). This guidance includes suggestions for additional supporting information to include when completing the forms.

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## Individualized Education Program (IEP) Team Membership

61. When are additional IEP team members required for an evaluation to consider SLD as the student's reported disability category?

Additional IEP team members are required for all evaluations of public school students when IEP teams consider SLD identification for the first time. The LEA appoints the IEP team members and provides proper written notice to parents. The additional roles include at least one individual qualified to assess progress data, an individual qualified to conduct individual diagnostic evaluations, and at least one individual who



implemented the required SRBIs with the student. An IEP team member can fill multiple roles on the IEP team. The additional IEP team members are not required for reevaluations when a student has previously been identified as having the disability of SLD or for initial evaluations when SLD is considered for private school or homeschooled students when the significant discrepancy method is used.

62. If someone serves multiple roles on the IEP team, how should this be documented?

Each IEP member's name and role needs to be listed on the appropriate written notice. More than one role may be listed next to a member's name.

63. Is a speech-language pathologist required on the IEP team if at least one of the eight areas is listening comprehension or oral expression?

The SLD rule does not require a speech and language pathologist be a member of the IEP team when listening comprehension or oral expression are areas of concern. While not required, the department strongly recommends a speech and language pathologist be included on the IEP team whenever language related concerns are being considered. If the evaluation is also considering a potential speech and language impairment, the IEP team must include a licensed speech and language pathologist.

64. Do the additional IEP team member requirements apply to IEP team meetings to review and revise a student's IEP?

No. The requirements only apply to evaluations when SLD is being considered for the first time.

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## Reevaluation

65. Must insufficient progress and inadequate classroom achievement be documented for reevaluations of students previously identified with an SLD?

No. These criteria apply only when considering SLD identification for the first time. The process for documenting continuing eligibility upon reevaluation relies on an analysis of continued need for specially designed instruction and whether exclusionary factors have become the primary reason for continued achievement delays. When

determining if a student continues to meet criteria of SLD, the IEP team considers whether the student performs to generally accepted grade level expectations in the general education environment without specially designed instruction.

66. If a student was previously identified with a SLD, would a reevaluation be needed before adding special education services to address an area of concern not initially identified as meeting the SLD criteria?

Once identified as a student with a disability, special education and related services (with the exception of OT and PT) may be added to a student's IEP without a reevaluation. An evaluation determines eligibility for special education in general, not for specific IEP services. IEP services are not disability specific. A student does not need to meet SLD criteria in a specific area of concern to receive special education services or support in that area. This applies to any eligible student including students with disability categories other than SLD. Each eligible student's IEP team develops an IEP to address the student's disability-related needs. The IEP is reviewed and revised annually to address the student's needs. If it is determined additional information is needed to develop an appropriate IEP, a reevaluation would be required.

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## Transfer Students

67. If SLD was previously identified as the student's disability category, by a Wisconsin LEA and the student then transfers to a new Wisconsin LEA, must a reevaluation be conducted?

No. Once a student is found eligible for special education, the student continues to be eligible until such time an IEP team determines the student is no longer eligible or the parent revokes consent. A reevaluation is not required upon transfer. Upon transfer, the new LEA, in consultation with the parents, may adopt the evaluation and IEP from the student's prior LEA. For a student previously identified as having SLD in Wisconsin, if the LEA determines an evaluation is needed, it is considered a reevaluation and the reevaluation criterion applies related to identification of an SLD.

68. If SLD was previously identified as the student's reported disability category, and the student transfers to a Wisconsin LEA from another state, must the new LEA conduct an evaluation?

No. Upon transfer, the new LEA may either determine an evaluation is needed or adopt the previous out-of-state evaluation. If the new LEA decides an evaluation is needed, it is considered an initial evaluation and the IEP team would use initial SLD criteria.

69. What happens when a referred student transfers from one LEA to another before a special education eligibility decision has been made?

The new LEA must ensure a prompt completion of the evaluation. An extension of the 60-day timeline is allowable if sufficient progress is being made to ensure a prompt completion of the evaluation and the student's parents agree to a specific time when the evaluation will be completed. In the case of an evaluation when considering a SLD, the timeline may also be extended by written agreement of the IEP team, including the parent, to complete the collection of progress monitoring data during the required SRBIs.

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### **Students Attending Private School and Students Receiving Home-Based Private Education (homeschooled)**

70. What is an LEA's responsibility for evaluations considering SLD as a possible disability category for students who attend private schools or receive home-based private (homeschool) education?

LEAs must identify, locate, and evaluate all students suspected of having a disability, including students in private schools and homeschool settings.

71. When conducting evaluations considering SLD as a possible disability category may a district use the significant discrepancy method for private school and homeschool students?

Yes. Public schools lack the authority to require private schools or home-based education programs to produce data from a student's response to SRBIs. Per [PI 11.36\(6\)\(c\)2.b.](#) "A parent of a child attending a private school or participating in a home-based private educational program may request the IEP team to use the method set out in this subd. [2.b.](#) Upon such request, the IEP team shall consider whether use of the method set out in this subd. [2.b.](#) to evaluate the child is feasible. If the IEP team determines that it is not feasible to use the method set out in this subd. [2.b.](#), the reason for that determination shall be provided to the parent in writing." Therefore, an IEP team may use significant discrepancy to determine insufficient progress for private school and

homeschool students. The IEP team must still consider exclusionary factors. As with any special education evaluation, an LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.

72. May an IEP team use the significant discrepancy method to determine insufficient progress when a student transfers from a private school to a public school after an initial referral was made to consider a SLD?

If the student was enrolled in private school at time of referral, an LEA may use the private school exception and use significant discrepancy to determine whether the student meets the insufficient progress criterion. This decision should be made on a case by case basis and may depend on when the referral was made.

73. May IEP teams use progress data collected during intensive interventions implemented by private school personnel or other professionals when conducting evaluations of private school or homeschooled students?

Yes. Consistent with IDEA 2004, states may no longer require the use of significant discrepancy when making SLD identification determinations. If a parent or private school provides documentation that the student has received SRBIs meeting the criteria set forth in the rule and provides progress monitoring data collected in accordance with the rule, the IEP team may use these data to determine whether the student meets the insufficient progress criterion. In the absence of such data or if the data were not collected in accordance with the SLD rule, LEAs may use significant discrepancy to determine SLD identification for private school and homeschooled students. The inadequate classroom achievement criterion and exclusionary factors continue to apply to all evaluations including those of private and homeschooled students.

74. Some private schools do not employ licensed teachers. What does this mean in terms of the requirement that students receive appropriate general education instruction by qualified personnel?

Neither private schools nor home-based private education programs are required by federal or state law to employ qualified personnel (i.e., DPI licensed teachers) as referenced in IDEA. Thus, this requirement does not apply to private school teachers or others who deliver general education instruction.

When evaluating private school and homeschool students for suspected SLD, the requirements to consider the exclusionary factors of whether

the student received “appropriate instruction in general education settings” and “appropriate instruction in the area of potential specific learning disability” apply. The IEP team may not identify a student as having a specific learning disability if it determines the findings of insufficient progress and inadequate classroom achievement were due primarily to one or more exclusionary factors. For private school and homeschool students, the IEP team may obtain information from parents and teachers about the curricula used and the student’s progress with various teaching strategies when considering whether the student received appropriate general education instruction.

75. Can an LEA refuse to accept a referral for a special education evaluation if it believes a student has not received appropriate instruction or intensive intervention prior to referral?

No. LEAs must accept all special education referrals submitted in accordance with Wis. Stats. §115.777. Districts may not refuse to accept a written referral because a student has not received a particular type or amount of instruction or has not received intensive intervention prior to the referral. The IEP team must meet to determine eligibility within 60 days of receiving consent for evaluation or of the notice that no additional data are needed. In the case of an evaluation for suspected SLD, the timeline may be extended by written agreement of the IEP team, including the parent, to allow for the collection of needed data.

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### **Independent Educational Evaluations (IEEs)**

76. Can parents request an independent educational evaluation (IEE) at public expense for purposes of SLD identification?

Yes. Parents maintain the right to request an IEE at public expense in accordance with 34 CFR §300.502. The parent, however, does not have the right to obtain an IEE at public expense before the public agency completes its evaluation.

77. Must a district consider the findings of an IEE that uses significant discrepancy to document insufficient progress instead of progress monitoring data collected during SRBIs when the evaluation is of a public school student?

No. An IEE at public expense must meet the criteria the LEA uses when it conducts its own evaluation. If a parent obtains an independent educational evaluation, the results of the evaluation must be

considered by the LEA, if it meets agency criteria. Since all evaluations of public school students require the use of progress monitoring data collected during SRBIs, the IEP team would not need to consider the findings of an IEE that relied on the significant discrepancy method to analyze insufficient progress. However, if the evaluation was of a private school or homeschool student and the district's evaluation used significant discrepancy to determine insufficient progress, then the IEE could also rely on the significant discrepancy method.

78. Must an LEA pay for intensive interventions as part of an IEE?

No. Intensive interventions are not considered evaluation activities, but rather part of a student's general education instruction. The analysis of data from the student's response to intervention, not the interventions themselves, is part of the special education evaluation. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with the LEA's evaluation. The district may refuse to pay for the costs related to delivering SRBIs or other interventions, but must pay for IEE expenses without unnecessary delay, or file a due process hearing request to contest payment for an IEE.

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### **Expedited Evaluations and IDEA Disciplinary Provisions**

79. What must an LEA do when concerns that a student may be a student with a SLD were raised before the student engaged in behavior resulting in a disciplinary change of placement?

The district must conduct an expedited education evaluation to determine if the student is eligible for special education. If the "deemed to know" provisions in IDEA apply, the IDEA discipline protections also apply. For example, the district must conduct a manifestation determination. (See [Bulletin 14-02](#)).

An LEA is "deemed to know" that a student is a student with a disability, if before the behavior occurred:

- The parent expressed concern in writing to supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services;
- The parent of the student requested an evaluation pursuant to §§300.300 through §§300.11; or
- A teacher of the student, or another staff member, expressed specific concerns about a pattern of behavior demonstrated by

the student directly to the special education director or other supervisory personnel. (See questions #14 in [Bulletin 14-02](#)).

80. What must an LEA do if an initial special education referral is made soon **after** a disciplinary action that changes a student's placement, such as an expulsion?

The district must conduct an expedited evaluation if a referral is made for a special education evaluation after the incident that prompted the disciplinary removal.

Unless the "deemed to know" provisions apply (see previous question), the student remains in the placement determined by the LEA while the evaluation is being completed. This can include serving a suspension or expulsion without receiving educational services. If the student is found eligible for special education, the LEA must then provide educational services to enable the student to continue to participate in the general educational curriculum and to progress toward meeting the student's IEP goals for the remainder of the disciplinary removal. (See questions #14 and #15 in [Bulletin 14-02](#)).

81. When completing an expedited evaluation, must data from two SRBIs be used when considering SLD identification?

Whether data from two SRBIs must be used in this rare situation, is determined on a case-by-case basis. If the required data from SRBIs do not exist, the following options may be used to ensure the evaluation is expedited:

- If the required SRBIs can be completed in a short time, they should be completed.
- If, upon the review of existing evaluation data, the IEP team determines the student demonstrates adequate classroom achievement and sufficient progress needed to meet age or state-approved grade-level standards, the IEP team may move forward and conduct an IEP team meeting to complete the evaluation and make an eligibility decision based on existing data. Existing data reviewed by the IEP team include evaluations and information provided by the student's parents; previous interventions and the effects of those interventions; current classroom-based, local, or state assessments; classroom-based observations; and observations by teachers and related services providers. If two SRBIs were not completed, progress data had been collected during interventions in progress prior to the removal, and the IEP team decides the data are reliable, it should be considered. As in all cases, the IEP team must also consider exclusionary factors.

- If the student has not been provided with intensive interventions or the LEA is unable to complete interventions in a sufficiently expedited manner to ensure reliable progress data, there is not enough existing data to support an SLD identification decision. In this unique situation, the IEP team may use significant discrepancy analysis in lieu of SRBI data to determine insufficient progress. The other initial SLD criteria requirements would still apply.

In all cases, the IEP team must conduct a comprehensive special education evaluation using a variety of valid and reliable assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.





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