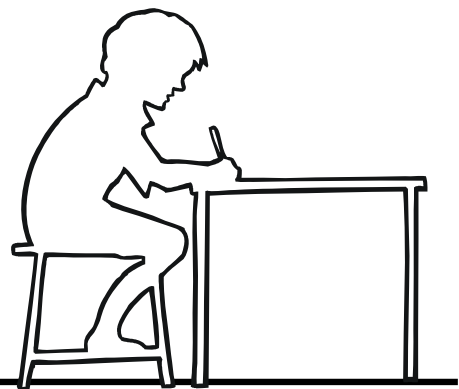


Module 11

Identification of Children with Specific Learning Disabilities



Written by: Patricia Hozella
Office of Special Education Programs
U.S. Department of Education

A Product of...

**National Dissemination Center for Children
with Disabilities (NICHCY)**

PO Box 1492, Washington, DC 20013

1.800.695.0285 (V/TTY) • nichcy@aed.org • www.nichcy.org

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NICHCY is here for you.

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Setting the Context

Three modules comprise this curriculum's training on **Evaluating Children for Disability**. Each discusses in detail certain aspects of IDEA's regulations and processes for determining eligibility for special education and related services. *Introduction to Evaluation* presents IDEA's provisions for ensuring that initial evaluations of children suspected of having disabilities and all reevaluations of children receiving services under IDEA are technically sound, nondiscriminatory, and comprehensive. The module on *Initial Evaluation and Reevaluation* takes up where the first module leaves off, providing a detailed look at the processes required for evaluations, including:

- review of existing evaluation data,
- parent consent,
- determination of eligibility, and
- IDEA's definition of a "child with a disability."

This module—the one you're reading—addresses the additional requirements in the Federal regulations for identifying children with specific learning disabilities (SLD). This module will not review the components already addressed in either the *Introduction to Evaluation* or *Initial Evaluation and Reevaluation*. Instead, it is strongly recommended that this module not be presented to

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You'll note the "New in IDEA" icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.

audiences who have not also received training with the first two modules in our **Evaluating Children for Disability** series. If that is not possible, then we strongly recommend that trainers take the extra time necessary to point out and discuss the critical features of IDEA explained in the first two modules. At a minimum, it would be important to stress that:

- the information in this module does not include all there is to know about IDEA's provisions for evaluation;
- the provisions discussed in this module are in addition to those separately examined in the preceding modules;
- an evaluation to identify whether or not a child has a specific learning disability must adhere to the requirements described in this module in addition to the requirements described in the other two modules.

Our Evolving Understanding of SLD

Procedures and processes for the identification of children with learning disabilities have changed and will continue to evolve over time. IDEA 2004 has continued the evolution of the identification procedures for children with specific learning disabilities. Most notably, in IDEA 2004 the specific learning disability (SLD) determination has been expanded to require States to adopt criteria, consistent with 34 CFR §300.309 of the final Part B regulations¹ that (1) must not require the use of a severe discrepancy between intellectual ability and achievement in determining whether a child has a specific learning disability; (2) must permit local educational agencies (LEAs) to use a process based on the child's response to scientific, research-based intervention; and (3) may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability. Thus, analyzing the

child's response to that intervention may be considered by school districts in the process of identifying a child with an SLD.

This Module in Time and Space

As described above, there are three modules under the umbrella topic of **Evaluating Children for Disability**, as follows:

- *Introduction to Evaluation* presents IDEA 2004's requirements to ensure that evaluations of children are technically sound, nondiscriminatory, and effective in gathering the information needed to determine if the child has a disability and the nature and extent of the special education and related services that the child needs;
- *Initial Evaluation and Reevaluation* examines IDEA's definition of "child with a disability" and the evaluation process that IDEA requires to determine if a child is a "child with a disability." Also examined in this module are: parent consent, review of existing evaluation data, and requirements for gathering additional data if needed.
- *Identification of Children with Specific Learning Disabilities* focuses exclusively on IDEA's process for determining if a child has a learning disability, including that States must permit response to intervention (RTI) to be used in evaluation.

More on Response to Intervention

A significant amount of training is provided in this module on the new provisions added to IDEA and the final Part B regulations² allowing local educational agencies to determine that a child has a specific learning disability if the child does not make sufficient progress to meet age or State-approved grade level standards in the identified areas when using a process based on the child's response to scientific, research-based intervention.

The Part B regulations do not use the specific term "response to intervention" or the acronym RTI. It may be helpful to your audience to explain a bit more about what RTI is in practice. You can pull information and descriptions of RTI from the separate module on the subject—*Early Intervening Services and Response to Intervention*—which is provided as part of the umbrella category of **IDEA and General Education**. That module necessarily overlaps with this one and can be used to enrich the audience's understanding of the role that response to research-based interventions can play in identifying learning disabilities in States that permit their LEAs to use this process.

All of these modules are intended for general audiences. The background materials (what you're reading right now) and *Resources for Trainers* include substantial additional information that trainers can use to adapt training sessions to specific audience needs and the amount of time available for training.

You are currently reading the background section and discussion in the module on *Identification of Children with Specific Learning Disabilities*.

¹ Unless otherwise noted, the citations to the final Part B regulations are to those that took effect on October 13, 2006.

² Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (codified at 34 C.F.R. pt.300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

Files You'll Need for This Module

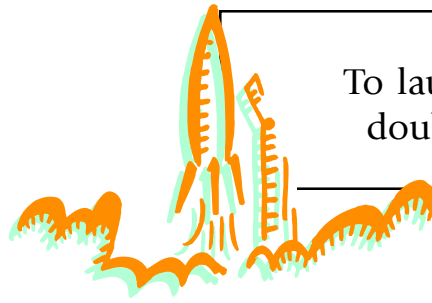
Module 11 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

- **Discussion.** The discussion text describes how the slides operate and explains the content of each slide, including relevant requirements of the statute passed by Congress in December 2004 and the final regulations for Part B published in August 2006. The discussion is also available separately in two (2) PDF files, which are available online at: www.nichcy.org/training/contents.asp

PDF of Discussion for
Slides 1-19
[www.nichcy.org/training/
11-discussionSlides1-19.pdf](http://www.nichcy.org/training/11-discussionSlides1-19.pdf)

PDF of Discussion for
Slides 20-end
[www.nichcy.org/training/
11-discussionSlides20-end.pdf](http://www.nichcy.org/training/11-discussionSlides20-end.pdf)

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **IDEA and General Education**, which includes the five modules described earlier. If you've already downloaded the handouts for other modules in **Theme B**, then you have what you need for this module, too. If not, then find Word® and PDF versions of these handouts as follows:



To launch the slide presentation,
double-click the **PLAY.bat** file.

Word® version of Handouts
[www.nichcy.org/training/
C-handouts.doc](http://www.nichcy.org/training/C-handouts.doc)

PDF version of Handouts
[www.nichcy.org/training/
C-handouts.pdf](http://www.nichcy.org/training/C-handouts.pdf)

- **PowerPoint® slide show.** NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations and training on IDEA's procedures for identifying whether or not a child has a specific learning disability. *Important note:* You do NOT need the PowerPoint® software to use the slide show. It's set to display, regardless.

To download the ZIP folder of all files in slide show, go to: [www.nichcy.org/training/
11slideshow.zip](http://www.nichcy.org/training/11slideshow.zip)

Within the three Discussion files (one of which you're reading right now), all slides are described, along with how the slides operate.

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/reauth/PL108-446.pdf
- <http://idea.ed.gov>

Final Part B Regulations:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means “Section.”) These references can be used to locate the precise sections in the Federal regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of the IDEA regulations so that you don’t have to go looking for them.

The final Part B regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It’s not unusual to see references to specific sections of IDEA’s regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. at 46738

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/reauth/IDEA2004regulations.pdf



References

Bradley, R., Danielson, L., & Hallahan, D. P. (Eds.) (2002). *Identification of learning disabilities: Research to practice*. Mahwah, NJ: Lawrence Erlbaum.

Clements, S.D. (1966). *Minimal brain dysfunction in children* [NINDS Monograph No. 3, Public Health Service Bulletin 1415]. Washington DC: U.S. Department of Health, Education and Welfare. (As cited in Larson & Majsterek, n.d., below.)

Cortiella, C. (2006). *A parent's guide to response-to-intervention*. New York: National Center on Learning Disabilities. (Available online at: www.nclld.org/images/stories/downloads/parent_center/rti_final.pdf)

Donovan, M.S., & Cross, C.T. (2002). *Minority students in special and gifted education*. Washington, DC: National Academy Press.

Ervin, M. (2001, June 26). SLI—What we know and why it matters [*The ASHA Leader Online*]. Rockville, MD: American Speech-Language-Hearing Association. Retrieved November 14, 2006 from www.asha.org/about/publications/leader-online/archives/2001/sli.htm

Hoskyn, M., & Swanson, H.L. (2000). Cognitive processing of low achievers and children with reading disabilities: A selective meta-analytic review of the published literature. *The School Psychology Review*, 29, 102–119.

Donovan, M.S., & Cross, C.T. (2002). *Minority students in special and gifted education*. Washington, DC: National Academy Press.

Hoskyn, M., & Swanson, H.L. (2000). Cognitive processing of low achievers and children with reading disabilities: A selective meta-analytic review of the published literature. *The School Psychology Review*, 29, 102–119.

Larson, N., & Majsterek, D. (n.d.). *What are learning disabilities?* Overland Park, KS: Council for Learning Disabilities (CLD). Retrieved November 14, 2006 from www.cldinternational.org/Initiatives/scienceP2.asp

Logsdon, A. (n.d.). *Best practices in educational programming for students with brain injuries*. Retrieved November 14, 2006 from learningdisabilities.about.com/od/learningdisabilitybasics/a/Brninjuryandld.htm

National Advisory Committee on Handicapped Children. (1968). *Special education for handicapped children: First annual report of the National Advisory Committee on Handicapped Children*. Washington, DC: Office of Education, Department of Health, Education, and Welfare. (As cited in Larson & Majsterek, n.d., above.)

National Aphasia Association. (1999). *Aphasia—the facts*. New York: Author. Retrieved November 14, 2006 from www.aphasia.org/facts.php

National Institute on Deafness and Other Communication Disorders. (2002). *Aphasia*. Retrieved November 14, 2006 from www.nidcd.nih.gov/health/voice/aphasia.asp

Reschly, D.J., Hosp, S.L., & Schmied, C.M. (2003). *And miles to go...: State SLD requirements and authoritative recommendations*. Retrieved on November 14, 2006 from www.nrcld.org/research/states/MilestoGo.pdf

Steubing, K.K., Fletcher, J.M., LeDoux, J.M., Lyon, G.R., Shaywitz, S.E., & Shoywitz, B.A. (2002). Validity of IQ-discrepancy, classifications of reading disabilities: A meta-analysis. *American Educational Research Journal*, 39, 469–518.

Identification of Children with Specific Learning Disabilities



How to Operate the Slide:

No clicks necessary.
Slide self-presents.

CLICK to advance to next slide.

Use Slide 1 (above) to orient your audience to what this training will be about: IDEA's additional provisions for identification of children with specific learning disabilities (SLD).

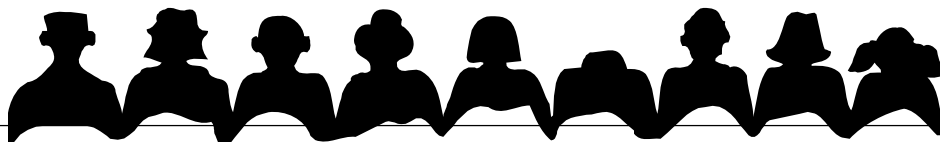
Handout C-5. The activity itself is described in the box on the next page.

This module begins with an activity designed to see what your audience already knows about SLD and the process by which a learning disability is identified. Also of interest is whether they are aware that States are no longer required to use a "severe discrepancy" model in making the SLD determination and must permit LEAs to use a process based on the child's response to scientific, research-based interventions in making a determination of whether a child has an SLD. The activity sheet for participants is



Note to Trainers

All references for this module are provided on page 10-6 of the module.



Opening Activity

Purpose

To have participants reflect on how much they already know on this subject and why they might need to know more.

Total Time Activity Takes

10 minutes.

Group Size

Individual (no grouping).

Materials

Handout Eval-5

Flip chart (optional)

Instructions

1. Refer participants to **Handout Eval-5**. Indicate that this is the activity sheet they have to complete. They will have 5 minutes.
2. Give participants the allotted 5 minutes. Then call them back to large-group focus.
3. Take 5 minutes to see how participants described their knowledge base of learning disabilities and response to intervention, and what reasons they identified for needing to know this information. Do this

free-form and informally. You may also choose to jot some of their answers down on a flipchart.

Depending on how much time you have or wish to devote to this activity, you can build the discussion by:

—“profiling” the audience with show-of-hands questions such as: How many of you are teachers? Parents? Administrators? How many of you have ever been involved in evaluating a child for disabilities? for learning disabilities?

—incorporating people’s personal stories of LD, RTI, or evaluation in general

—allowing participants to share more details about how they’d apply the information in this module

4. Summarize where the audience stands in terms of their existing knowledge and how they might apply what they learn here today to their “lives back home.”

View I

Slide loads with this view, intended to show that this module leads off a 3-part series on evaluation.

Evaluation series..

- **Intro to evaluation**
- Initial evaluation and reevaluation
- Identification of children with specific learning disabilities

Clicks 1- 2**This module looks at:****Evaluation series..**

- **Intro to evaluation**
- Initial evaluation and reevaluation
- Identification of children with specific learning disabilities

Click 1: Red background disappears, an arrow emerges from the "Identification of Children with Specific Learning Disabilities" bullet and travels to the appearing agenda, Bullet 1 shown.

Click 2: Bullet 2 appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) ➡



Slide 2 is an advance organizer for the audience regarding what content they're going to hear and discuss in this module.

The slide loads only the "Evaluation" series box listing the three modules focused on evaluation issues, the umbrella topic for the curriculum's **Theme C**. The title *Identification of Children with Specific Learning Disabilities* appears in **bold**, to indicate to the audience that this is the current module.

Theme C, Among Other Themes

Just as the module exists within a series of modules addressing evaluation issues, Theme C exists within a curriculum of multiple themes. Those themes represent critical components and organizing elements within IDEA. You may wish to make participants aware that there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped. A list of themes in this training curriculum is provided in the box on this page. If participants want to learn more on their own (or share information with their family or colleagues), they're welcome to visit NICHCY's Web site and download any and all modules they wish.

Agenda for Today's Training

Having established that more modules are available to learn about IDEA and that these address multiple themes, you can move on to what will be covered, broadly, in *this* module.:

- IDEA's definition of "specific learning disabilities" at §300.8(c)(10); and
- IDEA's additional procedures for identifying children with specific learning disabilities.

As you move through the bullets, you can elaborate as time allows, referring back to the opening activity and participants' prior knowledge as identified there, as well as their stated reasons for needing the information to be presented in the next slides and applied somehow in their own lives.

Themes in *Building the Legacy*

Theme A
Welcome to IDEA

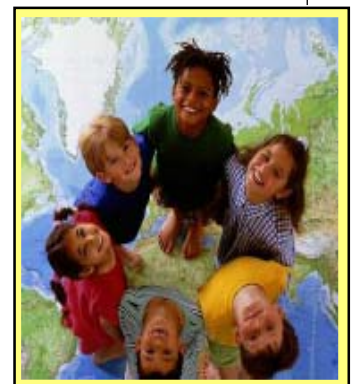
Theme B
IDEA
and General Education

Theme C
Evaluating Children
for Disability

Theme D
Individualized Education
Programs (IEPs)

Theme E
Procedural Safeguards

Available online at:
www.nichcy.org/training/contents.asp



**Starting View
& Click 1****Definition of Specific
Learning Disability**

Learning disability or specific learning disability?

Defined at §300.8(c)(10) as...

Slide loads with
the top item.Click 1:
2nd item appears.**Click 2****Definition of Specific
Learning Disability**


Learning disability or specific learning disability?

Defined at §300.8(c)(10) as...

A disorder in one or more of the basic psychological
processes involved in understanding or in using
language, spoken or written...

Click 2:
The definition of LD
begins, along with
an arrow to indicate
there's more to
come.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 3: Background and Discussion

2 Clicks



Slide 3 moves to the content—specifically, the definition of “specific learning disabilities” in IDEA.

Discussing the Slide

The first point on the slide is “called specific learning disabilities in IDEA.” This may seem like a strange point to make, but a great many people and organizations merely use the term “learning disabilities,” omitting the word “specific.” You might ask the audience which term they most often use or hear in their jobs or personal lives.

Set the terms for this training’s use of either term as the following:

- In this training session, the terms are used interchangeably and should be understood to refer to the term “specific learning disability” as defined in IDEA.
- In this training session, either term will mean what IDEA and the final Part B regulations say it means.
- Participants should not assume that when other people or organizations use

either term, they necessarily mean the same thing or are referring to the definition of SLD in IDEA and the final Part B regulations.¹

Having established your definitions for these terms, take a look at the beginning of the definition of “specific learning disabilities” in IDEA and the final Part B regulations. Read it aloud and indicate that the arrow on the slide means there’s more to the definition. Refer participants to **Handout C-3**, where the entire definition of SLD is provided as part of IDEA’s definition of “child with a disability.”

IDEA’s Definition Begins...

“A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written...” [§300.8(c)(10)(i)]

¹ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (to be codified at 34 C.F.R. pt.300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

Definition of Specific Learning Disability

...May manifest itself in the imperfect ability to:

- listen
- think
- speak
- read
- write
- spell *or*
- do mathematical calculations...

Starting View & Click 1

Slide loads with the lead-in phrase only (none of the bullets).

Click 1:
All the bullets come up at once, the "OR" appears, and then the line indicating there is still more to the definition.

CLICK AGAIN to advance to next slide.

Slide 4: Background and Discussion

1 Click

Slide 4 continues the definition of SLD from IDEA, focusing on the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The arrow appearing next to the last bullet indicates, yet again, that there is still more to come in IDEA's definition of SLD.

Small Change

One small change has been made in the part of IDEA's definition that appears on this slide. IDEA '97 stated that SLD may manifest itself in "an imperfect ability" to do the bulleted items above. In IDEA 2004, the "an" has been changed to "the"

so that the definition now reads that SLD may manifest itself in "the imperfect ability..." This is a technical change, not a substantive one, and was the subject of public comment or discussion in the Analysis of Comments and Changes that accompany the publication of the final Part B regulations.

In response to a public comment requesting that the words "imperfect ability" could be read to imply that a child with minor problems

IDEA's Definition Continues...

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, **that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations....** [§300.8(c)(10)(i)].

in listening, thinking, reading, writing, spelling, or doing math could not be determined to have a specific learning disability, the U.S. Department of Education (Department) responded that it did “not agree that the phrase ‘imperfect ability’ implies that a child has a minor problem,” and declined to change this phrase in the definition. (Analysis of Comments and Changes, 71 Fed. Reg. at 46551)

Discussing the Slide

The potential skill areas where SLD may manifest itself, as listed on the slide, strike at the heart of academic work and learning. It’s not difficult to see why an imperfect ability in any of these areas, let alone several, could

impact a child’s performance in school. A bit of discussion may be in order with participants. Some suggestions are given below.

- Ask participants to share their direct experience in how a child’s learning disability might manifest itself in any of these areas.
- Ask participants to take a look at their own skills.

Not to imply that difficulty in any of these areas means a learning disability, but some of us are better at writing than others, or reading; we all know horrible spellers or may be one ourselves. Mathematical calcula-

tions challenge many people. The point here is to reflect on the struggle to perform that often comes along with any challenging area, including feelings of anxiety and avoidance that may arise. While our personal experiences can offer us insight into what a child with an SLD might experience, for the child identified as having a learning disability, the difficulties he or she will have performing some, or all, of the tasks listed in IDEA’s definition (and shown on the slide) represent more than a “minor problem.”

—Space for Notes—

Definition of Specific Learning Disability

...including conditions such as:

- perceptual disabilities
- brain injury
- minimal brain dysfunction
- dyslexia *and*
- developmental aphasia →

Slide loads fully. No clicks are needed except to advance to the next slide.

Note the arrow at the bottom of the slide, indicating there's still more to come in this definition.

CLICK to advance to next slide.

Slide 5 adds another piece of IDEA's definition of SLD—mentioning specific disorders that are considered as learning disabilities.

Ask the audience if any participants are familiar with any of the terms shown on the slide. You may want to share some of the information we've provided here about these terms. In the Analysis of Comments and Changes, the Department responded to a few commenters who believed that "developmental aphasia" and "minimal brain dysfunction" were antiquated terms and should be removed from IDEA's definition of SLD. The Department declined to do so, stating:

Although the terms may not be as commonly used as "specific learning

disability," the terms continue to be used and we see no harm in retaining them in the definition. (71 Fed. Reg. at 46551)

More about the Terms

Perceptual disabilities. This term, when applied to LD, speaks to the difficulties that a learning disability can cause in visual or auditory discrimination. Among

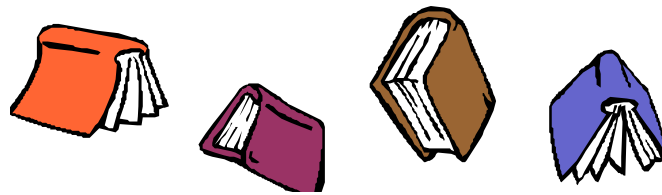
other things, *visual discrimination* difficulties may manifest themselves as difficulties in:

- organizing the position and shape of what is seen
- focusing on the significant figure instead of all the other visual inputs in the background

IDEA's Definition Continues...

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, **including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.** [§300.8(c)(10)(i)]

- judging distance, or
- doing things when the eyes have to tell the hands or legs what to do. (Silver, 2001)



retardation, emotional disturbance, or to environmental disadvantage. (Special Education for Handicapped Children, 1968)

Problems with *auditory discrimination* may manifest themselves as difficulties in, among other things:

- distinguishing subtle differences in sounds, or one specific sound (e.g., their mother's voice) from a field of noises (e.g., the TV);
- understanding what people are saying; or
- processing sound input as fast as normal people can (called an "auditory lag"). (Silver, 2001)

Brain injury. Brain injury, as used in the definition of LD, is not the same as traumatic brain injury (TBI), which is a separate disability category under IDEA and is defined at 34 CFR §300.8(c)(12). That definition makes clear that "traumatic brain injury" means "an acquired injury to the brain caused by an external physical force" and "does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma." Although TBI generally results from an accident to the brain that occurs after birth, "many students who sustain brain injuries have resulting learning disabilities" (Logsdon, n.d.). If the child had a learning disability before the brain injury, the brain injury may make the learning disability worse.

Inclusion of "brain injury" in IDEA's definition of LD harkens back to research conducted in the 1960s and the work of the National Advisory Committee on Handicapped Children, which wrote in its first annual report:

Children with special learning disabilities exhibit a disorder in one or more of the basic, psychological processes involved in understanding or in using spoken or written languages. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc. They do not include learning problems which are due primarily to visual, hearing, or motor handicaps, to mental

Sound familiar? Sure should! This is essentially the definition of LD that was adopted by Congress in Public Law 91-230 (the Education of the Handicapped Act, passed in 1970) and that continues in IDEA today, virtually unchanged.

Minimal brain dysfunction. This term also has its roots in research conducted during the 1960s. For example, in 1966 the National Institutes of Neurological Diseases and Blindness sponsored research focused on persons with minimal brain dysfunction. As put forth in that research, minimal brain dysfunction referred to:

...children of near average, average, or above average general intelligence with certain learning or behavioral disabilities ranging from mild to severe, which are associated with deviations of function of the central nervous system. These deviations may manifest themselves by various combinations of impairment in perception, conceptualization, language, memory and control of attention, impulse, or motor function. (Clements, 1966, 9-10)



The term began to ebb in the professional literature as use of the term “learning disabilities” increased.

Dyslexia. The term will no doubt be familiar to participants. It is used often with children who have difficulty reading and refers to specific, reading-related manifestations of learning disabilities. A great deal of information about dyslexia is available online, so no more will be said about this term in this module.

Developmental aphasia. The National Institute on Deafness and Other Communication Disorders (2002) at the National Institutes of Health describes aphasia as “a language disorder

that results from damage to portions of the brain that are responsible for language.” There are many kinds of aphasia, including the manifestation that many in the audience will already be familiar with—the difficulty in speaking that stroke patients can have. That type of aphasia is not developmental, it’s acquired, so it serves as an example only for illustrating what aphasia generally is—“an impairment of language, affecting the production or comprehension of speech and the ability to read or write” (National Aphasia Association,

1999). The American Speech-Language-Hearing Association refers to the impairment as SLI, specific language impairment and indicates that children with this disorder:

...have been known to clinicians and researchers for more than 150 years. Terminology has changed over the years, possibly giving the impression that this is a “new” disorder. Previous terms included developmental aphasia and later developmental dysphasia, terms that were dropped because they implied neurological damage that could not be documented. (Ervin, 2001)

Note to Trainers

All references for this module are provided on page 10-6 of the module.

Starting View**Definition of Specific Learning Disability**

Does not include learning problems that are primarily the result of:

Slide loads with this view.

Click I**Definition of Specific Learning Disability**

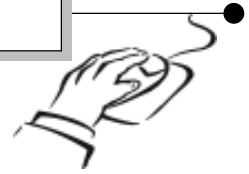
Does not include learning problems that are primarily the result of:

- visual, hearing, or motor disabilities
- mental retardation
- emotional disturbance *or*
- of environmental, cultural, or economic disadvantage

Click 1:
All bullets appear, as well as the "OR."

Note the *lack* of a continuing arrow. Definition's done!

CLICK AGAIN to advance to next slide.



Slide 6 puts the finishing touches on a close look at IDEA's definition of specific learning disabilities. Here, learning problems primarily resulting from specific disorders are excluded from being classified as an SLD—as shown in the excerpt in the box at the right.

This part of IDEA's SLD definition may be accompanied by a short question-and-answer, show-of-hands, or elaborating discussion with the audience. Explore the elements mentioned in the definition and clarify as necessary, or ask the audience to join you in better understanding these disqualifying disorders. For example:

- Reading problems can be the result of a visual disability—for example, poor eyesight. That's why checking a child's vision is an important part of evaluation, to eliminate visual impairment as the root of difficulties the child is experiencing.
- Similarly, difficulty in understanding what is being said or in responding may have its roots in a hearing impairment. Evaluation should involve checking the child's hearing to make sure that a hearing loss is not involved.
- Writing difficulties that result from a "motor disability"—meaning a disability that impairs fine or gross motor skills—could not be considered an SLD.
- Mental retardation is a separate disability category under IDEA and is defined at 34 CFR

§300.8(c)(6). It varies from SLD in numerous respects, even while both may cause learning difficulties. Mental retardation is defined as "significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance" [§300.8(c)(6)]. Unlike children with mental retardation, children with SLD typically have average or above-average intelligence.

- While it is possible for emotional disturbance (ED) to impact learning in many ways similar to a specific learning disability, it is defined within IDEA as a separate disability category. IDEA's definition of ED is provided in the box on the next page. Children with ED may have a learning disability, of course, but under IDEA, if a child's learning problems are primarily the result of having an emotional disturbance, then the team cannot determine that the child has an SLD.
- Disadvantages—environmental, cultural, or economic—can also manifest themselves in learning problems. IDEA consistently stresses that this is a factor that schools and parents may not consider in

IDEA's Definition: The End

(ii) *Disorders not included.* Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. [§300.8(c)(10)(ii)]

determining whether a child has a disability, along with its oft-associated corollary—inadequate instruction. IDEA's special rule for eligibility determination at §300.306(b)(1) specifically prohibits a public agency from determining that a child is a "child with a disability"—and that includes having an SLD—if the "determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency..."

All of these may result in learning problems, but the team cannot determine that a child has an SLD if the child's learning problems primarily result from those factors.

Considering “Primarily” and “Determinant”

As can be seen in the use of the phrases “primarily result from” and “determinant factor for,” IDEA includes provisions to rule out learning difficulties that are not the result of a disability. This is important to mention to participants, and will come up again in this module on determining SLD.

IDEA’s Definition of “Emotional Disturbance” at §300.8(c)(4)

(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

Determining SLD

IDEA includes additional procedures
for determining SLD.

Where shall we begin?

**Starting View**

← Slide loads with
this view.

Determining SLD

IDEA includes additional procedures
for determining SLD.

\$300.307

**Click I**

← Click 1:
The place to begin—
\$300.307—appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) ➡



The slide loads with only the sentence at the top: “IDEA includes additional procedures for determining SLD.” These additional procedures are labeled as such in Part B regulations—the header above them actually says “Additional Procedures for Identifying Children with Specific Learning Disabilities.” This header is then immediately followed by those additional provisions, which begin at §300.307 and continue through §300.311. What these provisions require will be the focus of the next 5 slides.

What about IDEA’s Other Evaluation Procedures? Do They Apply to SLD Evaluations?

The two modules preceding this one delved extensively into IDEA’s evaluation procedures. A question might naturally arise in participants’ minds as to whether or not those evaluation procedures apply to SLD determinations, given that you stand poised to talk about procedures specific to identifying children

with SLD. It’s best to clarify early that the evaluation procedures described in *Introduction to Evaluation* and *Initial Evaluation and Reevaluation* most certainly *do* apply to evaluations conducted when a child is suspected of having a learning disability. What the upcoming slides are going to focus upon are *additional* procedures for identifying children with SLD. As the Department pointed out:

Although there are additional criteria and procedures for evaluating and identifying children suspected of having SLD, the group must also comply with the procedures and timelines that apply to all evaluations, including evaluations for SLD. Evaluation of children suspected of having SLD must follow the same procedures and timeframes required in §§300.301 through 300.306, in addition to those in §§300.307 through 300.311. (71 Fed. Reg. at 46659)

Picking a Place to Start

So where to begin looking at these additional provisions? As the slide indicates, we’ll begin at the beginning, at §300.307 and go through each of the provisions there.

Slide 8

A Close Look at §300.307 (Slide 1 of 4)

Starting View & Click 1

A Close Look at §300.307

- ❑ State must adopt criteria* for determining whether a child has an SLD as defined in IDEA



- ❑ Public agencies must use State criteria in determining whether a child has an SLD

* Consistent with §300.309 of Part B

Slide loads with
Bullet 1 in view.

Click 1:
Bullet 2 appears,
along with the
asterisked text at
the bottom of the
slide.

CLICK AGAIN to advance to next slide.

Slide 8: Background and Discussion

1 Click



The box on the next page provides the complete verbatim text of IDEA at §300.307. Refer participants to **Handout C-7**, where the provisions also appear. The very first paragraph at §300.307—(a) *General*—and the very last paragraph—(b) *Consistency with State criteria*—are the focal points of this slide.

The slide tracks the provision at §300.307(a), including referencing that the criteria must be consistent with §300.309 (which will be discussed in an upcoming slide) and IDEA's definition of SLD [the meaning of the phrase "as defined in §300.8(c)(10)"]. For now, the point to make is

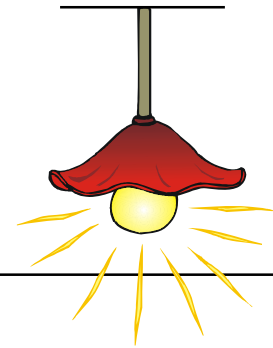
that States must adopt criteria for determining whether a child has a specific learning disability. As bullet 2 indicates (a **CLICK** will make the bullet appear), public agencies must use those State criteria when determining if a child has an SLD.

Because schools and districts must use the criteria that their State establishes for determining whether a child has an SLD, they may not separately determine those criteria or use different criteria than the State has adopted. The Department received some public comments expressing concern about allowing States to decide on the

approach for determining whether a child has an SLD and others requesting the Department to develop a national approach. Other commenters supported the development of State criteria. In response, the Department explained why this new provision was added:

The Department believes that eligibility criteria must be consistent across a State to avoid confusion among parents and school district

personnel. The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State. We believe this provides the Department with the authority to require a public agency to use State criteria in determining whether a child has an SLD, consistent with §§300.307 through 300.311. (71 Fed. Reg. at 46649)



§300.307 Specific learning disabilities.

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

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

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

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

A Close Look at §300.307

New

State criteria may **not** require use of severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD.



Slide loads with this view.
No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

We continue walking—slowly!—through §300.307, this time looking at its provision at (a)(1). Again, this is bolded in the box below; hopefully participants still have **Handout C-7** in front of them and can easily see IDEA's verbatim language. The subject at hand is one that many participants may be familiar with—the use of the “severe discrepancy” approach in determining whether a child has an SLD.

Describing Discrepancy Models

In recent years, the severe discrepancy model has been controversial in determining whether a child has a specific learning disability. “Discrepancy” refers to an unexpected difference between a child's ability and his or her achievement in school. “Severe discrepancy”

§300.307 Specific learning disabilities.

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

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

typically means a large or significant difference in ability and achievement (Kavale, 2001). Children who are of average or above average intelligence are expected to perform at that level of ability. When they don't, parents and school staff often become concerned, and the child may be referred for a full and individual evaluation under IDEA to see what is causing the discrepancy.

Concerns with Discrepancy Models

How much discrepancy is enough to be considered "severe" and, thus, evidence of a learning disability? This is an answer that States have individually defined. And it is also one of the reasons why using the discrepancy model to diagnose LD has been criticized. Since States have varied in their definition of "severe discrepancy," this could mean that a child may have been eligible in State A for special education and related services as a child with SLD, while in State B, that child would not have been eligible, because State B established a higher cut-off point for "severe discrepancy."

Another element of severe discrepancy models that has distressed educators, parents, and disability organizations alike has been the time it can take to establish a discrepancy. Children may struggle and even fail for several years before the discrepancy between ability and achievement is large enough to be judged significant or severe enough. And waiting years to make the determination that a child has an SLD "delays treatment to later grades when the

child is farther behind peers and effective interventions are more difficult to implement" (Reschly, Hosp, & Schmied, 2003, p. 6).

In its discussion responding to public comments, the Department referenced some of the research questioning the continued use of severe discrepancy models as a method for diagnosing SLD:

There is a substantial research base summarized in several recent consensus reports (Donovan & Cross, 2002; Bradley et al., 2003) and meta-analyses (Hoskyn & Swanson, 2000; Steubing et al., 2002) that does not support the hypothesis



that a discrepancy model by itself can differentiate children with disabilities and children with general low achievement. (71 Fed. Reg. at 46650)

Convening a Summit on SLD

In August 2001, OSEP brought together the research community in an SLD summit to synthesize the state of knowledge on defining and diagnosing SLD. This summit was followed by a smaller group of scholars—primarily the experts who had authored major papers for the summit—who formulated a set of recommendations. While all have merit, the recommendation most clearly relevant to the discussion at hand pertains to *ability-achievement discrepancy*. It is also the only recommendation made by the group in which both a majority and a minority viewpoint had to be stated (the group came to consensus on all other recommendations). We

LD Summit Follow-Up Consensus Conclusions #5: Achievement Discrepancy

Majority: IQ/achievement discrepancy is neither necessary nor sufficient for identifying individuals with SLD. IQ tests do not need to be given in most evaluations of children with SLD.

There should be some evidence that an individual with SLD is performing outside the ranges associated with mental retardation, either by performance on achievement tests or by performance on a screening measure of intellectual aptitude or adaptive behavior.

Minority: Aptitude/achievement discrepancy is an appropriate marker of SLD, but is not sufficient to document the presence or absence of underachievement, which is a critical aspect of the concept of SLD.

(Bradley, Danielson, & Hallahan, 2002, as cited in Reschly, Hosp, & Schmied, 2003, p. 9)

cite this two-part recommendation in the box below. It has direct bearing on the issue of discrepancy models and the emergence of a new approach to determining whether a child has an SLD.

From There to Here: IDEA and the Discrepancy Approach

As the slide summarizes, IDEA now states that the criteria a State adopts:

Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. [§300.307(a)(1)]

The Department provided the following explanation regarding this important change in the Analysis of Comments and Changes published with the final Part B regulations implementing IDEA 2004.

With respect to permitting LEAs to use discrepancy models, ... States are responsible for developing criteria to determine whether a child is a child with a disability, as defined in §300.8 and section 602(3) of the Act, including whether a particular child meets the criteria for having an SLD. Under section 614(b)(6) of the Act, States are free to

prohibit the use of a discrepancy model. States, including States that did not use a discrepancy model prior to the Act, are not required to develop criteria that permit the use of a discrepancy model. (71 Fed. Reg. at 46646)

However, in response to public comments requesting that the Department issue guidance urging States at least to eliminate provisions under State laws to permit the use of discrepancy models, the Department responded as follows:

We do not believe it is appropriate to add language in the regulations discouraging the use of discrepancy models to identify children with SLD. We removed current §300.541(a)(2), which required States to use a discrepancy model to determine whether a child has an SLD, because section 614(b)(6) of the Act now specifies that an LEA shall not be required to consider a severe discrepancy in determining whether a child has an SLD. (71 Fed. Reg. at 46647)



Discussing the Slide

The design of this slide allows you to be brief or more detailed in how you discuss discrepancy models. Perhaps your audience has some experience with LD diagnosis and is quite familiar with severe discrepancy models. They may have strong opinions one way or another about their use, which gives you the opportunity to heighten attention and participant involvement. Explore these possibilities as you deem appropriate, or move on.

New**A Close Look at §300.307**

State criteria must permit use of a process based on the child's response to scientific, research-based intervention.



Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Now we're going to dive into the provision at §300.307(a)(2), another requirement with respect to the criteria that States must adopt for determining whether a child has a specific learning disability as defined by IDEA. Again, this is bolded in the box on the next page; participants can refer to **Handout C-7**. The criteria at hand should be of high interest to participants; it's new in the Part B regulations, it's a hot topic, and it relates to the equally hot topic of response to intervention, or RTI.

What is RTI?

RTI is discussed in detail in a separate module *Early Intervening Services and Response to Intervention* (which is provided as part of the umbrella category of **IDEA and General Education**). That module necessarily overlaps with this one and can be used to

enrich the audience's understanding of the role that response to research-based interventions can play in identifying LD in States that permit their LEAs to use this process. You can use information and description of RTI from that module, as you deem appropriate.

Briefly, here, however, let us say that RTI is an approach new to IDEA 2004 for sorting out whether a struggling student really is a child with a disability or just needs more intensive regular education strategies to succeed in school. When a child is identified as struggling to learn—usually through systemwide screening tests or through a teacher's observation or testing—RTI may be used to see how the child responds to deliberate research-based



*New in
IDEA!*

interventions and other direct supports. If the child fails to learn adequately when provided with this assistance, then interventions will become increasingly more intensive. Student progress is closely monitored, so the school will know if the child is learning or improving. If the child still does not respond adequately to the intervention, then he or she may be referred for evaluation under IDEA to determine eligibility for special education and related services.

IDEA's New Provision and How It Relates to RTI

So how has RTI come to intersect with IDEA? In response to a comment recommending that the Department emphasize in any guidance that the use of a

process based on a child's response to intervention represents a shift in how children are identified for special education services, the Department provided the following response:

Consensus reports and empirical syntheses indicate a need for major changes in the approach to identifying children with SLD. Models that incorporate RTI represent a shift in special education toward goals of better achievement and improved behavioral outcomes for children with SLD because the children who are identified under such models are most likely to require special education and related services. (71 Fed. Reg. at 46647)

It is important to point out to participants that the Federal regulations and the Office of Special Education Programs (OSEP) do not endorse a specific model or methodology regarding scientific, research-based interventions. As discussed more fully in the module *Early Intervening Services and Response to Intervention*, many RTI and RTI-influenced models exist. They are also the focus of extensive investigation, as can readily be seen with one visit to the Web site of the National Research Center on Learning Disabilities (www.nrld.org). The language in both the statute and the final Part B regulations implementing IDEA 2004 do not address any particular implementation of RTI, while at the same time ensuring that LEAs are aware that States must permit their LEAs to use a process based on a child's response to scien-

tific, research-based intervention in SLD determinations.

In response to public comments asking whether there should be only one model, or several models to determine whether a child has an SLD, the Department responded:

There is nothing in the Act that would require a State to use one model of identification to identify a child with an SLD. We do not believe the regulations should include such a requirement, because section 614(b)(6) of the Act indicates that some flexibility in the selection of models of identification by LEAs can be appropriate, if permitted by the State. (71 Fed. Reg. at 46649)

May States Exclude RTI from Their Criteria?

No, States must permit their LEAs to use a process based on a child's response to scientific, research-based intervention in their criteria for determining SLD. The IDEA is very clear about this. Under §300.307(a)(2), the criteria adopted by the State "[m]ust permit the use of a process based on the child's response to scientific, research-based intervention."



§300.307 Specific learning disabilities.

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). **In addition, the criteria adopted by the State—**

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

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

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

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

Additional Information on RTI

Much more could be said about RTI, but this would be repetitive since the information has been presented in the separate module *Early Intervening Services and Response to Intervention*. The discussion points on the next page are not part of that earlier module's background text, so they may also provide

elements appropriate for your audience. The Department's remarks are drawn from the Analysis of Comments and Changes accompanying the final Part B regulations. We present these in chart form—question and Department answer—for ease of reading.

—Space for Notes—

Selected Additional Responses on “Response to Intervention” Approaches

Drawn from the Analysis of Comments and Changes to the Final Part B Regulations

Issues Identified in Public Comments	Excerpts from the Department of Education’s Discussion
<p>Will the use of RTI approaches in determining whether a child has an SLD result in more children being identified with SLD?</p>	<p><i>Discussion:</i> We do not believe that eligibility criteria based on RTI models will result in dramatic increases in referrals and special education placements. Well-implemented RTI models and models that identify problems early and promote intervention have reduced, not increased, the number of children identified as eligible for special education services and have helped raise achievement levels for all children in a school.⁸ We believe that the regulations do provide sufficient checks to ensure that only children who need special education and related services are identified as having SLD. (Analysis of Comments and Changes, 71 Fed. Reg. at 46652)</p> <p>⁸ Burns, M., Appleton, J., Stehouwer, J. (2005). Meta-analytic review of responsiveness-to-intervention research: Examining field-based and research-implemented models. <i>Journal of Psychoeducational Assessment</i>, 23, 381–394.</p>
<p>What about professional development and administrative support for implementing RTI?</p>	<p><i>Discussion:</i> We agree that administrative support, professional development, and coordination with teacher training programs would be helpful in the effective implementation of RTI models... However, professional development requirements are a State responsibility, consistent with §300.156 and section 612(a)(14) of the Act, and it would be inappropriate for the Department to include specific professional development requirements in these regulations. (Analysis of Comments and Changes, 71 Fed. Reg. at 46653)</p>
<p>How will the Department support States in implementing RTI?</p>	<p><i>Discussion:</i> The Department recognizes the need for technical assistance and training to implement RTI models and is directing technical assistance funds under Part D of the Act, administered by the Department’s Office of Special Education Programs (OSEP), toward this effort. OSEP plans to develop and disseminate an RTI resource kit and devote additional resources to technical assistance providers to assist States in implementing RTI models. OSEP will also continue to identify and develop model RTI implementation sites and evaluate SLD identification models in math and reading. In addition, the Comprehensive Center on Instruction, jointly funded by OSEP and the Office of Elementary and Secondary Education (OESE), will provide technical assistance to States on RTI implementation. (Analysis of Comments and Changes, 71 Fed. Reg. at 46654)</p>

A Close Look at §300.307

State criteria may permit use of other alternative research-based procedures.



New

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CLICK AGAIN to advance to next slide.

We've made it to the last of the four slides addressing State criteria for determining whether a child has an SLD as defined by IDEA—that State criteria may permit the use of other alternative research-based procedures. Again, the relevant provision is bolded in the box on the next page; participants can refer to **Handout C-7** at §300.307(a)(3).

What are “Other Alternative Research-Based Procedures?”

Under IDEA 2004, the criteria for determining an SLD that a State adopts also “[m]ay permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability [§300.307(a)(3)]. This is relatively vague, so your audience may be interested in more detail

on what these might be. The Department’s discussion may help you illuminate the matter.

New
§300.307(a)(3) ... recognizes that there are alternative models to identify children with SLD that are based on sound scientific research and gives States flexibility to use these models. For example, a State could choose to identify children based on absolute low achievement and consideration of exclusionary factors as one criterion for eligibility. Other alternatives might combine features of different models for identification. We believe the evaluation procedures in section 614(b)(2) and (b)(3) of the Act give the Department the flexibility



New in
IDEA!

to allow States to use alternative, research-based procedures for determining whether a child has an SLD and is eligible for special education and related services. (71 Fed. Reg. at 46648)

How Are Research-Based Procedures Defined?

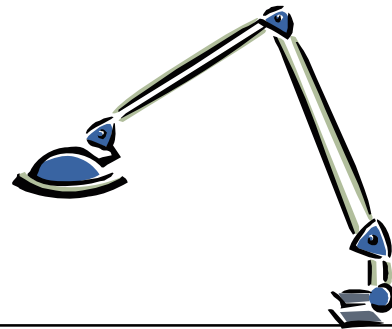
As discussed in the module on *Early Intervening Services and Response to Intervention*, the meaning of the term “scientifically based research” is an important addition to the Part B regulations. The complete definition is provided as a handout in that module—**Handout B-8**—and can be shared with this audience, as you deem appropriate. The definition is the same as that used in the

No Child Left Behind (NCLB) Act, referred to in IDEA and the final Part B regulations as the ESEA.

The Department offered the following discussion of what “research-based procedures” mean and how this interrelates with ESEA’s definition— incorporated into the IDEA—of scientifically based research.

This definition is the most appropriate definition to include in these regulations, given the importance Congress placed on aligning the Act with the ESEA. The Department does not intend to dictate how extensive the research must

be or who, within an LEA or State, should determine that the research is of high quality. We believe that this is a matter best left to State and local officials because determining the presence of an appropriate instructional process is part of the State-adopted criteria. (71 Fed. Reg. at 46648-46649)



§300.307 Specific learning disabilities.

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). **In addition, the criteria adopted by the State—**

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

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

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

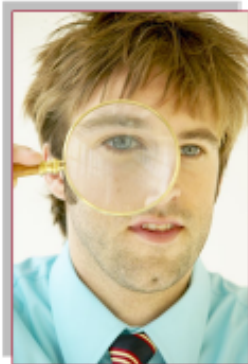
(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

View I

Group Determining SLD

Determination of SLD is made by child's parents and a team of qualified professionals that must include:

- ☐ Child's regular teacher



Slide loads with this view.

Click I

Group Determining SLD


Determination of SLD is made by child's parents and a team of qualified professionals that must include:

- ☐ Child's regular teacher



*If child does not have a regular teacher:
A regular classroom teacher qualified to
teach a child of his or her age*

Click1:
Caveat 1 appears:
If the child has no
regular education
teacher, who plays
that role?

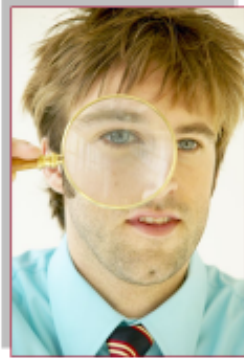
(continued on next page) 

Group Determining SLD

Click 2

Determination of SLD is made by child's parents and a team of qualified professionals that must include:

❑ Child's regular teacher



If child does not have a regular teacher:
A regular classroom teacher qualified to teach a child of his or her age

If child is less than school age:
An individual qualified by SEA to teach a child of his or her age

and →

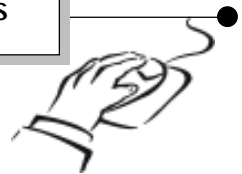
Click 2:

Caveat 2 appears: If the child is less than school age, who plays "teacher" role? An arrow also appears to indicate that there's more to the "group determining SLD."

CLICK AGAIN to advance to next slide.

Slide 12: Background and Discussion

2 Clicks



Slide 12 moves on to the next set of specific provisions in IDEA's "Additional procedures for identifying children with specific learning disabilities" found at §300.308 through §300.311. This slide and the next will take up the provisions at §300.308, which specify "Additional group members."

Discussing the Slide

When the slide loads, two members of the group are immediately identified. Ask participants to tell you who these two are (the child's parents and the child's regular education teacher). If the audience has read too superficially, they may overlook the "parents," who are

identified in the midst of text in the lead-in paragraph, not nearly as readily visible as "regular teacher" listed in a bullet.

Before clicking to load the next part of the slide, draw participants into a brief speculation about the regular teacher's participation. You might ask:

What happens if a child doesn't have a regular teacher?

Can you think of a circumstance when a child might not have a regular teacher?

An example might include a child who moves during the summer, enrolls in a new school, and is evaluated during the summer. Another example might

be a child who is not yet in school—only preschool, perhaps. This latter instance will be covered on the final part of the slide, so it would be helpful to the discussion if a member of the audience mentions this possibility. Since these requirements of IDEA existed in prior law, some members of the audience may be very familiar with them already.

When you've displayed all parts of the slide, and the audience can see how well their speculations match up with

IDEA, refer participants to **Handout C-7**, at §300.308, so they also see the precise language of IDEA's regulations. The same provisions are provided for you in the box below.

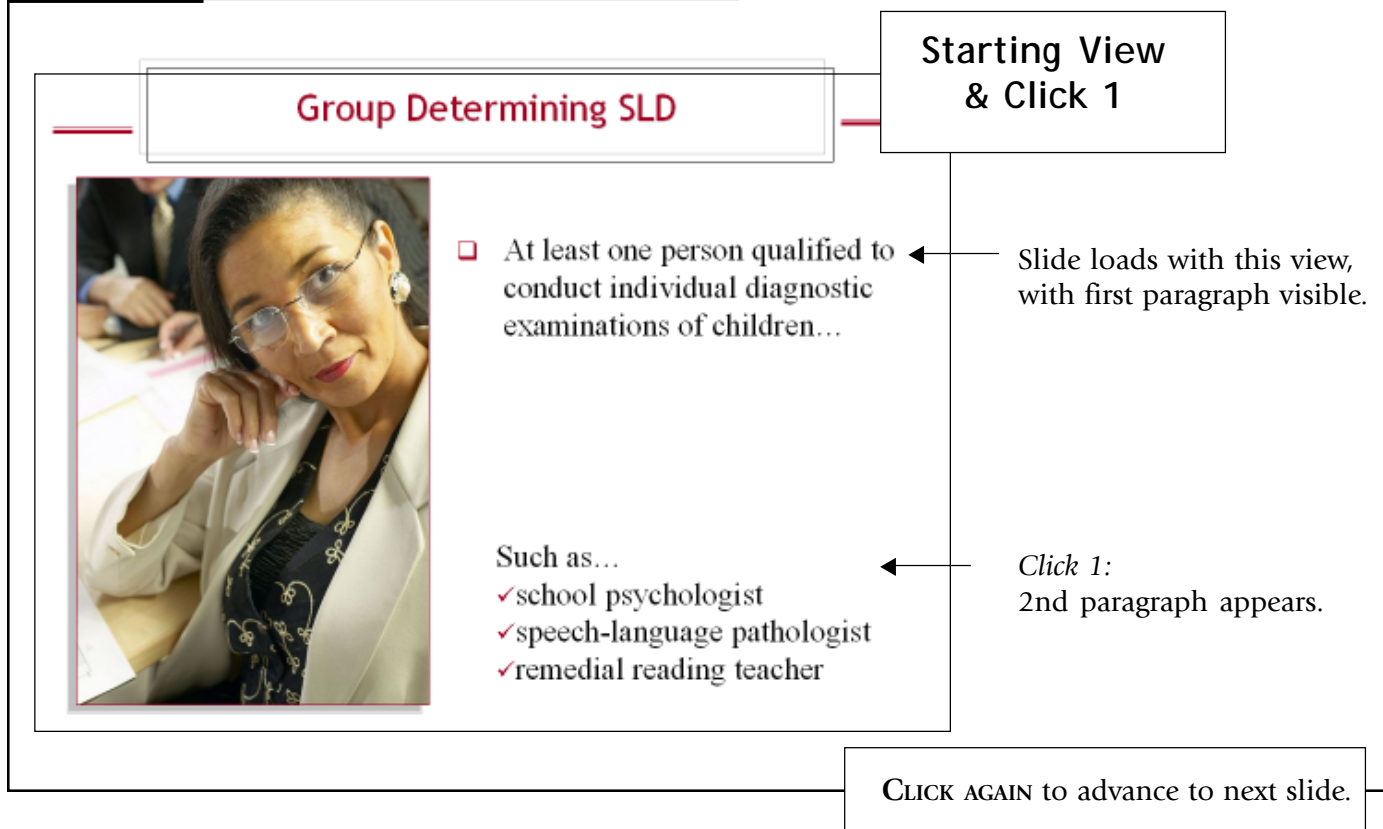
But there's more, isn't there? You can see this by the arrow on the slide and in the provisions as well. Only part of the provisions are covered on the slide, so move on and see who else is also involved.



§300.308 Additional group members.

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

- (a)(1) The child's regular teacher; or
 - (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
 - (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.



Slide 13: Background and Discussion

Slide 13 completes the look at the group that determines whether a child has a specific learning disability. As stated at §300.308(b), the group must also include:

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

This provision is not new to IDEA 2004, so you may have lots of audience experience to tap into for discussion. Some in the audience may even be school psychologists, speech-language pathologists, or remedial reading teachers! Who plays this role on

the group determining SLD is not limited to these three professionals, however, and it is important to make that clear. IDEA provides these examples, but says nothing about these only.

Department's Comments

A number of public comments were received regarding the composition of the group that makes eligibility determinations for children suspected of having an SLD. In response to these comments, the Department provided the following response, (excerpted):

The Department has considered the diversity of comments received and, given the lack of consensus

1 Click



about which individuals should be included in the group that makes eligibility determinations for children suspected of having an SLD, believes that the requirements in current §300.540 should be retained. Current §300.540 states that the eligibility group for children suspected of having SLD must include the child's parents and a team of qualified professionals, which must include the child's regular teacher (or if the child

Continued from previous page

does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age) or for a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist or remedial reading teacher. We believe this allows decisions about the specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors.

For example, for a child suspected of having an SLD in the area of reading, it might be important to include a reading specialist as part of the eligibility group. However, for a child suspected of having an SLD in the area of listening comprehension, it might be appropriate for the group to include a speech/language pathologist with expertise in auditory processing disorders. Current §300.540 provides flexibility for schools and districts, and ensures that the group includes individuals with the knowledge and skills necessary to interpret the evaluation data and make an informed determination as to whether the child is a child with an SLD, and the educational needs of the child. (71 Fed. Reg. at 46650)



View I**Determining SLD**

Factors involved:

- ❑ Child's achievement levels in 1 (or more) of 8 specified areas



Slide loads with this view.

Clicks 1-2**Determining SLD**

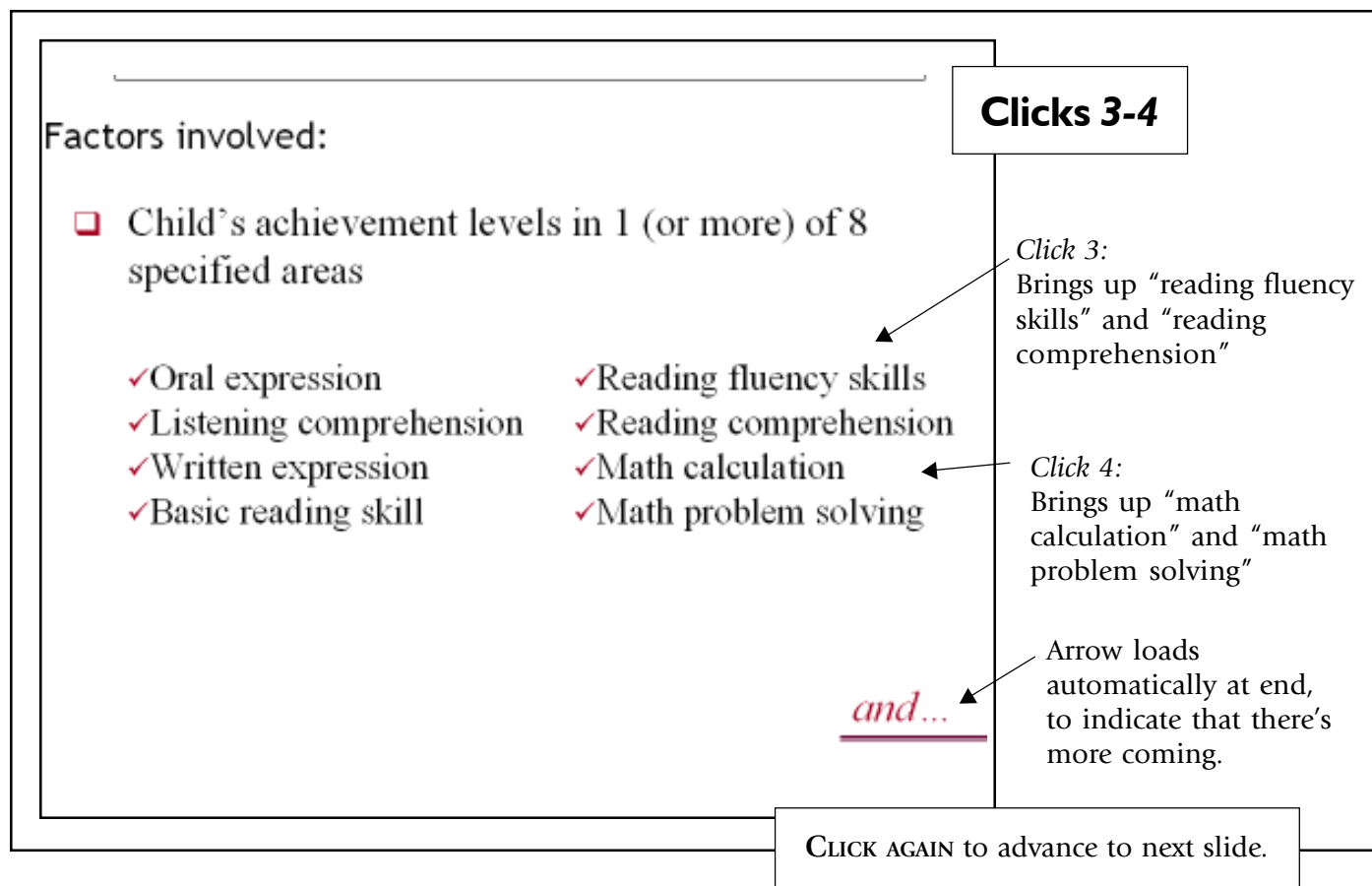
Factors involved:

- ❑ Child's achievement levels in 1 (or more) of 8 specified areas
 - ✓ Oral expression
 - ✓ Listening comprehension
 - ✓ Written expression
 - ✓ Basic reading skill

Click 1:
Brings up "oral expression" and "listening comprehension"

Click 2:
Brings up "written expression" and "basic reading skill"

(continued on next page) 



Slide 14: Background and Discussion

4 Clicks

Slide 14 is the first of eight slides that, together, examine IDEA's provisions at §300.309. These are provided to participants via **Handout C-7**, and also are presented in boxes as we move through the provisions.

The provisions corresponding to this slide are in the box on the next page.

Review First: IDEA's Definition of SLD

The slide—and the ones coming up—will list specific factors involved in determining whether a child has an SLD. As can be seen at §300.309(a), "The group...may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—" and then will come the factors.

This lead-in provides a good opportunity to review IDEA's definition of SLD "as defined in §300.8(c)(10)." This training module began with that very definition. See how much the audience can remember of how IDEA defines SLD. Either do this as a large group, or really grab the opportunity and make this into an activity to break up the "lecture" and maximize participation of everyone in the room.

You might have the participants quickly pair up with the person on their left or right and, without sneaking any peeks at their handouts, write down what they can recall of the definition. Keep this pair work brief, but review it in the large group in greater detail, as appropriate, including having pairs contribute their answers to build the fullest

definition the entire audience can. Then compare what they've generated with the actual definition, as it appears on **Handout C-3**.

Further suggestion: This is also a good opportunity to get participants up and moving around. Enough sitting! Put pairs together or more, give them flip-chart paper, have them tape the paper to the wall, and stand to write their composite, recall SLD definition. Make sure that any markers don't bleed through the paper onto the wall!

When you've finished your review, one **CLICK** of the slide will bring up the first factor for consideration and discussion.

Factor I: Child's Achievement Levels

The complete language of IDEA regarding this first factor has been distilled on the slide as:

Child's achievement levels in 1 (or more) of 8 specified areas. (*See slide.*)

Before you start clicking to advance through the list of eight areas (e.g., oral expression, listening comprehension, etc.), take a moment to focus the audience's attention on **Handout C-7** again—specifically the verbatim language at §300.309(a)(1). There are several elements to be addressed in this lengthy paragraph, as follows.

Achievement levels. The slide uses the phrase "child's achievement levels," but that's not really the phrase that IDEA's final regulations use. IDEA doesn't even *say* "achievement levels." It uses a lot more words and focuses on areas that we've only summarized on the slide as the "child's achievement levels."

Ask the audience how IDEA 2004 puts the concept we've captured on the slide as "achievement levels." Refer participants to **Handout C-7**, and have them read §300.309(a)(1). Have them break the paragraph down to its constituent parts, and—for the sake of clarity and completeness—write their answers on a flip chart as individual items. Jointly generate a list of the elements up for consideration in the group making a determina-

Beginning of §300.309 "Determining the Existence of a Specific Learning Disability"

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

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

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving. [§300.309(a)]

tion as to whether or not a child has an SLD. This list should include these elements:

- The child's achievement is not adequate for his or her age. OR—
- The child's achievement is not adequate to meet State-approved grade-level standards in one or more of the eight areas listed in the regulations.
- The child must have been provided with learning experiences and instruction appropriate for the child's age. OR—
- The child must have been provided with learning experiences and instruction appropriate for the grade-level

standards approved by the State.

In these latter two items, we see again IDEA's emphasis upon considering whether or not the child has received appropriate instruction and learning experiences. These elements will be reinforced in short order by upcoming Slide 18, which corresponds to IDEA provisions at §300.309(b).

Now it's time for the eight areas specified in the regulations within which the child may not have shown adequate achievement, given the considerations just discussed. Inadequate achievement is only necessary in one of these eight areas, although more areas may be affected.

Four **CLICKs** will move you through the entire list, two at a time (in other words, oral expression and listening comprehension come up with one **CLICK**, written expression and basic reading skills come up with another **CLICK**, and so on). You can either go through the list quickly, or take time to talk with participants about what each involves. For example, what has been said so far about how SLD can affect a child's oral expression? Listening comprehension? What are reading fluency skills? These areas correspond to well-known manifestations of SLD:

- dyslexia (difficulty with reading),
- dysgraphia (difficulty with writing), and
- dyscalcula (difficulty with math).

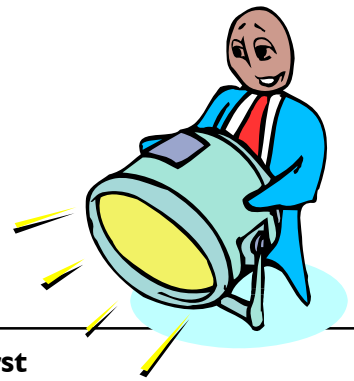
Reinforce that the adequacy of the child's achievement in any of these areas would be compared against what would be expected of a child of his or her age, or against State-approved grade-level standards.

Department's Comments

The audience may find the Department's discussion of these points in the *Analysis of Comments and Changes* helpful and interesting. We've provided it in the box below, along with the title "First Things First"—because the Department begins with "The first element in identifying a child with SLD should be..." Definitely worth reading!

There's More

Finally, point out the arrow, which means there is more to determining SLD than the information on the slide and the discussion that accompanied it.



First Things First

In response to public comments regarding how an SLD determination is made, the U.S. Department of Education's discussion in the Analysis of Comments and Changes is excerpted below:

The first element in identifying a child with SLD should be a child's mastery of grade-level content appropriate for the child's age or in relation to State-approved grade-level standards, not abilities. This emphasis is consistent with the focus in the ESEA on the attainment of State-approved grade-level standards for all children. State-approved standards are not expressed as "norms" but represent benchmarks for all children at each grade level. The performance of classmates and peers is not an appropriate standard if most children in a class or school are not meeting State-approved standards. 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.

We will ...clarify that, as a first element in determining whether a child has an SLD, the group must determine that the child does not demonstrate achievement that is adequate for the child's age or the attainment of State-approved grade-level standards, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards in one or more of the areas listed in §300.309(a)(1). The reference to "State-approved grade-level standards" is intended to emphasize the alignment of the Act and the ESEA, as well as to cover children who have been retained in a grade, since age level expectations may not be appropriate for these children. The reference to "instruction" will be added to emphasize that children may not be identified as having SLD if there is no documentation of appropriate instruction, consistent with the Act and the ESEA. Consistent with this change, we will add a reference to 'State- approved grade-level standards' in §§300.309(a)(2)(i) and (ii). We will also combine proposed §300.311(a)(5) and (6) into §300.311(a)(5) to ensure consistency with the requirements in §300.309(a).

Analysis of Comments and Changes, 71 Fed. Reg. at 46652

View**Determining SLD**

- ❑ Child's progress in 1 (or more) of these 8 areas is not sufficient to meet age or State-approved grade level standards when his or her response to scientific, research-based intervention is part of determination process



Slide loads with this view, Bullet 1 included.

Click 1**Determining SLD**

- ❑ Child's progress in 1 (or more) of these 8 areas is not sufficient to meet age or State-approved grade level standards when his or her response to scientific, research-based intervention is part of determination process
- or* ❑ Child exhibits a pattern of strengths and weaknesses in performance, achievement, or both:

Click 1:
Bullet 2 appears:
Pattern of strengths and weakness, or both.

(continued on next page)

Determining SLD

Click 2

- Child's progress in 1 (or more) of these 8 areas is not sufficient to meet age or State-approved grade level standards when his or her response to scientific, research-based intervention is part of determination process

- or* □ Child exhibits a pattern of strengths and weaknesses in performance, achievement, or both:

Relative to: age
State-approved grade level standards, or
intellectual development

...that group determines is relevant
to identification of SLD

and...

Click 2:
Additional info for
Bullet 2 appears.

Arrow loads auto-
matically at end, to
indicate that there's
more coming.

CLICK AGAIN to advance to next slide.

Slide 15: Background and Discussion

2 Clicks

Slide 15 is the second of eight slides that, together, examine IDEA's provisions at §300.309. These are provided to participants via **Handout C-7**, and also are presented in boxes as we move through the provisions.

IDEA's provisions corresponding to this slide are in the box on the next page.

Factor 2a: Child's Progress Under an RTI Approach



The second factor to be considered in making a determination of SLD is a two-parter—the child's performance must meet one or the other of the two elements listed on the slide and at §300.309(a)(2). The first of

these two elements examines the child's progress when a process has been used that involves the child's response to scientific, research-based intervention—hereinafter referred to as an RTI approach. Again, we point out that IDEA 2004 does not actually use the term RTI, nor does the Department endorse any particular model of RTI. In response to public comments on this issue, the Department responded:

There are many RTI models and the regulations are written to accommodate the many different models that are currently in use. The Department does not mandate or endorse any particular model. Rather, the regulations provide States with the flexibility to

adopt criteria that best meet local needs. Language that is more specific or prescriptive would not be appropriate. For example, while we recognize that rate of learning is often a key variable in assessing a child's response to intervention, it would not be appropriate for the regulations to set a standard for responsiveness or improvement in the rate of learning.[W]e do not believe these regulations will result in significant increases in the number of children identified with

SLD. (71 Fed. Reg. at 46653)

Whatever approach the States use to make an SLD determination under IDEA will be a matter left to State discretion. Regardless, it is important to point out to participants that:

...[a]n RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§300.304 and 300.305. (71 Fed. Reg. at 46648)

That said, the group involved in making the SLD determination for a child must consider how the child has responded to the RTI approach implemented, if one has been used, consistent with other provisions in the IDEA in the parameters it establishes for this consideration. Again, we see the use of:

- insufficient progress
- age standards or
- State-approved grade-level standards
- one or more of the eight areas typically affected by SLD.

Review opportunity! The design of the slide allows you to ask participants to name, without looking at **Handout C-7**, those eight areas. These areas will come up many times in the course of this training session and are quite salient, not just in SLD determination, but in how

the performance of a child with SLD may be adversely affected. It's important for participants to be able to readily identify these areas.

When you've thoroughly discussed this factor, including whatever review of the eight areas or RTI itself you've included, one **CLICK** will bring up the lead-in for next factor.

Factor 2b: Pattern of Strengths and Weaknesses

The first thing that you need to point out, even as you **CLICK** to reveal the next part of the slide, is that this factor is the *second* part of §300.309(a)(2)—the (ii) part. Everyone just looked at part one, (2)(i). And what joins the two parts is—ask the audience—“and” or “or”? Does a child need to manifest both elements listed in §300.309(a)(2), or only one?

IDEA's “and's” and “or's” are always significant, and readers of the law and its regulations need to pay attention to which term is being used and when. In this case, IDEA is using: **OR**. And that means...*what*? Ask the audience. It means that, if the group making the SLD determination for a child finds *either* of the two elements to be true with respect to the child, then the child has “met” the condition at hand. That's why we've labeled these “Factor 2a” and “Factor 2b.”



§300.309 “Determining the Existence of a Specific Learning Disability” continues...

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

(1) The child does not achieve adequately ...

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

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and...



That said, the first **Click** brings up the lead-in part of the bullet: “Child exhibits a pattern of strengths and weaknesses in performance, achievement, or both.” In response to public comments, the Department provided the following clarification:

Patterns of strengths and weaknesses commonly refer to the examination of profiles across different tests used historically in the identification of children with SLD. (71 Fed. Reg. at 46654)

As can be seen in the box on the previous page and on **Handout C-7**, IDEA 2004 adds more detail to define the scope of how the group is to consider this factor. Again, this will involve two elements that should be sounding very familiar to all by now:

- age
- State-approved grade-level standards.

The third one—intellectual development—may not be so familiar, although it has its roots in prior law and practice. In response to a public comment requesting that the Department provide a definition of “intellectual development” in the final

Part B regulations, the Department responded:

We do not believe it is necessary to define intellectual development in these regulations. Intellectual development is included in §300.309(a)(2)(ii) as one of three standards of comparison, along with age and State-approved grade-level standards. The reference to “intellectual development” in this provision means that the child exhibits a pattern of strengths and weaknesses in performance relative to a standard of intellectual development such as commonly measured by IQ tests. Use of the term is consistent with the discretion provided in the Act in allowing the continued use of discrepancy models. (71 Fed. Reg. at 46651)

Before **Clicking** to bring up those elements, you might ask participants if they can guess what IDEA might include here, given the consistencies in its provisions noted already.



You might also ask them what this factor sounds like, what it reminds them of. While new to the final Part B regulations implementing IDEA 2004, it bears the distinct ring of the pattern of strengths and weaknesses that underpins discrepancy models. The fact is that children with SLD do often manifest a pattern of strengths and weaknesses. RTI approaches are believed to reveal that pattern, but much more quickly and proactively than waiting for a discrepancy between ability and

achievement to become pronounced enough to be measurable using standardized assessments and warrant intervention. Moreover, this provision does not actually use the phrase “ability versus achievement,” only alludes to that artifact of SLD in its use of words such as strengths, weaknesses, performance, achievement, intellectual development. This revision in IDEA’s regulations is significant and, for audiences who are well versed in SLD determinations under prior law, demands a close scrutiny in training.

The group involved in making an SLD determination for a child has latitude in examining the child’s pattern of strengths and weaknesses in the areas indicated in this regulatory provision. This can be seen in the phrase “that is determined by the group to be relevant to the identification of a specific learning disability.” Again, we see the flexibility in IDEA’s requirements in order to accommodate how States approach SLD determinations and how local teams implement the State approach. Also worth pointing out to the audience is the last part of this provision, which references IDEA’s provisions requiring appropriate assessments at §§300.304 and 300.305. These provisions can be seen on **Handout C-2**. You



might wish to take a moment to discuss what those provisions require. They've been addressed in both of the other modules in the **Evaluating Children for Disability** series—§300.304 was the primary focus of *Introduction to Evaluation*, while §300.305 was covered in *Initial Evaluation and Reevaluation*.

As summarized in the Analysis of Comments and Changes:

[T]he evaluation of a child suspected of having a disability, including an SLD, must include a variety

of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services. This requirement applies to all children suspected of having a disability, including those suspected of having an SLD. (71 Fed. Reg. at 46646)

Either/Or—or And?

Before moving on to the next slide, again bring up the consid-

eration of "either/or" versus "and" conditions. The factors just addressed were an "or" situation. Either of the factors could be true, and the group would consider the provision of IDEA "met."

A new factor is going to be examined on the next slide. How does the upcoming factor blend into the total number of factors to be considered—as an "or" or as an "and" condition to be met? The "and" at the bottom of the screen provides the answer. What's coming up next is a condition that must be met in any determination of SLD.

—Space for Notes—

View I

Determining SLD

Slide loads with this view, Bullet 1 included.

- ☐ Group determines that these findings are not primarily the result of:



Clicks 1-4

Determining SLD

Click 1:
Brings up "visual, hearing, or motor disability"

Click 2:
Brings up 2 items: mental retardation and emotional disturbance

Click 3:
Brings up next 2 items: cultural factors and environmental or economic disadvantage

Click 4:
Brings up final item: limited English proficiency

- ☐ Group determines that these findings are not primarily the result of:

- ✓ Visual, hearing, or motor disability
- ✓ Mental retardation
- ✓ Emotional disturbance
- ✓ Cultural factors
- ✓ Environmental or economic disadvantage
- ✓ Limited English proficiency



CLICK AGAIN to advance to next slide.



Slide 16 is the third of eight that, together, examine IDEA's provisions at §300.309. These are provided to participants via **Handout C-7**, and also are presented in boxes as we move through the provisions.

IDEA's provisions corresponding to this slide are in the box below.

Factor 3: Eliminating Other Causes for Findings

The third factor to be considered in making a determination of SLD is whether or not the findings in the preceding factors are primarily the result of other issues, specifically:

- Visual, hearing, or motor disability;
- Mental retardation;
- Emotional disturbance;

- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

These issues clearly align with the issues enumerated in IDEA's definition of SLD at §300.8(c)(10)(ii):

(ii) *Disorders not included.* Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

They also align with IDEA's provision that a child will not be determined to be a "child with a disability" when the determinant factor for the child's academic or

behavioral difficulties is lack of appropriate instruction in reading, lack of appropriate instruction in math, or limited English proficiency [§300.306(b)]. The Department's discussion in the Analysis of Comments and Changes repeatedly emphasizes the importance of ruling out other causes for academic or behavioral difficulties. We'll share relevant responses to public comments raising this issue as we go through the slides.

§300.309 "Determining the Existence of a Specific Learning Disability" continues...

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

(1) The child does not achieve adequately ...

(2) (i) The child does not make sufficient progress... or

(ii) The child exhibits a pattern of strengths and weaknesses... and

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

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

What's New in This Provision



The provision under the microscope on this slide has been modified in several ways from how it was stated in prior law, as follows:

- "Severe discrepancy" was removed;
- "Cultural factors" was added; and
- "Limited English proficiency" was added.

Severe discrepancy. IDEA '97's lead-in phrase to the list of factors reads: "The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—" [The regulations implementing prior versions of IDEA, at §300.541(b)]. This provision also has been revised to correspond

to other changes in the regulations associated with removing the required use of severe discrepancy models as a means of identifying SLD.

Cultural factors. How might the group responsible for determining whether a child has an SLD go about judging the impact of cultural factors? The Department provided the following responses to public comments about this addition to the Part B regulations:

The identification of the effect of cultural factors on a child's performance is a judgment made by the eligibility group based on multiple sources of information, including the home environment, language proficiency, and other contextual factors gathered in the evaluation. (71 Fed. Reg. at 46655)

Limited English proficiency. The addition of this factor to IDEA's list is consistent with other provisions within Part B that consider the impact of limited English proficiency on academic achievement or learning. As the Department explained in response to a public comment:

Section 300.306(b)(1)(iii) ... is clear that a child must not be identified as a child with a disability if the determinant factor for that determination is limited English proficiency...[I]t is important to re-emphasize this requirement in §300.309 and... add this to the list of factors that the eligibility group must rule out as a primary factor affecting a child's performance. (*Id.*)

View I

“Either / Or / And”– Putting It Together

Three ✓s Needed to Determine SLD

§300.309(a)(1)		
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Slide loads with this view, the 1st prong of the 3-prong “test” for determining SLD.

“Either / Or / And”– Putting It Together

Three ✓s Needed to Determine SLD

§300.309(a)(1)	<u>§300.309(a)(2)</u> (i) or (ii)	
----------------	--------------------------------------	--

✓ and

Click I

Click 1:
2nd prong of
the 3-prong
“test” appears.

(continued on next page) 

“Either / Or / And”— Putting It Together

Click 2

Three ✓s Needed to Determine SLD

§300.309(a)(1)	§300.309(a)(2) (i) or (ii)	§300.309(a)(3)
✓	and	✓
		and
		✓

Click 2:
3rd prong of SLD
determination appears.

CLICK AGAIN to advance to next slide.

Slide 17: Background and Discussion

2 Clicks

Slide 17 is the fourth of eight slides that, together, examine IDEA’s provisions at §300.309. It is intended to summarize the complicated “either/or” and “and” aspects of IDEA’s criteria for determining an SLD.

The first three slides in this series closely examined the requirements at §300.309(a)—one at a time, however. Now it’s time to combine the requirements so that everyone is clear about how they are applied as a group during SLD determinations.

To review: Section 300.309(a) of IDEA begins:

The group described in §300.306 may determine that a child has a specific

learning disability, as defined in §300.8(c)(10), if—

Then come the three items examined in the last three slides and shown in the chart on the next page. Those items—not surprisingly numbered as (1), (2), and (3)—are also captured on the slide in the three cells of the box. These cells will display one at a time (upon your Click), giving you the opportunity to review with the audience the details of each provision noted there (see the chart for the verbatim language of IDEA’s regulations). Combine this review with a discussion of how “and” and “either/or” are used to create a three-prong “test” for determinations of SLD. The bottom of the slide shows this, as does the chart on the next page.

Thus, to make a determination of SLD, the group must find that:

- the statement in the first column [(a)(1)] is true about the child, AND
- the statement in the last column [(a)(3)] is true about the child, AND
- one of the two statements in the middle column [(i) or (ii)] is also true about the child.

The slide shows this as three check marks, corresponding to the three columns.



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

Yes	Yes to One of These		Yes	
(a)(1)	(a)(2)(i)	OR	(a)(2)(ii)	(a)(3)
<p>(1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:</p> <p>(i) Oral expression.</p> <p>(ii) Listening comprehension.</p> <p>(iii) Written expression.</p> <p>(iv) Basic reading skill.</p> <p>(v) Reading fluency skills.</p> <p>(vi) Reading comprehension.</p> <p>(vii) Mathematics calculation.</p> <p>(viii) Mathematics problem solving.</p>	<p>(2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention...</p>		<p>(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305...</p>	<p>(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—</p> <p>(i) A visual, hearing, or motor disability;</p> <p>(ii) Mental retardation;</p> <p>(iii) Emotional disturbance;</p> <p>(iv) Cultural factors;</p> <p>(v) Environmental or economic disadvantage;</p> <p>or</p> <p>(vi) Limited English proficiency.</p>

View I**Determining SLD**

Slide loads with this view.

Purpose:

To ensure child's underachievement is not due to lack of appropriate instruction in reading or math

Group must consider data in 2 areas:

**Click I****Determining SLD****Purpose:**

To ensure child's underachievement is not due to lack of appropriate instruction in reading or math

Group must consider data in 2 areas:

1.

Data showing that **child was provided appropriate instruction** in regular education settings, delivered by qualified personnel, before (or as part of) referral process

and...

Click 1:
Area 1 to be considered loads. Arrow appears at right, indicating there's more to come.

CLICK AGAIN to advance to next slide.



Slide 18 is the fifth of eight slides that, together, examine IDEA's provisions at §300.309. These are provided to participants via **Handout C-7**, and also are presented in boxes as we move through the provisions.

IDEA's provisions corresponding to this slide are in the box below.

Checkback Loop

Having examined §300.309(a) and the factors to be considered by the group determining whether a child has an SLD, it's time to move on to §300.309(b), which is essentially a checkback loop to ensure that the child's underachievement has not been due to a lack of appropriate instruction in reading or math. If the child has not received appropriate instruction in reading and math, then the group may not determine that the child has an SLD. The Department received many public comments on this aspect of SLD determination, and responds as follows:

Eligibility is contingent on the ability of the LEA to provide appropriate instruction. Determining the basis of low achievement when a child has been given appropriate instruction is the responsibility of the eligibility group. (71 Fed. Reg. at 46656)

The analysis of the eligibility group is data-driven. It will not be sufficient for the group to just say yes or no to the ques-

tion. They must consider data in two areas, as IDEA requires at §300.309(b)(1) and (b)(2), as described on the next two slides.

Considering Data: Has Child Been Provided Appropriate Instruction?

The appropriate-ness of a child's instruction in regular education settings—delivered by qualified personnel—is unmistakably a critical factor to consider in making determinations of disability. IDEA's provisions repeatedly address the possibility that the child has not received appropriate instruction and that this lack may be the primary cause of the child's difficulties. As the



Department explained in the Analysis of Comments and Changes:

Sections 300.306(b)(1)(i) and (ii)...specifically state that children should not be identified for special education if the achievement problem is due to lack of appropriate instruction in reading or mathematics. This issue is especially relevant to SLD because lack of appropriate instruction in these areas most commonly leads to identifying a child as having an SLD. All children should be provided with

§300.309 “Determining the Existence of a Specific Learning Disability” continues...

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

- (1) The child does not achieve adequately ...
- (2) (i) The child does not make sufficient progress... or (ii) ...exhibits a pattern of strengths and weaknesses... and
- (3) The group determines that its findings..are not primarily the result of...

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and...

appropriate instruction provided by qualified personnel. This is an important tenet of the Act and the ESEA. Both the Act and the ESEA focus on doing what works as evidenced by scientific research and providing children with appropriate instruction delivered by qualified teachers. (71 Fed. Reg. at 46655)

What is Appropriate Instruction?

Extensive public comments were received that probed the nature of “appropriate instruction”—what it is, whether a child’s eligibility under the category of SLD should be contingent upon having received appropriate instruction, and who determines what instruction is “appropriate.” Not surprisingly, many commenters requested that the regulations

define the term more fully. The Department responded:

Whether a child has received “appropriate instruction” is appropriately left to State and local officials to determine. Schools should have current, data-based evidence to indicate whether a child responds to appropriate instruction before determining that a child is a child with a disability. Children should not be identified as having a disability before concluding that their performance deficits are not the result of a lack of appropriate instruction. (71 Fed. Reg. at 46656)

What data might the group use to support a decision about the appropriateness of the instruction a child has received? IDEA does not specify. However, RTI may well be a piece of the

puzzle. Data would very likely be available from any RTI approach used with the child before he or she was referred for evaluation, especially considering RTI’s reliance on student progress monitoring (Cortiella, 2006). Similarly, the public agency may have decided to use an RTI approach as part of the referral process to determine the child’s response to appropriate instruction (in reading or math) delivered by qualified personnel. The necessity of the group to consider data demonstrating the child has, indeed, been provided such instruction makes it clearly critical for the public agency to thoroughly document any RTI approaches it implements with children.



View I

Determining SLD



2. Data-based documentation that child's achievement was repeatedly assessed at reasonable intervals

Slide loads with this view.

Click I

Determining SLD



2. Data-based documentation that child's achievement was repeatedly assessed at reasonable intervals

This documentation:

- ✓ Reflects formal assessment of student progress during instruction
- ✓ Was provided to the child's parents

Click 1:
Bottom text
appears.

(discussion on next page)



Slide 19 is the sixth of eight slides that, together, examine IDEA's provisions at §300.309. IDEA's provisions corresponding to this slide are in the box below and on Handout C-7.

Considering Data: Has Child's Achievement Been Repeatedly Assessed?

Here is the second question that the group must consider to ensure that a child's underachievement is not due to lack of appropriate instruction in reading or math. Again, the consideration must be data-driven. This time, the data derives from repeated assessments of the child's achievement. The documentation must reflect that the child's progress during instruction has been formally assessed. Further, the assessments must be conducted at reasonable intervals. But what is "data-based documentation?" In response to public comment asking that very question and requesting the regulations define the term, the Department responded:

Data-based documentation refers to an objective and systematic process of documenting a child's progress. This type of assessment is a feature of strong instruction in reading and math... [C]hildren cannot be identified for special education if an achievement problem is due to lack of appropriate instruction in reading or math. (71 Fed. Reg. at 46657)

Relationship Between Assessment and Instruction

IDEA's emphasis upon repeated assessments of achievement is tied directly to their value in guiding instructional decision making. In response to public commenters concerned that documenting repeated assessments would be a costly bureaucratic paperwork burden, the Department wrote, "A critical hallmark of appropriate instruction is that data documenting a child's progress are systematically collected and analyzed... Assessments of a child's progress are not bureaucratic, but an essential component of good instruction" (*Id.*). Further:

This allows teachers to make informed decisions about the need to change their instruction to meet the needs of the child, and also provides parents with information about their child's progress so that they can support instruction and learning at

home. Parents should be informed if there are concerns about their child's progress and should be aware of the strategies being used to improve and monitor their child's progress. (71 Fed. Reg. at 46658)

As reflected in the final Part B regulations and the Department's comments above, the parents must be aware of, and have received documentation regarding, the results of repeated assessments of their child and their child's progress (or lack thereof).

Which raises the question you may have already heard from your audience—at what point in this process must parents be informed and/or provide their consent? That is the subject of the next slide.

§300.309 "Determining the Existence of a Specific Learning Disability" continues...

(a) The group ...may determine that a child has a specific learning disability...if...

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

View I**Determining SLD**

Public agency must promptly request parent consent for evaluation:

- ☐ Whenever child is referred for evaluation

Slide loads with this view.

Determining SLD

Public agency must promptly request parent consent for evaluation:

- ☐ Whenever child is referred for evaluation
- ☐ If, before referral for evaluation, child has not made adequate progress...
 - ✓ after appropriate period of time
 - ✓ when provided appropriate instruction by qualified personnel

Click I

Click 1:
Bottom part of slide loads.

CLICK AGAIN to advance to next slide.

(Discussion on next page)



Slide 20 is the seventh of eight slides that, together, examine IDEA's provisions at §300.309.



IDEA's provisions corresponding to this slide are in the box below and on **Handout C-7**.

Parent Consent

Has the audience been asking when parents need to be informed in this process? When to inform parents, or ask for their consent, would be an area of concern to administrators and parents alike. This slide answers that question.

As can be seen on the slide, and has been stated in this training module, IDEA's additional procedures for identifying children with SLD must adhere to the basic process IDEA prescribes for full and individual evaluation of children suspected of having a disability. That includes the first element on the slide: that parent consent must be requested whenever a child is referred for evaluation. This requirement is found at §300.309(c)(2). It should come as no surprise to your audience.

The second part of the slide, which appears with a **CLICK**, is the aspect the audience may have been wondering about: When must the parents be informed and their consent requested in this process of determining whether a child has SLD—especially when, as part of making that determination, the public agency may use a process based on the child's response to a research-based intervention?

Taking a Look at Several Concerns

One of the concerns that has been expressed in the field about the use of RTI approaches is that they potentially open a door to delays in evaluation—a concern which, by the way, IDEA strongly addresses (discussed in an upcoming slide and in the module on *Early Intervening Services and Response to Intervention*). But beyond that concern come others. How long should an RTI approach last? How much time does it take for a child to show sufficient progress or not? How are a child's rights to a full and individual evaluation affected by the option of using a research-based intervention to see how the child responds? When are parents told about their child's involvement in a response-to-intervention approach—or the public agency's intent to involve the child in such a process?

The provisions at hand—§300.309(c)(1) and (2)—address these concerns, along with the provision at §300.311(a)(7)(ii). So do the Department's responses to the public comments reflected in the Analysis of Comments and Changes.

Answering the Concerns

First, let's discuss concerns associated with what constitutes "an appropriate period of time" [§300.309(c)(1)]. What is an "appropriate period of time?" How this phrase is interpreted will have a direct impact on the length of an RTI approach. The Department provided the following relevant discussion in response to public comments:

§300.309 "Determining the Existence of a Specific Learning Disability" continues...

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

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

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

§300.309(c)



Instructional models vary in terms of the length of time required for the intervention to have the intended effect on a child's progress. It would not be appropriate for the Department to establish timelines or the other requirements proposed by the commenters in Federal regulations, because doing so would make it difficult for LEAs to implement models specific to their local school districts. These decisions are best left to State and local professionals who have knowledge of the instructional methods used in their schools....

We understand the commenters requests for more specific details on timelines and measures of adequate progress. However, as noted above, these decisions are best left to professionals who have knowledge about the instructional models and strategies used in their States and districts.

We also understand the commenters concerns that the requirements ... may result in untimely evaluations or services and that parents must be fully

informed about the school's concerns about their child's progress and interventions provided by the school.

Therefore... §300.309(c) ...ensure[s] that the public agency promptly requests parental consent to evaluate a child suspected of having an SLD who has not made adequate progress when provided with appropriate instruction, which could include instruction in an RTI model, and whenever a child is referred for an evaluation. (71 Fed. Reg. at 46658)

As the bottom half of the slide summarizes, the public agency must promptly request parent consent if, before a referral for evaluation has been made, the child has not made adequate progress after an appropriate period of time when provided the type of instruction described on the last slide, namely:

- appropriate instruction in regular education settings, delivered by qualified personnel [§300.309(b)(1)], and
- instruction that includes repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during that instruction [§300.309(b)(2)].

What §300.311(7)(ii) Contributes to Addressing These Concerns

In responding to public comments on the Notice of Proposed Rulemaking (IDEA's regulations in draft form), the Department has added another provision to the Part B regulations that is relevant to this discussion. In particular, the Department explained:

We will also add a new §300.311(a)(7)(ii) to ensure that the parents of a child suspected of having an SLD who has participated in a process that evaluates the child's response to scientific, research-based intervention, are notified about the State's policies regarding collection of child performance data and the general education services that will be provided; strategies to increase their child's rate of learning; and their right to request an evaluation at any time. (*Id.*)

We may be examining §300.309 in its entirety at this moment, but clearly we also need to have a look at §300.311(a)(7)(ii). The provisions at §300.311 are entitled



Specific documentation for the eligibility determination. Refer participants to page 3 of Handout C-7, where these provisions appear.

The provisions require that “if the child has participated in a process that assesses the child’s response to scientific, research-based intervention,” the documentation of the determination of eligibility must contain a statement of the documentation—and *here comes (7)(ii)*—that the parents were notified about:

(A) The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child’s rate of learning; and

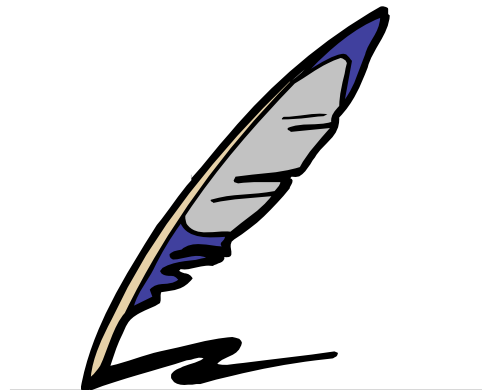
(C) The parents’ right to request an evaluation.
[§300.311(a)(7)(ii)]

So this answers several questions, including what the parents must be told (at a minimum) and when they must be told.

As discussed in the module on *Early Intervening Services and Response to Intervention*, practice in the field indicates that a child’s initial lack of progress in RTI typically results in more intensive interventions for that child—which may include instructional interventions delivered to small groups of children, not the entire class. It is at this point that parents are generally informed, perhaps meeting with school staff to discuss their child’s lack of progress and—as stated above—hear what the school has in mind. This would include:

- What type of student performance data will be collected, and how much;
- What general education services are planned; and
- What strategies the school will use to increase the child’s rate of learning.

Parents would also be informed that they have the right to request that their child be evaluated under IDEA—a full and individual evaluation. If they do request such an evaluation, the public agency must promptly ask for their informed written consent and conduct the evaluation within IDEA’s timeframe requirements. These are the subject of the next slide.



View I

Determining SLD

Public agency must adhere* to timeframes for evaluation:



Slide loads with this view.

Click I

Determining SLD

Public agency must adhere* to timeframes for evaluation:

Click 1:
Option 1 appears, along with the "OR" to indicate that there's another option, if applicable.

- 1. IDEA: 60 days from receiving parent consent for evaluation

or



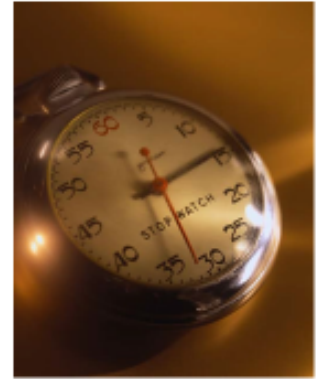
(continued on next page)



Click 2

Public agency must adhere* to timeframes for evaluation:

1. IDEA: 60 days from receiving parent consent for evaluation
- or*
2. Timeframe established by state



Click 2:
Option 2 appears,
along with the
asterisk (*),
qualifying the
above.

*

... unless timeframe is extended by mutual written agreement of the child's parents and group of qualified professionals. Exceptions also exist at §300.301(d) and (e).

CLICK AGAIN to advance to next slide.

Slide 21: Background and Discussion

2 Clicks

Slide 21 is the last of eight slides examining IDEA's provisions at §300.309. IDEA's provisions corresponding to this slide are in the box below and on **Handout C-7**. The focus is on the timelines for evaluating the child.

the exceptions that apply. Briefly, here, let us state the primary timeframe requirements:

The initial evaluation—

- (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or



Timeframes for Evaluation

As extensively discussed in the module *Initial Evaluation and Reevaluation*, IDEA establishes specific timeframes within which evaluations must be conducted, with only minimal possible exceptions to those timeframes. We refer trainers to Slide 8 of that module for a complete discussion of IDEA's new provisions regarding timeframes and

The Last Part of §300.309 “Determining the Existence of a Specific Learning Disability”

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

[§300.309(c)]

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe...[§300.301(c)(1)]

Under prior law, public agencies were required to conduct initial evaluations within a “reasonable period of time” after receiving parental consent [IDEA ’97, at §300.343(b)], so the specification of a 60-day timeframe in IDEA 2004 (or if the State has established a timeframe, within the State-established timeframe) represents a significant change that should be identified as such to your audience, with a reference to §300.301(c)(1)(i)-(ii). It’s important to note, however, that any timeframe established by the State for conducting the evaluation takes precedence over the 60-day timeline required by IDEA, as is clear in use of the word “or” between (i) and (ii).

As this slide indicates, the public agency must adhere to these timelines (described in §§300.301 and 300.303; see **Handout C-1**, where both of these regulations are provided), unless extended by mutual written agreement of the child’s parents and a group of qualified professionals [as described in §300.306(a)(1)].

Thus, from the time of receiving parental consent for evaluation, the public agency has 60 calendar days under the timeline specified in IDEA (or the amount of time established by the State’s timeframe) to complete the child’s evaluation. The timeframe can only be extended by mutual written agreement between the parents and the group of qualified professionals involved in deter-

mining the eligibility or continued eligibility of the child for special education and related services [that’s the group referenced in §300.306(a)(1) and charged with determining if

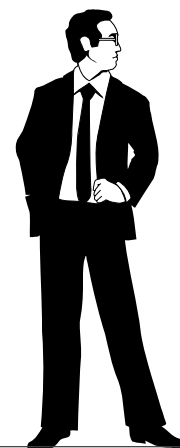
the child is a “child with a disability” and the educational needs of the child].

Putting It All Together

The Department has provided the following useful example of how the pieces might go together in this process for determining SLD that we’ve split across the last seven slides.

Section 300.309(c)...clarifies that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. As required in §300.301(c), the initial evaluation must be conducted within 60 days of receiving consent for an evaluation (or if the State establishes a timeframe within which the evaluation must be completed, within that timeframe). Models based on RTI typically evaluate the child’s response to instruction prior to the onset of the 60-day period, and generally do not require as long a time to complete an evaluation because of the amount of data already collected on the child’s achievement, including observation data. RTI models provide the data the group must consider on the child’s progress when provided with appropriate instruction by qualified professionals as part of the evaluation.

(continued on next page)

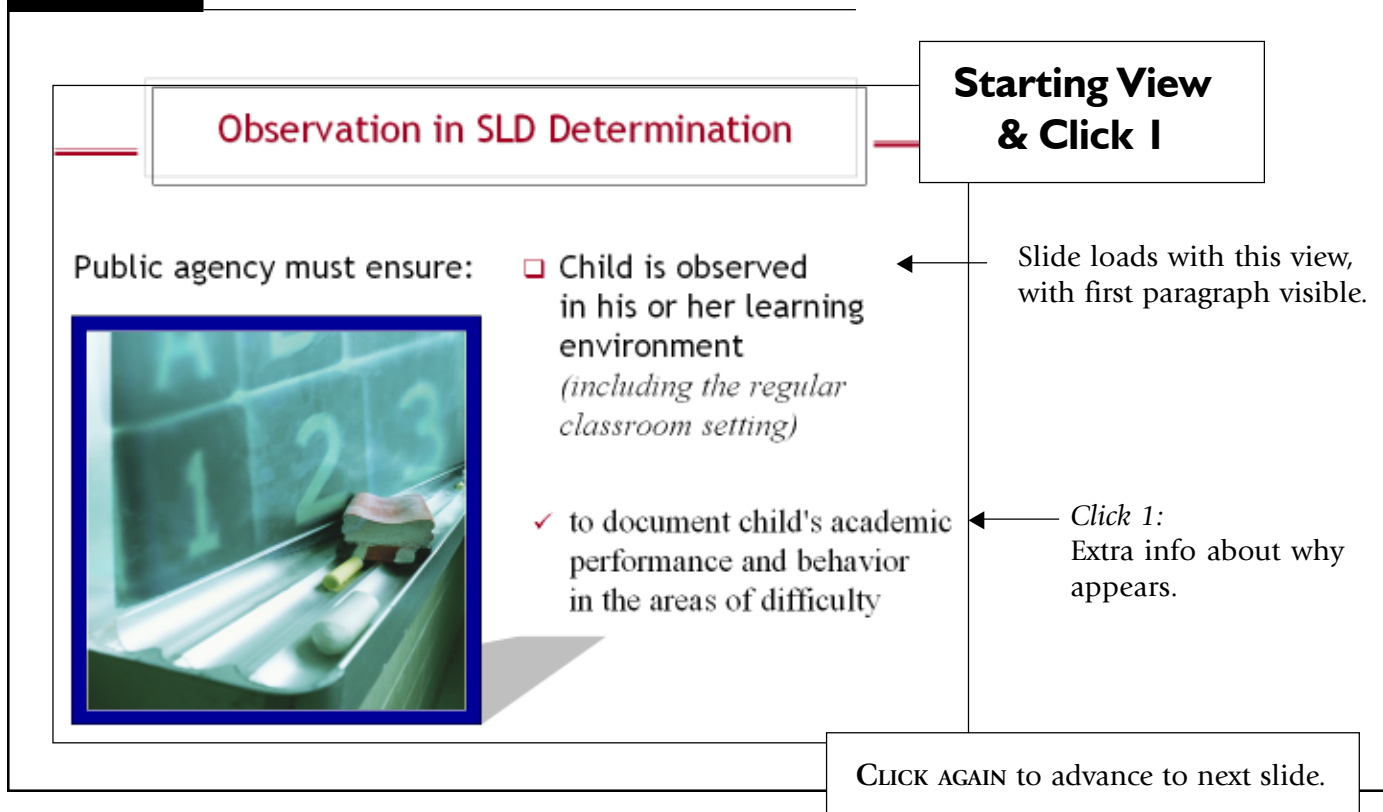


The Department's Example *(continued)*

Section 300.309(b)(1) requires that the eligibility group consider data on the child's progress when provided with appropriate instruction by qualified professionals as part of this evaluation. These data, along with other relevant information, will assist the eligibility group in determining whether the child's low achievement is attributable to a lack of appropriate instruction. As required in §300.306(b)(1)(i) and (ii)...a child cannot be identified as a child with a disability if the determinant factor for that determination is lack of appropriate instruction in reading or math.

Based on their review of the existing data, and input from the child's parents, the eligibility group must decide, on a case-by-case basis, depending on the needs of the child and the information available regarding the child, what additional data, if any, are needed to determine whether the child is a child with a disability, and the educational needs of the child. If the eligibility group determines that additional data are needed and that these data cannot be obtained within the 60-day timeframe (or the timeframe established by the State), ... 300.309(c)...allows the extension of the timeframe with mutual written agreement of the child's parent and the eligibility group. (71 Fed. Reg. at 46658-46659)





Slide 22: Background and Discussion

1 Click

Moving on in IDEA's additional provisions for determining SLD, we arrive at §300.310, Observation. Three slides are devoted to IDEA's provisions about observation, which are found on **Handout C-7**. The portion of those provisions that relate to Slide 22 are presented in the box at the right.

As Slide 22 shows, IDEA requires that the child suspected of having an SLD be observed in his or her learning environment as part of the evaluation and data-gathering process. This includes the regular classroom setting. The purpose of this observation is to document the child's academic performance and behavior in the areas of difficulty.

Why is Observation Necessary?

This was a question many commenters asked the Department of Education in public comments on the Notice of Proposed Rulemaking for IDEA 2004. The Department responded as follows:

The observation requirements for children suspected of having SLD have been in the regulations since before 1983. Important information can be obtained about a child through observation in the

"§300.310 Observation" begins....

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. [§300.310(a)]

classroom, or for a child less than school age, in an environment appropriate for a child of that age. Objective observations are essential to assessing a child's performance and should be a part of routine classroom instruction and are not costly or overly prescriptive. We believe the observation requirements are an important matter to regulate clearly. We will, therefore, ...clearly state that the public agency must ensure appropriate observation and documentation of the child's academic performance and behavior in the areas of difficulty to determine whether a child has an SLD. (71 Fed. Reg. at 46659)

What's New?

As indicated in the Department's comments, changes have been made to Part B regulations regarding observations. The provision in the box on the previous page highlights two notable revisions. (Changes in other provisions will be discussed with the slide covering those provisions.)



First, the requirement to observe a child suspected of having an SLD is more strongly stated in IDEA 2004—as seen in the phrase “the public agency must ensure...”, which is new. The provision also broadens the scope of where the child is to be observed. Previously the environment for observation was just “in the regular classroom setting”—or, in the case of a child who is less than school age or out of school, in “an environ-

ment appropriate for a child of that age” (the Department's final regulations implementing IDEA '97, at §300.542(b)). When a public commenter requested that the Department define what environment would be considered “appropriate” for such a child, the Department responded that the “eligibility group is in the best position” to determine that (71 Fed. Reg. at 46660).

Also added are the phrases “and behavior” and “in the areas of difficulty” (which address the scope of what's being observed).

Overall, IDEA's provisions regarding observation reflect changes that strengthen and clarify the dimensions of observation that are needed, and the documentation that needs to accompany those observations.



Who Conducts the Observations?

Who will conduct an observation of a child suspected of having an SLD will vary depending on the circumstances. This is reflected in the Department response to a public comment:

The person conducting the observation should be a member of the eligibility group because information from the observation will be used in making the eligibility determination....

If an observation has not been conducted, or additional observation data are needed, the

decision as to which person should conduct the observation is best left to members of the eligibility group, based on the type of information that is needed to make the eligibility determination and identify the child's needs. (71 Fed. Reg. at 46659)

And as §300.310(c) specifies, if the child is less than school age or out of school, the observer will also be a member of the eligibility group [the group described at §300.306(a)(1)].

You might wonder how the above can possibly apply if the group has decided to use information from an observation conducted before the child was referred for an evaluation—the circumstance described in §300.310(b)(1) and discussed on the next slide. While that observation would have collected data on the child's performance during routine classroom instruction, a member of the eligibility group may or may not have been the individual conducting the observation.

The Department responded to public comments regarding this question as follows:

If information is available from an observation conducted as part of routine classroom instruction that is important for the eligibility group to consider, the eligibility group should include the person who conducted that routine classroom [observation] [*sic*]. This will eliminate redundant observations and save time and resources. (*Id.*)

Is Parental Consent Needed?

The need for parental consent will also vary according to the circumstances. The chart below distills that information.



Circumstances of Observations and Whether Parental Consent is Needed	
Circumstance	Is Parent Consent Needed?
Observations conducted as part of routine classroom instruction and monitoring of the child's performance <i>before</i> the child is referred for an evaluation.	No, parental consent is <i>not</i> needed (71 Fed. Reg. at 46659).
Observations conducted <i>after</i> the child is suspected of having a disability and is referred for an evaluation.	Yes, parental consent <i>is</i> needed (<i>Id.</i>).

View I**Observation in SLD Determination**

Group must decide whether to:

- ☐ Use information from observation done before child was referred for an evaluation

- ✓ routine classroom instruction
- ✓ monitoring of child's performance

Slide loads with this view, the group's Option 1.

Click I**Observation in SLD Determination**

Group must decide whether to:

- ☐ Use information from observation done before child was referred for an evaluation

- ✓ routine classroom instruction
- ✓ monitoring of child's performance

or

- ☐ Have at least one group member conduct observation after child has been referred for evaluation and parental consent

- ✓ child's academic performance in regular classroom

Click 1: Option 2 appears.

CLICK AGAIN to advance to next slide.

(Discussion on next page)





Slide 23 continues the discussion of IDEA's provisions for observation in SLD determination. Again, these are **Handout C-7**. The relevant part of the provisions on this slide are in the box below.

The meaning of these provisions is clear. In determining whether the child has an SLD, the eligibility group must decide whether to use information from an already conducted observation of the child, or to have at least one member of the group conduct an observation of the child. The slide reflects the additional information contained in IDEA's provisions. Specifically, the observation previously conducted:

- would be of routine classroom instruction where the child's performance was monitored; and
- took place before the child was referred for evaluation.

As the slide also indicates, the group has the option to conduct a new observation of the child. In this case, the observation:

- would occur after the child's referral for evaluation;
- would require parent consent; and
- would be of the child's academic performance in the regular classroom.

Additional Information

We'd like to include one additional and interesting remark of the Department of Education on the subject of observations. Responding to a public comment asking about the working relationship between the general and special educators in conducting an observation, the Department responded:

We decline to provide specific guidance on the working relationship between the special education teacher and the general education teacher in conducting an observation because this relationship will necessarily vary depending on how classrooms are structured and teacher responsibilities assigned. Such decisions are best made at the local level. (71 Fed. Reg. at 46660)

However, the Department also explained:

Generally, we would expect that the child's general education teacher would have data from routine classroom instruction and would work with the other members of the eligibility group to determine what additional data, if any, are needed to determine whether a child has an SLD. A special education teacher who is experienced in working with children with SLD, for example, might have suggestions on ways to structure a particular observation session to obtain any additional information that is needed, and may be able to assist the general education teacher in gathering the data. (*Id.*)

"§300.310 Observation" continues....

- (a) The public agency must ensure ...
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

Observation in SLD Determination

Observation of child **less than school age or out of school:**

- ☐ Group member must observe child in environment appropriate for a child of that age



Slide loads with this view.
No clicks needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 24 is the last slide focusing on observations in SLD determination. If you'll pardon the pun, it zooms in on §300.310(c) and observation of children who are less than school age or out of school. The box at the right cites the relevant provision.

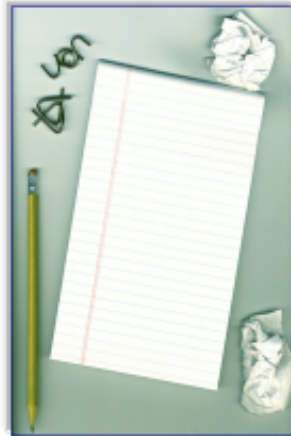
The point to be made here is *where* the observation would take place. Because the child is not in school, observation in the regular education setting is not possible. IDEA acknowledges this circumstance by stating that the child would be observed "in an environment appropriate for a child of that age."

The Last Part of §300.10 Observation.

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

View 1**Documenting the Determination of Eligibility**

For a child suspected of having SLD, documentation of determination of eligibility must contain a **statement of 7 things**:



Slide loads with this view.

Clicks 1-2**Documenting the Determination of Eligibility**

For a child suspected of having SLD, documentation of determination of eligibility must contain a **statement of 7 things**:

1. Whether child has a specific learning disability
2. Basis for making the determination*

Click1 and Click 2:
Bullet 1 and Bullet 2
appear, respectively.

(continued on next page)

Documenting the Determination of Eligibility

Click 3

For a child suspected of having SLD, documentation of determination of eligibility must contain a **statement of 7 things**:

1. Whether child has a specific learning disability
2. Basis for making the determination*

and... →

* ...including assurance that qualified professionals and child's parent determined child was a "child with a disability" and his or her educational needs

Click 3:
Meaning of the asterisk (*) appears, along with the arrow indicating there are more items than the two listed on this slide.

CLICK AGAIN to advance to next slide.

Slide 25: Background and Discussion

3 Clicks

Slide 25 begins another series of slides on one subject—this time, documenting the determination of eligibility. This is the first of eight slides. The provision relevant to this slide appears in the box below.

Most of the background information on the entire subject will be provided here, under this slide's discussion, although you will probably want to spread out the information across presentation of the slides in this series. Issues or details specific to a slide, as well as the relevant provision of IDEA, will be organized under that slide.

Documenting a Child's Evaluation and Eligibility

IDEA's provisions to be discussed across these eight slides are entitled "Specific documentation for the eligibility determination" and are found at §300.311. All appear on **Handout C-7**.

As the slide indicates, seven distinct statements are required in the documentation of the determination the group reaches as to a child's eligibility as a child with an SLD. The type of information that must be included in this report is rather detailed and

Beginning of §300.311 Specific documentation for the eligibility determination.

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

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);...



corresponds primarily, but not entirely, to the factors considered by the group in the course of its evaluation and eligibility determination.

Section 614(b)(4)(B) of the IDEA requires “the public agency to provide a copy of the evaluation report and the documentation of determination of eligibility to the parents for all children evaluated under the Act” (71 Fed. Reg. at 46660). IDEA specifies what should be in that report at §300.306(b) and (c). This applies to all children suspected of having a disability, including those suspected of having an SLD. (These provisions of IDEA were addressed in the module *Initial Evaluation and Reevaluation* and may bear repeating and a bit of review here.) The additional, quite specific elements listed in §300.311 are required only for children who are suspected of having an SLD. These elements will be the subject of the next eight slides.

Two Separate Reports Then?

Two separate reports for children suspected of SLD are not necessarily indicated, as the Department explained in the Analysis of Comments and Changes.

Two separate reports are not necessary as long as the information in §300.311 is included in the documentation of the eligibility determination in §300.306(a)(2). (*Id.*)

To make this clear, the Part B regulations have been revised to change the title of this section from “Written report” to ‘

‘Specific documentation for the eligibility determination.’ Other changes have been made in the regulations for the contents of this documentation, as we will see as we go through the slides.

Why Additional Elements for SLD?

The Department also provided clarification, in response to public comments, as to why IDEA specifies specific additional content in the evaluation and eligibility report of children evaluated for SLD.

Section 300.311 specifies the content for the evaluation report for children suspected of having SLD. States and LEAs have more discretion over the specific content of an evaluation report for children suspected of having a disability under the other disability categories. Therefore, whether the SLD evaluation report is more detailed or burdensome than other evaluation reports would depend on State and local requirements. We believe that the elements of the report specified in §300.311 provide important checks to prevent misidentification and ensure that children who

actually have SLD are identified. (*Id.*)

What is §300.306(c)(1)?

You can see that IDEA requires the documentation to include an assurance “that the determination has been made in accordance with §300.306(c)(1).” But what does that mean?

The exact provision appears on **Handout C-2** and is part of IDEA’s “Evaluation and reevaluation” provisions. We’ve reproduced it below, for convenience, and to make it easier for you to discuss it with the audience. They should be familiar with these requirements, if they have completed the *Initial Evaluation and Reevaluation* module, and the review here will help solidify that information.

(c) *Procedures for determining eligibility and educational need.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered. [§300.306(c)(1)]



View I

Slide loads with this view, Element #3.

Documenting the Determination of Eligibility

3. Relevant behavior (*if any*) noted during observation of child and relationship of that behavior to child's academic functioning



Click I

Documenting the Determination of Eligibility

3. Relevant behavior (*if any*) noted during observation of child and relationship of that behavior to child's academic functioning
4. Educationally relevant medical findings (*if any*)



Click 1:
Element #4 appears. An arrow also appears on the far left, to indicate there are more elements coming.

and...

CLICK AGAIN to advance to next slide.

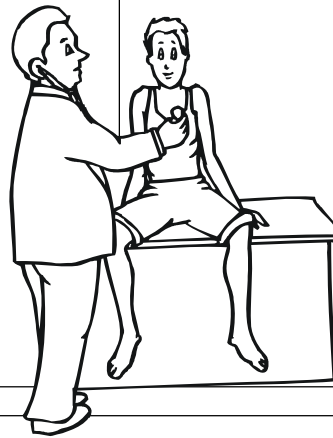
(Discussion on next page)





Slide 26 is the second of eight slides that will look at §300.311 and the elements to be included in the documentation of the determination of eligibility for a child suspected of having SLD. The relevant provisions of IDEA appear in the box below and on **Handout C-7**.

Neither of these elements is new to IDEA. The only change that has been made in these requirements is to add the words “if any” to noting relevant behavior during the observation of the child. Previously, #3 appeared as two separate elements in the regulations implementing IDEA ‘97, at §300.543(a)(3) and (4)]; they have now been collapsed into one provision, as we see here.



§300.311 | “Specific documentation for the eligibility determination” continues...

(a) ...documentation of the determination of eligibility... must contain a statement of—

- (1) Whether the child has a specific learning disability;
- (2) ...basis for making the determination...
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;
- (4) The educationally relevant medical findings, if any;...

Documenting the Determination of Eligibility



5. Whether child does not achieve adequately:

- ✓ for the child's age, or
- ✓ to meet State-approved grade-level standards*

and... →

* Consistent with §300.309(a)(1)

Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 27 is the third of eight slides examining §300.311 and the elements to be included in the documentation of the determination of eligibility for a child suspected of having SLD. The relevant provisions of IDEA appear in the box at the right and on Handout C-7.



considering the adequacy of the child's achievement, relative to age or State standards for the child's grade, what did members determine?

Those determinations are what must be documented here.

§300.311 "Specific documentation for the eligibility determination" continues...

(a) ...documentation of the determination of eligibility... must contain a statement of—

- (1) Whether the child has a specific learning disability;
- (2) ...basis for making the determination...
- (3) ...relevant behavior...
- (4) ...educationally relevant medical findings, if any;...
- (5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and...

§300.311(a)(1)-(5)(i)

Documenting the Determination of Eligibility

5. Continued...

and

Whether child does not make sufficient progress to meet age or State grade-level standards **

** Consistent with §300.309(a)(2)(i)

View I

Slide loads with this view, including the ** asterisk info at bottom.

Documenting the Determination of Eligibility

5. Continued...

and

Whether child does not make sufficient progress to meet age or State grade-level standards **

or

Whether child exhibits pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State grade-level standards or intellectual development ***

** Consistent with §300.309(a)(2)(i)

*** Consistent with §300.309(a)(2)(ii)

Click I

Click 1:
Brings up 2nd condition and the *** asterisk info at the bottom.

CLICK AGAIN to advance to next slide.

(Discussion on next page)





Slide 28 is the fourth slide in the series of eight examining §300.311 and the elements to be included in the documentation of the determination of eligibility for a child suspected of having SLD. The relevant provisions of IDEA appear in the box on the next page and on **Handout C-7**.



The provision under study at the top of this slide also interconnects with earlier considerations of the eligibility group, as described on Slide 15 in this module and required by §300.309(a)(2)(i) (also appearing on **Handout C-7**). The provision at §300.309(a)(2)(i) states that the group may determine that a child has a specific learning disability if, among other things:

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

When the group was considering the above, what did members determine? Those determinations are part of what must be documented here.

The other considerations that may need to be similarly documented are what the members of the eligibility group determined regarding the child's pattern of strengths and weaknesses. The

provision that required the group to consider this aspect appears at §300.309(a)(2)(ii), which states that the group may determine that a child has a specific learning disability if, among other things:

The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and...

Again—when the group was considering the above, what did members determine? Those determinations are also part of what must be documented.

Participants should certainly be seeing the interconnectedness of IDEA now! In one set of provisions, the eligibility group considered various questions regarding the child and, based on the data available on the child, made a determination. Here, in another set of provisions, they are required to document their determinations.

§300.311 “Specific documentation for the eligibility determination” continues...

(a) ...documentation ...must contain a statement of—

- (1) Whether the child has a specific learning disability;
- (2) ...basis for making the determination...
- (3) ...relevant behavior...
- (4) ...educationally relevant medical findings, if any;...
- (5) Whether—

(i) ...child does not achieve adequately... and

(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii);

§300.311(a)(1)-(5)(i)-(ii)(A)-(B)

Documenting the Determination of Eligibility

View I

6. What the group has determined concerning **effects** on the child's achievement level of—

- ✓Visual, hearing, or motor disability
- ✓Mental retardation

← Slide loads with this view, including first 2 bullets.

Documenting the Determination of Eligibility

Click I

6. What the group has determined concerning **effects** on the child's achievement level of—

- ✓Visual, hearing, or motor disability
- ✓Mental retardation
- ✓Emotional disturbance
- ✓Cultural factors
- ✓Environmental or economic disadvantage
- or ✓Limited English proficiency.

← Click 1:
Remainder of slide loads, including the arrow indicating there is still more.

and... →

CLICK AGAIN to advance to next slide.

(Discussion on next page)

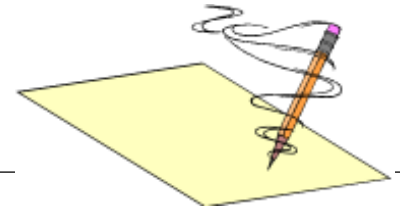


Here we go again! Different slide (the fifth in this series of eight on §300.311), different element to be documented, same pattern of interconnection with previously required considerations. Slide 29 follows up on, and requires documentation regarding, the eligibility group's determinations about the effect of specific factors on the child's achievement level. Those factors are:

- Visual, hearing, or motor disability;
- Mental retardation;
- Emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

The provision requiring that these determinations be documented appears in bold in the box on the next page and on **Handout C-7**, at §300.311(a)(6). The factors listed are also those that appear in the definition of SLD as exclusions to that determination—"disorders not included." These should sound familiar to participants. Do they remember that these factors are part of the definition of SLD? The definition appears on **Handout C-3**, if they'd like to take a quick look.

The requirement to document the group's determination concerning the effects of these factors are new to Part B regulations, save "environmental or economic disadvantage" [although in prior regulations this factor read "environmental, cultural, or economic disadvantage"—IDEA '97 at §300.543(a)(7)]. These were added in IDEA 2004 because "it is important to emphasize the importance of considering such factors in determining eligibility under SLD" (71 Fed. Reg. at 46661).



§300.311 "Specific documentation for the eligibility determination" continues...

- (a) ...documentation ...must contain a statement of—
 - (1) Whether the child has a specific learning disability;
 - (2) ...basis for making the determination...
 - (3) ...relevant behavior...
 - (4) ...educationally relevant medical findings, if any;...
 - (5) Whether—
 - (i) ...child does not achieve adequately... and
 - (ii)(A)...child does not make sufficient progress ...or
 - (B) ...child exhibits a pattern of strengths and weaknesses...
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and...

Documenting the Determination of Eligibility

View I

7. If child has participated in a process assessing his or her response to scientific, research-based intervention—



Slide loads with this view.

Documenting the Determination of Eligibility

Clicks 1-2

7. If child has participated in a process assessing his or her response to scientific, research-based intervention—



✓ instructional strategies used and student-centered data collected; and

✓ documentation that child's parents were notified about 3 things, as follows...

Click 1: Bullet 1 appears.

Click 2: Bullet 2 appears.

CLICK AGAIN to advance to next slide.

(Discussion on next page)





Slide 30 is the sixth of eight slides examining §300.311. It focuses on the documentation that IDEA requires regarding the child's involvement in a scientific, research-based intervention—an RTI approach, in other words, or other alternative research-based procedure—if permitted in the State and if the child indeed participated in one. What needs to be documented, specifically, are:



- the instructional strategies used in that intervention;
- the student-centered data collected; and
- that parents were notified of three specific things (covered in the next slide).

The provisions requiring this documentation appear in bold in the box on the next page and on **Handout C-7**, at §300.311(a)(7).

That IDEA would require documentation about the child's response to research-based intervention is not surprising, considering that RTI is a newly-added permissive aspect of the SLD determination and IDEA's emphasis upon appropriate instruction. Regarding the last item on this slide—documenting parent notification— you may have already discussed this with the audience as part of Slide 17. The background text there leapt forward to where we are now, wondering about parent notification. What do they get told, and when?

If you've covered parent notification with the audience earlier in this session, then see if they remember what was said! Can they list the three things about which parents must be notified and—as indicated by this slide—the eligibility group needs to document? Ask, jot down a few of their answers, then move on to the next slide, which lists the elements to be documented in determination of a child's eligibility.

§300.311 “Specific documentation for the eligibility determination” continues...

(a) ...documentation ...must contain a statement of—

- (1) Whether the child has a specific learning disability;
- (2) ...basis for making the determination...

(3) ...relevant behavior...

(4) ...educationally relevant medical findings, if any;...

(5) Whether—

(i) ...child does not achieve adequately... and

(ii)(A)...child does not make sufficient progress ...or

(B) ...child exhibits a pattern of strengths and weaknesses...

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and...

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

Documenting the Determination of Eligibility

View I

→ ...that child's parents were notified about—

- ✓ State's policies regarding amount and nature of student performance data that would be collected and general education services that would be provided

Slide loads with this view, Bullet 1 included.

Documenting the Determination of Eligibility

Clicks 1-2

→ ...that child's parents were notified about—

- ✓ State's policies regarding amount and nature of student performance data that would be collected and general education services that would be provided
- ✓ Strategies for increasing the child's rate of learning
- and ✓ Parents' right to request an evaluation

Click 1:
Bullet 2 appears.

Click 2:
Bullet 3 appears.

CLICK AGAIN to advance to next slide.

(Discussion on next page)





Slide 31 is the seventh of eight slides on §300.311 and the specific documentation that IDEA requires when making eligibility determinations for children suspected of having an SLD.

As the slide shows, the group making the eligibility determination needs to document that the child's parents were notified about:

- State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
- Strategies for increasing the child's rate of learning; and
- Parents' right to request an evaluation.

The provisions requiring this documentation appear in bold in the box on the next page and on **Handout C-7**, at §300.311(a)(7)(ii). All are self-explanatory.

§300.311 "Specific documentation for the eligibility determination" continues...

(a) ...documentation ...must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) ...basis for making the determination...

(3) ...relevant behavior...

(4) ...educationally relevant medical findings, if any;...

(5) Whether—

(i) ...child does not achieve adequately... and

(ii)(A)...child does not make sufficient progress ...or

(B) ...child exhibits a pattern of strengths and weaknesses...

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and...

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

Documenting the Determination of Eligibility

View I

Each member of group must certify in writing whether report reflects the member's conclusion



Slide loads with this view.

Documenting the Determination of Eligibility

Click I

Each member of group must certify in writing whether report reflects the member's conclusion

If report does not:

Member must submit a separate statement presenting his or her conclusions

Click 1:
Bottom text appears.

CLICK AGAIN to advance to next slide.

(Discussion on next page)





Slide 32 is the eighth and final slide about §300.311 and IDEA's requirements for documenting the eligibility determination of a child suspected of having an SLD. One more to go, one more to go!

Inhale. Focus. You're almost there.

So—what's the last element in this documentation of eligibility determination? The provision requiring this documentation appears in the box at the right and on **Handout C-7**, at §300.311(b). The certification of each group member as to the report's conclusion—does it represent the member's conclusion as well, or not? And if not, then... well, you can see for yourself.

This provision is not new to the final Part B regulations implementing IDEA 2004. But it still raises the question, *What happens if a member doesn't agree with the report's conclusions?* Obviously, that member has to submit a separate statement of his or her own conclusions, but what else? Is the determination of the child's eligibility affected? If the report's conclusion was that the child was eligible for special education and related services, are those services delayed by the member's disagreement?

The Department addresses these questions in the following remarks:

The eligibility group should work toward consensus, but under §300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency's determination, under §300.503, the public agency must provide the parent with prior written notice and the parent's right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in §300.503...

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal dispute resolution process. However, as stated in §300.506(b)(1)(ii)..., mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of the Act. (71 Fed. Reg. at 46661)



...End of §300.311 | Specific documentation for the eligibility determination.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.



← Slide loads fully. No clicks are needed except to END the slide show.

CLICK to END the slide show.

Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Depending on how much time you have available for this training session, you can also have participants work individually on **Handout C-8**, which takes them back to the beginning of this training with a round-up activity similar to the opener called "What You Take From the Party." Instructions for this type of round-up appear in the box.

Hey! Good job! That was fun, wasn't it?

Closing Activity

Purpose

To have participants reflect on what they have learned in this training session.

Total Time Activity Takes

10 minutes.

Group Size

Individual (no grouping) to complete the round-up sheet.
Large group to pool some of the answers.

Materials

Handout C-8
Flip chart (optional)

Instructions

1. Refer participants to **Handout C-8**. Indicate that this is the round-up or summary of their work today. They will have 5 minutes.
2. Give participants the allotted 5 minutes. Then call them back to large group focus.

3. Take 5 minutes to see what some of your audience felt they learned about learning disabilities, RTI, permissive use of RTI, and identifying specific learning disabilities. Do this free-form and informally, pleasantly correcting any mistaken "summaries" of the audience.

4. Finally, refer back to the opening activity, where the audience identified their existing knowledge on these subjects and how they might apply what they learned here today to their "lives back home." Would they change the way they answered those opening questions, now that they've finished the training?