ATTACHMENT

Michigan Criteria for Determining the Existence of a Specific Learning Disability

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Michigan Department of Education

Office of Special Education and Early Intervening Services

PURPOSE

This document establishes the criteria that must be followed in Michigan to determine the existence of a specific learning disability (SLD) for a student suspected to have a SLD. These criteria are used by the Multidisciplinary Evaluation Team (MET) to develop and produce an evaluation report and make a recommendation regarding eligibility to the Individualized Education Program (IEP) team. The MET evaluates a student suspected to have a SLD when a student has been referred for an initial evaluation or a change in eligibility as part of a reevaluation and the school district is in receipt of parental consent to evaluate.

A school district must not delay or deny an otherwise appropriate referral or request for an evaluation based on a district's use of a response to scientific, research-based intervention process. School districts that use this process must recognize a parent's right to refer and request an evaluation at any time. If school district personnel suspect that a student has a disability while the student is participating in this process, the school district must recognize the district personnel's right to refer and request an evaluation at any time.

Response to scientific, research-based intervention processes do not constitute a full and individual evaluation under the Michigan Administrative Rules for Special Education (MARSE) and the Individuals with Disabilities Education Act (IDEA) requirements for conducting evaluations and determining eligibility for special education programs and services. Response to scientific, research-based intervention processes provides record information that may be a component of an evaluation under the MARSE and the IDEA. Students and children have specific protections and due process rights under both the MARSE and the IDEA.

INTRODUCTION

The Michigan Department of Education, Office of Special Education and Early Intervention Services (OSE-EIS), is committed to the provision of a quality education for all of Michigan's students and to the continuous improvement of Michigan's educational systems. The OSE-EIS strives to assist and empower Michigan's schools to provide high-quality teaching and learning experiences for all students, in all grades, in all classrooms in Michigan. The OSE-EIS believes that effective core instructional programs, services, evidence-based interventions, data-driven decision-making, and positive behavioral approaches should be available to all students, and intervention resources should be accessible based on each individual student's intensity of need. To ensure the provision of a quality education for all of Michigan's students, schools need the guidance and the tools necessary to identify individual student needs.

BACKGROUND

The Elementary and Secondary Education Act (ESEA) of 2001 changed the landscape of education in the United States. The ESEA of 2001 established a heightened emphasis on the immediate and continuous improvement of our educational systems and focused improvement efforts on state and local accountability, student outcomes, parent involvement, data-driven planning and systems, and the use of scientific, research-based methods and interventions. The reauthorization of the IDEA in 2004 introduced a new and deliberate effort to connect federal special education legislation with federal general education legislation, the ESEA. This deliberate effort has resulted in an IDEA that embraces the use of data-driven decision-making and new educational methods based on scientific research. The use of data-driven decision-making processes includes the IDEA requirements for determining a student's eligibility for special education programs and services.

In Michigan, prior to the 2004 reauthorization of the IDEA, the identification of a student suspected to have a SLD was based on a single, specific method as defined in the MARSE. That method was the severe discrepancy model. The 2004 reauthorization of the IDEA expressly prohibits all states from requiring the use of the severe discrepancy model. As a result, the MARSE were revised in 2006. The MARSE for determining SLD eligibility provides schools with choices. Those choices include the use of methods for determining SLD eligibility based on the use of scientific, research-based interventions and patterns of strengths and weaknesses. The need to develop updated methods for determining SLD eligibility is the driving force behind development of these criteria.

CRITERIA FOR DETERMINING SLD ELIGIBILITY

I. Consistent with the IDEA federal regulations at 34 CFR § 300.309 and the MARSE at R 340.1713, schools must use the following processes for determining the existence of a SLD:

- **a student's response to scientific, research-based intervention**
- **a pattern of strengths and weaknesses**

A school district must not delay or deny an otherwise appropriate referral or request for an evaluation based on a district's use of a response to scientific, research-based intervention process.

The continued use of severe discrepancy is discouraged. Severe discrepancy must never be used exclusively to determine the existence of a SLD. Severe discrepancy must not be used within a response to scientific, research-based intervention process.

II. CRITICAL SCHOOL DISTRICT DECISIONS

School districts should be thoughtful and intentional when selecting processes and procedures for determining the existence of a SLD.

Each school district must determine which process, or combination of processes, it will use to determine SLD eligibility and ensure that the education community and parents are informed of the district's processes. Each school district must develop a systemic plan to operationalize the State criteria for the district's use.

In making the decision regarding the process to be used for determining the existence of a SLD, each school district must consider the extent to which it has implemented a process based on a student's response to scientific, research-based interventions.

- If a school district does not have a process based on a student's response to scientific, research-based intervention established in any of its schools, then the school district must utilize a pattern of strengths and weaknesses in determining the existence of a SLD.
- If a school in a district has a fully implemented response to scientific, research-based intervention process in select grades, the school must use data from its response to scientific, research-based intervention process to document interventions and student progress for the purpose of determining the existence of a SLD. The other grades in that school, and the other schools in the district, who have not fully implemented a response to scientific, research-based intervention process must use a pattern of strengths and weaknesses process until each grade is phased in to full implementation.
- If a school district is implementing a response to scientific, research-based intervention process on a school-by-school basis, the district must use data from its response to scientific, research-based intervention process to document interventions and student progress for the purpose of determining the existence of a SLD in the schools where the process is fully implemented. In schools that have not fully implemented a response to scientific, research-based intervention process, a pattern of strengths and weaknesses process must be used.

All federal and State regulatory requirements for evaluations for the purpose of determining a student's eligibility for special education programs and services as a student with a SLD still apply. These same requirements and all additional requirements for reevaluations for the purpose of determining continuing eligibility still apply.

III. WHAT IS A SLD?

A specific learning disability is "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 do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia that adversely affects a student's educational performance. A SLD 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." (34 CFR § 300.8(c)(10)).

IV. WHO EVALUATES FOR DETERMINATION OF SLD ELIGIBILITY?

In compliance with the MARSE, a MET conducts a full and individual evaluation of a student suspected to have a SLD. The MET, based upon its evaluation of the student, then makes its recommendation of eligibility to the IEP team. The student's IEP team then determines SLD eligibility (R 340.1713).

V. WHAT PROCESS OF EVALUATION IS USED TO DETERMINE SLD ELIGIBILITY?

Each Michigan school district will make a decision about the evaluation process the district will use to determine SLD eligibility. The MARSE and the IDEA give school districts choices and flexibility in determining the process to use for determining SLD eligibility (*see Section I of these criteria*).

Regardless of the process used to determine SLD eligibility, schools must follow all of the regulatory requirements in the IDEA, the MARSE, and Michigan laws, policies, and procedures for special education.

The following criteria apply to all methods used to determine SLD eligibility:

- A student must not be determined to be a student with a disability if the determinant factor for that determination is:
  - Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act) [including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency and oral reading skills, and reading comprehension strategies];
  - Lack of appropriate instruction in math; or
  - Limited English proficiency.

- A full and individual initial evaluation is a process conducted by the MET. Evaluation means procedures used in accordance with 34 CFR §§ 300.301 through 300.311 to determine whether a student has a SLD and the nature and extent of the special education and related services that the student needs. Evaluation includes the review of information from parents, existing data, and the results of assessment procedures used.

In interpreting evaluation data for the purpose of determining if a student is a student with a disability as defined in 34 CFR § 300.8, and the educational needs of the student, each public agency must:

- Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and
- Ensure that information obtained from all of these sources is documented and

carefully considered.

The process of evaluation requires a synthesis of all available assessment information. A student's parents are an integral part of the evaluation process, including providing information about the student. Parents are members of the IEP team meeting held for the purpose of determining eligibility, determining the educational needs of the student, and development of the student's IEP. Parents provide valuable insight and information to teams who conduct assessments in order to complete full and individual evaluations.

VI. THE EVALUATION PLAN

The "Review of Existing Evaluation Data (REED) and Development of an Evaluation Plan" document (published by the OSE-EIS) provides guidance and a general framework for the development of both initial evaluations and reevaluations. This document can be used with both the response to scientific, researched-based interventions and the pattern of strengths and weaknesses processes to develop and implement the evaluation plan for a student suspected to have a SLD.

Within a systemic plan it is essential to include a data-driven, decision-making process based on each individual student's needs.

Begin the development of an evaluation plan for determining SLD eligibility by collecting all pertinent data. The data used will be dependent upon the process (or processes) currently used in the district (and specific schools) for determining the existence of a SLD:

Response to Scientific, Research-Based Intervention Process:

1. The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the areas identified at 34 CFR § 300.309(a)(1)(i) when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards; and
2. The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified at 34 CFR § 300.309(a)(1)(i) when using a process based on the student's response to scientific, research-based intervention.

Pattern of Strengths and Weaknesses Process:

1. The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the areas identified at 34 CFR § 300.309(a)(1)(i) when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards; and
2. The student 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 MET to be relevant to the identification of a SLD, using appropriate assessments, consistent with the IDEA Evaluation Procedures and Additional Requirements for Evaluations and Reevaluations.

VII. DOCUMENTATION

The school must document a student's achievement in one or more of the following areas:

- Oral expression;
- Listening comprehension;
- Written expression;
- Basic reading skill;
- Reading fluency skills;
- Reading comprehension;

- Mathematics calculation;
- Mathematics problem solving.

To determine SLD eligibility, student data must demonstrate inadequate achievement to meet age or State-approved grade-level standards in the areas above and insufficient progress or a pattern of strengths and weaknesses. Schools and evaluation teams must follow these criteria:

- The finding of an academic skill deficit (*see the box "Suggested Parameters for Establishing an Academic Skill Deficit" in these criteria*) and insufficient progress must not be based on any one measure.
- The finding of an academic skill deficit and insufficient progress must be based on the school district's established objective criteria as applied to data on a student's level of performance (these are commonly referred to as 'decision rules').
- The IDEA clearly states that one benchmark for considering a student's extent of adequate achievement must be age or Michigan-approved grade level standards.
- No single benchmark or measure is sufficient under Michigan criteria; the student should evidence inadequacy on multiple measures to be determined SLD eligible.
- The student's level of intellect must not be used to exclude the student from SLD eligibility if the student otherwise qualifies for and requires special education programs and services.

Suggested Parameters for Establishing an Academic Skill Deficit

These are not intended to be absolute cut-points and the convergence of multiple sources of data needs to be considered by the evaluation team. The decision as to what constitutes an academic skill deficit is a complex decision and will require a degree of professional judgment. The decision must be based on valid and reliable data.

- At least one measure needs to reflect a comparison to Michigan (or national) benchmarks or norms in order to provide some consistency across schools and districts in the interpretation of an academic skill deficit.
- Curriculum-Based Measurement (CBM) results that include at least 6 data points that are at or below the 9th percentile may be considered significant.
- Criterion Reference Measures (CRMs) compare a student's performance to the goals of the curriculum. These may be provided within program materials or set by teachers. An academic skill deficit could be indicated by results that are at or below 50% of the grade level expectancy. Thus, grade level criteria must be determined for CRMs. (For example, if the expectation is that a student answer grade level comprehension questions with 80% accuracy, and a student's accuracy through repeated trials is at 40% or less, then a deficit might be indicated.)
- When a measure is utilized that provides a percentile rank, such as an individually administered norm referenced test, a score at or below the 9th percentile may represent an academic deficit.

VIII. SPECIAL CONSIDERATIONS

When considering student results that rely on a student's response to scientific, research-based intervention, the MET needs to be able to ensure that:

- There was a research/evidence base for the interventions implemented; and

- The interventions were implemented with fidelity, i.e., implemented as intended or prescribed with attention to the what, how, and intensity of instruction.

When considering student results that rely on a student's pattern of strengths and weaknesses, the MET needs to be able to ensure that:

- They follow the district guidelines and decision rules for the analysis of strengths and weaknesses

IX. OBSERVATION

An observation conducted during an early intervening period may be used, and must be properly documented, by the evaluation team. If, however, an observation has not been conducted prior to the referral and request for evaluation or additional observation data is needed, at least one member of the evaluation team must conduct an observation and must properly document the observation.

An observation:

- Must address academic performance and behavior in the specific area(s) of difficulty
- Must be conducted in the child's learning environment as determined by the evaluation team
- Must be conducted in the general education setting unless the child is less than school age or does not participate in general education

The observations must be scheduled at a time when the child is engaged in the specific area of need identified in the evaluation plan. Existing observations must have been conducted while the child was engaged in the specific area of need identified in the evaluation plan.

The federal regulations and the MARSE do not prescribe the type of observation to be conducted; the following methods may be appropriate:

- Behavioral observation procedures that result in quantifiable results (e.g., event recording, time sampling, interval recording)
- Methods that relate student's classroom behavior to instructional conditions
- Informal or anecdotal recordings that address referral questions, instructional practice, and instructional fidelity

These observations may also help to document that appropriate instruction was provided, and will assist in recommending instructional changes. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

X. EXCLUSIONARY FACTORS

The MET is required to consider what are commonly referred to as "exclusionary" factors. It must be clearly understood that a student to whom one of these factors applies might still be appropriately determined as SLD eligible. The issue is one of "primary cause" for the SLD. With the changes in SLD eligibility criteria, serious consideration of these factors has become even more important.

The IDEA requires that the determination of SLD eligibility must not be determined based on findings that are primarily the result of:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act);

- Lack of appropriate instruction in math;
- Limited English proficiency.

The determination of SLD eligibility must not be based on findings of inadequate achievement and insufficient progress or patterns of strengths and weaknesses that are primarily the result of:

- A visual, hearing, or motor disability;
- A cognitive impairment;
- An emotional impairment;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

XI. LACK OF APPROPRIATE INSTRUCTION

The team needs to consider:

- The instruction that the student has been receiving;
- The qualifications and training of the person delivering the instruction; and
- The student's access to that instruction.

Since the determination of SLD eligibility requires documentation that a student demonstrates a skill deficit and insufficient progress, there should be evidence that appropriate instruction in the area(s) of concern has been provided, including fidelity of instruction and intervention implementation.

The team will also want to determine whether a student's access to core instruction, as well as to scientific, research-based interventions is:

- Impacted by poor attendance;
- Frequent moves between schools; or
- Other factors.

If a determination of SLD eligibility cannot be made due to lack of appropriate instruction, attempts must be made to ensure that appropriate instruction is provided and that the student's response to that instruction is documented.

XII. REQUIRED DOCUMENTS TO BE GIVEN TO PARENTS

The school district must document that parents received specific information concerning their student's participation in any response to scientific, research-based intervention process. The information provided to parents must meet all of the IDEA regulation requirements specified at 34 CFR § 300.311. The information parents must receive includes:

- **Amount and nature of student performance data that will be collected and general education services that will be provided.**
- **Strategies for increasing the student's rate of learning.**
- **Parent's right to request an evaluation.**

XIII. USE OF OTHER ALTERNATIVE RESEARCH-BASED PROCEDURES

The IDEA allows for the use of "Other Alternative Research-Based Procedures" in determining SLD eligibility. At this time, Michigan has not identified other alternative research-based procedures for determining whether a student has a SLD as defined in 34 CFR § 300.8(c)(10). In the future, Michigan may consider local school system proposed alternative research-based procedures for determining whether a student has a SLD.