



**Council for  
Exceptional  
Children**

**Council for Exceptional Children's  
Initial Summary of Selected Provisions from  
Part B Proposed Regulations for the  
Individuals With Disabilities Education Act**

**Learning Disabilities**

**June 12, 2005**

## Learning Disabilities

**Note: Bold text in left column indicates language not specifically included in IDEA 2004**

NPRM Language	Current Regulation	Comments
<p><b>300.8(c)(10) Specific learning disability. (i) General. 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.</b></p> <p><b>(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.</b></p>	<p>300.7(c)(10) Specific learning disability is defined as follows:</p> <p>(i) General. The term 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 an 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.</p> <p>(ii) Disorders not included. The term 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.</p>	<p>In general statutory language was incorporated into regulations.</p>
<p><b>Additional Procedures for Evaluating Children With Specific Learning Disabilities</b></p> <p>§300.307 Specific learning disabilities.</p> <p>(a) General. <b>A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8. In addition, the criteria adopted by the State--</b></p> <p><b>(1) May prohibit 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;</b></p>		<p><b>Note- The NPRM dealt with the statutory LEA option by requiring the state to establish eligibility criteria for LD and allowing the state to prohibit the use of severe discrepancy by any LEA.</b></p> <p><b>OSERS Discussion of Proposed Regulatory Changes</b> “Recent consensus reports and empirical syntheses concur in suggesting major changes in the approach to the identification of an SLD. These reports recommend abandoning</p>

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<p><b>(2) May not require the use of</b> a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8;</p> <p><b>(3) Must permit the use of a</b> process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in §300.304; and</p> <p><b>4) 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.</b></p> <p><b>(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.</b></p>		<p>the IQ-discrepancy model and recommend the use of response to intervention (RTI) models (Donovan &amp; Cross, 2002; Lyon et al., 2001; President’s Commission on Excellence in Special Education, 2002; Stuebing et al., 2002). These reports find that SLD is a group of heterogeneous disorders, but recommend changes in the seven domains identified in current §300.541(a)(2) because of areas of difficulty for students with SLD that have not been identified under current regulations (e.g., reading fluency).</p> <p>There are many reasons why use of the IQ-discrepancy criterion should be abandoned. The IQ-discrepancy criterion is potentially harmful to students as it results in delaying intervention until the student’s achievement is sufficiently low so that the discrepancy is achieved. For most students, identification as having an SLD occurs at an age when the academic problems are difficult to remediate with the most intense remedial efforts (Torgesen et al., 2001). Not surprisingly, the “wait to fail” model that exemplifies most current identification practices for students with SLD does not result in significant closing of the achievement gap for most students placed in special education. Many students placed in special education as SLD show minimal gains in achievement and few actually leave special education (Donovon &amp; Cross, 2002).</p> <p>The use of the IQ-discrepancy drives assessment practices for most special education</p>

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		<p>services (President’s Commission on Excellence in Special Education, 2002). Nationwide, virtually every student considered for special education eligibility receives IQ tests. This practice consumes significant resources, with the average cost of an eligibility evaluation running several thousand dollars (MacMillan &amp; Siperstein, 2002; President’s Commission on Excellence in Special Education, 2002). Yet these assessments have little instructional relevance and often result in long delays in determining eligibility and therefore services.</p> <p>Alternative models are possible. The type of model most consistently recommended uses a process based on systematic assessment of the student’s response to high quality, research-based general education instruction. The Department strongly recommends that States consider including this model in its criteria. Other models focus on the assessment of achievement skills identifying SLD by examining the strengths and weaknesses in achievement, or simply rely on an absolute level of low achievement. These models are directly linked to instruction. (Fletcher, et al., 2003). Other models use alternative approaches to determining aptitude-achievement discrepancies that do not involve IQ, including multiple assessments of cognitive skills. However, these models do not identify a unique group of low achievers and maintain a focus on assessment as opposed to intervention. In considering alternative models for</p>

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		<p>identification, we believe that the focus should be on assessments that are related to instruction, and that identification should promote intervention. For these reasons, models that incorporate response to a research-based intervention should be given priority in any effort to identify students with SLD. Identification models that incorporate response to intervention represent a shift in special education toward the goals of better achievement and behavioral outcomes for students identified with SLD because the students who are identified under such models are most likely to require special education and related services.”</p>
<p><b>§300.308 Group members.</b> The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, is made by the child's parents and the group described under §300.306(a)(1) that--</p> <p>(a) Is collectively qualified to--</p> <p>(1) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development;</p> <p>(2) Interpret assessment and intervention data, and apply critical analysis to those data;</p> <p>(3) Develop appropriate educational and transitional recommendations based on the assessment data; and</p> <p>(4) Deliver, and monitor specifically designed</p>	<p>300.540 Additional team members. The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include—</p> <p>(a)(1) The child's regular teacher; or</p> <p>(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</p> <p>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</p> <p>(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.</p>	

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<p>instruction and services to meet the needs of a child with a specific learning disability; and</p> <p>(b) Includes--(1) A special education teacher; (2)(i) The child's general education teacher; or (ii) If the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; and</p> <p>(c) Other professionals, if appropriate, such as a school psychologist, reading teacher, or educational therapist.</p>		
<p><b>§300.309 Determining the existence of a specific learning disability.</b></p> <p>(a) The group described in §300.308 may determine that a child has a specific learning disability if--</p> <p>(1) The child does not achieve commensurate with the child's age in one or more of the following areas, when provided with learning experiences appropriate for the child's age:</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 fails to achieve a rate of learning to make sufficient progress to meet State-approved results in one or more of the areas identified in paragraph (a)(1) of this section when assessed with a response to scientific, research-based intervention process;</p>	<p>300.541 Criteria for determining the existence of a specific learning disability</p> <p>(a) A team may determine that a child has a specific learning disability if—</p> <p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and</p> <p>(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:</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 comprehension.</p> <p>(vi) Mathematics calculation.</p> <p>(vii) Mathematics reasoning.</p> <p>(b) The team may not identify a child as having a specific learning disability if the</p>	<p><b>OSERS Discussion of Proposed Regulatory Changes</b> “The current requirements in §300.541 permit the group to determine that an SLD is present if the child does not achieve commensurate with his or her age and ability levels and if the group finds a severe discrepancy between achievement and intellectual ability. Proposed §300.309 would address the elements required for determining the existence of an SLD and would revise §300.541 of the current regulations in light of the statutory provision in section 614(b)(6)(A) of the Act, which protects LEAs from being required to use a severe discrepancy between intellectual ability and academic achievement. Under the proposed regulations, the first element of a determination that a child has an SLD is a finding that the child does not achieve commensurate with the child's age in one or more of the eight specified areas when provided with learning experiences appropriate to the child's age.</p> <p>The second element for a determination that a</p>

<sup>1</sup> \*\* Repeated twice in NPRM.

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<p>or</p> <p>(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, [or a pattern of strengths and weaknesses in performance, achievement, or both, ]<sup>1</sup> relative to intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and</p> <p>(3) The group determines that its findings under paragraph (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; or</p> <p>(v) Environmental or economic disadvantage.</p> <p>(b) For a child suspected of having a specific learning disability, the group must consider, as part of the evaluation described in §§300.304 through 300.306, data that demonstrates that--</p> <p>(1) Prior to, or as a part of the referral process, the child was provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel; and</p> <p>(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.</p> <p>(c) If the child has not made adequate progress</p>	<p>severe discrepancy between ability and achievement is primarily the result of—</p> <p>(1) A visual, hearing, or motor impairment;</p> <p>(2) Mental retardation;</p> <p>(3) Emotional disturbance; or</p> <p>(4) Environmental, cultural or economic disadvantage.</p>	<p>child has an SLD is a finding that the child failed to make sufficient progress in meeting State-approved results when using a response to scientific, research-based intervention process, or the child exhibits a pattern of strengths and weaknesses that the team determines is relevant to the identification of an SLD. The pattern of strengths and weaknesses may be in performance, achievement, or both or may be in performance, achievement, or both relative to intellectual development. Proposed §300.309(a)(3) would incorporate the exclusions from section 602(30)(C) of the Act and would prohibit the eligibility group from finding an SLD if the SLD is primarily the result of other visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. These exclusions are in addition to the special rule for eligibility determination in section 614(b)(5) of the Act and proposed §300.306(b).</p> <p>Proposed §300.309(b) would require the group to consider evidence that the child was provided appropriate instruction prior to, or as a part of, the referral process. These requirements would emphasize the importance of using high-quality, research-based instruction in regular education settings consistent with relevant sections of the ESEA, including that the instruction was delivered by qualified personnel. Also important is evidence that data-based documentation reflecting formal assessment of progress during instruction through repeated</p>

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<p>after an appropriate period of time, during which the conditions in paragraphs (b)(1) and (2) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services must be made.</p> <p><b>(d) Once the child is referred for an evaluation to determine if the child needs special education and related services, the timelines described in §§300.301 and 300.303 must be adhered to, unless extended by mutual written agreement of the child’s parents and a group of qualified professionals, as described in §300.308.</b></p>		<p>assessments of achievement at reasonable intervals is provided to the parents and documentation that the timelines described in proposed §§300.301 and 300.303 are adhered to, unless extended by mutual written agreement of the child’s parents and a group of qualified professionals as described in §300.308. These requirements would be included in §300.309(c) and (d), respectively, of the proposed regulations.”</p>
<p><b>§300.310 Observation.</b></p> <p>(a) At least one member of the group described in §300.308, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty.</p> <p>(b) 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.</p>	<p>300.542 Observation</p> <p>(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.</p> <p>(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.</p>	
<p><b>§300.311 Written report.</b></p> <p>(a) For a child suspected of having a specific learning disability, the evaluation report and the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination,</p>	<p>300.543 Written report</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of—</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination;</p>	

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<p>including an assurance that the determination has been made in accordance with §300.306(c)(1);</p> <p>(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;</p> <p>(4) The educationally relevant medical findings, if any;</p> <p>(5) Whether the child does not achieve commensurate with the child's age;</p> <p>(6) Whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement, or both, relative to intellectual development in one or more of the areas described in §300.309(a) that require special education and related services; and</p> <p>(7) The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process, as described in §300.309 was implemented.</p> <p>(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.</p>	<p>(3) The relevant behavior noted during the observation of the child;</p> <p>(4) The relationship of that behavior to the child's academic functioning;</p> <p>(5) The educationally relevant medical findings, if any;</p> <p>(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and</p> <p>(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.</p> <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.</p>	