

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

This document is part of the department’s guidance on implementing Wisconsin SLD criteria. It provides answers to frequently asked questions regarding the criteria set forth in Wisconsin’s SLD rule.

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## Definition and General Requirements

1. What is required before a student can be found to have a specific learning disability (SLD)?

When considering SLD eligibility for the first time, the IEP team may identify a student as having SLD if the student demonstrates both inadequate classroom achievement and insufficient progress following at least two intensive, scientific, research-based, or evidence-based interventions (SRBIs). In addition, the IEP team must determine the inadequate classroom achievement and insufficient progress are not primarily due to one of the exclusionary factors listed in the rule. Once a student has been identified as having a specific learning disability, the reevaluation criteria in Wis. Admin Code, § PI 11.36(6) (h) applies.

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

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

This general definition of SLD has been part of federal special education regulation since 1977 and is mirrored in Wisconsin rules at Wis. Admin Code, § PI 11.06. LEAs use criteria to determine if a student has the impairment of SLD. The diagnostic labels listed in the general definition include those historically used to describe conditions similar to the educational definition of SLD. Many of these terms are no longer used. Students with non-educational diagnoses, such as those listed, may be considered for eligibility under IDEA but must meet Wisconsin eligibility criteria for the “impairment” of SLD (or another impairment) **and** demonstrate a “need for special education” as a result of that impairment prior to being identified as a student with a disability.

3. Is there an age requirement for identifying students as SLD? Could a preschool child be found eligible as having the impairment of SLD?

There is no age requirement for identifying students with SLD. However, given the wide variation of normal development, paired with the limited amount of time most children from age three to first grade have had to develop and demonstrate the academic skills addressed in the SLD rule, IEP teams should be prudent in identifying SLD in this age group. Before identifying any student with SLD, at least two SRBIs must be implemented and there must be evidence of inadequate classroom achievement and insufficient progress compared to the expectations for same age/grade peers, in one or more of the eight potential areas of concern. In addition, exclusionary factors must be considered including whether the student has received appropriate instruction in the area(s) of concern. When a student demonstrates significant delay, but there is not enough information to determine if the student meets the SLD criteria, the impairment of Significant Developmental Delay (SDD) may be considered for children ages 3 through 5. General education interventions

should also be considered and implemented as appropriate. It is anticipated the prevalence of SLD in preschool through early elementary age children will remain very low.

4. What are the eight areas of SLD concern?

The eight areas are oral expression; listening comprehension; written expression; basic reading skill; reading fluency; reading comprehension; mathematical calculation; and mathematical reasoning. A student must be found to have inadequate classroom achievement and insufficient progress in at least one of these areas in order to be found eligible as a student with SLD.

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

Yes. Students being considered for potential SLD often exhibit language concerns. If the only area(s) of concern are oral expression or listening comprehension, the IEP team may decide to consider if the student only has a speech and language impairment. Before identifying any student with SLD, at least two SRBIs must be implemented and there must be evidence of inadequate classroom achievement and insufficient progress compared to the expectations for same age/grade peers, in one or more of the eight potential areas of concern. When the areas of oral expression or listening comprehension are considered as part of an SLD evaluation, it is recommended a speech and language pathologist (SLP) be included on the IEP team. An SLP must be included on the IEP team if eligibility for a speech and language impairment is being considered. A speech and language impairment may co-exist with SLD and is not considered exclusion to SLD identification.

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

Yes. The same criteria and standards for determining SLD eligibility apply to students enrolled in public charter schools including virtual charter schools. It is up to the LEA to determine how the required interventions are provided and progress monitoring data are collected for students attending public charter schools, including virtual schools.

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

Pursuant to Wis. Stats. §115.782, if, upon the review of existing evaluation data, the IEP team determines the student demonstrates adequate classroom achievement or sufficient progress needed to meet age or state-approved grade-level standards, the IEP team may make an eligibility decision. Existing data reviewed by the IEP team includes evaluations and information provided by the student's parents; previous interventions and the effects of those interventions; current classroom-based, local, or state assessments; classroom-based observations; and observations by teachers and related services providers. The IEP team must meet and document the basis of its eligibility decision.

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

Once the IEP team determines a student has met the SLD criteria and has a need for special education, the IEP team develops the student's IEP. In doing so, the IEP team determines the goals and services needed to address the student's individual disability-related needs, including involvement and progress in the general education curriculum and environment with non-disabled students, participation in non-academic and extracurricular activities, and any other identified educational needs. Eligibility itself does not define which special education services a student may or may not receive. A student does not need to meet SLD eligibility criteria in a specific area of concern to receive special education services or supports in that area. An IEP is intended to be individualized for each student and is not impairment specific.

A reevaluation is required every three years (unless the parents and LEA determine one is not needed), or sooner if the student's parent or teacher requests a reevaluation, or if the LEA determines one is needed. A reevaluation is not required before adding and changing IEP services with the exception of occupational and physical therapy.

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### **Referral and Evaluation Timelines**

9. Is an evaluation timeline extension allowable when conducting an initial SLD evaluation?

Yes. In addition to the two timeline extensions that apply to all evaluations (transfer before evaluation completed and student repeatedly not made available), a timeline extension specific to SLD evaluations may be granted to allow for the collection of necessary data. The decision to extend the timeline for this reason must be made by written agreement of the IEP team, including the parent.

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

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

11. Do any of the eight areas of SLD concern need to be specified on the referral form in order to begin the evaluation process?

No. A referral must include the reasons why the person making the referral believes the student is a child with a disability. There is no requirement to specify either a specific category of suspected impairment or any of the eight areas of academic achievement listed in the SLD rule. Additional information about specific areas of concern can be provided after the referral is made as the IEP team reviews existing data and determines what additional data are needed. The areas of concern to address during the evaluation are identified as a result of the review of existing data and determination of what, if any, additional data is needed to proceed.

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

No. A special education referral cannot be denied or delayed to allow a school to implement, or finish implementing an intervention. The LEA must process all special education referrals. Once a referral is made, the LEA notifies the parent and assigns an IEP team to review existing data. Following the review of existing data, if the IEP team finds additional information is needed, such as data from intensive intervention, the LEA must request consent to collect the additional data. If the IEP team, including the parent, agrees that additional time is needed to implement the intervention and collect the necessary data, they may agree to an extension of the 60-day timeline.

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

Yes, the IEP team may request an extension to allow for the completion of required intensive interventions and collection of progress monitoring data that meets the standards described in the rule. If the parent does not agree to an extension, the IEP team may decide it does not have sufficient data to make an SLD eligibility decision.

If an eligibility decision is delayed because data needed by the IEP team was not collected in a manner consistent with the rule because the evaluation was not properly conducted, the LEA may be required to consider whether compensatory services are needed if the student is found eligible.

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### **Intensive Intervention**

14. What interventions are required by the SLD rule?

All evaluations of public schools students to determine initial SLD eligibility must be completed after the student has received at least two intensive, scientific-research or evidence-based interventions (SRBIs) in each area of SLD concern. Generally speaking, an intervention is “the systematic use of a technique, program or practice designed to improve learning or performance in specific areas of pupil need.” The SLD rule specifies higher standards for the interventions that must be implemented before an IEP team can make an SLD eligibility decision. The standards for SRBIs used when applying the SLD criteria include:

- Scientific research-based or evidence-based;
- Use with individual or small groups;
- Focus on single or small number of discrete skills closely aligned to individual learning needs (consistent with the area of SLD concern);
- Culturally appropriate;
- A substantial number of instructional minutes beyond what is provided to all students; and
- Implemented with adequate fidelity

- Applied in a manner highly consistent with its design, and
- At least 80% of the recommended number of weeks, sessions, minutes.

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

15. For how long must an SRBI be implemented and what would be considered a “substantial number of instructional minutes in addition to those provided to all pupils?”

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

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

There is no specific definition in the SLD rule of defining “discrete skills”. For the purpose of SLD eligibility, “discrete skills” should be aligned with one or more of the eight areas of concern listed in the rule; the interventions should be sufficiently focused to address the area of concern identified by the IEP team. Depending on the areas of concern and the intervention, it is possible for one intervention to address more than one area of concern.

17. What is “adequate fidelity” and how is it documented?

For the purpose of determining insufficient response to intensive, scientific, research-based or evidence based intervention, “adequate fidelity” means the intervention has been applied in a manner highly consistent with its design, and was provided to the pupil at least 80 percent of the recommended number of weeks, sessions, and minutes per session. Monitoring intervention fidelity is a school-wide process. It is strongly recommended that LEAs develop a system for monitoring intervention implementation including how intervention implementation fidelity will be documented and by whom. Ultimately, the IEP team determines if the data provided is sufficient for the purpose of making an eligibility decision.

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

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

Interventions for any one area of concern must be implemented consecutively. However, if there is more than one area of concern, the two interventions for each area may be implemented concurrently.

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

It is possible to utilize the same program, practice or technique for both of the required SRBIs under certain circumstances. Some interventions are designed such that, based on the student's response, the interventionist may increase the frequency or intensity (such as moving from a small group to an individual implementation) following a first round of intervention. These adjustments mean the student is, in effect, receiving a new intervention. Such adjustments should be made in accordance with the design of the intervention. Staff implementing interventions should refer to the implementation manual or protocol for what is allowable. Districts are encouraged to put in place systems to monitor fidelity to ensure students receive SRBIs and progress data is collected in accordance with the rule prior to making the SLD eligibility decision. It is ultimately up to the IEP team to determine whether the progress data collected meets the required standards.

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

No. There is no legal requirement to notify parents before providing general education interventions. However, as part of a special education evaluation when SLD is considered, the IEP team must document the parent was notified of the progress monitoring data collected and the strategies used for increasing the student's rate of learning, including the intensive interventions. While there is nothing in the law that requires such notification prior to a special education referral, it would be good practice for schools to develop a system in which parents are notified of the general education instruction (including interventions) used with their children.

21. What are the qualifications for an individual implementing an SRBI?

SRBIs must be provided by appropriately licensed staff. At the elementary level, this generally means classroom teachers whose certifications include the content area in question (for example, a Middle Childhood-Early Adolescence Regular Education license (72-777) includes both reading and mathematics instruction). If an interventionist provides reading interventions for multiple class periods per day, they are required to have a Reading Teacher (316) license. See <http://tepd1.dpi.wi.gov/licensing/license-and-assignment/reading> for more information on requirements to teach reading. At the secondary level a licensed teacher in the content area should be delivering the intervention. Because most content area certifications at the secondary level do not include reading instruction, highly qualified individuals providing reading SRBIs will likely hold a Reading Teacher license.

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

Generally, no. Intensive interventions as referenced in the SLD rule are part of general education instruction and, therefore, must be provided by appropriately licensed general education staff. The IEP team uses data collected from such general education intervention as part of the special education evaluation process. As such, the interventions themselves are not part of the evaluation.

If a student has already been identified as a student with a disability and the student's IEP calls for only special education programming in an area of concern, the special education teacher may implement the two required intensive, scientific research or evidence based interventions with the student. Progress data from these interventions may be used when considering SLD for the first time.

23. Can a paraprofessional support the implementation of intensive intervention?

Yes. A general education paraprofessional may support, reinforce, or follow-up on the provision of instruction provided by and under the supervision of an appropriately licensed general education teacher. This may include supporting the implementation of intensive intervention with students. Supervision means regular, continuing interaction between the appropriately licensed general education teacher and the paraprofessional. There must be sufficient contact between the general education teacher and the paraprofessional, and between the general education teacher and the student, to monitor the interventions.

24. If SRBIs were not implemented prior to referral, how should the IEP team proceed?

The LEA must process all special education referrals. Following the review of existing data, if the IEP team finds the required SRBIs were not implementing prior to referral, the IEP team must request consent to collect the required progress monitoring data during intensive intervention. If the IEP team, including the parent, agrees additional time is needed to implement the intervention and collect the necessary data, they may agree to an extension of the 60-day timeline. If more time is needed and there is no agreement to an extension, the IEP team may decide it does not have sufficient data to make an SLD eligibility decision.

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### **Insufficient Progress**

25. How is the insufficient progress criterion determined?

For all initial SLD evaluations for students enrolled in Wisconsin public schools, IEP teams use progress monitoring data collected using probes during at least two intensive, scientific research-based or evidence-based interventions (SRBIs) in each area of concern to determine insufficient progress. To be eligible as having the impairment of SLD, the referred student must demonstrate insufficient response to SRBIs in one or more of the eight areas of SLD concern. All SRBIs and progress monitoring probes from which data will be used by IEP teams to determine whether the student meets the insufficient progress criterion must meet the standards described in the rule. See the section on parentally placed private school and home-based private education (homeschooled) students for potential exceptions to this requirement.

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### **Progress Monitoring**

26. What is “Progress Monitoring?”

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

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

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

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

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

29. What if an SRBI does not exist for an area of concern under consideration or reliable and valid probes do not exist to assess a student’s response to interventions?

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

Districts are encouraged to put in place systems to ensure students receive SRBIs and progress data is collected in accordance with the rule. Ultimately, the IEP team decides if the data collected is sufficient for making an eligibility decision or if additional data is needed. IEP teams must document the basis for its eligibility decision as part of the evaluation report.

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

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

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### **Rate of Progress**

31. How does the IEP team decide if a student demonstrates insufficient progress using data from SRBIs?

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

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

32. What is “least squares regression” and how is it used to determine rate of progress?

Rate of progress is determined by analyzing the slope of the trend line using least squares regression on the baseline and all subsequent data points during each intensive intervention. Least squares regression is a statistical method for finding a line that summarizes the relationship between the two variables. In this case, it is used to help IEP teams analyze the student's rate of progress by putting a student's scores from progress monitoring on a line and depicting progress as a “slope” (or incline). A steeper slope means a greater change in achievement from baseline and a flatter slope means a smaller change from baseline. Additional guidance on determining rate of progress is available on the SLD Program page on the DPI website at [http://sped.dpi.wi.gov/sped\\_ld](http://sped.dpi.wi.gov/sped_ld).

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

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

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

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

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

The IEP team must include an individual qualified to assess and interpret individual progress data. This individual should be able to help explain the data analysis process and results to parents. In addition, there are programs available to help chart data and make it easier to explain to parents. The department has developed such a tool and other related resources posted on the SLD page at [http://sped.dpi.wi.gov/sped\\_ld](http://sped.dpi.wi.gov/sped_ld)

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### **Inadequate Classroom Achievement**

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

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

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

Yes. The IEP team may consider scores within 1 standard error of the measurement of the 1.25 SD cut-score to meet the inadequate classroom achievement criterion, if the IEP team determines the student meets all other criteria. The 1.25 SD requirement may not be used if the IEP team

determines the student cannot attain valid and reliable standard achievement scores because of test behavior, language proficiency, another impairment that interferes with the attainment of valid and reliable scores, or the absence of individually administered standardized assessments appropriate for the student's age. If the IEP team makes this determination, it must document the reasons why it was not appropriate to consider standardized achievement testing, and that inadequate classroom achievement exists in at least one of the eight areas using other empirical evidence.

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

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

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

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

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

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

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### **Exclusions**

41. How should the IEP team apply the exclusionary factors requirement when determining SLD eligibility?

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

- Environmental, economic disadvantage, or cultural factors;
- Lack of appropriate instruction in reading, including in the essential components of reading instruction;
- Lack of instruction in math;
- Limited proficiency in English;

- Any of the other impairments; or
- Lack of appropriate instruction in the area(s) of potential specific learning disability under consideration.

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

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

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### **Observation**

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

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

44. Where is information from the required observation documented?

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

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

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

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

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

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### **Documentation**

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

Documentation of the IEP team's eligibility decision, including the basis for the determination must be included in the evaluation report. The department has developed model forms for LEAs to use to meet state and federal documentation requirements including the ER-1 *Evaluation Report* and three options for documenting SLD eligibility decisions, [ER-2A](#), *Required Documentation for SLD-Initial Evaluation*, ER-2B, *Required Documentation for SLD-Reevaluation* and [ER-2C](#), *Required Documentation for SLD-Initial Evaluation using Significant Discrepancy*. All DPI model forms are available at [http://sped.dpi.wi.gov/sped\\_forms06](http://sped.dpi.wi.gov/sped_forms06) . The department has also provided guidance and instructions for completing the SLD forms at [http://sped.dpi.wi.gov/sped\\_ld](http://sped.dpi.wi.gov/sped_ld).

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### **Individualized Education Program (IEP) Team Membership**

48. When are the additional IEP team members required?

The additional IEP team members are required for all evaluations of public school students when IEP teams consider SLD eligibility for the first time. The LEA appoints the IEP team members and provides proper written notice to parents. The additional roles include at least one individual qualified to assess progress data, an individual qualified to conduct individual diagnostic evaluations, and at least one individual who implemented the required SRBIs with the student. An IEP team member can fill multiple roles on the IEP team. The additional IEP team members are not required for reevaluations when a student has previously been identified as having the impairment of SLD or initial SLD evaluations of parentally placed private school or homeschooled students when the significant discrepancy method is used.

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

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

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

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

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

No. The requirement only applies to evaluations when SLD is being considered for the first time.

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### **Reevaluation**

52. Must inadequate classroom achievement and insufficient progress be documented for SLD reevaluations?

No. These criteria apply only when considering SLD eligibility for the first time. The process for documenting continuing eligibility upon re-evaluation relies on an analysis of continued need for special education and exclusionary factors. When determining if a student continues to have the impairment of SLD, the IEP team considers whether the student performs to generally accepted grade level expectations in the general education environment without specially designed instruction.

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

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

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## **Transfer Students**

54. If a student previously found eligible for SLD by a Wisconsin LEA moves to a new Wisconsin LEA, must a reevaluation be conducted?

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

55. If a student previously found eligible for SLD transfers to a Wisconsin LEA from another state, must the new LEA conduct an evaluation?

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

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

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

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## **Parentally Placed Private School Students and Students Receiving Home-Based Private Education (home schooled)**

57. What is an LEA's responsibility for evaluating students for suspected SLD who are parentally placed in private schools or receiving home-based private education?

LEAs must identify, locate, and evaluate all students suspected of having a disability, including students enrolled by their parents in private schools and home-based education programs.

58. When evaluating students for suspected SLD, may a district use the significant discrepancy method for parentally placed private school students and students receiving home-based private education?

Yes. Public schools lack the authority to require private schools or home-based education programs to produce data from a student's response to SRBIs. Therefore, an IEP team may use significant discrepancy to determine insufficient progress for parentally placed private school students and students receiving home-based private education. The IEP team must still consider exclusionary

factors and whether some intervention has been provided prior to administering the required standardized achievement test to determine inadequate achievement. As with any special education evaluation, an LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.

59. May IEP teams use progress data from intensive interventions implemented by private school staff or other professionals when conducting evaluations of parentally placed private or home schooled students?

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

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

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

When evaluating parentally placed private school and home-schooled students for SLD, all eligibility criteria apply, including the requirement to consider the exclusionary factor of “appropriate general education instruction”. The IEP team may not identify a student as having a specific learning disability if it determines the findings of inadequate classroom achievement and insufficient progress were due to a lack of appropriate instruction in the area(s) of concern under consideration. For parentally placed private school and home-schooled students, the IEP team may obtain information from parents and teachers about the curricula used and the student’s progress with various teaching strategies when considering whether the student received appropriate general education instruction.

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

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

suspected SLD, the timeline may be extended by written agreement of the IEP team, including the parent, to allow for the collection of needed data.

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

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

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

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

No. An IEE at public expense must meet the criteria the LEA uses when it conducts its own evaluation. If a parent obtains an independent educational evaluation, the results of the evaluation must be considered by the LEA, if it meets agency criteria. Since all evaluations of public school students require the use of progress monitoring data collected during SRBIs, the IEP team would not need to consider the findings of an IEE that relied on the significant discrepancy method to analyze insufficient progress. If the evaluation was of a parentally placed private school or homeschooled student and the district's evaluation used significant discrepancy to determine insufficient progress, then the IEE could also rely on the significant discrepancy method.

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

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

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