

Initial Guidance Implementing Wisconsin Criteria for Specific Learning Disability (SLD)

Frequently Asked Questions about Making SLD Eligibility Decisions

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

Effective Date

1. What is required on December 1, 2010?

Effective immediately, additional documentation related to intervention is required for all evaluations in which SLD eligibility is considered for the first time. IEP teams must document that intensive intervention was applied in a manner highly consistent with its design, was closely aligned to pupil need, and was culturally appropriate.

Additional IEP team members are required when a school uses insufficient response to intensive, scientific, research-based or evidence-based intervention when determining SLD for the first time. These IEP team roles may be filled by existing members who meet the requirements.

2. Does the option to use significant discrepancy (insufficient progress in achievement compared to measured ability) still apply to initial evaluations of SLD?

Yes. When considering eligibility for the first time, the IEP team may identify a student as having SLD if the student has both inadequate classroom achievement and insufficient progress. Prior to December 1, 2013, insufficient progress may be defined as either insufficient response to intensive, scientific, research-based, or evidence-based intervention *or* significant discrepancy between measured achievement and ability. Once a student has been identified as having a specific learning disability, the reevaluation criteria in Wis. Admin Code, section PI 11.36(6) (h) apply.

Local Educational Agencies (LEAs) must decide which method will be used to determine insufficient progress on a school-wide basis. Once a school begins using data from response to intensive intervention to determine insufficient progress, all evaluations of students in the school must use this method when making initial SLD eligibility decisions, and the school is no longer permitted to use significant discrepancy.

Definition

3. What is the definition of SLD found in Wis. Admin Code, section PI 11.06, and how is this 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. 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.

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

There are no age requirements 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. When the student demonstrates significant delay, but there is not sufficient information to determine if the student meets SLD criteria, the impairment of Significant Developmental Delay (SDD) may be considered for children ages 3 through 5. Additional general education interventions should also be considered and implemented as appropriate. It is anticipated the prevalence of learning disabilities in preschool through early elementary age children will be very low.

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 has a speech and language impairment. 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 a speech and language impairment is being considered as part of the evaluation. A speech and language impairment may co-exist with SLD and is not considered exclusion to SLD identification.

6. 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.

Referral and Evaluation Timelines

7. Does the extension of the 60-day evaluation timeline only apply to referrals made after December 1, 2010?

No. This is not a new provision. In addition to the two timeline extensions that apply to all evaluations, a timeline extension specific to SLD evaluations has been in effect since the 2004 IDEA reauthorization. The decision to extend the timeline for this reason must be made by written agreement of the IEP team, including the parent.

8. 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.

9. 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.

10. 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.

11. 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 intervention or to collect needed progress monitoring data?

Yes, the IEP team may request an extension to allow for the completion of required intensive intervention 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.

Notification/Timeline for implementing the Insufficient Progress criterion

12. During the sunset period, can a school pick and choose whether to use progress monitoring data from two intensive interventions or significant discrepancy to analyze the insufficient progress criterion?

No. Prior to December 1, 2013, a school can decide if it will use data progress monitoring data from two intensive interventions or significant discrepancy to analyze the insufficient progress criterion when considering SLD eligibility for the first time. Once a school chooses which method it will use, it must use this method for all initial SLD eligibility decisions.

13. May an IEP team use the significant discrepancy method to determine insufficient progress for SLD evaluations of students in the LEA's public charter schools, including virtual schools, even if all other schools in the LEA are using data from intensive intervention to analyze this criterion?

The decision to begin using data from intensive intervention to determine insufficient progress is a school-based, not a district-wide decision. Until December 1, 2013, a school can decide if it will use progress monitoring data from two intensive interventions *or* significant discrepancy to analyze the insufficient progress criterion when considering SLD eligibility for the first time. Once a school chooses which method it will use, it must use this method when making all initial SLD eligibility decisions.

14. What are the requirements for notifying parents of a school's decision to begin using data from a student's response to intensive, scientific, research-based or evidence-based intervention, instead of significant discrepancy, for demonstrating insufficient progress?

Once the decision is made to use data from intensive intervention to determine insufficient progress in a school, the parents of all students enrolled in that school must be notified of the decision at least ten days before IEP teams may begin using this method. Schools must be able to document that parents were notified. A school is defined as having an assigned administrator responsible for personnel and has a unique school code assigned by the DPI. In most cases, but not always, a school is housed in one or more buildings. Also, multiple schools may be in one building. [<http://dpi.wi.gov/lbstat/defini.html>]. A district may decide to implement the new criterion in one or more schools in the district at different times; however, all schools must use data from intensive interventions to determine insufficient progress beginning December 1, 2013.

15. If a school is still using significant discrepancy, can a parent instead request progress monitoring data from intensive intervention be used to make the decision of whether the student meets the insufficient progress criterion?

No, the decision to use significant discrepancy or data from intensive interventions cannot be made on a case by case basis, even at a parent's request. Once a school has notified parents and begins using data from intensive intervention to determine insufficient progress, it must use this method with all students and may no longer use the significant discrepancy method.

16. 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 where SLD is considered and the IEP team used data from intensive intervention to determine insufficient progress, the IEP team must document that 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.

Intensive Intervention

17. Are there different requirements for the intensive intervention implemented prior to assessing inadequate classroom achievement and the two intensive interventions implemented when using progress monitoring data to determine insufficient progress?

Yes. The standards for intensive interventions needed to determine insufficient progress are more rigorous than those for the intensive intervention implemented before the IEP team considers inadequate achievement. The intervention implemented prior to assessing inadequate classroom achievement must be used with individual or small groups of pupils, focusing on single or small numbers of discrete skills, with substantial numbers of instructional minutes in addition to those provided to all pupils. The intervention must also be applied in a manner highly consistent with its design, closely aligned to student need, and culturally appropriate. In addition to meeting these standards, the two intensive interventions used to determine insufficient progress must also be scientific, research-based, or evidence-based, implemented with adequate fidelity, and closely aligned to individual student learning needs.

18. With respect to intensive intervention, what would be considered a "substantial number of instructional minutes in addition to those provided to all pupils"?

Intensive intervention means interventions used with individual or small groups of pupils, focusing on single or small numbers of discrete skills, with substantial numbers of instructional minutes in addition to those provided to all pupils. There is no specific standard for defining a "substantial number of instructional minutes." On a case by case basis, the IEP team determines whether the student has received intensive intervention with a substantial number of instructional minutes.

19. For how long should an intensive intervention be implemented?

In order to meet the definition of adequate fidelity, the intensive intervention must be implemented with a student for a minimum of 80% of the recommended number of weeks, sessions, and minutes per session. On a case by case basis, the IEP team determines whether the intervention has been implemented with adequate fidelity.

20. What is the minimum number of intensive interventions required when a school begins using the insufficient response to intensive, scientific, research-based or evidence-based intervention criterion?

At least two intensive interventions are required prior to identifying a student as having the impairment of SLD for the first time. The inadequate classroom achievement criterion must be documented following at least one intensive intervention. The insufficient progress based on response to intervention criterion requires progress monitoring data from at least two intensive, scientific, research-based or evidence-based interventions. The standards for interventions needed to document insufficient progress are more rigorous than those for the intensive intervention implemented prior to assessing inadequate achievement. However, if one intervention meeting the more rigorous standard was implemented with the student before assessing inadequate classroom achievement, then this intervention could also be counted as one of the two required intensive interventions. The IEP team determines if there has been sufficient intensive intervention implemented to meet the standards set out by each criterion.

21. 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 intensive, scientific, research-based or evidence-based interventions for each area of concern. If an intervention addresses more than one area of concern, it may be used. For example, if an intensive, scientific, research-based intervention used with the student addresses both reading decoding and reading fluency and meets the standards set in Wis. Admin. Code, section 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.

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

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.

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. While paraprofessionals may work under the direct supervision of licensed teachers, they are not licensed to provide instruction, including intensive intervention.

24. If an intensive intervention was 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 an intensive intervention was not implementing prior to referral, the IEP team needs to consider requesting consent to collect additional data following intensive intervention. 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. 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.

Inadequate Classroom Achievement

25. 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.

26. 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-off 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.

27. If a student was administered a standardized achievement test prior to 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 intervention.

Insufficient Progress

28. How is the insufficient progress criterion determined under the new SLD rule?

Until December 1, 2013, insufficient progress may be documented in one of two ways when considering SLD eligibility for the first time. Schools may determine a student demonstrates insufficient progress by documenting insufficient response to intensive, scientific, research-based or evidence-based intervention. This method will be required for all evaluations considering SLD eligibility for the first time, beginning December 1, 2013. Until a school adopts the insufficient response to intervention method, IEP teams may continue to determine insufficient progress by documenting a significant discrepancy between academic achievement and intellectual ability.

Progress Monitoring

29. What is “Progress Monitoring”

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

30. Can a district use locally developed progress monitoring probes 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. Probes are one such tool. For the purpose of making SLD eligibility decisions, “probes” mean 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 probes will not likely meet the required standard for considering the insufficient progress criterion using data from intensive interventions. The IEP team determines if the progress data under consideration meets the requirements set out in the rule.

31. What if the intensive intervention is evidence or research based but the accompanying progress monitoring tool 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 tool would need to be used to collect progress data during the intervention.

32. What if a scientific-research or evidence-based intervention does not exist for an area of concern under consideration or scientifically based progress monitoring tools, including reliable and valid probes, do not exist to assess a student's response to interventions

If reliable and valid progress data cannot be collected because of the absence of intensive scientific, research-based or evidence-based interventions, or scientifically based progress monitoring tools for an area of concern appropriate for the student's grade, then the IEP team should consider other empirical evidence of the student's progress in response to intensive intervention. In such cases, the IEP team will document its decision about the area of concern using other empirical evidence.

Rate of Progress

33. How does the IEP team decide if a student demonstrates insufficient progress using data from intensive intervention?

The IEP team considers progress monitoring data from two intensive interventions. 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 data collect 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.

34. 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://www.dpi.wi.gov/sped/ld.html>.

35. Does a student's intellectual ability affect how the IEP team looks at rate of progress when using data from intensive intervention to determine insufficient progress? Is a different rate of progress acceptable for students with measured low ability?

No. A student's intellectual ability is only a factor when using the significant discrepancy method of analyzing insufficient progress. When using progress monitoring data from insensitive interventions, a 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.

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.

36. When analyzing insufficient progress using data from intensive intervention, 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.

Fidelity

37. 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. LEAs determine specifically how intervention implementation fidelity will be documented and by whom. The IEP team is responsible for determining if sufficient documentation has been provided for the purpose of making an eligibility decision. As such, each student's IEP team determines if an intensive intervention was implemented with adequate fidelity for the purpose of making an SLD eligibility decision. Additional guidance on ensuring and documenting intervention fidelity is available on the SLD Program page on the DPI website at <http://www.dpi.wi.gov/sped/ld.html>.

Exclusions

38. 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.

39. 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, section 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.

Observation

40. 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 form (ER-1), a form for documenting additional requirements when a student is evaluated for SLD (ER-2), and SLD criteria checklists for initial and reevaluation eligibility decisions. Documentation of the results of observations may be included on either the ER-1 or ER-2 or any other attachment to the report.

41. 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.

42. When using data from intensive intervention to determine insufficient progress, must an observation be completed for each of the two required interventions?

No. 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 interventions with the referred student.

43. Once a school begins using data from intensive intervention to determine insufficient progress, must observations be completed during general education core instruction and during the intensive interventions?

Yes. Once a school begins using data from intensive intervention to determine insufficient progress, the IEP team must use information from both systematic observation of routine classroom instruction (general education core instruction) and information from systemic observation during intensive intervention when considering SLD eligibility for the first time. These are separate observations.

Documentation

44. Where do we document intervention and progress monitoring data?

Documentation should be included in the ER-1 (*Evaluation Report*) and the ER-2 (*Additional Documentation Required When Child Is Evaluated For Specific Learning Disabilities*). Documentation may also be included on the SLD eligibility checklists, if used.

Individualized Education Program (IEP) Team Membership

45. When do the additional IEP team membership requirements go into effect?

The additional IEP team members are required for all evaluations considering SLD eligibility for the first time when data from intensive intervention is used to determine insufficient progress. An IEP team participant can fill multiple roles on the IEP team. IEP teams continuing to use significant discrepancy until December 1, 2013, are not required to implement this provision. The additional IEP team members are not required for reevaluations when a student has previously been identified as having the impairment of SLD.

46. When using data from intensive interventions to determine insufficient progress, are there any specific required qualifications for the IEP team member who has implemented the interventions with the student?

Yes. The individual who serves on the IEP team in this capacity must be the staff member who was responsible for implementing the intensive interventions. Intensive interventions must be implemented by qualified general education staff, licensed in an appropriate area and age or grade range.

47. Who appoints the IEP team to conduct an evaluation of a student with a suspected SLD?

Following receipt of a referral, the LEA appoints the IEP team. Each team member's name and role needs to be listed on the written notice, DPI form IE-1 "*Notice of Receipt of Referral and Start of Initial Evaluation.*" An IEP team participant can fill multiple roles on the IEP team.

48. 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 "*Notice of Receipt of Referral and Start of Initial Evaluation.*" More than one role may be listed next to a member's name.

49. Is a speech pathologist still 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 evaluated. If the evaluation is also considering a potential speech and language impairment, the IEP team must include a licensed speech and language pathologist.

50. 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 where SLD is being considered for the first time.

Reevaluation

51. Must insufficient progress based on insufficient response to intensive intervention be documented for SLD reevaluations?

Insufficient progress must be documented only when considering SLD eligibility for the first time. The process for documenting continuing eligibility for SLD upon re-evaluation relies on an analysis of continued need for special education and exclusionary factors.

52. If a student was previously found eligible for SLD because of inadequate achievement and insufficient progress in one or more of the eight areas of concern, would a reevaluation need to be conducted before adding special education services to address an area of concern not previously 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. There is not

necessarily a one-to-one correspondence between the areas of SLD concern and IEP services. Once found eligible as a student with a disability, the 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.

53. Were there any changes in the SLD eligibility rules effective December 1, 2010, regarding reevaluations of students previously identified as having the impairment of SLD?

No. The criteria for determining SLD eligibility upon reevaluation are the same as prior to December 1, 2010. Upon reevaluation, a previously identified student with SLD who continues to demonstrate a need for special education remains an eligible student with SLD unless an exclusionary factor now applies. If a student with SLD performs to generally accepted expectations in the general education classroom without specially designed instruction, the IEP team shall decide whether the student is no longer a student with a disability.

Transfer Students

54. If a student previously found eligible for SLD using the significant discrepancy criterion transfers from one Wisconsin LEA to another, and the new LEA uses data from intensive intervention to determine "insufficient progress," 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 they are no longer eligible or the parent revokes consent. A reevaluation is not required upon transfer. Upon transfer, the 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, 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 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 may occur 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.

When the new LEA and prior LEA used different methods for analyzing insufficient progress (e.g., one LEA uses significant discrepancy and the other uses progress monitoring data from intensive interventions), the criteria used by the new LEA would apply. The new LEA would review the status of the evaluation at the time of transfer and determine if additional data is needed in order to apply their criteria. Information collected by the previous LEA would be considered as part of this process.

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

57. When evaluating students for suspected SLD, may a district use significant discrepancy for parentally placed private school students and students receiving home-based private education, even if all schools in the district are using data from intensive intervention to determine insufficient progress?

Yes. Public schools lack the authority to require private schools or home-based education programs to produce data from a student's response to intensive intervention. Therefore, even when all schools in a district have begun using data from a student's response to intensive intervention to determine insufficient progress, an IEP team may use significant discrepancy to determine insufficient progress for parentally placed private school students and students receiving home-based private education. 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.

58. 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 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 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.

59. 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.

60. 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.

Independent Educational Evaluations (IEEs)

61. Can parents request an independent educational evaluation (IEE) at public expense when a school uses insufficient response to intensive intervention to determine "insufficient progress" for purposes of SLD eligibility?

Yes. When a school uses data from insufficient response to intensive intervention to determine whether a student demonstrates "insufficient progress" as part of an evaluation for a specific learning disability, 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.

62. If a school uses insufficient response to intensive intervention to determine insufficient progress when making SLD eligibility decisions, then must a district consider the findings of an IEE that uses significant discrepancy to document insufficient progress?

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. If the LEA uses data from insufficient response to intensive intervention to determine "insufficient progress" (required beginning December 1, 2013), the IEP team would not need to consider the findings of an IEE that relied on the significant discrepancy method to analyze insufficient progress.

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

No. Intensive interventions are not considered evaluation activities, but rather are considered 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 intensive interventions, but must pay for IEE expenses without unnecessary delay, or file a due process hearing request to contest payment for an IEE.