

## 10. Deciding Eligibility

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**Note:** Throughout this chapter, where teams are mentioned, they always include the parents.

### Chapter Overview

The focus of the SLD Manual has been to guide teams in the use of problem solving and comprehensive evaluation in order to develop high quality instruction matched to an individual's needs. Evaluation is primarily used to determine the next instructional steps; eligibility for special education is just one possible next step. This chapter covers the last phase in the eligibility determination process, which is, making the decision whether to qualify a student for special education services.

The chapter begins with a thorough review of the federal laws and regulations and state statutes and rules relating to determining eligibility. It provides teams with a tool, the SLD Eligibility Criteria Worksheet, located in the Quality Practices section to aid in this step. A discussion of the possible results of this work follows, including guidance on making eligibility decisions for special cases and how to involve parents in this important step. The chapter ends with guidance on developing an Individualized Education Program (IEP) after an SLD determination.

## Regulations and Rules

**Note:** Regulations, statutes, and rules form the basis for legal compliance and are provided below to help readers understand the requirements of law.



### Determining Eligibility

To determine a student's eligibility for special education, each district must conduct a full and individualized evaluation of the student. The evaluation must meet all state and federal requirements. The evaluation team uses both formal and informal procedures to determine the specific areas of a student's strengths and needs.

The evaluation must include the following steps and may include others:

- Provide the parent(s) with prior written notice of each proposed evaluation.
- Ensure tests or evaluation tools are administered by trained and knowledgeable personnel.
- Assess the student in all areas related to the suspected disability.
- Present all evaluation results to the parent(s) in writing within state and federal timelines.
- Determine whether the child or student meets state eligibility criteria.
- Ensure the individual evaluation is sufficiently comprehensive for the team to identify all of the student's special education and related services needs, whether or not linked to the disability category in which the child has been classified.

### Federal Law and State Rules Relating to the Development of the Evaluation Report

- 34 CFR 300.305 (a)(1) As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child.
- 34 CFR 300.306 (c)(i). Draw upon information from a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior, and must ensure the information obtained from all such sources is documented and carefully.
- 34 CFR 300.304 (c)(6). Ensure the evaluation is sufficiently comprehensive to identify all of the child's or student's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR 300.8, and the educational needs of the child, each public agency must:

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

This section refers to Minnesota Rule 3525.2710, subp. 6.

An evaluation report must be completed and delivered to the pupil's parents within the specified evaluation timeline. At a minimum, the evaluation report must include:

- A. A summary of all evaluation results;
- B. Documentation of whether the pupil has a particular category of disability or, in the case of a reevaluation, whether the pupil continues to have such a disability;
- C. The child's present levels of performance and educational needs that derive from the disability;
- D. Whether the child needs special education and related services or, in the case of a reevaluation, whether the pupil continues to need special education and related services; and
- E. Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP and to participate, as appropriate, in the general curriculum.

### **Secondary Transition**

This section refers to 34 CFR 300.305(e)(3)

For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for Free Appropriate Public Education under state law, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

This section refers to Minnesota Statutes section 125A.08(a)(1):

. . . By grade 9 or age 14, the student's individual education plan addressed the need for transition from secondary services to post-secondary education and training, employment, community participation, recreation, and leisure and home living . . .

This section refers to Minnesota Rule 3525.2900, subp. 4(A)-(B):

For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation, leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational educational staff members and other community agency representatives.

Secondary transition evaluation results must be documented as a part of the evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

### **State Rule Related to Initial Evaluations**

This section refers to Minnesota Statutes section 125A.08(a)(4).

Every district must ensure that eligibility and needs of children with a disability are determined by an initial assessment or reassessment, which may be completed using existing data under United States Code, title 20, section 33, et. seq.

### **State Rule Related to Re-evaluations**

This section refers to Minnesota Rule 3525.2710, subp. 4(A)(1).

A review of existing evaluation data on the pupil, including evaluations and information provided by parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers observation

This section refers to Minnesota Rule 3525.2710, subp. 4(D)-(E).

Subp 4 (D). If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents.

Subp 4 (E). A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

The remainder of this section covers regulations and rules that pertain to deciding eligibility.

### **Federal Regulation and State Statute Related to Determining Disability**

This section refers to 34 CFR 300.306(a):

- Upon completion of the administration of assessments and other evaluation measures:
  - A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in section 300.8, in accordance with paragraph (b) of this section and the educational needs of the child.

- The public agency provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.
- A child must not be determined to be a child with a disability:
  - If the determinant factor for that determination is:
    - Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA).
    - Lack of appropriate instruction in math.
    - Limited English proficiency.
  - If the child does not otherwise meet the eligibility criteria under section 300.8(a).

As defined in Minnesota Statutes section 125A.02, subd. 2, a child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the commissioner, is not a child with a disability.

### **State Rule Relating to Criteria for Specific Learning Disability**

This section refers to Minnesota Rule 3525.1341, subp. 3.

**Determination of specific learning disability.** In order to determine that the criteria for eligibility in subpart 2 are met, documentation must include:

- A. an observation of the child in the child's learning environment, including the regular classroom setting, that documents the child's academic performance and behavior in the areas of difficulty. For a child of less than school age or out of school, a group member must observe the child in an environment appropriate to the child's age. In determining whether a child has a specific learning disability, the parents and the group of qualified professionals, as provided by Code of Federal Regulations, title 34, section 300.308, must:
  - (1) use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for a special education evaluation; or
  - (2) conduct an observation of academic performance in the regular classroom after the child has been referred for a special education evaluation and appropriate parental consent has been obtained; and
  - (3) document the relevant behavior, if any, noted during the observation and the relationship of that behavior to the child's academic functioning;
- B. a statement of whether the child has a specific learning disability;
- C. the group's basis for making the determination, including that:
  - (1) the child has a disorder, across multiple settings, that impacts one or more of the basic psychological processes described in subpart 1 documented by information from a variety of sources, including

aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

- (2) the child's underachievement is not primarily the result of visual, hearing, or motor impairment; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; limited English proficiency; or a lack of appropriate instruction in reading or math, verified by:
  - (a) data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel; and
  - (b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents;
- D. educationally relevant medical findings, if any;
- E. whether the child meets the criteria in subpart 2, either items A, B, and C or items A, B, and D; and
- F. if the child has participated in a process that assesses the child's response to SRBI, the instructional strategies used and the child-centered data collected, the documentation that the parents were notified about the state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parent's right to request a special education evaluation.

Subp. 4. **Verification.** Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusions.

The district's plan for identifying a child with a specific learning disability consistent with this part must be included with its total special education system (TSES) plan. The district must implement its interventions consistent with that plan. The plan should detail the specific SRBI approach, including timelines for progression through the model; any SRBI that is used, by content area; the parent notification and consent policies for participation in SRBI; procedures for ensuring fidelity of implementation; and a district staff training plan.

### **State Rule Relating to Procedures for Documenting an Override**

This section refers to Minnesota Rule 3525.1354, subp. 1.

The team may determine a pupil is eligible for special instruction and related services because the pupil has a disability and needs specially designed instruction even though the pupil does not meet the specific requirement in parts 3525.1354. The team must include the documentation in the pupil's special education record according to items A, B, C, and D.

- A. The pupil's record must contain documents that explain why the standards and procedures that are used with the majority of pupils resulted in invalid findings for this pupil.
- B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of special instruction and related services. These data include for example, test scores, work products, and self-reports teacher comments, medical data, previous testings, observational data, ecological [evaluations], and other developmental data.
- C. Because the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.
- D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included.

### **Federal Law Relating to Exiting a Child from Special Education**

This section refers to 34 CFR 300.305(e).

1. Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with § 300.304 through 300.311 before determining that the child is no longer a child with a disability.
2. The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from a secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
3. For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals.



### **Quality Practices**

The focus of the SLD Manual is to use problem solving and comprehensive evaluation as a means to provide high quality instruction matched to an individual's needs. The evaluation is primarily for determining the next instructional steps, with eligibility for special education being one possible solution.

The comprehensive evaluation process is thorough and involves intensive problem solving. All team decisions about eligibility and student need should rely on data-based decisions.

**Note:** See the blue box at the bottom of this Quality Practices section for more information.

The data gathered to document the individual's ongoing educational needs also allows the team to answer the questions of eligibility.

Throughout the SLD manual, the quality practice sections and accompanying questions within each chapter have sought to answer the following:

- What is known about the student's learning during instruction, intervention, and problem solving?
- What result of supplemental efforts, aligned with grade-level standards, was implemented to accelerate the student's rate of learning and level of performance?
- What has and has not worked to increase participation in the general education environment, (instruction modifications, accommodations, assistive technology, or parental support in the home)?
- What factors (environmental, instructional, intrinsic, etc.) limit performance? What supplemental efforts mediated the effects of the impairment?
- What in the student profile leads the team to suspect a disability and the need for special education and related services?
- What additional supports, accommodations, or modifications are necessary to provide access to grade-level expectations?
- What educational supports would be sufficiently rigorous to accelerate performance towards grade or age level achievement standards?
- What supports are required to help the student gain control over his/her education and independent living skills?
- What accommodations, modifications, or instructional supports are required to maximally accelerate development of academics or behavior?

*When all the answers are in, the team should be able address the legal issues of disability, entitlement for services, and personal rights.*

The eligibility determination process is recursive, a point that has been discussed in previous chapters. Teams, including parents, should integrate and summarize all of the answers above in order to provide a clear picture of how the student learns, what the student's current levels of performance are, as well as what interventions are and are not likely to be effective. With those questions adequately addressed, the team is ready to make the eligibility determination.

Next, the team must answer the following questions laid out in Federal Laws and Rules:

- What interventions or instructional strategies were implemented in order to impact access and academic progress within the general education curriculum? SLD criteria A, B and D, 34 CFR 300.8(a)(2), 34 CFR 300.304 through 300.306, Minnesota Rule 3525.2900, subp. 4(A).

- Are exclusionary factors the primary cause of inadequate achievement and academic progress? SLD criteria A, 34 CFR 300.306C(1), 34 CFR 300.304(b)(1), 34 CFR 300.304 (c)(1)(ii).
- Is the child a child with a disability? If the child has a disability and requires specially designed instruction, supplementary services, and related services to access the general education curriculum, then the child meets criteria for SLD eligibility. SLD criteria A, B, C, D, 34 CFR 300.305(a)(2), 34 CFR 300.304(b)(1), Minnesota Rule 3525.2710, subp. 6.

#### **Data Used in the Eligibility Determination**

- All eligibility and instructional decisions should be data based.
- Assessment should produce instructionally relevant information specific to the student being evaluated.
- Assessment may not be limited to a single test or source of data.
- Evaluation should be sufficiently comprehensive to allow the team to accurately determine eligibility as well as develop an educational program that will address all the identified needs regardless of whether they are directly attributable to the disability.
- Existing data may be used to make eligibility decisions and establish on-going needs.
- Administered assessment are valid and reliable for their intended purpose.
- Parent input must be included.
- Interpretation of data should not go beyond what the tools are designed to support.
- A student's strengths and successful instructional practices should be identified, as well as weaknesses and needs.

### **Specific Learning Disability (SLD) Eligibility Criteria**

The intent of the Minnesota Rule criteria is to allow teams to accurately identify students with learning disabilities while at the same time not misidentifying students who do not have disabilities.

To assist teams in ensuring they have considered all the relevant data for making the eligibility determination the worksheet that follows will provide teams an opportunity to make sure they have met all the state and federal regulatory and statutory requirements.

The worksheet has been organized to follow the criteria. Users will note that requirements for documentation have been clustered with the specific criteria the data are designed to support. For example, observation data linking behavior and achievement have been inserted under Documentation of Inadequate Achievement.

Users will also note that the sources of data that must be included are separated from sources of data that are optional. Users should specify or code the required data to be sure all sources have been included in the eligibility determination process. Additional space has been provided for teams that wish to add findings or supporting evidence.

## Specific Learning Disability (SLD) Eligibility Criteria Worksheet

For each section check the appropriate boxes where evidence exists to meet the legal requirements. Additional space has been provided for teams that wish to add findings from the data or supporting evidence.

### Section 1: Criteria Used to Determine Eligibility

Check which eligibility criteria were used to establish whether a child meets the criteria:

- ABC** (Inadequate achievement, disorder in basic psychological processes, discrepancy between intellectual ability and achievement).

**OR**

- ABD** (Inadequate achievement, disorder in basic psychological processes, data from a system of scientific research-based intervention (SRBI). **Note:** A system of SRBI must be documented within the TSES plan and fully implemented before teams may use criteria D, see FAQ).

### Required Documentation Provided to Parents

Check the box when there is evidence that required documentation was provided to parents. The section of Minnesota Rule requiring the documentation follows each option.

<input type="checkbox"/> Right to request an evaluation at any time (Minn. R. 3525.1341 Subp 2).
<input type="checkbox"/> Data based documentation of repeated assessments of achievements at reasonable intervals, reflecting formal assessment of progress during child's instruction. (Minn. R. 3525.1341 Subp 3.C.(2)(b)).
AND If the child participated in a System of SRBI and the team is using the data to meet criteria D, additional documentation must include (Minn. R. 3525.1341 Subp 3.F):
<input type="checkbox"/> Instructional strategies used.
<input type="checkbox"/> Child centered data collected.
<input type="checkbox"/> Notification of state's policies regarding amount and nature of performance data collected.
<input type="checkbox"/> General education services that would be provided.
<input type="checkbox"/> Strategies for increasing rate of learning.

## Section 2: Inadequate Achievement

Minn. R. 3525.1341 Subp 2A

Documented in the report and eligibility determination is evidence that the child demonstrates inadequate achievement in response to appropriate classroom instruction in one or more of the following areas representative of the curriculum or useful for developing instructional goals.

**Note:** Check the appropriate box if evidence has been included.

- Parent input.

AND

- Documentation of inadequate achievement includes data that demonstrate that prior to or as part of, the referral process, the child was provided appropriate instruction in regular education delivered by qualified personnel (Minn. R. 3525.1341Subp 3.C.(2)(a)).

AND

- Documentation includes evidence of inadequate progress to make age or state-approved grade-level standards in one or more of the areas specified in rule when using a process based on the child's response to scientific, research-based intervention (Minn. R. 3525.1341 Subp 2.A.(1)).

OR

- Documentation includes a pattern of strengths and weakness in performance and/or achievement, relative to age, state-approved grade-level standards, or intellectual development that is determined by the evaluation team to be relevant to the identification of SLD (Minn. R. 3525.1341Subp 2.A.(2)).

**Note:** Check the sources of data used.

Documentation must be representative of the child's curriculum and useful for developing instructional goals and objectives. Sources may include:

- Repeated measures of achievement.
- Cumulative record review.
- Class work samples.
- Teacher records.
- State or district assessments.
- Formal and informal tests.
- Curriculum-based Evaluation results.
- Results from targeted support programs.

The table below provides space to collect the findings and integrate multiple sources of evidence in each of the eight areas of achievement (Minn. R. 3525.1341 Subp 2.A).

**Areas of Achievement Matrix**

Areas of Achievement	Guiding Questions to Identify Patterns in Achievement Data			
	<p>Can the student meet the <b>instructional demands</b> that apply to all students?</p> <p>List academic/behavioral task requirements the student <b>can</b> meet.</p>	<p>In what areas is the student's achievement inadequate to meet:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> State-approved grade-level standards</li> <li><input type="checkbox"/> District or state norms</li> <li><input type="checkbox"/> Intellectual development</li> </ul>	<p>Instructional interventions or adaptations provided</p> <p>List instructional supplemental efforts, aligned with grade-level standards, implemented to accelerate the student's rate of learning and level of performance</p>	<p>List <b>what has worked</b> to increase rate of learning, performance, motivation, etc. (consider ICEL matrix)?</p>
Listening Comprehension				
Oral Expression				
Written Expression				
Basic Reading Skills				
Reading Fluency				
Reading Comprehension				
Mathematical Calculation				
Mathematical Problem Solving				

**Documentation of Exclusionary Factors**

Minn. R. 3525.1341 Subp 2A

Documented in the report and eligibility determination is evidence that the child's underachievement is not primarily the result of:

Exclusionary Factor	Source and Evidence for Future Reference
Visual, hearing or motor impairment	
Developmental cognitive disabilities	
Emotional or behavior disorders	
Environmental, cultural or economic influences	
Limited English proficiency	
A lack of appropriate instruction in reading and math	

**Note:** Teams may use the space provided to document any contributing factors that limit achievement and performance that are to be differentiated for or included in the design of specialized instruction.

**Documentation of Observation Linking Area Of Inadequate Achievement With Relevant Behavior** (Minn. R. 3525.1341 Subp.3A).

Check the box illustrating which option was exercised and that the documentation meets the criteria.

<input type="checkbox"/> Use information from an observation and monitoring of child's performance before the child was referred for evaluation (Subp.3A (1)).	
OR	
<input type="checkbox"/> Conduct an observation in the regular classroom after the child has been referred for evaluation (Subp.3A (2)).	
AND	
<input type="checkbox"/> Document relevant behavior(s) noted during the observation (Subp.3A (3)).	

**Section 3: Disorder in Basic Psychological Processes**

Minn. R. 3525.1341 Subp 2B

Documented in the report and eligibility determination is evidence that the child demonstrates a disorder in basic psychological processes in one or more domains of information processing manifested in a variety of settings.

Check the sources of data that corroborate determination of disorder across multiple settings (classroom(s), home, extra-curricular activities, non-instructional settings) (Subp. 3.C (1). (Subp. 2.B):

<b>Documentation sources must include:</b>	<b>Additional evidence may come from:</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> Aptitude tests</li> <li><input type="checkbox"/> Achievement tests,</li> <li><input type="checkbox"/> Parent input—(P-CI)</li> <li><input type="checkbox"/> Teacher recommendations, (TI)</li> <li><input type="checkbox"/> Data used for exclusionary factors</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Student input—S</li> <li><input type="checkbox"/> Classroom observations or checklists—OB</li> <li><input type="checkbox"/> Behaviors observed during assessment</li> <li><input type="checkbox"/> Screening data</li> <li><input type="checkbox"/> Relevant medical data</li> <li><input type="checkbox"/> Input from other school personnel</li> <li><input type="checkbox"/> Independent evaluations</li> <li><input type="checkbox"/> Other</li> </ul>

The chart that follows provides space for teams to integrate the findings of multiple sources of evidence. To increase clarity, a coding system has been provided.

- Evidence should be entered in the appropriate column: a normative strength, weakness, or within normal limits.
- A student’s personal profile may be entered in the normative strength and normative weakness column and coded according to the following:
  - RS (relative strengths) are relative to the student’s profile
  - RW (relative weaknesses) are relative to the student’s profile
- If using CHC theory-driven assessment each cognitive/academic domain, narrow ability and processing notation may be recorded where known or suspected (e.g., as reported by a teacher).
- Teacher Information may be coded as (TI) and Parent/Caregiver Information may be coded as (P-CI).

**Documentation of Basic Psychological Processes Chart**

Rule	Cognitive abilities in research that may also be included	Below Average Weakness SS<85 and additional data	Within Average Limits SS 85-115 and additional data	Average and Above Strength SS>115 and additional data
Acquisition	Attention			
	Short-term memory			
	Phonological processing: <ul style="list-style-type: none"> <li>• phonological awareness</li> <li>• phonological memory</li> </ul>			
Speed of processing				
Working memory <ul style="list-style-type: none"> <li>• Auditory</li> <li>• Visual and spatial (a.k.a. orthographic)</li> </ul>				
	Successive processing			
	Simultaneous processing			
Organizing, planning and sequencing	Executive functions <ul style="list-style-type: none"> <li>• organizing,</li> <li>• planning,</li> <li>• problem solving,</li> <li>• self-monitoring/ meta-cognition</li> </ul>			
	Long-term retrieval <ul style="list-style-type: none"> <li>• Associative memory</li> <li>• Rapid naming</li> <li>• Morphographic processing</li> </ul>			
Verbal and Non-verbal expression <ul style="list-style-type: none"> <li>• Transfer of information and Motor control for written tasks</li> </ul>				

To be in compliance with rule, we recommend making statements that further specify the areas of acquisition that are of particular difficulty. For example, “The student shows significant weaknesses in acquiring information as indicated by below-average processing speed, short-term memory, inability to sustain attention,” etc.

Thanks to Jennifer Mascolo and Dawn Flanagan for the use of their matrix and suggested coding.

**Section 4: (Optional) Severe Discrepancy**

Minn. R. 3525.1341 Subp 2C

The child demonstrates a severe discrepancy between general intellectual ability and achievement in the areas in the table below.

The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the child's chronological age level.

Check the area of discrepancy and other criteria.

Areas of Discrepancy	Other Criteria
<ul style="list-style-type: none"> <li><input type="checkbox"/> Oral expression</li> <li><input type="checkbox"/> Listening comprehension</li> <li><input type="checkbox"/> Written expression</li> <li><input type="checkbox"/> Basic reading skills</li> <li><input type="checkbox"/> Reading comprehension</li> <li><input type="checkbox"/> Reading fluency</li> <li><input type="checkbox"/> Mathematics calculation</li> <li><input type="checkbox"/> Mathematical problem solving</li> </ul>	<ul style="list-style-type: none"> <li>• Corroborated with data from other sources indicating discrepancy between expected and documented performance.</li> <li>• Nondiscriminatory practices are applied when standardized tests of aptitude and/or achievement are not appropriate (34 CFR 300.304).</li> </ul>

### **Section 5: (Optional) Data from a system of SRBI**

Minn. R. 3525.1341 Subp 2.D

Documented in the report and eligibility determination is evidence that the child demonstrates an inadequate rate of progress, measured over time using intensive SRBI.

Check the boxes when there is documentation sufficient to meet criteria.

- A **minimum** of 12 data points over a **minimum** of 7 school weeks.

The rate of progress is inadequate when a child's:

- Rate of improvement is minimal and continued intervention will not result in reaching age or state-approved grade-level standards.

**AND**

- Progress will likely not be maintained when instructional supports are removed.

**AND**

- Performance in repeated assessments falls below the child's age or state-approved grade-level standards.

**AND**

- Achievement is at or below the 5th percentile on one or more valid and reliable **achievement tests** using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

### **Section 6: Additional Requirements for Documentation**

Minn. R. 3525.1341 Subp 3 and 4

The eligibility report and determination contains documented evidence, such as:

- Statement of whether the child has a Specific Learning Disability (Subp 3B).
- Indication that the child is in need of special education services (Subp 3E).
- Educationally relevant medical findings, if any (Subp 3D).
- Evaluation report signed by all members verifying their agreement with the team's conclusion. If a member disagrees with the team's decision, they must submit a separate statement of their conclusions (Subp 4).

## Potential Results of the Evaluation Process

After the team, including the parents, has considered all the data, the evaluation process may end with one of three possible results.

- The student does not have a disability but needs continuing attention and intervention supports.
- The student has a disability that impairs one or more major life functions and meets criteria for Section 504 of the Rehabilitation Act and the Americans with Disabilities Amendments Act of 2008. The next step is to determine if a 504 plan is needed and document the needs and accommodations in a 504 plan.
- The student has a disability and requires special education services. The next step is the design of an Individual Education Program.

The figure below illustrates these results and the follow up actions required by the 504 plan.

### RESULTS OF SPECIAL EDUCATION EVALUATION

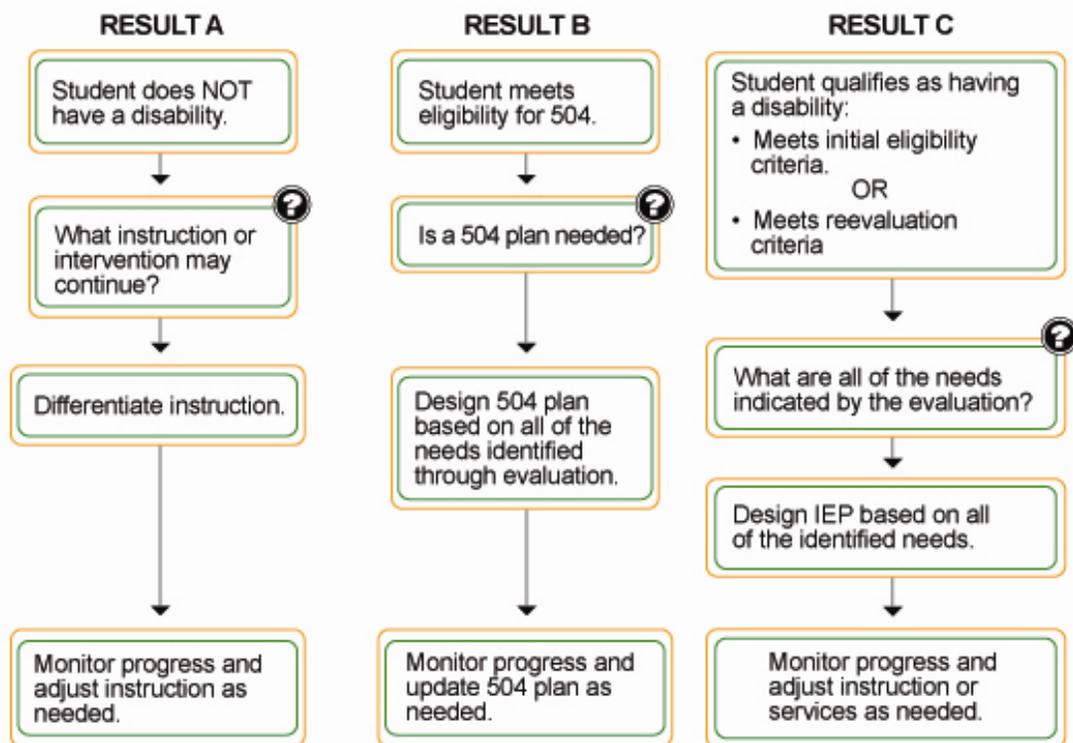


Figure 10-1: Results of Special Education Evaluation.

Although the three options are clear, making the decision is a complex process. To help teams, including the parents, negotiate the progressively more intensive problem-solving process, quality practice questions are embedded throughout the SLD manual. Teams are encouraged to continuously focus on altering instruction, curriculum and environment to improve achievement.

Consider the following illustrative examples of decision results.



### Illustrative Example – Jack – Result A

Jack is in the low average to below-average achievement range with no evidence of a disorder in basic psychological processes. He displays intellectual abilities in the low average range. He is likely to require continued intervention to achieve at an accelerated rate and may continue to lag behind grade-level expectations because of the rigorous demands of the curriculum.

**Strengths:** With intervention, Jack has low-average reading abilities in decoding. Writing skills are in the low average range as well as math fact and computation skills.

Data from standardized assessments and observations indicate that cognitive processing and global ability scores are in the low-average range.

**Weaknesses:** Comprehension and vocabulary are significantly below grade-level expectations. Current interventions are not sufficient to improve achievement to within grade-level expectations.

**Eligibility determination:** Given all the data, the student does not qualify as SLD; however, continued intervention will be necessary for him to improve achievement and access the general education curriculum. The team, including the parents, suggests continuing differentiation within core instruction as well as supplemental interventions with regular monitoring for improvement. Jack continues to be served in a small group. The classroom teacher has received support and coaching to differentiate instruction to meet Jack's ongoing needs, as identified in the evaluation report.



### Illustrative Example – Jill – Result C

Jill has the following profile and may be a child with nonverbal learning disorder (NVLD), not low ability.

**Strengths:** Basic decoding skills, recall of basic facts and computation. Jill displays normative and relative strengths in auditory processing, auditory recall, and fluid reasoning. Jill's global ability scores are in the average range.

**Weaknesses:** Significantly low achievement in reading comprehension, math problem solving, handwriting, and written expression. Normative and internal weaknesses in working memory, visual processing, and executive functions (planning and self-monitoring). Jill has difficulty integrating information, which impairs academic and social functioning.

**Eligibility determination:** The team, including the parents, determines Jill to meet criteria and have an SLD. They design an IEP that extends beyond what was provided during interventions to address academic and social functioning in all areas of weakness.

### **Guidance on Result A: Students Who Don't Qualify for SLD**

SLD evaluation is primarily concerned with determining the existence of underachievement in one of eight areas with consistency in normative weakness in empirically identified basic psychological processes. Low IQ scores and/or pattern of basic psychological processes in the low-average range may be more suggestive of low ability or mild developmental cognitive delay. These are conditions that preclude determination of SLD under federal law and Minnesota rule. The team, including the parents, making the eligibility decision must determine through professional judgment if the whole picture of data indicates that the student has a disability and requires special education services. Not all children presenting with flat profiles in achievement show a corresponding profile in cognitive abilities.

To further illustrate issues where a team judgment must be used in data collection, analysis, interpretation and decision-making apply, below are common pitfalls that may detract from valid decision-making, grouped into student, parent/family, team process, eligibility problems, and criteria for SLD.

Teams should be familiar with these pitfalls and establish procedures to avoid making similar errors in the eligibility determination process.

*Teams need to use caution when making decisions based on the indicators listed under each result example below. Assessment data, not emotion-based decisions, must support the overall team decision.*

### Examples of Common Pitfalls in Making Valid Decision

#### Result A

The student does not have a disability, but struggles to make progress towards grade-level standards. Common pitfalls that may lead to misdiagnosis of the student being SLD even though the data does not support the decision:

- Student needs extra help to catch up academically.
- Student has not had access to formal, systematic, and explicit instruction in the area of inadequate achievement.
- Student is unmotivated to perform in the regular classroom.
- Student is culturally and linguistically diverse and requires differentiated curriculum and instruction to accelerate progress towards grade-level standards.
- Student is highly mobile, experiencing school difficulties and few alternative services are available.
- Student is transitioning to elementary, middle/intermediate, or high school and the perception is that he/she will fail without special education supports.
- Student performs poorly on state comprehensive assessment, so is eligible for SLD.
- Student is two grade-levels below grade expectancy and needs to be found eligible for SLD to receive remedial services.
- Parent(s) for many reasons (language, work schedules, English Proficiency, literacy, academic proficiency) cannot support academic achievement.
- Parents and schools have differing views of appropriate parental involvement.
- The team has data from repeated measures collected during interventions that indicate student needs continued intervention despite evidence that achievement is within levels expected for the student's ability or there is a lack of evidence of disorder in basic psychological processes.
- The "expert" team member is certain the student needs help that is not currently available in the general education setting, so the student is determined SLD.
- Achievement profiles that exceed expectations for student grade and/or ability level are unlikely to present with evidence to qualify as SLD, yet they struggle. Teams should provide recommendations to improve achievement or intervention when need is demonstrated.

### **Result B**

The student has a disability, possibly diagnosed by an outside agency, which demonstrates adverse impact on his/her ability to succeed in reaching grade-level standards without additional supports. Confusion may be caused by any of the scenarios below. Parents may have sought an outside evaluation either prior to or in conjunction with the school evaluation.

- Parent(s) have diagnosed dyslexia and student is showing similar symptoms.
- Parent(s) have had the student assessed privately and the summary report identifies a learning disorder, dyslexia, dyscalculia, dysgraphia, etc.
- Family physician says the student has SLD.
- The school conducts the assessment and evaluation, finds the child eligible; however, the parent denies special education services in favor of 504 plan.

### **Result C**

- Student likely has a disability but the team refuses to make the determination because the student comes from a culturally and linguistically diverse background and the team lacks the experience and/or tools to distinguish diversity from disability.
- Student has a disability but does not qualify because of a single score.
- Student has a disability but not an SLD because a member of the team pushed for an SLD label over other disability category.
- The disability interferes with academic achievement in one of the 8 areas and the team requires that the student meet initial criteria in each area to receive special education services.
- Student does not need specially designed instruction in order to make progress within the general curriculum, but has been inappropriately identified.

### **Multi-Disciplinary Team Process**



This section discusses team membership, time to meet for integration of data, and integrity of team process.

- Teams making the eligibility determination, including the parents, collect and integrate comprehensive assessment data. Those responsible for gathering achievement and performance data meet collectively to interpret results and make educational recommendations based on shared understanding of the student's needs. The benefits of taking this step are:
  - Identification of all the needs related to the disability as well as needs that must be addressed in order to help the student gain control over his/her education.
  - Shared understanding among all team members of the needs and the functional implications of the disability.

- Shared understanding of how services, accommodations and/or modifications will be designed to maximize student achievement and make progress towards grade-level standards and instruction accessible.
- Increased compliance with federal regulations and state rules for documentation of evaluation results and Individualized Education Programs (IEPs).
- Shared belief that the student's abilities and challenges will be addressed
- Faithful implementation of special education services.

The table below delineates challenges teams may face and solutions to help teams avoid making inappropriate identifications. This is a suggestive list only.

Table 10-7

*Issues, Challenges and Solutions*

Challenge	Solution
<b>Issue 1: Eligibility Decision-Making</b>	
<p>A. Decision made without full team membership present, including parents</p> <p>B. Parents were not allowed to make an informed decision about placement into special education</p>	<p>A. Case manager ensures all team members are present for the decision making process or reschedules the meeting.</p> <p>B. Parents receive sufficient data and time to make an informed decision. Parents provided with Evaluation Summary Report (ESR) prior to meeting; parents allowed and encouraged to ask questions; meeting reviews ESR followed by an IEP meeting to allow parents time to review and discuss results without the pressure of the group.</p>
<b>Issue 2: Interventions</b>	
<p>A. The team designs interventions based on data collected on interventions that lack integrity or were not sufficiently rigorous enough to remediate the academic weakness.</p> <p>B. Intervention not implemented with fidelity — team “knows” the student has SLD and makes decision despite inappropriate intervention.</p> <p>Intervention was not matched to student’s academic need or the intervention process was designed in favor of ultimately referring the student for special education evaluation.</p>	<p>A. Well-designed interventions delivered by trained staff within the general education curriculum can provide much greater access to grade-level curriculum than pull-out services. Analysis of challenges in implementing interventions should be the next step in problem-solving. Consultation and professional development may provide a more effective solution for students that do not have a disability.</p> <p>B. Implementation of research-based interventions is an ongoing process regardless of the eligibility determination. While special education supports may be necessary to maximize student performance and make grade-level curriculum accessible, special education services are not the only answer.</p>

Challenge	Solution
<b>Issue 3: Decisions Based on Poor Data</b>	
<p>A. Teams make decisions based on data that are inadequate, incomplete, irrelevant, or from technically inadequate instruments.</p> <p>B. Teams use discrepancies calculated in areas unrelated to the referral concern in order to document a discrepancy.</p>	<p>A. As long as the team collecting evidence for a disability determination has been focused on answering the question, “What are the pre-requisite skills and why is the student unable to learn normally within the context of intensive instructional supports?”, the team will have data appropriate for developing an appropriate IEP and making an eligibility determination.</p> <p>B. The comprehensive evaluation should have been driven by a hypothesis, and all avenues for explaining the relationship of inadequate achievement to systemic, ecological, or environmental factors as the reason for the observed learning problems tested. If alternate hypotheses develop and are validated through the evaluation process, the team should use the appropriate eligibility criteria supported by the data (Result C for other disability area).</p> <p>If the team gathers comprehensive data and cannot identify a specific learning disability using the body of evidence from valid and reliable sources, it should include this determination in the evaluation report and recommend instructional options such as differentiated instruction, (Result A).</p>

Table 10-8  
*Miscellaneous Challenges and Solutions*

Challenge	Solution
<p>The team is unduly influenced by a single member asserting his/her opinion</p>	<p>The basic makeup of the team is designed specifically for the purpose of providing comprehensive, quality expertise in the decision-making process. As a rule, anyone required to attend the team meeting has something of value to contribute. The meeting facilitator should have training to manage strong opinions and ensure that all voices are heard. A single team member may not make the decision regarding eligibility for SLD. A team meeting is not merely an automatic act with a predetermined conclusion.</p>

Challenge	Solution
<p>Eligibility is contingent on the availability of services e.g. High case-loads or lack of funding limits the number of students who can be served.</p>	<p>Establish a decision sequence that all team members follow to guard against being influenced by availability of services or by need to increase the student numbers to justify a teaching position. The services and placement determination are the last activities in the development of an IEP.</p>
<p>Eligibility dictates services (e.g., students must meet initial eligibility criteria in each area of academic achievement to receive services, instructional supports are only available for students on IEPs)</p>	<p>Special education and related services decisions are driven by the documented needs in the evaluation report, present levels of educational performance, and need for special education and related services to make continued progress towards reaching grade-level standards. Minnesota Rule does not require a student to meet the data threshold in each area in which services are to be provided.</p> <p>A determination that a child does not have an SLD will not absolve the team from designing a program to enable the child to make progress towards proficiency in state standards. Continue to problem solve how to differentiate or provide interventions for students not able to make progress in the general curriculum regardless of their eligibility.</p>
<p>Eligibility is contingent on a single team member being able to work with a student</p>	<p>Consultation and collaboration may provide a more efficient solution as well as increase the ability of all staff to meet the needs of all learners.</p>
<p>The team has made the assumption that students from diverse cultures or those that are ELL are not allowed to be identified for Special Education.</p>	<p>When data suggest that the student differs significantly from peers of similar background with similar levels of language acquisition, base the eligibility decision on data gathered from a variety of credible sources on skills reflecting cultural competency. The team’s culturally competent judgment ensures holistic consideration of available data and best practices, and in a particular case enhances the precision, accuracy, and integrity of the eligibility decision.</p> <p>Parental or guardian input can be valuable to determine the cultural norms for a student of a culture different from the school team. Consider input from parents on how their child compares to same age and cultural peers. Consider including a cultural liaison on the team.</p>

## Making the Eligibility Decision – Special Cases

### Guidance for Special Cases – Transfers

Students transferring from other districts may continue to receive services and/or interventions while teams, including the parents, determine if further evaluation is

warranted. Teams may use existing data or gather additional data to ensure the student meets Minnesota criteria for SLD.

A student that was previously qualified as having an SLD under Minnesota criteria does not necessarily need re-evaluation. A team may accept the eligibility determination even if the student qualified under criteria other than what the district uses (i.e., ABC or ABD). If the team does not have the information it needs to be certain that the child has a disability and to design an Individualized Education Program, additional data may be sought.

### **Guidance for Special Cases – Overrides as referenced in Minnesota Rule**

In rare cases, the team, including the parents, may determine that the student has a disability and needs specially designed instruction even though the student does not meet the required data thresholds. There are three requirements for an override.

1. An explanation of why the usual standards and procedures resulted in invalid findings for the student should be made in the evaluation report. This standard applies to all the criteria.
2. An indication of the objective data used is needed to conclude that the student has a disability and is in need of specialized instruction. The data may include:
  - Test scores.
  - Previous assessments.
  - Work products.
  - Observational data.
  - Self-reports.
  - Ecological assessments.
  - Teacher comments.
  - Other developmental data.
  - An indication of which data has the greatest relative importance for the eligibility decision.

The team members must sign the evaluation report agreeing to the override decision. A team member who disagrees must include a signed statement explaining their position. Include documentation of all three SLD eligibility components in the evaluation report.

### **Guidance for Special Cases – Re-evaluation**

Federal law states that during a review of existing evaluation data, the IEP team must determine:

- Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or in the case of a reevaluation of a child.
- Whether the child continues to have such a disability, and the educational needs of the child...” 34 CFR 300.305(a)(2)(i).

Federal law does not require that children meet initial state eligibility criteria during re-evaluation to remain eligible for special education and services. The regulations clearly state that the IEP team must determine whether a child has a disability as defined by section 300.8 and that during reevaluation whether the child continues to have such a

disability. The Minnesota Department of Education has long held the position that as long as a child continues to meet the federal definition of “child with a disability,” which is a more permissive standard than state initial criteria, and the child continues to have a need for special education and related services, that child continues to be eligible for special education.

That a student has a disability is the most stable operative fact in determining whether they qualify for special education. It is likely that a student who has received effective specially designed instruction will have a narrower discrepancy than found in the initial evaluation. A discrepancy that is narrower than initial eligibility requirements is not the same as saying a student does not have a disability. If services are effective, a student with a disability may make progress with special education services and supports. If a student makes significant progress, such that the team suspects that initial evaluation results were not valid and/or the student does not have a disability, the re-evaluation should seek to determine the validity of the existing data identifying a disability. Given circumstances where a student without a disability is being served in special education, the team should consider exiting the student.

As previously discussed, in documenting that a child continues to have a disability the team should determine if the existing data continues to be an accurate portrayal of the student and the disability. If existing data continues to be an accurate portrayal, the team should make a statement as such. For example, given the relative stability of IQ scores over time the team may use record review to establish validity of the IQ score. The team would not have to complete a new IQ test as long as the team documents that they feel the score continues to be valid and reliable. They would make a statement in the re-evaluation summary report reflecting that they feel the existing IQ score continues to be valid.

What is more likely is that a student with significant weaknesses in a cognitive process will experience challenges at different points in the curriculum. The team may wish to review the subtest scores (or re-evaluate if data is not available) of targeted cognitive abilities to identify how those cognitive abilities are impacting the student in making progress in the general curriculum (see chapter 9 for example of the impact of working memory on acquisition of math skills).

When re-evaluating whether the student continues to require special education services, the team should consider the existing data as well as any new data that reflects the student’s changing needs and progress. In general, considerations might include:

- Demonstrate the ability to function independently.
- Meet their IEP goals and objectives.
- Access and perform adequately in the general curriculum.

The student should have a plan to monitor progress during the year after exiting services to ensure that the student continues to make progress in the general education curriculum without special education supports.

Where the student demonstrates that they need special education services within 1 year of exiting special education, then they can re-enter special education through a team process. A school district *may* be required to conduct an evaluation if a student who was previously but no longer receiving services begins to demonstrate a need for services. Children who have been discontinued from all special education services may have services reinstated within 12 months of the discontinuation. The school district is not required to conduct pre-referral interventions or a new evaluation if data on the child’s

Present Level of Academic Achievement and Functional Performance (PLAAFP) is available and if an evaluation was conducted within the last three years. See Minn. R. 3525.3100 or the question and answer document provided by Compliance and Assistance addressing Evaluations: Dismissal and Reinstatement of Services.

### **Transfers**

Students transferring from other districts may continue to receive services and/or interventions while teams determine if further evaluation is warranted. Teams may use existing data or gather additional data to ensure the student meets Minnesota criteria for SLD.

A student who has previously qualified as SLD under Minnesota criteria does not necessarily need to be re-evaluated. A team may accept the eligibility determination even if the student qualified under the criteria other than what the district uses (ABC or ABD). If the team does not have the information it needs to design an Individualized Education Program, additional data may be sought.

## **Involving Parents in the Eligibility Decision-Making Process**

**Prior to the Meeting**, teams should seek and encourage parent input to the decision making process by sending a draft of the evaluation report. Parents may appreciate having time to read and understand it prior to the meeting. Additionally teams may provide parents with questions to reflect on prior to the eligibility decision making meeting, such as those pertaining to historical points the parents can contribute to the description of the student, questions or concerns regarding their student's education, and how the behavior (both academic and behavioral) described by the school compares to what the parent sees on a daily basis at home? ) See Appendix for sample parent questions.

**During the meeting**, the school psychologist should explain the evaluation of intellectual ability to the parents carefully using appropriate terminology and ensure that parents understand it. It is the responsibility of the school team to provide the parents with definitions of these terms.

*Parents should be included in the determination of eligibility.*

Listen and acknowledge parents' concerns and fears (this may be in a pre-meeting with a representative that has the most rapport with the parent).

Parents should be included in the determination of eligibility. Even though teams may wish to make the determination prior to the meeting for efficiency's sake, eligibility determination is a team process and the parent is a mandated member of the team. Pre-meetings can be held with the parent to review data or concepts that may take time to process for a layperson.

Below are two illustrative examples of parent involvement.



**Illustrative Example – Mr. Smith**

Mr. Smith has been involved in the assessment process throughout. He has an understanding of the special education process or has connected with an advocate to help him through the process. Mr. Smith would benefit from or has requested a pre-review of the evaluation report prior to the meeting. The case manager should provide him with a copy of the evaluation report within a reasonable period prior to the meeting.



**Illustrative Example – Mrs. Jones**

Mrs. Jones has been involved throughout the process, but the school team has concerns that she may misunderstand or misinterpret the data being gathered. Keeping in mind that the data that will be shared at the evaluation summary meeting is of a technical nature (even though schools should make attempts to put it in parent-friendly language), schools must make allowances for parents to have time to digest the information in order to allow them ample time to make an informed decision. The school team feels Mrs. Jones would have an increased understanding of the results from the discussion at the team meeting had she had time to digest the report. Even though the school team has made attempts to provide Mrs. Jones with information so that an informed decision can be made, her level of understanding is suspect. The school staff may suggest that she contact an advocate to help her during the evaluation summary meeting.

Table 10-6

*Potential Problems Working with Parents and Solutions*

Problem	Solution
<b>Issue 1: Pre-referral Intervention</b>	
<ul style="list-style-type: none"> <li>• Parents not aware/informed their child is struggling in school.</li> <li>• Parents not informed their child is receiving interventions.</li> <li>• Parents not provided on-going progress monitoring data.</li> <li>• School does not acknowledge parental concerns about student progress.</li> <li>• Parent verbally requests evaluation for special education and the school tells parent interventions need to be attempted prior to evaluation.</li> <li>• Custodial parent not involved in the school setting. Non-custodial parent making decisions without other parent's knowledge.</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-referral Intervention.</li> <li>• Open communication between home and school.</li> <li>• Parents are informed as soon as concern is noted.</li> <li>• SRBI process is in school handbook and/or specially designed communications to ensure that parents understand the intervention process.</li> <li>• School provides progress monitoring results in visual form with normative peer performance or grade-level benchmarks for comparison.</li> <li>• Parent puts concerns into dated written format, mails to principal and teacher with requests for follow-up response from school district staff.</li> <li>• Put request in writing, send to principal with a cc to the director of special education and request follow-up communication.</li> <li>• School communicates in writing reasonable, rational data, prioritized by weight and considered in decision.</li> <li>• School makes good faith effort to communicate and include parent in decision making.</li> </ul>

Problem	Solution
<p><b>Issue 2:</b> Proceeding from referral (either school or parent initiated) to planning for evaluation</p>	
<ul style="list-style-type: none"> <li>• Following the parent request for an evaluation, the team proceeds to gathering parent consent for an evaluation without holding the team meeting.</li> <li>• Long delay between referral request and action on that referral.</li> <li>• Assessment plan developed without parental input.</li> <li>• Assessment plan does not include comprehensive data collection procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Proceeding from referral (either school or parent initiated) to planning for evaluation.</li> <li>• Even with parent request for the evaluation the team is still obligated to discuss the evaluation. Quality practices indicate that meeting as a team, allowing the parent a chance to share and discuss concerns with the school, ensures a more comprehensive evaluation plan.</li> <li>• Acknowledgment of receipt of the parent request must be made within 10 days. Keep parents informed as to why delay may be occurring. Proceed to assessment in a timely manner. Parents should feel comfortable with following up on request.</li> <li>• Rule requires parental participation in the evaluation planning process. Schools need to make efforts to hold the meeting when parents can participate.</li> <li>• Parents can seek guidance from advocacy groups. Teams should talk through the evaluation decisions relaying the concerns and how the assessment will address those concerns.</li> </ul>

Problem	Solution
<b>Issue 3: Outside Evaluation Data</b>	
<ul style="list-style-type: none"> <li>• Parents provide school with outside evaluation data and the school does not fulfill their obligation to consider the data. (The team gives the report a cursory look and then discards the data without rational consideration.)</li> <li>• Outside evaluation data conflicts with school gathered data.</li> <li>• Parents feel pressured into seeking outside evaluation for conditions such as Dyslexia.</li> <li>• Parents do not have the monetary/insurance resources to take child in for school requested outside evaluations.</li> <li>• Parents have diagnosis of conditions such as SLD from medical doctor and want school to proceed to special education placement.</li> </ul>	<ul style="list-style-type: none"> <li>• Parents should expect the school will summarize the outside evaluation data (showing that it has been read and considered).</li> <li>• The team is obligated to weigh both pieces of data, determine which is more valid and reliable and provide a rationale of why they made that determination.</li> <li>• Parents are not required to seek an outside evaluation for conditions such as Dyslexia.</li> <li>• If the team feels an outside evaluation is necessary and parents do not have the resources to pay for it, the school must pay for the outside evaluation.</li> <li>• Medical community diagnoses do not necessarily match state eligibility criteria, thus the school must complete the comprehensive evaluation to determine special education eligibility (see Dyslexia Information paper).</li> </ul>

Problem	Solution
<b>Issue 4: School Evaluation Data</b>	
<ul style="list-style-type: none"> <li>• Parents not allowed to give input into evaluation data.</li> <li>• Materials not in the parents' native language.</li> <li>• All communication done with parents is via notes, not phone contact or face-to-face meeting.</li> <li>• School is making efforts to include parent in the evaluation process and parent does not respond to the requests.</li> <li>• Data reported to parents in technical manner.</li> <li>• Parents not informed when testing was going to occur and feel they could have prepared the student better for testing had they been informed.</li> <li>• Parents do not have the resources to get to the school for meetings with teachers regarding the evaluation.</li> <li>• Transition data, goals, and plans are not gathered from students of transition age.</li> <li>• Degree of parental support is not considered when determining underachievement.</li> </ul>	<ul style="list-style-type: none"> <li>• Rule requires that parents are part of the team and must have input into the evaluation.</li> <li>• Materials must be provided in a language that is readable to the parent or a verbal interpretation must be provided.</li> <li>• Best practice is that a relationship has been developed with the parent via face-to-face communication. This will increase parent comfort level and will make stressful decisions a little easier.</li> <li>• The school needs to make efforts to determine why the parent is reticent to respond. Parent may have a school phobia.</li> <li>• Attempts should be made to report evaluation data in parent-friendly language. Parents should be comfortable and encouraged to request clarification.</li> <li>• Parents should check with the school to keep the line of communication open.</li> <li>• School should provide transportation for parents if this could further facilitate parental involvement. Schools should make attempts to schedule meetings that parents would be able to attend.</li> <li>• Students aged 14 and older should be included in the data-gathering process. Parents should be aware that a transition age student should be involved in the process.</li> <li>• Data should be collected about parent involvement at home. Parents should honestly reflect the amount of involvement they have in assisting their child with homework as well as the number of minutes children spend independently on their homework.</li> </ul>

Problem	Solution
<b>Issue 5: Eligibility determination</b>	
<ul style="list-style-type: none"> <li>• Decision made prior to the parent being involved in the process.</li> <li>• Only the school data are considered.</li> <li>• Parents don't feel they have a voice in eligibility determination.</li> <li>• No consideration of categories other than SLD.</li> <li>• Parents feel pressured to go along with school's decision.</li> <li>• Parents are not provided with evaluation data in a way they can understand.</li> <li>• Only interpretation of the data is reported; no actual data are provided to parents.</li> </ul>	<ul style="list-style-type: none"> <li>• Outside evaluation data must be considered (if available). Parental input must be included. (See related outside evaluation data question above).</li> <li>• If parents feel they do not have a voice, they should enlist the help of an advocate. Parents need to understand they have the right to request an independent educational evaluation, at the school district's expense, if they don't agree with the school's determination. Parents need to advocate for their right to be heard in the meeting and consult the parent's rights document that should have been provided by the school. Parents are the only consistent voice across grade levels and schools. Therefore, their input is critical.</li> <li>• State rule says evaluations are not conducted for a specific eligibility category. Teams are determining if the child meets any eligibility category.</li> <li>• Parents should be given ample time to make an informed decision and if both parents were not at the meeting, both should to be part of the decision making process. Parents should understand the parent's rights document that should have been provided by the school.</li> <li>• Teams must ensure evaluations are written and explained in parent friendly language. Parents should be encouraged to ask questions and ask for clarification.</li> </ul>

Problem	Solution
<b>Issue 6: Determination of student needs</b>	
<ul style="list-style-type: none"> <li>• Needs based on school programs not actual student based needs.</li> <li>• Parents not involved in determination of needs.</li> <li>• Prioritizing needs done solely by school not including parental and student input.</li> <li>• Needs determined for short term only, long range needs not considered or planned for.</li> <li>• Future needs are not based on realistic goals.</li> <li>• Exclusion of parental concerns and input that was provided through the parent guardian questionnaire.</li> </ul>	<ul style="list-style-type: none"> <li>• IEPs are based on individual student needs and not school programs that may or may not be available. Services need to be provided in the least restrictive environment.</li> <li>• Parents need to advocate for their own rights.</li> <li>• If there is an abundance of needs and the team determines that they cannot address all of them, the parent and student should give input as to which needs are of the highest priority. This would be an ideal opportunity for a transition-aged student to practice self-advocacy skills.</li> <li>• The ESR should spell out needs for at least three years and, therefore, long-range goals need to be thought of.</li> <li>• Teams should keep high expectations for the student, but also help guide the student and parents towards realistic goals based on strengths and future plans.</li> <li>• Rule states that the determination cannot be made from a single score. The team must consider all of the data gained through the evaluation process including parent interviews and questionnaires.</li> </ul>
<b>Issue 7: IEP Development</b>	
<ul style="list-style-type: none"> <li>• IEP is planned and in a written format prior to IEP meeting.</li> <li>• IEP not in parents' native language.</li> <li>• Placement is determined before services are determined.</li> <li>• Informed consent is not possible as school expects parents to sign permission for the IEP at the meeting.</li> </ul>	<ul style="list-style-type: none"> <li>• The parent must be provided input in the development of the IEP. While schools have considered and may have rejected some options they should not be presented to the parents as a plan.</li> <li>• Parents should be allowed ample time to make an informed decision and thus should not be pressured to sign a proposed IEP if there is hesitation during the meeting.</li> </ul>

### Explaining eligibility to parents and students

- Clarify the purpose of the meeting.
- Provide an overview of what will be discussed.
- Review referral concerns and the hypotheses that were generated to account for the concerns.
- Explain areas of academic strength and corresponding information processing assets/strengths.
- Explain areas of underachievement and corresponding normative weaknesses in basic psychological processes.
- Use graphs to present results (with confidence intervals).
- Discuss the implications of normative weakness and strengths.
- Integrate additional relevant data and team findings.
- Confirm or disconfirm hypotheses and eligibility.
- Summarize the findings.
- Explain findings and implications on instructional planning.

**Note:** See Chapter 9, the External Evaluation section to learn more about independent evaluation and the rights of parents to make this request.

### After the Eligibility Determination

Once the eligibility determination is made, the team has the obligation of translating the data from the evaluation report into an Individualized Educational Program. The guiding questions that have been supplied at the end of each chapter should provide a guide for integrating data.

Teams should use the information gained from the guiding questions and quality practices to address both the questions of eligibility as well as to satisfy the needs of the team in designing instruction. Without intentional planning, data gathered during the intervention/pre-referral stage may be left out and leave teachers to reinvent special education services. The Individual Education Program should build on what was working within core instruction and intervention.

**Note:** It is extremely important for teams to use the information gained throughout the process to inform the design of specially designed instruction. Specially designed instruction should build on the information gained during interventions prior to the comprehensive evaluation. Independent observers should be able to see that the IEP and special education services are more intensive, frequent, or of longer duration than what was provided prior to the eligibility determination. Accommodations and modifications should make use of principles of Universal Design as well as effective use of Assistive Technology. It should be clear that the student has access to grade-level content regardless of where the specially designed instruction takes place.

The following represents the evidence-based practices for designing special education services that will likely accelerate a student's acquisition of achievement and social competence.

- Increase the quantity of instruction a student receives. Supplanting core instruction with less direct, systematic, and explicit instruction is not supportable.
- Design instruction to be systematic, explicit, and promote ongoing opportunities to review previously mastered content. Instruction should be provided through the generalization stage.
- Use consistent language across classroom environments and content area teachers to promote deeper understanding, exposure, and opportunities for over learning.
- Integrate self-regulation strategies, goal setting, monitoring of progress, self-evaluation, etc. to promote ownership and nurture independent learning.
- Incorporate higher-order thinking skills and nurture meta-cognition along with skills instruction. Research indicates that students benefit when both are taught simultaneously.
- Explicitly design instruction to build vocabulary and conceptual knowledge on grade-level to afford the individual access to grade-level content regardless of literacy skills. Language instruction, where appropriate, should be integrated into skills instruction to provide context and multiple exposures. Accommodations for lack of grade-level literacy are not sufficient to overcome the gap in vocabulary and conceptual knowledge.
- Progress monitoring should continue and instruction should be adjusted accordingly to continue the acceleration of skill acquisition.
- Use data collected during transition evaluation, to help students see link between instruction and achievement in middle school/high school and his/her post-secondary goals.

***Transition Issues for Students Less than Age 14***

*The framework was designed to help teams think through issues related to access to the general education classroom as well as areas of transition. Teams should apply the questions that are developmentally appropriate for the student being evaluated. Minnesota Rule requires that transition assessments must be completed by the time a Special Education student reaches age 14.*

## Appendix

### Questions for Parent(s) Prior to Eligibility Determination

Send these questions to parent(s) to consider before the eligibility determination meeting:

1. What does your child prefer to do at home? How does your child interact with parents, siblings?
  
2. Does he/she have friends?
  - a. How does your child get along with his friends? (Leader? Follower?)
  
3. Is your child involved in activities after school? (This can be school or non-school related) If so what are they? Does your child look forward to these activities or is it a struggle to get your child to attend these activities? How does your child act after the activity?
  
4. Tell us about what your child does well. (This can be academic, social, sport, or any area.)
  
5. How do you teach your child new tasks and skills? Do you and your child work well together?
  
6. What does your child tell you about school? Has what your child told you about how they feel about school changed?
  
7. Do you see the same types of concerns at home that the school sees in the area that was listed as a concern? How are the concerns similar and/or different? When did you begin to see these types of concerns? Has the school brought up these concerns prior to this?
  
8. What do you think the school could do to help your child?

9. How much time does your child spend doing homework at home?
  - a. What is the amount of homework your child brings home? Do you think this is too much?
  - b. How much assistance does your child require to complete the homework? Who is available to help? Is someone who is proficient in English available to help the child with homework? (Refer back to question regarding who is available to help child with learning.)
  - c. What is his behavior when doing homework? Is your child able to complete his/her home work? Alone? With assistance?
  - d. Where does your child do his/her homework? Does your child have a set spot or is he/she more likely to pick a variety of spots?
10. What are your long-term goals for your child? What are your child's long-term goals?
11. What are your short-term goals for your child? What are your child's short-term goals?
12. What area of concern would you consider to be your and your child's top priority at this time?
13. What is your expected outcome from the information gathered through the interventions and evaluation results?
14. How would you feel about your child being placed in a special education program?