



Implementing Response to Intervention

for Specific Learning Disability Identification

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II. Introduction

A. About this Document

As of July 5, 2007, districts have had the option to use a Response to Intervention (RTI) model as part of the evaluation process for identifying students with specific learning disabilities (SLD). To better assist districts in understanding how to put that practice into action, this document was developed. This document is a comprehensive guide outlining the criteria and procedures to determine the existence of a specific learning disability (SLD) through a comprehensive Multi-Tiered System of Supports Response to Intervention (MTSS RTI) process.

B. Principles for All Students

In 2019, multiple national organizations collaborated to develop a joint document titled, “Eligibility for Special Education Under a Specific Learning Disability Classification.” Principles outlined in this technical assistance document identified critical elements of an evaluation process when SLD is suspected and are embedded within this technical assistance document. You can find the full document and a list of the collaborating organizations [here](#). The principles are as follows:

Education for All Students

Principle 1: All students should have access to general education that includes rigorous, differentiated, universally designed core instruction, as well as supplemental, evidence-based interventions designed to respond to students’ individual needs.

Principle 2: Education professionals—working as a team—should have the preparation, ongoing training, and resources required to: collect and use universal screening information; select and administer assessments to measure student learning and monitor progress; and provide evidence-based instruction and interventions to support students in accessing the core general education curriculum.

Principle 3: Teams of education professionals should establish and maintain clear lines of communication with families to gain valuable input related to a student’s strengths as well as academic, social, behavioral, and health needs to ensure that families, students, and service providers can participate in collaborative decision making about future instruction.

When a Disability is Suspected

Principle 4: An evaluation must lead to a clear, unbiased, and timely decision regarding special education eligibility and inform future instruction, whether the student requires special education.

When Special Education Eligibility is being Determined and SLD is Suspected

Principle 5: Policies for determining student eligibility for special education services under the SLD classification should require the use of valid and reliable measures and ensure consistency across school districts.

Principle 6: Comprehensive evaluations for special education eligibility under the SLD category must include data from targeted, valid, and reliable measures that are tailored to the unique learning and behavioral profile of each student. The selection of measures and an eligibility determination must consider both best practice and professional judgment.

Principle 7: Assessments that measure aspects of cognitive functioning may be used to rule out cognitive disabilities or to inform educational decisions by documenting areas in which the student is struggling or excelling.

Principle 8: Teams of education professionals should use data collected on how a student responds to evidence-based interventions as an essential part of the evaluation. School personnel must not use response to intervention (RTI) procedures to delay a comprehensive evaluation and the determination of eligibility for special education services. ([OSEP 2011 letter to Directors](#))

III. Overview

A. SLD Defined

Specific learning disabilities are neurodevelopmental disorders that affect an individual's capacity to excel in certain academic areas and are one of the 13 disability categories under the Individuals with Disabilities Education Act (IDEA). It is further described in South Dakota Administrative Rule (ARSD) below:

24:05:24.01:18. Specific learning disability defined.

Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive disability; emotional disability; or environmental, cultural, or economic disadvantage.

B. Determining Eligibility

According to [ARSD 24:05:25:12](#) districts may use the discrepancy model or the RTI for SLD Identification to determine SLD eligibility. Districts who elect to use an RTI model as part of the evaluation process for specific learning disabilities must submit a plan to the South Dakota Department of Education (SD DOE) that, at minimum, addresses the provisions in [ARSD 24:05:25:12](#).

Response to Scientific, Research-Based Intervention Model

- What is the Area of Concern?
- Do we have enough information from the interventions that have been tried to know how the student learns?
- Is there enough information to develop a responsive, data-driven IEP if necessary?
- What research-based strategies were implemented with the student?
- Has assessment data been collected at reasonable intervals?
- Have the student's parents been informed of:
 - the teaching strategies;
 - the student's progress, and
 - their right to request an evaluation?

IQ/ Achievement Discrepancy Model

- Is there a severe discrepancy between ability and achievement in one or more Areas of Concern?
- Is there a pattern of strengths and weaknesses in performance and/or achievement?
- What information has been gathered from cognitive, behavioral, physical and/or developmental assessments?
- Has the team considered data from multiple assessments?

Figure 1: RTI Model and Discrepancy Model

While both models have their benefits and challenges, the purpose of this document is to provide districts with the tools and resources to understand and implement an RTI for SLD Identification model. The RTI model provides opportunities for early identification and a more proactive and prevention-oriented approach to identifying and serving students with specific learning disabilities. Even with use of the discrepancy model to determine eligibility, multidisciplinary teams must utilize a problem-solving approach within the multidisciplinary team framework to determine a student's eligibility for special education and related services.

Before using an RTI model for SLD Identification, districts must first have a well-established RTI framework. Once an effective RTI framework is established, districts can submit an RTI for SLD Identification plan to SD DOE. This plan must, at minimum, address the provisions included in [ARSD 24:05:25:12](#). For assistance in developing an RTI for SLD Identification plan, see Appendix B: RTI for SLD Identification Checklist.

IV. Response to Intervention (RTI) Within a Multi-Tiered System of Support (MTSS)

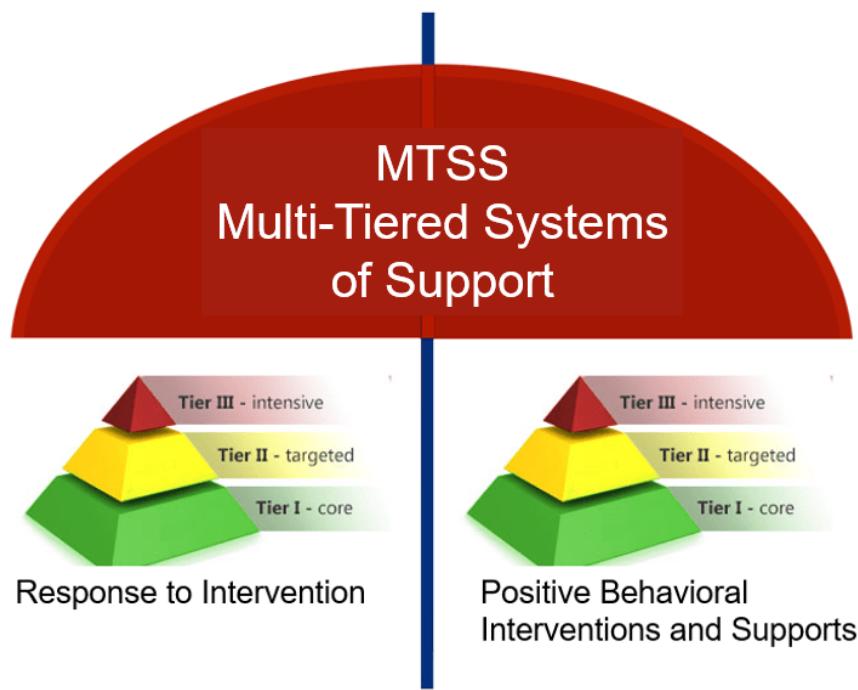


Figure 2: MTSS Umbrella of Supports

What is MTSS? - MTSS is a continuous-improvement framework in which data-based problem solving and decision making is practiced across all levels of the educational system to support students. To ensure efficient use of resources, schools begin with the identification of trends and patterns in their student data, beginning with their school-wide data. Students who need interventions beyond the core or universal academic and behavior curriculum are provided with targeted, supplemental interventions delivered at increasing levels of intensity [\[Link to MTSS guide\]](#).

Within the umbrella of SD MTSS are Response to Intervention (RTI) and Positive Behavior Intervention and Supports (PBIS). RTI provides academic-focused support to schools and students, and PBIS provides behavior-focused support. Both systems of support provide a structure to implement tiered supports to all students. Students who need interventions beyond what is given universally are provided with targeted, supplemental interventions delivered at increasing levels of intensity. For this document, the focus is on using RTI interventions.

What is RTI? Response To Intervention (RTI) is a framework used across both general education and special education settings to ensure the learning needs of all students are met (National Center on Response to Intervention, 2010; Fuchs, & Compton, 2012).

The purpose of RTI is to accelerate a student's learning to support the student in meeting grade-level benchmarks.

Essential Components of MTSS RTI

Team-Based Leadership

A building leadership team oversees school-level implementation. The team reviews systems-level data, scheduling, and curriculum and instruction decisions. A grade-level team oversees student-level progress. The team meets regularly to analyze and adapt student interventions based on progress monitoring data.

Tiered Continuum of Supports

All students receive evidence-based Tier 1 instruction. Some students also receive targeted Tier 2 intervention on missing grade-level skills. Few students also receive intensive Tier 3 intervention on missing below grade-level skills.

Comprehensive Data Collection System

Schools use a comprehensive process for collecting and reviewing data at the school and student levels. Data is used in a continuous improvement process.

Communication and Collaboration

Schools engage families, community partners, and other stakeholders in understanding MTSS RTI and partnering to improve outcomes for all students (See Section D).

V. RTI for SLD Identification Process

A. Referral

For a school age student who is not responding positively to intervention, a general education *problem-solving team* shall be used prior to referral for a special education evaluation. A problem-solving team shall document the problem-solving process, which includes a review of student data, implementation of strategies to intensify instruction, documentation of the student's response to intensification strategies. If the student problem-solving team has determined and documented that a student has not responded to intervention and intensification after an appropriate period, the district must request parental consent to evaluate and determine whether the student needs special education and related services.

A student may be referred for a special education evaluation at any time within a problem-solving process (e.g., MTSS RTI). **The MTSS RTI process should not delay the initial evaluation of a student that is suspected of having a disability.** If a parent submits a verbal or written request for special education evaluation, the district should respond to that request in a timely manner.

(Source: [24:05:24.01:19](#).)

The determination for eligibility should be made by the team of qualified professionals to include child's parents, which shall include:

1. The child's regular teacher;
2. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;
3. If the child is less than school age, an individual certified by the department to teach a child of that age; and
4. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, remedial reading teacher, or special education teacher.

(Source: [24:05:25:08](#).)

B. Criteria for Determining Eligibility

The Multi-Disciplinary Team (MDT) may determine that a child has a specific learning disability after documentation of careful consideration of the following three criteria as defined in [ARSD 24:05:24.01:19](#), [24:05:25:11.](#), and [24:05:25:12..](#)

CRITERION 1: ACHIEVING ADEQUATELY

The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, if provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- *Oral expression*
- *Listening comprehension*
- *Written expression*
- *Basic reading skill*
- *Reading fluency skills*
- *Reading comprehension*
- *Mathematics calculation*
- *Mathematics problem-solving*

(Source: [ARSD 24:05:24.01:19](#))

The first criterion for identification of SLD requires a determination that the student is failing to meet age or grade-level state standards in one of eight areas. A student needs to meet this criterion in only one of the eight areas but may potentially meet criteria in multiple areas. The multidisciplinary team should identify the area(s) of concern during its review of existing data. The area(s) of low achievement that have not been responsive to instruction/ interventions of varying intensities should be what prompted referral for evaluation for the possible presence of SLD.

Existing data from a variety of sources, to determine the degree of underachievement or difference between the student's current performance and age- or grade-level state standards, at a minimum includes the following:

- Universal screening: Benchmark testing of all students, typically administered three times per year, focusing on foundational skills and aligned with state standards.
- Formative and progress-monitoring assessments: Aligned with grade-level state standards, the assessments are used to monitor what students are expected to learn when provided with robust instruction within the general education setting.

- Norm-referenced assessments: Assessments of academic achievement correlated to state standards.
- Performance on state assessments (if applicable): These are the state's general assessments aligned to state academic content standards for the student's grade.
- One or more classroom-based observations: These observations should be completed in the instructional environment(s) and during instruction in concern. Those conducting the observation should not be providing instruction while observing the student. (See Criterion 5).
- Parental Input: Information provided by the student's parents that the student has a history of not meeting age or grade-level state standards, as evidenced by data from prior evaluations, developmental history questionnaires, other information, and/or that there is a family history of SLD, other family members with SLD, and/or delayed acquisition of reading and/or math skills.

To determine eligibility for special education under Criterion 1, the multidisciplinary team should consider a variety of data sources related to any of the eight areas of academic functioning. Within a problem-solving process, districts establish decision rules based on their student population, evidence-based assessment tools, and their chosen curriculum.

A variety of data must be considered within the context of these two important elements:

- Assessments: Norm-referenced assessments provide an indicator of the average performance of a student in the same grade in comparison with other students across the country. Local norms are based on grade-level state standards, and a state's norms may vary in relation to the overall progress of students nationwide. The South Dakota state test is an example of a criterion-referenced test that measures student performance on South Dakota state grade-level standards.
- Cultural and linguistic sensitivity: If differences in culture or language are not considered when interpreting assessment data, the result may be an inappropriate disability designation.

Determining Extent of Student Underachievement

Additional data may be needed to verify the extent of the student's underachievement. Such data will likely need to be obtained through more in-depth assessments as discussed below.

Assessments and other evaluation materials are provided and administered in the child's native language or by another mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally,

unless it is clearly not feasible to so provide or administer. In addition, assessments and other evaluation materials:

- a) Are used for the purposes for which the assessments or measures are valid and reliable; and
- b) Are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer.

(Source: [24:05:25:04.](#))

A useful tool to provide a closer look at student achievement may include classroom-based formative assessments that are very closely tied to the curriculum (aligned with grade-level and age-level state standards) or targeted skill areas where instruction or intervention is focused. In many cases norm-referenced tests may also be used to gather additional data on the student's academic achievement (discussed further below). The goal is to determine the magnitude of difference between the student's current skills and what is expected for his or her age and grade (Deno, 2003).

Regardless of the assessment tools used, confidence intervals should be considered for the measurement error of the tests and to permit the expression of a range of scores, *not a set cut-off score*. Confidence intervals provide a range within which the student's actual performance or skill level is likely to fall, thus providing a discussion focused on the student's range of achievement and opportunity for growth.

Validating Provision of “Appropriate Instruction”

The multidisciplinary team must also satisfy the requirement expressed in Criterion 1 regarding a determination that the student's lack of academic achievement has occurred within the delivery of “appropriate instruction.” This is an important element as it serves as a stopgap for identifying students as having an SLD who might be underperforming due to a lack of or inadequate instruction.

Evidence of class wide, grade wide, or school wide low achievement in the academic area of concern could lead the multidisciplinary team to a determination that instruction (e.g., quantity, quality, relevance, alignment with standards) may have a strong relationship to the student's lack of achievement. Only when the multidisciplinary team can determine that the referred student's academic problems persist while most students in the same demographic (e.g., English Language Learners, race/ethnicity), class, school, or district are performing satisfactorily can lack of appropriate instruction be ruled out. For example, when approximately 80% of students in the referred student's class or grade, or other subgroup, are meeting the

age or grade-level state standards, then the referred student's lack of achievement can be recognized as unique and not a result of the lack of instruction.

Professional judgment is used to carefully analyze data to determine if the child meets the eligibility criteria for specific learning disability and whether the identified disability adversely impacts the child's developmental or educational performance.

CRITERION 2: SUFFICIENT PROGRESS

The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention.

(Source: [ARSD 24:05:24.01:19](#))

While state administrative rules provide two options for determining that the student is not making sufficient progress, this guide focuses exclusively on the use of response to scientific, research-based intervention when making a determination regarding Criterion 2.

Validating Delivery of Scientific, Research-Based Interventions

First, documentation is needed regarding the scientific, research-based interventions that were provided to supplement core-curricular instruction during the intervention period.

The multidisciplinary team should document that the interventions are supported by scientific research. A standard intervention protocol should be developed with interventions that:

- are appropriate for the group of students receiving the intervention and aligned to the student's area of need,
- have yielded successful responses and outcomes from other students for whom the interventions are appropriate,
have been implemented by staff who were adequately trained and have demonstrated proficiency providing the interventions, and
- were delivered with a high degree of fidelity (as intended by the program authors) and for a sufficient length of time and intensity, as evidenced by progress monitoring data.

Issues that arise during the process of validating delivery of scientific, research-based interventions—such as fidelity—should be addressed before the multidisciplinary team proceeds to evaluation and eligibility determination.

“The most common reason for a lack of response to an evidence-based intervention well matched to a student and skill area is the failure to implement the intervention as designed” (VanDerHeyden & Tilly, 2010).

Evidence-based practices (EBPs) are instructional techniques with meaningful research support that represent critical tools in bridging the research-to-practice gap and improving student outcomes (e.g., Cook, Smith, & Tankersley, in press; Slavin, 2002 as cited by Cook & Cook, 2011). To be considered evidence based, a practice must have multiple demonstrations of effectiveness for the population intended from high quality experimental studies.

Technical Adequacy of Measurement Tools Used for Decision Making

All decisions made in an RTI for SLD Identification process must be made with data from measurement tools with adequate reliability and validity. A reliable tool provides consistent results, and a valid tool measures what it is intended to measure. multidisciplinary teams should carefully examine the technical adequacy of all tools, including tests, observations, and interviews, to ensure they are providing reliable information and that the tools used for decision making are valid for the purpose (i.e., screening, progress monitoring, disability diagnosis, measure of non-verbal intelligence) intended.

Table 1: Documenting High Quality Intervention under Criterion 2

Essential Elements	Required Actions
Universal screening data to determine need for intervention	Students are identified for intervention from one or more sources of screening data utilizing a systematic problem-solving process and established decision rules.
Established baseline and create aim line	Baseline data point(s) established from initial data collection.
Established goal	<ul style="list-style-type: none"> • SMART (Specific, Measurable, Attainable, Realistic, Timely) • Numerical, graphable goal, matched to student need
Evidence based intervention	Intervention has sufficient research on its effectiveness. The student participates in intervention of increased intensity for time necessary to determine a student's response to intervention.
Implementation with fidelity	Fidelity monitored during intervention. At least 80% of intervention components are implemented consistently. Staff have been appropriately trained to administer the intervention as intended.
Individual progress monitoring	Progress is monitored daily or weekly depending on the nature of the intervention and significance of the problem. Progress monitoring tools have adequate reliability and validity for regular ongoing progress monitoring.
Decision Rules	<p>Written decision rules are established and implemented to provide guidance for multidisciplinary teams to determine:</p> <ol style="list-style-type: none"> 1) which students will receive intervention, 2) how to set goals and monitor the rate of improvement, 3) if the intervention is working, 4) how to intensify intervention/instruction when needed. <p>The intervention should be carried out with enough data points to make a <u>sound</u> decision about the student's responsiveness and whether the intervention should be maintained, intensified, and/or faded.</p> <p>multidisciplinary teams must utilize data-based decision making to establish duration and determine the student's response to intervention.</p>
Multiple levels of supports increasing in intensity and frequency as needed	At least 1 phase change (i.e., point in time where intervention was intensified based on review of progress monitoring data) within an intervention, or change to a different intervention program with sufficient time given to be able to demonstrate student response.
Parent participation and input	Parents are notified that student is receiving intervention, the extent of their progress/screening data, and rights for requesting an evaluation

CRITERION 3: OTHER FACTORS

The group determines that its findings under this section are not primarily the result of:

- a) *A visual, hearing, or motor disability;*
- b) *Cognitive Disability;*
- c) *Emotional Disability;*
- d) *Cultural factors;*
- e) *Environmental or economic disadvantage; or*
- f) *Limited English proficiency.*

(Source: [ARSD 24:05:24.01:19](#))

The fundamental question is whether the poor performance is primarily the result of any of these factors. It is possible for one or more of these factors to be contributing to a student's lack of achievement and response to intervention, and for the student to have SLD. Therefore, the school team must determine the degree to which each factor affects the student's performance. The existence of the factors is not the issue; the issue is the degree to which each factor adversely affects performance.

A full evaluation may not be necessary for each factor. In many cases the data gathered during the problem-solving process may be sufficient to determine that environmental, cultural, or economic factors and EL status are not the primary cause of a lack of academic achievement and lack of response to scientific, research-based intervention. This can be determined if there is documentation that most students from similar demographics are meeting expectations.

Considerations specific to each factor are discussed below.

This does not mean the MDT must completely rule out each of these factors. It is entirely possible for one or more of these factors to be influencing a student's lack of achievement and response to instruction/intervention and for the student to have a specific learning disability.

Visual Disability

Screening for vision problems is routine in most public schools. If a vision screening indicates normal vision, a visual problem can be ruled out as the primary cause of the student's academic underachievement unless an evaluation from an appropriate credentialed provider (e.g., optometrist/ophthalmologist) provides evidence to the contrary. If screening indicates a potential vision problem (i.e., poor visual acuity), then additional evaluation must be conducted to determine the extent of the problem.

Hearing Disability

Like the process for vision problems, hearing screenings are generally performed in schools. If a hearing screening indicates normal hearing, a hearing loss can be ruled out as the primary cause of the student's academic underachievement unless an evaluation from an appropriate credentialed provider (e.g., audiologist) provides evidence to the contrary. If the screening indicates a potential hearing problem, further evaluation is required.

Motor Disability

Unlike vision and hearing screenings, schools don't generally screen for motor difficulties. Motor problems—also known as orthopedic impairments—can interfere with typical school tasks such as handwriting and walking. Assessments to measure motor skills may be necessary to determine if such difficulties are interfering with academic achievement. As with vision and hearing issues, if the problem is corrected and achievement improves, motor difficulties can be considered as the primary cause of underachievement and the multidisciplinary team could consider eligibility under the orthopedic impairment category of IDEA. If the achievement problems persist after application of prosthetic devices or intervention, the multidisciplinary team should consider SLD as the primary cause of underachievement.

A student with a primary disability in vision, hearing, and/or orthopedic impairment may be considered as also having a SLD if the identified learning deficits are significantly greater than what can be reasonably expected due to the primary disability (e.g., hearing loss) alone. All identified needs must be addressed, whether typically linked to the child's primary disability.

Cognitive Disability

This is the one factor that cannot co-exist with SLD. Students with cognitive disabilities (CD) exhibit significant deficits in measured intelligence and adaptive behavior. multidisciplinary teams are encouraged to review [ARSD 24:05:24.01:11](#). for guidance on qualifying for special education in the category of Cognitive Disability.

Emotional Disability

Students with an emotional disability (ED) often display inappropriate and disruptive classroom behavior. Other students with ED may have emotional problems that do not manifest themselves in externalizing behaviors. For students who display behavior, social, and/or emotional problems, the multidisciplinary team must determine whether the student's learning problems are causing the behaviors, or whether underlying emotional problems are affecting the student's ability to acquire academic skills. multidisciplinary teams are encouraged to review [ARSD 24:05:24.01:16](#) for guidance on the category of Emotional Disability.

Cultural Factors

Prior to referring a student who is acquiring English language for a special education evaluation, multidisciplinary teams must ensure the student has been provided appropriate opportunities to learn through the delivery of culturally and linguistically responsive instruction. Educators knowledgeable about the stages and behaviors of second language acquisition should be part of the multidisciplinary team determination.

The impact of cultural factors can also be difficult to ascertain. Cultural factors that may affect a student's school performance include:

- communication patterns,
- behavioral expectations,
- gender-based family roles, and
- prescribed cultural practices.

Information from interviews with parents (and other community members who share the student's cultural and linguistic background) would be particularly helpful in determining the impact of cultural factors as well as an in-depth family social history, if warranted.

A separate, but related, consideration is whether data indicate that the student's general education instruction and interventions are culturally appropriate and whether the student functions differently from classroom to classroom, year to year, from intervention setting to general education classroom, or between home and school.

In determining the impact of cultural factors, data might indicate that most students of a particular cultural or ethnic group are achieving at acceptable levels in response to general education and intervention. If a particular student is receiving the same instruction in a similar learning environment, but not achieving similarly to peers from the same cultural background, a determination that the learning difficulties are not due to cultural factors might be made.

Environmental or Economic Disadvantage

The last factor to examine is that of environmental or economic disadvantage. Situations such as homelessness, child abuse, poor nutrition, socioeconomic status (SES), and other factors may adversely impact a student's ability to learn.

SES is defined as an economic and sociological combined total measure of a person's work experience and of an individual's or family's economic and social position in relation to others, based on income, education, and occupation.

If needed, support is provided and the student's academic achievement improves, then environmental and economic disadvantages cannot be ruled out as primary contributors. However, if supports implemented with fidelity fail to produce improvements in learning, particularly if other students with similar environmental or economic situations are performing adequately to general education and interventions, then the student should be considered for SLD eligibility.

It is important to not exclude a student from SLD eligibility simply because of the existence of one or more of these factors. On the other hand, it is equally critical not to identify a student as having SLD and needing special education when, in fact, one or more of these factors is the primary cause of poor academic performance.

Efforts to determine the relative contribution of visual, hearing, motor, and cognitive disabilities as well as cultural factors, environmental or economic disadvantage, and EL status as factors in poor school performance and lack of response to interventions should include systematic strategies that have been shown to be effective for students with similar needs and characteristics. For example, if many students presenting with similar factors can make adequate progress with core instruction and systematically applied support, this gives the multidisciplinary team more confidence that a particular child's struggles are not due to a lack of appropriate instruction.

Should the multidisciplinary team find that one (or more) of these factors is the primary cause of a student's lack of achievement, efforts to address the student's needs through interventions in general education must continue.

English Learner (EL)

To adequately make the determination that EL is not the primary cause of the student's academic difficulties, the multidisciplinary team should include at least one person who is knowledgeable about the development of English and related achievement skills for the student's age and language/cultural background and is knowledgeable about ELs who are identified with a specific learning disability. Research has indicated that students who are English Learners (ELs) take approximately 2–3 years to acquire basic interpersonal communication skills and between 5 and 7 years to acquire the cognitive academic language proficiency that is required to function effectively in academic content subjects (Brown & Ortiz, 2014; Cummins, 1981; Cummins, 1981; Klingner & Eppolito, 2014; Rhodes, Ochoa, & Ortiz, 2005). However, this should not be cause for delay when a disability is suspected.

Schools are required to identify all students with primary home languages other than English. This is typically achieved through a parent home language survey. Additional screening and summative assessments are completed in South Dakota to determine the student's proficiency with English language skills. multidisciplinary teams must have access to and consider such evaluations to determine if limited English proficiency is the major contributing factor. (See Section D: Considerations for English Learners for more information)

Table 2: Summary of Exclusionary Factors

Exclusionary Factor	Source of Evidence
Visual, Motor, or Hearing Disability	Sensory screening, medical records, observation
Cognitive Disability	Classroom performance, academic skills, language development, adaptive functioning (if necessary), IQ (if necessary)
Emotional Disability	Classroom observation, student records, family history, medical information, emotional/behavioral screenings (if necessary)
Cultural Factors	Level of performance and rate of progress compared to students from same ethnicity with similar backgrounds
Environmental or Economic Factors	<ul style="list-style-type: none"> - Level of performance and rate of progress compared to students from similar economic backgrounds, situational factors that are student specific. - Excessive absenteeism - Chronic absenteeism is defined in the South Dakota Every Student Succeeds Act (ESSA) Plan as 10% or more of membership days. - Lack of implementation of evidence-based practices with fidelity. Were interventions used matched to student need? Were interventions implemented with fidelity?
Limited English Proficiency	Measures of language acquisition and proficiency, level of performance and rate of progress compared to other EL students with similar exposure to language and instruction

CRITERION 4: APPROPRIATE INSTRUCTION

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in this article:

- *data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and*
- *data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.*

(Source: [ARSD 24:05:24.01:19](#))

This step in the SLD identification process is designed to ensure that students are not identified as having an SLD and needing special education when lack of appropriate instruction is the cause of the student's underachievement. **This is required for all eligibility methods.**

A second component of Criterion 4 is to document the school's use of repeated assessments with the referred student and the communication to parents about these assessments. These repeated assessments should include universal screenings, diagnostic assessment (when appropriate), and progress monitoring data that is being used for eligibility determination. Documentation should include what data were reported to parents and at what frequency.

Guiding Questions for Criterion 4:

- To what degree was the student included in and benefited from core instruction?
- To what degree was core instruction delivered in accordance with the district-determined curriculum expectations?
- Is the core instruction that this student receives benefiting at least 80% of students?
- To what degree was core instruction differentiated to meet individual student needs?
- Were interventions delivered with fidelity in accordance with the expectations of the intervention program and/or student's individualized intervention plan?
- Was the intervention empirically based? Delivered by qualified, trained personnel?
- Was core instruction and intervention instruction delivered with adequate frequency and sufficiency?
- On what date were parents notified of their child's screening data?
- On what date were parents provided information about their child's data?
- On what date were parents notified of the right to request evaluation?

CRITERION 5: OBSERVATION

The school district shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

The group described in this section, in determining whether a child has a specific learning disability, shall:

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 an evaluation, as in a **response to intervention model**; or*
2. *Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with this chapter, is obtained, as in a **discrepancy model**.*

If a child is less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Source: [24:05:25:11](#).)

Observing student behavior in the classroom offers opportunities for multidisciplinary teams to better understand the educational ecology within which student learning is occurring. This might include the student's rate of active engagement, rate of correct responses to instruction, and the student's opportunity to respond and practice skills within the suspected area(s) of difficulty. Observations also provide an opportunity to determine the quality of instruction and implementation of curriculum and instructional strategies. Such observations could be conducted during general education instruction/interventions conducted through the MTSS RTI process.

The Administrative Rule regarding observation differentiates the timing of the observation in a discrepancy model and in an RTI model. As part of a district's RTI model, students who are not responding to intervention should be observed before a child is referred for a special education evaluation. However, if the observation conducted prior to referral did not provide information specific to the area(s) of academic difficulty (i.e., those areas listed in Criterion 1) for which the student has been referred, the multidisciplinary team should require an additional observation.

The observer must not be conducted by the person providing instruction to the student. Rather, a separate observer should conduct the observation while the teacher provides instruction or intervention. "Qualified" refers to an individual who has received direct instruction in a

particular skill, has received feedback on the performance of that skill by an individual who has mastered the skill, and has had the opportunity to practice that skill to perform it accurately in a consistent manner.

The district must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the area(s) of difficulty. While the regulations do not prescribe the type of observation to be conducted, the following methods may be appropriate:

- behavioral observation procedures (e.g., event recording, time sampling, interval recording) that result in quantifiable results;
- methods that relate the student's classroom behavior to instructional conditions, and teaching practices and opportunities for engagement;
- methods that address referral questions, instructional practices, and instructional fidelity (see sample questions below).

Information gathered during direct observation(s) should assist in the documentation (Criterion 6) to determine the involvement of other factors relative to the student's underachievement and lack of response to intervention (Criterion 3) and whether appropriate instruction was provided (Criterion 4). When student behavior is observed during academic tasks, data on the accuracy, amount, and completion rates of the academic performance should be collected concurrently. Clearly, some students may present with high rates of off-task behavior, yet answer questions accurately, complete written work accurately, and do so with sufficient levels of productivity. The collection of student behavior data without the collection of student academic performance data will likely result in false-positive errors (e.g., assuming the behavior interfered with academic performance/accuracy when it did not).

Most important, the observation should provide information that is data driven, empirical, and objective. The observation should, with clarity, produce a detailed description of relevant behaviors that inform the multidisciplinary team of the student's academic engagement and responsiveness to instruction. Simple narratives do not provide adequate or objective information. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

Guiding Questions for Criterion 5:

- Was the student's performance and behavior in the area of concern "typical" during the observation compared with how the student performs at other times?
- What learning skills were difficult for the student?
- What student strengths were noted during the observation?
- Was the student engaged and cooperative during instruction in comparison to peers? To what degree was the student actively versus passively engaged?
- Did the students have opportunities to participate or respond in the instructional dialogue and activities?
- Did the student's behaviors interfere with learning to such an extent that they might be the primary reason the student is not making sufficient progress?
- Did the student have the prerequisite skills to perform the tasks being observed?
- Are the data collected during the observations consistent with other formal and informal data about the student in the area(s) of concern?
- What is the relationship between the targeted student's performance and behavior to other students?
- How is the student's behavior similar or different from classroom peers?
- For IEP development, what information can be gathered from the observation to address the student's deficits?
- How might the interactions between teacher and student impact a student's learning?

CRITERION 6: DOCUMENTATION

Documentation and determination of eligibility – see Table 3 for details below (Source: [24:05:25:12](#).)

AND

Each group member shall certify in writing whether the report reflects the group member's conclusion. If it does not reflect the member's conclusion, the group member must submit the conclusion in a separate statement.

(Source: [24:05:25:13](#))

Addressing the requirements of the specific documentation for eligibility determination involves a compilation of the information gathered to address Criteria 1–5.

Ultimately, the multidisciplinary team must make a determination on the existence of a specific learning disability and the need for special education through a careful evaluation of multiple sources of data. Special education eligibility is a high-stakes decision for students. As such, it must be made in a comprehensive manner. A student's complete data profile (i.e., progress

monitoring data, benchmarking tests, state test data, information from observations, interviews, and diagnostic testing) must all be used for decision making about eligibility.

Documentation of scientifically, research-based interventions, intensity, fidelity, and lack of sufficient achievement and progress, in best practice, would be included within the MDT report. A Parental Prior Written Notice (PPWN) indicating the student's eligibility determination must also be completed.

Table 3: Sources of Information for Documentation Requirements

Documentation Requirements (ARSD 24:05:25:12)	Sources of Information
For a child suspected of having an SLD, the documentation of the determination of eligibility shall contain a statement of: (1) Whether the child has a specific learning disability;	While stated as the first requirement, a statement of whether the child has a specific learning disability is one of the final steps in the eligibility determination process.
(2) The basis for making the determination, including an assurance that the determination has been made in accordance with this section;	Assurance that the information and data used in this process are drawn from a variety of sources, documented, and carefully considered.
(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;	Criterion 5: Observation
(4) The educationally relevant medical findings, if any;	Information on relevant medical findings will most likely be drawn from documented medical data obtained from the student's parent(s). Documentation should indicate that existing medical findings were considered, even if the multidisciplinary team determined the information is not relevant to the final determination.
(5) Whether— (a) The child does not achieve adequately for the child's age or to meet state- approved grade-level standards; and	Criterion 1: Failure to meet age or grade-level state standards in one of eight areas when provided appropriate instruction. This includes specific information on the area(s) in which the student is failing to meet age or grade-level state standards.

5 (b) The child does not make sufficient progress to meet age or state-approved grade-level standards; or	Criterion 2: Lack of progress in response to scientific, research-based intervention.
5 (b) continued... The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state- approved grade level standards, or intellectual development;	Does not apply to an MTSS RTI-based SLD evaluation process.
(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;	<p>Criterion 3: The group determines that its findings are not primarily the result of other factors.</p> <p>When applicable, specific documentation should be provided for any relevant factors and include information on whether these factors were excluded from consideration because of screening or whether more extensive evaluations were conducted. Along with determining whether any of these factors are the primary cause of the lack of achievement and lack of adequate progress, information should include the extent of impact. This information can be used to inform the development of an IEP for eligible students.</p>
<p>(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—</p> <p>(a) The instructional strategies used, and the student-centered data collected; and</p> <p>(b) The documentation that the child's parents were notified about:</p> <ul style="list-style-type: none"> i. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided. ii. Strategies for increasing the child's rate of learning; and iii. The parents' right to request an evaluation. 	<p>Criterion 2: Lack of progress in response to scientific, research-based intervention.</p> <p>Documentation should include the instructional strategies used as well as documentation of the data collected and the multidisciplinary team's findings.</p> <p>Documentation should also include information around how and when parents were notified about the district's RTI process and data collected, strategies the multidisciplinary team used for increasing the child's rate of learning, and the parent's right to request a special education evaluation.</p>

<p>(8) If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and</p>	<p>Does not apply to an MTSS RTI-based SLD evaluation process.</p>
<p>(9) If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state-approved grade-level standards.</p>	<p>Criterion 1: Failure to meet age or grade-level state standards in one of eight areas when provided appropriate instruction. This includes data collected around the student's response to interventions and intensifications provided.</p> <p>Criterion 4: Underachievement is not due to lack of appropriate instruction. This includes documentation that the student received instruction and intervention that were research-based and provided by trained educators.</p>
<p>ARSD 24:05:25:13. Group members to certify the report in writing. 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 group member must submit a separate statement presenting the member's conclusions.</p>	<p>Written signatures from required group members. Group members include the child's parents and a team of qualified professionals, which must include—</p> <ol style="list-style-type: none"> 1. The child's regular teacher. 2. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age. 3. If the child is less than school age, an individual certified by the department to teach a child of that age; and 4. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech- language pathologist, remedial reading teacher, or special education teacher. <p>(ARSD 24:05:25:08)</p> <p>Ideally, the group members should be those who have been involved in the problem-solving process and are familiar with the student's data.</p>

C. Family Engagement and Notification

The collaboration of families, schools, and communities as active partners in improving learner, classroom, school, district, and state outcomes is important to the MTSS RTI process. Families are critical members of both the intervention team process and the multidisciplinary team that will conduct the special education evaluation.

Encouraging family involvement early in the MTSS RTI process helps establish a foundation for a trusting, collaborative, and respectful relationship with the multidisciplinary team. Families have unique and powerful expertise regarding the children in their care. A school district cannot support student needs effectively without engaging families and caregivers as fundamental partners in the design and implementation of MTSS RTI.

Table 4: Family Engagement Practices

Family Engagement and School Partnership – Effective Practices
<ul style="list-style-type: none">• High-Impact learning strategies are explained and used to build trusting relationships between staff, students, and parents throughout the entire system.• School decision-making teams embed parent engagement and shared leadership throughout the MTSS RTI process.• Communication mechanisms for families and staff emphasize multiple ways to gather feedback, sharing information, and building capacity for active partnerships.• Focus is on the student’s network of support with consideration of cultural context unique to the student.• Districts promote parent engagement and shared responsibility in the data-based problem-solving and decision-making process at the student level.• The district provides guidance for parents/guardians on how to request assistance for their child and the available

To support collaboration and effective decision-making, families must be intentionally involved across teams. All families should receive information related to a district’s MTSS RTI process and how students are identified to receive interventions.

When a student needs a tiered intervention, families should also be informed of:

- The nature of the student performance (i.e., benchmark and progress-monitoring) data being collected.
- The general education intervention being provided.
- Strategies for increasing a student’s rate of learning.

When a student is not responding positively to intervention and a formal problem-solving meeting is needed to identify appropriate support(s) for the student, families should be invited to attend and participate in the meeting.

Families have the right to request a special education evaluation at any time. If a family submits a request for a special education evaluation, the district must follow referral procedures when responding to the family's request. The district must conduct a meeting to review current data, determine whether they will evaluate the student, and respond in writing to the family with their decision and data that led to that decision. If the family disagrees with the district decision, the family can utilize their dispute resolution options.

[ARSD 24:05:25:12](#) indicates that when a district uses RTI to determine eligibility for a specific learning disability, the documentation of the determination of eligibility shall include a statement of:

- (b) The documentation that the child's parents were notified about:
 - (i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided.
 - (ii) Strategies for increasing the child's rate of learning; and
 - (iii) The parents' right to request an evaluation.

D: Considerations for English Learners

Introduction

Regarding English Learners (ELs), when implementing the data collection requirements for MTSS RTI, it is important that data be collected and analyzed in several areas that impact academic achievement, language, and literacy development of ELs, as well as their response to intervention. These areas of data collection and analysis include the learning environment, personal and family background, physical and psychological functioning, previous schooling in the U.S. and elsewhere, oral language proficiency and literacy in English and the student's native language, academic achievement in the U.S. and elsewhere, and cross-cultural factors.

Effective Curriculum and Learning Environment

In examining evidence that ELs have had access to effective curricula, it is important to determine if the curriculum is aligned with all standards adopted by the state of South Dakota, including the WIDA English Language Development (ELD) Standards. This Should be reflected in all programs designed for ELs, including Sheltered Instruction, Pull-Out EL and Push-In EL. Further, when evaluating effective reading programs for ELs, the multidisciplinary team should consider the findings of the National Literacy Panel on Language to determine whether students have had appropriate instruction in reading for ELs.

Additionally, when identifying students who have English Learning needs and exceptionalities, it is essential that the learning environment be responsive to ELs both linguistically and culturally. That is, it needs to take into consideration the fact that ELs are gradually learning a new language while simultaneously learning new content. Therefore, there is a need for curricular information that is linguistically accessible, grade level appropriate, and culturally relevant.

Students who are in the process of learning English will often display academic gaps that may look like deficiencies, especially if their education has been disrupted during an immigration experience. Similarly, students may be particularly at risk for lack of appropriate instruction issues if language instruction has not been provided to address the student's language development needs. Given the scarcity of research on appropriate interventions, assessment, and response rates for students who are learning English, it can be difficult for multidisciplinary teams to differentiate SLD from characteristics of second language acquisition (Zumeta, Zirkel, & Danielson, 2014). For additional information, multidisciplinary teams may choose to review the WIDA: Can Do Descriptors (2016) that provide important suggested indicators of expected behaviors associated with specific language proficiency levels as a resource to differentiate language acquisition from a potential specific learning disability.

MTSS RTI Data Collection and Assessments for ELs

South Dakota is a part of WIDA (World-Class Instructional Design and Assessment), a consortium of states dedicated to the design and implementation of high standards and educational opportunities for English learners. WIDA provides South Dakota with language proficiency assessments for grades K-12. This tool can be found on the South Dakota DOE Website: <https://doe.sd.gov/Assessment/elp.aspx>

In terms of universal screening and benchmarking, mobility may affect the comparison group, in that at a given point in time, it may not be possible to compare the student to the current group of like peers. When considering universal screening and progress monitoring data, problem-solving teams are cautioned about applying normative data for native English speakers to ELs. If such normative measures are used, it is recommended that the data be interpreted in conjunction with a variety of other measures that are culturally and linguistically appropriate for MTSS RTI decision making and referrals for special education evaluations.

In determining whether an EL is achieving adequately for his/her age or to meet state-approved grade level standards, the considerations and cautions discussed in previous sections of this document are applicable to the multidisciplinary team's decision-making process. For example, if an EL's performance is compared to a peer group to determine adequate progress, that group should consist of the student's peers. Also, the standards to which the student's performance is compared may need to include both the ELP standards as well as grade level content standards adopted by the state of South Dakota.

For all assessments, it is important that students be compared to their peers and that the assessment occurs in the child's primary language to the degree appropriate or possible and in English.

When examining state assessment data for ELs, such data should include results from student performance on the ACCESS 2.0 for ELs, which is the English language proficiency assessment used in South Dakota. South Dakota's uniform definition of English language proficiency is currently a student identified as an EL until such student obtains a minimum Overall Composite Proficiency Level Score of 5.0 or a student who is proficient on South Dakota State Assessment in reading and an Overall Composite Level Score of 4.0 or higher. Thus, districts must continue to provide ELs with appropriate services until they achieve these cut scores on ACCESS 2.0. Prior to attainment of proficiency, care should be taken to appropriately interpret scores on any district-wide assessment being used.

Below are questions the multidisciplinary team might consider when determining the impact of limited English proficiency on a student's academic achievement:

- What is the student's native (home) language and culture?
- Is the student proficient in his or her native (home) language based on a formal assessment of language proficiency in the native language?
- Is the student's academic language level consistent with the language levels necessary to be successful with core curriculum and interventions?
- Has the student failed to develop age-appropriate native language skills despite opportunities to learn?
- Was the student provided with sufficient opportunities to learn by implementing necessary differentiations to address cultural and linguistic features?
- What is the gap between the student's proficiency in English and his or her native language?
- Has the student failed to gain English language skills despite targeted language instruction?
- Is there a difference in the student's performance by subject area, with higher performance in areas that are less related to language proficiency?
- Are the student's learning difficulties pervasive in both his or her native language and English?
- Are the expectations of the student's home culture consistent with school expectations?
- What is the performance of other EL students with similar levels of proficiency in this school/ district and subject area?
- Can any social or psychological factors (e.g., refugee or immigrant status; mental health concerns; racial or ethnic bias) be identified?
- Did someone with expertise in the student's dominant culture and language AND someone who is knowledgeable about EL students who are identified with an SLD participate in the multidisciplinary team?
- Was someone with expertise in the student's dominant culture and language AND someone who is knowledgeable about EL students who are identified with an SLD involved in conducting and interpreting the evaluation data?