

February 16, 2005

John H. Hager
Assistant Secretary
U.S. Department of Education
Office of Special Education and Rehabilitative Services
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100

Dear Assistant Secretary Hager:

On behalf of over 400,000 parents, special educators and other special education professionals and related services personnel, the 2004 Learning Disabilities Roundtable (LD Roundtable) is pleased to submit comments and recommendations for the development of federal regulations governing the implementation of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). These recommendations represent the collaborative work of 14 national organizations concerned with the identification and eligibility of students with specific learning disabilities — who currently represent fifty percent of students receiving special education services under IDEA — and the effective delivery of special education and related services to those students. The recommendations developed by the group sought to build on the work of an earlier Learning Disabilities Roundtable and the National Research Center on Learning Disabilities (NRCLD).

Our goal is to ensure that the new regulations provide state and local education agencies with clear direction regarding the identification and eligibility process. The 14 organizations are committed to a process that promotes early identification and effective intervention and services, both prior to and as part of a special education evaluation.

With funding provided by The Emily Hall Tremaine Foundation and in-kind support provided by participating organizations as well as Patton Boggs LLC, the LD Roundtable organized a consensus building process facilitated by Judy Schrag, Ph.D., and invited a panel of experts from Capitol Hill as well as the U.S. Department of Education, Office of Special Education to address the LD Roundtable. We met from February 2, 2004 through January, 2005 in a series of meetings in Washington, DC and via teleconference to develop the attached recommendations.

Respectfully, we hope this comprehensive and collaborative effort by 14 national organizations will be used to improve and enhance the IDEA 04 regulations. We are available to answer questions and provide clarification on any issue related to our joint recommendations. Thank you for this opportunity to help direct this important change in IDEA law related to the identification and eligibility of students suspected of having a specific learning disability.

Sincerely,

Association of Educational Therapists, AET
Association for Higher Education and Disability, AHEAD
American Speech-Language-Hearing Association, ASHA
Council for Exceptional Children's Division for Communicative Disabilities and Deafness, DCDD
Council for Exceptional Children's Council of Administrators of Special Education, CASE
Council for Exceptional Children's Division for Learning Disabilities, DLD
Council for Learning Disabilities, CLD
Learning Disabilities Association of America, LDA
International Dyslexia Association, IDA
International Reading Association, IRA
National Association for the Education of African American Children with Learning Disabilities, NAEACL
National Association of State Directors of Special Education, NASDSE
National Association of School Psychologists, NASP
National Center for Learning Disabilities, NCLD

cc: Stephanie Lee, Director, Office of Special Education Programs

2004 Learning Disabilities Roundtable

Comments and Recommendations
on regulatory issues under the
Individuals with Disabilities Education Improvement Act of 2004
Public Law 108-446

February 2005

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*The work of the Learning Disabilities Roundtable
was made possible by a grant from the
Emily Hall Tremaine Foundation and in-kind support
from the participating organizations and Patton-Boggs LLC.*

Please note: This document should be used or disseminated in its entirety as it represents the comprehensive and integrated work of the participating organizations.

Introduction

The **2004 Learning Disabilities Roundtable** is pleased to submit comments and recommendations for the development of federal regulations governing the implementation of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). These recommendations represent the coordinated work of 14 organizations (see below) concerned with the identification and eligibility of students with specific learning disabilities (SLD) and the effective delivery of special education and related services to those students. The recommendations developed by the group sought to build on the work of an earlier Learning Disabilities Roundtable and the National Research Center on Learning Disabilities (NRCLD). The following organizations support these comments and recommendations:

- Association of Educational Therapists, AET
- Association for Higher Education and Disability, AHEAD
- American Speech-Language-Hearing Association, ASHA
- Council for Exceptional Children's Division for Communicative Disabilities and Deafness, DCDD
- Council for Exceptional Children's Council of Administrators of Special Education, CASE
- Council for Exceptional Children's Division for Learning Disabilities, DLD
- Council for Learning Disabilities, CLD
- Learning Disabilities Association of America, LDA
- International Dyslexia Association, IDA
- International Reading Association, IRA
- National Association for the Education of African American Children with Learning Disabilities , NAEAACLD
- National Association of School Psychologists, NASP
- National Association of State Directors of Special Education, NASDSE
- National Center for Learning Disabilities, NCLD

Background

The initial **Learning Disabilities Roundtable** convened in July 2002 as part of the OSEP Research to Practice *Learning Disabilities Initiative*. The 2002 **Learning Disabilities Roundtable**, comprised of member organizations of the National Joint Committee on Learning Disabilities (NJCLD) released its report, *Finding Common Ground*, which included consensus statements, as well as concerns related to several essential SLD issues. At the

time, it was expected that many of these issues would be addressed in the reauthorization of IDEA-97.

The **2004 Learning Disabilities Roundtable** was convened in February 2004. Additional organizations were invited to join the group, expanding beyond the ten organizations that participated in the 2002 initiative. In developing its regulatory recommendations, the 2004 Learning Disabilities Roundtable was especially mindful of the consensus statements developed by the 2002 Learning Disabilities Roundtable in the areas of the Nature of, Identification of, Eligibility for, and Intervention with students with SLD. These statements were:

Nature of Specific Learning Disabilities

1. The concept of Specific Learning Disabilities (SLD) is valid, supported by strong converging evidence.
2. Specific learning disabilities are neurologically based and intrinsic to the individual.
3. Individuals with SLD show intra-individual differences in skills and abilities.
4. Specific learning disabilities persist across the life span, though manifestations and intensity may vary as a function of developmental stage and environmental demands.
5. Specific learning disabilities may occur in combination with other disabling conditions, but they are not due to other conditions, such as mental retardation, behavioral disturbance, lack of opportunities to learn, primary sensory deficits, or multilingualism.
6. Specific learning disabilities are evident across ethnic, cultural, language and economic groups.

Identification

1. Identification should include a student-centered, comprehensive evaluation and problem solving approach that ensures students who have a specific learning disability are efficiently identified.
2. Regular education must assume active responsibility for delivery of high quality instruction, research-based interventions, and prompt identification of individuals at risk while collaborating with special education and related services personnel.

Eligibility

1. The ability-achievement discrepancy formula need not be used for determining eligibility and should not be used as the sole criterion for determination of eligibility.
2. Decisions regarding eligibility for special education services must draw from information collected from a comprehensive individual evaluation using multiple methods and sources of relevant information.
3. Decisions on eligibility must be made through an interdisciplinary team, using informed clinical judgment, directed by relevant data, and based on student needs and strengths.
4. Decisions on eligibility must be made in a timely manner.
5. Based on an individualized evaluation and continuous progress monitoring, a student who has been identified as having a specific learning disability may need different levels of special education and related services under IDEA at various times during the school experience.

Intervention

1. The field should continue to advocate for the use of evidence-based practices. However, in

areas where an adequate research base does not exist, data should be gathered on the success of promising practices.

2. Schools and educators must have access to information about scientifically-based practices and promising practices that have been validated in the settings where they are to be implemented.
3. Students with SLD require intensive, iterative (recursive), explicit scientifically-based instruction that is monitored on an on-going basis to achieve academic success.
4. Students with SLD require a continuum of intervention options through regular and special education across all grades and ages.
5. Interventions must be timely and matched to the specific learning and behavioral needs of the student.
6. An intervention is most effective when it is implemented consistently, with fidelity to its design, and at a sufficient level of intensity and duration.
7. Regular and special education must be coordinated as part of a coherent system which is held accountable for the educational outcomes of students with SLD.

Additionally, the 2004 Roundtable was guided by the following **LD Roundtable Policy Recommendations** that emerged from the 2002 process:

Policy Recommendations for the Reauthorization of the Individuals with Disabilities Education Act (IDEA) July 2002

Identification

- **The statutory definition of SLD should be maintained in IDEA.**
- **Section 614 (b) of IDEA-97, should be maintained.** That section states, "In conducting the evaluation, the local educational agency shall not use any single procedure as the sole criterion for determining whether a child is a child with a disability."
- **All preschoolers should be screened to assess early language and reading skill development just as they are for vision and hearing.** According to a report of the National Institutes of Health, 80% of students in the SLD category have their primary problem in the area of reading. NIH also reports that 75% of children with reading difficulties who are not identified by age 9 will still have poor reading skills at grade 12.
- **Preschool and kindergarten programs should be required to provide targeted early instruction to all children to minimize any risks for reading failure.** Early intervention for language problems may minimize later difficulty in academic, behavioral and social skills.
- **IQ-Achievement discrepancy formulae should not be used to determine eligibility for students with learning disabilities.**
- **Identification should include a student-centered, comprehensive evaluation and problem solving process by an inter-disciplinary team** that ensures students who have a learning disability are efficiently identified and receive services in a timely manner.
- **Students must be evaluated on an individual basis** and assessed for intra-individual differences in the seven domains that comprise the definition of SLD in the law -- listening, thinking, speaking, reading, writing, spelling, and mathematical calculation.
- **All assessments must be culturally and linguistically unbiased.**

- **Identification must be documented by systemic assessments and reporting**, appropriate regular education interventions, high quality instruction, administrative and other support services for all professionals.
- **New methods for identifying students with SLD must be piloted in classroom settings, and demonstrated through data-based analysis to improve educational outcomes prior to widespread adoption.**
- **Information on existing methods for identifying students with SLD must be validated and disseminated as soon as possible.**

Eligibility

- **Eligibility decisions must draw from information collected from a comprehensive individual evaluation using multiple methods including clinical judgment and other sources of information.**
- **Eligibility decisions must be made through an inter-disciplinary team**, be student-centered and informed by appropriate data, and based on student needs and strengths.
- **Eligibility must ensure a student with SLD has access to different levels of special education and related services at various times during the school experience.**

The 2004 LD Roundtable regulatory recommendations also were informed by the recent work at the National Research Center on Learning Disabilities (NRCLD), most notably the comprehensive survey of SEA requirements for SLD as reported in *And Miles to Go...: State SLD Requirements and Authoritative Recommendations* as well as the Center's documents addressing responsiveness-to-intervention (RTI) issues. The work of the NRCLD provides clear evidence that: (a) enormous variation exists in State Education Agency (SEA) requirements for SLD identification and eligibility under the IDEA; and, (b) there are significant differences among models being self-identified under the responsiveness-to-intervention rubric.

THE NEED FOR BALANCE

In developing these recommendations, the Learning Disabilities Roundtable has attempted to balance the recognized need for flexibility at both the state and local levels with the expressed need for improvements in the SLD identification approach being used in many states, districts, and schools. While it is critical that States and LEAs retain the flexibility needed for continued development of innovative, more effective methodologies for SLD identification, there is also a pressing need to bring to a close the widespread use of the IQ-achievement discrepancy formula as the sole criterion for learning disability identification and eligibility decisions under IDEA.

Additional guidance was provided by the Senate Committee on Health, Education, Labor and Pensions (HELP) conference report. It states in part:

"While the committee believes that allowing this flexibility is appropriate, it also acknowledges that the research base supporting such changes continues to advance and improve. Section 614(b)(3)(A)(iii) will require that all procedures, including alternate procedures, be valid and reliable for the purpose for which they are used; the committee expects that new methodologies adopted for use by local educational agencies also will be based on sound research findings. In order to prevent radical differences in how local educational agencies determine the presence of specific

learning disabilities, the committee encourages States to develop research-based models that can be adopted by local educational agencies. Further, the committee emphasizes that nothing in the new statutory language would prohibit a State from establishing a consistent statewide process for determining whether a child has a specific learning disability. States should collaborate with LEAs to identify the criteria for determining an SLD and ensuring the consistency and integrity of the classification system across the State. In addition, the committee strongly encourages the Secretary of Education to assist States and LEAs in this effort by developing guidance and technical assistance systems for the improvement of SLD identification and eligibility."

RECOMMENDED REGULATORY LANGUAGE

EVALUATING CHILDREN FOR SLD. The Learning Disabilities Roundtable participants have sought to develop recommendations for changes to the current regulatory language for evaluating children suspected as having specific learning disabilities (§300.540-§300.543) in order to provide States and local education agencies with the guidance needed to implement the statutory language found in P.L. 108-446 which reads:

Sec. 614(b)(6)
SPECIFIC LEARNING DISABILITIES.--

*(A) **IN GENERAL.** -- Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(26), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.*

*(B) **ADDITIONAL AUTHORITY.** -- In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).*

Recommendations for Regulatory Language for the "Additional Procedures For Evaluating Children With Specific Learning Disabilities"

NOTE: Section references refer to existing IDEA 97 Federal Regulations

Key: Bold=new language

Strikethrough=deletions to current IDEA regulations

Revisions to §300.540 - Additional Team Members

IDEA 97 Regulations	Recommended Revisions
<p><u>§300.540 Additional team members.</u></p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include-</p> <p>(a)</p> <p style="padding-left: 40px;">(1) The child's regular teacher; or</p> <p style="padding-left: 40px;">(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or</p> <p style="padding-left: 40px;">3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and</p> <p>(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p>	<p><u>§300.540 Additional Team members</u></p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include- that:</p> <p>(a) is collectively qualified to—</p> <p style="padding-left: 40px;">(1) conduct individual diagnostic assessments in the areas of cognition, speech and language, academic achievement and, social-emotional development;</p> <p style="padding-left: 40px;">(2) interpret assessment and intervention data and apply clinical analysis to that data;</p> <p style="padding-left: 40px;">(3) develop appropriate educational and, as appropriate, transitional recommendations based on the assessment data;</p> <p style="padding-left: 40px;">(4) deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability.</p> <p>(b) minimally includes—</p> <p style="padding-left: 40px;">(1) The child's regular teacher; or</p> <p style="padding-left: 40px;">(1) A special education teacher with expertise in specific learning disabilities; and</p>

IDEA 97 Regulations	Recommended Revisions
(Authority: Sec. 5(b), Pub. L. 94-142)	<p>(2) The child's regular general education teacher; or</p> <p>(3) If the child does not have a regular general education teacher, a regular classroom general education teacher qualified to teach a child of his or her age; or</p> <p>(4) If a child is less For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and</p> <p>(c) may include other professionals, such as a school psychologist, speech-language pathologist, reading teacher or educational therapist.</p>

TEAM COMPOSITION. This section has been updated to reflect the need for a team that can bring the comprehensiveness necessary to determine if a child suspected of having a disability is a child with a specific learning disability. In contrast with current regulatory language delineating possible "Additional team members," this section now defines the minimum expertise necessary to make an eligibility determination for SLD, along with the child's parents.

Recognizing that professionals involved in this process may have various titles depending upon the state or locality, new language is recommended that lists the competencies that must be found within the team of qualified professionals. This alternative manner of stating the requirements of the team is designed to offer flexibility while ensuring that this important decision-making process is carried out by duly qualified professionals who possess the needed expertise.

Given the need to abandon the use of ability-achievement discrepancy formulas as the primary basis for SLD identification and instead, use a comprehensive evaluation approach, the expectation that the team will be interdisciplinary cannot be overstated. In particular, when schools utilize a decision-making process that focuses more on clinical than statistical information, it will be critical to ensure through regulations that a team of qualified professionals brings all the competencies necessary for accurate review of comprehensive assessment data to the evaluation process.

Additionally, there is widespread agreement that the current team member criteria do not provide the expertise needed to determine the specially designed instructional and related services needed by individual students. Incorporating competencies rather than job titles, into the required criteria will provide a stronger framework for the development of high quality instruction and services leading to enhanced educational benefit while maintaining state and local flexibility.

TEAM COMPETENCIES. Clinical analysis. As used in (2), clinical analysis refers to professional judgment that is informed by empirical research, training and experience with the given population and is guided by effective interpretation of patterns in evaluation findings which may include, but not be limited to test scores, interviews, work samples, observational data, and information from parents, school personnel, and other related service providers.

The importance of the competencies present on the team is underscored by the finding of *And Miles to Go...:State SLD Requirements and Authoritative Recommendations*. The report indicates that roughly two-thirds of states currently allow team override, (i.e., a diagnosis of SLD can be conferred upon the child by the majority of the team even if the classification criteria are not met). Given the prevalence of such authority, responsible decision making is heavily dependent upon team qualifications and competencies.

It is important to note that the new provision of required team competencies is intended to ensure composite qualifications of the team and not intended to impose a specific number of team members. Since team members may possess several of the required competencies, so that one team member may satisfy more than one of the requirements, the fiscal impact of the new requirements for team competencies would be negligible, but decision-making of the team would be improved.

CRITERIA FOR SLD DETERMINATION

The Learning Disabilities Roundtable has also included recommendations designed to better align the classification criteria for SLD evaluation and eligibility determination with the statutory definition of Specific Learning Disability found in P.L. 108-446 which reads:

Sec. 602(30)(A)

SPECIFIC LEARNING DISABILITY. --

(A) **IN GENERAL.** - The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) **DISORDERS INCLUDED.** -- Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) **DISORDERS NOT INCLUDED.** -- Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Revisions to §300.541 - Criteria for determining the existence of a specific learning disability

IDEA 97 Regulations	Recommended Revisions
<p>§300.541 Criteria for determining the existence of a specific learning disability.</p> <p>(a) A team may determine that a child has a specific learning disability if-</p>	<p>§300.541 Criteria for determining the existence of a specific learning disability.</p> <p>(a) A team may determine that a child has a specific learning disability if—</p>

IDEA 97 Regulations	Recommended Revisions
<p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and</p> <p>(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:</p> <ul style="list-style-type: none"> (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading comprehension. (vi) Mathematics calculation. (vii) Mathematics reasoning. <p>(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of-</p> <ul style="list-style-type: none"> (1) A visual, hearing, or motor impairment; 	<p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section following areas, if when provided with learning experiences that are appropriate for the child's age and ability levels,</p> <ul style="list-style-type: none"> (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading comprehension. (vi) Mathematics calculation. (vii) Mathematics reasoning; <p>and</p> <p>(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:</p> <p>(2) If a <u>Response to Scientific, Research-based Intervention Process</u> has been implemented, the child fails to achieve a rate of learning to make sufficient progress to meet SEA approved outcomes in one or more of the areas identified in (1); and</p> <p>(3) the child exhibits a pattern of strengths and weaknesses in performance and/or cognitive abilities that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with <u>§300.530-300.536</u>.</p> <p>(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is documents that its findings under 300.541 are not primarily the result of-</p> <ul style="list-style-type: none"> (1) A visual, hearing, or motor

IDEA 97 Regulations	Recommended Revisions
<p>(2) Mental retardation;</p> <p>(3) Emotional disturbance; or</p> <p>(4) Environmental, cultural or economic disadvantage.</p> <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>impairment;</p> <p>(2) Mental retardation;</p> <p>(3) Emotional disturbance; or</p> <p>(4) Cultural factors;</p> <p>(5) Limited English proficiency; or</p> <p>(6) Environmental, cultural or economic disadvantage.</p> <p>(c) For a child suspected of having a specific learning disability, the team may consider, as part of the evaluation described in 300.532-533, the data from a scientific, research-based intervention process that must include-</p> <p>(1) High-quality, research-based instruction and behavioral supports in general education settings;</p> <p>(2) Scientific, research-based interventions focused specifically on individual student difficulties and delivered with appropriate intensity;</p> <p>(3) Use of a collaborative approach by school staff for development, implementation and monitoring of the intervention process;</p> <p>(4) Data-based documentation reflecting continuous monitoring of student performance and progress during interventions;</p> <p>(5) Documentation of parent involvement throughout the process;</p> <p>(6) Documentation that the timelines described in §300.532-300.533 are adhered to unless extended by mutual written agreement of the child's parents</p>

IDEA 97 Regulations	Recommended Revisions
	<p data-bbox="917 231 1356 325">and a team of qualified professionals as described in 300.540;</p> <p data-bbox="917 357 1388 483">(7) Systematic assessment and documentation that the interventions used were implemented with fidelity.</p>

The existing requirement that the team determines that a child does not achieve commensurate with his or her age and ability levels has been retained and the seven areas of functioning, currently in §300.541 (a)(2), have been incorporated into this required determination without revision (see (a)(1)).

AGE AND ABILITY. There is strong support for continued use of a child’s “age” as an achievement marker and equally strong consensus that “ability” is the more significant achievement marker. However, there is also an understanding and appreciation for the important role that a child’s age plays in the evaluation process. Therefore, it is recommended that final ED guidance should make clear that, while a child’s age and ability may be considered as achievement markers, a child’s age should not be used as the sole achievement benchmark in SLD determinations.

PATTERN OF STRENGTHS AND WEAKNESSES. The existing requirement for the finding of a “severe discrepancy between achievement and intellectual ability” in (a)(2) has been replaced by a new guideline for teams to consider whether there is a relevant pattern of strengths and weaknesses and/or cognitive abilities that may be impacting on the child’s achievement. This guideline is not meant to encourage use of formulas or a rigid approach to interpreting strengths and weaknesses. Only empirically validated patterns of discrepancy should be considered by teams. For many of the Roundtable participants, it is important to recognize that the new guideline also acknowledges intra-individual differences as a fundamental concept of SLD, although the term was not incorporated into the recommended regulatory language.

This improvement to the current requirement achieves the need for flexibility as discussed in both the House and Senate report language while:

- *Eliminating the absolute requirement for the existence of a severe discrepancy between achievement and ability;*
- *Allowing an LEA to continue to consider, as part of a comprehensive assessment, the presence of a discrepancy between achievement and ability;*
- *Allowing an LEA to consider other forms of discrepant (intra-individual) variations within the areas of achievement, cognitive abilities and/or cognitive processing;*
- *Allowing the team to determine if the patterns of strengths and weaknesses are relevant. (Current regulations require the team to include “relevant” findings regarding both behavior and medical issues, recognizing the team’s responsibility to determine “relevance.”)*
- *Allowing for the continued advancement and improvement of identification methodologies based on sound research.*

PREVALENCE RATES. There is substantial concern regarding the potential impact of proposed revisions to (a)(2), particularly the impact on SLD prevalence rates. There is an acute awareness of the concern among policymakers regarding SLD identification rates and the costs associated with those rates. It is important to note that over the past five years, the number of children served in the SLD category has not increased at the same rate as the total number of children served under the IDEA. Most recently, according to OSEP child count data, there was only a marginal increase in the number of children (ages 6-21) served in the SLD category from 1999-2000 (2,871,966) to 2000-2001 (2,887,217).

USE OF A SCIENTIFIC, RESEARCH-BASED INTERVENTION PROCESS. A new provision (a)(2) has been added that requires an additional finding of inadequate responsiveness to a scientific, research-based intervention process *should an LEA choose to include such a process* as part of its SLD evaluation procedures. This provision is designed to require LEAs choosing to use such a process as part of its evaluation procedures to:

- *Provide documentation of the child's failure to adequately respond;*
- *Provide a standardized benchmark by which progress within a RtI process is to be measured (i.e., "sufficient to meet SEA approved outcomes...") in order to ensure that a child's progress is not measured against expectations that are either arbitrary and/or inconsistent;*
- *Provide necessary linkage to a new provision (c) that sets forth basic requirements of any intervention process used as part of evaluation procedures to ensure that any process utilized is both well documented and includes the essential elements currently considered to be necessary to any effective RtI process, such as documentation, collaboration, individualized interventions, and systematic classroom assessment.*

EXCLUSIONARY FACTORS. The existing provision regarding "exclusionary factors" (b) has been updated to eliminate the reference to "severe discrepancy between ability and achievement." Language has been modernized in order to recognize that cultural factors may impede learning but that cultural differences do not in and of themselves constitute a "disadvantage" as the current language implies.

"Limited English proficiency" has been added as an additional factor which must be ruled out as the primary cause of the child's learning difficulties when making a determination of SLD. Roundtable participants felt the need to include this new factor given the rapidly growing number of English Language Learners (ELLs) across the United States and the subsequent need for fair and appropriate procedures for identifying which English Language Learners may also have special education needs in order to avoid mis-identification. While recognizing "limited English proficiency" is a factor in the "Special Rule For Eligibility Determination" (Sec 614(b)(5)) and, therefore, must be a consideration for all eligibility decisions, special education prevalence data continues to suggest a disproportionate representation of ELL students in special education. For example, ELLs are 27% more likely to be placed in special education in elementary grades and twice as likely to be placed in secondary grades in California. When over-representation of ELL students occurs, inappropriately assigning a disability label to a non-disabled child can lead to negative academic, vocational, and socio-emotional outcomes for these students.

SCIENTIFIC, RESEARCH-BASED INTERVENTION PROCESS. A new provision (c) has been added that details critical components that a responsiveness-to-intervention (RtI) process must include if data from such a process is used as part of the evaluation procedures for SLD. This provision has been designed to:

- *Ensure the integrity of any intervention process that is part of an evaluation procedure for identification and eligibility under IDEA and, thereby, funded in whole or in part with IDEA funds;*
- *Ensure high-quality, research-based instruction and behavioral supports (if needed) have been utilized within general education prior to a special education referral (1);*
- *Require that the essential core concepts of a responsiveness-to-intervention process have been employed (2)(3)(4)(7);*
- *Ensure that the child's parent has been involved in the intervention process (5);*
- *Ensure that the intervention process is not used to delay or deny access to a timely evaluation as required by Sec. 614 (a)(1)(C)(i)(I) by requiring adherence to an established evaluation timeframe unless extended by mutual written agreement (6).*

In crafting this new provision, participants used the most current understanding of responsiveness to intervention processes, as reported by the National Research Center on Learning Disabilities (NRCLD). While allowing for the flexibility necessary to accommodate the array of RtI models from which data could be employed as part of the SLD evaluation process, the provision also recognizes that new knowledge regarding RtI can be expected to emerge, and thus requires only the most essential components in the recommended regulations. While a simple statement allowing use of a *scientific, research-based intervention process* was considered, there was strong consensus that regulatory language should provide some degree of consistency across models when such a process is part of formal evaluation procedures.

OBSERVATION. The current provision regarding classroom observation (a) was revised to better reflect the need for observation to include information about both the learning environment and the child's academic performance and behavior in the environment. Given the importance of the classroom environment to a child's ability to learn, this additional language would provide needed expansion to the typical observation process which often presumes that characteristics intrinsic to the child are the cause whenever children experience difficulty learning. In addition, language has been added to ensure the observation is performed by personnel trained in observation.

Revisions to §300.542 - Observation

IDEA 97 Regulations	Recommended Revisions
<p>§300.542 Observation.</p> <p>(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.</p> <p>(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an</p>	<p>§300.542 Observation.</p> <p>(a) At least one team member, other than the child's regular current teacher, who is trained in observation, shall observe the child, academic performance the learning environment, including academic performance and behavior in the areas of difficulty in the regular classroom setting, to document</p> <p>(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment</p>

IDEA 97 Regulations	Recommended Revisions
environment appropriate for a child of that age. (Authority: Sec. 5(b), Pub. L. 94-142)	appropriate for a child of that age.

WRITTEN REPORT. This section has been expanded to parallel the recommended changes to §300.541. Specifically, changes to (a) are as follows:

- *Requirements (1)-(5) are retained, adding additional language to (2) that requires an assurance that the determination has been made in accordance with the procedures for determining eligibility and placement that govern all such determinations under the IDEA (found at §300.535 (a) in current regulations);*
- *Requirement (6) has been revised to eliminate the requirement for documentation of a severe discrepancy between ability and achievement. This is replaced by a finding that the child fails to achieve commensurate with his or her age and ability to parallel language in §300.541 (a)(1);*
- *Additional requirement (7) for documentation of a finding of strengths and weaknesses in performance or cognitive abilities that requires special education and related services;*
- *Additional requirement (8) for documentation of findings of an intervention process if such a process was used as part of the evaluation to parallel new language in §300.541(c);*
- *Changes in (9) regarding the effect of culture as a difference but not a disadvantage and the addition of limited English proficiency to parallel new language in §300.541(b).*

Revisions to §300.543 - Written report

IDEA 97 Regulations	Recommended Revisions
<p>§300.543 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of-</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination;</p> <p>(3) The relevant behavior noted during the observation of the child;</p> <p>(4) The relationship of that behavior</p>	<p>§300.543 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of-</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination, including assurance that the determination has been made in accordance with §300.535 (a);</p> <p>(3) The relevant behavior noted</p>

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<p>to the child's academic functioning;</p> <p>(5) The educationally relevant medical findings, if any;</p> <p>(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and</p> <p>(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.</p> <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.</p> <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>during the observation of the child;</p> <p>(4) The relationship of that behavior to the child's academic functioning;</p> <p>(5) The educationally relevant medical findings, if any;</p> <p>(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; the child does not achieve commensurate with his or her age and ability levels; and</p> <p>(7) Whether there are strengths and weaknesses in performance or cognitive abilities in one or more of the areas mentioned in §300.541 (a)(2) that require special education and related services; and</p> <p>(8) The instructional strategies used and the student-centered data collected if a Response to Scientific, Research-based Intervention Process as described in §300.541 was implemented; and</p> <p>(9) The determination of the team concerning the effects of cultural factors, limited English proficiency, environmental, cultural or economic disadvantage.</p> <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.</p>

DEFINITIONS. In addition to the recommended regulatory language pertaining to the procedures for evaluating children with Specific Learning Disabilities, the LD Roundtable developed definitions for terms used in the recommendations. The LD Roundtable suggests that ED consider adding these definitions to Part 300, Subpart A of the federal regulations.

Scientific, Research-based Interventions. Scientific, Research-based Interventions are specific, clearly described instructional procedures that have been shown through objective, systematic, data-based research to improve targeted academic or curricular outcomes in individual students with specified characteristics and difficulties, when implemented with fidelity and the needed intensity. The objectives, procedures, students, settings, and personnel in which a given scientific, research-based intervention has been validated, dictate where, when, how, and with whom interventions can be selected and used with a student or students. Specific scientific, research-based interventions have been or may be developed for any age level and academic or curricular area. They can be used in general education classrooms by regular teachers and/or with collaborative or consultative assistance, as well as in resource, tutoring, and self-contained settings by more specialized teachers. A scientific, research-based intervention must have the following characteristics:

- (1) A scientific, research base for the interventions must be applicable to the students and settings in which they are provided.
- (2) Interventions are delivered by qualified personnel as defined in §300.136 (b)(1), with expertise in the interventions used and in the areas of student difficulty.
- (3) Interventions address the individual student's difficulties at the needed level of intensity and with the support of needed resources and personnel.
- (4) Student progress is continuously monitored and the resultant data analyzed and documented.
- (5) Interventions are systematically verified as being implemented with fidelity, integrity and the intended intensity.
- (6) A written document describing the specific intervention is available to parents and professionals.

Response to Scientific, Research-based Intervention Process. A Response to Scientific, Research-based Intervention Process is a problem solving framework that may be used to detect student academic and behavioral difficulties and guide the use of scientifically, research-based interventions to provide intensive, individualized, student-centered instruction. Individual student responses to general education and intensive specialized instruction are measured periodically and compared to age, grade, or classmate performance. The resulting data of response to intervention measures may be used to inform instruction and, as part of the comprehensive evaluation described in §300.532-§300.533 for identification of learning disabilities or other disabilities and determination of eligibility for special education and related services. The process must include the following characteristics:

- (1) High quality instructional and behavioral supports are in place.

- (2) Scientific, research-based intervention is delivered by qualified personnel as defined in §300.136 (b)(1), with expertise in the intervention used and in the areas of student difficulty.
- (3) Student progress is continuously monitored.
- (4) Data-based documentation is maintained on each student.
- (5) Systematic documentation verifies that interventions are implemented with fidelity, integrity and the intended intensity.
- (6) Decisions are made by a collaborative team of school staff who review response data and other information required to ensure a comprehensive evaluation as defined in §300.532-§300.533.
- (7) Interventions address the individual student's difficulties at the needed level of intensity and with the support of needed resources and personnel.
- (8) A written document describing the specific components and structure of the process to be used is available to parents and professionals.
- (9) Parent notification and involvement are documented.

APPENDIX A:

**2004 Learning Disabilities Roundtable
Participating Organizations and Representatives**

Association of Educational Therapists, AET Mishelle Ross	International Dyslexia Association, IDA Emerson Dickman Nancy Hennessy
Association for Higher Education and Disability, AHEAD Christy Lendman	International Reading Association, IRA Richard Long
American Speech-Language-Hearing Association, ASHA Stan Dublinske	Learning Disabilities Association of America, LDA Jean Lokerson Marianne Toombs
Council for Learning Disabilities, CLD Debi Gartland Linda Elksnin Roberta Strosnider	National Association for the Education of African American Children with Learning Disabilities, NAEAACLD Cassandra Archie Nancy Tidwell
Council for Exceptional Children's Council of Administrators of Special Education, CASE Mary Kealy	National Association of School Psychologists, NASP Mary Beth Klotz Bob Lichtenstein
Council for Exceptional Children's Division for Communicative Disabilities and Deafness, DCDD Diane Paul Froma Roth	National Center for Learning Disabilities, NCLD Lawrence Gloeckler Stevan Kukic James Wendorf
Council for Exceptional Children's Division for Learning Disabilities, DLD Edwin Ellis Doug Fuchs John Lloyd Susan Osbourne Karen Rooney	National Association of State Directors of Special Education, NASDSE Nancy Reder

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