

# Illinois State Board of Education

Updated August 2012

Guidance Document

## Illinois Special Education Eligibility and Entitlement Procedures and Criteria within a Response to Intervention (RTI) Framework

*This document is intended to provide non-regulatory guidance on the subject matter listed above.  
For specific questions, please contact the person(s) identified in the document.*

---

Dr. Christopher Koch, State Superintendent

## ACKNOWLEDGEMENTS

---

This guidance document was developed and reviewed through an extensive collaborative effort of the Committee on Special Education Eligibility and Entitlement in an RtI Framework and the Illinois State Board of Education (ISBE). The Committee was charged with examining the federal Individuals with Disabilities Education Improvement Act regulations and ISBE's rules governing special education, as well as informational and guidance materials from Illinois and other states, to develop the comprehensive content of this document. In finalizing the document, the Committee also reviewed questions and suggestions received from the field during stakeholder review of the initial draft document. As a result, the Committee incorporated changes within various sections of the guidance document and developed a Frequently Asked Questions supplement. ISBE wishes to thank the Committee members listed below for their contributions and time dedicated to this important effort.

### **Committee on Special Education Eligibility and Entitlement in an RtI Framework**

Melissa Bergstrom, Ph.D.  
Assistant Professor  
Department of Special Education and  
Communication Disorders  
Southern Illinois University Edwardsville

Kathryn Cox  
Principal Education Consultant  
Special Education Services Division  
Illinois State Board of Education

Carrie De La Cruz, Ph.D.  
District Services Coordinator  
Northern Suburban Special Education District

Judy Hackett, Ed.D.  
Superintendent  
North Suburban Special Education  
Organization

Christine Martin  
Problem Solving Coach  
Indian Prairie School District 204

David Prasse, Ph.D.  
Dean of the School of Education  
Loyola University Chicago

Pamela Radford, Ph.D.  
District Services Coordinator  
Northern Suburban Special Education District

Mark E. Swerdlik, Ph.D.  
Professor and Coordinator, Graduate  
Programs in School Psychology  
Department of Psychology  
Illinois State University

Updates to this Guidance Document to address factors and considerations that may be unique to the needs of English Language Learners (ELLs) when implementing an RtI process as part of special education eligibility and entitlement were made subsequent to the issuance of the original document. The updates were made through a collaborative effort of the RtI and ELL Professional Practice Committee and ISBE. Convened by ISBE, the committee was charged with reviewing legal requirements, as well as informational, guidance, and resource materials from Illinois and other states, pertinent to serving the ELL population. In finalizing the updated document, the committee also reviewed questions and suggestions received from the field during stakeholder review of the draft updated document. As a result, the committee incorporated further changes within various sections of the guidance document and added content to the Frequently Asked Questions supplement. ISBE wishes to thank the committee members listed below for their contributions and time dedicated to this important effort.

### **RtI and ELL Professional Practice Committee**

David Barker  
Chair  
Illinois Advisory Council on Bilingual  
Education

Mitch Dubinsky  
Principal  
Briar Glen Elementary School  
Glen Ellyn CCSD 89

Kathryn Cox  
Principal Consultant  
Illinois State Board of Education

Judy Hackett, Ed.D.  
Superintendent  
Northern Suburban Special Education  
Organization

Ellen Magit  
Bilingual School Psychologist and Intervention  
Specialist  
Bilingual Solutions

Barbara Marler  
Education Specialist  
Illinois Resource Center

Karen Mulattieri  
ELL Coordinator  
Elmhurst CUSD 205

Pamela Radford, Ph.D.  
Statewide Administrator  
Illinois RtI Network

Cristina Sanchez-Lopez  
Education Specialist  
Illinois Resource Center

Mark Swerdlik, Ph.D.  
Professor and Coordinator, Graduate  
Programs in School Psychology  
Department of Psychology  
Illinois State University

## FOREWORD

---

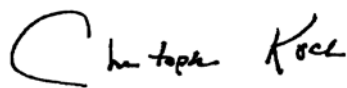
*Illinois Special Education Eligibility and Entitlement Procedures and Criteria within a Response to Intervention (RtI) Framework: A Guidance Document* was developed by ISBE with the invaluable assistance of the committee members listed on the preceding pages. While the requirement for Illinois districts to use an RtI process to identify and address student learning needs comes from ISBE's rules governing special education at 23 Illinois Administrative Code 226.130, ISBE supports RtI as an important part of school improvement.

This commitment is demonstrated in the January 2008 Illinois State RtI Plan ([http://www.isbe.net/pdf/rti\\_state\\_plan.pdf](http://www.isbe.net/pdf/rti_state_plan.pdf)). This plan lays the foundation for implementation of RtI in the broader context of school improvement while also supporting the use of an RtI-based process for special education eligibility and entitlement decisions. It is upon this foundation that the following guidance document was developed.

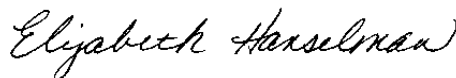
The guidance document is designed to provide Illinois districts and schools with a framework for using RtI to determine a student's eligibility for and entitlement to special education services. Because data collected during instruction are essential to eligibility determination, it is important that school districts understand the critical role that effective, research-based core instruction, interventions, and assessment play in this process. To that end, the guidance document addresses ways in which districts can assess whether their core curricula and instruction, as well as interventions, are effective and, in turn, use such data in the eligibility determination process.

As will become evident through the information delineated in the guidance document, decisions about the effectiveness of core instruction and interventions must be made for all students, not just those who are under consideration for special education eligibility. Therefore, it is important that district and school leadership teams have an active role in examining curricular materials, instructional methodologies, and other practices across school settings to determine their effectiveness and assess their impact on student outcomes.

The guidance document aligns directly with the Illinois State RtI Plan and sets the stage for Illinois schools to approach special education eligibility and entitlement decisions from a broader context of quality instruction, intervention, and assessment to address the learning and behavioral needs of all students. While we recognize that the requirements and criteria outlined in the document represent a change from previous practices and may therefore present a challenge to some districts, we also see this as an important opportunity to continue to work together to significantly improve the way in which the needs of our students are identified and addressed in a timely manner. Accordingly, we look forward to continuing our collaboration with various educational partners in Illinois to support the implementation of RtI across the state.



Christopher A. Koch, Ed.D.  
State Superintendent of Education



Elizabeth Hanselman  
Assistant Superintendent  
Special Education and Support Services

## TABLE OF CONTENTS

|  |    |
|--|----|
| I. Introduction .....  | 1  |
| II. Data Collection Requirements and Procedures.....   | 3  |
| A. Determinant Factors – All Disabilities .....  | 4  |
| 1. Lack of Appropriate Instruction in Reading and Math, including the Essential<br>Components of Reading and Math Instruction..... | 4  |
| 2. Limited English Proficiency (LEP) .....   | 8  |
| B. Additional Procedures for Determining the Existence of a Specific Learning Disability .....                                     | 9  |
| 1. Adequate Achievement.....   | 10 |
| 2. Exclusionary Criteria.....  | 11 |
| 3. Appropriate Instruction and Repeated Assessments .....  | 12 |
| 4. Observation.....  | 14 |
| 5. Specific Documentation for the Eligibility Determination .....  | 15 |
| C. Use of Existing Evaluation Data .....   | 16 |
| III. Use of RtI Data for Eligibility and Entitlement Decisions.....  | 18 |
| A. Level/Extent of Discrepancy or Gap .....  | 18 |
| B. Educational Progress .....  | 18 |
| C. Instructional Needs .....   | 20 |
| IV. Resources.....   | 21 |

## I. Introduction

Illinois' rules governing special education at [23 Illinois Administrative Code \(IAC\) 226](#) (effective June 28, 2007) provide the legal structure for the implementation of Response to Intervention (RtI) in districts across the state (see 23 IAC 226.130). The [Illinois State RtI Plan](#) issued on January 1, 2008, outlines a framework for statewide implementation of RtI and delineates requirements for District RtI Plans, which were to be in place by January 1, 2009. The district plans were to lay the foundation for the implementation of an RtI process.

As stated in the Illinois State RtI Plan, "the Illinois State Board of Education (ISBE) believes that increased student learning requires the consistent practice of providing high quality instruction matched to student needs. In a quality educational environment student academic and behavioral needs must be identified and monitored continuously with documented student performance data used to make instructional decisions." The plan also defines RtI as "*the practice of providing (1) high-quality instruction/ intervention matched to student needs and (2) using learning rate over time and level of performance to (3) make important educational decisions*" (Batsche, et al., 2005). RtI is an ongoing process of using student performance and related data to guide instructional and intervention decisions for ALL students. It is a part of a multi-tiered problem solving model of prevention, interventions, and use of educational resources to address student needs. RtI matches instructional and intervention strategies and supports with student needs in an informed, ongoing approach for planning, implementing, and evaluating the effectiveness of curricular supports and interventions.

In accordance with 23 IAC 226.130, beginning no later than the 2010-2011 school year, school districts in Illinois are required to use a process that determines how a student responds to scientific, research-based interventions (RtI) when determining whether that student is or continues to be eligible for and entitled to special education services under the category of specific learning disability (SLD). The change in the SLD eligibility requirements at 23 IAC 226.130 came from the 2004 reauthorization of the federal Individuals with Disabilities Education Improvement Act (IDEIA) and the [IDEIA regulations](#) issued in 2006. The federal regulations at 34 CFR 300.307 allow a state education agency to adopt criteria to identify students in the category of SLD using a process that determines how a student responds to scientific, research-based interventions. These regulations also require school districts to use the established state criteria.

The purpose of this guidance document is to provide Illinois districts and schools with a framework for using RtI to determine a student's eligibility for and entitlement to special education services. While the requirement at 23 IAC 226.130 for the use of RtI is specific to the identification of SLD, the purpose of this document is also to lay the foundation for the optional use of RtI as part of the evaluation procedures to determine special education eligibility for all students suspected of having a disability other than SLD.

It is imperative to put this document, and the identification of students who qualify for special education services, in the larger context of RtI. RtI is not just a process that is used to make eligibility and entitlement decisions. More importantly, RtI is about creating learning environments that are effective and lead to improved outcomes for all students. Consequently, the RtI framework outlined in this document may have significant impact on instruction and assessment practices in

Illinois schools. Accordingly, numerous additional resources available to support the implementation of RtI are provided in Section IV of this document.

Using information on how a student responds to scientifically-based instruction and intervention (i.e., RtI) when determining whether a student is eligible for and entitled to special education services represents a significant shift in practices used to identify students with disabilities. The focus shifts away from identifying and diagnosing characteristics that are internal to the student and moves to identifying effective interventions. When using a student's response to intervention as a basis for special education eligibility and entitlement decisions, the following questions are asked:

1. What is the discrepancy of the student's performance with the peer group and/or standard?
2. What is the student's educational progress as measured by rate of improvement?
3. What are the instructional needs of the student?

There are many advantages to using data collected as part of an RtI process to support entitlement decisions over more traditional models of disability identification (e.g., use of an IQ/achievement discrepancy), including:

1. Student needs are addressed proactively. The monitoring of student progress is early and frequent, which allows for scientifically-based instruction and intervention to be delivered as soon as possible.
2. The delivery of scientific, research-based instruction and intervention prior to finding a student eligible to receive special education services reduces the number of students who are inappropriately identified as having a disability due to a mismatch between the curriculum and the student's needs.
3. Staffs spend their time focusing on finding what works for students and the conditions under which they are most successful instead of attempting to identify problems that are internal to the student and presumed to be stable across environments and across time.
4. Eligibility determination is based on educational need. Those with the greatest need are given the most support.
5. The RtI process continues once students receive special education supports, and the school team continues to work to find instruction and interventions that result in the greatest progress for the student. The team continues to make regular and ongoing instructional decisions based on data, including when special education resources may no longer be necessary.

The increased emphasis on using information on how a student responds to scientifically-based instruction and intervention to support eligibility and entitlement decisions is coupled with a decreased emphasis on the use of standardized, norm-referenced assessments of achievement, cognitive ability, and cognitive processing. IDEIA 2004 makes it clear that the determination of a severe discrepancy between IQ and achievement is not necessary in order to identify a student as having a SLD. Additionally, none of the federal regulations addressing special education evaluation requirements, including the additional procedures for SLD identification, specify that a particular type of assessment (e.g., assessment of psychological or cognitive processing) must be conducted.

Of particular relevance is the United States (U.S.) Department of Education’s response in the “Analysis of Comments and Changes” section of the federal regulations.

*The Department does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD. Further, in many cases, these assessments have not been used to make appropriate intervention decisions.*

– Federal Register, Vol. 71, No. 156, p. 46651

When using RtI to make eligibility and entitlement decisions, a variety of sources of information, including screening, progress monitoring, and diagnostic/prescriptive assessment data, can provide the information necessary for a) determining a student’s performance discrepancy from the peer group, b) establishing a pattern of educational progress over time, and c) identifying the educational circumstances under which the student performs his or her best. This document provides Illinois schools and districts with detailed information on the process for the collection of student performance data in an RtI framework (Section II) and delineates how those data can be used to assist with eligibility and entitlement decisions (Section III).

Users of this document should note that because the document’s focus is to provide guidance on utilization of an RtI framework in making special education eligibility and entitlement decisions, the federal laws and regulations and Illinois statutes and rules cited herein are those most directly connected to this subject. Accordingly, individuals are strongly encouraged to consult other federal laws and regulations and Illinois statutes and rules that may have relevance to a particular situation, such as those governing personnel qualifications, specific program requirements, etc. Examples of state-level sources that may be consulted are Chapter 105, Part 5 of the Illinois Compiled Statutes (105 ILCS/5, or the Illinois School Code; available at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>), including, but not limited to, Articles 14, 14C, and 21, and 23 IAC (available at <http://www.isbe.net/rules/archive/default.htm>), including, but not limited to, Parts 24-28, 226, and 228.

## II. Data Collection Requirements and Procedures

The purpose of this section is to identify and describe the processes that lead to the point of eligibility determination. Subsection A addresses the collection of data to determine whether one or more of the factors associated with the Special Rule for Eligibility Determination are the **primary** reason(s) a student is experiencing difficulty, and this rule is applicable to all disability categories. Subsection B discusses the additional requirements for determining if a student qualifies for special education services under the category of SLD. Subsection C examines the regulatory requirement that IEP teams must review existing evaluation data when conducting a special education evaluation for all suspected disabilities. The requirements contained in Subsections A through C are reflective of existing federal regulations, and their implementation is discussed in the context of an RtI framework.

The requirements associated with a full and individual evaluation [34 CFR 300.301(a)], requests for initial evaluation [34 CFR 300.301(b)], and conducting the evaluation [34 CFR 300.304(b)] remain



the same. These requirements are addressed in greater detail in the Frequently Asked Questions (FAQ) supplement to this guidance document.

With regard to English Language Learners (ELLs), when implementing the data collection requirements and procedures discussed below, it is important that data be collected and analyzed in several areas that impact academic achievement, language, and literacy development of ELLs, 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 and literacy in English and the student's native language, academic achievement in the U.S. and elsewhere, and cross-cultural factors.

#### A. Determinant Factors – All Disabilities

When determining eligibility for special education services, regardless of the type of disability suspected, the IEP team must apply the Special Rule for Eligibility Determination prescribed at 34 CFR 300.306(b), which states:

- (b) A child must not be determined to be a child with a disability under this part—
  - (1) If the determinant factor for that determination is—
    - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA [Elementary and Secondary Education Act]);
    - (ii) Lack of appropriate instruction in math; or
    - (iii) Limited English proficiency.

In order to rule out each of the factors listed above as the **primary** reason a student is experiencing difficulty, it is important that the IEP team examine data-based evidence, as discussed below.

##### 1. *Lack of Appropriate Instruction in Reading and Math, including the Essential Components of Reading and Math Instruction*

A key component of appropriate instruction is a student's opportunity to learn. Opportunity to learn is a complex construct that includes not only access to key resources (e.g., qualified personnel, funding, relevant and rigorous curriculum), but also factors related to the nature and implementation of academic instruction. To rule out lack of appropriate instruction in reading and math, three key factors are examined: a) the degree to which the curriculum is scientifically-based, b) the degree to which the curriculum is implemented with integrity, and c) the impact of instruction on student outcomes.

- a. Scientifically-Based Curriculum: It is important that the IEP team has evidence that the core curriculum and supplemental instruction are scientifically-based. "Scientifically-based" is a term used to describe practices and programs that have been thoroughly and rigorously reviewed to determine whether they produce positive educational results in a predictable manner. This determination is made based on objective, external validation.

Scientifically-based reading programs include the essential components of reading instruction as defined in the ESEA of 2001, i.e., phonemic awareness, phonics, fluency, vocabulary, and comprehension [20 USC 6368(3)]. Scientifically-based math programs include the essential components of math instruction (conceptual understanding, procedural fluency, strategic competence, adaptive reasoning, and productive response), as recommended by the National Research Council (2001).

Evidence that curricula and supplemental instruction are scientifically-based can be obtained from a variety of sources. The strongest evidence includes such sources as positive curriculum outcomes published in peer-reviewed journals, favorable reviews by panels of appropriately credentialed experts, and/or independent reviews that verify alignment of curriculum with learning standards adopted by the state of Illinois.

An example of moderate-level evidence that curricula or supplemental instruction is scientifically-based is positive outcomes of field studies conducted by the curriculum publisher. The weakest sources of evidence include customer testimonials, consumer satisfaction surveys, local or internal district reviews, and high proportions of district students meeting state standards. Using multiple sources of evidence can increase the strength of evidence overall.

In examining evidence that ELLs have had access to scientifically-based curricula, it is important to determine if the curriculum is aligned with all standards adopted by the state of Illinois, including the English Language Proficiency (ELP) Standards. This should be reflected in all programs designed for ELLs, including Transitional Bilingual Education (TBE) and Transitional Programs of Instruction (TPI). Further, when evaluating scientifically-based reading programs for ELLs, the team should consider the findings of the National Literacy Panel on Language Minority Children and Youth (2006), which include the following:

- Language minority students clearly benefit from instruction that provides substantial coverage in the key components of reading identified by the National Reading Panel (NICHD, 2000), which are phonemic awareness, phonics, fluency, vocabulary, and comprehension.
- ELLs benefit from instruction in the five areas of literacy identified by the National Reading Panel, but they require additional oral language instruction connected to their literacy instruction.
- ELLs also benefit when instruction in the native language, both oral and in literacy, is used to support English literacy development.

It is also necessary to look for demographic information about the population on which the curriculum was validated and ask questions such as the following:

- Is the curriculum linguistically appropriate for the ELL subgroups?
- Did the research include a significant number of ELLs and were the results disaggregated for the subgroup? Curriculum should be validated with like peers, i.e., students from the same linguistic and socio-cultural background with similar exposure to the curriculum.
- If evidence of scientifically-based research is not available, does the district have local data as evidence that the curriculum is effective for the ELL subgroup (e.g., action research)?

- Based on your data and research in the field, are the curriculum materials adequate and appropriate for ELLs across the developmental spectrum of language acquisition and academic achievement?

Additionally, when identifying those students who have English Language Learning needs and exceptionalities, it is essential that the learning environment be responsive to ELLs both linguistically and culturally. That is, it needs to take into consideration the fact that ELLs 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.

- b. Implementation Integrity: To assess the integrity with which the curriculum has been implemented, the factors listed below should be examined through existing mechanisms such as the district leadership process, district improvement process, curriculum review and adoption process, professional development plans, integrity checklists, school and classroom walk-throughs, etc.
- i. The length of time the curriculum has been in place in the school.
  - ii. The amount of training the teachers have received in using the curriculum and supplemental instruction.
  - iii. The degree to which the teachers used the prescribed instructional procedures and materials associated with the core curriculum and supplemental instruction.
  - iv. The degree to which the teachers used effective instruction methodologies and techniques (e.g., differentiation, scaffolding, frequent opportunities to respond with corrective feedback).
  - v. The length of time the student was taught the curriculum.

Additional considerations for ELLs include ensuring the following:

- The implementation of the curriculum and delivery of instruction is congruent with ELL pedagogy, including first and second language literacy instruction.
- The teacher demonstrates knowledge of second language acquisition and competence to effectively and appropriately deliver and differentiate instruction for ELLs.
- ELLs are provided an adequate opportunity to learn, e.g., a curriculum within a language assistance instructional program such as TBE or TPI is of sufficient length and intensity to support the child's developmental stage of language acquisition (the least proficient should be getting more support) while imparting grade level appropriate content instruction. The student's progress may be hindered by the lack of consistency in the instructional program, e.g., limited access to ELL services, multiple changes in ELL programming.
- Individuals completing observations to determine implementation integrity include persons knowledgeable of first and second language academic instruction as well as second language acquisition.
- The classroom environment is conducive to ELLs' learning, e.g., extensive use of visuals, explicit oral language instruction and teaching of vocabulary and background knowledge, multiple response opportunities, interaction with non-ELL peers, incorporation of language and content objectives, comprehensible input, frequent opportunities for practice and

application. (Resources related to this topic may be accessed online at <http://www.nccrest.org/professional.html>.)

It is also important to keep in mind that a language assistance instructional program such as TBE or TPI is a core instructional program and should not be considered an “intervention.” Any additional intervention and support within RtI should be supplemental to the core curriculum and should consist of research-based instructional materials and approaches from the bilingual/English as a Second Language education field.

- c. Student Outcomes: To assess the impact of instruction on outcomes for all students, it is important that data such as the following be examined:
  - i. State assessment data (e.g., ISAT, PSAE, ACCESS for ELLs®).
  - ii. Local district-wide assessment data based on national norms.
  - iii. Local universal screening/benchmark data on all students collected multiple times during the academic year.
  - iv. Progress monitoring data collected at regular intervals for individual or groups of students.

Additional considerations for ELLs include the following:

- For all assessments, it is important that students be compared to their like peers (as described previously) 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 ELLs, such data should include results from student performance on the ACCESS for ELLs®, which is the English language proficiency assessment used in Illinois. Further, it is important to remember that in accordance with 23 IAC 228.25(b)(2), the State Superintendent of Education establishes Illinois’ uniform definition of English language proficiency. Currently, a student is identified as an ELL until such student obtains a minimum Overall Composite Proficiency Level of 4.8 and a minimum Literacy Composite Proficiency Level of 4.2 on ACCESS. Thus, districts must continue to provide ELLs with appropriate services until they achieve these cut scores on ACCESS. Prior to attainment of proficiency, care should be taken to appropriately interpret ELLs’ scores on any district-wide assessment being used.
- Districts must continue to monitor the education progress of former LEP students. When a district’s monitoring suggests that a former LEP student may be struggling academically due to a language barrier, and general education and remediation services have proven inadequate as documented by a body of evidence, the district shall retest the student with the ACCESS for ELLs® or the WIDA ACCESS™ Placement Test to determine if the student qualifies as LEP again and needs additional ELL services.
- 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 (as described previously). When considering universal screening and progress monitoring data, teams are cautioned about applying normative data for native English speakers to ELLs. 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.

If it is determined the **primary** reason a student is discrepant from his or her peers is lack of appropriate instruction in reading and/or math, then delivery of appropriate instruction utilizing a curriculum that is scientifically-based and implemented with integrity should be put in place for the student to determine whether it will result in improved academic performance.

## 2. *Limited English Proficiency (LEP)*

It is important to understand that students with LEP may also be identified as having a disability and, if so, must receive services to address both aspects of their learning needs. However, students should not be identified as eligible for special education when the **primary** cause for their academic difficulties is LEP. Federal law requires that all students must be screened to determine if their primary home language is other than English. If so, the student's acquisition of and proficiency in the English language (listening, speaking, reading, and writing) must be assessed and considered by school personnel.

To rule out LEP as a determinant factor for an individual student, it is important that the IEP team has evidence that the core curriculum is effective for most of the subgroup of students identified as LEP. To that end, the team examines data such as the following:

- a. State assessment data (e.g., ISAT, PSAE).
- b. ACCESS for ELLs® and other language proficiency tests.
- c. Local district-wide assessment data based on national norms.
- d. Local universal screening/benchmark data collected multiple times during the academic year.
- e. Progress monitoring data collected in regular intervals for individual or groups of students.
- f. Authentic assessment (portfolios, teacher-made assessments using rubrics, etc.)

Many of the considerations discussed above with regard to ruling out lack of appropriate instruction in reading and mathematics are applicable to ruling out LEP as the primary cause for a student's academic difficulties. In addition, IEP teams need to consider the following:

- ELLs' progress rates in acquiring English proficiency vary depending on several factors, including how much education they received prior to immigration to the U.S., how proficient they are in their home language, and how much first language support is/has been provided by the school and available in the home and community.
- ELLs who grow up in the U.S. are often considered simultaneous bilinguals whose full language skills would be a composite of both the first and second language. Examining concept knowledge and vocabulary in only one language does not accurately reflect their full language proficiencies.
- Mixed proficiency in the native language and in English is not an indicator of language impairment. A student may demonstrate strengths and weaknesses in either or both languages depending on instruction and usage of first language and second language at home and school.
- When an underlying difficulty is due to a disability, it will manifest itself across languages and contexts. For example, if the child is having difficulty following directions, then the team should see if the same difficulty occurs in social as well as academic settings and occurs in the home.

language as well as in English. It would not be appropriate to find an ELL to have a disability in one language and not the other.

If a student is not succeeding due *primarily* to any one of the reasons listed above (lack of appropriate instruction in reading or math or LEP), he or she is *not eligible* for special education and related services.

#### B. Additional Procedures for Determining the Existence of a Specific Learning Disability

The preceding Subsection A (Determinant Factors – All Disabilities) addressed evaluation requirements applicable to all students suspected of having a disability. This subsection (B) identifies the additional requirements specific to determining the existence of a SLD.

As discussed in the introduction, the purpose of this document is to provide guidance on determining a student’s eligibility for and entitlement to special education and related services within an RtI framework. Given Illinois’ requirement at 23 IAC 226.130 that a process that determines how a student responds to scientific, research-based interventions must be used as part of the evaluation procedures for determining SLD, other options allowed under the federal regulations and ISBE’s rules governing special education will not be discussed here and are instead addressed in the FAQ supplement. The options addressed in the FAQ include consideration of whether a student exhibits a pattern of strengths and weaknesses in performance, achievement, or both and use of a severe discrepancy between intellectual ability and achievement *in addition to* use of an RtI process.

The IDEA 2004 regulations at 34 CFR 301 and 300.304–300.306 delineate procedures for conducting an evaluation to determine eligibility for special education and related services. The regulations at 34 CFR 300.307–300.311 prescribe additional procedures for determining whether students qualify for special education services under the category of SLD. These additional requirements include:

1. Determining if the student is achieving adequately,
2. Ruling out exclusionary criteria,
3. Consideration of data related to appropriate instruction and repeated assessments to ensure that underachievement is not due to lack of appropriate instruction in reading or math,
4. Observation of the student, and
5. Specific documentation requirements for the eligibility determination.

This information, combined with the information described in the preceding Subsection A, is sufficient for determining whether a student has a SLD requiring special education or related services. Although the federal definition of SLD at 34 CFR 300.8(c) makes reference to “a disorder in one or more of the basic psychological processes,” the regulations at 34 CFR 300.307–300.311 (Additional Procedures for Identifying Children with Specific Learning Disabilities) do not require assessment of psychological or cognitive processing, nor do they require assessment of intellectual ability.

## 1. Adequate Achievement

As set forth in 34 CFR 300.309(a), a “group of qualified professionals” and the parent may determine that a student has a SLD if—

- (1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:
  - (i) Oral expression.
  - (ii) Listening comprehension.
  - (iii) Written expression.
  - (iv) Basic reading skills.
  - (v) Reading fluency skills.
  - (vi) Reading comprehension.
  - (vii) Mathematics calculation.
  - (viii) Mathematics problem solving.

[and]

- (2)
  - (i) 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 paragraph (a)(1) of this section *when using a process based on the child’s response to scientific, research-based intervention* [emphasis added]; or
  - (ii) 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, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305.

Given the regulations cited above, when determining the existence of a SLD:

- a. Students who are included for consideration of a SLD are those who do not achieve adequately for their age or to meet state-approved grade level standards.
- b. Only those students whose achievement falls significantly below (as defined locally) an age or grade level state standard are eligible for consideration.
- c. The eight areas listed above are the only academic areas inclusive of SLD. There are no other areas that are permitted in considering SLD. The requirement is that student performance data focus on achievement, not processing deficits.
- d. Because Illinois requires the use of a process based on a child’s response to scientific, research-based interventions as part of the evaluation procedures for SLD, 34 CFR 300.309(2)(ii) is not relevant to the purposes of this document.

In determining whether an ELL is achieving adequately for his or 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 IEP team’s decision making process. For example, if an ELL’s

performance is compared to a peer group in order to determine adequate progress, that group should consist of the student's like peers (as described previously). 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 Illinois.

## 2. *Exclusionary Criteria*

In accordance with the federal regulations at 34 CFR 300.309(a)(3), the IEP team must determine that a student's response to instruction is not **primarily** a function of a visual, motor, or hearing disability or **primarily** the result of an intellectual disability, emotional disturbance, cultural factors, environmental or economic disadvantage, or LEP.

To rule out these factors, IEP teams must document evidence that each factor has been excluded from consideration in the screening process, or if necessary, conduct a more extensive evaluation to eliminate them from consideration. There is no legal requirement that an in-depth evaluation of any of these areas occur if it is not judged appropriate or necessary by the team. Each of these areas may be assessed via screening activities, as discussed below. Please note that the "areas to consider" for each of the factors below provide examples of screening data sources and are not intended to be an exhaustive list.

- a. A visual, hearing, or motor disability  
Areas to consider: Review of health records to check any history of passed routine vision, hearing, and motor (e.g., from physical education class) screenings.
- b. Intellectual disability  
Areas to consider: Review of adaptive behavior history (age-appropriate adaptive behavior indicates that the student does not have an intellectual disability), review of performance across academic areas (average performance in any of the academic areas may indicate that a student does not have an intellectual disability).
- c. Emotional disability  
Areas to consider: Review of results of behavior screening data collected on all students (e.g., attendance records, discipline referrals), behavior checklists, and/or behavior rating scales. For students who display behavior problems, the IEP team must determine whether the student's learning problems are an antecedent of the behavior problems or whether emotional problems are impacting the student's ability to acquire academic skills.
- d. Cultural factors  
Areas to consider: Review of results of achievement data that compare the performance of subgroups (e.g., race/ethnicity, gender) in the district. The disaggregated data might indicate that most students of a particular cultural or ethnic group are achieving at acceptable levels in response to the instruction they are receiving. If a particular student is receiving the same instruction in a similar learning environment but not achieving, a determination that the learning difficulties are not due to cultural factors might be made.



Further, sensitivity and instruction/curriculum review are needed to assess if instruction is “culturally responsive,” which is an important element of appropriate instruction. Students may also display academic deficiencies that are related to their acculturation experience in the U.S. and these must be considered. Partnering with parents is crucial in assessing whether cultural factors are the primary reason for the student’s difficulties, as are student interviews and observation.

e. Environmental or economic disadvantage

Areas to consider: Review of results of achievement data that compare the performance of students of similar socioeconomic status in the district, interviews with the family, and developmental histories. Situations such as homelessness, child abuse, poor nutrition, and other factors may adversely impact a student's ability to learn. Interviews with the family and developmental histories are useful tools to assess these issues. In addition, chronic medical conditions, frequent absences, and sleep disruptions should be duly considered.

f. Limited English Proficiency

Areas to consider: Review of results of achievement data that compare the performance of all LEP students and results of assessments of a student’s English proficiency. The same factors and considerations for ELLs discussed under ruling out LEP in Subsection A (Determinant Factors – All Disabilities, see Item 2) of this section are applicable here.

### 3. *Appropriate Instruction and Repeated Assessments*

The federal regulations at 34 CFR 300.309 require the following:

- (b) 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 300.304 through 300.306—
  - (1) 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
  - (2) 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.

The explicit requirement stated above is that the school/district must have some type of student data collection system that shows how the student has responded to appropriate instruction as measured by repeated assessments of the student’s response to instruction. The responsibility rests with the school district to ensure that low achievement is not a function of curriculum mismatch and/or lack of effective instruction.

The emphasis of this entire “Additional Procedures for Determining the Existence of a Specific Learning Disability” section requires a focus on student achievement within the context of age and/or grade level standards, and not on within-child deficits. This is a requirement that applies to all evaluations of students thought to have a SLD. Low achievement is not evidence of a SLD if appropriate curriculum choice and the delivery of effective instruction cannot be demonstrated. If

it is determined that there has not been a sufficient provision of standards-aligned curriculum and instruction, these features should be put in place for the student in order to determine whether they will result in improved academic performance.

- a. Data demonstrating the student was provided appropriate instruction from qualified personnel: IEP teams considering students for SLD eligibility must document the school's efforts to provide the student with scientifically-based instruction in the essential components of reading and mathematics. It is important that the team documents the extent to which the student has been provided with an appropriate standards-based core instructional program, delivered by personnel whose credentials demonstrate that they meet the highly qualified requirements of the ESEA, prior to being referred for evaluation. To meet this requirement, the team should provide the same evidence discussed previously under Subsection A (Determinant Factors – All Disabilities) of this section.

For ELLs, instruction should follow best practice based on research specific to the ELL population. Further, personnel providing instruction should not only include individuals who are qualified in their subject matter but also those who are qualified in the instruction of ELLs.

Procedures that districts may consider to assess the provision of appropriate instruction for all students also include:

1. The principal's observation of teachers' delivery of instruction through routine classroom visits and more formal observations conducted on a regular basis during the instructional period for the targeted content/subject area,
2. Checklists of integrity of instruction completed by teachers as self-check measures,
3. Checklists of integrity of instruction completed among teachers as peer-check measures, and
4. Checklists completed by content specialists or curriculum supervisors working with classroom teachers.

In the context of instruction, documentation is also needed for the interventions that were provided during the early intervening period. It is important that the IEP team is able to ensure the following:

- Supplemental interventions used at the strategic (Tier 2) and intensive (Tier 3) levels of intervention are supported by scientific research, are based on the problem solving approach, and are appropriate for the group of students receiving the intervention.
- Supplemental interventions have yielded successful responses and outcomes from other students receiving the intervention.
- Staff implementing the supplemental interventions was adequately trained and demonstrate proficiency with the interventions.
- The interventions were delivered with a high degree of fidelity, with sufficient intensity, and for a sufficient length of time, as evidenced by progress monitoring data. Specific information about the frequency and intensity of the interventions delivered should be documented.

- In the context of the ELL population, the effectiveness of the intervention(s) with similar ELLs is supported by peer-reviewed research. In the absence of such research, districts may use state, regional, or locally-obtained ELL data.

b. Data-based documentation of repeated assessments of achievement: To meet this requirement, the IEP team will need to provide evidence of local universal screening/benchmark data that are collected on all students at multiple times during the academic year. Universal screening is a systematic process for the assessment of all students within a given grade, school building, or school district on critical academic skills. Universal screening yields data to make decisions about needed enhancements in the core curriculum, instruction, and/or educational environment and about which students may need additional assessment and/or supplemental or intensive intervention and instruction beyond what is provided through core programming.

IEP teams must also provide evidence of data from repeated assessments (i.e., progress monitoring) collected to determine the effectiveness of interventions that were delivered. Additional information about progress monitoring tools and data collection can be found in Section III, Subsection B (Educational Progress).

For ELLs, the focus of data collection typically needs to be on closing the gap between the target student and similar, nondisabled peers, not on reaching benchmarks intended for native English speakers. As students reach English proficiency (i.e., currently defined by the State Superintendent as a minimum Overall Composite Proficiency Level of 4.8 and a minimum Literacy Composite Proficiency Level of 4.2 on the ACCESS for ELLs®), the focus begins to include comparison with native English speakers in addition to like peers (as described previously).

Communicating with parents and safeguarding their rights is an important part of the repeated assessment process. Accordingly, the IEP team must provide evidence that universal screening/benchmark data and progress monitoring data have been provided to the student's parents. The results of universal screening should be shared in easily understood language (parent-friendly), without jargon, and should report the student's performance data. In addition, the report should provide age and/or grade level expectations so that parents have a way to compare their child's performance. For parents whose primary language is other than English, it is important to provide this information in a language the parents understand.

#### 4. *Observation*

For any student under consideration as having a SLD, the federal regulations at 34 CFR 300.310 require the following:

- (a) The public agency 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 areas of difficulty.

The regulations also require that the IEP team must either use information from an observation in routine classroom instruction and monitoring of the student's performance that was done prior to

referral for a special education evaluation (and therefore does not require parental consent) or the team must have at least one team member conduct an observation after the student has been referred for an evaluation and parental consent is obtained.

This requirement makes clear that classroom observations conducted during the early intervening period are sufficient to comply with the provision and should be documented by the IEP team. However, if a classroom observation has not been conducted prior to the referral for evaluation, the team must conduct an observation in the general education classroom and provide appropriate documentation. **For ELLs, at least one of the individuals conducting the observation(s) should be a person knowledgeable about instruction for ELLs, as well as any pertinent cultural and/or linguistic characteristics of the individual student.**

The focus of the observation must be tied directly to relevant academic performance in one or more of the eight areas listed previously under “Adequate Achievement” and the functional relationship of behavior to that academic performance. Further, best practice suggests that structured classroom-based observations (i.e., utilizing a pre-established objective format and/or checklist) should occur prior to referral. The observation(s) should assist in the documentation that appropriate instruction was provided and also serve to inform the decisions about recommended instructional changes. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

##### *5. Specific Documentation for the Eligibility Determination*

The preceding four additional procedures for determining the existence of SLD focused on data collection. This fifth component addresses requirements associated with documentation of the data in order to make a determination of special education eligibility for a student suspected of having a SLD.

As required in the federal regulations at 34 CFR 300.311:

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—
  - (1) Whether the child has a specific learning disability;
  - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);
  - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic function;
  - (4) The educationally relevant medical findings, if any;
  - (5) Whether—
    - (i) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
    - (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or

- (B) 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 consistent with § 300.309(a)(2)(ii);
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention [required in Illinois]—
  - (i) The instructional strategies used and the student-centered data collected; and
  - (ii) The documentation that the child's parents were notified about—
    - (A) 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;
    - (B) Strategies for increasing the child's rate of learning; and
    - (C) The parents' right to request an evaluation.

The documentation requirements listed above are specific and comprehensive in scope. They require student performance data that compare the student's performance within an age context or a state-approved grade level standard and documentation that the student does not make sufficient progress to meet the age or grade level standard. (Note: Because Illinois requires the use of a process based on a child's response to scientific, research-based interventions as part of the evaluation procedures for SLD, 34 CFR 300.311(5)(ii)(B) contained in the citation above is not relevant to the purposes of this document.)

The first requirement is generally referred to as "gap" analysis, or the discrepancy between the student's performance and the peer group. The second refers to the student's rate of learning, or how well and at what pace or speed the student is responding to an effective intervention delivered with integrity. The word "and" connecting these two requirements means each must be documented, and these data are required for all students suspected of having a SLD. The IEP team should also keep in mind the factors and considerations for ELLs discussed in earlier parts of this document with regard to the types of data used for meeting the documentation requirements.

The documentation requirements in 34 CFR 300.311(a)(7) focus on the substance of the interventions delivered and the student's response to those interventions, and not on merely notifying parents of these interventions for the purpose of compliance. The documentation must focus on the strategies used, the student's response to those interventions (progress monitoring data), and strategies used to increase the student's rate of learning.

### C. Use of Existing Evaluation Data

A requirement for all special education evaluations, regardless of the suspected disability, is the review of existing evaluation data. Subsections A (Determinant Factors – All Disabilities) and B (Additional Procedures to Determine the Existence of a SLD) of this section (II) outlined the processes and data sources that are necessary to make eligibility decisions in an RtI framework.

Because these processes and data sources are integral to RtI, data collected through screening, assessment, progress monitoring, etc., should be readily available for review.

***Screening for instructional purposes is not evaluation.*** *The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*

– § 300.302, Federal Regulations

Given the regulation at 34 CFR 300.302, as cited above, screening data collected as components of Tier 1 activities and Tier 2 and 3 assessment data (e.g., curriculum-based evaluation) and progress monitoring data documenting student response to intervention neither require nor trigger procedural safeguards associated with comprehensive evaluations. Yet, use of these data as a component of a comprehensive evaluation is permitted and expected, as evidenced by the regulations at 34 CFR 300.305 (Additional requirements for evaluations and reevaluations):

- (a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
- (1) Review existing evaluation data on the child, including—
    - (i) Evaluations and information provided by the parents of the child;
    - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
    - (iii) Observation by teachers and related services providers; and
  - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any [emphasis added], are needed to determine—
    - (i) (A) Whether the child is a child with a disability, as determined in § 300.8, and the educational needs of the child; or  
(B) In the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
    - (ii) The present levels of academic achievement and related developmental needs of the child;
    - (iii) (A) Whether the child needs special education and related services; or  
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services...

The use of existing evaluation data is a part of the comprehensive evaluation. The term “if any” allows the IEP team, which includes the student's parents, the discretion to determine if further data are required or if the data already collected as a part of a three-tiered RtI process are sufficient to determine special education eligibility and entitlement to services.

The data collection requirements and procedures discussed in A through C of this section (II) provide the foundation for special education eligibility and entitlement decisions and have been framed in the context of using an RtI process.

### III. Use of RtI Data for Eligibility and Entitlement Decisions

Section II of this guidance document described the data collection processes that lead to eligibility determination. Section III discusses how student data collected within an RtI process can be subsequently used in making decisions about special education eligibility and entitlement for services. In considering such decisions, the IEP team uses student data collected through the RtI process to answer the following questions:

1. What is the discrepancy of the student's performance with the peer group and/or standard?
2. What is the student's educational progress as measured by rate of improvement?
3. What are the instructional needs of the student?

When using data to answer the questions above and thereby determine ELLs' eligibility and entitlement, it is important that the IEP team address the factors and considerations for ELLs discussed under Sections I and II, based on each student's needs.

#### A. Level/Extent of Discrepancy or Gap

When answering the question regarding the discrepancy between a student's performance and the performance of his/her peer group and/or standard, the IEP team must determine that given equal or enhanced opportunities, the student's current level of performance and/or rate of improvement is significantly lower than grade level peers or grade level standards. The question is answered on the basis of student progress monitoring data compared to benchmark peer or standards-based data. Accordingly, the team must consider evidence that shows the student performs significantly below grade level peers, as defined locally, on:

- a. State assessments; and
- b. Local grade level norms from universal screening (e.g., student is below the cut score of a universal screening instrument that can scientifically predict performance on high stakes testing).

#### B. Educational Progress

When examining educational progress, the IEP team must determine if previous interventions have not sufficiently improved the student's rate of learning and additional resources are needed to enhance student learning or the interventions that have sufficiently improved the student's rate of learning are of such intensity that they cannot continue to be implemented without supplementary aids and services via special education resources. The team uses data from student progress monitoring to answer this question.

The determination of rate of improvement presupposes that the student's progress has been monitored frequently and with fidelity during the early intervening period. Progress monitoring is a rigorous assessment technique that is based in research on applications of repeated measurement. Progress monitoring features brief and frequent measurements of academic variables that are based on state standards and are highly predictive of performance on statewide tests. The National

Center on Student Progress Monitoring has indicated that progress monitoring measures should include the following characteristics:

- Acceptable psychometric characteristics (including reliability and validity),
- A number of alternate forms,
- Sensitivity to the improvements in skill acquisition,
- Ability to create linkages to instructional design, and
- Efficient administration.

It is important that school districts identify progress monitoring measures that meet these criteria. Curriculum-based measurement (CBM) is one such well-known and well-researched technique that can be used in this context. However, other methods of progress monitoring have been developed and may also be suitable. As new measures of progress monitoring become available, practitioners need to evaluate carefully the evidence base to support their use. Once the evidence base is established, such measures may be added to the range of metrics used for decision making.

The frequency of progress monitoring is determined by the level of intensity of interventions. Students receiving supplemental (strategic) interventions (Tier 2) should be monitored at least twice per month. Students receiving intensive interventions (Tier 3) should be monitored at least weekly.

Most progress monitoring metrics allow for two types of data displays, both of which are useful for guiding instruction and for determining the extent to which the student's rate of progress is inadequate as compared to other students. First, progress monitoring data may be graphed with various conventions (e.g., aimlines, trendlines) used to create a visual display of the student's response to intervention. In addition, a quantitative index of the student's rate of improvement can be determined through the student's slope of progress. For example, in monitoring a student's progress in oral reading fluency, the IEP team might calculate the number of words per minute per week the student gained during strategic and intensive interventions.

In an RtI framework, to be determined eligible for special education, students must exhibit significant deficiencies in their rate of learning based on progress monitoring data. A student's progress is compared to his or her performance during baseline data collection, to the normative rate of progress displayed by peers, and to the rate of learning required to close his or her performance gap with typical peers. Accordingly, the IEP team reviews:

- a. Results of progress monitoring data that are directly linked to the area of deficit and are completed over a period of time to assure reliability.
- b. Evidence that interventions provided to address the skill deficit were scientifically- or evidence-based and of sufficient intensity.
- c. Evidence that interventions were delivered with integrity (e.g., documentation of observations, interview checklists, or self-evaluation checklists that monitor integrity of intervention implementation).



- d. Evidence that interventions were implemented for a sufficient amount of time to allow changes to occur in the student's skill level (e.g., progress monitoring graphs). The length of time that is appropriate for students to receive early intervening services at Tiers 2 and 3 before referral for special education evaluation will vary depending on the following factors:
  - The student's initial or baseline performance level,
  - The student's prior history of effective interventions,
  - The stability of the student in the current school and instructional environment, and
  - The intensity of the interventions.
- e. Evidence that an intervention has been identified that results in a positive rate of improvement (e.g., progress monitoring graphs) and/or evidence that changes were made to an intervention when data suggested the student was not making adequate progress (e.g., Instructional Planning Forms, progress monitoring graphs).

### C. Instructional Needs

In addressing the question of instructional needs, the IEP team must determine that instructional needs have been identified that are beyond what can be met with general education resources alone. This is evident when curriculum, instruction, and/or environmental conditions need to be very different for the student as compared to the needs of other students in the general education environment. Specifically, the team considers the following evidence:

- a. Based on RtI outcome data, the factors of the intervention program at Tier 3 that are responsible for the student making progress and
- b. Characteristics of the educational program needed in order for the student to make educational progress, including the following:
  - i. Intensity of instruction (e.g., amount and rate of practice and feedback, how explicit the instruction is),
  - ii. Time delivered (e.g., amount of time weekly the intervention is delivered), and
  - iii. Size of group (e.g., individualized or small group).

It is important that the IEP team consider all three questions (Level/Extent of Discrepancy or Gap, Educational Progress, and Instructional Needs) in its deliberation, and affirmative decisions are understood to mean that the student is entitled to special education and related services, which include specific interventions that have already proven effective for that student. Thus, in order to be eligible for special education services, a student must:

- a. Demonstrate performance that is significantly below the performance of peers or expected standards (*Discrepancy*),
- b. Exhibit significant deficiencies in his or her rate of learning based on progress monitoring data (*Educational Progress*), and
- c. Demonstrate that his or her needs in the areas of curriculum, instruction, and/or environmental conditions are significantly different than that of his or her general education peers (*Instructional Needs*) and, in order to make educational progress, require interventions of an intensity or type that exceeds general education resources.

A student may also be found eligible for special education if he or she is demonstrating adequate *Educational Progress* and is reducing the *Discrepancy* between his or her performance and the performance of his or her peers or expected standard, if the team has been able to demonstrate that this progress is only possible when the student has been provided and continues to need curriculum, instruction, and/or environmental conditions (*Instructional Needs*) that are significantly different from general education peers and of an intensity or type that exceed general education resources.

If an ELL is found eligible for and entitled to special education and related services, it is important to remember that the provision of special education services does not supplant a language assistance instructional program such as TBE or TPI, which must still be provided as needed to help students overcome language barriers and meet the IEP goals as determined by an appropriately constituted IEP team. TBE/TPI support and instruction is not a related service. It is part of the core curriculum for ELLs.

#### IV. Resources

It is essential that schools recognize that in order to implement RtI and use the data from an RtI process to determine eligibility for special education services, the following are necessary:

1. Strong collaboration among ALL school administrators and staff,
2. The consistent review of the district's RtI Self-Assessment and RtI implementation plan in order to assess progress toward identified benchmarks, and
3. High quality and ongoing staff development, technical assistance, and coaching.

ISBE recognizes that implementation of the guidelines presented within this document may present as a challenge to some districts. Illinois school districts have several resources available for technical assistance and support for the implementation of RtI, including but not limited to the following:

- As stated previously, an FAQ document was developed as a companion to this guidance document. This supplemental tool provides greater details and examples connected to the information found herein. The FAQ also answers specific questions raised by stakeholder groups and individuals during the review of the initial 2009 draft and the updated 2011 draft of the guidance document.
- The ISBE RtI website ([http://www.isbe.net/RtI\\_plan/default.htm](http://www.isbe.net/RtI_plan/default.htm)) will continue to serve as a resource. Here districts can access various documents, such as the *Illinois State Response to Intervention Plan* and the *Illinois RtI District Plan* template. The ISBE site also has links to various sources for professional development and technical assistance, such as PowerPoints, webinars, and other websites.
- The Illinois ASPIRE website (<http://www.illinoisaspire.org>) was developed under a five year federally-funded State Personnel Development grant project. Although the project has

ended, the website continues to provide extensive information from Illinois on training modules and links to other valuable resources.

- The National Center on RtI (<http://www.rti4success.org>) is funded by the U.S. Department of Education's Office of Special Education Programs and provides information on the latest research, professional development opportunities through online learning events, and practical resources for implementation of RtI. Based on a standard evaluation process of scientific rigor, the website publishes a tool chart to assist educators and families in becoming informed consumers who can select reading screening and progress monitoring tools to be used within the RtI context.
- The National Association of State Directors of Special Education (<http://www.nasdse.org>), in collaboration with numerous very knowledgeable experts in the field of RtI, has published many valuable documents and resources that guide districts through the RtI process. They continue to provide updates on research, training modules, and collaboration with the Council of Administrators of Special Education, American Association of School Administrators, and other organizations to provide timely, relevant information regarding RtI practices across the county.
- The RtI Action Network (<http://www.rtinetwork.org>) is a program of the National Center for Learning Disabilities and has the goal of providing tools and resources for the effective implementation of RtI. The website provides research and references behind RtI practices, ongoing professional development through webinars, and opportunities to connect to others regarding implementation issues through discussion strands.
- The Illinois Alliance of Administrators of Special Education (<http://www.iaase.org/wp>) is a state professional organization for special education administrators that provides several workshops and conferences throughout the year. The website offers links and updated information on workshops across the state that support RtI.
- The Illinois School Psychologists Association (<http://ilispa.org>) is another current and knowledge-based resource on practices, data collection, networking, and research available to assist districts in their RtI planning and implementation. This organization's listerv also offers ongoing supports and ideas on a frequent basis.
- The Illinois Principals Association (<http://www.ilprincipals.org>) is a leadership organization that provides ongoing supports and professional development for school leaders across Illinois. They continue to provide webinars and workshops on RtI and updated resources and links to other valuable sites for their membership.

### **ELL Resources**

- The Illinois Resource Center, or IRC, (<http://www.thecenterweb.org/irc/>) provides assistance to teachers and administrators serving linguistically and culturally diverse students. With support from ISBE, the IRC has emerged as a major statewide intermediate service agency, and its educational and professional development programs have helped

educators throughout Illinois and the nation to develop effective learning environments for ELLs.

- The Center for Research on Education, Diversity, and Excellence, or CREDE, (<http://crede.berkeley.edu/>) is focused on improving the education of students whose ability to reach their potential is challenged by language or cultural barriers, race, geographic location, or poverty. CREDE promotes research by university faculty and graduate students and provides educators with a range of tools to help them implement best practices in the classroom.
- The Center on Instruction (<http://www.centeroninstruction.org/>) supports the regional Comprehensive Centers as they serve state education leaders in the work of helping schools and districts meet the goals of the ESEA. It offers information on the ESEA and best practices in reading, math, science, special education, and English Language Learning instruction; syntheses of recent scientific research on instruction; and opportunities for professional development. One of its resources includes “Practical Guidelines for the Education of English Language Learners,” which is available via the English Language Learning page of the Center’s website.
- The National Center for Culturally Responsive Educational Systems (NCCREST; <http://www.nccrest.org/>) was a project funded by the U.S. Department of Education’s Office of Special Education Programs to provide technical assistance and professional development to close the achievement gap between students from culturally and linguistically diverse backgrounds and their peers, and reduce inappropriate referrals to special education. Although the project has ended, resources for educators continue to be available on the website to assist with improving culturally responsive practices, early intervention, literacy, and positive behavioral supports. The Equity Alliance (see below) is continuing the work of NCCREST.
- The Equity Alliance at Arizona State University (<http://www.equityallianceatasu.org/>) works in partnership to support state and local school systems across the to eliminate achievement disparities, develop inclusive learning environments, uphold the civil rights of students, and harness the power of family and community involvement in schools. It also serves as a resource for principals, teachers, parents, community members, students, school boards, and other school leaders to create the conditions necessary for culturally responsive schools.

## References

- Batsche, G., Elliott, J., Graden, J., Grimes, J., Kovaleski, J., Prasse, D., Reschly, D., Schrag, J., & Tilly III, W.D. (2006). *Response to intervention policy considerations and implementation*. Alexandria, VA: National Association of State Directors of Special Education.
- Center for Applied Linguistics. (2006). *Developing literacy in second-language learners: Report of the national literacy panel on language-minority children and youth*. D. August and T. Shanahan (Eds.). Mahwah, NJ: Lawrence Erlbaum Associates, Inc.
- Cloud, N., Genesee, F., & Hamayan, E. (2009). *Literacy instruction for English language learners: A teacher's guide to research-based practices*. Portsmouth, NH: Heinemann.
- Colorado Department of Education. (2008). *Guidelines for identifying students with specific learning disabilities*. Denver, CO.
- Fernley, S., LaRue, S.D. & Norlin, J. (2009). *What do I do when... The answer book on RTI*. Horsham, PA: LRP Publications.
- Genesee, F., Lindholm-Leary, K., Saunders, W. & Christian, D. (2006). *Educating English language learners: A synthesis of empirical evidence*. New York: Cambridge Press.
- Genesee, F., Paradis, J., & Crago, M. (2004). *Dual language development & disorders*. Baltimore, MD: Paul H. Brookes Publishing Co.
- Gottlieb, M. (2006). *Assessing English language learners: Bridges from language proficiency to academic achievement*. CA: Corwin Press.
- Hamayan, E., Marler, B., Sanchez-Lopez, C., & Damico, J. S. (2007). *Special education considerations for English language learners: Delivering a continuum of services*. Philadelphia, PA: Caslon, Inc.
- Herrera, S.G., Perez, D.R., & Escamilla, K. (2010). *Teaching reading to English language learners: Differentiated literacies*. Boston: MA: Allyn & Bacon.
- Illinois State Board of Education. (2009). *The Illinois state response to intervention (RtI) plan*. Springfield, IL.
- Illinois State Board of Education. (2007). *23 Illinois administrative code 226*. Springfield, IL.
- Illinois State Board of Education. (2010). *23 Illinois administrative code 228*. Springfield, IL.
- Klingner, J.K., Hoover, J.J. & Baca, L. (Eds.), (2008). *Why do English language learners struggle with reading? Distinguishing language acquisition from learning disability*. Thousand Oaks, CA: Corwin Press.

National Institute of Child Health and Human Development (NICHD). (2000). *Report of the national reading panel. Teaching children to read: An evidence-based assessment of the scientific research literature on reading and its implications for reading instruction* (NIH Publication No. 00-4769). Washington, DC: U.S. Department of Health and Human Services.

National Research Council. (2001). *Adding it up: Helping children learn mathematics*. J. Kilpatrick, J. Swafford, & B. Findell (Eds.). Mathematics Learning Study Committee, Center for Education, Division of Behavioral and Social Sciences and Education. Washington, DC: National Academy Press.

Pennsylvania Department of Education. (2008). *Guidelines for identifying students with specific learning disabilities*. Harrisburg, PA.

U.S. Department of Education. (2006). *Federal register: 34 CFR parts 300 and 301, Assistance to states for the education of children with disabilities and preschool grants for children with disabilities; Final rule*. Vol. 71, No. 156.