

## Guidelines for Determination of Specific Learning Disabilities

*“... must all the schools in the entire LEA be trained simultaneously?”*

At this time, Maryland is **not** requiring; but, consistent with 34 CFR §300.309, is permitting local school systems to use the option of identifying a specific learning disability based upon a child’s response to scientific, research-based intervention. In addition, Maryland is not requiring the use of the IQ-discrepancy model of identification. Professionals should be thoughtful and intentional when selecting processes and procedures for identifying specific learning disabilities.

The Office of Special Education and Rehabilitative Services in the United States (U.S.) Department of Education has developed a *Question and Answer* document to provide guidance related to requests for clarification of IDEA regulations. The response developed by the U.S. Department of Education is informal guidance that reflects its interpretation of the applicable statutory or regulatory requirements and is not legally binding. Additional information can be found at <http://idea.ed.gov>.

One of the guidance questions and responses from the Office of Special Education Programs regarding the use of response to intervention in the specific learning disability identification process is extremely pertinent to local school systems (local education agencies-LEA) that choose to use the option of identifying a specific learning disability based upon a child’s response to scientific, research-based intervention. The question and response is verbatim as follows.

**Q-** *“When an RtI model is implemented, can an incremental process be used to train individual schools so that over time the entire LEA is implementing the model, or must all the schools in the entire LEA be trained simultaneously?”*

**A-** *If the State or LEA requires the use of a process based on the child’s response to scientific, researched-based intervention, in identifying children with SLD, then all children suspected of having a SLD, in all schools in the LEA, would be required to be involved in the process. However, research indicates that implementation of any process, across any system, is most effective when accomplished systematically in an incremental manner over time. If the LEA chose to “scale up” the implementation of the RtI model gradually over time, as would be reasonable, the LEA **could not** use RtI for purposes of identifying children with SLD until RtI was fully implemented in the LEA. Therefore, it is unwise for a State to require the use of a process based on the child’s response to scientific, research-based intervention before it has successfully scaled up implementation.”*

Since Maryland is **not** requiring the use of a process based on a child's response to scientific, research-based intervention, local school systems that choose to use this process will need to develop a systemic plan for operationalizing the criteria for its use. Within a systemic plan it is essential to include a data-driven decision-making process based on the individual child's need. When a student's achievement data indicates a need for consideration of special education and/or if a disability is suspected, it is the obligation of the local school system to evaluate the student to determine whether or not the student's lack of response or progress in attaining grade level content standards is a result of the presence of a disability that requires the provision of special education and related services to ensure a free appropriate public education. If school personnel and/or a parent perceive that a student needs specialized instruction and individualized support the student may be referred for an evaluation. It is imperative that processes used for response to scientific, research-based intervention be carefully tracked in order to determine at what point the intervention process becomes part of a special education evaluation. At that point, procedural safeguards should be provided and informed parental consent obtained which initiates the evaluation timeline.

*“Within a systemic plan it is essential to include a data-driven decision-making process ...”*

**Evaluation Process: General Requirements for All Disability Determinations** (34 CFR §§300.302; 300.304 and 300.305)

The following content reinforces that, all general federal and State regulatory requirements for evaluation and re-evaluation for the purpose of eligibility determination of students with disabilities still apply. These are addressed through the regulations referenced above and include:

**Parental Consent**

The public agency must promptly request parental consent whenever a child is referred for evaluation to determine if the child is eligible to receive special education and related services and must adhere to timeframes described in 34 CFR §§300.301, .303 and COMAR 13A.05.01.13. The public agency must provide written notice to the parents of a child with a disability, in accordance with 34CFR§300.503, that describes any evaluation procedures the agency proposes to conduct. In addition, parents must be provided with Maryland's Procedural Safeguards Notice.

**Screening**

Screening 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.

## Exclusionary Factors - 34 C.F.R. §300.306(b)(1)

A child must **not** be determined to be a child with a disability if the determinant factor for that determination is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the *Elementary and Secondary Education Act*) [including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency and oral reading skills, and reading comprehension strategies];
- Lack of appropriate instruction in math; or
- Limited English proficiency.

## Evaluation

An evaluation is a comprehensive process conducted by the Individualized Education Program (IEP) team. Evaluation means procedures used in accordance with 34CFR §§ 300.301-.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. Evaluation includes the review of information from parents, existing data, and the results of assessment procedures used. This review shall occur at a meeting of the IEP team. [COMAR 13A.05.01.06]

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

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

## Assessment

The process of evaluation requires a synthesis of all available assessment information. The student's parents are an integral part of the evaluation process, including providing information about the student. Parents are members of the IEP team meeting held for the purpose of determining the educational needs of the student, including whether the team needs to conduct assessments in order to complete a comprehensive evaluation.

*“The process of evaluation requires a synthesis of all available assessment information.”*

In completing assessments as a part of the evaluation process public agencies must ensure:

- ***Nondiscrimination:*** Testing and assessment materials and procedures used to assess a student's need for special education and related services are selected and administered in a manner, which is not racially or culturally discriminatory.

- ***Assessment materials:***

- Assessment and other evaluation materials used to assess a child are administered in the child's native language or other mode of communication in a form most likely to yield accurate information regarding the child's academic achievement and functional performance;
- Assessment and other evaluation materials must be used for the purposes for which they are valid and reliable:
  - Must be administered in accordance with any instructions provided by the producer of the assessment; and
  - Are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills results accurately reflect the child's aptitude of achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that are to be measured).

- ***Assessment Procedures:***

- Administration of assessment and other evaluation materials is conducted by trained and knowledgeable personnel.
- A student shall be assessed in all areas related to the suspected disability as appropriate, including:
  - Academic performance;
  - Communication;
  - General intelligence;
  - Health;
  - Hearing;
  - Motor abilities;
  - Social, emotional, and behavioral status; and
  - Vision.
- A variety of assessment tools and strategies shall be used to gather relevant functional, cognitive, developmental, behavioral, and physical information that directly assists the IEP team in enabling the student to be involved in and progress in the general curriculum.
- Use of technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. [34CFR §300.304]

## Requirements for Determination of Specific Learning Disabilities

The Individuals with Disabilities Education Act specifies that States may not require the use of an Intelligence Quotient (IQ) discrepancy process. In addition, States are to allow local education agencies the option to identify a specific learning disability based on a process including response to scientific research-based intervention. Specifically, the regulations state:

“A State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10). In addition, the criteria adopted by the State:

- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10);
- Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10).

A public agency must use the State criteria adopted pursuant to 34 CFR §300.307(a) in determining whether a child has a specific learning disability.”

[20 U.S.C. §§1221e-3; 1401(30); 1414(b)(6); 34 CFR §300.307]

See page 37 for the Evaluation section of Procedural Requirements for the Determination of Specific Learning Disabilities.

## Definition of Specific Learning Disability

The term specific learning disability means “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia that adversely affects a child’s educational performance. A specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or of environmental, cultural, or economic disadvantage.” 34 CFR §300.8(c)(10)

## Criteria For Specific Learning Disability Determination

In accordance with COMAR 13A.05.01.06, the determination of the existence of a specific learning disability and a child's eligibility for special education and related services is made by an IEP team. Parents should be provided with Maryland's Procedural Safeguards Notice.

### Achievement

The IEP team may determine the child has a specific learning disability if:

The child does not achieve adequately for the child's age or 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:

- Oral expression;
- Listening comprehension;
- Written expression;
- Basic reading skills;
- Reading fluency skills;
- Reading comprehension;
- Mathematics calculation; or
- Mathematics problem solving.

### Process Options

#### Option 1

Determination of responsiveness to intervention through a tiered instructional approach

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

**or**

#### Option 2

Determination of a pattern of strengths and weaknesses based on individual assessment data

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 IEP team to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR §300.309(a)(2)(ii). It is important to consider the specific needs related to students who are both gifted and talented and learning disabled when making determinations.

*“... the determination of the existence of a specific learning disability and child's eligibility for special education ... is made by an IEP team.”*

*“The IEP team must demonstrate and document the student’s performance through the collection and review of multiple sources of information.”*

Option 3

Use of other alternative research-based procedures

At this time, Maryland State Department of Education has not identified other alternative research-based procedures (Option 3) for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10). In the future, the Maryland State Department of Education will consider local school system proposed alternative research-based procedures for determining whether a child has a specific learning disability.

**Exclusions**

When determining whether a child has a specific learning disability, the IEP team must show that the disability is not a result of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency. The IEP team must demonstrate and document the student’s performance through the collection and review of multiple sources of information.

**Data Collection and Decision-Making**

Public agencies must use the State criteria adopted pursuant to 34 CFR §300.307(a) in determining whether a child has a specific learning disability.

Option 1: Response to Intervention Program

While the Maryland State Department of Education supports a tiered instructional approach using a response to intervention process, Maryland is **not** requiring the use of a process based on a child’s response to scientific, research-based intervention for determining whether or not a child has a specific learning disability. Local school systems that choose to use Option 1, a response to intervention process for the purpose of determination of a specific learning disability, will need to develop and implement the essential components for data collection and decision-making as described in this document.

If a local school system elects to use data collected through a response to intervention process to document the student’s performance for the purpose of determination of a specific learning disability, the instructional process and data collections must be consistent with the State’s framework for a *Tiered Instructional Approach to Support the Achievement of All Students*. The local school system must ensure the student has access to instructional and behavioral supports in addition to the core programs consistent with previous sections of this document.

### Essential elements:

If using the response to intervention process for identifying specific learning disabilities, local school systems, at a minimum, shall have provided:

- Universal screening processes for identifying students with learning needs;
- A description of concern(s) in meaningful and measurable terms;
- Appropriate instruction and positive behavioral supports delivered by appropriately trained personnel;
- Scientific, research-based or evidence-based interventions matched to student needs and appropriate for the suspected area(s) of disability;
- An established baseline using the selected performance measure before implementing an intervention;
- An objective, relevant, ongoing measure or performance indicator of the student's progress;
- Ongoing data-based progress monitoring of learning rate over time;
- A comparison of expected performance and actual performance using the student's performance measure;
- Data-based documentation of a student's response to the intervention(s);
- Data-based documentation related to the integrity, fidelity, and intensity (e.g., number and length of sessions) of the intervention;
- A comparison of the student's performance rate or slope of improvement: (a) a comparison of the slope of improvement with the historical slope of improvement, or (b) a comparison of a normative rate reference based on the response of peers;
- Periodic collaborative team review of student outcome data;
- A standard of comparison selected and used to evaluate the student's performance. The standard chosen must be relevant to the individual student and targeted area of concern and may include:
  - State norms,
  - Developmental norms,
  - Local school system norms, and
  - Local school system measure of peer performance.

### Essential decision making:

In order to determine whether a student meets criteria for identification as a student with a specific learning disability, the team must:

- Establish decision rules related to responsiveness to scientific, research-based interventions before the student evaluation to ensure valid and reliable decision-making. These rules should be based on comprehensive curriculum-based data and include the following:
  - Graphic representations of student progress,
  - Frequency of monitoring,
  - Estimation of the error (e.g., the standard error of measurement associated with the monitoring data),
  - Learning rate, and
  - Duration of intervention.

- Identify a specified decision point for determining responsiveness to intervention based on a student’s level and rate of progress, both prior to and after the initiation of an intervention. The decision points must be valid and reliable for determining a specific learning disability and eligibility for special education services based in part on both an age-based discrepancy in performance and a discrepancy in expected rate of progress.

**Decision-Making Criteria within the Response to Intervention Framework**

*Tiered service delivery cannot be used to delay identification of students with disabilities; therefore, school personnel need to ensure that families understand their right to request an evaluation as guaranteed under the Individuals with Disabilities Education Act.*

All students access grade level curricula aligned with State standards, including the use of differentiated instruction and supports. The student **always continues participating in Tier I** regardless of additional Tiered supports provided unless otherwise specified in an IEP, or in an instructional program appropriate to the needs of gifted and talented students.

The following chart describes the decision-making criteria that serve as the basis for actions to be taken.

Criteria	Actions
<p>After the provision of differentiated Tier I instruction and supports, and weekly or bi-weekly progress monitoring for a period of 6 or more weeks, the decision-making team determines whether a student’s performance is significantly below expected rates of skill acquisition. A sufficient number of data points needs to be collected and analyzed to determine if a student’s performance is reliably below the expectations established by the team. If a decision is to be made in less than 6 weeks, the team needs to account for possible error of measurement (e.g., analyze standard errors of measurement or confidence intervals). If data analysis provides sufficient evidence that the student’s response to instruction is below the expected rates of skill acquisition, then the team may recommend Tier II Interventions/ Supports.</p>	<p>Increase Intensity to Selected Tier II Interventions/ Supports</p>
<p>After the provision of selected Tier II instruction and supports, mastery of targeted skill and determination that Tier I differentiated instruction and supports alone will be sufficient for progress.</p>	<p>Decrease Intensity to Universal Tier I</p>

Criteria

Actions

Learning rate and skill acquisition is partially effective. Multiple data sources suggest student will respond to Tier II intervention and supports. These data sources should be identified **prior** to data collection. While team judgment can be important to this decision, the work products should be the primary source.

Continue Selected Tier II Interventions/Supports

After the provision of selected Tier II instruction and supports, and progress monitoring administered one to three times per week for a period of 6 or more weeks, the decision-making team determines whether a student's performance is significantly below expected rates of skill acquisition. A sufficient number of data points needs to be collected and analyzed to determine if a student's performance is reliably below the expectations established by the team. If a decision is to be made in less than 6 weeks, the team needs to account for possible error of measurement (e.g., analyze standard errors of measurement or confidence intervals). If data analysis provides sufficient evidence that the student's response to instruction is below the expected rates of skill acquisition, then the team may recommend Tier III interventions/supports. In addition, data indicate the rate and amount of progress with the use of Tier II interventions and supports are insufficient to produce desired outcomes.

Consideration of Increased Intensity to Selected Tier III Interventions/Supports

After the provision of selected Tier III instruction and supports, mastery of the targeted skill is demonstrated and determination is made that Tier II interventions/supports will be sufficient for continued progress.

Decrease Intensity to Selected Tier II Interventions/Supports

Learning rate and skill acquisition is partially effective. Multiple data sources suggest the student will respond to Tier III interventions/supports.

Continue Targeted Tier III Interventions/Supports

After the provision of targeted Tier III instruction, interventions, and supports with daily progress monitoring, data indicates Tier III is insufficient to increase the student's rate of learning and skill acquisition to a level comparable to peers. Review existing data and information from parents to determine whether or not the student may have a disability that requires the provision of specialized instruction and/or related services to enable the student to progress in the general curriculum.

Referral for Evaluation

### Option 2: Pattern of Strengths and Weaknesses

Local school systems that choose to implement Option 2 for determination of a specific learning disability will need to establish procedures and criteria that yield reliable decisions and that are consistent with 34 CFR §§300.304, 300.305, and 309(a)(2)(ii). Assessments and other evaluation materials used to assess a child must be valid and reliable, and administered by trained and knowledgeable personnel. At a minimum, patterns of a student's strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development should be evaluated in terms of the level of performance, the degree of variation among strengths and weaknesses, the frequency of such variation across individuals, and the relevance to identification of a specific learning disability. Criteria need to account for the fact that some profile variation is typical of non-disabled peers. That is, significant intra-individual differences in score profiles are normal and can be expected to occur among all students. Furthermore, when two assessment scores are compared, the difference between the two scores (i.e., difference score) is nearly always less reliable than the separate scores on which the difference is based. With these cautions in mind, use of Option 2 for determination of a specific learning disability requires local procedures and criteria that identify patterns of a student's strengths and weaknesses that are significant, meaningful, and relevant to identification of a specific learning disability.

*“It is best practice to include a school psychologist during the IEP team meeting...”*

Please refer to current guidelines for specific learning disability identification (Identifying Specific Learning Disabilities: Maryland's Technical Assistance Guide, June 2001) for additional information regarding methods of data collection and assessment to gather and review information regarding the student's progress, performance and patterns of strengths and weakness.

### Option 3: Alternative Procedures

As stated previously, at this time, the Maryland State Department of Education has not identified other alternative research-based procedures for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10).

## **Procedural Requirements for the Determination of Specific Learning Disabilities**

### **Participants on an IEP Team**

In Maryland, the IEP team is responsible for identifying specific learning disabilities and eligibility for special education services. (COMAR 13A.05.01.06). It is best practice to include a school psychologist during the IEP team meeting when teams are considering the determination of a specific learning disability. School psychologists have the training and expertise to help IEP teams address reliability and validity issues that may arise with both Options 1 and 2 described previously.

An IEP team must include:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher of the child or where appropriate, not less than one special education provider of the child;
- A representative of the public agency who
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general education curriculum; and
  - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- Whenever appropriate, the child with a disability. (34 CFR §300.321).

### Evaluation

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 CFR §300.8(c) (10), must be made by an IEP team including the parent, qualified professionals, and the IEP team members described previously. Specific additional group members included in the federal regulations are described as follows: the child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child of less than school age, an individual qualified by the State to teach a child of his or her age; and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist or remedial reading teacher. 34 CFR §300.8 (a) and (b).

Information shall be gathered from the following persons in the evaluation of a child having or suspected of having a specific learning disability:

- parent or guardian (principal caretaker of the child, if appropriate);
- the child's general education classroom teacher;
- at least one licensed teacher with qualifications to conduct an individualized diagnostic examination or evaluation of children (i.e., School Psychologist, Speech-Language Pathologist, Remedial Reading Teacher), and
- other professional personnel as indicated.

Decisions about the specific qualifications of the evaluation team members shall be made at the local level so that the composition of the group

may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors (Federal Register, August 14, 2006/Rules and Regulations, page 46650)

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 IEP team must consider as part of the evaluation, (1) data that demonstrates that prior to, or as part of the referral process the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) data based documentation of repeated assessment of achievement at reasonable intervals reflecting formal assessment of student progress during instruction which was provided to the child's parents.

(34 CFR §300.309(b)(1)(2))

Although a student's response to scientific, research-based intervention is included within the *Individuals with Disabilities Education Act* statute and regulations in the section regarding the identification of specific learning disabilities, it is an **optional** process for which data collected within the response to intervention framework can be used as one component of a comprehensive evaluation to determine special education eligibility. The initial intent for the development of a tiered instructional approach is to improve the quality of instruction and interventions provided for all learners, especially those who struggle with meeting the same standards as their peers.

### Observation

The child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the area(s) of difficulty. Documented observations of the child shall include:

- Observational information in routine classroom instruction and monitoring by the child's general education classroom teacher before the child was referred for an evaluation; or
- A direct observation by a professional on the Individualized Education Program (IEP) team after the child has been referred for evaluation and parental consent obtained. Observations must address the child's academic behaviors, academic performance in the regular classroom, and relevant work samples. The following information must be included:
- Parental input and, as appropriate, the child's input;

*“The child is observed in the child's learning environment ...”*

- Documentation that the child’s learning problems are not primarily due to previously listed exclusionary factors, including:
  - Visual, hearing, or motor impairment;
  - Cognitive impairment (mental retardation);
  - Emotional disturbance;
  - Environmental, cultural, or economic factors; and
  - Motivational factors.

The classroom observation can be an important opportunity for assessing the fidelity with which instruction is provided. The observation could be considered important for assessing student engagement, opportunities to learn, and judgments about curricular and instructional fidelity. If this focus is not emphasized, the observation becomes more perfunctory or just a routing that doesn’t lend itself to the diagnostic information that could be valuable.

### **Documentation of Specific Learning Disability Eligibility**

(34 C.F.R. §300.311)

For all methods of identification, the IEP team shall prepare a written report that includes documentation required for a student suspected of meeting the criteria for identification as a student with a specific learning disability which must contain a statement of:

- whether the student has a specific learning disability;
- the basis for the determination, including an assurance that the determination has been made in accordance with 34 CFR §300.306 (c) (1);
- the relevant behavior, if any, noted during the observation and the relationship of the behavior to the student’s academic functioning;
- the educationally relevant medical findings, if any;
- whether the child does not achieve adequately for the child’s age or to meet State-approved grade level standards consistent with 34 CFR §300.309 (a)(1), and
- whether the student does not make sufficient progress to meet age or State-approved grade level standards consistent with 34 CFR §300.309 (a)(2)(i); or
- whether the student 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 34 CFR §300.309 (a)(2)(ii);
- determination regarding 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 student’s achievement level;

*“For all methods of identification, the IEP team shall prepare a written report...”*

- if the student has participated in a process that assesses the student’s response to scientific, research-based intervention the documentation requirements in the next section must be included when identifying a specific learning disability. (Refer to the next section entitled, “Additional Documentation Requirements if a Tiered Responsiveness to Intervention Approach to Instruction is used for Specific Learning Disability Determination”); and
- each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

### **Additional Documentation Requirements if a Response to Intervention Process through a Tiered Approach to Instruction is Used for Specific Learning Disability Determination**

#### **Parent/Family Notification**

If a student has participated in a tiered instructional approach/response to intervention process, and the response to intervention process is a component used for identification of the child as a child with a specific learning disability, the local school system must document that the student’s parents were notified about the following:

- Applicable policies and procedures regarding the amount and nature of student performance data to be collected and the general education services that would be provided;
- Strategies for increasing the student’s rate of learning; and
- The parents’ right to request an evaluation to determine if an educational disability exists for their child at any time during the tiered instructional approach/response to intervention process.

#### **Data and Responsiveness to Interventions**

The data collected and information that must be documented in a written report and maintained for students who are receiving interventions and monitoring through a tiered instructional approach/response to intervention process includes the following categories and related information:

- Area of concern
  - Valid and reliable performance measure
  - Performance goal or indicator

*“... the student’s parents were notified about the following:”*

- Research-based intervention
  - Identified intervention that matches the student’s needs
  - Fidelity of implementation data
- Performance monitoring
  - Performance data
  - Frequency of data collection
  - Decision plan to determine effectiveness of intervention
  - Modification of plan as appropriate
- Rate of progress as compared to expected rate of the established trend line
- Data analysis and conclusions
  - Individual’s actual rate of skill acquisition compared to the expected rate of progress
  - Frequency, intensity, and duration of relevant behaviors
  - Fidelity of intervention implementation
  - Identification of conditions in which the student experiences the most growth

The written report will need to include not only the reporting of test scores and the information described previously, but the rationale or thinking that lead to the eligibility determination. Local school systems need to develop a template that would provide a uniform standard for specific learning disability eligibility reports.

**All information from the response to intervention process that was used in the determination of a student’s specific learning disability and eligibility for special education and related services, must be included within the child’s special education record.**

It is important to remember that as clarified by the Office of Special Education Programs, “a response to intervention process does not replace the need for a comprehensive evaluation.” A public agency must use a variety of data gathering tools and strategies even if a response to intervention process is used. The results of a response to intervention process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §§.301-.311. As required in 34 CFR §300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services.” (Analysis of Comments and Changes to the Regulations IDEA 2004, p 46648)