

GUIDELINES FOR DUAL DISCREPANCY

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

SPECIAL EDUCATION BUREAU

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AUTHORITY:

A. 34 CFR § 300.307 Specific learning disabilities. (a) *General.* A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

- (1) 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 § 300.8(c)(10);
- (2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).

B. Subsection C of 6.31.2.10 NMAC

Criteria for identifying children with perceived specific learning disabilities.

(1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.

(a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination.

(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 required in 34 CFR Secs. 300.304 through 300.306:

(i) 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

(ii) 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.

(c) The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c)(1), must meet the requirements of 34 CFR Sec. 300.311, including:

(i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and

(ii) a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and

(iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and

(iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the

student-centered data collected; documentation that the child's parents were notified about 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; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

(d) A parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

(2) Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model.

(3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).

(4) In identifying children with specific learning disabilities in grades 4 through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

C. 6.29.1.11 NMAC PROGRAM REQUIREMENTS:

A. Curriculum.

(1) Local curricula shall be aligned with the applicable New Mexico content standards with benchmarks and performance standards. In accordance with Section 22-13-1.6 NMSA 1978, each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area. Each school district's aligned grade level and subject area curricula shall be in place for mathematics by the 2009-2010 school year.

(2) Adopted instructional materials shall support the aligned local curricula. The state standards revision cycle, the local curriculum cycle and the instructional materials cycle shall be aligned and sequenced to provide standards-based curricula that are supported by aligned instructional materials. At the completion of each standards revision cycle, the standards-based state assessment program shall be reviewed to determine the need for realignment.

(3) All courses offered for credit shall have written, delivered, assessed and sequential curriculum.

(4) Written and delivered curricula shall be congruent, state what students should know and be able to do, and include an assessment process.

(5) The curricula shall be assessed as part of the EPSS process.

(6) The curricula shall support the EPSS.

B. Subject areas. The district or charter school shall be in compliance with subject area requirements as specified in Section 22-13-1 NMSA 1978.

(1) The department shall require instruction in specific subject areas as provided in Paragraphs (2) through (7) of Subsection B of 6.29.1.11 NMAC. Any public school or school district failing to meet these minimum requirements shall not be accredited by the department.

(2) All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension; and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

(3) All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content standards, benchmarks and performance standards shall be provided in science, social studies, physical education and health education.

TERMINOLOGY:

CURRICULUM-BASED MEASURES: Curriculum-based measurement (CBM) is a type of assessment that is conducted on a regular basis (at least monthly) and directly measures an individual student's rate of improvement with basic skills of reading, language arts, and math at the student's instructional level. CBMs can measure both fluency and accuracy of student responses. They can be teacher-developed, purchased, or found online. Some core of intervention programs included prepared CBMs. Commercial or computer-based CBMS provide the greatest reliability and divert less time from instruction. (The Student Assistance Team Manual and Three-Tier Model of Student Intervention, NM PED, Fall 2009).

DATA-BASED DOCUMENTATION: Data-based documentation refers to an objective and systematic process of documenting a child's progress. This type of assessment is a feature of strong instruction in reading and math and is consistent with 34 CFR §300.306(b)(1)(i) and (ii) and section 614(b)(5)(A) and (B) of the Act, that children cannot be identified for special education if an achievement problem is due to lack of appropriate instruction in reading or math. 71 Fed. Reg. 46656 (August 14, 2006).

DUAL DISCREPANCY: A dual discrepancy is said to exist when a student's performance is below the level of grade-level peers (low achievement) and shows a learning rate substantially below grade-level peers (low rate of progress). (*PED Memo, August 13, 2009*)

ELIGIBILITY DETERMINATION GROUP MEMBERS: 34 CFR § 300.308 **Additional group members.** The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include—(a)(1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

OBSERVATION: 34 CFR § 300.310 **Observation.** (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. (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained. (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

PATTERNS OF STRENGTHS AND WEAKNESSES: Patterns of strengths and weaknesses commonly refer to the examination of profiles across different tests used historically in the identification of children with SLD. We believe that the meaning of “pattern of strengths and weaknesses” is clear and does not need to be clarified in these regulations. 71 Fed. Reg. 46654 (August 14, 2006).

REASONABLE INTERVALS: “Instructional models vary in terms of the frequency and number of repeated assessments that are required to determine a child's progress. It would be inappropriate for the Department to stipulate requirements in Federal regulations that would make it difficult for districts and States to implement instructional models they determine appropriate to their specific jurisdictions.” 71 Fed. Reg. 46657 (August 14, 2006).

SHORT CYCLE ASSESSMENTS: “Short-cycle assessment” is a formative measure that is regularly used to assess student performance over a short time period.” NMAC 6.29.1.7(CC).

DECISION-MAKING PROCESS:

- (a) The group described in 34 CFR § 300.306 may determine that a child has a specific learning disability, as defined in 34 CFR § 300.8(c)(10), if-

Specific Learning Disability Evaluation Process

	Yes to:	Yes to <u>ONE</u> of THESE: <i>Either</i> (a)(2)(i) OR (a)(2)(ii)		Yes to:
	34 CFR §300.309 (a)(1)	34 CFR §300.309 (a)(2)(i)	34 CFR §300.309 (a)(2)(ii)	34 CFR §300.309 (a)(3)
	FACTOR 1	FACTOR 2		FACTOR 3
Regulation 34 CFR §300.309	(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 skill. (v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation.	(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...	(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...	(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of— (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.

	(viii) Mathematics problem solving.			
Data to be gathered and decision rules	SBA Short Cycle Assessments	Short Cycle Assessments	Short Cycle Assessments Curriculum-based measures Standardized Assessments Core or content area classroom assessments	For example: 1. Home language survey/proficiency 2. Parent interviews and reports 3. Classroom observations 4. Vision screening 5. Hearing screening 6. Case history 7. Behavioral checklists 8. Standardized assessments 9. Curriculum-based measures
Documentation of data and decision	Must meet 1.5 Standard Deviation Adequately is defined as the 1.5 S.D. below the State's mean for that grade level.	Must meet 1.5 Standard Deviation	Documented pattern of strengths and weaknesses. Cannot be based on one instrument or sole criterion. Must use technically sound instruments.	Appropriately conducted evaluations in accordance with 34 C.F.R. §300.310 Observation (see terminology section). Documented analysis of considerations and data reviewed to address all factors.
Weighting	Factor 1 must be met. Factor 2 must be met. The eligibility determination team must calculate Factor 2a. If a child does not demonstrate slope criteria (Factor 2a), the eligibility determination team may consider a pattern of strengths and weaknesses and performance, achievement or both. Factor 3 must be met.			
Professional judgment	Professional judgment is woven throughout and is not stand alone, an event, or a veto power.			

Making a Dual Discrepancy Decision

FACTOR 1: Calculating the Level of Achievement

- Need at least two data points to make the dual discrepancy decision.
- May collect data across consecutive school years
- Required measures: NMSBA and/or Short-Cycle Assessments
 - Steps:
 - A. Same Grade Peers:
 1. Calculate the mean score for the State grade-level peers for the first data point (e.g., fall).
 2. Calculate the mean score for the State grade-level peers for the last data point (e.g., winter).
 3. Calculate the standard deviation of the scores for the grade-level peers within the State for the first data point and the last data point.
 4. Multiply the standard deviation by 1.5 ($SD * 1.5 = y$).
 5. Calculate the **Level of Achievement Cut Score** by subtracting y from the overall Level of Achievement mean scores for the State grade-level peers.
 - B. Target Child:
 1. Calculate the mean score of the target child's first data point and the last data point.
 2. Is the child's score lower than the **Level of Achievement Cut Score**? If "yes" then criteria for FACTOR 1 is met.

School districts will be responsible for providing the State with grade level means at least three times per year.

FACTOR 2: Calculating the Rate of Improvement

- A. For the same-grade peers in the State:
 1. Enter the beginning score for all grade-level peers in the State.
 2. Enter the last score for all grade-level peers in the State.
 3. For each child, calculate the Rate of Improvement (*last score - first score/# of weeks of instruction between scores*).
 4. Calculate the overall mean score for the beginning score and the last score, as well as the overall mean for the Rate of Improvement.
 5. Calculate the standard deviation for the mean Rate of Improvement.
 6. Multiply the standard deviation by 1.5 ($SD * 1.5 = z$).
 7. Calculate the **Rate of Improvement Cut Score** by subtracting z from the overall Rate of Improvement mean scores for the State grade-level peers.
- B. For target child:
 1. Identify the child's Rate of Improvement (*last score - first score/# of weeks of instruction between scores*).
 2. Is the child's score lower than the **Rate of Improvement Cut Score**? If "yes", then criteria for FACTOR 2 is met.

OR

Calculating Slope

- A. Determine cut off score:
 - a. Multiply Standard Deviation x 1.5
 - b. Subtract from the mean
- B. Compare child's growth score to cut off score

Professional Judgment

PURPOSE: The overall purpose of professional judgment is to ensure best practices and use of a systematic *decision-making* approach in the eligibility determination process. It is important to formalize and structure the professional judgment process when used for eligibility determination to insure accurate determination.

DEFINITION: Professional judgment is a special type of judgment rooted in a high level of professional expertise and experience; it emerges directly from extensive data and incorporates a *decision-making* methodology of analysis of convergent data. It is based on the qualified professionals (as identified in IDEA '04) explicit training, direct experience with those whom the professionals are working, and specific knowledge of the person and the person's environment. Competent professional judgment has been defined in the NM TEAM as a set of specific strategies (see chart on page 111). Professional judgment is characterized by being: *systematic* (i.e., organized, sequential, and logical), *formal* (i.e., explicit and reasoned), and *transparent* (i.e., apparent and communicated clearly) (NM TEAM, page 109).

A team of qualified professionals that includes the parent are responsible for determining eligibility through a decision-making process involving "team judgment" rather than "individual judgment."

CONTRAINDICATIONS OF PROFESSIONAL JUDGMENT: Professional judgment should not be thought of as a justification for abbreviated evaluations, a vehicle for stereotypes or prejudices, a substitute for insufficiently explored questions, an excuse for incomplete or missing data, or a way to solve political problems.

PROCESS: As part of a full and individual evaluation, the evaluation team must include in the diagnostic summary the comprehensive data-based process utilized in the professional judgment problem-solving process. A statement that the team is using professional judgment to make the determination is not sufficient evidence to support the decision. The data-based rationale for the conclusions must be clearly documented and articulated and address the required components of documentation.

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 CFR §300.306(a)(2), must contain a statement of:

- Whether the child has a specific learning disability;
- The basis for making 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 of the child and the relationship of that behavior to the child'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 the child does not make

sufficient progress to meet age or State-approved grade-level standards consistent with 34 CFR §300.309(a)(2)(i); or 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 34 CFR §300.309(a)(2)(i); or 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 34 CFR §300.309(a)(2)(ii);

- 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
- If the child has participated in a process that assesses the child’s response to scientific, research-based intervention:
 - o The instructional strategies used and the student-centered data collected; and
 - o The documentation that the child’s parents were notified about: (1) the State’s policies regarding the amount and nature of the child’s performance data that would be collected and the general education services that would be provided; (2) strategies for increasing the child’s rate of learning; and (3) the parents’ right to request an evaluation.