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March 25, 2008

## MEMORANDUM

**TO:** Exceptional Student Education Directors  
Student Services Directors

**FROM:** Bambi J. Lockman

**SUBJECT:** REVISED – Requirements for Students with Specific Learning Disabilities: Eligibility Determinations in the Interim Prior to Revision of State Board of Education Rule 6A-6.03018, Florida Administrative Code

According to Section 300.307, Code of Federal Regulations (CFR), the Florida Department of Education cannot require local education agencies (LEAs) to use a discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability (SLD). This memorandum is to provide interim guidance to LEAs with respect to the determination of eligibility for special programs for students with SLD. LEAs ~~should~~ may continue to use the discrepancy criteria as outlined in Florida Rule 6A6.03018, Florida Administrative Code (FAC.), until the revised SLD eligibility rule is promulgated.

Providing for the continued use of the discrepancy process is viewed by the Florida Department of Education as a way to *ease* the *transition process* for LEAs to a process that will ultimately evolve over time into a Response to Intervention (RtI) approach. In the interim, districts should *actively develop* and *implement steps* and procedures to *transition* to the *RtI method*. Suggested questions to guide a district toward appropriate interim activities are as follows:

1. Is there evidence of leadership commitment to the RtI process represented in both general and special education?
2. Is there evidence that the school-wide core curriculum is effective for at least 80% of all sub-groups of students as currently reported?
3. Is there a school-wide data-collection system used for screening, diagnostic, and progress monitoring levels of assessments that can be communicated graphically to parents, students, and educators?

**BAMBI J. LOCKMAN**

*Chief*

*Bureau of Exceptional Education and Student Services*

4. Are interventions and supports provided, with reliable systems established to ensure effective implementation, within a multi-tiered framework of increasing intensity?
5. Are teams established that consistently use a systematic problem-solving method for collecting/analyzing student data and selecting/implementing interventions?

As LEAs continue to use the discrepancy process in accordance with current Florida Rule 6A-6.03018, FAC., to determine SLD eligibility, it should be noted that there were some changes made by the federal regulations that became effective on October 13, 2006. These changes must be incorporated immediately into an LEA's process for determining eligibility for an SLD program in the State of Florida. The applicable changes are reviewed below.

### **FEDERAL ADDITIONS TO SLD REQUIREMENTS**

#### 1. Determining the existence of a Specific Learning Disability

##### a. Criteria for eligibility

When determining SLD eligibility, the multidisciplinary evaluation team ~~will~~ may follow the procedures and use the SLD criteria for eligibility currently set forth in Rule 6A-6.03018, FAC. The federal regulations add that the team determining SLD eligibility must also find that—

- (1) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one of the seven areas already set forth in Florida Rule 6A-6.03018, FAC., and the additional area of reading fluency, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards [Section 300.309(a)(1), CFR]; or
- (2) 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 the law [Section 300.309(a)(2)(ii), CFR]; and
- (3) The team's findings above are not primarily the result of the conditions/disabilities already set forth in Florida Rule 6A-6.03018(2)(d), FAC., *to include the addition of* limited English proficiency and *a change in wording* from cultural difference to cultural factors. Specifically stated in Section 300.309(a)(3), CFR, the group determines that its findings 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.

##### b. Additional data collection required

The federal regulations added the following requirements regarding data collection as part of the eligibility process 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. Specifically, the team must consider as part of the eligibility process—

- (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 [Section 300.309(b)(1), CFR]; 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 [Section 300.309(b)(2), CFR].

c. Promptly seeking consent for evaluation

The federal regulations add provisions relative to seeking parental consent for an evaluation in the area of SLD by clarifying that an LEA must promptly request parental consent to evaluate a child to determine if the child needs special education and related services and must adhere to evaluation timelines, unless extended by mutual written agreement of the child's parents and the multidisciplinary team:

- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in the additional data collection provisions above [Section 300.309(c)(1), CFR]; and
- (2) Whenever a child is referred for an evaluation [Section 300.309(c)(2), CFR].

In addition, the minimum activities identified in Rule 6A-6.03018(3)(a), FAC., that must occur prior to any referral remain in place.

2. Observation requirements

The observation requirements for SLD eligibility in Rule 6A-6.03018, FAC., remain unchanged and must be implemented. The federal regulations add to the observation requirements specifically as follows:

- (1) An LEA 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 [Section 300.310(a), CFR].
- (2) The multidisciplinary team must
  - (i) 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 [Section 300.310(b)(1), CFR]; or
  - (ii) have at least one member of the multidisciplinary team 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 is obtained [Section 300.310(b)(2), CFR]; and
- (3) In the case of a child of less than school age or out of school, a team member must observe the child in an environment appropriate for a child of that age [Section 300.310(c), CFR].

3. Written Eligibility Report for SLD

~~While continuing the use of the severe discrepancy model,~~ The Florida requirement for the preparation of and components to be included in an SLD eligibility report as specified in Rule 6A-6.03018(5)(c), FAC., continues to apply. In addition, the federal regulations provide that the following components be included in an SLD eligibility report:

- (1) Whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with the new requirements set forth above and whether the child does not make sufficient progress to meet age or state-approved grade-level standards consistent with the new requirements above [Section 300.311(a)(5)(i)(ii)(A), CFR]; or
- (2) 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 the new requirements above [Section 300.311(a)(5)(ii)(B), CFR].

In order to ensure that the program requirements are met, I am requesting that each LEA assume the responsibility for conveying this information and related changes to appropriate staff. Amendments to the *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students (SP&P)* document incorporate these changes as required by IDEA 2004.

Thank you for your attention to this matter.

cc: Pam Smith  
Debby Kearney  
Lois Tepper