



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

October 20, 2023

By Email

Honorable Debbie Critchfield
Superintendent of Public Instruction
Idaho Department of Education
650 West State Street
Boise, Idaho 83702
Email: dcritchfield@sde.idaho.gov

Dear Superintendent Critchfield:

The U.S. Department of Education (the Department), Office of Special Education Programs (OSEP), received an inquiry that raised concerns about the Idaho State Department of Education's (ISDE) eligibility criteria for determining whether a child is eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA) as a child with a Specific Learning Disability (SLD). The inquiry included hyperlinks to the Idaho Special Education Manual (2018)¹ and the Idaho Specific Learning Disability Eligibility Guidance document.² OSEP has completed a preliminary review of these documents and has identified certain areas that we are requesting the State clarify in order to demonstrate its procedures are consistent with IDEA Part B.

The State's SLD Eligibility Requirements

OSEP reviewed the Idaho Special Education Manual 2018, specifically the State's definition of SLD; and the State's Eligibility Criteria for determining if a child is eligible under the IDEA which reads:³

Definition: SLD 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 to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

SLD does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional behavioral disorder, or of environmental, cultural, or economic disadvantage.

Only a school age child may be identified as a student with an SLD. (Emphasis added).⁴

¹ Idaho Special Education Manual (2018) <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf>.

² Idaho Specific Learning Disability Eligibility Guidance <https://www.sde.idaho.gov/sped/sped-manual/files/chapters/chapter-4-evaluation-and-eligibility/SLD-Eligibility.pdf>. In OSEP's review of this document, it appears this document is intended to provide guidance on the evaluation procedures to be followed when determining whether a child is eligible to receive special education and related services as a child with an SLD. However, OSEP cannot determine specifically the usage of this guidance document.

³ Idaho Special Education Manual (2018) pp. 52-56 <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf>.

⁴ Idaho Special Education Manual (2018), p. 52. <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf>.

State Eligibility Criteria for Specific Learning Disability: In determining whether a child has an SLD, the child must meet at a minimum, the following criteria:

- a. The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the child’s age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child’s age or State approved grade level standards in one or more of the following areas: 1) Oral expression; 2) Listening comprehension; 3) Written expression; 4) Basic reading skills; 5) Reading comprehension; 6) Reading fluency; 7) Mathematics calculation; or 8) Mathematics problem solving.

AND

- b. The student demonstrates low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. For culturally and linguistically diverse students, the preponderance of evidence must indicate low achievement.

AND

- c. The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

- d. The student’s lack of achievement is *not* primarily the result of: 1) A visual, hearing, or motor impairment; 2) Intellectual disability; 3) Emotional behavioral disorder; 4) Environmental, cultural or economic disadvantage; 5) Limited English Proficiency; 6) A lack of appropriate instruction in reading, including the essential components of reading; 7) A lack of appropriate instruction in math.

AND

- e. The disability adversely impacts the student’s educational performance, and the student requires specially designed instruction.

State’s “School Age” Definition

In examining the State’s SLD eligibility requirements, OSEP notes that the State’s eligibility criteria for a child with an SLD indicates that it is restricted to “school age” children.⁵

OSEP also reviewed Idaho Statute, Title 33, Chapter 2, Section 33-201, which reads, “The services of the public schools of this state are extended to any acceptable person of school age. "School age" is defined as including all persons resident of the state, between the ages of five (5) and twenty-one (21) years. For the purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten. For a child enrolling in the first grade, the age of six (6) years must be reached on or before the first day of September of the school year in which the child is to enroll. Any child of the age of five (5) years who has completed a private or public out-of-state kindergarten for the required four hundred fifty (450) hours but has not reached the "school age" requirement in Idaho shall be allowed to enter the first grade. For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable state and federal regulations, "school age" shall begin at the

⁵ Id. at p. 52.

attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.”⁶

Applicable IDEA Part B Requirements

SLD Requirements

Under 34 C.F.R. § 300.307(a), a State must adopt criteria that are consistent with 34 C.F.R. § 300.309 and that meet the minimum requirements prescribed in 34 C.F.R. § 300.307(a)(1)-(3). The criteria adopted by the State for determining whether a child has an SLD as defined in 34 C.F.R. § 300.8(c)(10) cannot require the use of a severe discrepancy between intellectual ability and achievement.⁷ While a State cannot require the use of a severe discrepancy model, a State may prohibit or make optional, the use of a severe discrepancy model. The State’s eligibility criteria 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 an SLD, as defined in 34 C.F.R. § 300.8(c)(10). Under 34 C.F.R. § 300.307(b) a public agency must use the State’s criteria in determining whether a child has an SLD.

Under 34 C.F.R. § 300.309(a), the eligibility group described in 34 C.F.R. § 300.306 may determine that a child has an SLD, as defined in 34 C.F.R. § 300.8(c)(10), if the following criteria are met. First, 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; (viii) mathematics problem solving.⁸ Second, 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 34 C.F.R. § 300.309(a)(1) when using a process based on the child’s response to scientific, research-based intervention.⁹ Third, the eligibility group determines that its findings are not primarily the result of a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.¹⁰

Alternatively, the eligibility group may determine that a child has an SLD if 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 an SLD, using appropriate assessments, consistent with 34 C.F.R. §§ 300.304 and 300.305 and the eligibility group determines that its findings are not primarily the result of a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.¹¹

Age Requirements for Eligibility as a Child with a Specific Learning Disability

Section 619 of IDEA provides for formula grants to States to assist them in providing a free appropriate public education (FAPE) in the least restrictive environment for children with disabilities, ages three through five, and

⁶ Idaho statute, Title 33, Chapter 2, Section 33-201: <https://legislature.idaho.gov/statutesrules/idstat/Title33/T33CH2/SECT33-201/>.

⁷ Moreover, the Analysis of Comments and Changes section of the IDEA Part B regulations indicates that States may prohibit the use of a discrepancy model. 71 Fed. Reg. 46646 (Aug. 14, 2006).

⁸ 34 C.F.R. § 300.309(a)(1).

⁹ 34 C.F.R. § 300.309(a)(2)(i).

¹⁰ 34 C.F.R. § 300.309(a)(3).

¹¹ 34 C.F.R. § 300.309(a)(2)(ii) and 300.309(a)(3).

at a State's discretion, to two-year-old children with disabilities who will turn three during the school year.¹² A State is eligible to receive a grant under Section 619 if it is eligible under Section 612 of IDEA to receive a grant under Part B, and makes FAPE available to all children with disabilities, aged three through five, residing in the State.¹³ The IDEA Part B regulations, when appropriate, make adaptations to the general requirements to address preschool aged children. However, neither IDEA nor its implementing regulations limit consideration of preschool aged children for eligibility using any of the disability categories defined in 34 C.F.R. § 300.8, including SLD.

Child Find Requirements

Under 34 C.F.R. § 300.111, States are required to have policies and procedures which ensure that all children, including children suspected of being a child with a disability, are identified, located, and evaluated according to the regulations and procedures of IDEA Part B.

OSEP's Analysis and Conclusion

Based on OSEP's review of the State's information described above, it is our understanding that the State requires a child to demonstrate (a) insufficient progress in response to effective, evidence-based instruction and intervention for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards in one or more of the following areas listed above; and (b) low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. Further, the State requires the child to demonstrate a pattern of strengths and weaknesses in psychological processing skills that impact learning. OSEP is concerned that requiring all three conditions to be met, as described above, could be inconsistent with IDEA and impermissibly narrow IDEA's eligibility criteria for SLD found at 34 C.F.R. § 300.309.

Under 34 C.F.R. § 300.309, the group responsible for making the eligibility determination may find the child eligible as a child with an SLD if 34 C.F.R. §§ 300.309(a)(1) and 300.309(a)(2)(i); or 34 C.F.R. §§ 300.309(a)(2)(ii) and 300.309(a)(3) are met.¹⁴ Under the State's criteria for SLD, it is unclear to OSEP what evaluative data the group must obtain and review to determine whether the child demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning. If the purpose of that requirement is to meet the condition in 34 C.F.R. § 300.309(a)(2)(ii), it would be inconsistent with IDEA's eligibility provisions to impose this additional criterion as the State's eligibility criterion would be more narrow or strict than the criterion described under 34 C.F.R. § 300.309 and would not meet the standard for criteria to determine whether a child has an SLD described in 34 C.F.R. § 300.307(a).

OSEP notes that while it may not be common for a preschool-aged child to be identified with an SLD, Part B of IDEA and its implementing regulations, including the requirements under 34 C.F.R. § 300.8(c)(10), are applicable to school-aged and preschool-aged children, including at a State's discretion two-year-old children with disabilities who will turn three during the school year.¹⁵

¹² 20 U.S.C. § 1419(a).

¹³ 34 C.F.R. § 300.804.

¹⁴ See [OSEP Letter to Prifitera](#) (March 1, 2007).

¹⁵ The Secretary provides grants under section 619 of the IDEA to assist States to provide special education and related services in accordance with Part B – (a) to children with disabilities aged three through five years; and (b) at a State's discretion, to two-year-old children with disabilities who will turn three during the school year. See 20 U.S.C. § 1419(a); 34 C.F.R. § 300.800.

Regarding the State’s definition of “school age,” OSEP has determined that the State’s definition is inconsistent with the IDEA Part B child find provisions in 34 C.F.R. § 300.111 because the definition would only include preschool-age children that have already been identified as children with disabilities “who qualify for special education and related services”. The State’s definition of “school age” does not include children who are also suspected of having a disability. Children, including preschool-age children, that are not yet considered “children with disabilities who qualify for special education and related services under the federal IDEA” would be excluded from being evaluated as a child with an SLD under the current State definition.

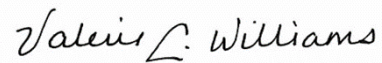
Required Next Steps

Within 90 days of the date of this letter:

1. The State must review and revise its definition of "school age" to ensure that children, including preschool-age children, who are also suspected of having a disability are included when determining whether a child has a SLD; and
2. The State must review and revise, as appropriate, its eligibility criteria for identifying a child with an SLD under the IDEA. If the State determines that its eligibility criteria are consistent with the IDEA requirements described in this letter, the State must provide an explanation to OSEP of how the criteria detailed in its Special Education Manual are implemented in a manner consistent with IDEA’s procedures for identifying children with SLD. Specifically, the State must demonstrate that its criteria are consistent with 34 C.F.R. § 300.309 and do not impermissibly narrow IDEA’s eligibility criteria for SLD; and
3. If the State determines that its eligibility criteria are inconsistent with the IDEA requirements described in this letter, the State must revise its policies and procedures for determining that a child is eligible to be identified as having an SLD and submit the revised policies and procedures to OSEP; and
4. If the State revises its policies and procedures for determining that a child is eligible to be identified as having an SLD, the State must provide a copy of a notification issued to all public agencies, LEAs, parent advocacy groups, the State advisory panel, and other interested parties advising them of the State’s revised eligibility criteria; and
5. The State must provide a written description of how it will ensure that its revised policies and procedures are being implemented in a manner consistent with IDEA, including the provision of training, technical assistance, and monitoring of its LEAs.

We appreciate your prompt attention to this important matter. If you have questions regarding the above or would like to request technical assistance, please contact, Dwight Thomas, your State Lead at 202-245-6238 or by email at Dwight.Thomas@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Valerie C. Williams". The signature is written in a cursive style and is contained within a light gray rectangular box.

Valerie C. Williams
Director
Office of Special Education Programs

cc: Chynna Hirasaki, Special Education Director, Idaho State Department of Education
Katie Flores, Idaho Special Education Advisory Panel Chair