Consideration of Exclusionary Factors When Considering Specific Learning Disability

Guidance Document

A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or 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. (34 CFR 300.8(b)(10))

Students with or without disabilities often have one or more factors (listed below) that may *contribute* to academic and learning difficulties. The evaluation team must rule out any of these factors as the *primary* cause of a student's academic and learning difficulties to determine/maintain eligibility for special education services.

The fundamental principle underlying this rule is that a child should not be regarded as having a disability if (1) he or she has not been given sufficient and appropriate learning opportunities or (2) the child's academic struggles are primarily due to other factors.

A student whose learning problems are primarily due to one or more of these exclusionary factors shall not be identified as having a disability. The main rationale for the exclusionary criteria is to raise the probability that an eligible individual is truly disabled and to ensure that students are not inappropriately included or excluded from receiving special education services (Flanagan, Ortiz, Alfonzo, Moscolo, 2002).

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Use the following guidance to determine the impact of each factor and how to document that impact or lack thereof.
Exclusionary Factors are detailed below 34 CFR 300.311(a)(6), 34 CFR 300.309(b)

Vision

Health records should be consulted to determine if the screening results indicate a possible visual problem. If there are lingering concerns about vision, the student can be re-screened. If the screening indicates a possible visual problem, a referral to an optometrist or ophthalmologist may be in order.

If the student is found to have a visual impairment that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility in the area of Specific Learning Disability.

Possible data sources - Vision checklist, screening by school nurse, medical evaluation

Questions to Consider	Y/N	Describe the Degree of Impact
• Have vision difficulties been observed (e.g., difficulty with copying, misaligned numbers in math work, squinting or rubbing eyes during visual tasks)?	Y/N	
• Has the student had a history of difficulties with vision?	Y/N	
• Does the student wear glasses? If yes, does the student routinely wear glasses during instruction?	Y/N Y/N	
• Has the student complained about not being able to see?	Y/N	
• Did the school nurse complete a vision screening? If yes, Date_____Results_____	Y/N	
• Did an ophthalmologist/optometrist conduct a formal vision test? If yes, Date_____Results_____	Y/N	

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Hearing

Health records should be consulted to determine if the screening results indicate a possible hearing problem. If there are lingering concerns about the student's hearing, the student can be re-screened. If the screening indicates a possible hearing problem, a referral to an audiologist for an audiological examination may be warranted.

If the student is found to have a hearing impairment that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility in the area of Specific Learning Disability.

Possible data sources - Hearing checklist, screening by school, medical evaluation

Questions to Consider	Y/N	Describe the Degree of Impact
• Has the student had a history of difficulties with hearing (including chronic ear infections)?	Y/N	
• Does the student wear hearing aids/devices?	Y/N	
• If yes, does the student routinely wear hearing device during instruction?	Y/N	
• Has the student complained about not being able to hear?	Y/N	
• Did the school nurse complete a hearing screener? If yes, Date_____Results_____	Y/N	
• Did an audiologist conduct a formal hearing evaluation? If yes, Date_____Results_____	Y/N	
• Has there been a determination between auditory discrimination and hearing difficulty?	Y/N	

Motor

Screening for orthopedic problems can be conducted by the school nurse or other health professional. If there are concerns that orthopedic problems may be the reason for the student's academic difficulties, a referral to a physical or occupational therapist, or other medical practitioner should be made.

If the student is found to have an orthopedic impairment that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility in the area of Specific Learning Disability.

Possible data sources - Motor checklist, developmental/medical history, parent interview, observations (navigating school, P.E., Playground), medical evaluations

Questions to Consider	Y/N	Describe the Degree of Impact
• Has the student had a history of significantly delayed motor development?	Y/N	
• Is there a medical diagnosis for a motor impairment that would affect this student's ability to learn or access general classroom instruction?	Y/N	
• Does the student have any physical or motor (fine or gross) impairments that have been observed or assessed?	Y/N	

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Intellectual Disability

According to the IDEA, intellectual disability is defined as "…significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's education performance." (34 §300.8(c)(6))

School psychologists have traditionally evaluated students for a possible cognitive impairment with measures of intellectual functioning and adaptive behavior. These methods remain the most valid way of determining this disability if there is concern that the student might have sub-average general intellectual functioning. However, it is also appropriate to screen out the possibility of intellectual disability if the student displays clear evidence of general intellectual functioning in at least the low average range. For example, if the student displays inadequacies in reading, but performs proficiently in mathematics, and otherwise displays appropriate adaptive behavior, the evaluation team may choose to rule out intellectual disability without administering intelligence tests or adaptive behavior measures. The rationale for this rule out should be included in the evaluation report. However, if there are concerns about significant cognitive and adaptive behavior difficulties, assessments of the student's cognitive functioning and adaptive behavior are recommended.

If the student is found to have an intellectual impairment that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility in the area of Specific Learning Disability.

Possible data sources – documentation of average achievement in some areas (ISAT scores, benchmark data, CBMs), full-scale IQ and adaptive assessment if needed, the rate of learning in language/social/adaptive, etc.

Questions to Consider	Y/N	Describe the Degree of Impact
• Is there reason to suspect that the student's intellectual ability is significantly below average?	Y/N	
• Is there reason to suspect that the student's adaptive skills are significantly below average?	Y/N	

Emotional- Behavioral Disability

Students with academic problems sometimes display inappropriate and disruptive classroom behavior, while other students may have emotional problems that do not manifest themselves in externalizing behaviors. It is the responsibility of the evaluation team to determine if a student's academic difficulties are primarily caused by an emotional disturbance. Generally, emotional disturbance is screened through the use of behavior checklists or more comprehensive behavior rating scales. The evaluation team is responsible for ruling out these factors as causative for the student's academic difficulties.

Essentially, for students who display behavior problems, the evaluation team must determine whether the student's learning problems are instigating the behavior problems, or whether underlying emotional problems are impacting the student's ability to acquire academic skills.

If the student is found to have an emotional-behavioral impairment that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility in the area of Specific Learning Disability.

Possible data sources – parent/teacher interviews, observations, rating scales, social/emotional history

Questions to Consider	Y/N	Describe the Degree of Impact
• Does the student have a medical or school history of behavioral or emotional difficulties?	Y/N	
• Are the student's learning problems significantly impacted by his/her behavior?	Y/N	
• Have behavioral interventions been implemented with fidelity? If yes, Dates_____ Outcome_____	Y/N	

Cultural Factors

Students who are found to be academically delayed due to cultural differences do not have a specific learning deficit. Students may also display academic deficiencies that are related to their acculturation experience in the United States. Evaluation teams need to weigh the relative impact of these cultural issues while not overlooking possible indications of special education eligibility. The potential impact of culture may extend well beyond the questions above, and evaluation teams may need to consider individual student factors.

If the student is found to have cultural factors that are the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility, including in the area of Specific Learning Disability.

Possible data sources – parent/student interviews, observations, student performance relative to disaggregated performance data for the respective cultural group.

Questions to Consider	Y/N	Describe the Degree of Impact
• Is the student's cultural background different from the culture of the school, community or larger society?	Y/N	
• Are there conflicting educational and behavioral expectations for the student between school and family?	Y/N	
• Is the student new to the United States? If so, how long has he/she been in the U.S.?_____	Y/N	
• Has there been miscommunication between parents and school due to cultural and/or ethnic differences?	Y/N	
• Are the parents less involved due to cultural and/or language barriers?	Y/N	
• Has the student had limited experiences in the culture of the school?	Y/N	
• Has the student had limited involvement in organizations and activities of any culture?	Y/N	

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Limited English Proficiency

Students should not be identified as eligible for special education when the cause for their academic inadequacies is limited English proficiency. Federal laws indicate that all students must be screened to determine if their primary home language is one other than English. If so, the student's proficiency in the English language (listening, speaking, reading, and writing) must be assessed by school personnel.

Research has indicated that students who are English Learners (ELs) take approximately two years to acquire basic interpersonal communication skills (BICS) and between five and seven years to acquire cognitive academic language proficiency (CALP) required to function effectively in content subjects.

Students who are in the process of learning English will often display academic deficiencies, especially if their education has been disrupted during an immigration experience. The school must follow established procedures for determining between language acquisition and a disability.

If the student is found to have limited English proficiency that is the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility, including in the area of Specific Learning Disability.

Possible data sources -Home language survey, parent/student interview, tests of language proficiency

Questions to Consider	Y/N	Describe the Degree of Impact
• Dominant language spoken in the home per home language survey_____.	Y/N	
• Has someone validated the results of the home language survey (e.g., interview with parents/student, home visit)?	Y/N	
• Has a language proficiency test been administered? If yes, Date_____SS/%ile_____	Y/N	
• Is the student receiving LEP instruction? If yes, Frequency_____Duration_____	Y/N	
• Number of years exposed to English instruction_____.	Y/N	

Environmental or Economic Disadvantage

The evaluation team must also assess whether issues regarding environmental or economic problems are the primary source of a student's academic deficiencies rather than a disability.

Economic disadvantage impacting school performance may include an inability on the part of the family to afford necessary learning materials or experiences. The student may reside in a depressed economic area or be from a family that receives public assistance (food stamps, Medicaid, public housing, etc.)

Environmental disadvantage impacting school performance may include homelessness, abuse, neglect, poor nutrition, limited experiential background, home responsibilities that interfere with the opportunity to develop study habits and participate in school-related activities, disruption in family life, stress, trauma, or lack of emotional support. Also, chronic medical conditions and sleep disorders should be duly considered.

*Although many students may be impacted by economic and environmental disadvantage, the evaluation team must determine if they are the *primary* cause of academic difficulties.

If the student is found to have economic and environmental disadvantages that are the *primary* cause of the student's academic difficulties, the student is excluded from consideration for special education eligibility, including in the area of Specific Learning Disability.

Possible data sources – parent interview, attendance history, student interview, cumulative file and school records.

Questions to Consider	Y/N	Describe the Degree of Impact
• Do attendance patterns show that the student has changed schools so often, or has attended school so sporadically, that normal achievement gains were not possible?	Y/N	
• Have there been any significant or traumatic events in the student's life that contribute to the current learning problems?	Y/N	
• Are there any factors in the student's school history that may be related to the current difficulty?	Y/N	
• Are there any variables related to family history that may have affected school performance (lifestyle, length of residence in the U.S., stress, poverty, lack of emotional support, the student is under the guardianship of another person or agency)?	Y/N	

• Are there any variables related to the student's medical history that may have affected school performance (Illness, nutrition, trauma or injury)?	Y/N	

Adequate Instruction in Reading and Math

A lack of appropriate instruction may entail the absence of sufficient instruction or may entail instruction lacking in quality. The absence of instruction may occur due to extended illness coupled with insufficient replacement instruction, a move or moves after which a student is not promptly re-enrolled in school, home schooling that does not provide sufficient learning opportunities, and so forth. Instruction lacking in quality may occur when essential concepts and skills are not adequately addressed in relation to a student's learning progress.

If it is determined that the primary reason for underachievement of the student is due to lack of appropriate instruction in reading or math, the student is excluded from consideration for special education eligibility, including in the area of Specific Learning Disability.

Data: Universal screening results, progress monitoring, gap analysis, rate of improvement analysis

Questions to Consider	Y/N	Describe the Degree of Impact
• Does data indicate that the student attended school regularly to receive instruction?	Y/N	
• Do universal screening data suggest a class-wide or grade-wide problem in core instruction?	Y/N	
• Have essential intervention components been delivered in a comprehensive and consistent manner by an interventionist trained to deliver the intervention?	Y/N	
• Were interventions correctly selected, supported, and consistently and accurately implemented?	Y/N	
• Were interventions implemented with sufficient frequency and duration?	Y/N	

Adapted from: *Exclusionary Factors*, Texas Education Agency, 2010

Sample Report Statements

Factors Not Primary or Contributory

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Example #1 (Economic Disadvantage): STUDENT'S mother reports that the family is experiencing significant economic challenges since her husband lost his job over 12 months ago, and she is unable to work due to a disability. In spite of the family's dire circumstances, STUDENT's parents have worked closely with the school to provide maximum support for his learning. In addition to the intervention he has received during the school day, he has participated in before and after school tutoring programs, and he has participated in summer school programs every year. His parents have attended conferences regularly and met with school staff to learn what they can do to support their son. They have taken him to the public library to participate in community reading programs, and regularly check out books and read with him at home. Though STUDENT's family has limited resources, STUDENT has had access to appropriate instruction and extensive interventions both in and out of school. Therefore, the family's present economic disadvantage is neither a primary nor contributory factor in STUDENT learning deficits.

Example #2 (Vision): In Kindergarten, STUDENT failed multiple vision screenings at the school, and was subsequently evaluated by a pediatric ophthalmologist. She was found to have 20/200 and 20/250 vision in her right and left eyes respectively and was prescribed glasses two years ago. STUDENT has been very consistent in wearing her glasses throughout the day, not just for academic work. Her parents have ensured she is evaluated annually, and her prescription is up to date. Her vision is corrected to 20/20 with her corrective lenses, and she has been provided preferential seating to ensure she has good access to both close work and board work. STUDENT has received Tier 2 interventions since Kindergarten. Her lack of progress in reading cannot be primarily attributed to her vision difficulties. Her vision issues are not deemed to be a contributory factor in STUDENT'S reading skill deficits.

Factors Contributory But Not Primary

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Example #1 (Dual Language): STUDENT has had consistent research-based instruction, has good attendance, has no health considerations and demonstrates a good work ethic. STUDENT has been exposed to both Spanish and English since birth. He has been primarily exposed to English at home the past three years. His mother reports that STUDENT understands Spanish but does not speak or read it. Both his bilingual mother and bilingual teacher report that English is his dominant language. As a student enrolled in a dual language magnet school, STUDENT has received most of his instruction in Spanish (80% in Kg, 1st; 70% in 2nd; and 60% this year). For his age level, STUDENT demonstrated negligible (Level 1) oral language proficiency in Spanish and limited to fluent proficiency (Level 3-4) in

English. However, language testing in his dominant language (English) revealed significant language delays. STUDENT's interventions (including special education services) have been delivered in English. Peers with similar language backgrounds have not exhibited similar learning struggles. The team has determined that while STUDENT's English dominance and Spanish Instruction may be a contributing factor to his struggles in reading and writing, they are not the primary factor.

Example #2 (Attendance/Anxiety): STUDENT is diagnosed with generalized anxiety disorder, social anxiety, and major depression. Due to her labile emotional status, she often is unable to get up in the morning and get ready for school in time. Once she is late, she experiences debilitating anxiety about entering school and being the focus of perceived negative attention from staff and peers for being late. Though her teachers and peers take little to no notice of her attendance status, STUDENT's irrational belief continues to prevent her from attending school consistently. While her poor attendance contributes to her limited educational progress, the team recognizes that her attendance issues are secondary to her mental health challenges. Therefore, it is her emotional disturbance that is the primary factor both in her poor attendance and her lack of educational progress.

Factors Primary

Example #1 (Attendance): Due to economic barriers and lack of stability, including homelessness, STUDENT's family has moved frequently resulting in STUDENT changing schools 18 times since kindergarten between 8 school districts. Significant attendance issues have also been referenced in his file with exact numbers unknown due to an incomplete cumulative record. The SCHOOL multidisciplinary team carefully examined many factors including, but not limited to, such things as STUDENT's school attendance, lack of a regular school experience, lack of curricular consistency, and environmental/economic disadvantage, and determined that STUDENT's suspected learning difficulties are likely primarily attributed to a combination of those external factors. The team determines that attendance patterns show that STUDENT has changed schools so often, or has attended school so sporadically, that normal achievement gains were not possible because essential intervention components could not be delivered in a comprehensive and consistent manner. Moreover, since enrollment in this school, STUDENT has been the recipient of intensive Tier 2 interventions. Current progress monitoring data indicates that while STUDENT continues to perform at a level well below that of age and grade level peers, he has made extensive progress with consistent school attendance and provision of interventions. Though this data is for a relatively brief period (6 weeks), it does suggest that STUDENT is capable of making appropriate academic progress when he attends regularly and experiences consistent instruction.

Example #2 (CLD): STUDENT was transitioned into English-only instruction in 3rd grade and coupled with the fact that English cannot be supported in the home to the degree necessary for academic success, it is clear that STUDENT cannot be expected to be at the

same level as that of her monolingual (English speaking) peers. The pattern of results gathered from both formal and informal sources over the course of this evaluation appear to support the notion that much of STUDENT's difficulties are the result of a premature transition to English only curriculum, consistent lack of comprehensible input during instruction, limited English language experience, and the unavailability of home language support in English. In addition to linguistic factors, there is also considerable evidence to indicate that much of STUDENT's inability to maintain age and grade appropriate progress is related to cultural factors. STUDENT is one of only a handful of children who are of Mexican heritage at her school and observations of her interactions with others clearly shows that she does not feel like a valued or important part of her school or class. She admits to often feeling alone and lonely and does not have any real friends at her school. During recess, she prefers to read books or assist the librarian in checking books out and in. She does not actively or spontaneously engage in activities with her peers and has reported that she in not invited to participate in out-of-school activities with them (e.g., birthday parties, sleep-overs, etc.). She stated that what she likes best about her school are the teachers but not anything else. It is quite apparent that the effects of cultural isolation and the corresponding social alienation that it produces has and continues to undermine STUDENT's confidence, self-esteem, motivation and ability to perform up to potential. Overall, these factors do not represent a disability and are believed to be the primary, if not sole, causes of the pattern of suspected difficulties seen in STUDENT's academic work.