

# SLD TAP #4 – Ruling out Inadequate Instruction

The state of Washington’s special education regulations were expanded to provide additional options for determining SLD eligibility in 2007, including those that provide for the use of, “a process based upon a student’s response to scientific, research-based interventions ([WAC 392-172A-03060](#)).” This fact sheet addresses Criterion 4, Rule-out Inadequate Instruction.

**Figure 1. Washington’s Four Criteria for SLD Identification (adapted from Kovaleski et al., 2023).**

<p><b>1 Inadequate Achievement</b></p> <p>Failure to achieve adequately for the child’s age or to meet state-approved grade level standard in one or more of the following areas:</p> <ul style="list-style-type: none"> <li>• Oral expression</li> <li>• Listening comprehension</li> <li>• Written expression</li> <li>• Basic reading skills</li> <li>• Reading fluency skills</li> <li>• Reading comprehension</li> <li>• Mathematics calculation</li> <li>• Mathematics problem solving</li> </ul>	+	<p><b>2 Insufficient Progress</b></p> <p>The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in column (1) when using a process based on the student’s response to scientific, research-based intervention.</p>	+	<p><b>3 Rule Out Alternative Primary Factors:</b></p> <ul style="list-style-type: none"> <li>• A visual, hearing, or motor disability;</li> <li>• An intellectual disability;</li> <li>• Emotional/behavioral disability</li> <li>• Cultural factors;</li> <li>• Environmental or economic disadvantage; or</li> <li>• Limited English proficiency.</li> </ul>	+	<p><b>4 Rule out Inadequate Instruction</b></p> <p>Document:</p> <ul style="list-style-type: none"> <li>• Instruction was delivered by qualified personnel;</li> <li>• High quality core curriculum;</li> <li>• Designed to meet the instructional needs of all students; and</li> <li>• Repeated assessments of achievement at reasonable intervals were conducted.</li> </ul>
Inclusionary		+		Exclusionary		
+ Observation						
+ Student Needs Specially Designed Instruction						



## Washington Administrative Codes

The fourth criterion for specific learning disability identification is Ruling out Inadequate Instruction as the cause for student academic delays. [WAC 392-172A-03040](#) outlines the necessary requirements for evaluating eligibility for all categories in special education, including:

"...(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

- (i) Lack of appropriate instruction in reading, based upon the state's grade level standards;
- (ii) Lack of appropriate instruction in math;..."

For the purpose of this TAP, and as guidance for schools in addressing all areas of core learning, this TAP will also include written expression as an area to rule out lack of appropriate instruction as a determinant factor.

[WAC 392-172A-03055](#) clarifies requirements for districts to rule out inadequate instruction for eligibility under the category of Specific Learning Disability:

"...(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

- (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and
- (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents."

The purpose of this SLD TAP is to provide guidance to District and Special Education Evaluation teams to develop practices for ruling out inadequate instruction. It is recommended that The District Team, in collaboration with key members of school-based leadership and The Special Education Evaluation Teams, develop common procedures and processes to be utilized by Special Education Evaluation teams across the school district during the evaluation process to Rule Out Inadequate Instruction. Ruling Out Inadequate Instruction is a key exclusionary criterion in the evaluation process and is a part of a comprehensive evaluation. This criterion can ensure eligibility decisions are accurate, in that students made eligible for special education have a disability, rather than suffer from a lack of adequate instruction. Guidance from The District Team to The Special Education Evaluation should include:

- What: Written procedure, including checklists or “look for’s”.
- Who: Roles and Responsibilities for team members who are ruling out inadequate instruction (i.e. what is The District Team responsible for vs. the Special Education Evaluation Team, or other).
- How: Procedures for how to determine inadequate instruction, as well as documentation of the criteria.
- Next Steps: Steps to take if the Special Education Evaluation Team determines the student has not received Adequate Instruction.

To rule out inadequate instruction The District Team guidance to Special Education Evaluation Teams will need to develop written guidance for school-based evaluation teams on how to best address this criterion, and what the District Team considers appropriate core instruction and intervention. The guidance to The Special Education Evaluation Teams must be specific enough that they can gather the necessary information to guide team decision making in ruling out inadequate instruction in reading, written expression, and math. In addition to gathering sufficient data to determine if criteria outlined in WAC requirements are met, The Special Education Evaluation Team will also need data about quality indicators of instruction and intervention, assessment of student progress, and student attendance. District guidance on appropriate core instruction and intervention should include the following components:

- Qualified Professional
- Data-based documentation of students’ progress during instruction
- Teaching the standards, and knowing and aligning to curriculum and research-based instructional practices
- Implementation of targeted instruction with fidelity
- School and class-wide outcomes of core instruction
- Student attendance and other factors impacting student availability for instruction

**Qualified Professional:** In the State of Washington, a qualified professional (to deliver core instruction) is defined by having achieved a bachelor’s degree from an accredited university, a teacher certification, and a teaching endorsement in the area of instruction. Individuals who have met these basic requirements are considered a qualified professional. The Special Education Evaluation Team will want to consider information about student and teacher variables to ensure the student is taught by a qualified professional. For instance, ensuring a 3<sup>rd</sup> grade student is taught by a professional who has a teaching certificate and a K-8 endorsement. Additionally, school districts will want to ensure all staff with instructional or instructional support responsibilities have access to routine professional development on research-based practices for reading, writing, and math.

Some districts may utilize other professionals like ESAs or other certificated staff to deliver Tier 2 or 3 intervention. Additionally, paraprofessionals may provide intervention. Evidence indicates

utilizing paraeducators to support intervention can be a beneficial practice when paraeducators are provided with appropriate training and ongoing supervision (<https://files.eric.ed.gov/fulltext/ED558020.pdf>). When districts utilize paraprofessionals in this manner, the school district and school administration will need to consider the individual, paraprofessional role, appropriate training, and supervision needed for the individual and the student to be successful.

**Data-based Documentation** of students' progress during instruction is collected through repeated assessment at routine intervals and shared with families. Screening measures in reading, writing, and math should be utilized to gather student performance data to inform teams of their progress in the general education curriculum. Screening measures should be collected three times annually, be statistically sound (reliable and valid instruments), measure academic skill in reading (phonological processing, decoding, fluency, and comprehension), math (numerical operations, fluency, and problem solving), and written expression (spelling, fluency, correct writing sequences), and be quick to administer to a whole class. At the screening level, teams will want to gather quick information that provides a snapshot of the student learning, which when linked successively over time, also provides information on their overall rate of learning.

**Teaching the Standards in Core Instruction:** Washington State learning standards are outlined by OSPI pursuant to RCW [28A.655.070](#) on their website: <https://ospi.k12.wa.us/student-success/learning-standards-instructional-materials>. Districts, schools, and teachers should align high-quality instructional methods to meet the grade-level outcomes defined in common core standards. Educational research has identified essential practices that when integrated into classroom instruction, improve student outcomes, and define high-quality instruction. As mentioned previously, school districts will need to develop written guidance so that school teams can apply uniform criteria when ruling out inadequate instruction. The written direction developed by the The District Team should incorporate instructional "look-fors". The Special Education Evaluation Team can observe in the classroom setting and document the observation findings. The written findings need to provide objective and observable practices for teams to document when deciding on this exclusionary factor. For example, the Special Education Evaluation Team may observe and document instructional practices, like beginning a lesson with a review of previous learning. Information below provides an example of research that outlines criteria observed in high-quality instruction.

Information from Rosenshine (2012) provides 10-research-based principles of instruction, to support effective instructional practices. The 10 research-based principles are listed below, and the full article can be found here: <https://www.aft.org/sites/default/files/Rosenshine.pdf>

- Begin a lesson with a short review of previous learning.
- Present a lesson in small steps with student practice after each step.
- Ask a large number of questions and check the responses of all students.

- Provide models.
- Guide student practice.
- Check for student understanding.
- Obtain a high success rate.
- Provide scaffolds for difficult tasks.
- Require and monitor independent practice.
- Engage students in weekly and monthly reviews.

Evaluation of core instruction will require a review of State Learning Standards (<https://ospi.k12.wa.us/student-success/learning-standards-instructional-materials>) in comparison to district adopted core curriculum to ensure that instructional strategies are aligned with research-based practices for teaching of reading, math, or written expression. Core instruction should be accessible to all students, through evidence-based inclusionary practices.

The Special Education Evaluation Team who is determining eligibility decisions about specific learning disabilities in the area of reading would want to evaluate the student's instruction (core and/or intervention) in phonemic awareness, phonics, fluency, vocabulary, and comprehension, in a systematic and structured method. Core instruction in reading that excludes one or more of the aforementioned components would fall under the category of lacking appropriate instruction and would then exclude the student from eligibility. What Works Clearinghouse has developed Practice Guides to provide educators with recommendations for instruction within the school environment. A variety of practice guides can be found here:

- [WWC | Practice Guides: https://ies.ed.gov/ncee/wwc/practiceguides](https://ies.ed.gov/ncee/wwc/practiceguides)

Additionally, information to support specific areas of instructional interest are included below:

- Universal Reading Instruction, K-3: <https://ies.ed.gov/ncee/WWC/PracticeGuide/21>
- Rubric for Evaluating Reading/Language Arts Instructional Materials for Kindergarten to Grade 5: <https://ies.ed.gov/ncee/rel/Products/Region/southeast/Publication/3814>
- Assisting Students Struggling with Math: <https://ies.ed.gov/ncee/WWC/PracticeGuide/2>
- Writing Instruction: <https://ies.ed.gov/ncee/WWC/PracticeGuide/17>

Ultimately, the District Teams will need to determine the criteria to be included in written guidance (common tools) for schools to evaluate if instruction is research-based, meets state requirements for State Approved Learning Standards, and is implemented with fidelity. Criteria that are observable, research-based, account for fidelity of instruction, and can be collected routinely through data will provide teams the information necessary to make a high-stakes decision like ruling out inadequate instruction. An example of a common tool, like a fidelity check tool, is included in Harlacher et al (2024, p110), and provides a simple and observable format for documenting implemented standards of practice:

Whole Group Instruction		
Component	Materials	Instruction
<ul style="list-style-type: none"> <li>Foundational Reading Skills (phonemic awareness, phonics and fluency)</li> </ul>	<ul style="list-style-type: none"> <li>Sound spelling cards</li> <li>Decodable Text</li> <li>Fluency Passage</li> </ul>	<ul style="list-style-type: none"> <li>Word Work</li> <li>Sound Spelling Cards Taught</li> <li>Decoding and Encoding</li> <li>Fluency</li> </ul>

Another example would be use of the Rosenshine (2012) 10-research-based principles of instruction as a walk-through tool, or district-developed tools based on the quality criteria of their adopted curriculum.

**School and Class-wide Outcomes of Core Instruction:** Examination of school-wide, grade, and classroom data is another method for evaluating whether or not a student has received high-quality instruction. In most cases, evidence of high-quality classroom instruction is demonstrated through student performance on class-wide screening or benchmark data collection. As The District team develops guidance for how Special Education Evaluation Teams should determine ruling out inadequate instruction, they will want to provide guidance on how and when to utilize school and class-wide data as one variable to consider in the decision making.

To assess inadequate core instruction, two sets of criteria exist, one that address the overall effectiveness of core instruction, and another that informs when an individual intervention versus a class-wide intervention should be conducted. To assess the effectiveness of core instruction, the Special Education Evaluation Team should use the metric of 80% of students should reach academic proficiency on the practices implemented in core instruction alone (grade or class) (Gibbons et al, 2018, p. 74). If less than 80% of students reach proficiency, then the unit of intervention should be at the core instruction level and would warrant a review of practices and curriculum. When determining if an individual student should receive intervention, the intervention team should review the student's benchmark scores in relation to their classmates, and if there are 50% or more of students who are below benchmark, then a class-wide intervention should be conducted versus an individual Tier II or Tier III intervention (Kovaleski, et al, 2023, p. 144). These guidelines should be used as general guidelines, and Special Education Evaluation and Interventions will need to make decisions based on the needs of individual students. The needs of individual students need to be met, and the effectiveness (or lack thereof) of core instruction does not preclude the need to identify students in need of intervention.

Kovaleski et al (2023) indicated that for The Special Education Evaluation Team to utilize class-wide data to determine the effectiveness of core instruction, *valid and reliable screening data that measures the area of student concern should be utilized.* The class- or grade-wide screening

data can be utilized to determine the impact of instruction on student learning and provide evidence for The Special Education Evaluation Team on whether a lack of progress is due to individual factors or if there is a group/instructional effect. The Special Education Evaluation team will need to review the class-wide screening data and determine if a majority of students are at or above benchmark, meaning the instruction has a positive impact on student learning, and thus providing evidence The Special Education Evaluation Team can rule out a lack of appropriate instruction as the variable impacting student lack of progress. This process, in combination with other recommended methods in the this document, can be utilized by the Special Education Team to decide whether or not instruction has met Criteria 4 (Ruling Out Inadequate Instruction).

## Case Study

In a Washington State elementary class, a student was referred for a special education evaluation due to limited progress in the areas of reading and math. Upon reviewing the grade-wide data, The Special Education Evaluation Team noticed 30% of students met or exceeded grade-based learning standards and were above the 25th percentile on screening measures of reading. Class-wide data demonstrated 20% of students met or exceeded grade-based learning standards and were above the 25th percentile on screening measures of reading. The team made the decision to implement a class-wide and grade-wide intervention in the area of reading. For math, The Special Education Evaluation Team reviewed grade- and class-level screening data and found over 50% of students met standards on screening measures above the 25th percentile, and The Special Education Evaluation Team determined the universal instruction was sufficient, and the 4th criterion of the Dual Discrepancy Model was met/could be excluded as a factor contributing to a lack of academic progress. If criteria 1–3 are also met (included or excluded), the team could move forward with an evaluation in the area of math.

**Implementation of Targeted Instruction with Fidelity:** When students receive intensive intervention to address insufficient progress in an academic area(s), teams will want to consider the use of data-based individualization as a process for designing and implementing intervention, monitoring progress, and adjusting instruction to support student goal achievement. Information about data-based individualization can be found here: <https://intensiveintervention.org/data-based-individualization>. Assessing the sufficiency of Tier 2 & Tier 3-Intensive intervention will include team considerations of student access to research-based interventions that are implemented with fidelity ([Intervention Fidelity Graphic](#)), matched to student area of need, and provided with the duration, intensity, and frequency to see a positive impact on student skill. When evaluating the sufficiency of intervention, The Special Education Evaluation Team will want to consider the following variables (also reference SLD TAP 2):

- The recommended number of sessions, lessons, pacing, or minutes of implementation from the program or curriculum developer.

- Student progress in the intervention in relation to the intensity, duration, and frequency of the intervention.
- Level of student skill in relation to grade level standards, and the amount of time necessary in an effective intervention to eliminate the skill development gap.
- At minimum, one course of intervention should include multiple instructional sessions weekly, over the course of 6-weeks, with at least 6-data collection points.
- Fidelity of Intervention Delivery. NCII has resources to support the development of processes and tools to ensure fidelity of implementation (<https://intensiveintervention.org/implementation-intervention/fidelity>).

The Special Education Evaluation Team will want to refer to the What Works Clearinghouse (<https://ies.ed.gov/ncee/wwc/>), the IRIS Center (<https://iris.peabody.vanderbilt.edu/>), or Council for Exceptional Children, High Leverage Practices (<https://highleveragepractices.org/>) to review research-based interventions and determine the appropriate match to student need and intervention effectiveness. Teams will need to develop intervention fidelity tools to track and monitor student attendance, implementation fidelity, and impact of the intervention (<https://intensiveintervention.org/implementation-intervention/fidelity>). When discussing the intensification of interventions to meet student need, teams can consider elements of intervention taxonomy to guide the process of intensifying intervention (<https://intensiveintervention.org/implementation-intervention/taxonomy-intervention-intensity>).

**Student Attendance:** Information from the US Department of Education indicates that students who miss 15 days or more of school are at risk of falling behind in school (resource link [here](#)). Students who have missed 15 or more days of instruction or 8% of the school year likely have not received adequate instruction to perform commensurate to peers in general education or meet age- or grade-based standards. The Special Education Evaluation Team should consider the variables impacting the high rate of absenteeism and determine the appropriate course of action to support regular attendance, access to education, progress on interventions, or if the student meets criteria for another eligibility category. OSPI's website provides guidance on how to improve student attendance and can be a resource for school teams when problem-solving chronic absenteeism (<https://ospi.k12.wa.us/student-success/support-programs/attendance-chronic-absenteeism-and-truancy/best-practices-improving-attendance>).

## Case Study

Washington State Elementary School is evaluating a 2<sup>nd</sup> grade student due to inadequate progress in math. The student was reported to miss 10 days of school during each of their kindergarten, first and second grade years. Additionally, the student's teacher resigned after the first month of school, and the class was taught by substitute teachers from October through January. The classroom has a certificated teacher in place, and they are working to implement



behavior and instructional practices in the classroom. The student's academic skills are at the 9<sup>th</sup> percentile on the MAP for math for both the fall and winter assessments, and progress monitoring from a Tier II intervention indicates the student is making gains in week-over-week assessments. The team discussed the instructional practices within the classroom for September through January and determined that the district adopted curriculum was not implemented with fidelity, and student behavior often interrupted instruction; class-wide MAP data shows that 50% of the class are below the 25<sup>th</sup>ile at both fall and winter screenings. Assessment of Tier II intervention indicated implementation with fidelity and the student attended the intervention session with 100% attendance. Due to the discussion about universal instruction implemented inconsistently, and class-wide data demonstrating a majority of students are not meeting expected goals in math, the team decides the student does not meet exclusionary criteria for Ruling Out Adequate Instruction at this time. They will continue to provide Tier II interventions for another intervention cycle (see SLD TAP 2) and support the classroom teacher in implementation of core instruction.

## Conclusion

This TAP addressed how to determine if a student received adequate instruction within the general education setting. This criterion is the second exclusionary factor when identifying a SLD using the dual discrepancy model and it must co-occur with Ruling out Alternative Primary Factors (see SLD TAP #3), and the inclusionary factors of Inadequate Achievement (SLD TAP #1) and Insufficient Progress (SLD TAP #2). The inclusionary and exclusionary factors must be addressed through a Comprehensive Evaluation (SLD TAP #6) that also includes an observation (SLD TAP #5) of the student within instruction and intervention.

### References:

Haelacher, J.E., Potter, J. & Collins, A. (2024). Understanding Data-Based Decision Making: A Problem Solving Model to Enhance MTSS. Marzano Resources.

Kovaleski, J.F., VanDerHeyden, A.M., Runge, T.J., Zirkel, P.A., & Shapiro, E.S. (2023). *The RtI approach to evaluating learning disabilities* (2<sup>nd</sup> ed.). Guilford.

Rosenshine, B. (2012). Principles of Instruction: Research-based Strategies That All Teachers Should Know. *American Educator*, Spring, 2012

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