**Exclusionary Factors**

**Environmental or Economic Disadvantage**

When considering whether environmental or economic factors are exclusions, the IEP team may need to review data related to family mobility, school attendance, family change, and/or any recent trauma which can substantially impact school performance. When a referred student has attended many schools or has frequent absences, analysis of data from intensive, culturally responsive interventions can assist the IEP team in determining the impact of instruction on the student’s learning and progress.

he IEP team may need to seek information about a student’s personal history, including living conditions, access to home or community-based learning activities, or expectations for school performance. In other words, the IEP team should determine whether there are major factors outside school that are significantly impacting the student’s learning and are the primary causes of the student’s inadequate classroom achievement and insufficient progress. The educational environment may also have an impact on student performance. Considerations include whether classroom culture is supportive of the student, and whether the student functions differently from classroom to classroom, year to year, or from intervention setting to general education classroom. Data from observation of routine classroom instruction is one source of information on student response to the educational environment.

**Limited English Proficiency; Cultural Factors**

The IEP team should take special care when evaluating students who are English Language Learners. At least one person who is knowledgeable about the development of English and related achievement skills for the student’s age and language/cultural background should be a member of the IEP team. Research indicates that language and culture may mediate academic performance up to the fourth generation (Ortiz, 2008). Although a student may develop adequate English to interact socially within 1-3 years, it is not unusual to take up to 5-7 years for some students to develop academic language proficiency that allows them to function effectively in an educational setting (Cummins, Harley, & Swain, 1990).

To assist the IEP team in identifying and determining the impact of any cultural factors, interviews may be conducted with parents, the referred student or members of the student’s cultural community. Cultural elements that may affect school performance include communication patterns, behavioral expectations, gender-based family roles, and prescribed cultural practices. A related consideration is whether data indicate that the student’s general education instruction and interventions are culturally appropriate.

The IEP team must give careful consideration to whether the student’s inadequate classroom achievement and insufficient progress are primarily the result of lack of English proficiency or cultural factors. In determining whether this exclusionary factor applies, the IEP team considers the student’s current and previous educational experiences. Questions the IEP team might consider:

• What is the student’s native language and culture?

• Is the student proficient in his/her native language?

• Has the student failed to develop age appropriate native language skills despite appropriate instruction?

• What is the gap between the student’s proficiency in English and his/her native language; and what is the impact on learning?

• Has the student failed to gain English language skills despite instruction?

• Is there a difference in the student’s performance by subject area?

• Are the student’s learning difficulties pervasive in both his/her native language and English?

• Are the expectations of the student’s home culture consistent with school expectations?

• Can any social or psychological factors (e.g., refugee or immigrant status; mental health concerns; racial or ethnic bias) be identified?

• Did someone with expertise in the student’s dominant culture and language participate in the IEP team?

• Was someone with expertise in the student’s dominant culture and language involved in conducting and interpreting the evaluation data?

**Reviewing Achievement Data for Economic, Limited English Proficient, Culturally Diverse Groups**

If the student is a member of an economic, limited English proficient or cultural subgroup, the IEP team can review disaggregated achievement data for the student’s group and data for the aggregate grade or age group. Suggested questions for the IEP team when analyzing the data include:

• Are the majority of students in the aggregate grade or age group achieving grade level standards in the area(s) of concern for the referred student?

• How does the referred student’s performance compare to the performance of the aggregate group?

• If the student is a member of an economic, limited English proficient, or cultural subgroup, how does the performance of the subgroup compare to the performance of the aggregate grade or age group?

• How does the referred student’s performance compare to that of other members of the subgroup? Is the referred student’s performance significantly different?

It is possible that even if his/her performance is similar to students in the subgroup, the student may still have the impairment of SLD. The IEP team may need to review additional student-specific information about the student’s instructional history and performance. Areas of focus may include:

• Whether, given high quality culturally responsive instruction in all areas, the referred student is making progress toward grade level standards in some academic areas but not others;

• The referred student’s progress when culturally responsive interventions aligned to grade level standards and student need are implemented and monitored; and

• The impact of extended absences on retention of new information as compared to grade or age peers.

**Other Impairments**

A student who has been identified with a Cognitive Disability (CD) cannot also be identified with a Specific Learning Disability. Students with cognitive disabilities exhibit significant delays in measured intelligence, adaptive functioning, and academic functioning. A student’s level of adaptive functioning is a central consideration when determining the impairment of cognitive disability.

SLD may co-exist with sensory and motor impairments (hearing, vision, orthopedic), Other Health Impairment (OHI) and Emotional Behavioral Disability (EBD). However, for a student to be found eligible as having SLD, other impairments such as these may not be the **primary** reason for the finding of inadequate classroom achievement or insufficient progress.

When social/emotional behavior is a concern for the referred student, the IEP team may consider data regarding:

• Student performance in academic area(s) of concern when individual positive support or instruction in social/emotional behavior is implemented,

• Behavior when teaching is at the student’s instructional level,

• Level of sustained attention during instruction, and

• Differences in student performance across school subjects, settings, or teachers.

Speech/Language Impairment and SLD often co-exist. The IEP team may wish to consider whether the student has speech/language impairment if the main concerns at referral are related to the acquisition and development of oral expression and listening comprehension. In this case, a speech/language pathologist must be a member of the IEP team.

**Lack of Appropriate Instruction**

If the IEP team finds a student’s inadequate classroom achievement and insufficient progress in one or more of the eight achievement areas for SLD are due to a lack of appropriate instruction, it may not identify the student as having the impairment of SLD. The IEP team needs to verify that appropriate instruction has occurred in the achievement area(s) of concern being considered in the evaluation. Not all eight achievement areas for potential Specific Learning Disability must be addressed in every SLD evaluation. When considering the area of reading, federal regulations reference the essential components of reading identified in the Elementary and Secondary Education Act (ESEA) which include:

• Phonemic awareness,

• Phonics,

• Reading fluency, including oral reading skills,

• Vocabulary development, and

• Reading comprehension strategies. 71 Fed. Reg. 46646 (August 14, 2006)

To determine whether the referred student received appropriate instruction in the area(s) of concern identified at referral, the IEP team reviews both student-specific and grade level information for all students in the same grade as the student being evaluated. Examples of specific data the IEP team may review include:

• Evidence that explicit, systematic universal (core) instruction with differentiation was provided regularly in general education in the area(s) of concern for the referred student,

• Evidence that universal (core) instruction was delivered according to its design and methodology,

• Evidence that instruction was provided by qualified personnel,

• Data indicating that universal (core) instruction was sufficiently rigorous to assist the majority of students, including a comparable peer group for culturally and linguistically diverse students, in achieving grade level standards, and

• Data that the student attended school regularly for instruction. If the student was frequently absent, the team may consider how the student learns when he/she is present and if the learning difficulties persist when the student is present.

Grade level information may also be used to verify appropriate instruction in the area(s) of student concern. Performance data for all students in the same grade level as the referred student may help establish that the core instruction in the area(s) of student concern, for example – reading comprehension, is effective for most students. Such data may include:

• State assessment results,

• District-wide assessments aligned with state common core and local standards, and

• Grade level common assessments.

If the referred student is part of a disaggregated subgroup for statewide assessments, the IEP team may analyze data for the grade level disaggregated group as well as the student’s individual performance and instructional history. A question the IEP team might consider is whether the referred student performs like or unlike his/her peers in the disaggregated group.

Information demonstrating that the referred student was provided appropriate instruction in general education is documented on DPI sample form ER-2, Additional Documentation Required When Child is Evaluated for Specific Learning Disabilities. The form, along with guidance on completing it (Notes to Accompany DPI Sample Special Education Form ER 2