(j) Additional procedures for identifying students with learning disabilities.

(1) A student suspected of having a learning disability as defined in section 200.1(zz)(6) of this Part must receive an individual evaluation that includes a variety of assessment tools and strategies pursuant to subdivision (b) of this section. The CSE may not rely on any single procedure as the sole criterion for determining whether a student has a learning disability. The individual evaluation shall be completed within 60 days of receipt of consent, unless extended by mutual agreement of the student’s parent and the CSE.

(i) The individual evaluation must include information from an observation of the student in routine classroom instruction and monitoring of the student’s performance that was either done before the student was referred for an evaluation or from an observation of the student’s academic performance in the regular classroom after the student has been referred for an evaluation and parental consent, consistent with section 200.5(b) of this Part, is obtained. Such observation shall be conducted by an individual specified in paragraph (2) of this subdivision.

(ii) To ensure that underachievement in a student suspected of having a learning disability is not due to lack of appropriate instruction in reading or mathematics, the CSE must, as part of the evaluation procedures pursuant to section 200.4(b) and (c) of this Part, consider,

(a) data that demonstrate that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular 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.

(2) The determination of eligibility for special education for a student suspected of having a learning disability must be made by the CSE, which shall include the student’s regular education teacher as defined in section 200.1(pp) of this Part and at least one person qualified to conduct individual diagnostic examinations of students.
(such as a school psychologist, teacher of speech and language
disabilities, speech/language pathologist or reading teacher),

(3) A student may be determined to have a learning disability if,
when provided with learning experiences and instruction
appropriate for the student’s age or State–approved grade–level
standards, the student does not achieve adequately for the
student’s age or to meet State–approved grade–level standards in
one or more of the following areas: oral expression, listening
comprehension, written expression, basic reading skills, reading
fluency skills, reading comprehension, mathematics calculation,
mathematics problem solving; and

(i) The student either:

(a) does not make sufficient progress to meet age or State–
approved grade–level standards in one or more of the areas
identified in this paragraph when using a process based on the
student’s response to scientific, research–based intervention
pursuant to section 100.2(ii) of this Title; or

(b) 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 CSE to be relevant to the identification of a
learning disability, using appropriate assessments consistent with
section 200.4(b) of this Part; and

(ii) The CSE determines that its findings under this paragraph
are not primarily the result of a visual, hearing, or motor disability;
mental retardation; emotional disturbance; cultural factors;
environmental or economic disadvantage; or limited English
proficiency.

(4) In addition to the criteria in paragraph (3) of this subdivision,
the CSE is not prohibited from considering whether there is a severe
discrepancy between achievement and intellectual ability in oral
expression, listening comprehension, written expression, basic
reading skill, reading fluency skills, reading comprehension,
mathematical calculation and/or mathematical problem solving;
provided that effective on and after July 1, 2012, a school district
shall not use the severe discrepancy criteria to determine that a
student in kindergarten through grade four has a learning disability in the area of reading.

(5) Specific documentation for the eligibility determination.

(i) When determining eligibility for a student suspected of having a learning disability, the CSE shall prepare a written report containing a statement of:

(a) whether the student has a learning disability;

(b) the basis for making the determination, including an assurance that the determination has been made in accordance with section 200.4(c)(1) of this Part;

(c) the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student’s academic functioning;

(d) the educationally relevant medical findings, if any;

(e) whether, consistent with paragraph (3) of this subdivision:

(1) the student does not achieve adequately for the student’s age or to meet State-approved grade-level standards; and

(2) the student

   (i) does not make sufficient progress to meet age or State-approved grade-level standards; or

   (ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development;

   (f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student’s achievement level; and
(g) if the student has participated in a process that assesses the student’s response to scientific, research–based intervention pursuant to section 100.2(ii) of this Title:

(1) the instructional strategies used and the student–centered data collected; and

(2) the documentation that the student’s parents were notified in accordance with section 100.2(ii)(1)(vi) of this Title.

(ii) Each CSE member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the CSE member must submit a separate statement presenting the member’s conclusions.