

**Implications of the New RTI Provisions Under IDEA '04 for Identification of
Children with Specific Learning Disability:**

What Do We Know and Not Know About Implementation?

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of Children with Specific Learning Disability:
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A. State-Level Choices

1. The State can decide whether to prohibit or permit a severe discrepancy model but cannot require it. The LEA must use the State's criteria.
2. The State can permit LEAs to use an RTI process, a severe discrepancy model, and other alternative research-based procedures, at its discretion.

“There is nothing in the Act that would require a State to use one model of identification” (*Analysis of Comments and Changes* [Accompanying the IDEA-B Final Regulations], 71 Federal Register 46649, August 14, 2006).

3. For instance, Utah's proposed special education rules allow LEAs to use RTI or a severe discrepancy model, or both. This means that some school districts in the state may select the RTI process while others may continue with a severe discrepancy model and yet others may combine the two methods. The result is likely to be lack of uniformity in the SLD eligibility process within the state. The options, however, also provide additional time in which to evaluate the two approaches and train districts with respect to valid and reliable RTI models.

“An LEA may use one of two methods, or a combination of both, for determining a student's eligibility under the specific learning disability category:

- (a) A process based on the student's response to scientific, research-based intervention
- (B) Identification of a severe discrepancy between intellectual ability and achievement.” (Utah Special Education Rules: Draft, February 2007)

B. Parental Notification and Due Process Issues

1. Parents must be notified when the school is planning to use an RTI process with their child in the general education setting.

Documentation of the determination of eligibility for a child who is suspected of having an SLD and who participated in an RTI process must include a statement that the parents were notified about

- “(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided,
- (B) Strategies for increasing the child's rate of learning, and

(C) The parents' right to request an evaluation.”

34 C.F.R. 300.311(a)(7) (2006).

2. This gives the parents a chance to request an IDEA evaluation before the RTI process is concluded.
3. The school district can then refuse to begin the evaluation, just as is the case when any other parent requests an IDEA evaluation that the school believes is not justified. The school must provide its reasons for the refusal.
4. The parent can then challenge the school district's refusal just like any other parent. Various dispute resolution options are available: SEA complaint, mediation, hearing with prior resolution session.

C. What is the meaning of scientific, research-based interventions?

1. *Scientifically based research* in the IDEA regulations is given the same meaning as in section 9101(37) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act. (See the full definition in appendix 2 of this handout.)
2. The interventions should be based on “rigorous, systematic, objective procedures to obtain reliable and valid knowledge.” The research must employ empirical methods that can be based on either observations or experiment and must produce data that is both reliable and valid. The research is to be evaluated using experimental or quasi-experimental designs that are generally replicable, and the research must have been accepted by a peer-reviewed journal or approved by a panel of independent experts. Therefore, RTI interventions should be based on research that meets this general standard.
3. A State is allowed to permit the use of “*alternative* research-based procedures” as a means of identifying SLD. Does this mean the alternatives need not be *scientifically* based? For instance, might alternative procedures be valid and reliable even though not experimental or quasi-experimental in design? ED says it “does not support the use of identification procedures that are not based on sound scientific research” (*Analysis of Comments and Changes*, 71 Federal Register 46648, August 14, 2006). So, presumably, alternative research based procedures are those that, although scientifically based, do not use a response to intervention strategy.

ED provides an example of an alternative research-based procedure: “A State could choose to identify children based on absolute low achievement and consideration of exclusionary factors [MR, ED, LEP, etc.] as one criterion for eligibility” (71 Federal Register 46648, August 14, 2006).

D. Within the context of RTI, where does screening end and evaluation begin?

1. Screening by a teacher or specialist “to determine appropriate instructional strategies for curriculum implementation”[i.e., to produce more effective teaching] is not considered

evaluation (34 C.F.R. 300.302 (2006)).

In the *Analysis of Comments and Changes* section accompanying the final regulations, ED states that (a) screening “is typically a relatively simple and quick process that can be used with groups of children,”(b) “the timeframe to complete the screening process is a decision that is best left to State and local officials,” and (c) IDEA does not prohibit States from implementing policies that permit screening to determine if evaluations are necessary (71 Federal Register 46639, August 14, 2006)

2. Evaluation has a 60-day timeframe after receipt of consent from the parent. Screening has no IDEA time limit and does not require parental consent.

3. Is RTI considered screening or evaluation?

a. RTI typically involves 3 tiers of increasingly intensive intervention using research-validated practices. Depending on the model, all 3 tiers may be interventions conducted by general educators. In some models, tier 3 may be considered part of the evaluation for eligibility for SLD, especially if it involves one-on-one instruction. Each State will need to decide at which point RTI becomes part of a formal evaluation for eligibility and therefore, at what point, parental consent is needed to continue the process.

b. Official guidance would be helpful regarding the appropriate length of time spent in each tier of intervention so that undue delay does not occur prior to evaluation of students who are underachieving and suspected of having an SLD.

E. **The SLD Evaluation Itself**

1. Is RTI all there is to the evaluation for SLD eligibility?

a. No. Note that the section on SLD is entitled *Additional Procedures for Identifying Children with [SLD]*.

The RTI provisions are arguably a bit unclear because ED removed the phrase in the proposed regulations which said that, “as part of the evaluation procedures,” the State criteria must permit the use of a process based on the child’s response to scientific, research-based intervention. ED commented that this phrase was deleted as unnecessary. ED’s position is that RTI is “only one component of the process”and that all other general evaluation requirements must be met (e.g., no single procedure can be the sole criterion; determining “why a child has not responded to research-based interventions requires a comprehensive evaluation” (71 Federal Register 46647-46648, August 14, 2006).

b. Among requirements that may not overlap with RTI:

- Evaluate in all areas of suspected disability
- Identify all the child's special education and related service needs regardless of whether commonly linked to SLD
- Assess in the child's native language
- Use a variety of assessment tools and strategies
- Observe academic performance in the classroom
- Seek parental input
- Rule out exclusionary factors (MR, ED, LEP, etc.)

2. If RTI is selected in lieu of a severe discrepancy model, how will sufficient progress to meet age standards or State-approved grade-level standards be measured?

This is left to each State to determine.

Will ED monitor that the progress measures have been validated?

3. SLD identification requires (1) underachievement in one or more of 8 areas after appropriate instruction. RTI provisions then require (2) insufficient progress to meet age or state-level standards after RTI is implemented. If RTI is selected in lieu of severe discrepancy, will so-called *slow learners* be differentiated from the SLD population?

- a. Some educators may not be worried about the distinction and may see no need to make it. Each student, however, is expected to meet the regulatory definition of a child with a specific learning disability (disorder in one or more basic psychological processes involved in understanding or using language, etc)
- b. The primary method of differentiating will be the exercise of judgment by the eligibility team members, who must consider a variety of achievement and aptitude measures, parental input, teacher observations, and the child's needs for special education.
- c. If a pattern of strengths and weaknesses is added for consideration, examination of the pattern may help to differentiate students with SLD from slow learners.

F. Should RTI be funded with IDEA funds for early intervening services?

RTI is certainly is a form of early intervening services (EIS) to try to differentiate who has an SLD and who is underachieving because of insufficient instruction in general education. Each LEA must weigh how and in what grades it wants to spend the money available for EIS. ED emphasizes preventative EIS services particularly for children in grades K-3. It also requires that, in LEAs identified as having significant disproportionate numbers of children from racial and ethnic minorities, EIS funds be directed at preventing inappropriate overrepresentation of these children in some disability categories (71 Federal Register 46627, August 14, 2006).

G. **More (But NonLegal) Questions About Implementation of RTI**

Will general education accept responsibility for all the tiers of RTI?

What training do general educators and special educators need?

What are the funding and space needs for successful implementation?

What kind of coordination with special education is needed for successful RTI?

What kinds of continuing research and data collection are needed?

Do we know how to implement RTI at secondary levels?

Do we know how to implement RTI in mathematics?

These questions will be addressed in subsequent sessions throughout this strand.

BOTTOM LINE: THERE IS A LOT THAT WE DO NOT KNOW YET.