

How to Conduct SLD Evaluations Without Discrepancy Formulas: A Legal Perspective

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The Modernization of LD Eligibility

- Moving away from a dysfunctional, unscientific eligibility model
- The new challenges:
 - Child-find
 - Modern LD evaluations
 - Working with reg ed and using RTI data
 - Complying with State criteria

The Modernization of LD Eligibility

- Understanding the relationship between RTI and LD
- Interrelated initiatives that are broader than special education
- What's it all about—The expansion of regular education services and its impact on special education

The 2004 IDEA Provision

- A “mild” reform provision
- LEAs can’t be forced to use discrepancy, and must be allowed to use RTI analysis
- RTI analysis = using data from high-quality research-based interventions to help decide if a student is LD by reference to their response to interventions (in addition to other evaluation procedures)

The 2006 IDEA Regulations

- §300.307—State responsibility for LD model (a big responsibility...)
- §300.309—The main regulation; sets forth fundamental LD evaluation requirements (States fill in the details)

A four-part structure

The 2006 IDEA Regulations

1. Determine child is not achieving
2. Use either (a) RTI analysis or (b) a “strength & weakness” assessment-based determination
3. Rule out traditional exclusionary clauses
4. Apply appropriate instruction “filter”

The 2006 IDEA Regulations

- Details are up to states (e.g., how to do the RTI analysis, how to do the modern S & W assessments, how much RTI progress is needed, what remaining “weight” is given to discrepancy findings, etc...)
- Thus, the large responsibility placed on States to fill-in the blanks

Key Issues in the 4-part Structure

- Finding of failure to achieve

Based on age and grade-level standards

Failing a statewide test is not enough

(Should be the easier part of the evaluation)

Key Issues in the 4-part Structure

- RTI or S & W assessment process

RTI analysis raises basic unanswered questions
(that will lead to future litigation)

Type of RTI model entirely up to LEAs (*Letter to Clarke* (OSEP 2008))

Complicated failure-to-ID cases?...

Key Issues in the 4-part Structure

- RTI or S & W assessment process

State RTI policies required (*Letter to Zirkel*
(OSEP 2008))

RTI-based evals can be ramped up gradually (2
OSEP letters from 2007)

A couple of initial cases show the impact of RTI
on the IDEA hearing officers...

Key Issues in the 4-part Structure

- *Salado Ind. Sch. Dist.* (SEA TX 2008)

HO shows understanding of shift to RTI

- *A. D. v. Alvin ISD* (5th Cir. 2007)

HO felt that an “Academic & Behavior Contract” was a “special” program, and thus tacit admission that student needed sp. ed.

Key Issues in the 4-part Structure

- *Adelanto Elem. Sch. Dist. (SEA CAL 2008)*

Provision of actual sp. ed. services (resource instruction) went beyond RTI intervention, and was indicator of sp. ed. eligibility

Key Issues in the 4-part Structure

- What about RTI in areas other than LD? OSEP points out that regs do not address use of RTI models for children suspected of having other disabilities

Why would they say that?

Key Issues in the 4-part Structure

- The “Strength & Weaknesses” Assessment

Use of assessments, *in modern ways*, still a key part of the picture

Why an alternative to the RTI analysis?

Allows for LD evals without formal intervention data, if needed

A modern use of assessment instruments

Key Issues in the 4-part Structure

- The “Strength & Weaknesses” Assessment

But, some States retain “discrepancy” in their models, in some form

Can a pure discrepancy LD evaluation comply with §300.309? See *Ector County Ind. Sch. Dist.* (SEA TX 2007)—Apparently could be a problem

It’s not just a “reheated” discrepancy analysis

Key Issues in the 4-part Structure

- The “Strength & Weaknesses” Assessment

RTI or discrepancy? A potentially false choice...

Can there be a role for discrepancy, within the framework of the S & W assessment?

Schools can research work of D. Flanagan, S. Ortiz, and others on modern theories of LD and sophisticated use of assessments

Key Issues in the 4-part Structure

- The “Strength & Weaknesses” Assessment

The modern role of cognitive testing

Cattell, Horn, Carroll (CHC) theory of LD (seven areas of cognitive processing (G’s))

IQ tests align to the G’s, which align to academic skill areas, and can provide info on interventions, aside from eligibility

Key Issues in the 4-part Structure

- The “Strength & Weaknesses” Assessment

Big Picture—Looking for patterns across different cognitive and achievement tests that indicate specific areas of weakness that are unexplained in light of areas of relative strength

Key Issues in the 4-part Structure

- The traditional exclusionary clauses

Ruling out other disabilities, or non-disability factors, as the primary causes of the academic difficulties

Nothing new here in terms of how to objectively make this determination

USDOE concedes it's a "judgment" call

Key Issues in the 4-part Structure

- Ruling out lack of appropriate instruction (the appropriate instruction “filter”)

Sometimes confused with RTI analysis

A “data-based” determination—is it really?

How does one determine if instruction has been appropriate solely by looking at the one student’s performance?...

The Wyoming LD Rule

State of Wyoming Rules, Special Education, Ch. 7
Section 4(d)(x)

Mostly follows § 300.309 of federal regs

Defines SLD

Defines assessment group

Requires observation

Requires lack of achievement

The Wyoming LD Rule

State of Wyoming Rules, Special Education, Ch. 7
Section 4(d)(x)

Allows RTI process

Requires either RTI or discrepancy analysis

Sets forth requirements for discrepancy

Requires rule-out of poor instruction

Requires rule-out of exclusionary clauses

The Wyoming LD Rule

State of Wyoming Rules, Special Education, Ch. 7
Section 4(d)(x)

No discussion of strengths-and-weaknesses
assessment option in § 300.309(a)(2)(ii)

Model appears to be one of RTI or
discrepancy

Room for future consideration?...

The Wyoming LD Rule

State of Wyoming Rules, Ch. 7 Section 4(d)(x)

Adding provision on S & W assessment could open up process to cross-battery approaches (provision could track language of federal regulation)

And, discrepancy could remain as an additional non-dispositive procedure

And, RTI would remain an option