
The 2004 amendments of the IDEA, which went into effect on July 1, 2005, provided that for SLD identification states may no longer require severe discrepancy and must permit school districts to use “a process that determines if the child responds to scientific, research-based intervention,” i.e., RTI. Thus, states had a choice of permitting or prohibiting severe discrepancy and permitting or requiring RTI.

(6) Specific learning disabilities.--

(A) In general.--Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority.--In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

Regulations [34 C.F.R. § 300.307(a)(2008)]

(a) General. A State must adopt, consistent with Sec. 300.309, criteria for determining whether a child has a specific learning disability as defined in Sec. 300.8(c)(10). In addition, the criteria adopted by the State--

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10).

The reference points for RTI appear to be “age or State-approved grade-level standards [§ 300.309(a)(2)(i)].

The regulations further required the district “promptly” request consent for an evaluation if the child has not made “adequate progress” after an “appropriate period” of appropriate instruction delivered by qualified personnel in regular education settings (§ 300.309(c)(2)).

Finally, the regulations required specified considerations as part of the evaluation, including “data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child’s parents (§ 300.309(b))."
OSEP Policy Interpretation

In the commentary accompanying the 2006 regulations (71 Fed. Register 46,450 et seq. (Aug. 14, 2006)), OSEP provided these interpretations:

- For the third, research-based alternative, OSEP provided these examples for a state’s choices: 1) “identify children based on absolute low achievement and consideration of exclusionary factors as one criterion for eligibility” or 2) “combine features of different models for identification.”
- For State-approved grade-level standards, OSEP pointed specifically to NCLB assessments, not standardized norm-references test results:
  - State-approved standards are not expressed as ‘norms’ but represent benchmarks for all children at each grade level. The performance of classmates and peers is not an appropriate standard if most children in a class or school are not meeting State-approved standards.... The reference to ‘State-approved grade-level standard’ is intended to emphasize the alignment of the Act and the [NCLB], as well as to cover children who have been retained in a grade, since age level expectations may not be appropriate for these children.

In subsequent policy letters, OSEP provided the following clarifications1:

For core characteristics of RTI, OSEP listed: 1) “high quality research-based instruction” in general education, 2) continuous progress monitoring, 3) screening for academic and behavior problems, and 4) multiple tiers of progressively more intense instruction. See,
- Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS), 47 IDELR ¶ 196 (OSERS 2007)
- Memorandum to Chief State School Officers, 51 IDELR ¶ 49 (OSEP 2008)

Where both state law and local policy permit RTI, “a school would not have to wait until RTI is fully implemented in all schools in the LEA before using RTI as part of the identification of SLD.”

For adoption of RTI as mandatory, OSEP advised in favor of state-wide and district-wide uniformity, respectively.
- Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS), 47 IDELR ¶ 196 (OSERS 2007): see also Letter to Anonymous, 49 IDELR ¶ 106 (OSEP 2007).

RTI is only one part of a comprehensive evaluation.
- Letter to Zirkel, 47 IDELR ¶ 268 (OSEP 2007)
- Letter to Prifitera, 48 IDELR ¶ 163 (OSEP 2007)

For the duration of RTI and its interplay with the required evaluation, OSEP declined to define “an appropriate period” or “adequate progress”.

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Early intervening services funds may be used for RTI provided that they serve “nondisabled students in need of additional academic or behavioral support and supplement, not supplant, other funds used to implement RTI.

Memorandum to Chief State School Officers, 51 IDELR ¶ 49 (OSEP 2008)

If a district used the RTI process and, in disagreement with it, the parent obtained an independent educational evaluation (IEE), the district is not required to reimburse the parents for the IEE because reimbursement is only possible when the parents disagree with a completed evaluation.

Letter to Zirkel, 52 IDELR ¶ 77 (OSEP 2008)

The IDEA does not require parental consent for RTI to the extent that it constitutes screening prior to the evaluation process.

Letter to Torres, 53 IDELR ¶ 333 (OSEP 2009)

WYOMING STATE LAW - Chapter 7, Section 4(d)(x)(E)(II)

(II) Response to intervention process: The group may determine that the child does not make sufficient progress to meet age or Wyoming grade-level standards in one (1) or more areas in Paragraph (d)(1) of the section when using a process based on the child’s response to scientific, research-based intervention.

DOCUMENTS

Response to Intervention (RTI): Funding Questions and Answers, NCRTI. This document provides written responses from the U.S. Department of Education Office of Special Education Programs (OSEP) on the use of Individuals with Disabilities Education Act (IDEA) funds for the implementation of RTI and answers eight commonly asked questions on funding RTI.


VIDEOS AND WEBINARS

Ask the Expert: Why is it important to ensure students with disabilities are part of multi-tiered frameworks? (2:07), NCII. Maryl Randel, a doctoral candidate in Special Education at Michigan State University & NCII Coach for the Swartz Creek School District, addresses the importance of ensuring that students with disabilities have access to supports across the tiers of a tiered frameworks, especially intensive intervention. http://www.intensiveintervention.org/video-resource/why-it-important-ensure-students-disabilities-are-part-multi-tiered-frameworks

MTSS, RTI, Special Education...OH My! Gaining an understanding of MTSS and RTI from Drs. Lynn Fuchs and Joe Jenkins (14:05), NCRTI. RTI and MTSS are frameworks for integrating instruction, evidence-based interventions, and assessments to meet the academic and behavior needs of all students. The essential components of MTSS are as follows: screening, progress monitoring, a multilevel prevention system, and data-based decision making.
Ask the Expert: At what point should a team consider referring a student for special education services? What data would they need? (3:19), NCII. Dr. Evelyn Johnson, Associate Professor at Boise State University, discusses how data can be used to support eligibility decisions for students with disabilities. http://www.intensiveintervention.org/video-resource/what-point-should-team-consider-referring-student-special-education-services-what


RTI and Learning Disability (LD) Identification Part II – OSEP Policy Letters (44:44). NCRTI. In this 45 minutes webinar, Dr. Danielson discusses questions submitted to the U.S. Department of Education, Office of Special Education Programs, regarding the use of RTI in comprehensive evaluation and identification of learning disabilities. The letters discussed can be found below. View this webinar from our website at your convenience or download it to your mp3 player or other device to watch on the go. http://www.rti4success.org/video/rti-and-learning-disability-ld-identification-part-ii-osep-policy-letters

TOOLS
RTI Based SLD Identification Toolkit: Online Guide, RTI Action Network. Toolkit provides a clear vision of best practice related to an RTI-based SLD Identification process. With this vision, school systems can develop structures to ensure that the identification process for specific learning disabilities facilitates decision making about instructional decisions to improve outcomes for students. http://www.rtinetwork.org/toolkit

MTSS Checklists and Forms, RTI Action Network. This site provides sample MTSS planning forms and checklists, such as Self-Assessment of Problem Solving Implementation (SAPSI), treatment integrity protocols, beliefs and perceptions of MTSS skills surveys, and intervention documentation forms. http://www.rtinetwork.org/getstarted/checklists-and-forms.

DBI Process Overview, NCII. This document includes an overview of the data-based individualization (DBI) process. DBI is a research-based process for individualizing and intensifying interventions through the systematic use of assessment data, validated interventions, and research-based adaptation strategies. http://www.intensiveintervention.org/resource/dbi-process-overview

ARTICLES


**GENERAL RESOURCES**

**National Center on Intensive Interventions (NCII),** [http://www.intensiveintervention.org/](http://www.intensiveintervention.org/)
NCII’s mission is to build district and school capacity to support implementation of data-based individualization in reading, mathematics, and behavior for students with severe and persistent learning and behavioral needs.

The National Center on Response to Intervention’s mission is to provide technical assistance to states and districts and build the capacity of states to assist districts in implementing proven models for RTI/EIS.

**RTI Action Network,** [www.rtinetwork.org/connect/leadership-network](http://www.rtinetwork.org/connect/leadership-network)
The RTI Action Network provides resources to guide educators and families in the large-scale implementation of RTI. The RTI Action Network provides a variety of resources for RTI including: “virtual visits” to schools implementing RTI, expert interviews, online discussions, forms, checklists, and research briefs. The RTI Action Network is a program of the National Center for Learning Disabilities, funded by the Cisco Foundation.