

**PART I OF PROGRESS MONITORING PRESENTATION—
CONTINUOUS PROGRESS MONITORING: ITS LEGAL MEANING**

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The legal meaning of “continuous progress monitoring” (CPM) fits within one specified segment of the Individuals with Disabilities Education Act (IDEA) and its corollary Wyoming law. This specified context is the identification of students with specific learning disability (SLD).

The 2006 IDEA regulations, which went into effect on October 12, 2006, required states to choose among these options for SLD identification in lieu of the former requirement for severe discrepancy¹:

- severe discrepancy: permit or prohibit
- RTI : permit or require
- “other alternative research-based procedures”: permit or require²

As of May 2010, the vast majority of states, including Montana, Nebraska, South Dakota, Utah,³ and Wyoming,⁴ have elected to permit both RTI and severe discrepancy, thereby delegating the choice to the school district.⁵ Conversely, approximately 13 states—including Colorado and Idaho—had adopted RTI as mandatory for SLD identification at least in part (i.e., for reading and/or for specified grades), with varying deadlines (e.g., 8/15/09 and 7/1/10 for all grades and SLD areas in Colorado and Idaho, respectively).

Although the IDEA regulations do not define RTI, instead referring to it generically as “a process based on the child’s response to scientific, research-based Intervention,” the administering agency—the U.S. Office of Special Education Programs (OSEP)—has clarified that RTI is an approach with various versions that share these common characteristics:

- 1) “high quality research-based instruction” in general education
- 2) **continuous progress monitoring**
- 3) screening for academic and behavior problems
- 4) multiple tiers of progressively more intense instruction.⁶

¹ The regulations also add an eighth area for SLD eligibility—reading fluency skills. 34 C.F.R. § 300309(a)(1)(v) (2009).

² *Id.* §.307(a). Subject to confusion, the regulations separately included this provision as an alternative to RTI: “The child 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 group to be relevant to the identification of [SLD].” *Id.* § 300.309(a)(2)(ii). According to the agency that issues IDEA regulations, this “pattern” provision refers to severe discrepancy and the other, research-based alternative. Letter to Zirkel, 49 IDELR ¶ 50 (OSEP 2008).

³ Utah also allows the combination of both approaches.

⁴ <http://soswy.state.wy.us/Rules/RULES/7767.pdf> (7 WY. CODE R. EDUC. GEN. § 4(d)(x)).

⁵ Perry A. Zirkel & Lisa B. Thomas, *State Laws and Guidelines for Implementing RTI*, ___ TEACHING EXCEPTIONAL CHILD. ___ (Sept./Oct. 2010); Perry A. Zirkel & Lisa B. Thomas, *State Laws for RTI: An Updated Snapshot*, 42 TEACHING EXCEPTIONAL CHILD. 56 (Jan./Feb. 2010).

⁶ 71 Fed. Register 46,450 *et seq.* (Aug. 14, 2006); Memorandum to Chief State School Officers, 51 IDELR ¶ 49 (OSEP 2008).

Most states, either by law or by guidelines, conform to these core characteristics, along with a fifth that the professional literature increasingly recognizes—fidelity.⁷

The specifications for each of these characteristics and any other operational features of RTI are left to state law, with the results being a widely varying pattern with substantial areas of local latitude in most states. For example, Table 1 shows the pattern for CPM. Wyoming is among the minority of states that does not have official state education agency guidelines thus far.⁸

A pair of other caveats completes the legal analysis of CPM, with the rest being left to the extensive professional literature within and beyond RTI.⁹ First, the purpose of CPM in the IDEA is to determine whether the child makes “sufficient progress to meet age or State-approved grade-level standards in one or more of the [eight specified areas] when using a process based on the child’s response to scientific, research-based intervention.”¹⁰

Second, even if the local school district opts instead to use severe discrepancy to determine whether the child qualifies as SLD, the IDEA specifies that the evaluation team “must consider— . . . [d]ata-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.”¹¹ With the parental part being only an optional rather than essential element, this provision would appear to provide a legal definition of CPM.

⁷ Zirkel & Thomas (forthcoming), *supra* note 4.

⁸ *Id.* The original version of this table extends to decision rules in moving from one tier to another.

⁹ Various states and local districts also use CPM for other purposes within both special education and regular education beyond SLD identification, but its full appearance in legislation or regulations is largely limited to guidelines for either provisions for screening or early intervening services prior to special education.

¹⁰ 34 C.F.R. § 300.309(a)(1).

¹¹ *Id.* § 300.309(b)(2). In the commentary accompanying the regulations, OSEP explains this required consideration as follows: “We believe that one of the most important aspects of good teaching is the ability to determine when a child is learning and then to tailor instruction to meet the child’s individual needs.” As a final pertinent provision, the IDEA regulations also specify that, in determining whether the child qualifies as SLD under whatever is the applicable approach, the evaluation team must “[u]se information from an observation in routine classroom instruction and *monitoring of the child’s performance* that was done before the child was referred for an evaluation.” *Id.* § 300.310(b). (emphasis added).

Table 1. Frequency of CPM at Each Tier of RTI

Tier	Characteristic	State Recommendations (by Guidelines)	State Requirements
1	Number of times per week or month; total number of data points	<p>If ST receives additional support at Tier 1 PM:</p> <p>CA (1–2/month)</p> <p>NV (every 3 weeks)</p> <p>PM before referral to Tier 2:</p> <p>ID (borderline risk = monthly; moderate/high risk = weekly; for 45 weeks)</p> <p>MD (weekly or bi-weekly for ≥ 6 weeks)</p> <p>NY (at-risk = weekly for 5–6 weeks)</p> <p>WA (≥ 5 weeks)</p>	<p>DE: first screening within 2 weeks of the beginning of the school year or within 2 weeks of ST's entry into school; if ST's score is > 25th percentile but $<$ benchmark, PM for minimum of once every 2 weeks until PM data demonstrates ST is on trajectory to meet end-of-year benchmark; checkpoint at 6 weeks</p> <p>OK: If ST receives additional support at Tier 1 PM, ≥ 1/week; ≥ 4 points in 4 weeks)^a</p>
2	Weekly progress monitoring	<p>CA, CO (1/every 1–2 weeks)</p> <p>MD (1–3/week; ≥ 6 weeks)</p> <p>MS (2/week)</p> <p>NE (1–2/week; ≥ 24 sessions; ≥ 6 points – tns)</p> <p>NV (1–3/week)</p> <p>OR (1–2/week – tns)</p> <p>TX</p>	<p>DE (1–3 /week; ≥ 6 weeks)</p> <p>MO (≥ 1/week; ≥ 6 data points – tns)</p> <p>OK (≥ 1/week; ≥ 9 data points in 9 weeks)^a</p> <p>TN (≥ 1/week)</p>
	Weekly or biweekly progress monitoring	<p>AL, AZ, IL, ND, RI, WA (≥ 2/month)</p> <p>CT, KY, MN, MO (≥ 6 points)</p> <p>NM (≥ 4–5 points in ≥ 9 weeks)</p>	
	Monthly or bimonthly progress monitoring	<p>AK (≥ 2/month; 6–8 pts)</p> <p>IN, IA (≥ 1/mth)</p> <p>KS (every 2–3 weeks; 3–6+ pts)</p> <p>ME, MA (\geq bimonthly)</p> <p>NH, NY, VA (2/month)</p>	<p>PA, SD (≥ 2 times/month)^a</p> <p>WV (every 2–3 weeks; ≥ 6 points)</p>
	Other	<p>FL, ID, MT, SC (tns), UT – weekly, biweekly, monthly, or bimonthly</p>	<p>GA (≥ 4 points in 12 weeks – tns)</p> <p>ME^b (tns)</p> <p>MN (≥ 12 points in ≥ 7 weeks/1 intervention; ≥ 2 interventions – tns)</p>
3	Weekly progress monitoring	<p>AK, AZ, IL, IA, NY, WA (≥ 1/week)</p> <p>CA, CT, ME, MA, MS (2/week)</p> <p>CO, FL, GA (1–3/week)</p> <p>NE (1–2/week; ≥ 24 sessions; ≥ 6</p>	<p>DE</p> <p>MO (≥ 1/week; ≥ 6 pts – tns)</p> <p>PA, SD (≥ 1/week)^a</p> <p>TN (≥ 1/week)</p> <p>WV (2–3/week; ≥ 6 pts)</p>

	Weekly, biweekly, monthly, or bimonthly progress monitoring	NH (2/month) SC (tns)	
	Other	AL, KY (“more frequently” than T2) MD (1/day; ≥ 6 weeks) NM (per IEP; weekly to every 9 weeks)	GA (≥ 4 points in 12 weeks – tns) ME ^b (tns) MN (≥ 12 points in ≥ 7 weeks; ≥ 2 interventions – tns)

Note. State Requirements column indicates provisions in law except as noted below. Seven states did not have applicable information in law or guidelines: AR, DC, NJ, NC, OH, WI, and **WY**. ST = student; PM = progress monitoring; tns = tier not specified.

^aRequired by guidelines.

^bThe relevant regulation in ME provides: “A team shall review the child’s progress no later than 60 school days after the start of formal general education interventions and approximately every 30 school days thereafter.” 05-071 ME. CODE § 101, III-2(i).

^cExcludes NM, because Tier 3 is special education in that state.