

RtI in Special Education Evaluations

A Component of a Comprehensive Evaluation

Responsiveness to Intervention in the SLD Determination Process

NRCLD 2005

- * It is the intent of RTI to combine important features of assessment and instruction and to address many of the limitations currently associated with aptitude-achievement discrepancy models of SLD identification.
- * The following are core features of a strong RTI process:

#1 Core Feature

- * ***High quality classroom instruction:***
- * Students receive high quality instruction in their general education setting. Before students are identified for specific assistance, there must be assurance that the typical classroom instruction is of high quality. This quality can be assessed by comparing students' learning rates and achievement in different classrooms at the same grade level.

* NRCLD 2005

#2 Core Feature

- * ***Research-based instruction:***
- * General education's classroom practices and the curriculum vary in their efficacy. Thus, ensuring that the practices and curriculum have demonstrated validity is important. If instruction is not research-based, one cannot be confident that students' limited gains are independent of the classroom experiences.

* NRCLD 2005

#3 Core Feature

- * ***Classroom performance:***
- * General education instructors and staff assume an active role in students' assessment in the general education curriculum. This feature emphasizes the important role of the classroom staff in designing and completing student assessments rather than relying on externally developed tests (e.g., state or nationally developed tests).

* NRCLD 2005

Core Feature #4

- * ***Universal screening:***
- * School staff conducts universal screening of academics and behavior. This feature focuses on specific criteria for judging the learning and achievement of all students, not only in academics but also in related behaviors (e.g., class attendance, tardiness, truancy, suspensions, and disciplinary actions). Those criteria are applied in determining which students need closer monitoring or an intervention.

* NRCLD 2005

Core Feature #5

- * ***Continuous progress monitoring:***
- * In RTI models, one expects students' classroom progress to be monitored continuously. In this way, staff can readily identify those learners who are not meeting the benchmarks or other expected standards. Various curriculum-based assessment models are useful in this role.

* NRCLD 2005

Core Feature #6

- * ***Research-based interventions:***

- * When students' screening results or progress monitoring results indicate a deficit, an appropriate instructional intervention is implemented, perhaps an individually designed instructional package or a standardized intervention protocol. The standardized intervention protocols are the interventions that researchers have validated through a series of studies. School staff is expected to implement specific, research-based interventions to address the student's difficulties. These interventions might include a "double-dose" of the classroom instruction or a different instructional method. These interventions are not adaptations of the current curriculum or accommodations, because one would expect those procedures to have been implemented already. These research-based interventions are 8 to 12 weeks in length and are designed to increase the intensity of the learner's instructional experience.

#7 Core Feature

- * ***Progress monitoring during interventions:***
- * School staff members use progress monitoring data to determine interventions' effectiveness and to make any modifications, as needed. Carefully defined data are collected, perhaps daily, to provide a cumulative record of the learner's response to the intervention.

* NRCLD 2005

#8 Core Feature

- * ***Fidelity measures:***
- * While the interventions themselves are designed, implemented, and assessed for their learner effectiveness, fidelity measures that focus on those individuals providing the instruction also are completed. The fidelity measure, usually an observational checklist of critical teaching behaviors, is completed by a staff member other than the teacher being observed and indicates whether or not the intervention was implemented as intended and with consistency.

* NRCLD 2005

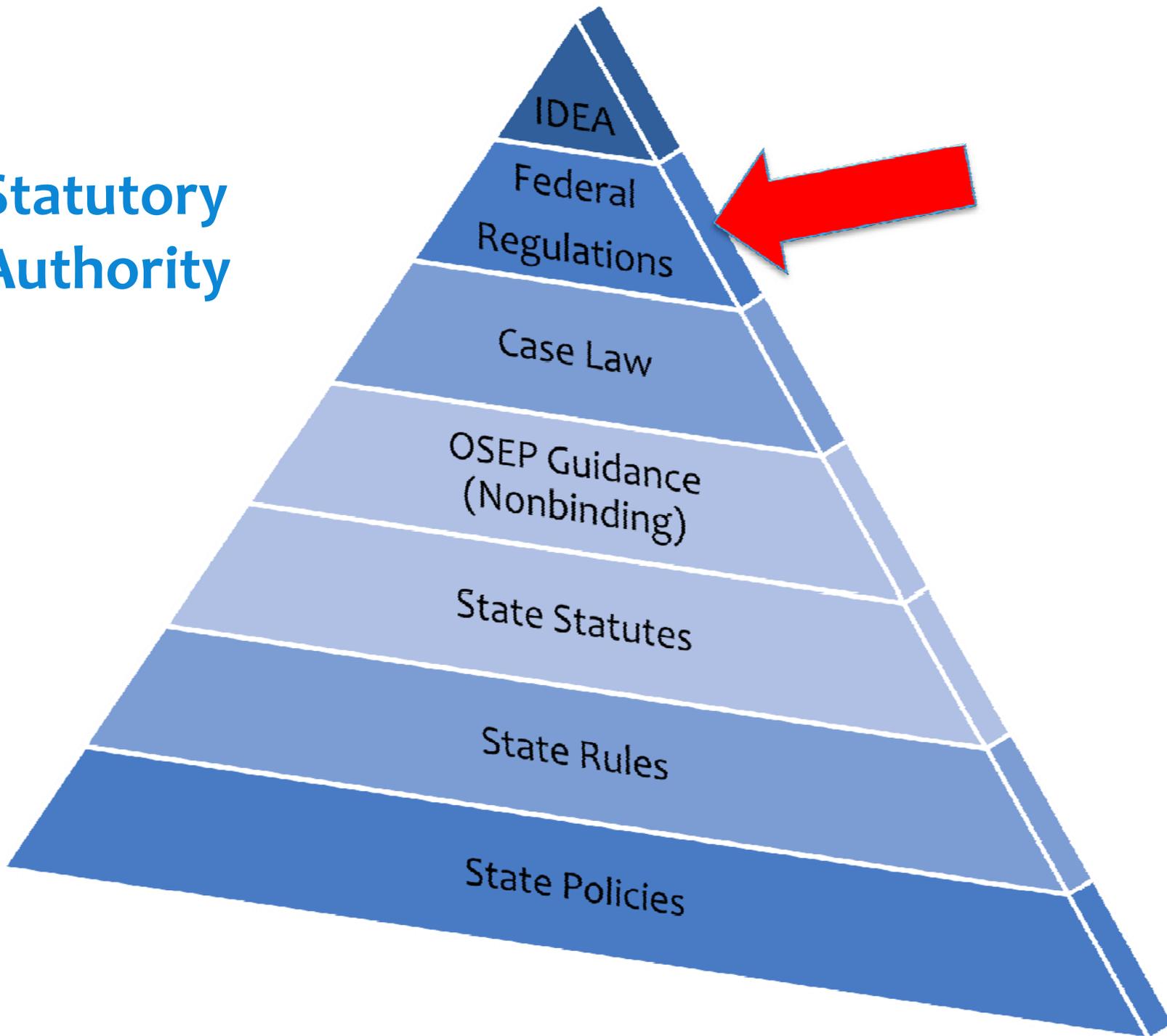
Common Language

- * Building Intervention Teams, Child Study Teams, or any other name – It matters less what your school calls the team and matters more that we have a common understanding of the function of the team.
- * For today’s purposes, we will use the term “Building Intervention Team” (BIT) universally to describe the decision making team responsible for planning interventions for students.

Non-negotiables

- * The IDEA represents the highest statutory authority in special education.
- * The Federal Regulations implement the IDEA.
- * Case law refines our knowledge of the Federal law.
- * Wyoming Statutes and Rules must be in conformity with the Federal Standard. States can offer greater protection, but never less.
- * State and District level policies guide implementation on a daily basis.

Statutory Authority



Child Find

- * A district's obligation to evaluate students in order to determine special education eligibility is a component of its *Child Find* obligation.
- * All children with disabilities residing in the State suspected of having a disability and in need of special education shall be identified, located, and evaluated pursuant to 34 C.F.R. §300.111.
- * A district's child find obligation is directly related to the manner in which any intervention process is designed and implemented.

Regulatory Guidance

- * Several provisions of the Federal Regulations provide us with guidance when using an intervention process as part of a comprehensive evaluation.
- * Take a look at:
 - * 34 C.F.R. §300.304(b) In conducting the evaluation, the public agency must –
 - * Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child.
 - * Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate program.

Regulatory Guidance

- * 34 C.F.R. §300.304(c) Each public agency must ensure that –
 - * The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
 - * The evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category.

Re-Cap

- * All evaluations should be a comprehensive view of the whole child.
- * All evaluations should include multiple sources of data and information.
- * The an intervention process is only one source of information, and should be supplemented with information from other sources.
- * The regulations reflect the USDE's position on the identification of children with SLD and its support for models that focus on assessments that are related to instruction and promote intervention for identified children. *71 Federal Register 46647.*

OSEP Guidance

- * An RtI does not replace the need for a comprehensive special education evaluation.
- * A child's eligibility for special education services cannot be changed solely on the basis of data from an RtI process.
- * *See 71 Federal Register 46648.*

OSEP Guidance

2007 Q & A

Question: The regulations require an SEA to adopt criteria for determining if a child has a specific learning disability (34 C.F.R. §300.307(a)). Does this preclude the SEA from mandating RTI as the sole criterion used to determine if a child has a specific learning disability? Must an LEA follow the State-developed criteria for determining if a child has a specific learning disability?

OSEP Guidance

2007 Q & A

Answer: An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 C.F.R. §300.304(b). However, an SEA could require that data from an RTI process be used in the identification of all children with SLD. An LEA must comply with the criteria adopted by their SEA regarding this requirement. . . The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State.

RtI in the Federal Regulations

- * Several provisions in the regulations relate specifically to the use of an RtI process in a comprehensive evaluation.
- * These include:
 - * 34 C.F.R. §300.307(a) A State must adopt criteria for determining whether a child has a specific learning disability. The criteria –
 - * Must not require the use of a severe discrepancy between intellectual ability and achievement.
 - * **Must permit the use of a process based on the child's response to scientific, research-based intervention.**

RtI in the Federal Regulations

- * 34 C.F.R. §300.309(a) The group of qualified professionals, including the parents, may determine that a child has a specific learning disability if –
 - * The child does not achieve adequately for the child's age or to meet grade-level standards when provided with learning experiences and appropriate instruction; **or**
 - * **The child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention.**

RtI in the Federal Regulations

- * 34 C.F.R. §300.309(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction, the group must consider –
 - * Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; **and**
 - * **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.**

From Rtl to Comprehensive Evaluation

- * 34 C.F.R. §309(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes –
 - * If, prior to the referral, a child has not made adequate progress after an appropriate period of time when provided instruction, **and**
 - * Whenever a child is referred for evaluation.

Re-Cap

- * WDE must permit the use of an RtI process as part of a comprehensive evaluation to determine the existence of a specific learning disability.
- * Data must demonstrate the underachievement in spite of appropriate instructional opportunities.
- * Parents must be part of the decision-making process.
- * Schools cannot delay the consideration of a special education evaluation when a child demonstrates lack of progress or when a referral for evaluation has been made.

OSEP Guidance

2007 Q & A

Question: When implementing an evaluation process based on a child's response to scientific, research-based intervention, the regulations require that a "public agency must promptly request parental consent to evaluate a child (34 C.F.R. §300.309(c))" if the "child has not made adequate progress after an appropriate period of time (34 C.F.R. §300.309(c)(1))." Please define "**promptly**" and "**adequate**" in this context.

OSEP Guidance

2007 Q & A

Answer: The Federal regulations under 34 C.F.R. §300.309(c) require that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. However, the regulations do not specify a timeline for using RTI or define “adequate progress.” As required in 34 C.F.R. §300.301(c), an initial evaluation must be conducted within 60 days of receiving consent for an evaluation. Models based on RTI typically evaluate a child's response to instruction prior to the onset of the 60-day period, and generally do not require as long a time to complete an evaluation because of the amount of data already collected on the child's achievement, including observation data.

OSEP Guidance

2007 Q & A

Answer: We do not believe it is necessary to define the phrase “promptly” because the meaning will vary depending on the specific circumstances in each case. There may be legitimate reasons for varying timeframes for seeking parental consent to conduct an evaluation. However, the child find requirements in 34 C.F.R. §300.111 and section 612(a)(3)(A) of the Act require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. **Therefore, it generally would not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability.**

OSEP Guidance 2007 Q & A

Question: Must an LEA evaluate a child upon the request of the parent at any time during the RTI process? May a parent request an initial special education evaluation at any time during the RTI process?

OSEP Guidance 2007 Q & A

Answer: If the LEA agrees with the parent that the child may be a child who is eligible for special education services, the LEA must evaluate the child.

OSEP Guidance

2007 Q & A

Answer: The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA **must issue a prior written notice** as required under 34 CFR §300.503(a)(2) which states, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation.

OSEP Guidance

- * The regulations at 34 C.F.R. §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability under 34 C.F.R. §300.8.
- * *See Memorandum to: State Directors of Special Education, 56 IDELR 50 (OSEP 2011).*

Memorandum to: State Directors of Special Education, 56 IDELR 50 (OSEP 2011)

- * If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child.
- * The LEA must provide the parent with prior written notice and obtain informed parental consent (if applicable), before conducting the evaluation.

Memorandum to: State Directors of Special Education, 56 IDELR 50 (OSEP 2011)

- * Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a **reasonable period of time** after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.
- * An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation.

Documentation Required by the Federal Regulations

- * See 34 C.F.R. §300.311(a). For a child suspected of having a specific learning disability, the documentation of eligibility must contain –
 - * If the child has participated in a process that assesses the child's response to scientific, research-based intervention,
 - * The instructional strategies used and the student-centered data collected; **and**
 - * The documentation that the child's parents were notified.

Interesting Rtl Questions

- * How does an Rtl district evaluate a private school student when the private school is not using an Rtl process?
 - * The district is responsible for meeting its child find obligations even if the private school has does not utilize an Rtl process. It would be inconsistent with the evaluation provisions of the IDEA for an LEA to reject a referral and delay the initial evaluation on the basis that a private school has not implemented an Rtl process.
- * *See Letter to Zirkel, 56 IDELR 140 (OSEP 2011).*

Interesting RtI Questions

- * May districts require outside agencies to implement RtI before referring a child for initial evaluation?
 - * Once a district receives a child find referral from a community based program, it must initiate the evaluation process in accordance with the IDEA.
 - * The IDEA neither requires nor encourages districts to monitor a child's progress in an RtI process prior to referring the child for an evaluation, or as part of an eligibility determination when the child is served by an outside agency.
- * *See Letter to Brekken, 56 IDELR 80 (OSEP 2010).*

More Interesting Rtl Questions

- * How does Rtl affect IEEs? If parents disagree with the district's use of Rtl, can they bypass the Rtl process and obtain a publicly funded IEE?
 - * A district that uses an Rtl process prior to completion of an evaluation is not obligated to fund an IEE if the district has not yet fully evaluated the student.
 - * The district's evaluation must be complete before publicly funding an IEE.
- * *See Letter to Zirkel, 52 IDELR 77 (OSEP 2008).*

IEE Regulatory Provision

- * The 2008 OSEP *Letter to Zirkel* may be more meaningful after a careful reading of the Independent Educational Evaluation provision in the Federal Regulations at 34 C.F.R. §300.502(b):
 - * (1) *A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. . .*
- * The right to an IEE is only triggered by a completed evaluation either conducted or obtained by the public agency.

More Interesting Questions

- * Does the use of an RtI process in a comprehensive evaluation justify extending the timelines for an expedited evaluation?
 - * If a request for an evaluation is made when a child is subjected to a disciplinary removal under the IDEA's discipline provisions, the evaluation must be conducted in an expedited manner.
 - * Although not defined, it means that an evaluation should be conducted in a shorter period of time than a typical evaluation. 74 *Federal Register* 46728.
- * See *Letter to Combs*, 52 IDELR 46 (OSEP 2008).

How is RtI Used in a Comprehensive Evaluation?

- * RtI can be useful in a comprehensive evaluation in the following ways:
 - * By helping the team decide if more evaluation data is needed;
 - * By documenting that the student was provided appropriate high-quality research-based instruction in general education settings, and that the instruction was delivered by qualified personnel; and
 - * By providing data to the team as one part of the evaluation process used to determine if the student has a disability that requires special education and related services.

How is RtI Utilized in an Eligibility Determination?

- * Wyoming Department of Education Rules Chapter 7, Section 4(d)(x)(D):
 - * (I) The child does not achieve adequately for the child's age or to meet Wyoming grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Wyoming grade-level standards:

How is RtI Utilized in an Eligibility Determination?

- * Oral expression;
- * Listening comprehension;
- * Written expression;
- * Basic reading skill;
- * Reading fluency;
- * Reading comprehension;
- * Mathematics calculation;
- * Mathematics problem solving; AND

How is RtI Utilized in an Eligibility Determination?

- * (II) The child does not make sufficient progress to meet age or Wyoming grade-level standards in one or more of the above areas when using a process based on the child's response to scientific, research-based intervention.

How is RtI Utilized in an Eligibility Determination?

- * Section 4(d)(x)(E): The group shall use either the Wyoming Severe Discrepancy Formula or a response to intervention process when determining whether a child is not making sufficient progress to meet age or Wyoming grade-level standards.

How is RtI Utilized in an Eligibility Determination?

- * Section 4(d)(X)(E)(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 or more of the areas above when using a process based on the child's response to scientific, research based intervention.

SLD Eligibility Criteria

PART I: Determining the Existence of Underachievement. 34 C.F.R. §300.309(a)(1)

Underachievement must be verified before proceeding.

Yes **No** The team has determined that the child does not achieve adequately for the child's age or to meet State-approved, grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or State approved grade-level standards: Oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem solving.

If Yes, continue to Part II.

SLD Eligibility Criteria

PART II: Required Assurances. 34 C.F.R. §300.311.

All assurances must be checked Yes before proceeding.

Yes **No** The team making the determination includes the parent, the child's regular teacher, or if the child does not have a regular teacher, then a regular classroom teacher qualified to teach a child of the same age; for a child of less than school age, an individual qualified by the SEA to teach a child of that age; and at least one person qualified to conduct individual diagnostic examinations of children. 34 C.F.R. §300.308.

Yes **No** The team considers information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, and information about the child's physical condition, social or cultural background, and adaptive behavior. 34 C.F.R. §300.306(c)(1).

Yes **No** The team considers educationally relevant medical findings, if any.

Yes **No** The child has been observed in the child's learning environment to document the child's academic performance in the regular classroom. If the child is less than school age or out of school, the observation must be conducted in an environment appropriate for that child. 34 C.F.R. §300.310.

If Yes, continue to Part III.

SLD Eligibility Criteria

Part III: Method of Determination:

Check method used for determination.

- Yes No Response to Scientific Research-Based Intervention (RTI). *If yes, proceed to Section IV.*
- Yes No Severe Discrepancy (Appendix A). *If yes, proceed to Section V.*

SLD Eligibility Criteria

PART IV: Response to Scientific Research-based Intervention. 34 C.FR. §300.311(a)



If the child has participated in a process that assesses the child's response to scientific, research-based intervention, all statements must be checked Yes.

Yes **No** The team has determined that the child does not make sufficient progress to meet age or State-approved, grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based intervention.

Yes **No** A statement of the instructional strategies used and the student-centered data collected are contained in the evaluation report.

Yes **No** The parents were notified about 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; the strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

SLD Eligibility Criteria

PART V: Exclusionary Factors. 34 C.F.R. §§300.309(a)(3) and (b)



Both statements must be checked Yes.

Yes No The team has determined the child's underachievement is not primarily the result of a visual, hearing or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

Yes No The child's underachievement is not due to lack of appropriate instruction in reading or math, considering:

- Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.

SLD Eligibility Criteria

PART VI: Conclusion. 34 C.F.R. §300.311(a)(1)

Team Determination

Yes **No** The team determines that the child has a specific learning disability.

EACH GROUP MEMBER MUST CERTIFY IN WRITING ON THE ELIGIBILITY REPORT WHETHER THE REPORT REFLECTS THE MEMBER'S CONCLUSION. IF IT DOES NOT REFLECT THE MEMBER'S CONCLUSION, THE GROUP MEMBER MUST SUBMIT A SEPARATE STATEMENT PRESENTING THE MEMBER'S CONCLUSION. 34 C.F.R. §300.311(b)

Can Eligibility Be Determined Solely By RtI?

No. RtI practices can assist teams in determining special education eligibility by providing useful information to the evaluation and eligibility process, as well as determining the educational needs of the child.

The information obtained through RtI progress monitoring will provide the team with documentation that the student's lack of academic progress is not the result of inappropriate instruction in reading or mathematics, or the result of limited English proficiency. (34 C.F.R. §§300.301 through 300.311).

Can an LEA Continue to Use the Discrepancy Model?

Yes, the LEA can continue to use a discrepancy between intellectual ability and academic achievement model to determine whether or not a child has a specific learning disability.

It is important to note that the state cannot mandate that LEAs use a discrepancy model for making such a determination, **and** that state criteria **must permit** the use of a process based on a child's response to scientific, research-based intervention (RtI).

WDE's RtI Policy

- * Pursuant to 34 C.F.R. §300.311(a)(7), the state must have a policy regarding the amount and nature of student performance data that would be collected and the general education services that would be provided in an intervention process.

RtI in SLD Eligibility Determinations

- * The policy was adopted July 1, 2010.
- * It describes a multi-tiered intervention model providing for different levels of intensity based upon the student's response to intervention, with ongoing progress monitoring.
- * The components include:
 - * Tier 1: Universal Interventions provided to all students in a classroom.
 - * Tier 2: Strategic Interventions designed for some students who are not making expected progress.
 - * Tier 3: Intensive Interventions designed for students who are significantly below established grade-level benchmarks, and provided to individual students or small groups.

School District RtI Policy

- * Pursuant to 34 C.F.R. §300.201, school districts (LEAs) must have in effect policies and procedures that are consistent with WDE's policies and procedures.
- * Each school district should have adopted an RtI policy.

Refining our Knowledge

What are the Courts Saying About Rtl?

YOU DECIDE

- * During kindergarten, a student received informal remedial interventions in the regular classroom setting four days each week that included an extra half-hour of instruction on listening and following directions.

YOU DECIDE

- * In first grade, an Instructional Support Team ("IST") was assigned to the student to provide additional interventions in reading four days per week. Early that year, the student was diagnosed with Attention Deficit Disorder ("ADD"). His parents advised the school of this diagnosis and requested a multi-disciplinary evaluation pursuant to the IDEA to determine the student's eligibility for special education services. An evaluation report was issued ("first evaluation") and concluded that the student had a specific learning disability in reading, noting a severe discrepancy between his cognitive ability and his reading comprehension. It was further determined that his needs were being adequately addressed through the IST interventions he was receiving in the regular classroom setting. The report stated that the student's progress was to be closely monitored and further evaluation was a possibility if his needs were not being met in the regular classroom setting.

YOU DECIDE

- * In second grade, the student continued to receive interventions through the IST program. He continued to exhibit academic difficulties and he was increasingly frustrated and anxious about school.
- * At the start of his third-grade year, the student's parents obtained an independent educational evaluation. The resulting report showed the student's academic achievement was falling behind that expected of him and noted a delay in his reading, math, and writing skills. The school district also evaluated the student at that time and the District's evaluation report ("second evaluation") concluded that he had a specific learning disability and was eligible for special education under the IDEA because of his deficits in reading, math, and writing.

YOU DECIDE

- * The school district scheduled an IEP meeting with the student's parents to discuss its proposed IEP. Prior to that meeting, his parents withdrew the student from the District, without notice to or approval by the District, and enrolled him in a private school that provides educational programming to children with disabilities.
- * Nonetheless, the IEP meeting took place. The student's parents attended and requested a due process hearing, seeking tuition reimbursement for enrolling him in private school and compensatory education for the District's decision not to provide special education following the first evaluation.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How the court decided...

- * **The hearing officer found:**
- * [The District] erred in concluding that the student was not eligible for special education services based, in part, upon the private, Parent-funded educational services supplementing the IST interventions he received in the regular education classroom. The District should have realized that the student's need for significant services in addition to the regular education classroom supports it was providing indicated his need for special education services *even if he was making appropriate progress* with the combined efforts of the IST process and the tutoring.

How the court decided...

- * **The appeals panel disagreed, finding:**
- * The District relied on the IST program provided to the student. The assessments determined the student made progress in the program until the third semester of the second grade, at which time the IST recommended a re-evaluation. The District completed that evaluation in the fall, at which time the District concluded the student was in need of special education services. The District relied on "response to intervention" model of assessment ... [which] "is a process in which a district identifies an at-risk student and monitors progress to determine if the student shows adequate growth after receiving high quality evidence based instruction in the area."

How the court decided...

- * The panel therefore reversed the hearing officer, holding that what the District knew at the time of the first evaluation was that the student was functioning at or above expectations for his ability, age, and grade level in all areas except reading comprehension. The student was in the IST program to which he responded until the third semester of the second grade. The Parents offered no evidence to the contrary as to the progress made to the response to intervention assessments.

How the court decided...

- * **Conclusion:**

- * The District recognized the student needed assistance in his very first year of school, provided remedial interventions, assigned an instructional support team, conducted an evaluation in the first grade determining that he had a specific learning disability, monitored his progress, and conducted a second evaluation at the beginning of the third grade to find him IDEA eligible. The appeals panel, giving proper deference to the hearing officer's findings and citing evidence where it disagreed, found that the District's determination of the student as IDEA eligible after the second evaluation was timely. The panel also found the IEP was appropriate and therefore denied tuition reimbursement, noting the exception of "serious emotional harm" was not applicable. Having carefully reviewed the record and giving due weight to the panel's findings, I agree and will uphold the panel's decision in its entirety.



RTI in the Courts:

Daniel P. v. Downingtown Area Sch. Dist., 44 IDELR 23 (E.D. Penn. 2011).

YOU DECIDE

- * A Student was in the third grade during the 2009-2010 school year. In September 2009, the parent requested a psychoeducational evaluation and provided medical documentation diagnosing the student with ADHD.
- * The district told the parent that the student first had to complete general education interventions, which would later be incorporated into the evaluation. In response to the Complainant's request for a psychoeducational evaluation, the RTI Team advised the Complainant that while the District could proceed with an evaluation of the Student, the District was first going to document educational interventions for the Student through the RTI process, and that the progress monitoring data of these interventions would later be utilized as part of the full psychoeducational evaluation of the Student.

YOU DECIDE

- * This conformed with the district's written policies. Those policies indicated that completing the RTI process was a prerequisite to qualifying for special education services.
- * In October 2009, the district provided the student interventions in a general education classroom.

YOU DECIDE

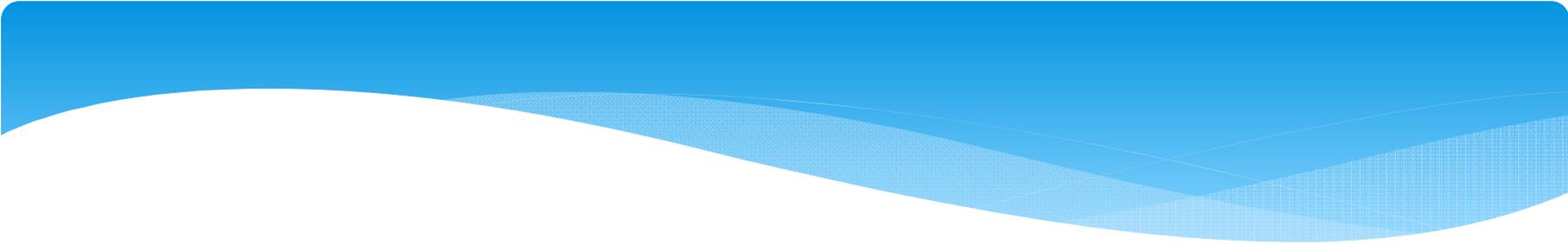
- * The Student's participation in the RTI process continued through the second semester of the school year. An RTI meeting was scheduled for December 16, 2009; however, this meeting was rescheduled because the Complainant was unable to attend. The RTI meeting was rescheduled for January 14, 2010. During this meeting, the Student's progress in the areas of reading and math were discussed. The RTI team made the decision to continue the Student's Reading Program and utilize a new math intervention -- the "folding in" method, a Tier three intervention. On February 24, 2010, another RTI meeting was held and the decision was made that the District would proceed with a psychoeducational evaluation of the Student.
- * On March 3, 2010, after the Parent provided a doctor's note verifying that the Student's vision had been corrected, the Parent gave the District written consent for evaluation of the Student.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How OCR ruled...

- * Based upon a preponderance of the evidence, OCR has determined that there is sufficient evidence to support that the District is in noncompliance with Section 504 and Title II by failing to conduct the Student's psychoeducational evaluation in a timely manner.



Rtl and OCR:

*Polk County Pub. Schools, 56
IDELR 179 (OCR 2010).*

YOU DECIDE

- * E.M. is a bilingual student who has been enrolled in regular education program since beginning kindergarten in 1999.
- * After kindergarten, E.M. was designated as being at risk of retention and thus was required to attend summer school to work on his reading skills.
- * A similar assessment was made after he completed the first grade.

YOU DECIDE

- * During second grade, state standardized testing showed a basic (average) level in math and a below basic level in language arts.
- * By the spring of his third grade year, he scored basic in language arts but below basic in math.
- * The same test results were achieved during the fourth grade, although E.M.'s math score approached the basic level.

YOU DECIDE

- * E.M. was enrolled in the third grade during the 2002-2003 academic school year. He did not perform well during the first quarter, again becoming a retention risk.
- * However, he was not at risk for retention for the remaining three quarters, and while his teacher described him as "easily distracted," she also wrote in his grade report that E.M. was "very bright" and "extremely capable."
- * During the third grade, E.M. began to exhibit difficulties with turning in his homework. According to his mother, the homework would be completed but left at home or elsewhere in the classroom.

YOU DECIDE

- * E.M. entered fourth grade in fall 2003, and he had a slow start and again was designated as a retention risk. In her first quarter report, E.M.'s teacher noted that E.M. was "easily distracted" even when placed at the front of the class. However, the teacher testified at the due process hearing that E.M. displayed average to above-average skills in reading comprehension and above-average geometry skills.
- * Overall, the teacher described E.M. as an "average" student who was in the "middle" of his class in terms of his academic skills. E.M. did not present any disciplinary issues. "E.M. just seemed like a -- like he never required the [special education] referral to me."

YOU DECIDE

- * However, she also described his grades as "poor" and attributable to inconsistent testing skills and work production. In particular, the teacher testified that E.M. had issues with turning in his homework, and on at least one occasion he told his teacher that he preferred to play video games after school.
- * E.M.'s mother also confirmed that the student's teacher did not suggest a referral for special education.

YOU DECIDE

- * E.M. was promoted to the fifth grade on the condition that he attend summer school.
- * During the summer prior to the new school year, E.M.'s parents retained a doctor to evaluate whether E.M. suffered from a learning disability.
- * The evaluation culminated in a diagnosis of eligibility for services under the Americans with Disabilities Act ("ADA"), which presumably was to be used in immigration proceedings.

YOU DECIDE

- * After receiving the psychologist's report, E.M.'s mother requested that the district perform a formal assessment of her son's abilities.
- * Ultimately, the district concluded that “[E.M.] does not qualify for special education services. The assessment team agrees that interventions in the regular education program could be implemented to improve [E.M.]'s attention and work completion in his class.”
- * Instead, a 504 Accommodation Plan was implemented, which included a number of classroom-based interventions designed to address E.M.'s distractibility and difficulties with completing his work.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How the court ruled...

- * Viewed in its entirety, the evidence presents a relatively close question.
- * The district may have had some reason to suspect that E.M.'s difficulties were caused by something other than a mere lack of motivation, notwithstanding the teacher's testimony to the contrary.
- * However, the point at which this duty would have been triggered, if at all, is unclear from the record.

How the court ruled...

- * The district responded in a timely fashion after being notified of the psychologist's report.
- * In addition, "among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan." *Amanda J. ex rel. Annette J. v. Clark County School Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). The record reflects that E.M.'s teachers communicated with his mother on a regular basis. The district responded to her heightened concerns in light of the psychologist's report by proceeding with a formal assessment. The doctor's report was considered during the assessment process.
- * E.M.'s mother participated in the meetings, and on at least one occasion she brought a friend who also happened to be involved in education.



RtI and the Courts:

E.M. v. Pajaro Valley Unified Sch. Dist., 53 IDELR 41 (N.D. Cal. 2009), reversed and remanded to consider evaluation it wrongfully excluded, 57 IDELR 1 (9th Cir. 2011).

YOU DECIDE

- * The parent and fourth grade teacher were in regular contact about A.P.'s progress throughout the year.
- * The teacher identified the student as a child in need of additional teacher assistance.
- * The teacher testified that she used special interventions with A.P. in order to help him with inattention and handwriting.
- * A.P. received A's, B's, and C's on his report card, and he performed on goal on Mastery Tests, which he took without any special accommodations.

YOU DECIDE

- * As his teacher testified, A.P. responded well to the assistance she provided.
- * He was performing at grade level and made progress throughout the year.

YOU DECIDE

- * The Parents argue that the ADD screening showed A.P. was "at risk" for ADD, and that fact alone should have alerted the school to A.P.'s need for a referral to special education.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How the court ruled...

- * The IDEA's child find requirement applies to students who are suspected of having a qualifying disability *and* being in need of special education as a result. 34 C.F.R. §300.111.
- * The student in this case did not fulfill the second requirement. Although the student had some difficulties in the classroom, the evidence showed that he responded well to interventions.

How the court ruled...

- * The court pointed out that the student received As, Bs and Cs on his report card, and performed "on goal" on a statewide assessment without any accommodations. Moreover, the teacher had regular contact with the parent about the student's progress.

How the court ruled...

- * “This is decidedly not a case in which a school turned a blind eye to a child in need.” “To the contrary, [the teacher] acted conscientiously, communicating regularly with [the mother] and utilizing special strategies to help [the student] succeed.”

Post Script

- * After an independent evaluation the student was ultimately determined eligible as learning disabled in the spring of his fifth grade year.
- * An IEP was developed for implementation in the student's 6th grade year.
- * The court acknowledged that the student was found eligible for IDEA services in sixth grade under the category of nonverbal learning disability. Given the student's response to interventions, however, the district did not err in failing to evaluate him sooner.



Rtl and the Courts:

A.P. v. Woodstock Bd. Of Educ., 50 IDELR 275 (D. Conn. 2008), *aff'd* 55 IDELR 61 (2nd Cir. 2010).

YOU DECIDE

- * The district referred a 14 year old student with ADHD for interventions.
- * The district provided interventions recommended by the Student Teacher Assistance Team, including Section 504 accommodations, additional tutoring, and Saturday tutoring camps.
- * The student continued to struggle in reading, math and science.

YOU DECIDE

- * He failed the state standards test for three years in a row.
- * The student received failing grades in core subjects.
- * The district continued to use the STAT process for providing interventions for three years.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How the court ruled...

- * “Why [the district's] STAT committee would have suggested [more interventions], knowing that [the student] had undertaken each of these steps in the past three years and that none had helped him achieve passing test scores, simply baffles this court.”
- * Although the district eventually offered to evaluate the student, that offer was made 13 months after the initial evaluation request as part of a proposed FAPE settlement.
- * By failing to evaluate the student in a timely manner, the district violated its child find obligation.



Rtl and the Courts:

El Paso Indep. Sch. Dist. v. Richard R., 50 IDELR 256 (W.D. Tex. 2008), *aff'd in part and vacated in part (on other grounds)*, 53 IDELR 175 (5th Cir. 2011).

YOU DECIDE

- * The Student was in third grade in a District.
- * Comments on the Student's third grade, third quarter report card include
 - * [Student] is adjusting to the routine and making friends. He tends to get off task and lose focus on his assignments. [Student] requires a lot of redirection, but makes adjustments to complete his work.
 - * He is an excellent reader and has great math strategies.
 - * At the end of 3rd grade, the Student was "clearly meeting standards in all areas with the exception of Language Arts, where he was "barely meeting standards."

YOU DECIDE

- * The Student's 2008 PAWS Student Report for scores obtained in 3rd grade indicate that the Student performed Below Basic in reading, Below Basic in writing, and Basic in math.
- * The Student was previously diagnosed as having ADHD and a social anxiety disorder.

YOU DECIDE

- * On October 2008 parents submitted a letter to the, school requesting that the Student be evaluated for special education in light of his difficulty with social Skills, particularly interacting with peers, difficulty with math, and handwriting that is nearly illegible.
- * The Student's second quarter report card indicates that his performance decreased from Basic at the end of the first quarter to Below Basic at the end the second quarter in all subjects, including Language Arts; Science, Mathematics, and Social Studies.

YOU DECIDE

- * The Parents again requested a "complete educational evaluation" in January 2009, expressing concerns with the Student's declining academic scores.
- * The documentation submitted by the District indicates that Tier 2 interventions began on October 2, 2008 and were "changed due to no response" on October 20, 2008.

YOU DECIDE

- * However, no further data or interventions were noted on the tracking form, leading to a conclusion that the interventions ceased on October 20, 2008, only two weeks and one day from their start date.
- * There was no further progress monitoring data documented from October 2008 to January 2009.

YOU DECIDE

- * Four weeks of progress monitoring data commencing January 2009 documented that the Student had not met target data for any week based on his average weekly performance.
- * The District points to academic progress and the requirement to conduct interventions for at least 16 weeks as justification for not conducting a comprehensive special education evaluation.

YOU DECIDE

- * How would this situation be handled in your district?
- * What RtI decision rules might apply to this student?
- * Is this a child find violation?

How WDE decided...

- * This lack of documented behavioral or social progress, in conjunction with the significant concerns regarding attention and socialization expressed by the classroom teacher, the observations of the Instructional Strategist and the Behavior Interventionist, the Student's declining performance as evidenced by the 4th grade report card and declining PAWS scores, and the concerns expressed by the parents obligated the District to undertake specific child find activities, including an evaluation, to determine if the Student was eligible for special education.
- * The District violated its child find obligation, and corrective action was ordered.

Why Are Courts and SEAs Considering RtI?

- * With the introduction of an intervention system as a component of a comprehensive evaluation in 2004, the courts and states are now hearing disputes alleging FAPE violations based on misuse of the process.
- * The IDEA regulations have placed RtI in the jurisdiction of the courts.
- * Decisions help us refine our knowledge of the regulations and compliance.

Additional Resources

- * Resources will be posted on WDE's website, including:
 - * WDE RtI Policy
 - * WDE RtI Framework
 - * WDE Complaint Decision
 - * Comprehensive Evaluation Wheel
 - * RtI Flowchart
- * Other resources will be posted as available.

THANK YOU

QUESTIONS?