

RESPONSE-TO-INTERVENTION

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The 2004 Individuals with Disabilities Education Act (IDEA) includes a new concept regarding the identification of students with specific learning disabilities. The IDEA allows a school district to consider a student's response to scientific, research-based interventions as part of the evaluation process in determining whether a student has a specific learning disability (LD). This new approach is commonly referred to as the response-to-intervention (RTI) process. New York State has recently established regulations to conform with IDEA that not only address the use of RTI for learning disability determinations but also introduces the RTI process as a general education initiative.

This document provides an overview of the use of RTI in the identification of students with learning disabilities and as a schoolwide prevention model. Implications for local leaders will also be explored.

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Response-to-Intervention

What is Response-To-Intervention?

While the IDEA refers to a RTI process, the term is not defined in federal law or regulations. We must, therefore, look to the research literature for a definition of this concept. The RTI process generally refers to a multi-step approach to providing services and interventions to students with learning problems at increasing levels of intensity. The progress students make at each level of intervention is closely monitored. The results of this monitoring are used to make decisions about the need for further research-based instructions and/or interventions in general education, in special education, or both.

The following summary of the three tiered model of progressive interventions is excerpted from an American Federation of Teachers (AFT) Fact Sheet on RTI:

Tier 1: Screening and Group Interventions - Students who are “at risk” are identified using universal screenings and/or results on state- or district-wide tests and could include weekly progress monitoring of all students for a brief period. These students receive supplemental instruction, or interventions, typically delivered individually or in small groups during the student’s regular school day in the general education classroom. During that time, student progress is closely monitored. At the end of this period, the interventions for students showing significant progress in academic growth would no longer be needed.

Tier 2: Targeted Interventions - Students not making adequate progress in the regular classroom in Tier 1 are provided with more specifically-designed services. These interventions are more intensive in nature. These services are provided in addition to instruction in the general curriculum. These interventions are generally provided in small group settings. Students who do not respond to interventions or show progress in this tier are then considered for more intensive interventions as part of Tier 3.

Tier 3: Intensive Interventions and Comprehensive Evaluations - Students receive individualized, intensive interventions that target the student’s skill deficits. Students who do not respond to these targeted interventions are often referred for an initial special education evaluation. Data collected during Tiers 1, 2 and 3 are considered in making the eligibility decision.

Note: At any point during an RTI process, parents are permitted under IDEA to request a formal evaluation to determine eligibility for special education. An RTI process cannot be used to deny or delay a formal evaluation for special education. See Appendix IV for guidance from the U.S. Department of Education and the New York State Education Department underscoring this point.

The RTI process offers an alternative to policymakers and educators who have been frustrated by the rising numbers of identified students with specific learning disabilities and the increased special education costs to serve these students. According to Fuchs, (2006), the proportion of students with learning disabilities in the general population, nationally, increased from 2 percent in 1976 to more than 6 percent in 2000. This dramatic rise significantly increased the expense of special education given that it costs approximately twice the amount to educate students with disabilities in New York State. The Report to the Governor and the Legislature on the Educational Status of the State’s Schools, also known as the Chapter 655 Report, notes that in 2003-04 a general education program cost \$8,177 for each student in New York State while a

program of special education resulted in a \$17,667 cost for each student (Chapter 655 Report, Volume 2, 2006 Statistical Profiles of Public School Districts, Statewide Summary Data).

Fuchs (2006) also identified two major criticisms that led to changing the LD identification process in the 2004 IDEA reauthorization. First, the “wait-to-fail” model is antithetical to early intervention services as students must fall dramatically behind their peers before a student would qualify for special education services. Second, the low achievement of LD students may not truly reflect disability, but may be more a lack of appropriate instruction. According to Fuchs, (2006), the response-to-intervention process provides an alternative to LD identification that focuses on the use of evidence-based instruction in increasing intensity based on the needs of the student. In theory, the use of this process should decrease the number of students unnecessarily identified as learning disabled and reduce the costs of special education.

Response-to-Intervention in New York State

IDEA 2004 required that states adopt criteria for school districts to use in the identification of students with learning disabilities which:

- Must not require the use of severe discrepancy between intellectual ability and achievement; and
- Must permit the use of a process based on the student’s response to scientific, research-based intervention.

However, while IDEA 2004 ensured the availability of an RTI process for the identification of students with learning disabilities, New York State not only chose to fulfill the federal requirement, but expand the RTI concept beyond special education (See Appendix III for a NYSUT Fact Sheet on the identification of Specific Learning Disabilities and Response-to-Intervention).

In New York State, RTI is defined as a general education service. In 2007, the Board of Regents amended three significant sections of the Regulations of the Commissioner of Education (See Appendix I).

- Part 117, where diagnostic screening requirements for students were expanded to require that students making sub-standard progress be provided with instruction that is tailored to meet the student’s individual needs with increasingly intensive levels of targeted intervention and instruction;
- Part 100, where RTI programs are defined under general school requirements; and
- Part 200, where RTI is included in special education regulations as one method for the identification of a student with a learning disability.

It is important to recognize that, while an RTI process is available in New York State, school districts are not required to implement an RTI program for identifying students with disabilities. If a district chooses to implement an RTI program, it must be offered according to Commissioner’s Regulations.

In 2010, the Regents expanded regulations for Academic Intervention Services (AIS) to allow school districts to use an RTI process in lieu of providing AIS for eligible students (See Appendix I).

RTI and General Education

In providing for an RTI program, it is the responsibility of the school district to:

- Select and define the specific structure and components of the response to intervention program, including, but not limited to:

- the criteria for determining the levels of intervention to be provided to students;
- the types of interventions;
- the amount and nature of student performance data to be collected; and
- the manner and frequency for progress monitoring; and
- Take appropriate steps to ensure that staff have the knowledge and skills necessary to implement a response to intervention program.

A district's RTI process must include the following minimum requirements:

- Appropriate instruction must be delivered to all students in the general education class by qualified personnel *[Appropriate instruction in reading is defined as scientific research-based reading programs that include explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies.]*
- Screenings must be applied to all students in the class to identify those students who are not making academic progress at expected rates;
- Instruction is matched to student need with increasingly intensive levels of targeted intervention and instruction for students who do not make satisfactory progress in their levels of performance and/or in their rate of learning to meet age or grade level standards;
- Repeated assessments of student achievement which should include curriculum-based measures to determine if interventions are resulting in student progress toward age or grade level standards; and
- The application of information about the student's response-to-intervention to make educational decisions about changes in goals, instruction and/or services and the decision to make a referral for special education programs and/or services.

The district is required to provide written notification to the parents when the student requires an intervention beyond that provided to all students in the general education classroom. The notice must provide information about:

- the amount and nature of student performance data that will be collected and the general education services that will be provided;
- strategies for increasing the student's rate of learning; and
- the parents' right to request an evaluation for special education programs and/or services.

NYSUT objected to New York State's expansion of the RTI process outside of special education because of concern that implementing RTI programs could delay referrals to special education (See Appendix IV). There is also significant question regarding the ability of school districts to be adequately prepared to implement an RTI process with fidelity to the identified research. Such preparation should include a defined RTI structure, appropriate professional development, identification of the roles and responsibilities of the professionals involved in the RTI process, and a defined process to support timely referrals for special education evaluations. Districts need time to phase-in an RTI process responsibly – a view supported by the United States Department of Education, Office of Special Education and Rehabilitation Services (see Appendix II).

Teachers, especially general education teachers, have a key role in identifying and responding to students with academic and behavioral problems. Since the RTI process does not require a student to demonstrate a significant learning problem before it is addressed, teachers and other school personnel may be called upon to provide timely interventions and collect data measuring a student's progress as a part of a school district's general education intervention program. New and expanded roles for teachers include participation in designing the local RTI process, quality

professional development opportunities, team collaboration, as well as learning new strategies to help students with learning problems.

RTI and the Identification of Students with Learning Disabilities

IDEA 2004 no longer requires school districts to take into consideration whether a student has a severe discrepancy between achievement and intellectual ability in determining whether a student has a learning disability. Consistent with state criteria, school districts may now use the results of a student's response to a scientific, research-based intervention (RTI) as part of the evaluation in determining whether a student has a learning disability.

Under the IDEA, school districts must establish a team of qualified professionals and the child's parents which is responsible for determining whether the student has a learning disability. In New York State, the Committee on Special Education (CSE) serves as the team responsible for determining whether a student has a learning disability.

Following parental consent, the CSE would arrange for a comprehensive individual special education evaluation. The student is assessed in all areas related to the suspected disability by members of the evaluation team. The district is required to provide the parent with an evaluation report that includes the documentation of the student's eligibility. Each member of the eligibility team must certify in writing whether the report reflects the member's conclusion. If it does not, the group member must submit a separate statement presenting the member's conclusions.

In an RTI process, the assessments focus on the skills and abilities of the student and are linked to scientifically-based interventions. The student's response to a scientifically based intervention is only one component of the student's individual evaluation. Based on the evaluation results, the CSE would determine that a student has a specific learning disability, if:

- The student does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards: oral expression; listening comprehension; written expression; basic reading skills; reading fluency skills; reading comprehension; mathematics calculation; mathematics problem solving.
- The student 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 students' response to a scientific, research-based intervention; or the student 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 a specific learning disability, using appropriate assessments; and
- The group determines that its findings are not primarily the result of: a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

Core Concepts of Response-to-Intervention

A critical step in helping students who are experiencing learning difficulties is the use of the assessment method to match the student with appropriate instruction. RTI combines important features of assessment and instruction to address the limitations currently associated with the IQ-

achievement discrepancy model (referred to as the “wait-to-fail” model) and the traditional pre-referral interventions currently being implemented in our schools.

State and local policymakers and practitioners need a common understanding of the purpose of RTI and a common frame of reference in designing and implementing an effective RTI approach. The National Research Center on Learning Disabilities has identified the following core features of a strong RTI approach.

- 1. High quality classroom instruction.** Students receive high quality instruction in their general education classroom before they are identified for specific assistance. If instruction is not highly qualified, i.e. research based, the limited gains of a student cannot be confidently determined if they are independent of classroom instruction.
- 2. Classroom performance.** General education teachers and other school personnel assume an active role in students’ assessment in the general education curriculum. This feature emphasizes the important role of the classroom teacher in designing and completing student assessments rather than relying solely on externally developed tests (e.g., state or nationally developed tests).
- 3. Universal screening.** School staff conducts universal screening of academics and behavior. Focusing on specific criteria for judging the learning and achievement of all students, not only in academics but also in related behaviors. Those criteria are applied in determining which students need closer monitoring or an intervention.
- 4. Continuous student progress monitoring.** In this way, school staff can readily identify those learners who are not meeting learning expectations. Various curriculum-based assessment models are useful in this role.
- 5. Research-based interventions.** When students’ progress monitoring results indicate a deficit, school staff would implement appropriate instructional intervention which has been validated through a series of studies. These interventions might include a “double-dose” of the classroom instruction or a different instructional method. These research-based interventions may vary in length and are designed to increase the intensity of the learner’s instructional experience.
- 6. Progress monitoring during interventions.** General education teachers and other appropriate school staff use progress monitoring data to determine interventions’ effectiveness and to make any modifications, as needed such as increasing the intensity of the intervention or making a referral for a special education evaluation.
- 7. Fidelity measures.** The research-based interventions themselves are designed, implemented, and assessed for their learner effectiveness therefore, it is critical that the individuals providing the intervention do so in a manner as intended and with consistency.

Benefits of Response-to-Intervention

The use of a RTI process for determining whether a student has a learning disability can potentially benefit students and their teachers when comparing it to the IQ-achievement discrepancy model.

RTI could:

- Reduce the time a student waits before receiving additional instructional assistance, including special education, if needed;

- Reduce the overall number of students referred for special education services and improve the performance of students with learning difficulties in general education;
- Provide critical information about the instructional needs of the student, which can be used to create effective instructional interventions;
- Focus instructional testing on instructional relevance; and
- Ensure that students receive appropriate instruction, particularly in reading, math and limited English proficiency prior to placement in special education.

Limitations of Response-to Intervention

- While many schools have been using RTI for a number of years, RTI is generally being used as a school-wide prevention model – not specifically as an approach used to identify students who have learning disabilities.
- In addition, schools’ use of RTI tends to be focused on the early elementary grades and limited to the academic area of reading, with some focus on early math. As schools attempt to develop RTI processes that address and strengthen other academic areas and focus on students beyond elementary school, little information or research on which to base such models is available.
- Since an RTI process identifies the lowest performing students within a group – such as a class or grade – within the school, students who are highly intelligent (frequently referred to as “gifted”) yet aren’t performing up to their potential will most likely not be identified for intervention. While these students may have a learning disability, they typically would not be identified as needing special education through an RTI process.
- Lastly, RTI alone is generally not sufficient to identify a learning disability. While the information collected during the RTI process will, as mentioned above, play an important role in making decisions about student need and creating effective instructional plans, additional information is needed to satisfy the evaluation requirements of IDEA and make a well-informed, individualized decision about each student.

Despite these limitations, a well implemented, research-based RTI process promises to offer earlier, more relevant help for students at risk for learning disabilities, especially in the area of reading, and provide critical information about the instructional needs of the student, which can be used to create effective educational interventions.

Response-to-Intervention vs. Pre-Referral Interventions

Many schools and school districts have established pre-referral intervention approaches such as child study or instructional support teams to assist the rest of the students struggling to attain learning standards. These approaches have traditionally provided additional support to struggling students prior to recommending that a student be evaluated for special education. However, the research on the effectiveness of these approaches is limited.

Pre-referral interventions have frequently been used without close monitoring of the student’s progress, which provides the important information needed to make appropriate decisions about the student’s instruction and/or intervention. Equally important, the relationship of the instruction being delivered in the general education classroom to student’s learning difficulties has not usually been examined. For example, the instructional program being used in general education, such as the beginning reading program may not be scientifically based and may not have a high success rate for most children.

Successful implementation of RTI, however, requires a number of essential components that ensure high-quality instruction, careful monitoring of student progress and close collaboration

between general education and special education. While NYSUT supports effective early intervention services in general education, including a multi-tiered approach to provide increasingly intensive assistance to struggling learners, NYSUT also recognizes the limitations of response-to-intervention and cautions its use as the panacea to address the learning problems of all students across all grade levels.

Advice to Local Leaders

The State Education Department regulations incorporate the federal provisions concerning the use of a response-to-intervention process in determining whether a student has a learning disability. The regulatory language allows school districts to establish an RTI process. However, SED's regulations also call for the elimination of the discrepancy model for students enrolled in kindergarten through grade 4 by July 1, 2012. This action would tacitly require the use of the RTI process within the early elementary grades. NYSUT does not believe that requiring the use of an RTI process and prohibiting the use of a discrepancy model is the intent of the reauthorized IDEA.

The systematic implementation of the key core concepts (see page 5) of a strong RTI approach in a school system takes between three to five years for appropriate implementation of the RTI process. In fact, the United States Department of Education, Office of Special Education and Rehabilitative Services issued a guidance letter stating:

“Research indicates that implementation of any process, across any system, is most effective when accomplished systematically, in an incremental manner, over time. If a local education agency (LEA) chose to “scale up” the implementation of the RTI model gradually, over time, as would be reasonable, the LEA could not require the use of RTI for purposes of identifying children with specific learning disabilities until RTI was fully implemented in the LEA. Therefore, it is unwise to require the use of a process based on the child's response to scientific, research-based intervention before implementation of that process has been successfully scaled up.” (See Appendix II)

NYSUT is very concerned that without clear guidance from the State Education Department, school district personnel will not have the appropriate level of skills and knowledge to implement RTI in a manner that will ensure statewide consistency. The SED has a critical role in ensuring that school districts are knowledgeable of research-based interventions and in providing assistance to school districts implementing this process.

In preparing for the implementation of a district RTI process, local leaders should:

- Educate their members in regard to the RTI process.
- Make parent groups, such as the PTA, aware of the RTI process and to identify any potential impact on the provision of appropriate special education programs and services for their children.
- Work with school administrators in determining if an RTI process will be implemented locally and if so, create a team including but not limited to general education and special education teachers, other school personnel, administrators and parents to plan for its implementation, including the integration of this process into existing pre-referral interventions and the IEP eligibility and development process.

- Urge administrators to limit the use of the RTI process to those students with early grade reading problems and to pilot the implementation of the RTI process in selected schools and grades.
- Work with the district's Professional Development Plan Team to determine what training will be required to ensure the proper implementation of a RTI process in the district, including information on the roles and responsibilities of general and special education staff who will be involved in this process.
- Work with your labor relations specialist to ensure that the elements of a RTI implementation plan which may be subject to collective bargaining are appropriately addressed. For example, wages, hours and other conditions of employment such as workload, class size/caseload, transfer, reassignment, evaluation and professional development.
- Monitor district compliance with the RTI regulations if an RTI process is used in your district.

In the development of a district RTI process, local leaders should consider the following questions:

- What interventions (e.g. Reading First, Academic Intervention Services, pre-referral intervention programs, positive behavior support, etc.) exist at the local level that supports high-quality instruction for all students at risk for academic failure?
- What are the current structures within general education to support the implementation of scientific, research-based interventions?
- Is the implementation of an RTI process delaying referrals to the CSE?
- What professional development is needed to support members of the Committee on Special Education on decision-making skills with RTI concepts and practices?
- Is appropriate instruction provided to all students in the general education class by qualified personnel?
- Are screenings applied to all students to identify those not making academic progress at expected rates?
- Is instruction matched to student need with increasingly intensive levels of targeted intervention and instruction for students who do not make satisfactory progress?
- Are there repeated assessments of student achievement to determine if interventions are resulting in progress?
- How is information about a students' RTI used to make educational decisions about changes in goals, instruction, services and referrals to special education?
- Is written notification provided to parents when their child requires an intervention beyond that provided to all students?
- Are parents informed of their right to request an evaluation for special education?
- Has your district selected and defined the specific structure and components of the RTI program such as:
 - The criteria for determining the levels of intervention to be provided to students;
 - The types of intervention;
 - The amount and nature of student performance data to be collected; and
 - The manner and frequency for progress monitoring?

- Has your district taken steps to ensure that:
 - Staff have knowledge and skills necessary to implement a RTI program; and
 - The RTI program is implemented with fidelity?

Web-Based RTI Resources

The following list is not an exhaustive reference, but offers a sampling of web sites that can provide additional information on the RTI process:

- www.nysut.org
- www.aft.org
- www.nea.org
- RTI Action Network
 - <http://rtinetwork.org>
- National Association of State Directors of Special Education
 - <http://www.nasdse.org>
 - *Look for "RTI: Policy Considerations & Implementation" (2006)*
- IDEA Partnership
 - <http://www.ideapartnership.org>
- Council for Exceptional Children
 - <http://www.cec.sped.org/>
 - *Look for RTI Special Issue; Teaching Exceptional Children (Vol. 39; No. 5; May/June 2007)*
- Learning Disabilities Association of America
 - <http://www.ldaamerica.org>
- National Center on RTI
 - www.rti4success.org
- National Research Center on Learning Disabilities
 - <http://www.nrclld.org>
 - *Look for "Learning Disabilities Resource Kit: Specific Learning Disabilities Determination Procedures and Responsiveness to Intervention" (Winter 2007)*
- National Association of School Psychologists
 - <http://www.nasponline.org>
- The IRIS Center for Training Enhancements
 - <http://iris.peabody.vanderbilt.edu>
- OSEP IDEAs That Work (USDOE)
 - <http://www.osepideasthatwork.org>
 - *Look for "Tool Kit on Teaching and Assessing Students With Disabilities"*

APPENDIX - I

Part 117 of the Regulations of the Commissioner of Education is amended, effective October 4, 2007, as follows:

117.1 Scope of Part.

The purpose of this Part is to establish standards for the screening of every new entrant to the schools to determine which students are possibly gifted, have or are suspected of having a disability in accordance with subdivision (6) of section 3208 of the Education Law and/or possibly are limited English proficient in accordance with subdivision 2-a of section 3204 of the Education Law.

117.2 Definitions.

As used in this Part:

(a) A student who is suspected of having a disability shall mean a student who, on the basis of diagnostic screening, shows evidence of being a preschool student with a disability or student with a disability as defined in section 200.1 (mm) and 200.1(zz) of this Title respectively.

(b) A student who possibly is limited English proficient shall mean a student who, on the basis of diagnostic screening, appears to meet the definition of limited English proficiency as contained in section 154.2 of this Title.

(c) A student who is possibly gifted shall mean a student who, on the basis of diagnostic screening, appears to meet the definition of gifted and talented as contained in section 142.2 of this Title.

(d) New entrant shall mean a student entering the New York State public school system, pre-kindergarten through grade 12, for the first time, or reentering a New York State public school with no available record of a prior screening.

(e) A student with low test scores shall mean a student who scores below level two on either the third grade English language arts or mathematics assessment for New York State elementary schools. Those students exempted from testing as non-English-speaking shall be examined in the student's native language through similar procedures, and shall be screened for suspected disabilities if resultant scores are comparable to those indicated above.

(f) Diagnostic screening shall mean a preliminary method of distinguishing from the general population those students who may possibly be gifted, those students who may be suspected of having a disability and/or those students who possibly are limited English proficient.

(g) Health care provider means a duly licensed physician, physician's assistant, or nurse practitioner.

117.3 Diagnostic Screening.

(a) Each school district shall develop a plan for the diagnostic screening of all new entrants and students with low test scores. All new entrants and students with low test scores shall be screened in accordance with the plan.

(b) Such diagnostic screening shall be conducted:

(1) by persons appropriately trained or qualified;

(2) by persons appropriately trained or qualified in the student's native language if the language of the home is other than English;

(3) in the case of new entrants, such screening shall be conducted prior to the school year, if possible, but no later than December first of the school year of entry, or within 15 days of transfer of a student into a New York State public school should the entry take place after December first of the school year;

(4) in the case of students with low test scores, such screening shall be conducted within 30 days of the availability of the test scores.

(c) Diagnostic screening for new entrants shall include, but not be limited to:

(1) a health examination by a health care provider, or evidence of such in the form of a health certificate, in accordance with sections 903, 904 and 905 of the Education Law;

(2) certificates of immunization or referral for immunization in accordance with section 2164 of the Public Health Law;

(3) vision, hearing and scoliosis screenings as required by section 136.3 of this Title;

(4) a determination of development in oral expression, listening comprehension, written expression, basic reading skills and reading fluency and comprehension, mathematical calculation and problem solving, motor development, articulation skills, and cognitive development using recognized and validated screening tools; and

(5) a determination whether the student is of foreign birth or ancestry and comes from a home where a language other than English is spoken as determined by the results of a home language questionnaire and an informal interview in English and the native language.

(d) Diagnostic screening for students with low test scores shall include, but not be limited to:

(1) vision and hearing screenings to determine whether a vision or hearing impairment is impacting the student's ability to learn; and

(2) a review of the instructional programs in reading and mathematics to ensure that explicit and research validated instruction is being provided in reading and mathematics.

(i) Students with low test scores shall be monitored periodically through screenings and on-going assessments of the student's reading and mathematic abilities and skills. If the student is determined to be making sub-standard progress in such areas of study, instruction shall be provided that is tailored to meet the student's individual needs with increasingly intensive levels of targeted intervention and instruction.

(ii) School districts shall provide written notification to parents when a student requires an intervention beyond which is provided to the general education classroom. Such notification shall include: information about the performance data that will be collected and the general education services that will be provided; strategies for increasing the student's rate of learning; and the parents' right to request an evaluation by the Committee on Special Education to determine whether the student has a disability.

(e) The results of the diagnostic screening shall be reviewed and a written report of each student screened shall be prepared by appropriately qualified school district staff. Such report shall include a description of diagnostic screening devices used, the student's performance on those devices and, if required, the appropriate referral.

(f) A student who is suspected of having a disability shall be referred to the committee on special education or the committee on preschool special education, as appropriate, no later than 15 calendar days after completion of such diagnostic screening. Such referral shall be accompanied by the report of such screening.

(g) A student identified as possibly gifted shall be reported to the superintendent of schools and to the parent or legal guardian of such child no later than 15 calendar days after completion of such screening. Such referral shall be accompanied by the report of such screening.

(h) A student identified as possibly being limited English proficient shall be assessed in accordance with Part 154 of this Title.

Section 100.2(ee)(7) of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(ee) Academic Intervention Services...

(7) Notwithstanding the provisions of this subdivision, a school district may provide a response to intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided that:

(i) the RTI program is provided in a manner consistent with subdivision (ii) of this section;

(ii) the RTI program is made available at the grade levels and subject areas (reading/math) for which students are identified as eligible for AIS;

(iii) all students who are otherwise eligible for AIS shall be provided such AIS services if they are not enrolled in the RTI program; and

(iv) for the 2010-2011 school year, the school district shall submit to the department, no later than December 15, 2010, a signed statement of assurance that the services provided in the RTI program meet the requirements of this paragraph; and for each school year thereafter, the school district shall submit to the department no later than September 1st of such school year, a signed statement of assurance that the services provided under the district's RTI program meet the requirements of this paragraph.

Subdivision (ii) is added to section 100.2 of the Regulations of the Commissioner of Education, effective October 4, 2007 as follows:

(ii) Response to intervention programs. (1) A school district's process to determine if a student responds to scientific, research-based instruction shall include the following minimum requirements:

(i) appropriate instruction delivered to all students in the general education class by qualified personnel;

(a) appropriate instruction in reading shall mean scientific research-based reading programs that include explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies;

(ii) screenings applied to all students in the class to identify those students who are not making academic progress at expected rates;

(iii) instruction matched to student need with increasingly intensive levels of targeted intervention and instruction for students who do not make satisfactory progress in their levels of performance and/or in their rate of learning to meet age or grade level standards;

(iv) repeated assessments of student achievement which should include curriculum based measures to determine if interventions are resulting in student progress toward age or grade level standards;

(v) the application of information about the student's response to intervention to make educational decisions about changes in goals, instruction and/or services and the decision to make a referral for special education programs and/or services; and

(vi) written notification to the parents when the student requires an intervention beyond that provided to all students in the general education classroom that provides information about:

(a) the amount and nature of student performance data that will be collected and the general education services that will be provided pursuant to paragraph (2) of this subdivision;

(b) strategies for increasing the student's rate of learning; and

(c) the parents' right to request an evaluation for special education programs and/or services.

(2) A school district shall select and define the specific structure and components of the response to intervention program, including, but not limited to, the criteria for determining the levels of intervention to be provided to students, the types of interventions, the amount and nature of student performance data to be collected and the manner and frequency for progress monitoring.

(3) A school district shall take appropriate steps to ensure that staff have the knowledge and skills necessary to implement a response to intervention program and that such program is implemented consistent with paragraph (2) of this subdivision.

Section 200.4 of the Regulations of the Commissioner of Education is amended, effective October 4, 2007, as follows:

(j) Additional procedures for identifying students with learning disabilities.

(1) A student suspected of having a learning disability as defined in section 200.1(zz)(6) of this Part must receive an individual evaluation that includes a variety of assessment tools and strategies pursuant to subdivision (b) of this section. The CSE may not rely on any single procedure as the sole criterion for determining whether a student has a learning disability. The individual evaluation shall be completed within 60 days of receipt of consent, unless extended by mutual agreement of the student's parent and the CSE.

(i) The individual evaluation must include information from an observation of the student in routine classroom instruction and monitoring of the student's performance that was either done before the student was referred for an evaluation or from an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent, consistent with section 200.5(b) of this Part, is obtained. Such observation shall be conducted by an individual specified in paragraph (2) of this subdivision.

(ii) To ensure that underachievement in a student suspected of having a learning disability is not due to lack of appropriate instruction in reading or mathematics, the CSE must, as part of the evaluation procedures pursuant to section 200.4(b) and (c) of this Part, consider,

(a) data that demonstrate that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel;

and (b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(2) The determination of eligibility for special education for a student suspected of having a learning disability must be made by the CSE, which shall include the student's regular education teacher as defined in section 200.1(pp) of this Part and at least one person qualified to conduct individual diagnostic examinations of students (such as a school psychologist, teacher of speech and language disabilities, speech/language pathologist or reading teacher),

(3) A student may be determined to have a learning disability if, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards, the student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving; and

(i) The student either

(a) does not make sufficient progress to meet age or State-approved grade-level

standards in one or more of the areas identified in this paragraph when using a process based on the student's response to scientific, research-based intervention pursuant to section 100.2(ii) of this Title; or

(b) 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 CSE to be relevant to the identification of a learning disability, using appropriate assessments consistent with section 200.4(b) of this Part; and

(ii) The CSE determines that its findings under this paragraph are not primarily the result of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

(4) In addition to the criteria in paragraph (3) of this subdivision, the CSE is not prohibited from considering whether there is a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematical calculation and/or mathematical problem solving; provided that effective on and after July 1, 2012, a school district shall not use the severe discrepancy criteria to determine that a student in kindergarten through grade four has a learning disability in the area of reading.

(5) Specific documentation for the eligibility determination.

(i) When determining eligibility for a student suspected of having a learning disability, the CSE shall prepare a written report containing a statement of:

(a) whether the student has a learning disability;

(b) the basis for making the determination, including an assurance that the determination has been made in accordance with section 200.4(c)(1) of this Part;

(c) the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) the educationally relevant medical findings, if any;

(e) whether, consistent with paragraph (3) of this subdivision:

(1) the student does not achieve adequately for the student's age or to meet State-approved grade-level standards; and

(2) the student

(i) does not make sufficient progress to meet age or State-approved grade-level standards; or

(ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development;

(f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) if the student has participated in a process that assesses the student's response to scientific, research-based intervention pursuant to section 100.2(ii) of this Title:

(1) the instructional strategies used and the student-centered data collected; and

(2) the documentation that the student's parents were notified in accordance with section 100.2(ii)(1)(vi) of this Title.

(ii) Each CSE member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the CSE member must submit a separate statement presenting the member's conclusions.

APPENDIX - II



Dated July 27, 2007

This letter is in response to your letter of April 27, 2007, in which you request clarification of an issue addressed in the technical assistance document "Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)," released in January 2007 by the Office of Special Education Programs (OSEP) to clarify the final Part B regulations implementing the reauthorized Individuals with Disabilities Education Act (IDEA) of 2004.

You ask whether, in the event a local educational agency (LEA) (in a State that leaves the use of an RTI model for purposes of eligibility for specific learning disabilities (SLD) to each LEA) decides it will use an RTI model, as opposed to a severe discrepancy model, to determine whether a child is eligible for special education as a child with a SLD, must **every** school in the LEA (K-12) use the RTI model for SLD eligibility determinations before **any** school in the LEA is permitted to do so? You also ask if every school in an LEA must implement RTI for eligibility purposes, are there provisions in the IDEA that would allow a State and/or an LEA to pilot, or otherwise allow the use of an RTI model for eligibility determinations, only in selected schools in the State or LEA?

If the use of a process based on the child's response to scientific, research-based interventions, in identifying children with SLD is required, then all children suspected of having a SLD, in all schools in the LEA, would be required to be involved in the process. However, research indicates that implementation of any process, across any system, is most effective when accomplished systematically, in an incremental manner, over time. If an LEA chose to "scale up" the implementation of the RTI model gradually, over time, as would be reasonable, the LEA could not require the use of RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA. Therefore, it is unwise to require the use of a process based on the child's response to scientific, research-based intervention before implementation of that process has been successfully scaled up.

On the other hand, if the use of a process based on the child's response to scientific, research-based intervention, is not required but is permitted by the LEA, a school would not have to wait until RTI is fully implemented in all schools in the LEA before using RTI as a part of the identification of SLD. That is, if the LEA is **allowing, but not requiring** the use of RTI, and a particular school, using the criteria adopted by the State for determining whether the child has an SLD as identified in section 300.8(c)(10), is implementing an RTI process, consistent with the LEA's guidelines, it would not have to wait until RTI is implemented in all schools in the LEA before it could use information from an RTI process as part of the identification of children with SLD.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope you find this information responsive to your request. Please do not hesitate to contact me if you have further questions or if I can be of any further assistance.

Sincerely,
Patricia J. Guard
Acting Director
Office of Special Education Programs

APPENDIX – III

FACT SHEET

IDEA FACT SHEET #3 IDENTIFICATION OF SPECIFIC LEARNING DISABILITIES & RESPONSE TO INTERVENTION (RTI)



No. 7

April 2012

Federal Summary:

The IDEA no longer requires school districts to take into consideration whether a student has a severe discrepancy between achievement and intellectual ability in determining whether a student has a learning disability. Consistent with state criteria, school districts may now use the results of a student's **response to a scientific, research-based intervention** as part of the evaluation in determining whether a student has a learning disability. The term "response-to-intervention" (RTI) is not defined in the IDEA law or regulation.

Under the IDEA, school districts must establish a team of qualified professionals and the child's parents which is responsible for determining whether the student has a learning disability. In New York State, the Committee on Special Education (CSE) serves as the team responsible for determining whether a student has a learning disability. The school district is required to provide the parent with an evaluation report that includes the documentation of the student's eligibility. Each member of the eligibility team must certify in writing whether the report reflects the member's conclusion. If it does not, the group member must submit a separate statement presenting the member's conclusions.

New York State's Response

The Board of Regents recently amended the Regulations of the Commissioner of Education to implement the federal requirement that States must adopt criteria regarding the identification of learning disabilities which:

- Must not require the use of severe discrepancy between intellectual ability and achievement;
- Must permit the use of a process based on the student's response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures...

In New York State, while regulations allow the use of an RTI process, NYSUT worked to obtain additional protections including:

- *Districts must provide notification to parents when a student requires an intervention beyond that provided to all general education students including the parental right to initiate a special education referral;*
- *Districts must identify RTI criteria and the process for levels of intervention and progress monitoring;*
- *Districts must ensure staff has knowledge and skills to implement RTI with consistency and fidelity;*
- *A regulatory definition of research-based instruction in reading;*
- *Allowing additional time prior to prohibiting the use of the significant discrepancy criteria in reading for K-4 students by July 1, 2012 (SED originally proposed that this be implemented by 2010); and*
- *Not allowing the use of federally-permitted but undefined "other alternative research-based procedures."*

It is important to note that in New York State the Regents established RTI as an optional general education service in addition to the IDEA requirement. In fact, RTI is not defined in the Part 200 of Commissioner's Regulations that govern services for students with disabilities, but instead the definition is found in the Part 100 regulations detailing elementary and secondary education program requirements for all students.

Frequently Asked Questions

1. How does the district determine the existence of a specific learning disability?

According to the IDEA, the eligibility team (the CSE in New York State) may determine that a student has a specific learning disability, if:

- The student does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, **when provided with learning experiences and instruction** appropriate for the student's age or state-approved grade-level standards: oral expression; listening comprehension; written expression; basic reading skills; reading fluency skills; reading comprehension; mathematics calculation; mathematics problem solving.
- The student 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 students' **response to a scientific, research-based intervention**; or the student 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 a specific learning disability, using appropriate assessments; and

- The group determines that its findings are not primarily the result of: a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

2. What is the definition of "response-to-intervention (RTI)?"

Generally, response-to-intervention means a process of assessing a student's response to a high-quality instruction/intervention matched to a student's need, for the purpose of making educational decisions concerning a student suspected of having a learning disability. A response-to-intervention process could also involve a multi-tiered problem-solving process for schools to address the needs of all students struggling to meet higher learning standards. The following summary of the three tiered model of progressive interventions is excerpted from an AFT Fact Sheet on RTI:

Tier 1: Screening and Group Interventions - Student who are "at risk" are identified using universal screenings and/or results on state- or district-wide tests and could include weekly progress monitoring of all students for a brief period. These students receive supplemental instruction, or interventions, typically delivered individually or in small groups during the student's regular school day in the general education classroom. During that time, student progress is closely monitored. At the end of this period, the interventions for students showing significant progress in academic growth would no longer be needed.

Tier 2: Targeted Interventions - Students not making adequate progress in the regular classroom in Tier 1 are provided with more specifically-designed services. These interventions are more intensive in nature. These services are provided in addition to instruction in the general curriculum. These interventions are generally provided in small group settings. Students who do not respond to interventions or show progress in this tier are then considered for more intensive interventions as part of Tier 3.

Tier 3: Intensive Interventions and Comprehensive Evaluations - Students receive individualized, intensive interventions that target the student's skill deficits. Students who do not respond to these targeted interventions are then referred for an initial special education evaluation. Data collected during Tiers 1, 2 and 3 are considered in making the eligibility decision.

Note: At any point during an RTI process, parents are permitted under IDEA to request a formal evaluation to determine eligibility for special education. An RTI process cannot be used to deny or delay a formal evaluation for special education.

3. How is RTI used to determine eligibility for learning disability?

Following parental consent, the school district's Committee on Special Education (CSE) would arrange for a comprehensive individual special education evaluation. The student is assessed in all areas related to the suspected disability by members of the evaluation team. In an RTI process the assessments focus on the skills and abilities of the student and are linked to scientifically-based interventions. The student's response to a scientifically based intervention is only one component of the student's individual evaluation. Based on the evaluation results the CSE

would determine if the student has a learning disability based on the criteria described in the response to Question one of this document.

4. What does the RTI process mean for teachers and student?

Teachers, especially general education teachers, have a key role in identifying and responding to students with academic and behavioral problems. Since the RTI process does not require a student to demonstrate a significant learning problem before it is addressed teachers and other school personnel may be called upon to provide timely interventions and collect data measuring a student's progress as a part of a school district's general education intervention program. New and expanded roles for teachers include participation in designing the local RTI process, quality professional development opportunities, team collaboration, as well as learning new strategies to help students with learning problems.

Advice to Local Leaders

- Local Leaders should work with school administrators in determining if an RTI process will be implemented in the school district and if so, create a team including but not limited to general education and special education teachers, other school personnel, administrators and parents to plan for its implementation, including the integration of this process into existing pre-referral interventions and the IEP eligibility and development process.
- Local leaders should urge administrators to limit the use of the RTI process to those students with early grade reading problems and to pilot the implementation of the RTI process in selected schools and grades.
- Local leaders should work with the district's Professional Development Plan Team to determine what training will be required to ensure the proper implementation of a RTI process in the district, including information on the roles and responsibilities of general and special education staff who will be involved in this process.
- Local leaders should work with their labor relations specialist to ensure that the elements of a RTI implementation plan which may be subject to collective bargaining are appropriately addressed. For example, wages, hours and other conditions of employment such as workload, class size/caseload, transfer, reassignment, evaluation and professional development.

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APPENDIX - IV



May 2011

To: District Superintendents
Superintendents of Public Schools
Superintendents of State-Operated and State-Supported Schools
Superintendents of Special Act School Districts
Principals of Public, Nonpublic and Charter Schools
New York City Department of Education
Impartial Hearing Officers
Special Education Parent Centers
Regional Special Education Technical Assistance Support Centers
Commissioner's Advisory Panel for Special Education Services
Organizations, Parents and Individuals Concerned with Special Education

From: James P. DeLorenzo

Subject: A Response to Intervention (RtI) Process Cannot Be Used to Delay or Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)

This is to inform you that the United States Department of Education (USDOE), Office of Special Education Programs (OSEP) has issued guidance and clarification regarding the relationship between Response to Intervention (RtI) and evaluations pursuant to the Individuals with Disabilities Education Act (IDEA). Please share this memorandum and the attached federal guidance with appropriate staff, including Directors of Special Education, Committee on Special Education Chairpersons, Directors of Pupil Personnel Service, as well as Parent Teacher Associations. To access this guidance electronically, use the link under Attachment at the end of this memorandum.

RtI is a nationally recognized instructional process that begins with appropriate core instruction; early screening and identification of students who are struggling in academic and behavioral areas; targeted instructional strategies and supports to address learning problems; and continuous monitoring to assess their progress during instruction. New York State regulations define the components for an RtI process and establish parental notification requirements, including notification of a parent's right to refer a student for an initial evaluation if the parent suspects the student has a disability and needs special education. See 8 NYCRR section 100.2(ii).

New York State regulations also establish procedures for identifying students with learning disabilities (8 NYCRR section 200.4(j)) that recognize and encourage school districts to use the research-based RtI process prior to, or as part of, the individual evaluation to determine whether a student has a learning disability. Effective on and after July 1, 2012, an RtI process is required for all students in grades Kindergarten through grade four suspected of having a learning disability in the area of reading.

State and federal regulations require that if a student has participated in an RtI process, parents must be informed of their right to refer the student for an individual evaluation to determine whether the student has a disability and requires special education. Upon receipt of a referral from a parent, a school district must provide the parent with prior written notice informing the parent of the proposed evaluation and seek consent from the parent to conduct the individual evaluation. Upon receipt of such consent, the initial evaluation must be completed within 60 calendar days and may not be delayed unless the parent and the school district, by mutual written agreement, extend this timeline to another agreed upon date in order for the student to participate in the RtI process as part of the individual evaluation.

If a school district refuses to conduct the initial evaluation of the student upon a parental referral, the district must provide the parent with prior written notice and the parent has the right to request a due process proceeding if it disagrees with the decision. A school district may use the procedures in section 200.4(a)(8) if it does not believe the referral of the student is appropriate. Through these procedures, the school and the parent may reach agreement that the referral be withdrawn and that the student be provided additional general education support services.

Please review the attached federal guidance on this topic and your school district's procedures relating to individual evaluations. If you have general questions regarding implementation of RtI, please see the guidance document, "Response to Intervention: Guidance for New York State School Districts" at <http://www.p12.nysed.gov/specialed/RTI/guidance/cover.htm> and further information on the RtI Technical Assistance Center website at www.nysrti.org. Questions regarding this memorandum may be directed to the Office of Special Education Policy Unit at 518-473-2878.

Attachment Below:

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 21, 2011

Contact Persons:	
Name:	Ruth Ryder
Telephone:	202-245-7513
Name:	Deborah Morrow
Telephone:	202-245-7456

OSEP 11- 07

MEMORANDUM

TO: State Directors of Special Education

FROM: Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

SUBJECT: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)

The provisions related to child find in section 612(a)(3) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.

A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness.

While the Department of Education does not subscribe to a particular RTI framework, the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions.

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention¹. See 34 CFR §300.307(a)(2). OSEP continues to receive questions regarding the relationship of RTI to the evaluation provisions of the regulations. In particular, OSEP has heard that some LEAs may be using RTI to delay or deny a timely initial evaluation to determine if a child is a child with a disability and, therefore, eligible for special education and related services pursuant to an individualized education program.

Under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §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 an SLD; (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 an SLD. Although the regulations specifically address using the process based on the child's response to scientific, research-based interventions (i.e., RTI) for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate.

The regulations at 34 CFR §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, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8. 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 notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. 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

¹ The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel - 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke - 5-28-08; and Copenhaver - 10-19-07. Guidance related to the use of RTI for children ages 3 through 5 was provided in the letter to Brekken - 6-2-10. These letters can be found at <http://www2.ed.gov/policy/speced/guid/idea/index.html>.

LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c).

If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR §300.507 or filing a State complaint under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

We hope this information is helpful in clarifying the relationship between RTI and evaluations pursuant to the IDEA. Please examine the procedures and practices in your State to ensure that any LEA implementing RTI strategies is appropriately using RTI, and that the use of RTI is not delaying or denying timely initial evaluations to children suspected of having a disability. If you have further questions, please do not hesitate to contact me or Ruth Ryder at 202-245-7513.

References:

Questions and Answers on RTI and Coordinated Early Intervening Services (CEIS), January 2007
Letter to Brekken, 6-2-2010
Letter to Clarke, 4-28-08
Letter to Copenhaver, 10-19-07
Letters to Zirkel, 3-6-07, 8-15-07, 4-8-08 and 12-11-08

cc: Chief State School Officers
Regional Resource Centers
Parent Training Centers
Protection and Advocacy Agencies
Section 619 Coordinators

88904/DR/vp