

Appendix J – IDEA Federal Regulations Concerning Response to Intervention (RTI)

On August 14, 2006, the United States Department of Education, Office of Special Education Programs (OSEP) published final federal regulations to implement Part B of the Individuals with Disabilities Education Improvement Act (IDEA) that was reauthorized on December 3, 2004. The regulations will take effect on October 13, 2006. Below are excerpts from the federal regulations pertaining to using RTI to identify students with specific learning disabilities (SLD).

- **Scientifically Based Research Defined:** 34 CFR § 300.035 adopts the definition contained in No Child Left Behind: Scientifically based research-
 - a. Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
 - b. Includes research that--
 - (1) Employs systematic, empirical methods that draw on observation or experiment;
 - (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
- **RTI Allowed:** 34 § 300.307 requires states to allow the use of RTI as part of its specific learning disability (SLD) criteria. 34 CFR § 300.309(a)(2)(i) allows an evaluation group to determine that a student does not make sufficient progress in the SLD areas (discussed below) based on RTI data.
- **Early Intervening Services:** 34 CFR § 300.226(a) allows school district to use up to 15% of federal special education funds, minus any maintenance of effort reductions, in combination with other funds, to develop and implement coordinated early intervening services. This may include financing structures, for kindergarten through grade 12 students (with particular emphasis on students K-3) who are not currently identified as needing special education or related services, but need additional academic and behavioral support to succeed in a general education environment.

- **Early Intervening Services Activities:** 34 CFR § 300.226(b) states that early intervening services activities may include:
 - a. Professional development on scientifically based academic and behavioral interventions including instruction on the use of adaptive and instructional software; and
 - b. Educational and behavioral evaluations, services, and supports.

- **Screening:** 34 CFR § 300.302 provides that screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an evaluation for special education eligibility requiring parental consent.

- **SLD Areas:** 34 CFR § 300.309(a)(1) provides that to identify an SLD an evaluation must show that a student does not achieve adequately for his or her age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards, in one or more of the following areas:
 - a. Oral expression;
 - b. Listening comprehension;
 - c. Written expression;
 - d. Basic reading skills;
 - e. Reading fluency skills;
 - f. Reading comprehension;
 - g. Mathematics calculation; or
 - h. Mathematics problem solving.

- **Rule Out Other Factors:** 34 CFR § 300.309(a)(3) provides that in order to determine a student has SLD his or her lack of sufficient progress in the above areas may not primarily result from:
 - a. A visual, hearing, or motor disability;
 - b. Mental retardation;
 - c. Emotional disturbance;
 - d. Cultural factors;
 - e. Environmental factors or economic disadvantage; or
 - f. Limited English proficiency.

- **Appropriate Math and Reading Instruction:** 34 CFR § 300.309(b) requires an evaluation group ensure underachievement shown by a student suspected of having SLD is not due to a lack of appropriate instruction in math and reading and consider:
 - a. Data that demonstrate that prior to, or as part of, the referral process the student was provided appropriate instruction in the general education setting, 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.

- **Reporting Progress to Parents:** 34 CFR § 300.309(b)(2) requires that parents be provided documentation of the repeated assessments of achievement at reasonable intervals as described above.

- **Promptly Request Consent and Evaluate:** 34 CFR § 300.309(c) provides that a school district must promptly request parental consent to evaluate the student to determine if he or she needs special education and related services and must adhere to evaluation timeframes (unless extended by mutual agreement of the parents and a group of qualified professionals):
 - a. If, prior to referral, the student did not make adequate progress after an appropriate period of time when provided appropriate math or reading instruction (including repeated assessments of achievement at reasonable intervals); and
 - b. Whenever a child is referred for an evaluation.

- **Observation:** 34 CFR § 300.310 requires school districts to ensure that a student is observed in his or her learning environment, including the general education setting, to document the student's academic performance and behavior in the suspected areas of difficulty. When identifying SLD, an evaluation group should either use information from observation of the student in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after a referral has been made and consent obtained. In the case of a student who is less than school age or out of school an evaluation group member must observe the student in an environment appropriate for a student of that age.

- **RTI Eligibility Documentation and Specific Notice to Parents:** 34 CFR § 300.311(a)(7)(i) requires when using RTI, eligibility documentation must state the instructional strategies used and the student-centered data that was collected. 34 CFR § 300.311(a)(7)(ii) requires RTI eligibility documentation to contain a statement that parents were notified of:
 - a. State policies regarding the amount and nature of student performance data collected and the general education services that would be provided;
 - b. Strategies for increasing the child's rate of learning; and
 - c. The parents' right to request an evaluation.

- **SLD Determination:** 34 CFR § 300.311(a)(5) states that SLD evaluations determine whether the student does not achieve adequately for her or his age or to meet State-approved grade-level standards; and
 - a. The student does not make sufficient progress to meet age or State-approved grade-level standards; or
 - b. 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 evaluation group to be relevant to the identification of SLD using appropriate assessments consistent with evaluation procedures.