

***PA Guidelines for Identifying Students with Specific  
Learning Disabilities (SLD)***

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## **Introduction**

The following guidelines provide direction and assistance to schools, specifically multidisciplinary evaluation teams, conducting comprehensive evaluations for students who are suspected to have specific learning disabilities (SLD). The 2008 Chapter 14 special education regulations of the State Board of Education will be used throughout these guidelines as the critical source document of reference. The Pennsylvania regulations are based on and in some references go beyond the requirements of the federal Individuals with Disabilities Education Improvement Act (IDEA) 2006 regulations. Consequently, the IDEA regulations are also referenced to provide additional context for these guidelines.

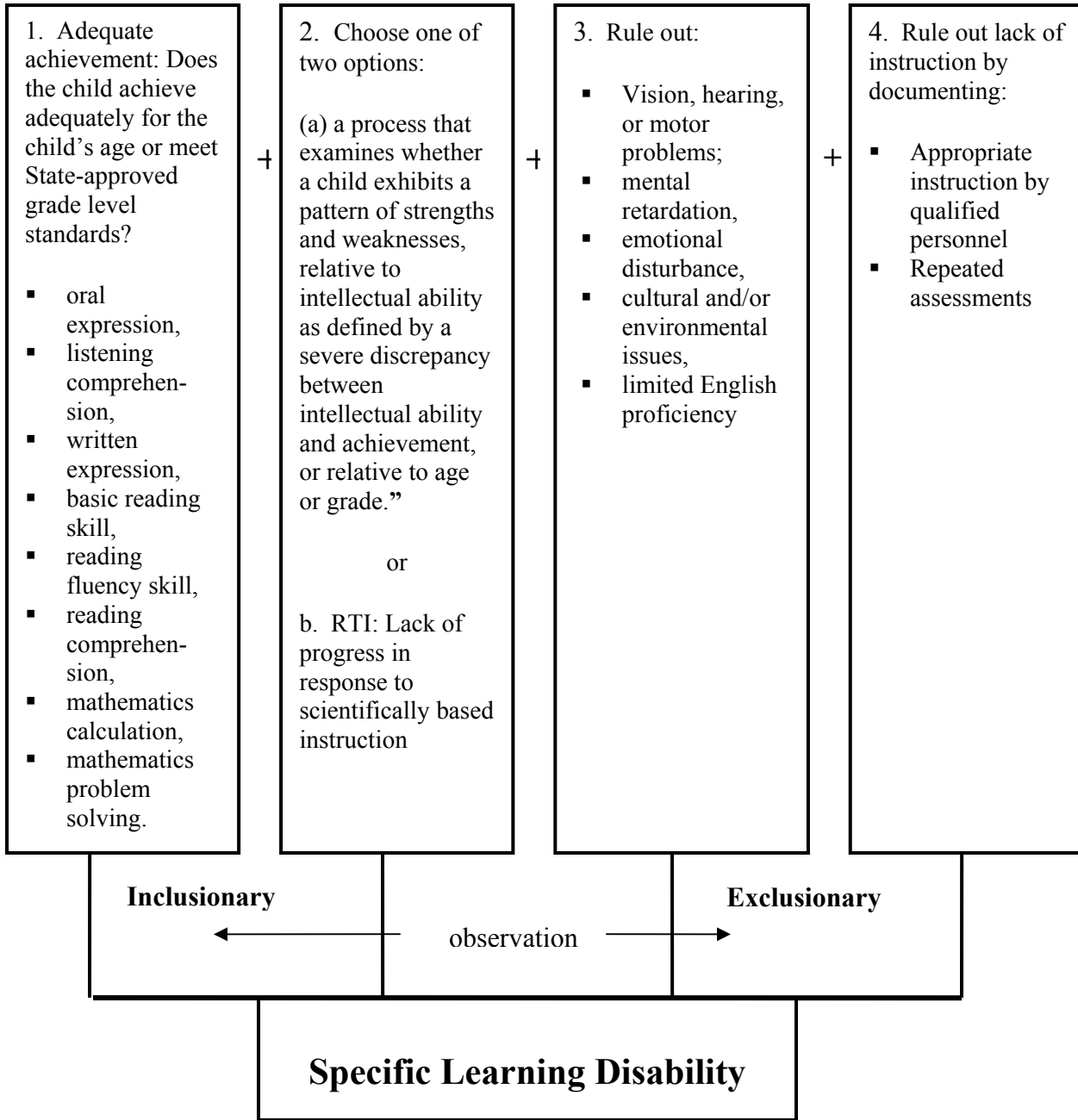
Response to Intervention (RtI) has been endorsed as one alternative to the aptitude-achievement discrepancy model for the identification of students with specific learning disabilities (SLD). The use of RtI data as part of the SLD identification process is a new and challenging aspect of the IDEA and Pennsylvania regulations. As such, extensive coverage will be given to this topic. The RtI option was included in the Federal regulations because of widespread criticisms of the ability-achievement discrepancy approach to identifying students with SLD. However, the federal regulations do not prohibit the use of the ability-achievement discrepancy approach, but only indicate that it may not be mandated by states. Consequently, both the RtI and ability-achievement discrepancy approaches are covered in these guidelines. Other proposed approaches to identifying students with SLD are not described in these Guidelines because they are not included in PA state regulations as an available option.

## **Overview of the SLD Criteria**

§14.125 of the Pennsylvania Special Education Regulations outlines the criteria for the determination of SLD. These criteria are derived from the federal IDEA regulations (§300.309). As indicated in Figure 1, there are four factors to consider when identifying a student as eligible for special education under the category of SLD. An assessment of each of these components is required to ensure that the evaluation is comprehensive, as required by federal and state rules. An evaluation team must determine if the student meets the inclusionary criteria of the SLD definition and rule out exclusionary factors of this disability category. The first inclusionary factor requires school districts to determine whether the student "...does not achieve adequately for the child's age or meet state-approved grade-level standards..." in eight areas of functioning. The second inclusionary factor provides districts with the option of choosing either RtI or the traditional ability-achievement discrepancy approach for SLD determination.

In regards to exclusionary factors, both the federal and state regulations require districts to document that the student's presenting academic and/or performance problems are not the result of a lack of instruction or of other disabilities or conditions. These exclusionary requirements pertain to all evaluations regardless of the option (RtI or discrepancy model) chosen by the district. A student must meet the criteria under each factor of the SLD definition in order to qualify as a student with specific learning disabilities.

Figure 1. Eligibility Criteria for Specific Learning Disability (SLD)



## **Pennsylvania's Criteria for the Determination of Specific Learning Disabilities**

This section describes the four factors for determining eligibility as a student with specific learning disabilities.

### 1. Adequate Achievement

The first criterion for a determination of SLD requires a multidisciplinary evaluation team to:

...address whether the child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child's age or state-approved grade levels standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving.  
(§14.125[a][1])

The regulation limits the construct of SLD to eight functional academic domains (oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem-solving). A multidisciplinary evaluation is required to determine if the student is not achieving adequately in one or more of these areas by evaluating all areas of presumed need (i.e., those domains that have been identified as of concern as a result of the screening process). Sources of data to document lack of achievement may include results of the benchmark assessments conducted as part of the screening process, progress monitoring data collected during the provision of early intervening services (cf. §14.122[a]), the student's performance on district-wide assessments (e.g., DIBELS, AIMSweb, 4Sight) or statewide tests of achievement (e.g., PSSA scores, PVAAS projection measures of growth), and norm-referenced tests of academic achievement. The evaluation team must determine whether RtI data from early intervening activities are sufficient to make the initial eligibility determination, or whether additional assessments are needed. For example, an evaluation team may have extensive data from the early intervening period regarding a student's oral reading fluency and comprehension, but may order an additional assessment of the student's written expression if it had not been assessed earlier, and was a referral concern. Multiple sources of data indexed (referenced) to national norms and/or state standards as well as the student's educational progress across years in school should be documented.

Multidisciplinary evaluation teams shall consider the extent to which a student is achieving adequately in one or more of the aforementioned areas. The regulations specifically state that the benchmark for consideration in determining the extent of adequacy is age or state-approved grade level standards. A student must be significantly below the performance level considered acceptable for the student's age or grade. For example, one meaningful benchmark might be the lowest level of proficiency on the PSSA. A student should be significantly below

this level to qualify under this criterion. For most students, to be significantly below proficiency on the PSSA would place them in the low “basic” or “below basic” range. However, no one benchmark or measure is sufficient under this criterion; the student should evidence inadequacy on multiple measures to qualify as a student with SLD. Local performance standards are not the standard against which the student should be judged for this criterion; rather state or national standards are the appropriate benchmarks. The student’s academic inadequacy under this criterion is not referenced to the student’s level of intelligence. Although students who display mental retardation are excluded from the definition of SLD (see below), an assessed discrepancy from a student’s IQ is not required for a student to meet the qualifications under this criterion. That is, the student’s IQ level is not considered the criterion against which the student’s academic performance is compared.

Neither the federal nor state regulations specifically indicate the extent to which a student must demonstrate inadequate performance/achievement (i.e., how deficient a student must be to qualify for special education under the SLD designation). Consequently, it is the responsibility of individual school districts to establish or define appropriate assessment parameters. Contemporary research has indicated that a score at the 30<sup>th</sup> percentile on nationally normed benchmark tests or individual tests of academic achievement is equivalent to a proficient score on most statewide tests. Therefore, to demonstrate inadequate achievement relative to this standard, a student should be significantly below this level (e.g., the 10<sup>th</sup> percentile) to meet the SLD qualification under this component.

There are two implications of this provision that must be considered by evaluation teams. First, students with intelligence levels in the “slow learner” range may not be excluded from having SLD if they display significantly inadequate academic achievement and if they meet the other criteria since intelligence level is not considered in this section of the current definition unless the school district is using the ability-achievement discrepancy approach. Conversely, students with high levels of intelligence must display inadequacies in relation to their age or the state standards for their grade in order to qualify for SLD under this criterion.

## 2. The Second Criterion: A Choice – The Rtl Process or Pattern of Strengths and Weaknesses/Discrepancy Model

The Pennsylvania regulations provide districts a choice between two options to determine students’ eligibility for SLD identification.

- a. Response to Intervention: “...a process based on the child's response to scientific, research-based intervention, which includes documentation that: the student received high quality instruction in the general education setting; research-based interventions were provided to the student; and the student(s) progress was regularly monitored.” (§14.125[a][2][i])

**or**

- b. Analysis of Strengths and Weaknesses: “...a process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined

by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.” (§14.125[a][2][ii])

### *Response to Intervention*

School districts choosing RTI as a criterion for identifying students with SLD must put in place a rigorous early intervening program and establish procedures for documenting student progress using ongoing assessment conducted during the early intervening period. School districts that opt for RTI are required to establish an early intervening program to guarantee the provision of scientifically based interventions delivered with fidelity as well as a system of ongoing assessment that is valid and reliable to be used for eligibility decision making. In Pennsylvania, the implementation of assessment and intervention in an RTI model has been conceptualized within a three-tier framework (appendix A). This framework includes:

- **Standards-aligned instruction:** All students receive high quality, research-based instruction in the general education standards-aligned system.
- **Universal screening:** All students are screened to determine academic and behavior status against grade-level benchmarks.
- **Shared ownership:** All staff (general education teachers, special education teachers, Title I, English as a second language, ESL) assume an active role in students’ assessment and instruction in the standards-aligned system.
- **Data-Based Decision Making.** A public, objective, and normative framework for guiding school decisions on instructional changes, choices of interventions and appropriate rates of progress.
  - Progress Monitoring: Continuous progress monitoring of student performance and use of progress monitoring data to determine intervention effectiveness and drive instructional adjustments, and to identify/measure student progress toward instructional and grade-level goals.
  - Benchmark and Outcome Assessment: Student progress is benchmarked throughout the year to determine level of progress toward monitoring and assessing the fidelity of intervention implementation.
- **Tiered Intervention and Service Delivery System:** Some students receive increasing intense levels of targeted scientifically, research-based interventions dependent upon student need. Instruction is differentiated to meet learner needs and consists of:
  - Research-based Interventions: Implementation of research-validated interventions with proven effectiveness based on assessed skill area and level of need.
  - Flexible grouping: Students move among flexible instructional groups based on need and skill mastery.
  - Fidelity of implementation: Teachers deliver curriculum and program content and use instructional strategies in the same way that they were designed to be used and delivered.
- **Parental Engagement:** Parents receive information regarding:
  - their child’s needs,
  - a description of the specific intervention and who is delivering instruction,
  - clearly stated intervention goals and academic progress expected for their child,



- the amount of time spent in each tier to determine whether the intervention is working,
- regular progress or lack of progress reports, and
- the right to request a special education evaluation at any time.

When considering student's eligibility for SLD designation, evaluation teams using RtI must consider three issues:

1. Did the student receive appropriate instruction in the general education setting?
2. Were research-based interventions provided at a high level of fidelity for a sufficient amount of time?
3. During multiple tiers of intervention, was the student' rate of improvement (slope of progress) significantly inadequate in relation to benchmarks?

These first two questions relate to the determination of the student's need for special education. The third question, when considered with the first criterion of inadequate performance/achievement in relation to grade-level standards, constitutes what has come to be referred to as dual discrepancy approach to identifying students with SLD. That is, a student can be considered to display an SLD when they demonstrate significantly inadequate academic performance (level) along with a significantly inadequate rate of improvement when provided with scientifically based interventions. The documentation required in response to these three questions is discussed below.

*Documentation of instructional sufficiency and fidelity.* Evaluation teams must have documentation that the student was provided with appropriate instruction in the general education setting. Further, they must document that students who fail to make adequate progress in the general education curriculum were provided with increasingly intensive interventions. Parameters for establishing appropriate instruction and scientifically based interventions are described later in this document. For the purposes of the determination of eligibility, evaluation teams must document that foundational, core instruction as well as strategic and intensive interventions were sufficient and were provided at a high degree of fidelity and for a sufficient length of time.

To document that the student received high quality instruction for a sufficient amount of time, the following factors should be assessed:

- Whether the general education curriculum is aligned to the Pennsylvania standards and has it been successful in bringing high percentages of students to proficiency.
- Whether the curriculum has been in place for a sufficient amount of time in the school.
- Whether the student's teachers were adequately trained in using the curriculum.
- Whether the student's teachers adequately used the prescribed instructional procedures and materials associated with the core curriculum.
- Whether the student's teachers used effective instruction methodologies and techniques (e.g., differentiation, scaffolding, teacher questioning, etc.).

- Whether the student was taught the curriculum for a sufficient amount of time.

There are a number of ways that these features can be documented. Commercially prepared or locally created checklists of critical features of the instructional program can be used by teachers as a self-check tool or among teachers as peer to peer checks. Administrators may also use these checklists to review lesson plans and during routine classroom visits and more formal observations. Documentation of the methods used and the outcome of the methods should be detailed in the evaluation report. The school principal or designee should provide input into the determination of these factors.

A similar level of documentation is needed for the scientifically based interventions that were provided beyond the general education classroom program during the early intervening period. In the evaluation report, the team should document that:

- Supplemental interventions used at the strategic (Tier 2) and intensive levels of intervention (Tier 3) are supported by scientific research. Interventions that feature a standard treatment protocol and are appropriate for the group of students receiving the intervention.
- Supplemental interventions have yielded successful responses and outcomes from other students receiving the intervention.
- Staff implementing the supplemental interventions were adequately trained and demonstrate proficiency with the interventions.
- The interventions were delivered with a high degree of fidelity and for a sufficient length of time, as evidenced by progress monitoring data. Specific information about the frequency and intensity of the interventions delivered should be documented.

Again, prepared checklists of critical features of all the supplemental interventions can be completed by interventionists (staff implementing the intervention) and verified by peers, reading or instructional coaches and or supervisory personnel (e.g., principal, curriculum supervisors). Documentation of the delivery of these interventions, including duration and frequency of the interventions, and rigorous adherence to the critical features of the interventions should be documented in the evaluation report.

*Determination of rate of improvement.* As indicated above, students displaying SLD under a dual-discrepancy model should not only demonstrate inadequacies in academic achievement in comparison to state standards, but also display an inadequate rate of improvement when presented with scientifically based interventions. The determination of rate of improvement presupposes that the student's progress has been monitored frequently and with fidelity during the early intervening period. Progress monitoring is a rigorous assessment technique that is based in research on applications of repeated measurement techniques featuring brief and frequent measurements of academic variables that are based on state standards and are highly predictive of performance on statewide tests. The National Center on Student Progress Monitoring has indicated that progress monitoring measures should include the following characteristics:

- acceptable psychometric characteristics (including reliability and validity),
- a number of alternate forms,
- sensitivity to the improvements in skill acquisition,
- ability to create linkages to instructional design,
- efficient administration.

It is important that school districts identify progress monitoring measures that meet these criteria. Curriculum-based measurement (CBM) is one such well-known and well-researched technique that can be used in this context. However, other methods of progress monitoring have been developed and may also be suitable. School districts are encouraged to visit the website of the National Center on Student Progress Monitoring at [www.studentprogress.org/](http://www.studentprogress.org/) for information about the characteristics of various progress monitoring options and to assist in identifying appropriate measures. As new measures of progress monitoring in other domains become available, practitioners need to evaluate carefully the evidence base to support their use. Once the evidence base is established, such measures may be added to the range of metrics use for decision making.

The frequency of progress monitoring is determined by the level of intensity of interventions. Students receiving supplemental (strategic) interventions (Tier 2) should be monitored at least twice per month. Students receiving intensive interventions (Tier 3) should be monitored at least weekly. Most progress monitoring metrics allow for two types of data displays, both of which are useful for guiding instruction and for determining the extent to which the student's rate of progress is inadequate as compared to other students. First, progress monitoring data may be graphed with various conventions used (e.g., aimlines, trendlines) to create a visual display of the student's Rtl. In addition, a quantitative index of the student's rate of improvement can be determined through the student's slope of progress. For example, in monitoring a student's progress in oral reading fluency, the evaluation team might calculate the number of words per minute per week the student gained during strategic and intensive interventions. There are a number of websites that provide detailed instructions and calculation aides for determining slope of progress, such as Vanderbilt University's IRIS Center ([www.iris.peabody.vanderbilt.edu/](http://www.iris.peabody.vanderbilt.edu/)), the Rtl Action Network ([www.Rtlnetwork.org](http://www.Rtlnetwork.org)), and the Association of School Psychologists of Pennsylvania ([www.aspponline.org](http://www.aspponline.org)).

Determining rate of improvement as a quantitative index is especially important in appraising the extent of the student's inadequacy in rate of progress as compared to other students. It is important to note the student's rate of improvement over the years in school to determine if there is a historical pattern of underachievement and poor response to instruction. Similar to the determination of level of deficiency, neither the federal nor state regulations currently or have ever specifically indicated how inadequate a student must be in terms of rate of improvement to qualify for special education under the SLD designation. Consequently, it is the responsibility of individual school districts to assure appropriate assessment parameters. As a general guide, researchers in CBM recommend a 2.0X discrepancy between a target student's rate of improvement and that of his/her age group as being indicative of a significantly deficient Rtl. For example, in oral reading fluency, a fifth grade student identified with SLD would have

rate of improvement of greater than 0.3 words per minute learned per week in comparison to the rate of 0.6 of the norm group. Most commercially available progress monitoring measures (e.g., DIBELS, AIMSweb) provide expected rates of progress for students in different grades against which an individual student's slope can be compared.

The existence of a student's inadequate response to scientifically based interventions is not sufficient to determine eligibility as SLD. Rather, to be identified with SLD, a student must not only display an inadequate rate of improvement in response to intervention, but must also display significantly inadequate academic achievement relative to age or grade level standards (i.e., the first criterion).

### Assessing Patterns of Strengths and Weaknesses (Discrepancy Model)

Districts that choose not to utilize an assessment of a student's RtI in the SLD identification process must use "...a process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between ability and achievement (Discrepancy Model) or relative to age or grade." (§14.125[a][2][ii])

The analysis of strengths and weaknesses will identify whether the student has a severe discrepancy between intellectual ability and achievement or whether the student has a severe discrepancy relative to age or grade.

Evaluation teams using assessment of patterns of strengths and weaknesses to determine the discrepancy between ability and achievement would continue to administer tests of intelligence to determine a student's IQ as well as norm-referenced tests of academic achievement so that the discrepancy between scores from the two measures can be appraised. Neither the federal or state regulations delineate the extent of the discrepancy that is needed for eligibility under the SLD designation. It remains the school district's responsibility to assure parameters for judging the extent of the discrepancy required for eligibility. The existence of an ability-achievement discrepancy is not sufficient to determine eligibility as SLD. Rather, to be identified with SLD, a student must not only display an ability-achievement discrepancy but must also be achieving significantly below age or grade level standards.

Evaluation teams using assessment of patterns of strengths and weaknesses to determine the discrepancy relative to age or grade must examine and document the extent to which the student's achievement or performance is discrepant from grade or age. For example the team may find that a student's reading standard scores on a nationally normed achievement test are significantly below his/her math, writing, and language scores. It remains the school district's responsibility to assure parameters for judging the extent of the pattern discrepancy required for eligibility. A possible criterion might be that the confidence intervals of the lower scores do not overlap the confidence intervals of the higher scores, thus indicating a significant difference in achievement. To be identified with SLD, a student must not only display a significant

discrepancy in pattern of scores but must also be achieving significantly below age or grade level.

#### *Choosing the RtI or Pattern of Strengths and Weaknesses (Discrepancy) Approach: Exceptions*

School districts must choose to use either the RtI or the pattern of strengths of weaknesses approach (discrepancy model) to determine a severe discrepancy between ability and achievement, or age or grade discrepancy. The choice must be documented in the special education plan to indicate which of the two options will be used in the district or in an individual school (pg.24).

However, a district may use both the RtI model and the discrepancy model in particular situations. A district with a plan to phase in RtI over a three- to five-year period may use RtI in one building and the discrepancy model in another. Districts may also choose to use RtI for SLD determination at the elementary level and the discrepancy model at the secondary level. These and other exceptions must be documented and approved through the Special Education Plan approval process.

It is also not appropriate for districts to require students to qualify for SLD of both RtI and discrepancy criteria. However, it is understood that some districts opting to use the discrepancy approach to determine SLD eligibility may be using RtI procedures, i.e. progress monitoring. In this case, it is appropriate to consider data gathered during the RtI process in the multidisciplinary evaluation. However, the inclusionary criteria would be lack of adequate progress in relation to state standards and a discrepancy between assessed ability and achievement, not the RtI data on rate of improvement.

Similarly, a district choosing the RTI option may continue to utilize other tests and assessment procedures in its evaluation of a referred student on a case-by-case basis. These procedures should be used when the evaluation team needs additional information to address specific referral questions (e.g., oral expression, listening comprehension), and to make appropriate decisions for the student. The team maintains the authority to order any type of assessment needed to inform the eligibility decision and develop an appropriate educational program for the student. However, the use of these instruments, especially those that assess a student's cognitive functioning, does not induce the district to use an ability-achievement discrepancy criterion in these cases. Rather, the essential criteria for identification for districts using the RtI option would be the student's lack of adequate progress in relation to state standards and the student's rate of improvement in response to scientifically based instruction, rather than the pattern of scores on the other assessment procedures.

#### Ruling Out Exclusionary Factors

The third criterion for determining whether a student qualifies for special education under the SLD designation is that the evaluation team has determined that "... its findings... are not

primarily a result of a visual, hearing or orthopedic disability, mental retardation, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency.” (§14.125[a]) The evaluation team must determine that the student’s academic deficiencies are not the result of these factors which are considered contra-indicators of SLD.

To rule out these factors, evaluation teams should document, in the evaluation report, evidence that each of these factors have been excluded from consideration in the screening process, or if necessary, conduct a more extensive evaluation to eliminate them from consideration. Each exclusionary factor is discussed in detail below.

*Visual impairment.* Vision screening is routinely conducted in Pennsylvania schools and is required by Pennsylvania Regulations (§14.122[b][1]). Health records in the school nurse's office should be consulted to determine if the screening results indicated a possible visual problem. If there are lingering concerns about vision, the student can be re-screened. If the screening indicates a possible visual problem, a referral to an optometrist or ophthalmologist would be indicated. If the student is found by the medical professional to have a visual impairment that is the primary cause of the student's academic difficulties, the student is excluded from consideration for SLD.

*Hearing impairment.* Hearing screening is also routinely conducted in the schools and is required by Pennsylvania Regulations (§14.122[b][1]). These records should be available and consulted by the evaluation team. If there are lingering concerns about the student’s hearing, the student can be re-screened. If the screening indicates a possible hearing problem, a referral to an audiologist for an audiological examination would be indicated. A student who is found to have a hearing impairment that is the likely source of the student’s academic difficulties cannot be considered as a student with SLD.

*Orthopedic disability.* Screening for orthopedic problems can be conducted by the school nurse or other health professional. If there are concerns that orthopedic problems may be the reason for the student’s academic difficulties, a referral to a physical or occupational therapist or other medical practitioner should be made. If the student is found to have an orthopedic disability that is causing their academic problems, that student cannot be identified as SLD.

*Mental retardation.* According to the IDEA, mental retardation is defined as “... significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.” (§300.7[b][6]) School psychologists have traditionally evaluated students for the possibility of mental retardation with measures of intellectual functioning and adaptive behavior. These methods remain the most valid way of determining this disability if there is concern that the student might have sub-average general intellectual functioning. However, it is also appropriate to screen out the possibility of mental retardation if the student displays clear evidence of general intellectual functioning in at least the low average range. For example, if the student displays inadequacies in reading, but performs proficiently in mathematics and otherwise displays appropriate adaptive behavior, the evaluation team may

choose to rule out mental retardation without administering intelligence tests or adaptive behavior measures. The rationale for this rule out should be included in the evaluation report. However, if there are concerns about significant cognitive and adaptive behavior difficulties, assessments of the student's cognitive functioning and adaptive behavior are recommended.

*Emotional disturbance.* Students with academic problems often display inappropriate and disruptive classroom behavior. Other students may have emotional problems that do not manifest themselves in externalizing behaviors. It is the responsibility of the evaluation team to determine if a student's academic difficulties are primarily caused by an emotional disturbance rather than SLD. Generally, emotional disturbance is screened through the use of behavior checklists or more comprehensive behavior rating scales. The evaluation team is responsible for ruling out these factors as causative for the student's academic difficulties. Essentially, for students who display behavior problems, the evaluation team must determine whether the student's learning problems are instigating the behavior problems, or whether underlying emotional problems are impacting the student's ability to acquire academic skills. The Special Education Regulations indicate that school psychologists must be involved in the evaluation of students being considered for emotional disturbance. Students whose academic difficulties are predominantly a result of emotional disturbance may not be identified as SLD.

*Cultural factors and limited English proficiency.* Students should not be identified as eligible for special education when the cause for their academic inadequacies is Limited English Proficiency or other cultural factors. Federal laws indicate that all students must be screened to determine if their primary home language is other than English. If so, the student's proficiency in the English language (listening, speaking, reading, writing) must be assessed by school personnel. Research has indicated that students who are English language learners (ELLs) take approximately two years to acquire basic interpersonal communication skills (BICS) and between five and seven years to acquire the cognitive academic language proficiency (CALP) that is required to function effectively in content subjects. Students who are in the process of learning English will often display academic deficiencies, especially if their education has been disrupted during an immigration experience. Similarly, ELLs may be particularly at risk for lack of instruction issues (see section below) if interventions that address their language issues have not been appropriately provided. Delays in the acquisition of academic skills that are the result of limited English proficiency are contraindications of SLD. In addition to language acquisition issues, students may also display academic deficiencies that are related to their acculturation experience in the United States. Multi-disciplinary evaluation teams need to weigh the relative impact of these language and cultural issues while not overlooking possible indications of SLD.

*Environmental or economic disadvantage.* The evaluation team must also assess whether issues regarding environmental or economic problems are the primary source of a child's academic deficiencies rather than SLD. Situations such as homelessness, child abuse, poor nutrition, and other factors may adversely impact a student's ability to learn. Interviews with the family and developmental histories are useful tools to assess these issues. In addition, chronic medical conditions, frequent absences, sleep disorders should be duly considered.

Whether these factors are impacting on the student's academic skills should be documented in the evaluation report, and may serve to rule out SLD.

### Ruling Out Lack of Instruction

Since 1997, the IDEA has included a provision that requires evaluation teams to determine whether academic inadequacies are the effect of a cumulative lack of instruction rather than SLD. The sentiment behind this provision has been the widespread concern that students who have not been effectively taught have been increasingly identified as having SLD. Although IDEA 1997 included a general provision regarding lack of instruction, IDEA 2004 was much more specific, especially in regards to reading:

“... a child shall not be determined to be a child with a disability if the determinant factor for such determination is... lack of appropriate instruction in reading, including the essential components of reading instruction as defined in section 1208(3) of the ESEA...” (§300.306[b][1][i])

In §1208(3) of ESEA the essential components of reading instruction are defined as phonemic awareness; phonics; vocabulary development; reading fluency, including oral reading skills; and reading comprehension strategies.

Pennsylvania's special education regulations require that evaluation teams:

(e)nsure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that: prior to or as part of the referral process, the child was provided scientifically-based instruction in general education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction. (§14.125[a][4][i])

Similarly, in the section on screening (§14.122), the Pennsylvania regulations indicate that school districts must provide a program of early intervening services that include:

(1) (a) verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.

(2) (f)or students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

(3) (f)or students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.



(4) (a) research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3).

(5) (r)epeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) (a) determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) (a) determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) (d)ocumentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.

Taking the federal and state regulations together, evaluation teams considering students for SLD eligibility must document the school's efforts to provide the student with scientifically-based instruction in the essential reading components as well as in mathematics. The regulations further require "observations of routine classroom instruction" to verify that appropriate instructional procedures are in place. Further, the screening process must include early intervening services in which academic skills and classroom behavior are assessed and linked to research-based interventions. It is important that the multidisciplinary evaluation team documents the extent to which the student has been provided with an appropriate standards-based core instructional program prior to being referred for evaluation. To document that effective instruction was conducted in the core standards-based curriculum and that the student was provided with appropriate and supplemental intervention services (in addition to the core program), the procedures described in the above section on assessing a student's Rtl are recommended. Procedures that districts may consider to assess the provision of appropriate instruction include:

1. the principal's observation of teacher performance through classroom visits and observations conducted during the instructional period for the targeted content/subject area on a regular basis,
2. checklists of integrity of instruction completed by teachers as self-check measures,
3. checklists of integrity of instruction completed among teachers as peer-check measures, and
4. completion of checklists by content specialists or curriculum supervisors working with classroom teachers.

If it is determined that there has not been a sufficient provision of standards-aligned curriculum and instruction as well as supplemental interventions of sufficient intensity, these programmatic features should be put in place for the student to determine whether they will result in improved academic performance.

It should be noted that these requirements pertain to *all* districts for *all* students being considered for SLD designation regardless of whether schools are using RtI as one of the eligibility criteria. In addition, although students who have a history of transience or school absence are especially at risk for gaps in their instruction, the assessment of lack of instruction applies to all students being considered for SLD.

In the section on screening, the regulations also require:

(s)creening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects. (§14.122[b][2])

School districts are now required to conduct universal screening for any students who might be eventually referred for determination of special education eligibility. Further, for any student referred for evaluation for SLD consideration, the results of these screenings must be provided to the child's parents. To comply with these provisions, districts should conduct screenings on all students from kindergarten to grade 12 in areas related to grade-appropriate standards and to have in place a system of providing results of these screenings to parents. A number of research-based screening instruments are currently in use throughout the commonwealth. A complete listing of these instruments is available in *Response to Intervention (RtI) in Pennsylvania: A Standards Aligned Strategy to Improve Student Achievement*. Although school districts are not required to use commercially available screening instruments, they should ensure that the instruments used for screening have the following characteristics:

- acceptable psychometric characteristics (including reliability and validity),
- a number of alternate forms,
- sensitivity to the improvements in skill acquisition,
- ability to create linkages to instructional design,
- efficient administration,
- useful summary documents (e.g, visual displays) that allow for ease of interpretation by teachers and parents.

Communicating with parents and safeguarding their rights is an important part of the screening process. Parents should be notified of the results of universal screening as well as of the interventions that are utilized with the student in the three-tier process. Movement between tiers should be discussed with the parents and results of progress monitoring should be shared on a regular basis. The results of progress monitoring, the data, should be shared in easily understood language (parent-friendly), without jargon, and should report the student's scores. In addition, the report should provide grade-level expectations so that parents have a way to compare their child's progress.

Pennsylvania's three-tier early intervening process provides for increasingly intense supports as the student fails to make adequate progress in response to robust interventions. Tier 1 (benchmark) includes the provision of standards-aligned, scientifically based curricula in the

general education program along with appropriately differentiated techniques of effective instruction to all students. Tier 2 involves the provision of supplemental, small group instructional strategies and methodologies and the use of standard-protocol interventions for students not achieving benchmark skill levels in addition to the standards aligned instruction in the core curriculum. Tier 3 intensive interventions are provided using standard-protocol instructional programs and strategies to address the needs of students who perform significantly below grade-level benchmarks. Tiers 2 and 3 are general education supports and are provided in addition to tier 1 foundational core instruction. Decisions about moving students through tiers of intervention are made by school-based teams. To ensure that students who are not making adequate progress are not delayed from receiving a comprehensive evaluation to determine their eligibility for special education; parents must be informed of their right to request an evaluation for special education services at any time. Upon receipt of a parent's written request for an evaluation, the school must provide the parent with the *Permission to Evaluate* form. Neither RtI nor pre-referral processes can be used to delay an evaluation. If a student is in the RtI process, the parent's request for an evaluation triggers the provision of the *Permission to Evaluate* form. The district cannot require the student to complete or move through all the RtI tiers prior to the issuance of the *Permission to Evaluate* form once the parent has made the request.

A critical decision for teams working with students who display inadequate academic performance and low rates of improvement is when to refer these students for a comprehensive evaluation. A general parameter is that students should be referred for evaluation for eligibility under the SLD category when their academic performance is significantly inadequate (below grade level) and their rate of improvement is so poor that they are unlikely to reach the acceptable level of proficiency within a pre-established time frame. The timeframe may vary based on student and situational variables. These variables may include the extent to which the student is performing below grade level or age benchmarks, the specific skill deficit (phonemic awareness, alphabetic principle, comprehension, fluency, vocabulary) or the student's school attendance. This assumes that students have received appropriate instruction and intensive interventions over a sufficient amount of time. Specifically, the team must decide whether a student's trend line will meet his/her goal line. Even if the student's trend line will eventually meet the goal line, if the intensity of the intervention is so great that it is above and beyond what is normally considered a tier 3 general education intervention, then the student could be referred for determination for special education under the identification of SLD.

The length of time that it is appropriate for students to receive early intervening services at tiers 2 and 3 before referral for evaluation will vary depending on factors such as:

- the student's initial or baseline performance level,
- the student's prior history of effective interventions,
- the stability of the student in the current school and instructional environment, and
- the intensity of the interventions.

Recent research with tier 3-level interventions has indicated that students can make meaningful gains in one or two 10-week intervals if the interventions are of sufficient intensity. However, this may vary depending on the factors identified above.

Procedurally, it is at this point of the three-tier process that permission to evaluate is requested from the parents (parents, however, may request an evaluation at any time). Permission for evaluation is not required during the three tiers of screening and early intervening, as these activities are part of the general education program. It is only when students are thought to be eligible for special education that permission for evaluation is required. Consequently, when the coordinating team decides that the student may need special education services in order to make appropriate progress (as described above), parental permission for evaluation should be requested. The permission form should include a request to evaluate the information collected during the screening and early intervening period for evidence of a disability and should also include descriptions of any additional assessment procedures needed by the team to answer referral questions and to make appropriate decisions for the student. Evaluations must be completed within 60 days of receipt of written parent permission to evaluate.

In summary, both the federal and Pennsylvania regulations, while not requiring that a school district utilize RtI as a criterion for the determination of SLD, do mandate that many of the essential features of RtI implementation be provided to all students and documented during the multidisciplinary evaluation process. Further, this documentation of effective standards-aligned core instruction, interventions supplemental to the core curriculum and regular screening of student's skills must be proactively and regularly provided to parents. These communications help to ensure that:

(s)creening or early intervening activities do not serve as a bar to the right of the parents to request an evaluation, at any time, including prior to or during the conduct of early intervening activities. (§14.122[d]).

The communications described above are intended to fully inform parents of their child's progress, or lack thereof, throughout the three-tier process. Parents of students requiring a comprehensive evaluation should, therefore, not be surprised by this communication when it occurs. Similarly, this communication enables parents to be fully informed of their rights to request an evaluation at any time.

### Observation of the Student

The federal IDEA regulations continue to require that school districts perform an observation of students being considered for SLD eligibility:

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.... The (evaluation team), in determining whether a child has a specific learning disability, must decide to— (1) Use

information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of (evaluation team) conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent.... (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (§300.310)

This requirement makes clear that classroom observations conducted during the early intervening period are sufficient to comply with the provision and should be documented by the evaluation team in the evaluation report. However, if a classroom observation has not been conducted prior to the referral for evaluation; the evaluation team must conduct an observation in the general education classroom and provide appropriate documentation in the evaluation report.

The regulations do not prescribe the type of observation to be conducted, however the following methods may be appropriate:

- behavioral observation procedures (e.g., event recording, time sampling, interval recording) that result in quantifiable results,
- methods that relate student's classroom behavior to instructional conditions and teaching practices (e.g., the Behavioral Observation of Students in Schools [BOSS], State-Event Classroom Observation Code [SECOS]).
- informal or anecdotal recordings that address referral questions, instructional practice and instructional fidelity.

These observations should assist in the documentation that appropriate instruction was provided, and also to inform the decisions about recommended instructional changes. Observations across instructional settings (e.g., different classes) are especially valuable, as are observations by different team members.

### Documentation of Eligibility

The law allows for students to be identified as having SLD using one of two evaluation models. Identification can occur through either the use of a discrepancy model or the use of a RtI model. Documentation required for the evaluation report in these two models differs slightly; however, much of the information is required for purpose of identification applies to either model. This section will outline the documentation required if the school district has elected to use the discrepancy model or the RtI model. It begins by outlining the information that needs to be documented regardless of the model used.

For both the discrepancy and the RtI model, the evaluation report will require information on eight separate topic areas. These areas are as follows:

1. The relevant behavior noted during the observation of the child.
2. The relationship of that behavior to the child's academic functioning.
3. Any educationally relevant medical findings.
4. The effects of the student's environment, culture or economic background.
5. Documentation that prior to referral for evaluation the student was provided with appropriate instruction by highly qualified personnel. Students with Limited English Proficiency require documentation that the English as a Second Language program and general education was aligned with the student's English proficiency level.
6. Data-based documentation, given to the parents, of repeated assessments at reasonable intervals reflecting progress.
7. An observation in the student's learning environment, including the general education classroom setting, documenting academic performance and behavior in the areas of difficulty.
8. Documentation regarding the rule-out statements. Required are statements that the conclusions of the evaluation team were not primarily a result of:
  - Visual, hearing, motor disability
  - Mental retardation
  - Emotional disturbance
  - Cultural factors
  - Environmental or economic disadvantage
  - Limited English Proficiency

These descriptions should provide information on whether these issues were excluded from consideration as a result of screening or whether more extensive evaluations were conducted.

*Documentation for teams utilizing the discrepancy model for eligibility decisions.* If the discrepancy model is used for SLD eligibility decision making, the multidisciplinary evaluation team must document the following:

1. The extent to which the student is not achieving relative to age or State grade-level standards, and
2. Whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability, achievement, or relative to age or grade.

In regards to the first criterion, the team should document all data collected on the student's level of academic achievement, including state tests (e.g., PSSA), local assessments, results of universal screening, and norm-referenced tests of academic achievement.

For the second criterion the team must follow one of two procedures. The first would be to use the discrepancy model in which the student is found to demonstrate a severe (severe is not further defined) discrepancy between ability (documented by administration of a standardized intelligence test) and achievement (demonstrated by administration of a standardized achievement test). The second possible procedure would be to identify a pattern of strengths

and weaknesses in achievement, performance or both relative to age or grade expectations. This might be demonstrated by a significant pattern of high and low scores on a standardized achievement test or some other form of pattern analysis.

*Documentation for teams utilizing the RtI model for eligibility decisions.* If the RtI model is used for eligibility decision making, the multidisciplinary evaluation team must document the following:

1. The extent to which the student is not achieving relative to age or State grade-level standards, and
2. The student's progress in response to scientifically based instruction.

In regards to the first criterion, the team should document all data collected on the student's level of academic achievement, including state tests (e.g., PSSA), local assessments, results of universal screening, diagnostic tests, classroom assessment and norm-referenced tests of academic achievement (if needed). The team should also note the student's initial (baseline) and end (terminal) levels of performance at the end of the intervention process.

In regards to the second criterion, the team should document the student's rate of improvement during the multi-tier early intervening period. Progress monitoring data including the arithmetic slope as well as a visual display of the student's data over the course of the intervention (e.g., progress monitoring graph) should be documented.

The multi-disciplinary team determines the assessments necessary to answer all referral questions, identify the need and strengths of students, and develop an appropriate IEP. The multi-disciplinary team may determine the need for additional testing even when RtI is used to determine SLD. The multi-disciplinary team may use additional assessments as necessary to assist the team in appropriate decision-making for the student.

#### Re-evaluation of Students with SLD

Districts/Schools using RtI to identify students with learning disabilities will follow the same re-evaluation procedures outlined in state regulations (Chapter §14.124) and federal IDEA regulations (§300.303, 304, 305.) Included in these regulations are requirements to conduct a reevaluation,

- if the public agency determines that the educational or related services ....warrant a reevaluation,
- at the request of a parent or teacher
- not more than once a year unless the parent and public agency agrees otherwise
- at least once every three years unless the parent and the public agency agree is unnecessary
- with the use of a variety of assessment tools and strategies.

- not using any single measure or assessment as the sole criterion for determining whether a child is a child with a learning disability
- using technically sound instruments

The reevaluation determines:

- if the student continues to have a disability and need specially designed instruction,
- the educational needs of the child,
- the present levels of academic achievement and related development needs of the child... ,
- the special education and related services
- if any additions or modifications to the special education and related services are needed

Please refer to the regulatory references above for a full description of reevaluation requirements and procedures.

### Special Considerations for Districts Choosing the RtI Option

The use of RtI in the identification process for SLD is only appropriate when the school district is delivering high quality instruction and interventions with fidelity and is precisely assessing the student's RtI. Schools can assess their readiness for using the RtI option using criteria that outline the components that must be in place and are necessary to fully implement a RtI program. Indicators of school readiness include:

- High quality standards-aligned curriculum and research-based instruction
- Universal Screening
- Shared ownership
- Tiered Intervention and Services Delivery System
- Data-based decision making
- Behavior
- Eligibility determination
- Parental engagement
- Leadership
- Professional Development

School districts electing to utilize RtI in the identification process are encouraged to seek training through PaTTAN and/or their intermediate unit in these components. A self-assessment checklist for these indicators is included in Appendix D and can be found on the PaTTAN website at [www.pattan.net](http://www.pattan.net). School districts may not use RtI as part of the identification process for SLD until appropriate readiness is documented and approved. (See the section on the Special Education Plan.)



## SLD Determination Procedures included in the Special Education Plan

The Pennsylvania regulations require that:

Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with §14.104(b) (relating to special education plans). §14.125(a)

School districts must demonstrate the capacity to use RtI for SLD determination. Each district will be required to submit a completed Response to Intervention (RtI): *Self Assessment and Readiness Planning Tool* (appendix D) to the Bureau of Special Education documenting full implementation of all RtI components including samples of evidence of student progress. Approval of the school district's RtI program must be received by the LEA to use RtI for SLD determination subsequent to July, 2008. School districts may apply to use RtI for SLD determination via their special education plan or a plan amendment. Districts must provide a detailed description of their RtI process in the plan, attaching the RtI self-assessment. RtI readiness shall be judged by the extent to which the district/school has implemented the components of the PA RtI framework including a research-based standards-aligned curriculum, use of benchmark measures at least three times a year in literacy and math, progress monitoring of at-risk students (Tier 3) at least every two weeks, a three tier model of intervention, research-based standard protocol interventions and other research-based intervention materials. Districts must document procedures for data-based decision making including a system for teacher/staff collaboration around data for instructional design and adjustments. A detailed description of professional development for staff on the components of response to intervention is required.

The Bureau of Special Education will release a PennLink in early fall 2008 outlining the specific documentation required for districts to apply to use the RtI option for SLD eligibility determination.

The Office of Special Education Programs (OSEP) of the federal Department of Education has acknowledged in a letter to the field (see Appendix E) that establishing readiness for RtI is a multi-year process and some school districts may find that certain schools are ready to implement RtI before others. For example, a district may identify its elementary schools are ready to implement RtI, but not its secondary schools. The OSEP letter makes clear that districts may implement RtI in its eligibility decision-making in some schools and not others depending on their levels of readiness.

School districts may also indicate special circumstances in their special education plans in which their typical procedures for identifying students with SLD will be altered. For example, if a parent of a student in a private school requests an evaluation to determine eligibility for special education and a district that is using the RtI option is not able to assess the student's RtI in the

private school environment, it may stipulate in its special education plan that the discrepancy approach will be used in these circumstances.

## **Appendices**

- A. RtI Fact Sheet
- B. Frequently Asked Questions (FAQs)
- C. Early Intervening Services (EIS)
- D. RtI Readiness and Implementation: Self Assessment Tool
- E. OSEP Correspondence



# Response to Intervention (RtI): What it is and what it's not!

## I. Legal Reference

*IN GENERAL* - when determining whether a child has a specific learning disability... a local educational agency may use the discrepancy model to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning...

*...ADDITIONAL AUTHORITY* - In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures. (IDEA 2004)

## II. Definition

RtI is an **early intervening strategy** and carries dual meaning in Pennsylvania. It is a comprehensive, multi-tiered, standards aligned strategy to enable early identification and intervention for students at academic or behavioral risk. RtI may be considered as one alternative to the aptitude-achievement discrepancy model for the identification of students with learning disabilities after the establishment of specific progress measures.

RtI allows educators to identify and address academic and behavioral difficulties prior to student failure. Monitoring student response to a series of increasingly intense interventions assists in preventing failure and provides data that may guide eligibility decisions for learning disabilities. **The goal of RtI is to improve student achievement using research-based interventions matched to the instructional need and level of the student.**

### RtI is a(n):

- data-driven process to improve reading and math achievement within a standards aligned instructional system.

- general education led effort implemented within the general education system, coordinated with all other services including special education, Title I, ESL, Migrant Education, Reading First, School Improvement.
- system to provide instructional intervention in reading and mathematics, immediately upon student need.
- alternative approach to the diagnosis of a Specific Learning Disability (SLD). Instead of only using the well-known aptitude-achievement discrepancy model, local educational agencies may use this diagnostic alternative to identify SLD.
- process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

### RtI is Not a(n):

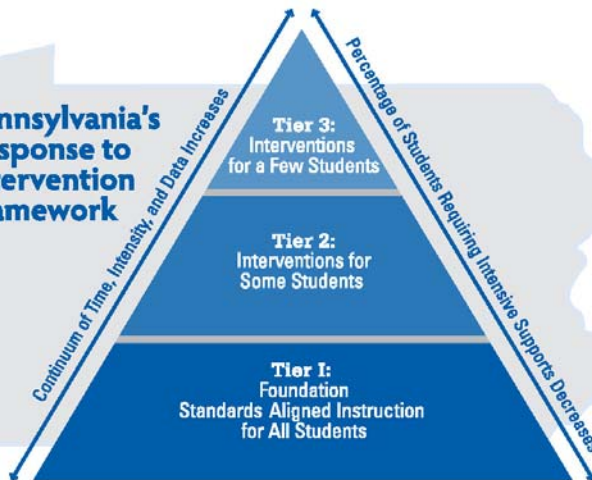
- pre-referral system
- individual teacher
- classroom
- special education program
- added period of reading instruction
- separate, stand-alone initiative

## III. Core Characteristics of RtI

- **Standards aligned instruction:** All students receive high quality, research-based instruction in the general education standards aligned system.
- **Universal screening:** All students are screened to determine academic and behavior status against grade-level benchmarks.
- **Shared ownership:** All staff (general education teachers, special education teachers, Title I, ESL) assume an active role in students' assessment and instruction in the standards aligned system.
- **Data-Based Decision Making:** Student performance data is analyzed to guide school decisions on instructional changes, choices of interventions, and appropriate rates of progress.
  - **Progress Monitoring:** Continuous monitoring of student performance and use of data to determine intervention effectiveness and drive instructional adjustments, and to identify/measure student progress toward instructional and grade-level goals.
  - **Benchmark and Outcome Assessment:** Student progress is assessed periodically throughout the year, and at the end of the year against grade level benchmarks and standards.

- **Tiered Intervention and Service Delivery System:** Some students receive increasing intense levels of targeted scientifically, research-based interventions. Instruction is differentiated to meet learner needs and consists of:
  - **Research-based Interventions:** Interventions with proven effectiveness are matched to students' level of need.
  - **Flexible grouping:** Students move among flexible instructional groups.
  - **Fidelity of Implementation:** Teachers deliver curriculum and program content and use instructional strategies in the same way that they were designed to be used and delivered.
- **Parental Engagement:** Parents receive information regarding their child's needs, including:
  - a description of the specific intervention and who is delivering instruction,
  - clearly stated intervention goals and academic progress expected for their child,
  - regular progress or lack of progress reports, and
  - the right to request a special education evaluation at any time.

## Pennsylvania's Response to Intervention Framework



The National Research Center on Learning Disabilities (NRCLD, 2006) defines RtI as: "an assessment and intervention process for systematically monitoring progress and making decisions about the need for instructional modifications or increasingly intensified services using progress monitoring data."

### Tier 1: Foundation/Standards Aligned Instruction for All Students

**Definition:** Standards aligned instruction and schoolwide foundational interventions are provided to all students in the general education core curriculum. Tier I also is used to designate instructional interventions for students who are making expected grade level progress (benchmark students) in the standards aligned system and who demonstrate social competence.

#### Foundation/Benchmark Interventions

- High quality, effective instruction designed to engage and challenge students
- Clear and high expectations for student learning and behavior
- Effective support to enhance student engagement in the learning process and to promote school completion
- 4Sight benchmark assessments or other periodic progress monitoring benchmark assessments

### Tier 2: Strategic Interventions for Some Students

**Definition:** Academic and behavioral strategies, methodologies, and practices designed for some students who are not making expected progress in the standards aligned system and who are **at risk** for academic and behavioral failure. Students require additional academic and behavioral support to successfully engage in the learning process and succeed in the standards aligned system.

#### Strategic Interventions

- Standards aligned instruction with supplemental, small group instruction which may include specialized materials
- Use of standard protocol interventions - A standard protocol intervention is scientifically research-based and has a high probability of producing change for large numbers of students. It is usually designed to be used in a standard manner across students and is typically delivered in small groups.
- Scientifically research-based interventions
  - Academic content areas (reading, mathematics)
  - Behavior
- Specialists assist with strategic instruction in the general education classroom and small group instruction as needed

### Tier 3: Intensive Interventions for a Few Students

**Definition:** Academic and behavioral strategies, methodologies and practices designed for a few students who are significantly below established grade-level benchmarks in the standards aligned system or who demonstrate significant difficulties with behavioral and social competence.

#### Intensive Interventions

- Use of standard protocols interventions
- May use supplemental instructional materials for specific skill development
- Small intensive, flexible groups
- Additional tutoring provided by specialists as part of the school day
- Instructional changes based on data based decision making

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## Frequently Asked Questions (FAQs)

1. **Question:** May school districts opt for both Rtl and the ability-achievement discrepancy approach to identifying SLD?

**Answer:** *In a letter dated July 27, 2007, the Office of Special Education Programs (OSEP) of the U.S. Department of Education indicated that Rtl should be used in the eligibility decision-making process after the requisite system for implementing research-based interventions is in place. It acknowledged that school districts would likely go through a period of gradually “scaling up” their readiness for Rtl in various schools, and gave the opinion that some schools in a district could therefore use Rtl in their eligibility determination, while other schools withheld their use of Rtl until they had established appropriate readiness. It can therefore be presumed from this letter that those schools not using Rtl would continue to use the ability-achievement discrepancy. (OSEP letter is attached in Appendix E.)*

2. **Question:** How should a district respond to a parental request for evaluation when the district uses a Rtl approach? Must “testing” be done?

**Answer:** Upon receipt of the parent request for evaluation, the LEA must respond by either:

- 1) Issuing the *Permission to Evaluate* to obtain informed consent and upon written approval move forward to conduct the evaluation or,
- 2) Issue the *NOREP/PWN* informing the parent that the LEA is declining to evaluate the child, the reason for the refusal and providing the parents procedural safeguard notice informing of them of their right to challenge the decision via due process.

As indicated in the guidelines, districts may choose to use a Rtl approach in lieu of an assessment of the student's ability-achievement discrepancy. If the Rtl approach is approved as a component of the SLD identification process in the district's special education plan, then a district should respond to a parent's request for evaluation by moving forward with its comprehensive evaluation of SLD eligibility as it is typically accomplished in the district. So, the district's evaluation team would assess the student's deficiency in relation to age or grade-approved standards and the student's Rtl, and also rule out the exclusionary factors and lack of instruction. It would not be required to perform additional testing that would be used in an ability-achievement format. IDEA is quite clear in this regard:

(W)hen determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. (34 CFR 614[b][6][a])

3. **Question:** How do you measure rate of improvement?

**Answer:** Rate of improvement is the amount of improvement divided by the time devoted to it. An example is the number of words a student obtains divided by the number of weeks of instruction needed to learn those words. Rate of improvement is demonstrated by a student's progress slope. This slope compares the student's progress in response to the interventions, compared with CBM benchmarks, state standards, other students in the same age/grade group, and/or an expected rate of progress for peers. A number of commercially available progress monitoring tools include norms on rates of improvement (slope) on various indicators (e.g., oral reading fluency) for students at various grade levels.

4. **Question:** How do you measure and analyze fidelity?

**Answer:** Successful RtI systems must consistently maintain high levels of fidelity in the implementation of both interventions and progress monitoring. This means that the intervention plans are applied consistently. Professional development is important in initially establishing and maintaining fidelity. Direct and indirect assessments of the implementation of major components of interventions will allow school districts to measure and analyze fidelity to determine the professional development needs of staff. This reiterates the importance of using a limited number of research-based interventions so school districts are working with a common understanding of what the intervention "looks like" and can support effective implementation in the classroom. This analysis is usually conducted at the building level often by the school principal. Direct assessment of the fidelity of implementation is done through observation during implementation and task analysis of staff's use of the major components. Indirect assessment is conducted through staff's self-reporting, interviews and documentation. Indirect assessment should focus on the staff's knowledge of components (often documented through a checklist) and gap analysis to determine when components were and were not used properly.

5. **Question:** Can parents request an independent educational evaluation (IEE) at public expense when a school district has chosen to implement a RtI system?

**Answer:** Yes, an IEE request is a process specific to special education and is available when a parent disagrees with the special education evaluation completed by the school district. When school districts choose to implement an RTI system, parents maintain the right to request an IEE at public expense in accordance with IDEA (§ 300.502). If a district has established RTI as an alternative to the determination of an ability-achievement discrepancy in accordance with §300.307(1) and (2), the IEE should use RTI procedures rather than an assessment of ability and achievement.

6. **Question:** When should a school district initiate a special education referral in a Rtl system?

**Answer:** A school district should initiate a referral when it obtains information to cause it to suspect that a student has a disability *or* when a parent or any other person makes a referral requesting that a student be evaluated for special education services. A school district's child find responsibilities do not end when the district chooses to implement a Rtl approach. Parents, teachers or any interested persons may also initiate a referral at any time if they believe a child requires special education services. Non-responsiveness at Tier III represents a baseline within a Rtl system when a disability should be suspected absent other information. However, school districts may not require that a student demonstrate non-responsiveness at Tier III before initiating a referral.

7. **Question:** If a student is determined not eligible for special education services, how long may that student continue to receive the intensive interventions provided at Tier III?

**Answer:** The amount of time students receive interventions is determined by student data. Students who enter Tier III should initially receive at least two full attempts of intensive interventions in order to determine if that student is non-responsive, however student data will inform this decision. When students are determined ineligible for special education, school districts should then determine the appropriate intervention(s) and the intensity of the intervention(s) that best match the needs of the student. Students receive these interventions until data indicate the need for a change due to the student's progress (responsiveness to intervention) or lack of progress (non-responsiveness to the intervention). Students who have been determined ineligible for special education services but continue to insufficiently progress may be re-referred for special education.

8. **Question:** How might specially designed instruction (SDI) differ from the Tier III interventions a student may have been receiving prior to qualifying for special education services?

**Answer:** Interventions and services a student receives once determined eligible for special education services will vary with each individual student. If a student has been unsuccessful with two attempts of Tier III interventions, the student's SDI may look similar to those Tier III interventions except the instruction will be more intense, provided with an increased frequency and duration, and adapted to meet the student's unique needs.

9. **Question:** How should a school district using Rtl proceed when it suspects that a student who was previously determined eligible using the discrepancy model requires special education services in additional areas of the curriculum?



**Answer:** If the RtI process reveals that an eligible student is suspected of requiring special education services in an additional area, the district may reevaluate the student using RtI data and additional assessment data if needed.

10. **Question:** Can a school district use RtI data to support the decision that a student has a disability in a special education disability category other than SLD?

**Answer:** Yes. RtI data may be included when considering criteria in other categories. However, the information included in the evaluation report must be comprehensively sufficient to address each area of suspected disability. Therefore, RtI data may not be the sole source of information but may supplement information provided for suspected disabilities in categories other than SLD.

11. **Question:** May a school/district using the RTI option for identifying students with learning disabilities use the ability-achievement discrepancy approach for students in non-public schools.

**Answer:** Yes. Schools using the RTI option for identifying students with learning disabilities may use the ability-achievement discrepancy approach for students in non-public schools since public schools lack the authority to require non-public schools to use response to intervention. Further, public schools lack the ability to assess a student's response to intervention in the non-public school including instructional fidelity/sufficiency, the development and implementation of tiered interventions or progress monitoring procedures.

## Early Intervening Services (EIS) and Response to Intervention (RtI)

### I. Early Intervening Services

**Definition:** Early Intervening Services (EIS) is a set of coordinated, services for students in kindergarten through grade 12 who are **not** currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

**Legal Authority:** *An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. [34 CFR 300.226(a)] [20 U.S.C. 1413(f)(1)] In implementing coordinated, early intervening services under 34 CFR 300.226, an LEA may carry out activities that include:*

- *Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based<sup>2</sup> academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and*
- *Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. [34 CFR 300.226(b)] [20 U.S.C. 1413(f)(2)]*

*EIS may not delay the evaluation of a child suspected of having a disability.*



## ***Response to Intervention (RtI) Readiness and Implementation: Self Assessment Tool***

This self-assessment tool is intended to assist schools/districts to determine initial readiness and next steps toward implementation of Pennsylvania's Response to Intervention (RtI) strategy for meeting the learning needs of ALL students. The overarching purpose of RtI implementation is to improve educational outcomes for all students.

The tool addresses **10** indicators of the current level of implementation (LOI). The tool may be used by individual school staff and/or be used by a school team to stimulate group conversations and to formulate a school profile. Rate your school's current level of implementation using a three point scale (1=low, 2=medium, 3=high). To determine "next steps" it is important not only to gauge the current implementation status of each item, but to also determine its relative priority. Two basic planning formats have been provided at the end of the checklist to document specific actions around the top priority items. These priority actions become the school's RtI focus for the academic school year.

### **Foundational principles underlying this RtI strategy:**

- RtI is one of many school improvement strategies in a standards aligned system and is a part of, not separate from, the school's comprehensive school improvement plan
- It relies on the premise that all students receive research-based and standards-driven instruction in general education.
- The learning of all students is assessed early and often (ongoing progress monitoring).
- If there are concerns about student progress, increasingly intense tiers of intervention are available to groups or individuals.
- Individual student data gathered through the process may be used to determine appropriateness of a special education referral (e.g., in the case of students who do not respond adequately to intervention or who require ongoing intensive intervention in order to sustain growth) and as part of a comprehensive evaluation for determination of eligibility.

LOI	Indicators of School Readiness	PR
	<b>HIGH QUALITY STANDARDS-ALIGNED CURRICULUM AND RESEARCH-BASED INSTRUCTION</b>	
	<p>1. General education core curriculum and instructional practices are aligned to the PA standards and are research based.</p> <ul style="list-style-type: none"> <li>• Reading: Addresses 5 big ideas (phonemic awareness, decoding, fluency, vocabulary, comprehension) <ul style="list-style-type: none"> <li>○ 90+ uninterrupted minutes minimum per day</li> </ul> </li> <li>• Math: Addresses math content standards (numbers and operations, measurement, geometry, algebraic concepts, data analysis and probability) and the five strands of mathematical proficiency (conceptual understanding, procedural fluency, strategic competence, adaptive reasoning, and productive disposition). <ul style="list-style-type: none"> <li>○ 60+ uninterrupted minutes minimum per day.</li> </ul> </li> <li>• Behavior: Includes school wide behavioral expectations with 3-5 Big Rules. Positive behavior is actively reinforced.</li> <li>• A system is in place to ensure core instruction is delivered with fidelity and includes routine fidelity checks and a feedback system to improve teaching practices.</li> </ul>	
	2. All staff general, remedial and special education participates in the design and delivery of core instruction.	
	3. Instruction is systematic, explicit, and follows research-based effective teaching principles.	
	4. Teachers are skilled in the use of effective instruction including techniques to differentiate instruction to meet diverse learning needs.	
	<b>UNIVERSAL SCREENING</b>	
	<p>1. A system is in place to assess the strengths and challenges of all students in academic content areas. All students are screened, benchmarked a minimum of three times per year to determine academic and behavior status against grade-level standards.</p> <ul style="list-style-type: none"> <li>• Screenings are research-based, predictive of future performance on standards, and benchmarked.</li> <li>• Efficiently administered by trained staff.</li> <li>• Administration fidelity is monitored.</li> </ul>	
	<p>2. Screening data is shared with administrative teams, grade level teams, student specific teams and parents, and:</p> <ul style="list-style-type: none"> <li>• Maintained in a database which generates user friendly summaries of data.</li> <li>• Graphed for easy display, analysis and interpretation.</li> <li>• Demonstrates the degree of risk for individual students and groups of students at specific grades.</li> </ul>	
	3. Grade level teams analyze screening data in a timely manner (within one week of administration) to design and adjust instruction using a structured team facilitation process and format.	
	<b>SHARED OWNERSHIP</b>	
	<p>1. All staff (general, special, remedial, ESL) assumes an active role in all aspects of assessment, curriculum and instruction in the standards aligned system.</p> <ul style="list-style-type: none"> <li>• All staff own and share all students.</li> <li>• Training is provided to staff assuming non-traditional roles in the RtI instructional framework.</li> <li>• All role changes are strategically planned and supported with appropriate training and coaching.</li> </ul>	
	2. School resources and staff expertise are allocated based on student need. Expert teachers and specialists are assigned to the most needy students.	
	<b>Data-based Decision Making</b>	
	1. Building, grade level and student-centered teams meet collaboratively to review assessment data and make instructional decisions.	

	<ul style="list-style-type: none"> <li>• Teachers receive user-friendly data in advance.</li> <li>• A structured team facilitation process and format are used.</li> </ul>
	<p>2. Grade level teams set measurable grade-wide goals, develop and implement strategies to achieve these goals, and monitor student progress toward these benchmark goals (i.e. _____% of students will meet benchmark by January).</p> <ul style="list-style-type: none"> <li>• Adjust core instruction</li> <li>• Research-based supplement to core program.</li> <li>• Implementation logistics are planned and staff is trained.</li> <li>• Strategies are monitored and fine tuned in response to progress data.</li> <li>• Implementation fidelity is monitored.</li> </ul>
	<p>3. Continuous progress monitoring data drives instructional decisions throughout the three-tier process.</p> <ul style="list-style-type: none"> <li>• Progress monitoring measures are standards aligned, reliable, efficient, and determine student and grade level progress toward prescribed benchmarks.</li> <li>• Progress in all tiers is monitored, graphed, and analyzed according to specified processes and decision rules.</li> </ul>
	<p>4. Academic and behavioral progress is monitored with increasing frequency as students receive additional tiered interventions.</p> <ul style="list-style-type: none"> <li>• Tier 1 - minimum of three times per year; Tier 2- minimum twice monthly; Tier 3-minimum weekly.</li> </ul>
	<p>5. Time is scheduled for grade-level and student level team collaboration and follow-up activities.</p>
<b>Tiered Intervention and Service Delivery System</b>	
	<p>1. Students receive increasingly intense research-based interventions targeted at assessed skill deficits <b>in addition</b> to standards-aligned core instruction immediately after need is identified through assessment. A range of research-based instructional interventions for any student at risk of academic or behavioral failure is in place. All staff participates in interventions.</p> <ul style="list-style-type: none"> <li>• The team uses screening and informal assessment data to identify instructional needs and appropriate interventions for students.</li> <li>• Tier 2 intervention provides additional instructional time (at least 30 minutes/day for 10-12 weeks, or as prescribed by the intervention program).</li> <li>• Tier 3 provides additional instructional time (30-60 minutes/day for 10-12 weeks, or as prescribed by the intervention program).</li> <li>• Intervention logistics (including training) are carefully planned (Who, What, Where, When).</li> <li>• Interventions vary by grouping, expertise, duration, frequency and time.</li> </ul>
	<p>2. Standard protocol interventions are used in designing instruction for students at Tiers 2 and 3.</p>
	<p>3. A system is in place to ensure that interventions are implemented with fidelity.</p>
	<p>4. Progress monitoring data determines the effectiveness of interventions and drive student movement through the tiers.</p> <ul style="list-style-type: none"> <li>• Team identifies student specific appropriate Rate of Improvement.</li> <li>• Progress monitoring logistics are identified (Who, What, Where, When)</li> <li>• Student progress is graphed and decision rules are identified.</li> <li>• Interventions are monitored and adjusted based on progress monitoring data.</li> </ul>
	<p>5. A system is in place to move student among tiers as needed.</p> <ul style="list-style-type: none"> <li>• Students making acceptable progress in Tier 2 return to Tier 1 or may remain at Tier 2. Students not making acceptable progress are referred for Tier 3 intervention.</li> <li>• Students making acceptable progress in Tier 3 return to Tier 2 or Tier 1 intervention or may remain at Tier 3. Students not making acceptable progress may be referred for special education eligibility determination or continue at Tier 3 with progress</li> </ul>

	monitoring and modified support to ensure student success.
	<b>Parent Engagement</b>
	1. Parents are provided information on the RtI process, including an overview of the RtI framework, tiered instruction, types of programs used, and tips to support their children and school to implement the RtI strategy. The overview includes timelines, explanations of interventions, and expectations.
	2. Parents are notified and requested to participate in the three-tier process as soon as their children begin tiered supports.
	3. Parents receive at least quarterly detailed reports on their child's interventions, goals, and progress.
	4. Parents are informed and understand their right to request a special education evaluation at any time during RtI.
	<b>Behavior</b>
	1. The school conducts universal screening of emotional, social, and behavior adjustments at all grade levels.
	2. School staff understands the relationship between effective instruction and behavior.
	3. Expected behaviors are explicitly taught, practiced, and positively reinforced in all settings.
	4. Staff members receive instruction in the principles of school wide positive behavior support. <ul style="list-style-type: none"> <li>• Expectations and consequences are consistent, known and understood by staff and students.</li> <li>• A system is in place to positively reinforce appropriate student behavior.</li> <li>• Staff utilizes de-escalation techniques with inappropriate student behavior.</li> </ul>
	5. A continuum of services including behavioral health services is available through the three-tier process.
	<b>Eligibility Determination</b>
	1. Policies and processes are in place to ensure compliance with all federal and state regulations, timelines and assurances.
	2. A system is in place to use RtI data to diagnose specific learning disability. The determination includes RtI outcome data and is part of a comprehensive evaluation of student eligibility. <ul style="list-style-type: none"> <li>• The evaluation team uses research-based norms or benchmarks to determine the magnitude of a student's deficit in basic academic skills.</li> <li>• The team uses student progress data to compare the referred student's slope of progress to the goal line needed to close the achievement gap in the academic skill deficit.</li> <li>• The team considers other factors (vision, hearing, language, social/behavioral, medical, etc.) that may explain the student's difficulties in conducting the comprehensive evaluation, and assesses the degree of student need.</li> </ul>
	<b>Leadership (Supports, Infrastructure, Flexible Use of Resources)</b>
	1. Central administration of the school district strongly endorses the three-tier model as an organizing structure for instruction and resources.
	2. Building Administrators lead and support RtI with demonstrated commitment to the efficient and flexible use of time and resources.
	3. School district policies and procedures have been revised, as necessary to implement the model (Title 1, Sp. Ed. Plan).
	4. The building infrastructure (i.e. schedule) supports RtI.
	5. Scheduling supports time allocations required for implementation (screening, data analysis teaming (grade level and student specific), intervention planning/implementation/monitoring, professional development, etc.).
	6. Administration supports change in staff role in addressing student needs (general, remedial, special education).
	<b>Professional Development</b>
	1. Professional development is ongoing, job-embedded and includes the relevant areas essential to the effective implementation of

	Rtl and improved student outcomes.
	2. All personnel have received an overview of the Rtl framework and its implications for change from a traditional instructional model. The overview is provided by the building's instructional leaders.
	3. All staff receives training in effective use of data for instructional decision making (data analysis teaming), progress monitoring, effective instruction, principles of differentiation, parent engagement, reading and mathematics instruction, school wide behavior support and other areas as identified. Guided practice is an integral component of professional development activities.
	4. Key school personnel are identified for enhanced training in specific components of the three-tier model (screening, intervention, data analysis) to build school capacity and to ensure sustainability of the Rtl strategy.
	5. The district professional development calendar provides sufficient time and flexibility for professional development in the components of Rtl.

Now, use the priority rating column to identify your implementation priorities (1=low, 2=medium and 3=high). Record your priority ratings and your implementation ratings below for quick reference.

### Rtl Readiness and Implementation Summary

	Level of Implementation Score	Priority Score
1. Standards-aligned Curriculum and Research-based Instruction.....	_____	_____
2. Universal Screening.....	_____	_____
3. Shared Ownership.....	_____	_____
4. Data-based Decision Making.....	_____	_____
5. Tiered Intervention and Service Delivery.....	_____	_____
6. Parent Engagement.....	_____	_____
7. Behavior.....	_____	_____
8. Eligibility Determination.....	_____	_____
9. Leadership (Supports, Infrastructure, Flexible Use of Resources).....	_____	_____
10. Professional Development.....	_____	_____

**RtI Action Plan (complete only sections applicable)**

School: \_\_\_\_\_ Team Members Completing Action Plan \_\_\_\_\_

<b>I. High Quality Standards-aligned Curriculum and Research-based Instruction</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>2. Universal Screening</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>3. Shared Ownership</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>4. Data-based Decision-making</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>5. Tiered Intervention and Service Delivery System</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>6. Parent Engagement</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>7. Behavior</b>		
Summary of Current Status	Annual Goals	Action Steps



<b>8. Eligibility Determination</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>9. Leadership (Support, Infrastructure, Flexible Use of Resources)</b>		
Summary of Current Status	Annual Goals	Action Steps
<b>10. Professional Development</b>		
Summary of Current Status	Annual Goals	Action Steps

**UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES** 400 MARYLAND AVE., S. W. WASHINGTON, D.C. 20202 www.ed.gov September 24, 2007  
Dr. Carol Massanari  
Mountain Plains Regional Resource Center  
Utah State University  
1780 North Research Parkway, Suite 112  
Logan, UT 84341

Dear Dr. Massanari:

This letter is in response to your August 6, 2007, electronic mail (email) inquiry on behalf of the Wyoming Department of Education, 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 13 regulations implementing the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA).

You ask whether or not there might be a way to "field test" procedures for using data from RtI as part of the identification of specific learning disabilities (SLD). You pose a second part to your question regarding the differences between elementary schools and secondary schools. You ask, "Would it be possible that the LD determination at the elementary level would be based on data using the RtI process while the middle and high school levels would continue to use a discrepancy process?"

In its letter to XXXXXX, dated July 27, 2007, and attached, OSEP states that if the use of a process based on the child's response to scientific, research-based interventions, in identifying children with SLD is required [by the local educational agency (LEA)], then all children suspected of having an SLD, in all schools in the LEA, would be required to be involved in the process. However, [as stated in the Cernosia letter] 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 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 is identified under 34 CFR §300.8(c)(10), is implementing a RtI process, consistent with

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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 a RtI process as part of the identification of children with SLD. Regarding the second part of your question, the differences between elementary school children and secondary school children, the final Part B regulations do not make such a distinction regarding the identification of children with SLD. However, under 34 CFR §300.307(a)(1)-(3), a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has an SLD as defined in 34 CFR §300.8(e)(10). 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. A public agency, including an LEA, must use the State criteria in determining whether a child has an SLD. Nothing in the final Part B regulations would prohibit an LEA, if consistent with the State criteria, from using multiple methods of identifying a child with an SLD, as part of a full and individual evaluation, or reevaluation, across schools or across levels (e.g., elementary school, middle school or high school).

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,  
e/s  
Patricia L. Guard  
Acting Director  
Office of Special  
Education  
Programs

cc: Peg Brown-Clark John Copenhaver