



## Parent Rights in the Era of RTI

The Individuals with Disabilities Education Act (IDEA 2004) and its federal regulations for implementation have significantly changed the way students suspected of having specific learning disabilities (SLD) are identified and found eligible for special education.

Specifically, under IDEA 2004, states may no longer **require** school districts to use a discrepancy model (a comparison of a student's academic achievement and intellectual ability) when determining eligibility for SLD. Furthermore, states must **allow** (but not require) for the use of "a process based on the child's response to scientific, research based intervention" or RTI. Lastly, states **may also allow** the use of *other alternative* research-based procedures for determining whether a child has SLD.

IDEA federal regulations issued in 2006 require every state to develop criteria for SLD identification that comply with the requirements above. These state-developed eligibility criteria vary significantly across states.

### Why the change?

The "discrepancy" requirement for SLD identification, which had been part of federal special education regulations since 1977, had been under attack for some time prior to the reauthorization of IDEA in 2004. Critics charged that, by using this approach to identify SLD, students had to fail for long periods of time before they showed sufficiently large enough deficits in academic achievement to satisfy the "severe discrepancy" requirement and begin receiving special education services. Critics dubbed this approach "wait to fail."

The dramatic rise in the number of students identified as having SLD during the 1990s also drew criticism from both researchers and policymakers. In a landmark paper published in 2001, *Rethinking Learning Disabilities*, researchers suggested that the category was a "catch-all" for low-achieving students and that, from its inception as a category, LD has served as a "sociological sponge that attempts to wipe up general education's spills and cleanse its ills." A report from a Presidential commission on special education in 2002 reported that up to 40% of children identified for special education were there because they weren't taught how to read rather than because they had a true disability.



By 2004, there was widespread agreement that change was needed in order to move away from the “discrepancy” approach of identification and toward more valid and reliable methods. The changes made in 2004 and subsequent regulatory changes in 2006 sought to jumpstart this shift.

### Use of RTI across states

States are adopting RTI because it can improve the support of students with learning and behavior needs and can lead to earlier identification of students who have true disabilities and are in need of special education services. According to a survey conducted by noted special education legal authority Perry Zirkel, 15 states “partially or fully require RTI for SLD identification.” The study also noted that “the manner in which states have incorporated RTI into SLD identification varies dramatically—from inclusion in state law to guidelines.”

The variance across states led the federally funded National Center on Response to Intervention to conclude:

*“There is a lack of understanding in and between states regarding SLD identification criteria, in part because of the lack of clarity and specificity in the federal regulations. This ambiguity has led to states defining SLD in ways that vary even more than they did under the discrepancy approach. Questions arise about SLD and what it really means when it is defined differently by each state.”*

*- The Complex Ecology of Response to Intervention, April 2011*

The lack of understanding referenced by the National Center on Response to Intervention was brought to light in a January 2011 memorandum issued by the Office of Special Education Programs (OSEP) at the U.S. Education Department. Claiming that it had encountered instances where local districts are using RTI strategies to delay and/or deny a timely evaluation for children suspected of having a disability, OSEP reminded states of their legal obligations under the IDEA’s Child Find provisions, and asked states to engage in an examination of procedures and practices to ensure that any district implementing RTI is “appropriately using RTI, and that the use of RTI is not delaying or denying timely initial evaluations to children...”

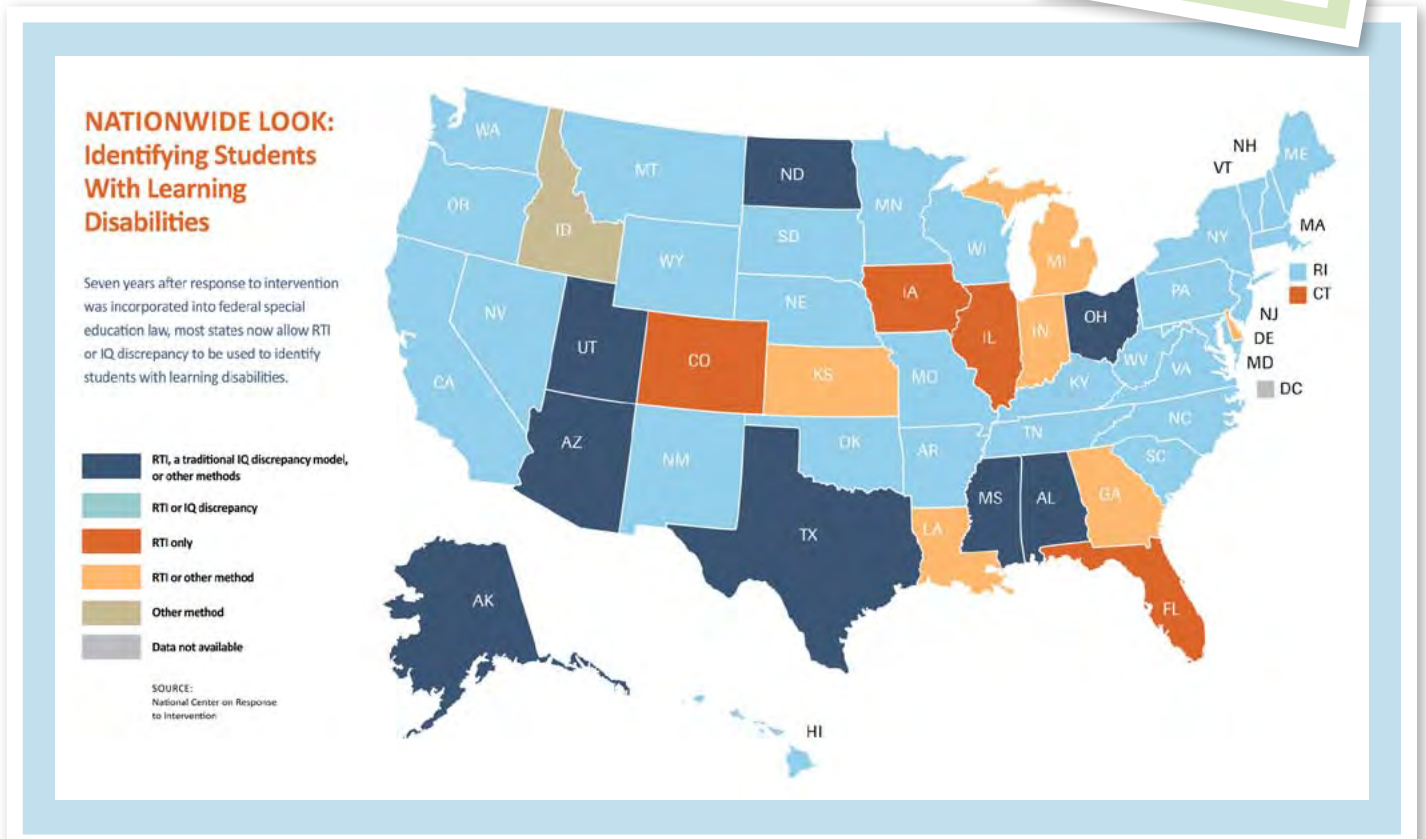
### Specific Learning Disabilities by the Numbers

The number of children identified as SLD and eligible for special education has been declining every year since 2001. Between 2001 and 2010 the SLD category declined by **19%**. Previously representing more than half of all students in special education, SLD now accounts for 41%.

Year	All Disabilities 6-21 yrs.	# SLD 6-21 yrs.	% SLD of all SPED
2001	5,861,366	2,878,315	49.1
2002	5,959,282	2,878,146	48.3
2003	6,032,622	2,866,908	47.5
2004	6,118,437	2,839,694	46.4
2005	6,109,569	2,780,218	45.5
2006	6,081,890	2,710,476	44.6
2007	6,007,832	2,620,240	43.6
2008	5,884,739	2,522,735	42.9
2009	5,882,157	2,486,419	42.3
2010	5,822,808	2,415,564	41.4

Acknowledging that a shift in SLD identification criteria is not without pitfalls, this document seeks to provide a number of strategies that parents and advocates can use when RTI is a factor. Using these strategies requires—first and foremost—a thorough understanding of RTI.

A Parent’s Guide to Response to Intervention (RTI), available from the National Center for Learning Disabilities, provides essential information for parents and advocates.



As first appeared in *Education Week*, March 2, 2011. Data from the National Center on Response to Intervention. Reprinted with permission from Editorial Projects in Education.



## Your Rights under IDEA

### RTI and Child Find

Your school district is legally obligated to “find” all children who may have a disability and, because of their disability, need special education services. In other words, schools cannot rely on parents or private psychologists, for instance, to tell them that a child needs help—schools have to affirmatively *look* for students who may have a disability and need special education. To use the more formal language of IDEA, all public schools must “*identify, locate and evaluate*” children who may need special education. (See, IDEA 34 CFR § 300.111)

You may be wondering what “*identify, locate and evaluate*” means. That’s an excellent question because its meaning

under the law has changed in recent years. It used to be—before IDEA was amended in 2004—that there was basically one way to evaluate children to help determine if he or she had a disability. That evaluation is often known as “a psycho-educational evaluation.” Since the changes made to IDEA in 2004 and to IDEA federal regulations in 2006, many school districts are choosing to identify children who may need special education by using RTI.

However, RTI does not do away with a parent’s right to request a more traditional evaluation. As a parent, if your child is struggling in school and you believe he or she may have a disability such as a learning disability, you have the right—even in this RTI era—to request a “full and individual” initial evaluation. (See, IDEA 34 CFR § 300.301)

*“As a parent, if your child is struggling in school and you believe he or she may have a disability such as a learning disability, you have the right—even in this RTI era—to request a ‘full and individual’ initial evaluation.”*

### What is psycho-educational testing?

Psycho-educational testing is a process which utilizes standardized tests and questionnaires in an effort to identify a student’s strengths and weaknesses across many areas of functioning and attributes. These areas include but are not limited to the following:

- Cognitive Development
- Academic Achievement
- Adaptive Functioning
- Visual Perception
- Motor Coordination
- Visual-Motor Integration
- Behavior (e.g., Attention, Aggression, etc.)
- Emotion (e.g., Anxiety, Depression, etc.)

Psycho-educational testing is conducted on an individual basis, by a qualified examiner, in a controlled testing situation.



## Right to Request an Evaluation

Every parent has the right to request a *full and individual initial* evaluation at any time to determine if their child has a disability and what that child's educational needs are. (See, IDEA 34 CFR § 300.301) This type of evaluation is typically administered by a public school psychologist and must include a variety of assessment tools, such as an IQ test, and tests of academic achievement, behavior, mental health, communication and motor abilities. The child must be assessed in “all areas related to the suspected disability.” (See, IDEA 34 CFR § 300.304)

As soon as you think your child may have a disability, be sure to request an evaluation. Your request should be made in writing.

Once the school has received your request for an evaluation, the school district must do one of two things.

If the school agrees that your child needs to be evaluated, they must get your written consent to do so. Once you provide your written consent—and only once you do so—the school district must complete the evaluation within 60 days (or the timeline established by your state). If you request an evaluation, but don't provide your informed written consent to conduct an evaluation, the 60 day timeline does not begin. (See, IDEA 34 CFR § 300.9)

**or**

If the school disagrees with you regarding the need for an evaluation, the school district can refuse your request. In this case, the school must provide you with a written notice of its decision. Known as Prior Written Notice, this notice must include:

- A description of the action proposed or refused by the district
- An explanation of why the district proposes or refuses to take the action and a description of all student information used as a basis for the decision
- A statement that the parents have protection under the Procedural Safeguards of IDEA

You can request an evaluation at any time. However, it may be wise to do some homework before formally requesting an evaluation of your child.

- **Talk to the Teacher.** If you haven't already met with your child's teacher to discuss your concerns, consider this as a first step.
- **Learn about Special Education Services.** Talk to your school's principal about the special education services available at your child's school. Inquire about the training and qualifications of special education teachers and the instructional approaches they use to work with students identified with learning disabilities so you know about the qualifications of the personnel in your school. Finally, ask about the evaluation and eligibility process in your school district and get any printed information available for parents.
- **Contact Your PTI.** Get in touch with the Parent Training and Information Center (PTI) in your state. Each state has at least one PTI, supported by funding from the U.S. Department of Education. Your PTI can help you understand the particular “ins and outs” of special education in your state. Ask for any printed information that will help you understand the process. Go to [www.ParentCenterNetwork.org](http://www.ParentCenterNetwork.org) to find your state's PTI.

- *IDEA Parent Guide*, National Center for Learning Disabilities, 2006



*“Stating that your child has not yet participated in or completed a school’s RTI process is **not** a legally sound reason for a school to deny an evaluation.”*

- Sources for parents to contact or to obtain assistance in understanding the various provisions of their rights under IDEA
- A description of other options considered and the reason why those options were rejected
- A description of the factors that impacted the district’s proposal or refusal

If the school refuses to evaluate your child, do not take that lightly. If the school “suspects” your child may have a disability and needs special education, they are legally obligated to evaluate your child under the Child Find provision of IDEA. As noted above, a school can only refuse a parent’s request for an evaluation in writing. In other words, don’t let your request for an evaluation be denied verbally! You are entitled to receive Prior Written Notice giving you an explanation for their refusal to evaluate and what information they used as the basis for their decision. (See, IDEA 34 CFR § 300.503, 300.504)

Ask the school to state in writing why they do not “suspect” that your child may have a disability and need special education. (See, IDEA 34 CFR § 300.8) **Stating that your child has not yet participated in or completed a school’s RTI process is not a legally sound reason for a school to deny an evaluation.** (See, IDEA 34 CFR § 300.301-300.111, U.S. Department of Education, Office of Special Education Programs (OSEP) Memorandum, on pages 15-17)

Once you receive the school’s Prior Written Notice informing you of its refusal to evaluate your child, you have a right to file a due process complaint or a state complaint to your state’s Department of Education. At the meeting when your evaluation is refused, ask for the forms required to submit due process and state complaints. You should also be able to find those forms at your state’s Department of Education website. See the discussion below of recent legal cases to get an idea of how other parents’ cases have proceeded.

**Note:** Parents can and often do choose to have their child evaluated privately, as opposed to asking the school to do an evaluation. If you choose to obtain a private evaluation, the school is not responsible for the cost of the evaluation. You can decide whether or not to share the results of a private evaluation with your child’s school.

## What is informed consent?

Informed consent is a procedure to ensure that the parent:

- Has been fully informed of all information related to the proposed activity (in his native language, or other mode of communication)
- Understands and agrees in writing to carrying out the activity for which his consent is sought
- Understands that giving consent is voluntary and may be revoked at any time
- Understands that revoking consent will not apply to an activity that has already occurred

Informed consent is required for an evaluation, a reevaluation and for the initial delivery of special education services.



**Brenda Louisin with son David, age 8**

## A Parent Advocate's Story

**Brenda Louisin, M.A.**  
Louisin Child Advocacy, LLC  
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Not long ago, a group of families collectively shared their concerns with me about their children's educational programming. For years, many of their children had been placed in similar reading, writing or math intervention programs, with vaguely written plans. The parents unanimously felt left out of the planning and reporting process and realized that their children continued to fall further and further behind their typical peers. I listened to each family tell their story, carefully documented each file and encouraged parents to seek individual remedies for their children at the school level.

The families ultimately decided to file a group state complaint to secure effective change in district policy. At my recommendation, the group appropriately involved the support of a skilled special education attorney when drafting the state complaint. My role as their advocate was continuing to provide deep understanding of each situation, individually and collectively, throughout the process. As you will read in *Case in Point: Upper Arlington City School District*, the complaint filed by these families had a positive outcome for the children and their families.

In summary, I offer the following suggestions so that parents can ensure effective programming for their children:

- Parents must understand their district's Response to Intervention (RTI) and special education policy and procedures.
- Parents must identify the school/district curriculum and know if the intervention programs and progress monitoring tools have been implemented with fidelity.
- Parents must know how to find informational resources and contact information for key personnel.
- Parents should connect with the school team to establish a strong rapport.
- Parents must understand the timing of the RTI process so they know when the pivotal points are to make decisions about student progress.
- Parents should stand together and not be divided by internal conflicts or external manipulations or pressure. There is strength in numbers.

There is also a federal non-discrimination law—Section 504 of the Rehabilitation Act of 1973—that gives rights to parents of students who may have a disability, such as the right to have a full evaluation. You can learn more about Section 504 at [www.nclld.org/on-capitol-hill/federal-laws-aamp-ld/adaaa-a-section-504/section-504-of-the-rehabilitation-act-of-1973](http://www.nclld.org/on-capitol-hill/federal-laws-aamp-ld/adaaa-a-section-504/section-504-of-the-rehabilitation-act-of-1973)



## Strategies for Addressing Identification Issues

If the school informs you that they are using RTI, you should go ahead and request an evaluation in writing as soon as you think your child may have a disability. Making this request is critical because your written consent puts a 60 day timeframe on both the completion of the RTI process and the evaluation. The process of determining whether your child has a disability such as a learning disability and needs special education cannot go on indefinitely.

If your request for an evaluation is denied because your child's school says they do not "suspect" a disability or because they are using RTI, you have the right to file either a due process complaint or a state complaint, discussed later.

### Informal Strategies

An alternative to filing a formal complaint is to give RTI a chance by using the following informal strategies.

#### 1. Ask questions about how the school is implementing RTI. For example:

- What information about RTI has the school provided for parents?
- What length of time is allowed for an intervention before determining if the student is making progress?
- At what point in the RTI process are students who are suspected of having a learning disability referred for a formal evaluation?

See the complete list of questions parents should ask on page 18 of *A Parent's Guide to Response to Intervention (RTI)*.

#### 2. Request a written intervention plan that includes details about how the school is planning to help your child. A written plan should include:

- A description of the intervention being used
- Length of time that will be allowed for the intervention to have an effect
- Details of who and how the intervention will be delivered
- Details about how progress will be monitored and how frequently you will receive reports about your child's progress

For more information, see *A Parent's Guide to Response to Intervention (RTI)*, page 10 and page 19.

#### 3. Hold your child's school accountable for correctly implementing RTI. Sometimes schools claim to be using RTI, but they really aren't. Be sure all of the essential components of RTI are included in the school's RTI process. Of particular importance are:

- How the school selects and implements interventions
- How the school monitors a student's progress
- How the school ensures that interventions are provided accurately and consistently (often referred to as "fidelity")

See the complete list of essential components on page 8 of *A Parent's Guide to Response to Intervention (RTI)*.





**4. Keep records that show how your child is achieving in school. Maintain a communications log to document all conversations that take place regarding your child.** See Types of Records a Parent Should Keep for more information.

## Types of Records a Parent Should Keep

- Report cards and progress reports
- Standardized test scores
- Evaluation results
- Medical records related to disability or ability to learn
- Individualized Education Programs (IEPs) and other official services plans such as 504 plans
- Awards received by the child
- Notices of disciplinary actions
- Notes on your child's behavior or progress
- Letters or notes to and from the school or teacher, special educators, evaluators, and administrators
- Notices of meetings scheduled
- Student handbook and policies
- Attendance records
- Calendar of meetings
- Samples of schoolwork
- It is also important that you have a **communications log**. In a notebook, keep track of your communications with the school, including:
  - records of meetings and their outcomes
  - dates you sent or received important documents
  - dates you gave the school important information
  - dates of suspension or other disciplinary action
  - notes on telephone conversations (including dates, person with whom you spoke, and a short description of the conversation)



## Formal Strategies

IDEA provides various options for resolving disputes between schools and parents.

Two of these options are state complaints and due process complaints. Either of these options could be used to address matters involving a school district's delay or denial to evaluate a student because it is using an RTI process. Such complaints would be based on the district's violation of Child Find. Recent cases are presented here to help understand important components affecting the decisions.

Filing complaints, whether state complaints or due process complaints as allowed by IDEA, is serious business. Before proceeding, you should be well informed and understand federal and state policies about such actions. Be sure to get all available information regarding all complaint options prior to filing a complaint.

A **State Complaint** is a written complaint that can be filed by any organization, individual, or group of individuals, claiming that a school district (or districts) within the state has either violated a requirement of Part B of IDEA or the state's special education law or regulations, including Child Find. State complaints must be filed within one year of the alleged violation.

IDEA requires every state to have a formal procedure for filing complaints. Information on how to file a state complaint should be available from your state's Department of Education or Parent Training and Information Center.

### Case in Point: Upper Arlington City School District

In this case, nine parents in a generally high-performing school district joined together to file a state complaint against their school district in Upper Arlington, Ohio. The State found that the school district violated Child Find and IDEA because:

- a) Students with suspected learning disabilities were subjected to an intervention process which did not address or resolve their academic difficulties, particularly those related to reading, and were denied evaluations over a two to four year period even when these students were not making adequate progress; and
- b) The district routinely denied repeated requests for evaluations and engaged in a practice of "differentiated evaluation" which caused parents to falsely believe their children were being formally evaluated when they were not. *Ohio Department of Education Letter of Finding, dated August 29, 2011.*

As a result, the Ohio Department of Education required the district to stop doing what they were doing and develop a "corrective action plan," including professional development.

This case is important because it shows that when RTI is being systematically abused by an entire school district, state departments of education may act to correct that district's actions.

A **Due Process Complaint** is a written complaint filed by a parent or a school district involving any matter relating to the identification, evaluation, educational placement or provision of a free appropriate public education to a student with a disability. Due process complaints must be filed within two years of the matter in dispute.

Each state's Department of Education must have a model form to assist parents in filing a due process complaint that fulfills the requirements of IDEA. Contact your state's Department of Education or Parent Training and Information Center for more information.

In a majority of the cases brought to date, school districts are unsuccessfully using RTI as a defense to Child Find due process claims. However, in nearly every case more than two years of inadequate general education interventions elapsed before the parents filed a due process complaint. Courts appear willing to forgive delays in identification if "progress" is shown using general education interventions.

### Case in Point: El Paso Independent School District

In this case, the court found that the school district violated its Child Find obligations by repeatedly referring a student with ADHD for "interventions" over a three year period despite his lack of academic improvement.

The court found that the school district should have evaluated the student, who failed the state standardized assessment three times, and considered him for special education.

This case is highly significant on a national level because it established what triggers a school district's Child Find obligation. The Child Find obligation is triggered when the school district has reason to suspect that: (1) the student has a disability; and 2) a resulting need for special education services.

*El Paso Indpt. Sch. Dist. v. RICHARD R.* (W.D. TX, July 14, 2008) 50 IDELR 256, 53 IDELR 175 (Dec. 16, 2009) vacating the award of atty's fees, *cert. den'd* on issue of atty's fees 130 S.Ct. 3467 (June 21, 2010).

### Case in Point: Cobb County School District

In this case, the court ruled in favor of the school district, finding that it did not violate its Child Find obligation, even though the child started showing reading delays at the end of his kindergarten year and was ultimately identified as having a specific learning disability about one and a half years later.

The fact that this child passed the state standardized exams in first and second grades without accommodations and had shown "consistent progress" as a result of RTI interventions such as working in "occasional small groups," lent support to the hearing officer's conclusion that essentially, the district did not do anything wrong.

This case is important because it shows that when a child earns passing scores on a state standardized exam, courts often weigh that information heavily in a school district's favor— even though under IDEA passing grades and exam scores do not preclude finding that a child has a disability or needs special education.

*Cobb County Schl. Dist., GA State Ed. Agency*, 58 IDELR 180 (Jan. 3, 2012).

## Action by the U.S. Department of Education

On January 21, 2011, the U.S. Department of Education, Office of Special Education Programs (OSEP), issued a Memorandum to states telling them that schools cannot use the RTI process to delay or deny an evaluation. The Memo appears on pages 15-17.

The OSEP Memo is very helpful because it outlines what RTI is supposed to be, and what your rights are if you believe your child has a disability and needs special education.

If the school's RTI process does not include all of the components listed in the OSEP Memo—or if your request for an evaluation has been denied in order to complete RTI—you might want to share the OSEP Memo with school officials. If your continued requests for an evaluation are denied, consider filing a due process complaint or state complaint.

Key statements in the OSEP Memo:

*“The provisions related to child find in section 612(a)(3) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.”*



**This statement emphasizes the affirmative obligation of all states and school districts to find and serve all students who have a disability and need special education.**

*“A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors.”*



**This statement defines an RTI process, or framework, as one that includes all students.**

*“(T)he core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student’s response to instruction.”*



**This statement clearly lays out the essential components of an RTI process.**

*“The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8.”*



**This statement establishes that RTI may not be used to delay or deny a request by a parent for an evaluation.**

*“It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.”*



**This statement makes clear that using participation in an RTI framework—even one that satisfies the core characteristics stated above—as a prerequisite to an evaluation would violate the evaluation provisions of IDEA.**





## Conclusion

RTI holds both promise and pitfalls. It provides an opportunity for improving instruction and delivering interventions quickly when a student is struggling. It also requires significant change for schools. These changes will be helped by parents who support efforts to better serve struggling learners. However, throughout these changes, you maintain the right to question a school's implementation of RTI as well as raise concerns when timely evaluations are not occurring. Along the way, always keep your focus on what's best for your child.

## Resources

### **Position Statement on Determination of Specific Learning Disabilities**

[www.ncl.org/on-capitol-hill/policy-agenda/policy-recommendations/position-statement-determination-specific-ld](http://www.ncl.org/on-capitol-hill/policy-agenda/policy-recommendations/position-statement-determination-specific-ld)

### **A Parent's Guide to Response to Intervention (RTI)**

[www.ncl.org/checklists-a-more/parent-advocacy-guides/a-parent-guide-to-rti](http://www.ncl.org/checklists-a-more/parent-advocacy-guides/a-parent-guide-to-rti)

### **IDEA Parent Guide**

[www.ncl.org/checklists-a-more/parent-advocacy-guides/idea-parent-guide](http://www.ncl.org/checklists-a-more/parent-advocacy-guides/idea-parent-guide)

### **A Parent Leader's Perspective on Response to Intervention**

[www.rtinetwork.org/essential/family/parentleadersperspective](http://www.rtinetwork.org/essential/family/parentleadersperspective)

### **Legal Implications of Response to Intervention and Special Education Identification**

[www.rtinetwork.org/learn/ld/legal-implications-of-response-to-intervention-and-special-education-identification](http://www.rtinetwork.org/learn/ld/legal-implications-of-response-to-intervention-and-special-education-identification)

### **Response to Intervention and IDEA – LD Identification in the RTI Instruction Model**

[www.rtinetwork.org/professional/rti-talks/transcript](http://www.rtinetwork.org/professional/rti-talks/transcript)

## Tips for Preparing a State Complaint or Due Process Complaint

Here is a list of some information you may want to include in a state complaint or due process complaint.

1. The Prior Written Notice from your school district.
2. Information about how your child is struggling in school. Give specifics and examples.
3. Your child's grades in the subject(s) he or she is struggling in.
4. Results of any standardized tests on which he or she performed poorly (below grade level). If your child passed a state standardized test or has average grades, include information on what you needed to do at home to make that happen, such as private tutoring, or getting lots of help from a parent. Be specific as to how often your child got help and anything your child had to give up (such as after school activities and play time) in order to get the help.
5. Any diagnosis of a disability from a medical doctor or private psychologist.
6. Any medication for a disability your child may be taking.
7. Whether your child has behavior or attention problems in the classroom.
8. How long it has been since you first asked for an evaluation.
9. Whether the child has a 504 Plan.
10. Whether the teacher has told you that your child should be evaluated.



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

Contact Persons:

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OSEP 11- 07

JAN 21, 2011

**MEMORANDUM**

TO: State Directors of Special Education

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

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

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

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

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

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention<sup>1</sup>. See 34 CFR §300.307(a)(2). OSEP continues to receive questions regarding the relationship of RTI to the evaluation provisions of the regulations. In particular, OSEP has heard that some LEAs may be using RTI to delay or deny a timely initial evaluation to determine if a child is a child with a disability and, therefore, eligible for special education and related services pursuant to an individualized education program.

Under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10). In addition, the criteria adopted by the State: (1) must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; (2) must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) may permit the use of other alternative research-based procedures for determining whether a child has an SLD. Although the regulations specifically address using the process based on the child's response to scientific, research-based interventions (i.e., RTI) for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate.

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



The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The LEA must provide the parent with notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c).

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

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

References:

Questions and Answers on RTI and Coordinated Early Intervening Services (CEIS), January 2007

Letter to Brekken, 6-2-2010

Letter to Clarke, 4-28-08

Letter to Copenhagen, 10-19-07

Letters to Zirkel, 3-6-07, 8-15-07, 4-8-08 and 12-11-08

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

## About the Authors

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## Our Mission

The National Center for Learning Disabilities' (NCLD) mission is to ensure success for all individuals with learning disabilities in school, at work and in life. We:

- Connect parents and others with resources, guidance and support so they can advocate effectively for their children.
- Deliver evidence-based tools, resources and professional development to educators to improve student outcomes.
- Develop policies and engage advocates to strengthen educational rights and opportunities.

For more information about learning disabilities, special education and parental rights, please visit us on the Web at [www.LD.org](http://www.LD.org).

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