

State Laws and Guidelines for RTI: Additional Implementation Features

By Perry A. Zirkel

Response to intervention (RTI) remains a major issue in both the professional literature and school practice. A series of previous "snapshot" studies traced the development of RTI in state laws concerning identification of students with specific learning disability (SLD). In the last article in this series, Zirkel and Thomas (2010) reported that as of May 2010, 14 states partially or completely required RTI for SLD identification and that most states provided guidelines for implementing RTI. Since then, Wisconsin finalized its regulations, joining the states requiring RTI (Zirkel, 2011).

Leading this legal evolution of RTI for SLD identification, which crystallized in the official federal recognition and delegation to the states in the 2006 regulations of IDEA, the professional literature has extended to various implementation issues, including promoting the use of RTI for (a) the behavioral side (e.g., Fairbanks, Sugrue, & Lathrop, 2007), such as positive behavior support (PBS; e.g., Ijoo & Nantais, 2010) or an integrated approach (e.g., McIntosh, Bohanen, & Goodman, 2008) and (b) IDEA disability classifications beyond SLD, such as emotional disturbance (ED; e.g., Cheney, Flower & Templeton, 2008) or more generally, such as a noncategorical approach (e.g., Smith, Peters, Sandres, & Witz, 2010).

Moreover, the initial case law, although limited to hearing and review officer rather than court decisions, has reflected confusion in interpreting the definitional boundaries and implementation requirements for RTI (Zirkel, in press). For example, in a Delaware case, the hearing officer panel rejected the charter school's RTI defense to the parents' "child find" claim, but (a) the focus of the claim was not SLD but ED and/or other health impairment (OHI), as exemplified by the diagnoses of the independent educational evaluation of ADHD, ODD, and mood disorder; and (b) the panel's decision was predicated on its erroneous conclusion that, under Delaware's law, "RTI requires a written plan for a child with meetings to discuss the interventions and the child's progress" (Delaware College Preparatory Academy 2009, p. 676).

Finally, the few special education journal articles purportedly addressing the RTI case law added to the confusion by relying instead on court decisions concerning child find claims based on much more general and older prereferral services and strategies (Walker & Daves, 2010; Yell & Walker, 2010). The confusion concerning the extent of state law provisions for such related but separate general education interventions (GEI), also referred to globally as "prereferral intervention processes," is attributable to not only the variations in their specific appellations, such as "student assistance teams" and "teacher intervention teams," but also the lack of direct examination of the state statutes and regulations rather than reliance on surveys of state education agency personnel (Buck, Polloway, Smith-Thomas & Cook, 2003). Recognizing the sometimes blurry line between the state law provisions for general education interventions and those for RTI, Zirkel and Thomas (2010) recommend further analysis of such implementation issues in state laws and, with due differentiation, state guidelines.

As the next step in this series of snapshots, this study systematically canvasses state laws and guidelines as of February 15, 2011 to address the following implementation questions:

1. Which states provide for general education interventions with or without connection to RTI?
2. Which states extend RTI to include the behavioral, not just the academic, dimension?
3. Which states specify an individual written plan as part of RTI implementation?
4. Which states expressly include RTI for disability classifications beyond SLD?

Method

The search strategy was different for state laws and guidelines, with only the policies that state boards of education had adopted included on the state-law side of the dividing line. For state laws (i.e., legislation and regulations) available on the Westlaw database, the author conducted two Boolean searches. For question 1, the search string was: "screening" OR "intervention" OR "general education" AND "student" or "disability." For questions 2-4, the search terms, all connected by "OR," were "response to intervention," "response to scientific," "responds to intervention," and "responds to scientific." For state laws available only via state education agency (SEA) websites, the search used the same terms one by one. For state guidelines, the search was based on the same websites listed in Zirkel and Thomas (2010), the focus was questions 2-3, and the search terms were "behavior" and "plan," respectively.

Having purposely using this wide-net search strategy, the author devoted considerable time to screening out false positives (i.e., provisions that did not address on

more of the four questions of the study). For question 1, two marginal issues emerged: (a) brief provisions specific to "early intervening services" (EIS), per the related but separate provision in the IDEA regulations (§ 300.226), were excluded; and (b) the tabulation only recorded acronyms that were clearly differentiated broader systems (e.g., Hawaii - CSSS; Kentucky - KSI), not those that were simply the state version of RTI (e.g., California - RtI2; Connecticut and Minnesota - SRBI; Kansas - MTSS; Michigan - MiBLSi; Pennsylvania - RTII; and Wyoming - WySIS). Similarly, for question 2, references to behavior in the observation provision paralleling the one in the IDEA regulations for SLD identification (§ 300.310) were excluded.

The data entries for each state in terms of the four respective questions were differentiated first for state laws as compared with state guidelines and second, with each of these two categories, in terms of specificity and centrality. The resulting scale was as follows:

- 1 = brief, peripheral mention in guidelines
- 2 = one of the key features in the guidelines
- 3 = relatively limited in law
- 4 = especially notable in law

Additionally, the tabulation included "()" for partial credit, "+" for additional information, and a comments column to further differentiate and clarify the numerical entries.

Although obviously imprecise levels, the author used the following features to differentiate the highest entry for these two questions:

- Question 1: general education intervention coordinated with RTI
- Question 4: at least one full disability classification

Results

Table 1 presents the entries for the four questions. The clarifying comments are enumerated in terms of the numbered column(s) to which they apply. The rows for 15 states that partially or fully require RTI for SLD identification are shaded in beige.

The highlights of the tabulated entries follow for each of the four questions, respectively.

1. Which states provide for general education interventions (GEI) with or without connection to RTI? At least half of the states provide for GEI, typically via a law and with varying designations of problem-solving teams, such as student assistance teams (SAT) or teacher support teams (TST). The "at least" is attributable to difficulty of finding all of the pertinent provisions, due to varying terminology, and differentiating them from EIS or other distinct provisions, such as early childhood screening. However, only six states—Alabama, Georgia, Louisiana, Minnesota, Mississippi, and New Mexico—expressly provided for connection to or coordination with corresponding provisions for RTI. The correlation between mandatory RTI states and the incidence of GEI provisions was generally low, but—accounting for three of six states with an express connection—it was more pronounced in this small group with the highest entries. Within the mandatory subset of this group, Georgia is notable for its detailed regulatory specification for the "student support team" (SST) problem solving process and its express connection, in the separate regulation for the mandatory RTI process for SLD identification, to the SST intervention plan.

Conversely, within the subset of this group that permits, rather than requires, RTI, Alabama shows the continuing changes in the legal landscape in its proposed regulation to require a problem solving team in concert with RTI to replace the building-based school support team (BBSST) that was part of its previously separate process. Similarly, in the permissive subset of states, Minnesota is notable for having legislation that specified, with a limited exception, the following cross-category prerequisite for a special education evaluation:

The district must conduct and document at least two instructional strategies, alternatives, or interventions using a system of scientific, research-based instruction and intervention in academics or behavior, based on the pupil's needs, while the pupil is in the regular classroom.

2. Which states extend RTI to include the behavioral, not just the academic, dimension? Slightly more than two thirds (n = 35) of the states expressly include behavioral dimension in their version of RTI, but—unlike GEI—these provisions are in most cases by way of guidelines rather than laws. The majority of these guidelines provisions follow a dual model of RTI, commonly illustrated by the two-sided three-tier triangle. Within this majority, the guidelines of 13 states expressly mention, sometimes as part of their RTI model and sometimes in coordination with it, PBS. The small cluster of states that expressly incorporate behavior in their RTI provisions—Georgia, Minnesota, and New Mexico—are within the similarly leading group for GEI. Although still of limited scope and strength, Georgia is the most notable, providing in law—via the connection to its GEI SST process—for intervention plans that address "learning and/or behavior."

3. *Which states specify an individual written plan as part of RTI implementation?* Slightly less than half (n = 23) of the states expressly provide for an individual plan as part of their implementation provisions for RTI, typically via guidelines and with varying designations, such as "intervention plan" or "instructional support plan." The New Mexico guidelines unusually not only provide an SAT intervention plan but also encompass, within Tier 2, a Section 504 plan. Only four states—Georgia, Hawaii, Idaho, and Kentucky—do so via legislation or regulations. Idaho is the most notable, requiring, as a matter of law, documentation of the RTI process "through an intervention plan and graphs."

4. *Which states expressly include RTI for disability classifications beyond SLD?* Only a handful of state laws extend RTI beyond the SLD identification process, all of them are mandatory RTI states. The leading state is Louisiana, legally mandating RTI for not only SLD but also autism, developmental disabilities, ED, intellectual disabilities, OHI, and orthopedic impairment. In second place, Florida requires RTI for not only SLD but also speech and language impairment (SLI). Next, Delaware requires RTI for SLD and a subset of intellectual disabilities—educable mental retardation. Close behind, New Mexico requires RTI as a service under its state dyslexia

In a marginal second group, a couple of states—Maine and Minnesota—provide for their GEI provisions to be part of the identification process for various disability classifications beyond SLD. Finally, a few states—Colorado, Connecticut, and Maryland in descending order of clarity—seem to suggest the use of RTI globally via the guidelines. Specifically, Connecticut's guidelines for SRBI, which is its RTI process, state: "SRBI can benefit students with a variety of disabilities, not only LD." Next Maryland's guidelines straddle the fence with the following Q/A:

Can RTI be used in determining eligibility for disabilities other than SLD?
 No, IDEA [and Maryland regulations] only included [RTI] in the section regarding criteria for determining whether a student has an SLD.... However, data from the RTI process can be used to document student performance ... as part of the identification of other educational disabilities as part of a comprehensive evaluation.

Finally, Colorado's guidelines provide for the varying use of Tiers 1 and 2 for specified classifications, such as ADHD/OHI as part of the rule-out exclusions for SLD identification.

Discussion

As Zirkel and Thomas (2010) previously clarified, state laws are binding, whereas courts have consistently regarded guidelines as nonbinding in light of their failure to follow the formal processes of legislation or regulations (*Bethlehem Area School District v. Zhou*, 2009; *D. K. v. Abington School District*, 2010; *Holmes v. Millcreek Township School District*, 2000). Guidelines, which may be couched as requirements or recommendations, are usually more flexible in terms of their formulation, allowing for revision at the state level and/or customization at the local level. Moreover, they are often aimed at the optimum (in terms of best practice) rather than the minimum (in contrast to legal requirements). Thus, differentiation between state laws and state guidelines is clearly warranted.

Conversely, beyond both state laws and guidelines, the implementation of RTI includes a wide range of other significant considerations, including research, resource leadership, and planning, intrinsic to a systems-wide change that encompasses general as well as special education. Within this broader context, the subsequent sections address each of the four RTI implementation features in state laws and, with due differentiation, state guidelines.

General education interventions. At least half of the states have legal provision for GEI, but connection to and coordination with RTI is more the exception than the rule. If RTI is to be successful either within the confines of SLD identification or for wider application, first it must have fidelity not only in terms of consistent implementation but also as not simply GEI under a new label (Zirkel, in press). Second and equally important, state lawmakers need to provide a well-conceived systematic coordination between RTI and GEI rather than the piecemeal and patchwork pattern that is evident in relevant, current state laws.

Behavioral dimension. More than two thirds of the states include the behavioral, not just the academic, dimension for RTI, but—unlike GEI—typically in terms of guidelines rather than law. This dimension fits much of the professional literature. Legally, the federal framework thus far is limited under the IDEA to policy interpretations of the administering agency—the Office of Special Education Programs (OSEP). First, OSEP had consistently taken the position that one of the core characteristics of RTI is universal screening for "academic and behavioral problems" (e.g., OSEP, 2008, p. 254). Yet, in response to a recent question as to the importance of the reference to behavior, not just academic performance, in the IDEA regulations for SLD identification, OSEP concluded, based on the placement of this documentation requirement in the regulation specific to observation and separate from RTI, "it would be inappropriate to assume that an adopted RTI process *must be based on behavior and/or that this [RTI] process extends to other classifications more closely connected to behavior*" (Letter to Zirkel, 2011).

Thus, the extent of integration of behavior, ranging from a limited consideration for SLD identification to a full dual approach, is left to state choice. Implementing

choice via guidelines allows for refinement after initial experience prior to cementing the model into law.

Individual plan. Similarly, providing for an individual plan, which has the same practical value as—but should not be confused with (e.g., the Illinois law requireme 23 Ill. Admin. Code § 226.130)—an overall plan for the district, is appropriate initially in guidelines. Thus, it is surprising that less than half of the states have specific implementation feature. In any event, just as with GEI, states need to give more careful and comprehensive consideration to the name and form of this individual document in relation to less systematic GEI—e.g., SAT or SAT—plans on the one side and § 504 plans on the other side. Contrary to Minnesota’s placement of § 504 in Tier 2, the controlling consideration for them should be whether the student meets the three-part definition of disability under § 504 under the recently amended standards (e.g., Zirkel, 2009).

Other classifications. For the use of RTI for other disability classifications, OSEP has issued the following policy interpretation: "The IDEA . . . does not address the an RTI model for children suspected of having disabilities other than SLD. It is up to [each] State . . ." (Letter to Brekken, 2010). Although OSEP interpretations are binding, courts generally find them to be persuasive due to the agency’s administering authority and expertise (Zirkel, 2003). Although some will argue that legally extending RTI beyond SLD identification requires IDEA authorization, on balance the OSEP view of federalism seems persuasive, especially because RTI is—dependir the particular model—either largely or entirely prereferral (i.e., screening in general education prior to the special education evaluation process).

Thus far, however, only a handful of state laws have extended RTI beyond SLD identification, and—with the exception of Louisiana—the extension is limited to one disability classification or less. It is not at all clear which classifications are compatible with RTI, with the experience in these states and research in the field warrant careful attention. Additionally, it remains to be seen whether Delaware will maintain, extend, or eliminate its RTI requirement for educable mental retardation during the aftereffects of the implementation of Rosa’s law (2010), which requires replacing references in federal laws, including the IDEA, to "mental retardation" with "intellectual disabilities." Keeping the status quo would appear to be permissible not only because this legislation only applies to federal laws but also because it does not eliminate differentiations; specifically, it replaces "mild mental retardation" in the Elementary and Secondary Education Act with "mild intellectual disabilities."

In sum, RTI continues to warrant systematic attention as a matter of state law and, with due differentiation, state guidelines in addition to empirical experimentation and local implementation. The practical challenges are considerable but surmountable (e.g., Samuels, Sawchuk, Zehr, Kelleher, & Sparks, 2011; Wiener & Soodak, 2008). Whether RTI achieves its promise is yet to be seen, but ongoing objective snapshots help document the state-by-state developments.

	A	B	C	D	
Gei	Behavioral Dimension	Individual Plan	Other Class'n(s)		Comments on columns A-D
AI	4	2	2		a-"problem solving teams" (replacing BBssts)a; B-includes pBs
AK		2			
AZ	2				
AR					
CA	1	1			
CO	2	1	(1)		B-includes pBs; D-ambiguous extent as part of rule-out process
CT	2	2	1		B-coordinates with pBs; D-suggests utility for a variety of disability classifications
DE	3		3		a-guidelines recognize need for fit with at risk screenings D-"educable [not trainable or severe] mental disability"
FL	3		3		D-for sli
GA	4	4	3		a-sst (+ remedial education program); B-includes pBs D-sst "intervention plan"
HA	3		3		a-"comprehensive student support system"; c-student "action plan"
ID	1		4		B-coordinates with pBs c-"intervention plan and graphs"
IL	1	1			
IN			2		c-"intervention/extension plan"
IA	3				

^a January 2011 proposed regulations for replacement of building-based SSTs
 1 = brief, peripheral mention in guidelines
 2 = one of the key features in the guidelines

3 = relatively limited in law
 4 = especially notable in law
 () = partial credit
 + = additional information

States that partially or fully require RTI for SLD identification

	A	B	C	D	
Gei	Behavioral Dimension	Individual Plan	Other Class'n(s)		Comments on columns A-D
KS	3	2	1		a-screening + "general education interventions" B=includes pBs
KY	3	2	3		a,B,c-"Kentucky system of interventions" (Ksi)
LA	4	2		4	a-"pupil appraisal services" (+ Gei); B-coordinates with pBs D-autism, developmental disabilities, eD, intellectual disability, ohi, and orthopedic impairment
ME	3	2		(3)	a-team-based, targeted Gei; B=includes school-wide behavior support D-inadequate response to Gei for autism, eD, ohi, sli
MD		2		(1)	B-coordinates with pBs D-ambiguous, two-sided answer to question about use beyond sID
MA					
MI		1			
MN	4	3		(3)	B-coordinates, via guidelines, with pBs D-via detailed Gei prereferral procedures for all classifications
MS	4				a-tst with tracking via Mississippi student information system
MO	(3)	1	1		a-reading intervention plans in grades K-13
MT		2	1		c-"intervention/instructional plan"
NE	3	1			a-"sat or comparable problem solving team"
NV		1	2		
NH					
NJ	3				a-including "intervention and referral services"
NM	4	3	1+	(3)	a-coordinates with sat c-"sat intervention plan" (+ §504 plan within tier 2) D-required service for dyslexia
NY	3	1	1		a-permitted replacement for "academic intervention services" and general requirement for prereferral strategies
NC		2	1		
ND		2			
OH		2	1		B=includes pBs
OK		2			
OR		2	2		c-"instructional support plan"
PA	3	2			a-"instructional support teams" as permissive part of eis
RI		1	1		c-"personalized intervention plan," or "personal literacy plan"
SC	(3)	2	2		a-for at-risk students c-"intervention plan"
SD	1	1			a-"teacher assistance team" at tier 2
TN	(3)				a-brief and broad Gei
TX	(4)	2			a-part of brief and broad Gei B-mentions pBs
UT					
VT	3				a-"educational support system"
VA		2	2		
WA					
WV	3+				a-sat (+ coordinates with critical reading, language arts, & math in grades 3-8)
WI		2			B-mentions pBs
WY	3	2			a-"at-risk committee" B=includes pBs

^a January 2011 proposed regulations for replacement of building-based SSTs
 1 = brief, peripheral mention in guidelines
 2 = one of the key features in the guidelines

3 = relatively limited in law
 4 = especially notable in law
 () = partial credit
 + = additional information

States that partially or fully require RTI for SLD identification

References

Bethlehem Area Sch. Dist. v. Zhou, 976 A.2d 1284 (Pa. Commw. Ct. 2009).

Buck, G. H., Polloway, E. A., Smith-Thomas, A., & Cook, K. W. (2003). Prereferral intervention processes: A survey of state practices. *Exceptional Children*, 69, 34

- Cheney, D., Flower, A., & Templeton, T. (2008). Applying response to intervention metrics in the social domain for students at risk of developing emotional or behavioral disorders. *The Journal of Special Education*, 42, 108-126.
- Delaware Coll. Preparatory Acad., 53 IDELR ¶135 (Del. SEA 2009).
- D. K. v. Abington Sch. Dist., 54 IDELR ¶119 (E.D. Pa. 2010).
- Fairbanks, S., Sugai, G., Guardino, D., & Lathrop, M. (2007). Response to intervention: Examining classroom behavior support in second grade. *Exceptional Children*, 288-310.
- Holmes v. Millcreek Twp. Sch. Dist., 205 F.3d 583 (3d Cir. 2000).
- Ihlo, T., & Nantais, M. (2010). Evidence-based interventions within a multi-tier framework for positive behavioral supports. In T. A. Glover & S. Vaughn (Eds.). *The promise of response to intervention: Evaluating science and practice* (pp. 239-266). New York: Guilford.
- Individuals with Disabilities Education Act (IDEA) regulations. 34 C.F.R. Part 300 (2009).
- Letter to Brekken, 56 IDELR ¶80 (OSEP 2010).
- Letter to Zirkel, 56 IDELR ¶140 (OSEP 2011).
- McIntosh, K., Bohanen, H., & Goodman, S. (2010). Toward true integration of academic and behavior response to intervention systems. *Communiqué*, 39(4), 30-31
- Office of Special Education Programs. (2008). Memorandum to Chief State School Officers, 51 IDELR ¶49.
- Rosa's law, 126 Stat. 2643 (2010).
- Samuels, C. A., Sawchuk, S., Zehr, M. A., Kelleher, M., & Sparks, S. D. (2011, March 2). Special report: Response to intervention's promise and pitfalls. *Education Week*, pp. S1-S16.
- Smith, S. L., Peters, M., Sanders, M., & Witz, K. (2010). Applying a response to intervention framework for noncategorical special education identification. *Communiqué*, 38(8), 9-11.
- Walker, D. W., & Daves, D. (2010). Response to intervention and the courts: Litigation based guidance. *Journal of Disability Policy Studies*, 21(1), 40-46.
- Wiener, R. M., & Soodak, L. C. (2008). Special education administrators' perspectives on response to intervention. *Journal of Special Education Leadership*, 21, 3
- Yell, M. L., & Walker, D. W. (2010). The legal basis of response to intervention: Analysis and implications. *Exceptionality*, 18, 124-137.
- Zirkel, P. A. (2003). Do OSEP policy letters have legal weight? *West's Education Law Reporter*, 171, 391-396.
- Zirkel, P. A. (2009). Legal perspectives: New Section 504 student eligibility standards. *Teaching Exceptional Children*, 41(4), 68-72
- Zirkel, P. A. (2011). What does the law say? *Teaching Exceptional Children*, 43(3), 65-67.
- Zirkel, P. A. (in press). RTI: The need for fidelity in the case law, legal commentary, and local practice. *Learning Disabilities Quarterly*.
- Zirkel, P. A., & Thomas, L. B. (2010). State laws and guidelines for implementing RTI. *Teaching Exceptional Children*, 43(1), 60-73.

Perry A. Zirkel, PhD, JD, LLM, is university professor of education and law at Lehigh University in Bethlehem, Pennsylvania.

National Association of School Psychologists, 4340 East West Highway, Suite 402, Bethesda, MD 20814

Phone: (301) 657-0270 | Toll Free: (866) 331-NASP | Fax: (301) 657-0275 | TTY: (301) 657-4155

[Site Map](#) | [RSS Feeds](#) | [Copyright](#) | [FAQs](#) | [Contact Us](#) | [Privacy Policy](#)