



State Laws and Guidelines for Implementing RTI

Perry A. Zirkel and Lisa B. Thomas

The legal source of schools' use of response to intervention (RTI) is a matter of federal and state special education laws, although its implementation is largely a matter of general education practice. The only mention of RTI is in the Individuals With Disabilities Education Act (IDEA), and it is limited to identification of students with specific learning disability (SLD). More specifically, IDEA delegates to each state the choice of approach for identifying children with SLD: (a) permitting or requiring RTI; (b) permitting or prohibiting evaluation based on a severe discrepancy between ability and achievement; and (c) omitting, permitting, or requiring a third alternative of other research-based procedures. Although the IDEA regulations (2009) do not define or establish criteria for implementing RTI, they require local education agency (LEA) evaluation teams to "consider"—regardless of which approach is selected for SLD identification—at least one essential element of RTI: "data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction" (§ 300.309[b][2]). For another core characteristic, the IDEA final regulations provided only a partial foundation, requiring consideration of "data that demonstrate that the child was provided *appropriate* [emphasis added] instruction in regular education settings" (§ 300.309[b][1]); the Commentary (2006) accompanying the IDEA regulations explained that the originally proposed "requirement for *high quality, research-based* [emphasis added] instruction exceeds statutory authority" (p. 46,656).

The professional literature is rife with rhetoric, research, and increasingly more detailed practical sources, but the legal sources are relatively limited. For RTI litigation, Walker and Daves (2010) identified a handful of published court decisions, but all of them concerned prereferral activities generically, not RTI specifically. Instead, Zirkel (2010) found that the few readily available cases to date have been at the hearing/review officer level and, reflecting further confusion, none was specific to SLD eligibility.

The appearance and analysis of legislation and regulations have been more frequent but still rather fluid. In our recent systematic survey of state laws (Zirkel & Thomas, 2010), we found that as of September 2009 the vast majority of state laws had opted to permit both RTI and severe discrepancy, effectively delegating the ultimate choice to the LEA.

Conversely, we reported that 12 states had chosen to require RTI, with variations:

- Colorado, Connecticut, Louisiana, Rhode Island, and West Virginia—completely, with express or implicit prohibition of the severe discrepancy approach.
- Florida, Illinois, and, possibly for the combination, both Georgia and Maine—completely, but allowing the addition of a combination with at least the severe discrepancy approach.
- Delaware, New Mexico, and New York—only partially (i.e., particular area, such as reading, or grade range).

In addition, four states (i.e., Arizona, Hawaii, South Carolina, and Wisconsin) had not finalized their state law choice at that time. Because some states had not made their choice by statute or regulation, we extended the line between "state laws" and "guidelines" to include officially adopted state board of education policies (e.g., Mississippi, Missouri, and North Carolina) as "state laws" and state education agency (SEA) policy memoranda (e.g., Connecticut, Massachusetts, and Maine) as "guidelines" (Zirkel & Thomas, 2010). However, we had limited this initial study to the state choices with regard to the three options for SLD identification, thus not analyzing the state laws and guidelines for the detailed, implementation features of RTI.

The only study to analyze state guidelines for RTI features (Berkeley, Bender, Peaster, & Saunders, 2009) was not particularly clear or systematic with regard to the differentiation between state law and guidelines. First, the results were difficult to decipher in terms of the IDEA-required adoption with regard to SLD identification. For example, based on their review of RTI-related documents on SEA web sites in August–December 2007, Berkeley and her colleagues reported that 15 states "have currently adopted an RtI model" (2009, p. 89), yet their classification of states for SLD identification listed two states—Delaware and Georgia—as using "RtI only" and 36 more as using "discrepancy and/or RtI" (p. 88). Second, they did not offer any basis for the features of RTI that they examined (i.e., number of tiers, domain, intervention frequency, instruction group size, progress monitoring, research-based practices, and fidelity). Moreover, their tabulation was limited to the 15 states, and for most of these features the entries were limited to three broad, not directly

informative entries: (a) specified by tier, (b) specified but not by tier, and (c) not specified.

What is needed is a current, comprehensive, and differentiated tabulation of state laws and guidelines for RTI in the IDEA context of SLD identification in terms of their implementation framework. Given the lack of definitions, criteria, and implementation information in IDEA and the limited scope of the earlier state law snapshot, this sequel reports the “follow-up study that will systematically examine the scope and standards of RTI not only in these states’ laws but also the additional SEA guidelines” (Zirkel & Thomas, 2010, p. 62).

Method

The purpose of this study was to systematically synthesize the scope and standards for RTI in state laws and SEA guidelines, thus providing a more in-depth view of states’ specific legal requirements and normative recommendations for implementing RTI as part of the SLD identification process. Specifically, we addressed the following questions:

1. Which states have updated their laws regarding SLD identification since the publication of our earlier article (Zirkel & Thomas, 2010)?
2. Which states have opted to require or recommend an LEA plan as part of the implementation or compliance process for the use of RTI in SLD identification?
3. Which of the core characteristics of RTI have states required or recommended?
4. What criteria for the duration of the intervention at the multiple tiers have states required or recommended?
5. What criteria for the frequency and intensity of the intervention at the multiple tiers have states required or recommended?
6. What criteria for the frequency of progress monitoring at the multiple tiers and decision rules for the movement from tier to tier have states required or recommended?
7. What criteria for referral for initial special education evaluation have states required or recommended?

The date of this more detailed snapshot was May 31, 2010. Although in a few cases we contacted the SEA representative to obtain additional information, the basis for our entries was our impartial interpretation of the published pertinent provisions of each state’s law and guidelines as of this date. Due to its high rate of litigation, we included the District of Columbia, thus using “states” generically to extend to 51 SEAs.

The data source for the first question consisted of each state’s law, as cited in our earlier study (Zirkel & Thomas, 2010), which we revisited for any updates or other possible corrections. For the remaining questions, we additionally canvassed the RTI-related documents (e.g., manuals, guides, brochures, memoranda, forms, checklists, worksheets, and templates) that (a) were available on each SEA’s web site and (b) appeared to have the official endorsement of the SEA. We refer to these items herein under the generic label *guidelines* in contrast to what we previously defined as *law* (e.g., statutes and regulations). To ensure the comprehensiveness of

our compilation within the boundaries of these two concurrent criteria, we examined both special and general education documents on each SEA web site and also cross-checked the documents listed on the National Center on Response to Intervention’s (NCRTI) RTI State Database (2009). Conversely, we excluded presentations and other documents that were on the SEA’s web site but were attributable to other organizations (e.g., National Association of State Directors of Special Education [NASDSE], National Center on Student Progress Monitoring, National Research Center on Learning Disabilities [NRCLD], NCRTI, or an LEA) or individuals (e.g., university professors) that did not appear to have official SEA status. We contacted the SEA special education director or designated RTI representative to resolve ambiguities or omissions. Table 1 lists the citations and web sites that were our data sources.

The interpretation of data sources included three successive classifications: first, distinguishing between law and guidelines; next, for guidelines, distinguishing between requirements and recommendations; and finally, for both data sources, distinguishing between explicit and implicit requirements and recommendations. At each of these successive steps, the boundaries between each classification pair were not bright lines. For example, at the dividing boundary for the first classification, we interpreted Missouri’s RTI “guidelines” as an extension of law because the state’s regulations require districts that use RTI to have written implementation procedures that incorporate, as a minimum, these guidelines. Similarly, for the second classification, we judged Nebraska and South Dakota’s guidelines as amounting to requirements because these two states require LEAs to obtain SEA approval prior to using RTI for SLD identification. In the absence of such plan approval, the key criterion for the second classification was the specific language in the law or guidelines, such as the distinction between *shall* and *should* or *may*. Where the state’s law and guidelines yielded more than one possible entry, we listed the strongest one. For the final classification, our entries for “implicit” were based on partial references and/or contextual cues, which served as the basis for a reasonable inference, as compared with relatively clear and complete (i.e., explicit) requirements or recommendations.

For the second question, the determination was rather straightforward—merely reviewing the law and/or guidelines to ascertain whether the pertinent provisions require or recommend that the LEA submit an RTI implementation plan to the SEA. The answer to this question contributed to determining the strength of the implementation features; those states where SEA approval of an LEA plan was a prerequisite for implementing RTI effectively established a “required by” entry for their law or guidelines. The requisite forms (e.g., assurance letter or checklist) were part of the basis for our entries in response to the other questions.

For the third question, the framework was based primarily on the official agency policy interpretations (Office of Special Education and Rehabilitation Services, OSERS, 2007; Office of Special Education Programs, OSEP, 2008) as to the core characteristics of RTI: (1) high quality research-based instruction in general education, (2) universal screening for academic and

Table 1. Data Sources for the Study

State	Source(s)
AL	ALA. ADMIN. CODE r. 290-8-9-.03(10) RTI (i.e., Classroom Improvement Publications”) web site: http://www.alsde.edu/html/sections/documents.asp?section=54&sort=31&footer=sections
AK	ALASKA ADMIN. CODE tit. 4, § 52.130 RTI web site: http://www.eed.state.ak.us/nclb/RTI.html
AZ	http://www.ade.state.az.us/stateboard/Rules/Approved/Item4IR7-2-401andR7-2-405IDEAPartBRegulations.pdf (ARIZ. ADMIN. CODE § R7-2-401[E][6][d]) RTI web site: http://www.ade.az.gov/azrti/ http://www.azed.gov/ess/memos/2009/SPED09-01.pdf http://www.ade.state.az.us/ess/publications/AZ-TASEvaluation.pdf (pp. 3–5, 9–12, 30–31, 44–47)
AR	http://arksped.k12.ar.us/sections/rulesandregulations.html (§§ 6.07, 6.09.9) No RTI guidelines on SEA web site
CA	CAL. EDUC. CODE § 56337 RTI web site: http://www.cde.ca.gov/ci/cr/ri/
CO	1 COLO. CODE REGS. § 301-8:2220-R-2.08(6) RTI web site: http://www.cde.state.co.us/rTI/ToolsResourcesRtl.htm http://www.cde.state.co.us/cdesped/SD-SLD.asp
CT	No RTI requirements in law RTI (i.e., SRBI) web site: http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=322020 http://www.sde.ct.gov/sde/cwp/view.asp?a=2678&q=320730#IEP (<i>Guidelines for Identifying Children with Learning Disabilities – Executive Summary [2009]; Connecticut’s Framework for RTI – Using Scientific Research-Based Interventions [SRBI]: Improving Education for All Students [Executive Summary]; SRBI Self-Assessment; Reading Worksheet [ED 630]; Math Worksheet [ED 631]; Writing Worksheet [ED 636]</i>)
DE	http://regulations.delaware.gov/AdminCode/title14/900/925.shtml#TopOfPage (14 DEL. ADMIN. CODE Ch. 925, §§ 6.11, 7.0–12.11) RTI web site: http://www.doe.k12.de.us/infosuites/staff/profdev/rTI_docs.shtml
DC	http://odr.dc.gov/odr/frames.asp?doc=/odr/lib/odr/pdf/dc_special_education_policy_-_evaluation_and_eligibility_determination.pdf (D.C. MUN. REGS. Tit. 5, § 3006.4) No RTI guidelines on SEA web site
FL	FLA. STAT. §§ 1003.41, 1003.413, 1003.4156, 1003.53, 1008.22, 1008.25; FLA. ADMIN. CODE ANN. IT. 6A-6.053, 6A-6.054, 6A-6.03018, 6A-6.0331 RTI web site: http://www.florida-rti.org/ http://www.fldoe.org/ese/sldr.asp
GA	GA. COMP. R. REGS. 160-4-7-.05 Appendix (i) RTI web site: http://www.doe.k12.ga.us/ci_services.aspx?PageReq=CIServRTI
HI	http://www.boe.k12.hi.us/PUBLIC/ADMINR1.NSF/85255a0a0010ae82852555340060479d/a96bfdcf49e72a390a2576790079de56?OpenDocument (HAWAII CODE R. 8-60-41) RTI (i.e., CSSS) web site: http://doe.k12.hi.us/programs/csss/index.htm
ID	http://www.sde.idaho.gov/site/special_edu/manual_page.htm (Ch. 4 § 7[1a]) RTI web site: http://www.sde.idaho.gov/site/rTI/
IL	ILL. ADMIN. CODE tit. 23, § 226.130 RTI web site: http://www.isbe.state.il.us/RtI_plan/default.htm http://www.isbe.state.il.us/spec-ed/html/rTI_speced.htm http://www.isbe.state.il.us/spec-ed/html/parent_rights.htm (Ch. 5) http://www.illinoisaspire.org/welcome/
IN	511 IND. ADMIN. CODE 7-40-5, 7-41-12 RTI web site: http://www.doe.in.gov/rTI/index.html
IA	IOWA ADMIN. CODE IT. 281-41.307, 281-41.309, 281-41.312, 281-41.313 RTI (i.e., IDM) web site: http://www.iowa.gov/educate/index.php?option=com_content&task=view&id=801&Itemid=1305 http://www.iowa.gov/educate/index.php?option=com_content&task=view&id=595&Itemid=1577
KS	KAN. STAT. ANN. § 72-986(b)(4); KAN. ADMIN. REGS. §§ 91-40-10, 91-40-11 RTI (i.e., MTSS) web site: http://www.kansasmtss.org/ http://www.ksde.org/Default.aspx?tabid=3152 (Ch. 3)
KY	707 Ky. ADMIN. REGS. 1:300, 1:310 RTI (i.e., KSI) web site: http://www.education.ky.gov/KDE/Instructional+Resources/Kentucky+System+of+Interventions/ http://www.education.ky.gov/NR/rdonlyres/24F47C89-AAC0-416C-9B55-33F70AF75F78/0/SpecificLearningDisability.pdf
LA	LA. ADMIN. CODE tit. 28, Pt. CI, §§ 301, 303, 305, 307, 513, 719; LA. ADMIN. CODE tit. 28, Pt. XLIII, § 308 (http://www.doe.state.la.us/lde/bese/1041.html - Bulletins 1508 and 1706) RTI web site: http://www.louisianaschools.net/lde/lan/2999.html http://www.louisianaschools.net/lde/eia/2677.html
ME	http://www.maine.gov/education/speced/contentrules.htm (<i>Chapter 101 Regulations - Effective 5/8/10 - §§ III-2, V-2G, VII-2L</i>) RTI web site: http://www.maine.gov/education/rTI/index.shtml
MD	MD. CODE REGS. 13A.05.01.03, 13A.05.01.05, 13A.05.01.06 RTI web site: http://www.marylandpublicschools.org/MSDE/programs/rTI/

continues

Table 1 Continued

State	Source(s)
MA	603 MASS. ADMIN. CODE 28.02 (http://www.doe.mass.edu/sped/links/learndisability.html) No RTI web site http://www.doe.mass.edu/sped/iep/sld/default.html http://www.doe.mass.edu/candi/summit/TIModel.pdf http://www.doe.mass.edu/CandI/summit/2008/TIModel.pdf http://www.doe.mass.edu/news/news.aspx?id=5461
MI	MICH. ADMIN. CODE R. 340.1713 RTI (i.e., MiBLSi) web site: http://miblsi.cenmi.org/ http://www.michigan.gov/documents/mde/OSE-EISMemo09-02_263815_7.pdf http://www.michigan.gov/documents/mde/OSE-EIS_Memorandum_10-07_321440_7.pdf http://www.michigan.gov/documents/mde/Item_A_254706_7.pdf
MN	MINN. STAT. § 125A.56; MINN. R. 3525.1341 RTI web site: http://education.state.mn.us/MDE/Academic_Excellence/Implement_Effect_Practic/RTI/index.html http://education.state.mn.us/MDE/Learning_Support/Special_Education/Categorical_Disability_Information/Specific_Learning_Disabilities/index.html http://www.scred.k12.mn.us/School/Index.cfm/go:site.Page/Page:3/Area:4/index.html
MS	http://www.mde.k12.ms.us/SBE_policymanual/4300.htm ; http://www.mde.k12.ms.us/special_education/policies/2009/Policy_06-17-09.pdf (§§ 300.307-300.311) RTI web site: http://www.mde.k12.ms.us/IPS/RtI/index.html http://www.mde.k12.ms.us/special_education/msis.html (<i>Intervention Screen for Tier III 2006</i>)
MO	http://www.dese.mo.gov/divspeced/Compliance/StandardsManual/documents/1400-SLD.pdf RTI web site: http://dese.mo.gov/3tieredmodels/rti/ http://dese.mo.gov/divspeced/stateplan/index.html http://dese.mo.gov/3tieredmodels/ http://mimschools.org/
MT	MONT. ADMIN. R.R. 10.16.3019A, 10.16.3019B, 10.16.3019C RTI web site: http://www.opi.mt.gov/Resources/RTI/Index.html http://www.opi.mt.gov/pdf/SpecED/Forms/RTISumRptLDCriteriaChkfst.pdf http://www.opi.mt.gov/pdf/SpecED/Forms/CriteriaChkfst.pdf
NE	92 NEB. ADMIN. CODE § 51-006 RTI web site: http://rtinebraska.unl.edu/sld.html http://www.nde.state.ne.us/sped/technicalassist.html (<i>Verification Guidelines for Children with Disabilities; Verification Guidelines: Question and Answer; Verification Guidelines Disability Specific Videos; Verification Guidelines Disability Specific Power Point Trainings</i>) http://www.nde.state.ne.us/RTI/PDF/tadocprintable.pdf
NV ^a	NEV. ADMIN. CODE § 388.420 No RTI web site http://nde.doe.nv.gov/SpecialEdResources/SPTechnicalAssistance/LD_Policy.pdf
NH	N.H. CODE ADMIN. R. ANN. EDUC. 1107.02 RTI web site: http://www.education.nh.gov/innovations/rti/index.htm http://www.education.nh.gov/nhresponds/index.htm
NJ	N.J. ADMIN. CODE §§ 6A:14-3.4, 6A:14-3.5 No RTI guidelines on SEA web site
NM	N.M. CODE §§ 6.29.1.9(D), 6.31.2.10 RTI web site: http://www.ped.state.nm.us/RtI/index.html http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf (pp. 109-127 and Appendix) http://www.ped.state.nm.us/SpEd/dl10/dd/NM%20Technical%20Evaluation%20and%20Assessment%20Manual%20(NM%20TEAM)%20%20(6).pdf http://www.ped.state.nm.us/SpEd/dl10/dd/Guidelines%20For%20Dual%20Discrepancy%20(1).pdf http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks
NY	N.Y. COMP. CODES R. & REGS. Tit. 8, §§ 100.2, 200.4 RTI web site: http://www.nysrti.org/
NC	http://www.ncpublicschools.org/ec/ (Policies - NC 1500-2.8, NC 1503-2.5, NC 1503-3.1) RTI web site: http://www.dpi.state.nc.us/curriculum/responsiveness/ http://www.dpi.state.nc.us/ec/policy/forms/statewide/ (<i>SLD Worksheet and SLD RtI Worksheet</i>) http://www.dpi.state.nc.us/docs/ec/home/research-interventions.pdf
ND	No RTI requirements in law RTI web site: http://www.dpi.state.nd.us/speced/personnel/index.shtm http://www.dpi.state.nd.us/speced/guide/SLDGuide07.pdf http://www.dpi.state.nd.us/speced/guide/evalproc.pdf (pp. 1, 4, 5, 11)
OH	OHIO ADMIN. CODE 3301-51-06 RTI (i.e., Integrated Systems Model) web site: http://education.ohio.gov/GD/Templates/Pages/ODE/ODEPrimary.aspx?page=2&TopicID=842&TopicRelationID=657 http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=5&ContentID=29853&Content=76762 http://www.ode.state.oh.us/GD/DocumentManagement/DocumentDownload.aspx?DocumentID=56388 http://www.ode.state.oh.us/GD/DocumentManagement/DocumentDownload.aspx?DocumentID=56407 http://www.ode.state.oh.us/GD/DocumentManagement/DocumentDownload.aspx?DocumentID=42970

continues

Table 1 Continued

State	Source(s)
OK	<p>http://sde.state.ok.us/Curriculum/SpecEd/pdf/Compliance/Policies_Procedures.pdf (pp. 77, 79, 92–99, Appendix)</p> <p>No RTI web site</p> <p>http://sde.state.ok.us/Curriculum/SpecEd/Default.html (<i>RTI Questions and Answers; Frequently Asked Questions Regarding Early Intervening Services; Special EDition Newsletter</i> Fall 2006, Winter 2007, Winter 2008, Spring 2008)</p> <p>http://www.sde.state.ok.us/NCLB/pdf/Improvement/ppt/RtI.pdf</p>
OR	<p>OR. ADMIN. R. 581-015-2170</p> <p>RTI (i.e., OR-RTI) web site: http://www.ode.state.or.us/search/page/?=315</p> <p>http://www.ode.state.or.us/search/page/?id=1374</p> <p>http://oregonrti.org/</p>
PA	<p>22 PA. CODE §§ 14.122, 14.125</p> <p>RTI (i.e., RTII) web site: http://www.pattan.net/teachlead/ResponsetoIntervention.aspx</p>
RI	<p>http://www.ride.ri.gov/Regents/Docs/RegentsRegulations/BEP.6409.pdf (§§ G-13-1, G-14-1.1); http://www.ride.ri.gov/Regents/Docs/RegentsRegulations/Regulations%20Gov.%20Ed.%20of%20Children%20with%20Disab.%201-08.pdf (§§ 300.307–300.311)</p> <p>RTI web site: http://www.ritap.org/rti/</p> <p>http://www.ride.ri.gov/Special_Populations/Programs_Services/Learning_Disabilities_and_Response_to_Intervention_(RTI).aspx</p>
SC	<p>S.C. CODE ANN. REGS. 43-243.1(D)</p> <p>RTI web site: http://ed.sc.gov/agency/Standards-and-Learning/Academic-Standards/old/Instructional-Promising-Practices/documents/ResponsetoIntervention.html</p> <p>http://ed.sc.gov/agency/Standards-and-Learning/Exceptional-Children/old/ec/stateregs/StateRegulations2007.html (4/22/10 <i>Final Policies and Procedures</i>)</p> <p>http://ed.sc.gov/agency/Innovation-and-Support/Youth-Services/Guidance/Regionalworkshops/documents/RTIELACoordinatorsUpdate.pdf</p>
SD	<p>S.D. ADMIN. R. §§ 24:05:24.01:18, 24:05:24.01:19, 24:05:25:07 through 24:05:25:12</p> <p>RTI web site: http://doe.sd.gov/oess/specialed/forms/RtI/index.asp</p> <p>http://doe.sd.gov/oess/specialed/IEP/docs/IEPTAGuide2009.pdf</p>
TN	<p>http://state.tn.us/education/speced/doc/6110sldstand.pdf</p> <p>No RTI web site</p> <p>http://www.state.tn.us/education/speced/assessment.shtml (<i>Specific Learning Disabilities 6/1/10; SLD Assessment Documentation 6/1/10; Progress Monitoring; RTI Report Template; Template for RTI Guidelines; RTI Process Decision Tree; New Criteria for Identification of SLD Training Power Point; RTI Planning Checklist; RTI School Readiness for Implementation; Memorandum SLD 12/27/07; IDEIA Memo #1A RTI 8/30/05; IDEIA Memo #1 RTI 5/26/05</i>)</p>
TX	<p>19 TEX. ADMIN. CODE § 89.1040(c)(9)</p> <p>RTI web site: http://ritter.tea.state.tx.us/special.ed/rti/; http://www.tea.state.tx.us/index2.aspx?id=5817</p>
UT	<p>http://www.schools.utah.gov/sars/lawsregs/pdfs/finalrules.pdf (pp. 46–52)</p> <p>No RTI web site</p> <p>http://www.schools.utah.gov/curr/lang_art/elem/ThreeTier.htm</p> <p>http://www.schools.utah.gov/curr/Math/Sec/documents/Utah's%203%20Tier%20Model%20of%20Mathematics%20Instruction%20for%20web.pdf</p> <p>http://www.schools.utah.gov/sars/manualsglines/pdfs/sld.pdf</p>
VT	<p>http://education.vermont.gov/new/pdfdoc/board/rules/2360.pdf (§ 2362.2.4)</p> <p>No RTI web site</p> <p>http://education.vermont.gov/new/html/pgm_sped/forms.html (<i>RTI Forms</i>)</p> <p>http://www.vermontfamilynetwork.org/Pub-RtI.html</p>
VA	<p>http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf (§§ 20-81-80[D][6], 20-81-80[T])</p> <p>RTI web site: http://www.doe.virginia.gov/instruction/response_intervention/index.shtml</p> <p>http://www.doe.virginia.gov/special_ed/disabilities/learning_disability/index.shtml</p>
WA	<p>WASH. ADMIN. CODE 392-172A-03045 thru 392-172A-03080</p> <p>RTI web site: http://www.k12.wa.us/RTI/default.aspx</p>
WV	<p>http://wvde.state.wv.us/osp/Policy2419-Jan-11-2010-w-cover.pdf (Ch. 4 § 3[L])</p> <p>RTI web site: http://wvde.state.wv.us/osp/RtIOSP.html</p>
WI	<p>Regulations specific to RTI still at proposed stage</p> <p>RTI web site: http://dpi.wi.gov/rti/index.html</p> <p>http://dpi.wi.gov/sped/ld.html</p>
WY	<p>http://soswy.state.wy.us/Rules/RULES/7767.pdf (7 WY. CODE R. EDUC. GEN. § 4[d][x])</p> <p>No RTI guidelines on SEA web site</p>

Note. The sources for each state are provided in the following order: (a) citation and/or web site for pertinent state law, (b) RTI web site, and (c) other RTI-related guidance documents on SEA web site. For the third category, the RTI-related guidance documents are listed parenthetically where the web site also included various other documents. SEA = state education agency; RTI = response to intervention.

^aThe SEA has disseminated the document *The RtI Framework: Underlying Foundations and Essential Components* to local education agencies, but current state furloughs have delayed uploading to the web site (e-mail from Jane Splean, Assistant Director for Special Education, May 25, 2010, at 3:13 p.m.).

behavior problems, (3) continuous progress monitoring, and (4) multiple tiers of progressively more intense research-based instruction and intervention. In addition, we found that recent respected professional sources (e.g., Batsche et al., 2006; Mellard & Johnson, 2008; NRCLD, 2007; NCRTI, 2010) not only corroborated but supplemented this list, yielding a fifth core characteristic: fidelity measures. Our entries for the first and third criteria used the language of the aforementioned required considerations in the IDEA regulations as a baseline. Parallel provisions only occurred in state law, not guidelines, but their formulation had to add specificity or strength for the IDEA language for a required-by-law entry (e.g., *shall ensure* or *must document* rather than *consider* for the first criterion, and *high-quality research-based instruction* or *scientifically based instruction* rather than *appropriate instruction* for the third criterion).

For Questions 4 through 6, the focus—as a practical outgrowth of the third and fourth core characteristics—was respectively on the duration and frequency of the interventions, the frequency of the continuous progress monitoring, and the decision rules for movement from one tier to the next. Although Mellard and Johnson (2008) comprehensively elaborated seven key features of the interventions at Tiers 1, 2, and 3, we prioritized this subset due to our primary focus on SLD identification. The basis for this prioritization was the convergence of practical significance and current literature (e.g., NRCLD, 2007; NCRTI, 2010).

Finally, representing the transition from RTI to the formal evaluation stage, the seventh question addressed the state criteria for an initial evaluation for SLD eligibility for special education. Inasmuch the implementation of RTI for SLD identification is largely or entirely in general education, this transition during or at the end of the final tier to the IDEA's comprehensive evaluation process merited examination.

Results

Which States Have Updated Their Laws Regarding SLD Identification?

Three of the previously incomplete states have finalized their state laws, and further review revealed that the entries for Florida, Idaho, and Iowa needed correcting or updating. Resulting revisions to the previous tabulation (Zirkel & Thomas, 2010) are

- Arizona: Permits RTI, severe discrepancy, and the third alternative (ARIZ. ADMIN. CODE § R7-2-401[E][6][d]).
- Florida: Requires RTI exclusively (rather than in combination with “pattern of strengths and weaknesses”) after transitional period ending July 1, 2010 (FLA. ADMIN. CODE ANN. r. 6A-6.03018[6]).
- Hawaii: Permits RTI, severe discrepancy, their combination, and/or “pattern” (HAWAII CODE R. 8-60-41).
- Idaho: Requires RTI after transitional period ending July 1, 2010 (Ch. 4 § 7[1a])

- Iowa: Requires RTI or the third alternative, and prohibits severe discrepancy (IOWA ADMIN. CODE CODE r. 281-41.307[1]).
- South Carolina: Permits RTI or “pattern,” which refers to severe discrepancy and/or the third alternative (S.C. ANN. REGS. 43-243.1[D][2][b]).

The only remaining state that has not finalized its choice is Wisconsin, which is currently undergoing its adoption process. Moreover, Florida and Idaho belong in the first of the three groups in our previous study, along with the five other states that completely require RTI without a combined or alternative approach. In addition to the new total of 13 states that partially or completely require RTI, Iowa is a singular hybrid, requiring either RTI or the third, research-based option.

Which States Require or Recommend LEA Implementation Plans?

Examination of the required or recommended provisions for the LEA to submit an implementation plan to the SEA prior to using RTI for SLD identification yielded the following three variations in order of descending strength:

- Require the LEA to obtain SEA approval, typically through submission of an assurance letter, plan, application, or self-assessment checklist, prior to implementing RTI for SLD identification: Arizona, Nebraska, Pennsylvania, Rhode Island, South Dakota, Tennessee, and Vermont.
- Require LEA submission but not approval of a plan for implementation of RTI for SLD identification: Colorado, Illinois, and North Carolina.
- Recommend development of an LEA plan for implementation of RTI for SLD identification but without submission to or approval by the SEA: Florida.

The mandatory states (i.e., those that legally require local districts to use RTI for SLD identification) only overlap, rather than equate, with requirements for the core characteristics or operational features of RTI. The opposites may apply beyond this overlap. For example, a permissive state may, via law or guidelines, require these characteristics or features for school districts that adopt RTI for SLD identification. Conversely, a mandatory state may only recommend or not at all address particular characteristics or features of RTI.

Which RTI Core Characteristics Do States Require or Recommend?

Table 2 presents the state-by-state results for the core characteristics of RTI. Most states—all but seven—have completely covered the core characteristics of RTI. However, the strength of the coverage is largely in terms of guideline recommendations. Only nine states—overlapping with those that are mandatory (shaded in gray in the table)—address all the core characteristics in terms of legal requirements. All of the seven states on the incomplete side are permissive rather than mandatory, and the most frequent missing characteristic in this relatively small group is fidelity.

Table 2. Core Characteristics of RTI for SLD Identification

★ = Explicitly Required by Law ■ = Explicitly Required by Guidelines ◆ = Explicitly Recommended by Guidelines
 ☆ = Implicitly Required by Law □ = Implicitly Required by Guidelines ◇ = Implicitly Recommended by Guidelines

State	High Quality Research-Based Instruction in General Education	Universal Screening for Academic and Behavior Problems	Continuous Progress Monitoring	Multiple Tiers of Progressively More Intense Instruction/Interventions	Fidelity Measures	Comments
AL	◆	◆	◆	◆	◆	
AK	◆	◆	◆	◆	◆	
AZ	□	◆	■	■	◆	
AR						SEA web site does not provide RTI guidance documents.
CA	◆	◆	◆	◆	◆	
CO	◆	◆	◆	◆	◆	
CT	■	◆	■	■	■	
DE	★	★	★	★	★	
DC						SEA web site does not provide RTI guidance documents.
FL	★	☆	★	☆	★	
GA	★	◆	★	☆	◆	
HI	◆		◆	◆	◆	Model includes five levels of student support, with special education services starting at Level 3.
ID	◆	◆	★	☆	◆	
IL	◆	◆	◆	◆	◆	
IN	◆	◆	◆	◆	◆	
IA	◆	◆	★	☆	◆	
KS	◆	◆	◆	◆	◆	
KY	★	◆	★	◆	◆	
LA	★	★	★	★	★	
ME	■	★	★	☆	■	
MD	◆	◆	◆	◆	◆	
MA	◆	◆	◆	◆	◆	RTI guidance document is in “draft.”
MI	◆	◆	◆	◆	◆	RTI guidance documents only apply to reading and/or behavior.
MN	◆	☆	★	☆	★	
MS	★	☆	★	★	◆	
MO	◆	◆	★	☆	☆	
MT	◆	◆	☆	☆	☆	
NE	■	■	■	■	■	
NV ^a	◆	◆	■	□	◆	
NH	◆	◆	◆	◆	◆	
NJ	☆		☆			SEA web site does not provide RTI guidance documents.
NM	★	★	★	★	★	
NY	★	★	★	★	☆	
NC	★	◆	★	★	◆	
ND	◆	◆	◆	◆	◆	
OH	◆	◆	★	☆		
OK	□	■	■	■	□	
OR	■	■	★	☆	■	

Table 2 Continued

State	High Quality Research-Based Instruction in General Education	Universal Screening for Academic and Behavior Problems	Continuous Progress Monitoring	Multiple Tiers of Progressively More Intense Instruction/Interventions	Fidelity Measures	Comments
PA	★	■	★	☆	■	
RI	★	☆	★	★	★	
SC	◆	◆	◆	◆	◆	
SD	■	■	■	■	■	
TN	★	★	★	★	★	
TX	◆	◆	☆	◆	◆	
UT	★	★	★	★	★	
VT	☆	■	★	★	■	
VA	◆	◆	◆	◆	◆	
WA	★	★	★	★	★	
WV	★	★	★	★	◆	
WI	◆	◆	◆	◆		
WY						SEA web site does not provide RTI guidance documents.

Note. Shaded rows indicate those states that require RTI by law for SLD identification. RTI = response to intervention; SLD = specific learning disability; SEA = state education agency.

^aThe Nevada entries are based on two documents, although only one is available on their web site. The second document, *The RtI Framework: Underlying Foundations and Essential Components*, has been disseminated to the local education agencies, but current state furloughs have delayed uploading to the web site (e-mail from Jane Splean, Assistant Director for Special Education, May 25, 2010, at 3:13 p.m.).

What Do States Require or Recommend for the Duration of the Intervention?

Table 3 presents state recommendations and requirements for the duration of the intervention. The majority of states ($n = 27$) have not addressed this implementation issue in their laws or guidelines. For those that have addressed duration, provisions tend toward variety and latitude rather than uniformity and specificity. Only nine states require by law or guidelines a specific duration of the intervention, and five of them (i.e., Georgia, Idaho, Maine, Minnesota, Missouri) do not specify a tier. This lack of differentiation in requirements, along with the recommendations' entries for Nebraska, which also does not specify a tier, and Arizona and Florida, which span the combination of the second and third tiers, contributed to the conflation of Tiers 2 and 3 in Table 3. Regardless of whether their provisions were requirements or recommendations, only three states specifically addressed duration at Tier 1, and the pertinent provisions for Tiers 2 and 3 do not establish a predominant pattern. The duration, where specifically required or recommended, is by round within a tier, tends to be in terms of a range rather than a specific number of weeks, and varies within as well as among the states.

What Are the States' Criteria for Frequency and Intensity of Interventions?

Overall, moderately more states address these implementation issues, but the vast majority of these states do so by way of recommendation rather than requirement (see Table 4). At Tier 1, the most common intensity/frequency for core instruc-

tion, typically reading and/or math, approximated 90 minutes or a range of 60 to 180 minutes on a daily basis. For Tier 2, an intensity/frequency of 30 minutes for 3 to 5 times per week prevailed but with considerable variation and, again, predominantly via recommendation rather than requirement. At Tier 3, the intensity tended to be longer, such as 30 to 60 minutes and more frequent, such as 4 to 5 times per week than at Tier 2, but the same lack of stringency and uniformity was evident.

What Are the States' Criteria for Progress Monitoring?

Table 5 summarizes the provisions for frequency of progress monitoring at, and decision rules for movement between, the tiers. As an overall matter, most states have addressed the first—and few states have addressed the second—of these two interrelated implementation issues. Moreover, compared to the previous tables, a higher—but still far from predominant—proportion has done so by way of requirements. For progress monitoring at Tier 1, the majority of states recommend ($n = 28$) or require ($n = 8$) it, by means of universal screening, a minimum of three times per year, specifically in fall, winter, and spring. At Tier 2, the frequency of progress monitoring was variable due to not only the disperse distribution among the specified categories but also the inexact meanings of the “bi-weekly” and “bi-monthly” referents. At Tier 3, progress monitoring tended to be more frequent, most often on a weekly basis. In contrast, hardly any of states provide criteria for movement between Tiers 1 and 2 or the movement between Tiers 2 and 3, with Delaware being the only one to do so for both pairs. The low number of states

Table 3. State RTI Recommendations and Requirements for Duration of Intervention

Tier	Characteristic	State Recommendations (by Guidelines)	State Requirements
1	Total number of weeks per intervention round	NM: Tier 1 interventions includes extra class time over core instruction, may last 4–18 weeks, and may be repeated as necessary. NY: year-long	OK: Tier 1 interventions ≥ 4–6 weeks ^a
2/3	6–12+ weeks per intervention round	AK (≥ 6–8 weeks – T2, T3) HI (6–10 weeks – T3) ^b KS (6–10 weeks – T2, T3) MD (6–12 weeks – T2, T3) MA (≥ 10 weeks – T3) MS (10 weeks – T2) NE (10 weeks – tns) SD (9–12 weeks – T2) TN (≥ 6 weeks – T3) WA (≥ 9–12 weeks – T2, T3)	DE (6–12 weeks – T2, T3) GA (≥ 12 weeks – tns) ID (8–12 weeks – tns) OK (≥ 9–12 weeks – T2; ≤ 8 weeks – T3) ^a WV (12 weeks – T3)
	7–24+ weeks per intervention round	CT (8–20 weeks – T2, T3) NM (9–18 weeks – T2) TN (8–16 weeks – T2) VA (12–18 weeks – T2, T3)	MN (≥ 7 weeks/1 intervention, ≥ 2 interventions – tns) MS (8–16 weeks – T3) WV (8–12 weeks + 8–12 weeks – T2)
	10–30+ weeks per intervention round	AZ, FL (15–30 weeks across T2 and T3) NY (≥ 10–30 weeks – T2, T3)	
	Other durations per intervention round	NM (per IEP – T3)	ME (tns) ^c MO (≥ 24 intervention sessions over 2 interventions – tns)

Note. State Requirements column indicates provisions in law except as noted below. The 27 states did not have applicable provisions in law or guidelines: AL, AR, CA, CO, DC, IL, IN, IA, KY, LA, MI, MT, NV, NH, NJ, NC, ND, OH, OR, PA, RI, SC, TX, UT, VT, WI, and WY.

T2 = Tier 2; T3 = Tier 3; tns = tier not specified; IEP = individualized education program.

^aRequired by guidelines. ^bIn HI’s unusual framework, what is designated here as “T3” is the third of five levels. ^cThe relevant regulation in ME provides: “A team shall review the child’s progress no later than 60 school days after the start of formal general education interventions and approximately every 30 school days thereafter” (05-071 ME. CODE § 101, III-2[i]).

and the variability in their decision rules preclude a predominant pattern.

What Are the States’ Criteria for Referral for Special Education Evaluation?

Table 6 canvasses the criteria for referral for a special education evaluation in the RTI-specific state laws and guidelines. Only six states have such explicit standards for the transition from RTI to the comprehensive evaluation stage, although four of them—and in part, New Mexico—are via legal requirements. All of these provisions specify or imply some sort of norm-referenced benchmark, but only three (i.e., Idaho, Minnesota, and New Mexico) provide rather specific standards for the requisite rate and level of achievement.

Discussion

As of this second snapshot of an evolving process, the shift in emphasis from the “whether” to the “how” to use RTI for SLD identification is evident in the states’ laws and guidelines. This shift is also reflected in the professional literature, which generally lacks the legal dimension (e.g., Hoover, Baca, Wexler-Love, & Saenz, 2008; NASDSE, 2008; Spectrum K12, 2010). The wider lens for this second snapshot, extending the scope to guidelines as well as adjusting the focus to implementation features, reveals an increased, although still incomplete, picture of RTI as a matter of state policy.

The predominant use of SEA guidelines, which do not have the full binding effect of law (e.g., *D.K. v. Abington*

School District, 2010) and which may be in the nature of requirements or recommendations, to address the implementation of RTI for SLD identification is notable for several reasons. First, guidelines are easier to change in response to the rapidly evolving knowledge basis for RTI. Second, guidelines afford the state a spectrum of forcefulness, extending on the one extreme from incorporation by reference in the regulations to the other extreme of unambiguous status as merely general recommendations or illustrative suggestions. In between these two extremes—even though the guidelines are not binding in IDEA’s adjudicative process, which starts with impartial administrative hearings—the SEA may enforce its guideline requirements via the approval process in those states that provide this prerequisite for implementing RTI or, more generally, via its compliance review process with regard to SLD identification. Third, and perhaps most significantly, the guidelines provide, via their relatively amorphous nature and their less than complete and stringent content, ample flexibility for districts to customize their particular form of RTI to their local school culture.

The findings specific to the questions of the study elaborate this overall pattern. For the threshold question, this update of the first snapshot (Zirkel & Thomas, 2010) accounts for every state—and, inclusively, the District of Columbia—except Wisconsin, but the basic story remains the same. More specifically, the majority of the states have taken a permissive posture, presumably to allow for local choice while awaiting the results of the experience not only within the state but also

Table 4. State RTI Recommendations/Requirements for Intensity and Frequency of Interventions

Tier	Intensity and Frequency of Intervention	State Recommendations (by Guidelines)	State Requirements
1	60- to 90 + -min sessions per day	IN (math, elementary: 60 min/day; RD, elementary: 90 min/day) KS (math: ≥ 60 min/day; RD: ≥ 90 min/day) MA (RD: ≥ 90 min/day) MI, OR, TN, VT (RD: 90 min/day) MS (90 min/day) MT (RD, Grades K-3: 90 min/day; Grades 4-6: 60-90 min/day) NH, VA (RD, Grades K-3: ≥ 90 min/day) NM (60-90 min/day) NY, TX (≥ 90 min/day) UT (math, Grades K-6: 60 min/day)	FL (RD, elementary: ≥ 90 min/day) PA (RD: ≥ 90 min/day) ^a SD (RD: 90 min/day) ^a
	60- to 180-min sessions per day	AZ (60-120 min/day) UT (RD, Grades K-6: 120-180 min/day) WV (RD: 60-120 min/day)	
	Other	NM (Tier 1 interventions 3-4 sessions/week; 30-60 min/session)	
2	15-30 + min per day or per session	IN, MS (30 min/day) KS (3-5 sessions/week; RD or math: 20-30 min/session) MA, NH, TN (≥ 30 min/day) MI, WV (RD: 30 min/day) NY (3-4 sessions/week; 20-30 min/session) OR (RD: ≥ 30 min/day - tns) TX (20-30 min/day) UT (math, Grades K-6: 4-5 sessions/week; 15-20 min/session; Grades 7-12: ≥ 30 min/day) VA (RD, Grades K-3: ≥ 30 min/day)	PA (≥ 30 min/day) ^a SD (20-30 min/day) ^a
	20-60 + min per day or per session	AK, WA (3-4 sessions/week; 30-60 min/session) AZ (30-60 min/day) CT (2-4 sessions/week; 30-45 min/session) LA (4-5 sessions/week; 20-40 min/session) MD (2-5 sessions/week; ≥ 30-60 min/session) MT (20-60 min/day) UT (RD, Grades K-6: 30-60 min/day)	
	60-120 + min per session or per week	NM (2-5 sessions/week; 60-90 min/session)	DE (≥ 2 sessions/week; if RD or math, ≥ 90 min/week; if RD and math, ≥ 120 min/week)
	Other	UT (RD, Grades 7-12: ≥ 1 class period)	
3	20-30 + min per day	MA (≥ 30 min/day) MI (RD: 30 min/day) MS (30 min/day) OR (RD: ≥ 30 min/day - tns) UT (math, Grades K-6: ≥ 20-30 min/day)	SD (20-30 min/day) ^a
	30- to 90-min per session or day	AK (2 sessions/day; 30 min/session) AZ (30-60 min/day) CT (4-5 sessions/week; 60 min/session) IN, MT (30-90 min/day) KS (RD or math: 60 min/day or 2 sessions/day for 30 min/session) LA (≥ 50 min/day) MD (4-5 sessions/week; ≥ 30-60 min/session) NH, WA (≥ 2 sessions/day; 30 min/session) NY (5 sessions/week; 30-60 min/session) TN (≥ 60 min/day) TX (50 min/day) UT (RD, Grades K-6: 60 min/day; math, Grades 7-12: ≥ 60 min/day) VA (RD, Grades K-3: ≥ 2 sessions/day; 30 min/session) WV (RD: 2 sessions/day; 30 min/session)	PA (30-60 min/day) ^a
	Other	NM (per IEP) RI (4-5 sessions/week) UT (RD, Grades 7-12: ≥ 1 class period)	DE (≥ 4 sessions/week; if RD or math, ≥ 150 min/week; if RD and math, ≥ 180 min/week)

Note. State Requirements column indicates provisions in law except as noted below. Twenty-four states did not have applicable provisions in law or guidelines: AL, AR, CA, CO, DC, GA, HI, ID, IL, IA, KY, ME, MN, MO, NE, NV, NJ, NC, ND, OH, OK, SC, WI, and WY. RD = reading; tns = tier not specified; IEP = individualized education program.

^aRequired by guidelines.

Table 5. Frequency of Progress Monitoring and Decision Rules for Tier Progression

Tier	Characteristic	State Recommendations (by Guidelines)	State Requirements
1	Universal screening ≥ 3 times per year—generally fall, winter, and spring	AL, AK, AZ, CO, CT, FL, ID, IA, KS, KY, MD, MA, MO, MT, NE, NH, NM, NY, ND, OR, RI, SC, TN, TX, UT, VA Specified academic area for screening: GA (RD and math) MI (RD) Exceptions to time frame for screening: LA (screening 2–3 times/year) CA, IL, IN, NV, VT (no time frame provided for screening)	ME ^a , MN, OK ^a , PA ^a , SD ^a , WA, WV Specified academic area for screening: DE (RD & math)
	Additional requirements for progress monitoring (number of times per week or month; total number of data points)	If ST receives additional support at Tier 1 PM: CA (1–2 times/month) NV (every 3 weeks) PM before referral to Tier 2: ID (borderline risk = monthly; moderate/high risk = weekly; for 4–5 weeks) MD (weekly or biweekly for ≥ 6 weeks) NY (at-risk = weekly for 5–6 weeks) WA (≥ 5 weeks)	DE: first screening within 2 weeks of the beginning of the school year or within 2 weeks of ST’s entry into school; if ST’s score is > 25th percentile but < benchmark, PM for a minimum of once every 2 weeks until PM data demonstrates ST is on trajectory to meet the end-of-year benchmark; checkpoint at 6 weeks OK: If ST receives additional support at Tier 1 PM, ≥ 1 time/week; ≥ 4 data points in 4 weeks ^a
	Decision rule		DE: ST’s score is > 25th percentile and ST is on trajectory for the end-of-year benchmark
2	Decision rule: Tier 1 to Tier 2	MD: ≥ 6 weeks and ST’s performance is significantly below expected rates of skill acquisition NM: ST consistently scores in lowest 20th–25th percentile of grade-level peer group on district short-cycle assessments after 1–2 rounds of Tier 1 interventions TN: ST’s score is ≤ 10th percentile on a screening measure	DE: ST’s score is ≤ 25th percentile on a screening measure, or after 6 weeks of PM at Tier 1 ST has made no progress towards benchmark or is not on trajectory for the end-of-year benchmark
	Weekly progress monitoring	CA, TX Specified additional criteria for weekly PM: CO (1 time/every 1–2 weeks) MD (1–3 times/week; ≥ 6 weeks) MS (2 times/week) NE (1–2 times/week; ≥ 24 session; ≥ 6 data points – tns) NV (1–3 times/week) OR (1–2 times/week – tns)	DE Specified additional criteria for weekly PM: MO (≥ 1 time/week; ≥ 6 data points – tns) OK (≥ 1 time/week; ≥ 9 data points in 9 weeks) ^a TN (≥ 1 time/week)
	Weekly or biweekly progress monitoring	AL, CT, KY, MN Specified additional criteria for weekly or biweekly PM: AZ (≥ 2 times/month) MO (≥ 6 data points) NM (≥ 4–5 data points in ≥ 9 weeks)	
	Monthly or bimonthly progress monitoring	ME, ND Specified additional criteria for monthly or bimonthly PM: AK (≥ 2 times/month; 6–8 data points) IL, RI, WA (≥ 2 times/month) IN, IA (≥ 1 time/month) KS (every 2–3 weeks; 3–6+ data points) MA (≥ bimonthly) NH, NY, VA (2 times/month)	Specified additional criteria for monthly or bimonthly PM: PA, SD (≥ 2 times/month) ^a WV (every 2–3 weeks; ≥ 6 data points)
	Other	Weekly, biweekly, monthly, or bimonthly PM: FL, ID, MT, UT SC (tns)	GA (≥ 4 data points in 12 weeks – tns) ME ^b (tns) MN (≥ 12 data points in ≥ 7 weeks/ 1 intervention; ≥ 2 interventions – tns)
3	Decision rule: Tier 2 to Tier 3 ^c	MD: ≥ 6 weeks and ST’s performance is significantly below expected rate of skill acquisition	DE: 6–12 weeks of PM at Tier 2 and ST has made no progress towards benchmark or is not on trajectory for the end-of-year benchmark MS: If ST is unsuccessful at Tier 2, refer to the Teacher Support Team to develop Tier 3 interventions; must implement Tier 3 interventions within 2 weeks of referral to Teacher Support Team

continues

Table 5 Continued

Tier	Characteristic	State Recommendations (by Guidelines)	State Requirements
3 <i>cont'd</i>	Weekly progress monitoring	FL, ME, MA, ND, RI, TX, UT Specified additional criteria for weekly PM: AK, AZ, IL, IA, NY, WA (≥ 1 time/week) CA, CT, MS (2 times/week) CO, GA (1–3 times/week) NE (1–2 times/week; ≥ 24 sessions; ≥ 6 data points – tns) NV (3–5 times/week) OR (1–2 times/week – tns) VA (≥ 1–2 times/week)	DE Specified additional criteria for weekly PM: MO (≥ 1 time/week; ≥ 6 data points – tns) PA ^a , SD ^a , TN (≥ 1 time/week) WV (2–3 times/week; ≥ 6 data points)
	Weekly or biweekly progress monitoring	HI, ID, IN, MN, MT Specified additional criteria for weekly or biweekly PM: KS (every 1–2 weeks; 3–6+ data points)	
	Other	Weekly, biweekly, monthly, or bimonthly PM: NH (2 times/month) SC (tns) “More frequently” than Tier 2: AL, KY MD (1 time/day; ≥ 6 weeks) NM (per IEP; weekly to every 9 weeks)	GA (≥ 4 data points in 12 weeks – tns) ME ^b (tns) MN (≥ 12 data points in ≥ 7 weeks/1 intervention; ≥ 2 interventions – tns) MS (Teacher Support Team reviews data at 8 weeks and 16 weeks)

Note. State Requirements column indicates provisions in law except as noted below. Seven states did not have applicable information in law or guidelines: AR, DC, NJ, NC, OH, WI, and WY. RD = reading; ST = student; PM = progress monitoring; tns = tier not specified. IEP = individualized education program. ^aRequired by guidelines. ^bThe relevant regulation in ME provides: “A team shall review the child’s progress no later than 60 school days after the start of formal general education interventions and approximately every 30 school days thereafter” (05-071 ME. CODE § 101, III-2[i]). ^cExcludes NM, because Tier 3 is special education in that state.

at the 13 leading, mandatory states. Moreover, the partial mandate in several of these states, limiting the RTI requirement for SLD identification to specified grades or subjects, contributes to the variability of the entries for the implementation issues represented by Questions 2 through 7.

For Question 2, the cluster of seven states (i.e., Arizona, Nebraska, Pennsylvania, Rhode Island, South Dakota, Tennessee,

and Vermont) that require submission and approval of a plan add strength to the guidelines’—and, in the only mandatory state, the Rhode Island law’s—requirements and the SEA’s quality control. However, this also adds potential problems in terms of enforcement efficiency and reliability as a trade-off for careful district planning. Moreover, an approved plan does not necessarily mean effective implementation.

Table 6. Criteria for Referral for a Special Education Evaluation

State	Criteria
DE	Required by law: After 6 weeks of Tier 3 or a total of 18–24 weeks of intervention, the student has made no progress towards benchmarks or is not on trajectory for the end-of-year benchmark.
ID	Required by law: (1) Resistance to general education intervention – actual rate of learning is lower than reasonably expected rate of learning despite interventions and (2) Discrepancy from peers’ performance on two or more measures, with at least one measure being a curriculum-based measure: (a) student’s median score on a curriculum-based measure that is one grade level below student’s current grade placement is ≤ 16th percentile (1.0 SD) or (b) student’s performance is ≤ 7th percentile (1.5 SD) on grade level material, and (c) student’s standard score on a nationally normed standardized test is ≤ 74 (1.75 SD), (d) student’s median performance is < the median performance of grade level peers by a ratio ≥ 2.0, or (e) student’s instructional performance is ≥ 2 grade levels below student’s current grade placement.
MD	Recommended by guidelines: If daily progress monitoring of Tier 3 interventions indicates Tier 3 is insufficient to increase the student’s rate of learning and skill acquisition to a level comparable to peers.
MN	Required by law: If (1) rate of improvement is minimal and continued intervention will not likely result in student achieving state-approved grade-level standards, (2) progress will not likely be maintained without instructional supports, (3) student’s performance on repeated assessments of achievement falls below age or state-approved grade level standards, and (4) the level of achievement is ≤ 5th percentile on ≥ 1 achievement test using state or national comparisons.
MS	Required by law: If the Teacher Support Team determined that the Tier 3 interventions are unsuccessful after reviewing them first within 8 weeks and second within 16 weeks.
NM	Required by law: Student must demonstrate a dual discrepancy in relation to age or state grade-level standards. Recommended by guidelines: Dual discrepancy refers to low achievement (performance below grade-level peers) and low rate of progress (learning rate substantially below grade-level peers). Tier 3 is special education. To move from Tier 2 to Tier 3, student must meet one or more of the following criteria: (1) student is unresponsive to 1–2 rounds Tier 2 interventions, (2) progress monitoring data show a pattern of flat or declining scores and below acceptable/low rates of progress compared to peers, (3) despite an intervention plan, student consistently demonstrates significantly low achievement on assessments in comparison to peers, and/or (4) student has a clear disability or has a disabling condition that significantly restricts a major life activity, long or short term.

For Question 3, most of the states address the core characteristics of RTI, but largely via the “lip service” of recommendatory guidelines. Thus, they provide a general template for the various implementation issues without, except for a few states, the binding rigor of legal requirements. The predominant yet least frequent recognition of fidelity is in line with its increasing importance in the professional literature but omission thus far in the federal policy interpretations (OSEP, 2008; OSERS, 2007).

For Question 4, the pertinent provisions for duration of the intervention are infrequent, variable, and largely not required. Indeed, there was not sufficient differentiation to merit tabulating into three separate tiers. Thus, the official governmental policies do not establish a predominant, much less uniform, pattern for the duration of intervention at each tier, instead providing considerable variance and latitude within and among states.

For Question 5, the pattern is a bit clearer, with increasing intensity and frequency of interventions proceeding from the bottom to top tier. Although far from complete or consistent across the states, this pattern fits the triangular conception that prevails in the professional literature concerning RTI.

For Question 6, the ascending pattern is even more crystallized for frequency of monitoring in terms of both the number and strength of pertinent provisions in the laws and guidelines; yet, they largely leave wide open the interrelated implementation issue of the decision rules for movement from tier to tier. Major attention to progress monitoring is expected in light of the pertinent baseline “must consider” provision in IDEA (§ 300.309[b][2]) and the general recognition of this core characteristic of RTI. It is not surprising that the attention, at this still formative stage for RTI implementation, is in terms of frequency at tiers rather than decision rules between tiers, given the difference between these two issues in terms of the difficulty and availability of research-based information.

For Question 7, the paucity of pertinent provisions—both in terms of overall frequency and objective specificity—for the transition from RTI to the initial, evaluation stage of special education is likely attributable to various factors. Among these factors are the preventive focus of RTI, the multiple sources of the comprehensive evaluation, the individualized imprecision of the two-pronged standard for IDEA eligibility, and the distinctiveness of eight enumerated areas of SLD. Notably too, the criteria for this movement, like the decision rules for movements in the internal tiers, do not fully square with the commentary accompanying the IDEA regulations (2006) that clarifies that the benchmark of “State-approved grade-level standards” refers to No Child Left Behind assessments rather than norms, because a “focus on expectations relative to abilities or classmates simply dilutes expectations for children with disabilities” (p. 46,652).

This study provides a snapshot: the latest, limited look at the rapidly maturing phenomenon of RTI. The lens is limited to state laws and guidelines, and, similarly, the narrow focus is SLD identification. The underlying literature is much broader, extending, for example, to science at the preschool level (Barnett, VanDerHeyden, & Witt, 2007), ELL students

(Elizalde-Utnick, 2008), students with behavioral or emotional disorders (Cheney, Flower, & Templeton, 2008), and noncategorical special education identification (Smith, Peters, Sanders & Witz, 2010). However, with the limited exception of the relatively few states that have laws and/or guidelines that require or recommend more extensive use, these broader matters at this point are left entirely to district discretion based on professional research and norms.

Our wish is that this latest snapshot will stimulate more high-quality and appropriate pictures and videos of RTI policies and practices.

Finally, this study is also limited in two other ways. One is the lack of precision for the findings at the margins of each addressed area. The dividing lines between the various classifications are not clear-cut. For example, the laws of various states (e.g., Louisiana, Maine, Minnesota, Mississippi, North Carolina, and Pennsylvania) include RTI-relevant provisions not only in the requirements specific to SLD identification but also, at least in part, in more general mandates for screening or early intervention services. Nevertheless, two considerations have moderated this marginal limitation: (a) the basis of this survey consists of the published provisions of the pertinent state laws and guidelines, not the interpretations of state representatives; and (b) the results were the collaborative and consistent judgments of two impartial authors, one specialized in education law and the other specialized in the RTI literature. The second limitation is that the answers to our questions both leave and lead to other law-related issues. Some of these questions extend to other significant areas of state laws and guidelines. For example, what do they require or recommend in terms of the defining “scientific, research-based” qualifier for RTI in the IDEA regulations (§ 300.307[a][3])? Similarly, what do the states require or recommend specifically with regard to fidelity, parental involvement, and the behavioral part of universal screening? Other questions extend to hearing/review officer and court decisions. For example, why is the litigation to date so negligible and confused at this point (Zirkel, 2010)? Similarly, are hearing/review officers and courts likely to be strict or deferential about the requirements for RTI in the wake of a determination of noneligibility for SLD? Still other questions extend to connections between these state policy provisions and the extent of compliance in practice and concordance with research. Our wish is that this latest snapshot will stimulate more high-quality and appropriate pictures and videos of RTI policies and practices.

References

- Barnett, D. W., VanDerHeyden, A. M., & Witt, J. C. (2007). Achieving science-based practice through response to intervention: What it might look like in preschools. *Journal of Educational and Psychological Consultation, 71*, 31–54.
- Batsche, G., Elliott, J., Graden, J. L., Grimes, J., Kovaleski, J. F., Prasse, D., ... Tilly, W. D. (2006). *Response to intervention: Policy considerations and implementation*. Alexandria, VA: National Association of State Directors of Special Education.

Berkeley, S., Bender, W. N., Peaster, L. G., & Saunders, L. (2009). Implementation of response to intervention: A snapshot of progress. *Journal of Learning Disabilities, 42*, 85–95.

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.

Commentary accompanying the IDEA regulations. 71 Fed. Reg. 46, 540-46,753 (Aug. 14, 2006).

D.K. v. Abington Sch. Dist., 54 IDELR ¶ 119 (E.D. Pa. 2010).

Elizalde-Utnick, G. (2008). Using the response to intervention framework with English language learners. *Communiqué, 37*(3), 17–21.

Hoover, J. J., Baca, L., Wexler-Love, E., & Saenz, L. (2008). *National implementation of response to intervention (RTI)*. Retrieved from <http://www.nasdse.org/Portals/0/NationalImplementationofRTI-ResearchSummary.pdf>

Individuals With Disabilities Education Act regulations. 34 C.F.R. Part 300 (2009).

Mellard, D. F., & Johnson, E. (2008). *RTI: A practitioner's guide to implementing response to intervention*. Thousand Oaks, CA: Corwin Press and Alexandria, VA: National Association of Elementary School Principals.

National Association of State Directors of Special Education (NASDSE). (2008). *Response to intervention: Blueprints for implementation*. Alexandria, VA: Author.

National Center on Response to Intervention. (2009). *RTI state database*. Retrieved from <http://state.rti4success.org/>

National Center on Response to Intervention. (2010). *Essential components of RTI – A closer look at response to intervention*. Washington, DC: U.S. Department of Education, Office of Special Education Programs, National Center on Response to Intervention.

Retrieved from http://www.rti4success.org/images/stories/pdfs/rtiessentialcomponents_051310.pdf

National Research Center on Learning Disabilities. (2007). *Core concepts of RTI*. Retrieved from <http://www.nrcld.org/about/research/rti/concepts.html>

Office of Special Education and Rehabilitation Services. (2007). *Questions and answers on response to intervention (RTI) and early intervening services (EIS)*, 47 IDELR ¶ 196.

Office of Special Education Programs. (2008). *Memorandum to Chief State School Officers*, 51 IDELR ¶ 49.

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.

Spectrum K12 School Solutions. (2010). *Response to intervention adoption survey 2010*. Retrieved from <http://www.spectrumk12.com>

Walker, D. W., & Daves, D. (2010). Response to intervention and the courts: Litigation-based guidance. *Journal of Disability Policy Studies, 21*, 40–46.

Zirkel, P. A. (2010). The legal meaning of specific learning disability for special education eligibility. *TEACHING Exceptional Children, 42*(5), 62–67.

Zirkel, P. A., & Thomas, L. B. (2010). State laws for RTI: An updated snapshot. *TEACHING Exceptional Children, 42*(3), 56–63.

Perry A. Zirkel, University Professor of Education and Law; and **Lisa B. Thomas** (CEC PA Federation), Doctoral Student, Department of School Psychology, Lehigh University, Bethlehem, Pennsylvania.

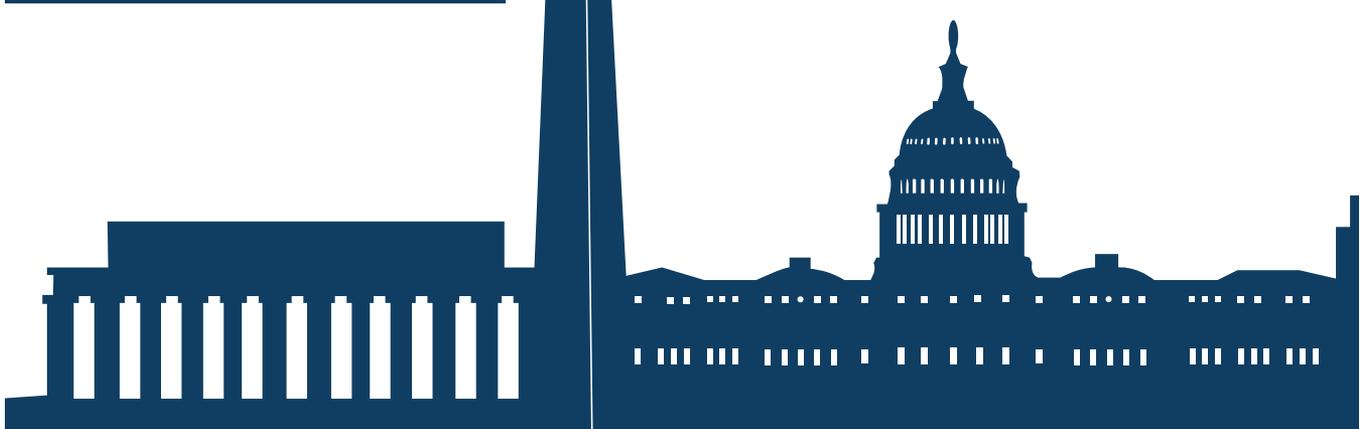
TEACHING Exceptional Children, Vol. 43, No. 1, pp. 60–73.
Copyright 2010 CEC.



**REGISTRATION
OPENS OCTOBER 15**

www.cec.sped.org

CEC 2011 April 25–28 (M-Th)
CONVENTION & EXPO
NATIONAL HARBOR, MD





Copyright of *TEACHING Exceptional Children* (ISSN 00400599) is the property of the Council for Exceptional Children (CEC) and its content may not be printed, copied or emailed to multiple sites, or posted to a listserv without CEC's express written permission. Users may, however, print, download, or email articles for limited educational or individual use.

Any use in any format beyond that specified in the fair use guidelines of the U.S. Copyright Law, must have explicit written permission or licensing from CEC. All permission requests must be made and accepted prior to use.

For routine permission requests, CEC encourages requestors to obtain permission to use CEC copyrighted materials at www.copyright.com.

For more information about CEC's copyright permissions, visit <http://www.cec.sped.org/Content/NavigationMenu/Publications2/TEACHINGExceptionalChildren/reprintPermissionInformationSheet.pdf>