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## Specific Learning Disabilities (SLD) Under the New Federal Special Education Regulations

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## Overview

- Brief overview of special education process focusing on evaluations and parental rights
  - Identifying students with disabilities
  - Old (or current they expire 10/13/06) federal regulatory requirements
  - RTI
  - New federal regulatory requirements
  - State standards
  - Advocacy
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## Special Education Laws

- Federal Statute, IDEA, 20 USC § 1400 et seq.
  - Federal Regulations 34 CFR § 300.1 et seq.
  - States have adopted their own statutes and regulations.
  - May exceed federal requirements, but must be consistent with them and cannot go below.
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## You need to know the laws

- Obtain them from a variety of sources
  - My website has links to the federal laws and New Hampshire Laws
    - [www.nhedlaw.com](http://www.nhedlaw.com)
    - [www.edlawrc.com](http://www.edlawrc.com)
  - Other places and organizations do as well
  - Resources for this webinar have evaluation and SLD regs and comments
  - State Department of Education
  - United States Department of Education

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## Specific Learning Disability

Federal statute defines it as:

a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

20 USC § 1401(3); so do the new regulations 34 CFR § 300.308(10).

It does not include a learning problem that is primarily the result of visual, hearing or motor disabilities, or mental retardation, or emotional disturbance, or of environmental, cultural or economic disadvantage.

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## Severe Discrepancy – old regulations

**§ 300.541** Criteria for determining the existence of a specific learning disability.

- (a) A team may determine that a child has a specific learning disability if—
- (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and
- (2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:
- (i) Oral expression;
  - (ii) Listening comprehension;
  - (iii) Written expression;
  - (iv) Basic reading skill;
  - (v) Reading comprehension;
  - (vi) Mathematics calculation;
  - (vii) Mathematics reasoning.

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## Problems & Changes

- Severe discrepancy criticized as a “wait to fail” model.
- Severe discrepancy criticized as not being an accurate method of deciding if students have SLD.
- Alternative methods used and developed including responsiveness to intervention (RTI).
- Led to changes in new federal regulations.

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## New requirements

The new regulations require states to adopt criteria for determining whether a child has a specific learning disability. The criteria:

- Must not require the use of a severe discrepancy between intellectual ability and achievement.
- Must permit the use of a process based on the child’s response to scientific, research based intervention (RTI).
- May permit the use of other alternative research-based procedures for determining whether a child has SLD.

34 CFR § 300.307

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## What it means

- Schools must follow the criteria adopted by the state.
- It appears to allow states to allow schools to continue to use severe discrepancy models but cannot require them to do so.
  - talk more in this section and in advocacy section about how it may not be possible to do given other requirements
- Shows clear preference and intent to move away from discrepancy models.
- Shows preference for RTI and other research based models, but does not require RTI specifically to be used.

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## Determining existence of SLD

- Team decision
- Evaluation process
- Eligibility decision
- Team must include parent, regular education teacher, someone qualified to conduct individual diagnostic exams (school psychologist, speech-language pathologist)

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## Step 1

The Team may determine that a child has a specific learning disability, if: The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- Oral expression.
- Listening comprehension.
- Written expression.
- Basic reading skill.
- Reading fluency skills.
- Reading comprehension.
- Mathematics calculation.
- Mathematics problem solving.

34 CFR § 300.309(a)(1)

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## Step 2

The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

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Step 2 (alternate)

The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305.

34 CFR § 300.309(a)

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Summary

- Must find lack of adequate achievement for age or towards meeting grade-level standards; AND
- Must find lack of sufficient progress towards meeting age or stage approved grade level standards when provided with RTI; OR
- Must find pattern of strength and weakness in performance or achievement (or both) that is relevant to identification of SLD using appropriate assessments.

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Observe

As part of the SLD evaluation and eligibility process the Team must ensure that the student is observed in the child's learning environment (including the regular education classroom) to document the child's academic performance and behavior in the areas of difficulty.

34 CFR § 300.310

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## Observe

- Can be an observation in routine classroom and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- It can be a member of the Team observing the child's academic performance in the regular classroom after the child has been referred for an evaluation.
- Parental consent must be obtained for the latter approach.

34 CFR § 300.310

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## Rule Outs

Team must determine that its findings are not primarily the result of:

- a visual, hearing, or motor disability
- mental retardation
- emotional disturbance
- cultural factors
- environmental or economic disadvantage
- limited English proficiency

34 CFR § 300.309(a)(3).

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## Appropriate instruction

To ensure that the child's underachievement is not due to lack of appropriate instruction in reading or math, the Team must consider, as part of the evaluation process—

1. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
2. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

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## Document

The Team must document the eligibility decision with a statement of--

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether--
  - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and
  - (ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or
  - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii);

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## Document

- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--
  - (i) The instructional strategies used and the student-centered data collected; and
  - (ii) The documentation that the child's parents were notified about--
    - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - (B) Strategies for increasing the child's rate of learning; and
    - (C) The parents' right to request an evaluation.

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## Document

- Each group member must certify in writing whether the report reflects the member's conclusion.
- If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

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## Summary

1. Lack of achievement
2. Lack of progress, or
3. Patterns in performance and/or achievement
4. Evaluations
5. Observation
6. Rule outs
7. Appropriate instruction
8. Documentation

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## RTI

- RTI is a school-wide approach.
- Students' are screened and monitored to determine whether they respond to high-quality instruction.
- Students who do not respond adequately to instruction delivered in the general education classroom are provided with increasingly intensive and validated interventions.
- Students' progress in skill areas of concern is monitored frequently (e.g., weekly), and the data collected inform subsequent decisions about whether a student is either appropriately responsive or still needing more intensive instruction.

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## RTI

- One basic premise of the RTI approach is that classroom instruction must be high quality.
- The process rules out ineffective instruction as the reason for inadequate academic performance.
- It has 3 Tiers or phases
  - Some refer to it as 4 steps or phases

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## RTI – Tier I

- High quality instructional and behavioral supports are provided for all students in general education.
- School personnel conduct universal screening of literacy skills, academics, and behavior.
- Teachers implement a variety of research-supported teaching strategies and approaches.
- Ongoing, curriculum-based assessment and continuous progress monitoring are used to guide high-quality instruction.
- Students receive differentiated instruction based on data from ongoing assessments.

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## RTI - Tier 2

- Students whose performance and rate of progress lag behind those of peers in their classroom, school, or district receive more specialized prevention or remediation within general education.
- Curriculum-based measures are used to identify which students continue to need assistance, and with what specific kinds of skills.
- Collaborative problem solving is used to design and implement instructional support for students that may consist of a standard protocol or more individualized strategies and interventions.
- Identified students receive more intensive scientific, research-based instruction targeted to their individual needs.

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## RTI - Tier 2

- Student progress is monitored frequently to determine intervention effectiveness and needed modifications.
- Systematic assessment is conducted to determine the fidelity or integrity with which instruction and interventions are implemented.
- Parents are informed and included in the planning and monitoring of their child's progress in Tier 2 specialized interventions.
- General education teachers receive support (e.g., training, consultation, direct services for students), as needed, from other qualified educators in implementing interventions and monitoring student progress.

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## RTI - Tier 3

- More intensive, systematic, specialized instruction is provided and additional RTI data are collected, as needed.
- The student is referred for special education evaluation and eligibility determinations.
- IDEA's procedural safeguards concerning evaluations and eligibility determinations apply.
- Evaluation is conducted by a multidisciplinary team to determine eligibility.
- Evaluation uses multiple sources of assessment data, which may include data from standardized and norm-referenced measures; observations made by parents, students, and teachers; and data collected in Tiers 1 and 2.

Source: *Responsiveness to Intervention and Learning Disabilities* by the National Joint Committee on Learning Disabilities

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## Evaluation Process Connected to RTI

- If find insufficient progress to RTI go to Tier 3, conduct evaluations as needed pursuant to the evaluation requirements in the IDEA to determine reasons, rule out other possible identifications, determine needs of student, and develop IEP.
- RTI process generally starts before the student is referred to the special education process for evaluation (Tier 1 and 2).
- Data is then used as part of the evaluation process.
- Regulations say that the school must request consent to evaluate when student is at Tier 3 and points out time frames apply. 34 CFR § 300.309(c).
- Evaluation process may be a bit more abbreviated given the data already collected.

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## Discrepancy Model?

- Pattern of strengths and weaknesses and intellectual development seems similar to current discrepancy model, but it has some important distinctions
  - Nothing about severe discrepancies
  - Has to be tied to performance or achievement (or both) relative to age, grade-level standards, or intellectual development
  - Has to be a research based process
  - Part of the law also meant to allow options under "other alternative research based procedures" in 34 CFR 300.307(a)(3).

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## Discrepancy Model?

- Department comments show an intent to move away from discrepancy models because they have not been effective at identifying students with disabilities.
- Law is now focused on prevention.
- The Department supports assessments that are related to instruction and promote intervention for identified children.
- Discrepancy models don't promote intervention or prevention.

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	<b>IQ-Achievement Discrepancy Model</b>	<b>Response-to-Intervention Approach</b>
<b>What is the underlying purpose?</b>	To eliminate low intellectual ability (IQ) as the reason for reading problems	To eliminate inadequate instruction as the reason for reading problems
<b>Who is targeted?</b>	Students with suspected learning disabilities	Struggling readers Students with suspected learning disabilities
<b>What process is used?</b>	A prescribed set of standardized tests Identification of discrepancy between IQ scores and achievement scores	Ongoing monitoring of students' performance Data-driven decisions leading to increasingly intensive services
<b>What information is typically used?</b>	Scores from standardized tests of intelligence (IQ) (e.g., <i>Stanford-Binet</i> ) Scores from standardized tests of achievement (e.g., <i>Woodcock-Johnson Achievement Test</i> )	Data collected frequently on students' performance Possibly some standardized test scores
<b>Who is responsible for collecting the data?</b>	Primarily a certified diagnostician or school psychologist	Primarily the general education teacher or other personnel providing instructional interventions
<b>What is the data used for?</b>	To identify whether or not a disability exists	To guide instructional placement (Can also be used to help make eligibility decision – SLD)

[http://iris.peabody.vanderbilt.edu/rtd1\\_overview/cresource.htm](http://iris.peabody.vanderbilt.edu/rtd1_overview/cresource.htm)

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## State standards

- State standards are an important part of the special education process.
- They have been part of the IEP process since IDEA 1997.
- New SLD regulations specifically reference State approved grade level standards.
- Direct connection to NCLB, assessment tests, and the general curriculum.

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## State standards

- States have developed grade level standards as part of accountability and assessment programs.
- Content and proficiency standards.
- Define what students should know and be able to do at certain grade levels.
- Not specific to special education.
- High expectations for all students.
- Developed in many subject areas but always in reading and math, and soon science.

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## Standards Based Eligibility

- The standards give a good guideline or framework to use in determining what a child should know and be able to do.
- Statewide assessment test assesses student's performance in connection to these standards.
- Curriculum based and other assessments can as well – part of the information the Team must consider.
- Can be used in the SLD and RTI process to help determine adequate achievement and sufficient progress. 34 CFR § 300.309.

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## How to do it

- Find the relevant state approved grade level standards for the grade the student is in.
- Will be by subject (reading, math, etc).
- Then find the specific standards in the relevant grade level that match up with the areas noted in the federal regulations (34 CFR § 300.309), i.e. basic reading skill, reading fluency and comprehension, math calculation, etc.
- Then find or help create and implement assessments to determine achievement and progress.

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## Where to find them?

- Can find state standards on your state department of education website.
- Local school likely uses them to develop their curriculum.
- May be called curriculum frameworks, or grade level equivalencies, or content and proficiency standards, etc.

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## Advocacy

- Know the positives and negatives of RTI.
- Understand the requirements of RTI so that it is used correctly when it is used.
- Determine what approach is best for specific student and advocate for that approach.
- Be aware of misinformation about using discrepancy models and RTI.
- Ensure that the time frames in the IDEA for evaluations are followed.

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## State level advocacy

- States have to adopt new laws and regulations to implement these federal requirements.
- States have discretion on what methods or approaches they favor or require.
- Get involved in the process.
- Make sure information about what is required and what is not required is accurately presented to state decision makers.
- Make sure information about what is permitted and what is not permitted is accurately presented to state decision makers.
- Advocacy institute has information about how to do so in general. Template in resources for this webinar.

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Wrap up

Questions?

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