

# GUIDELINES

**SPECIAL EDUCATION** 

P.L. 108–446 PT II 34 CFR Part 300

State Rules for Special Education (II.B.) (II.J.10)



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#### **ACKNOWLEDGMENTS**

The Utah State Office of Education (USOE), Special Education Services, formed a focus group to develop the *USOE Specific Learning Disability Eligibility Guidelines* for local education agencies (LEA) to use when developing and implementing their LEA procedures for determining eligibility.

The focus group was composed of representatives from LEAs, parents, Disability Law Center, related service providers, USOE education specialists, and Mountain Plains Regional Resource Center staff.

The Utah State Office of Education appreciates the time and effort spent by the focus group members in contributing to the development of this document.

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#### **FOREWORD**

The purpose of these *USOE Specific Learning Disability Eligibility Guidelines* is to assist local education agencies (LEAs) in developing and implementing procedures for Specific Learning Disability (SLD) eligibility in accordance with federal regulations and state rules.

#### INTRODUCTION

The purpose of these *USOE Specific Learning Disability Eligibility Guidelines* is to assist local education agencies (LEAs) in developing and implementing procedures for Specific Learning Disability (SLD) eligibility in accordance with federal regulations and state rules. As stated in federal regulation, LEAs must use State Education Agency (SEA) criteria in determining whether a child has an SLD [34 CFR §300.307 (b)].

When the Individuals with Disabilities Education Act (IDEA) was reauthorized in 1997, the U. S. Department of Education's Office of Special Education Programs (OSEP) began a process to "carefully review research findings, expert opinion, and practical knowledge...to determine whether changes should be proposed to the procedures for evaluation of children suspected of having a specific learning disability" (Federal Register, 1999, p. 12541). In the ensuing years, several panels and organizations met to discuss and make recommendations for changing procedures for the evaluation of children suspected of having a specific learning disability (SLD), including the President's Commission on Excellence in Special Education (2000), the Learning Disabilities Summit convened by the Office of Special Education Programs (OSEP) in the summer of 2001, and the Learning Disabilities Roundtable that first convened by the National Center for Learning Disabilities in February 2002.

The above groups' final reports had commonalities in their findings regarding proposed changes to procedures for identification of a specific learning disability. These included:

- Identification, as part of determining eligibility, should include a studentcentered, comprehensive individual evaluation and problem-solving approach that ensures that students who have a specific learning disability (SLD) are appropriately identified.
- Decisions regarding eligibility for special education and related services must draw from information collected from a comprehensive individual evaluation using multiple methods and sources of relevant information, including information provided by parents.
- General education must assume active responsibility for delivery of high-quality, research-based interventions and prompt identification of individuals at risk while collaborating with special education and related services personnel.

On December 3, 2004, President Bush signed into law the subsequent reauthorization of IDEA, and federal regulations for IDEA 2004 were finalized on August 14, 2006. IDEA 2004 states that

. . . a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability . . . a local educational agency may use a process that determines if the child responds to scientific, research-

based intervention as a part of the evaluation procedures (Public Law 108-446, Section 614(b)(6)(A&B)).

In addition, federal regulation stipulates that the SEA must "adopt. . .criteria for determining whether a child has a specific learning disability . . the criteria adopted by

the State (1) must not require the use of a severe discrepancy between intellectual ability and achievement. . ., (2) must permit the use of a process based on the child's response to scientific, research-based intervention" (34 CFR §300 307 (a)).

Each LEA must have procedures in place that describe the method(s) it uses to determine eligibility.

Utah has identified and supports three methods that a local education agency (LEA) may use to determine eligibility for special education in the area of specific learning disabilities:

- Response to Intervention (RTI) (Method A)
- Discrepancy between achievement and intellectual ability (Method (B)
- Combination of RTI and Discrepancy (Method C)

These *USOE Specific Learning Disability Eligibility Guidelines* are intended to provide guidance to LEAs as they write, develop and implement their policies and procedures for the evaluation and identification of a child suspected of having a specific learning disability.

#### DEFINITION OF SPECIFIC LEARNING DISABILITY

# Utah uses the federal definition for specific learning disability (SLD):

SLD is 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 do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that affects a student's educational performance.

"Specific learning disability" does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional disturbance; or of environmental, cultural, or economic disadvantage. (34 CFR §300.8(c)(10))

#### OPTIONS: MAKING AN SLD ELIGIBILITY DETERMINATION

The Utah State Board of Education Special Education Rules outline three possible methods for making an SLD determination. An LEA must develop written procedures for SLD determination using one of these methods.

## a) A process based on the student's response to scientific, research-based intervention, hereafter referred to as Method A—RTI

RTI is defined as "the practice of providing high-quality instruction and intervention matched to student needs and using learning rate over time and level of performance to make important educational decisions." (NASDSE, 2006, p. 5) *Prior* to use of the data from a response to scientifically based intervention as part of eligibility determination of SLD, RTI should be fully implemented as an instructional practice within the school.

If the use of a process based on the child's response to scientific, research-based interventions in identifying SLD is **required** (by the LEA), then **all children** suspected as having an SLD, **in all schools** in the LEA, would be **required to be involved** in the process.

On the other hand, if the use of a process based on the child's response to scientific, research-based interventions is **not required but permitted** by the LEA, **a school would not have to wait** until RTI is implemented in all schools.

OSEP letter, 2007 Appendix A

## b) Identification of a severe discrepancy between intellectual ability and achievement, hereafter referred to as Method B—Discrepancy

As part of eligibility determination for SLD, an LEA may choose to use Utah's current discrepancy model as described under Special Education Rules II.J.(c)(4)(h). Approved, standardized norm-referenced assessments are identified in the ESTIMATOR© manual. The manual specifies acceptable achievement and/or cognitive tests related to specific SLD areas. In determining eligibility, the discrepancy report is one data source that is considered along with all other evaluation data collected.

## c) A combination of (a) and (b), hereafter referred to as Method C—Combination

For a variety of reasons, an LEA may determine that it is best to use a combination of Methods A and B. Method C—Combination would require that data from Method A–RTI be considered in combination with evidence of a severe discrepancy, as defined in the ESTIMATOR© manual that is used with Method B—Severe Discrepancy. In such cases, the requirements outlined for both Method A and Method B would apply.

#### REQUIRED DOCUMENTATION FOR METHODS A, B AND C

Regardless of which eligibility determination method is used, the process must include all of the elements of a comprehensive evaluation, including the additional considerations outlined for SLD determination (II.H.10.(b)). All components of the evaluation process must be carefully considered, discussed with the parent(s) or guardian(s), and documented before eligibility is

Re-evaluation data must be reviewed by the IEP team members listed below:

- Parent(s)/guardian
- Special Education teacher
- At least one general education teacher
- LEA representative
- Individual who can interpret the instructional implications of evaluation results
- Other individuals who have knowledge or special expertise regarding the student
- Student as appropriate

finalized. Documentation must show evidence that:

- Evaluation/eligibility team membership consisted of parents and qualified professionals including:
  - The student's general education teacher, or a general education teacher qualified to teach a student of his or her age, if the student does not have a general education teacher or for a student of less than school age; and an individual qualified by the USOE to teach a student of his or her age, and
  - At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech/language pathologist, reading teacher or reading specialist, or special education teacher.
- Determination was not primarily the result of the following factors:
  - Vision
  - Hearing
  - Motor disability
  - Intellectual disability,
  - o Emotional disturbance
  - Cultural factors
  - Environmental or economic disadvantage
  - Limited English proficiency
- An observation in the student's learning environment (including the regular classroom setting) was completed by someone other than the classroom teacher.
   The observation must include documentation of all behaviors relevant to the concerns or questions documented in the referral.
- The student does not achieve adequately for the student's age, or to meet stateapproved grade-level standards in one or more of the following areas:
  - Oral expression

- Listening comprehension
- Written expression
- Basic reading skills
- Reading fluency skills
- Reading comprehension
- Mathematics calculation
- Mathematics problem solving
- The student's inadequate achievement is not due to lack of appropriate instruction in reading or math.
- Data from repeated assessments of achievement at reasonable intervals were collected and used in making instructional decisions.
- Educationally relevant medical findings were considered as appropriate.
- The basis for determination is in line with one of the three methods. Where the
  discrepancy method is used, the discrepancy printout must be attached to the
  SLD documentation (applicable for Methods B and C).
- The determination decision satisfies the three-prong test, as follows:
  - Meets one of the eight specific learning disability areas;
  - o Adversely affects the student's educational performance; and
  - Needs special education and related services.
- Each evaluation team member has certified in writing that the report reflects his/her conclusion.

#### METHOD A— RTI

Procedures for use of Method A—RTI stem from emerging research and guidance on the use of data that document a student's response to research-based, scientific interventions. Another term used for RTI is "multi-tiered process of instruction," and further explanation of the use of such a process can be found in *Utah's 3 Tier* 

Using an RTI process **does not** eliminate any of the procedural safeguards, the need for a comprehensive evaluation, or the steps of the IEP process outlined in IDEA.

Model of Reading Instruction at the following websites:

- http://www.schools.utah.gov/curr/lang\_art/elem/ThreeTier.htm
- http://www.schools.utah.gov/sars/servicesinfo/pdfs/3-tierread.pdf

#### **Components of RTI**

A full description of RTI or any multi-tiered approach to instruction goes beyond the purpose of this document. However, because it is desirable to have as much consistency as possible from LEA to LEA across the state, and because full implementation of RTI in a school is essential to having confidence in the data documented and used for eligibility determination, it is necessary to take time to describe the critical features found in an RTI (or multi-tiered) process.

The actual implementation of a multi-tiered approach to instruction will look different from school to school. However, a set of guiding principles and the core components of such an approach will be evident regardless of the specific implementation within a given school setting.

#### RTI Core Principles

We can effectively teach all children.

Intervene early (because it is more efficient than waiting until problems become severe).

Use a multi-tiered model of service delivery.

Use a problem-solving method to make decisions within a multi-tiered model.

Use research-based, scientifically validated interventions/instruction to the extent available.

Use data to make decisions.

Use assessment for three different purposes (screening, diagnostics, and progress-monitoring).

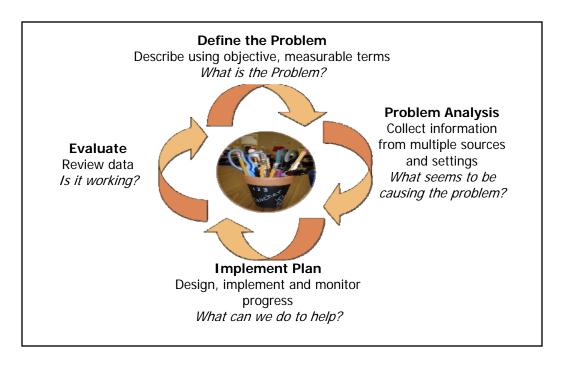
(National Association of State Directors of Special Education, Inc., "Response to Intervention Policy Considerations and Implementation," 2006.)

	RTI or Multi-Tiered Core Components						
1.	High quality, research-based instruction delivered by qualified staff in the general education setting	RTI is based on the premise that most (80 percent or more) students can achieve if the core instructional process (i.e., program and instructional strategies) is research-based and delivered by qualified staff. Therefore, the foundation to any RTI or multi-tiered approach is dependent upon a strong core curriculum. This is often referred to as Tier 1.					
Assessment of student performance that specifically includes universal screening and progress-monitoring		Universal screening is a brief, reliable and easy-to-administer school-wide assessment. The screening consists of probes that are aligned to the core curriculum and state academic standards. These screenings typically are conducted three times a year—fall, winter and spring. The purpose of universal screening is to determine which students have achieved benchmark skills (data norms for classroom, grade, school and/or district) for the grade and time of year.  Progress-monitoring is ongoing assessment that provides the objective data to determine which students are making adequate progress toward a specific goal and benefiting from the current instruction. These data assist with the decision to continue, modify, stop, or begin a different instructional intervention. Students are progress monitored weekly, biweekly, bimonthly or monthly, depending on the intensity of the intervention that is being provided. Sufficient data should be gathered to reliably					
	Multiple tiers of research-based interventions to address individual student difficulties	Some students will need supplemental interventions that are aligned to the core curriculum in order to achieve at a proficient level. A few students will need more intensive interventions aligned to the core curriculum. Schools that are implementing RTI have identified research-based supplemental and intensive interventions, often referred to as Tiers 2 and 3. Specific decision rules are used to determine when a student needs supplemental or intensive intervention based on progress-monitoring data.					
4.	Systematic and regular parent/family involvement and communication	Schools using a multi-tiered approach communicate regularly with families. Families are provided information that describes the multi-tiered process so they understand that students will receive instructional supports based on their instructional needs. Progress-monitoring data is					

	shared with families on a regular basis so they are aware of their child's performance and progress in the general curriculum.
5. System supports such as leadership, problem-solving team, data management systems, coaching and collaboration, professional development, and measures of fidelity in place to ensure effective implementation	Schools implementing RTI understand that effective instructional practices depend on the availability of a variety of system supports. System supports facilitate collaboration within grade levels, content areas, and across the school; the effective use of data for decision making; and ongoing professional learning. System supports also ensure that instructional programs and interventions are used with fidelity (i.e., implemented in the manner in which they were intended for the desired results to be achieved).

#### **Data-Based Decision Making**

At the core of a multi-tiered or RTI process is making data-based decisions using a problem-solving process. The problem-solving process provides educators with a consistent, step-by-step process to identify academic or behavioral problems, select interventions, and evaluate the effectiveness of interventions.



Data the team may consider include, but are not limited to, items such as:

School historical data (cumulative file review).

- State and district-level testing information.
- Classroom curriculum based measurements or other progress-monitoring results.
- Special needs (e.g., medical concerns).
- Observations.
- School readiness.
- Motivational factors.
- Recent trauma.
- Other information as determined by the school collaboration team.

It is important that teams using a problem-solving process understand and use a set of predetermined rules or guides for making decisions for different levels of decisions. The decision rules should be reviewed periodically to ensure they are effective and applicable to the school and local population. Consideration for cultural and linguistic differences should be included in the decision rules, as well as norm-referenced information (e.g., comparison of school data with district, state, and national results).

Decision-Making Rule Considerations					
Universal screening	<ul> <li>How are grade-level results used? If large numbers of students within a grade level are identified as at risk through universal screening, what might this indicate about the core curriculum at that grade or content level?</li> <li>How are class-wide results used? If large numbers of students within a class are identified as at risk through universal screening, what might this indicate about the instructional strategies being used in that classroom?</li> <li>What are the developments or other criteria used for determining whether a student is at risk?</li> <li>How are motivational and behavioral factors assessed to rule out motivation or behavioral issues?</li> </ul>				
Progress-monitoring	<ul> <li>How is expected growth determined?</li> <li>How many data points are needed to ensure confidence in the growth trend line?</li> <li>What are the considerations for determining whether a student is making sufficient growth, or whether a change in intervention is needed?</li> <li>How is research on the intervention used when making decisions about choosing an intervention or changing an intervention?</li> </ul>				
Fidelity measures	<ul> <li>Who makes the determination that an intervention has been implemented with fidelity?</li> <li>How is the determination made?</li> </ul>				

Schools will want to identify, with input from the LEA, interventions that are scientifically research-based, proven effective, and aligned with the curriculum and content programs. Interventions can be developed into menus that are available and readily used by problem-solving teams. Interventions that are similar for all struggling

students are sometimes referred as a standard protocol approach. Interventions should be used in accordance with the decision-making rules of the school and in accordance with the intended use of the intervention. Sometimes an intervention will be automatic (e.g., based on universal screening scores, a small group of students receives a set amount of time in a specific supplemental intervention). Other times, students might require a more individualized intervention that will be identified through the problem-solving process.

The most effective interventions will be those that are based on peer-reviewed studies, have positive reports from other LEAs that have used them, and have proven effective in the LEA based on progress-monitoring and outcome data.

Many LEAs successfully combine the use of a standard protocol approach with a problem-solving process. Information about a standard protocol approach is found in Appendix J.

More information about problem-solving teams is found in Appendix F.

#### **Informing Parents**

Involving parents at all phases is a key aspect of a successful RTI program. When included in the decision-making process, parents can provide a critical perspective on students, thus increasing the likelihood that RTI interventions will be effective. For this reason, schools must make a concerted effort to involve parents as early as possible, beginning with instruction in the core curriculum. This can be done through traditional methods such as parent-teacher conferences, regularly scheduled meetings, or other methods.

Criteria for determining SLD require that parents be:

- Notified about the state's policies regarding the amount and nature of student performance data that would be collected, general education services that would be provided, strategies for increasing the student's rate of learning, and the parents' right to request an evaluation (34 CFR §300.311(a) (7)(ii)).
- Provided with data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction (34 CFR §300.309(b)(2)).

Parents can request an evaluation for special education consideration at any point in time. LEAs will respond in accordance with Utah's State Special Education Rules (II.C. (§300.300)).

A parental request for referral **cannot** be denied solely because the student has not completed an intervention or step in the RTI process. However, parents are more likely to allow the continuing collection of data to determine the need for further evaluation when they:

- 1) Are informed of the process.
- 2) Receive regular progress reports.
- 3) Understand that the process is not meant to delay evaluation.
- 4) Understand that the process is part of an effective instructional process.

Parental consent is **not** required for universal screening and progress-monitoring. However, written, informed parental consent is required at the point of referral for a comprehensive evaluation for any additional assessments that are needed.

## Indicators of the Need for a Referral for Further Evaluation for Suspected SLD

When using the RTI process, a problem-solving team meets regularly to review student progress-monitoring data to ensure that students are progressing in the general education curriculum. The team tracks student progress and identifies recommendations for instructional interventions as needed. In tracking progress for students receiving multi-tiered

While the amount of time needed for learning to occur can vary, a generally accepted rule of thumb is that six to eight weeks are needed to see the results of a given intervention.

interventions, the problem-solving team is responsible for considering whether or not a student should be referred for a comprehensive evaluation to determine whether that student has a disability at the point where unexplained underachievement and insufficient growth are documented.

When using an RTI process as part of SLD determination, consideration for a referral should be made after:

- A student has been provided with scientifically research-based supplemental and/or intensive interventions with documented progress-monitoring data for a sufficient amount of time to allow for student learning to occur. The amount of time needed to document progress should be based on research – specifically, the research conducted for a given intervention. Students should be provided with at least two rounds of research-based instructional intervention. At least one intervention should be a change in targeted instructional intervention.
- Student participation in RTI interventions has been reasonably consecutive and consistent.

- o It is suggested that a minimum attendance rate of 85 percent be established as a cutoff. It is further suggested that students who do not meet this requirement receive instruction and appropriate interventions until their attendance rate meets the time needed to document progress in accordance with research on the intervention chosen.
- o In addition to regular attendance, other interruptions in a child's participation in the prescribed intervention (e.g., vacation, staff vacancies) have been taken into consideration. Regression and recoupment time must be considered when determining an appropriate extension of a prescribed intervention.
- Measures have been taken to modify the student's behavior and/or provide the child with incentives to increase the child's motivation to participate in prescribed interventions, when necessary. Behavioral interventions should consider environmental changes that may affect a student's behavior.
- The student has received appropriate instruction. In determining appropriate instruction, the problem-solving team assures that:
  - Scientifically research-based materials are used.
  - Personnel are qualified and have received appropriate training in the use of the instructional materials or intervention.
  - Interventions are delivered with fidelity (i.e., in the manner for which they were designed and researched).

If data indicates that 30 to 40 percent or higher of the classroom is NOT achieving, then it might be a classroom or instructional implementation issue.

When considering a referral for special education evaluation:

- The first responsibility of the school problem-solving team is to review the
  existing data and determine whether interventions have been implemented with
  fidelity and sufficient time has been provided for the specific intervention.
  However:
  - A referral cannot be delayed just because a student has not completed all cycles (or tiers) of an RTI process.
  - When a referral is made before completion of a cycle (or tier), progressmonitoring data should continue to be collected as part of the comprehensive initial evaluation process.
- Indicators that would suggest that further evaluation is needed include unexplained underachievement, rate of learning, gaps in skills, and intensity of instructional need. Progress-monitoring data for a targeted skill should be used for decisions in these areas.
  - Unexplained underachievement: Evidence that the student's lack of achievement cannot be explained by other factors.

- Is the student meeting the state-approved grade-level achievement standards? Is the student achieving LEA and classroom curricular standards?
- Are there known reasons why he or she is not meeting expected achievement?
- o Rate of learning: Evidence of the student's progress over time.
  - Given an equal opportunity to learn (including expanded classroom supports and interventions), is the student's learning rate significantly less than the rate of typical peers or of an expected rate?
  - What does it take, or what is it projected to take, for this student to learn at the expected rate (expected trajectory)?
- o Gaps: Evidence of gaps in student skill areas compared to peers.
  - Is the student's performance in skill areas significantly different from peers in his or her class or school, or from state or national norms?
  - In what areas is the student's performance significantly different?
- Intensity of instructional needs: Evidence of how the student needs to be taught and what it takes for the student to be successful.
  - o Are the student's learning patterns such that sustaining learning requires support significantly different from the core curriculum and instruction in the general education program, including comprehensive expanded supplemental supports, extensive differentiation of instruction, and precise measurement of progress?
  - o If the support is removed, does the student regress to such an extent that the student cannot achieve state or district standards?

#### Parental Notification

When a decision is made for a formal referral for additional assessment as part of a special education comprehensive evaluation, whether by the school or the parent, parents must be notified and written permission obtained. The problem-solving team or designated school personnel must:

- Complete the referral form or process as outlined by the LEA procedures.
- Follow the procedural safeguards for Written Prior Notice and Consent for Initial Evaluation.
- Provide the parent with a copy of the Procedural Safeguards.
- Obtain written parental consent for evaluation in the additional areas determined needed.

It is the LEA's responsibility to develop procedures for a referral process. During the referral and evaluation process, the student remains in the current intervention and data is collected until the comprehensive evaluation is completed and the evaluation team convenes. Progress-monitoring continues, and data can be included as part of the comprehensive evaluation.

#### **Comprehensive Evaluation**

The comprehensive evaluation must use a variety of technically sound assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. It is not permissible to use any single measure or assessment as the sole criterion for determining whether the child has a specific learning disability.

A comprehensive evaluation process includes:

- Review of all existing data collected to date, including, at minimum:
  - o Results from classroom-based, district or state assessments.
  - Evaluations and information provided by the parents.
  - Data collected from the RTI process by the problem-solving team that verifies unexpected underachievement and insufficient growth.
  - A review of attendance and discipline referral data.
  - o The results of the required observation of the student in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty.

In addition to RTI data, it is likely that information will be needed to help identify new or revised instructional strategies or find additional clues that help explain the underachievement and insufficient growth.

- The results of any individual assessments conducted, and the educational implications.
- Verification of CBM achievement levels using a standardized or norm-referenced assessment in part or in whole, depending on the area of concern. It is not necessary to give a full standardized or norm-referenced assessment. Rather, subtests of standardized or norm-referenced assessments in the area of concern are sufficient. The purpose is to ensure confidence that the student's achievement levels reflect underachievement when compared with state or national norms.
- A summary of behavioral assessment to address or rule out behavioral issues.
- Data demonstrating that the student was provided with appropriate instruction in the general education setting that rules out the following factors:
  - Lack of instruction in reading
  - Lack of instruction in math
  - Limited English proficiency

When all evaluation data have been collected, a group of qualified professionals and the parent(s)/guardian meet to review the data and determine eligibility. This evaluation/eligibility team must include at least:

- The student's regular education teacher or, if the student does not have a regular education teacher, a regular classroom teacher qualified to teach a student of his or her age.
- At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, reading teacher or reading specialist, or special education teacher.
- The student's parent(s)/quardian.

#### **Determining Eligibility**

Within 45 school days of receipt of signed written parental consent, all evaluations must be completed. Upon completion, the evaluation team must meet to review all the data, determine if there is a need for any

The 45-school day timeline is triggered by consent, not referral.

additional data, make an eligibility determination, and complete the evaluation report (assuming no additional data is needed to made a determination). The comprehensive evaluation must include information from multiple sources in determining SLD eligibility. Lack of progress in an RTI structure in and of itself is not sufficient to determine that a child is eligible as a child with a disability in the area of SLD.

When making a determination of SLD, the evaluation team must consider all of the data and use the following to guide the decision:

- The RTI component of the evaluation must evidence unexpected underachievement and insufficient growth, generally referred to as a dual discrepancy.
  - Evidence of underachievement can be made by documentation of progressmonitoring data, classroom performance, observation, and norm-referenced or standardized assessments.
  - Insufficient growth is substantiated when the child's rate of growth over the last eight (8) data points with a minimum of six (6) weeks of instruction/intervention is at or below the national rate of expected growth. If a student's rate of growth is within the average range for the norm group, the child cannot be determined to be a child with a disability in the area of SLD.
- The student's growth requires resources not available in the general education setting.
- The evaluation must assure, through signature or other appropriate means, that core instructional programs and RTI interventions were implemented with fidelity.
- The evaluation must rule out exclusionary conditions such as the effects of visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

• All components of required documentation for Specific Learning Disability Eligibility must be considered. See page 10 of this document.

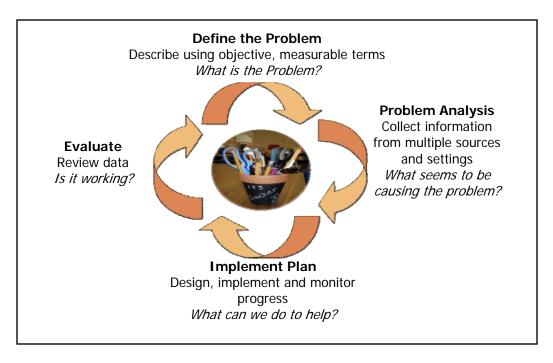
#### METHOD B—SEVERE DISCREPANCY

Traditionally, eligibility for SLD has been made by demonstrating that the student has a severe discrepancy between aptitude (intelligence) and achievement. While this is no longer required, it is still an allowable option under II.J.10.b.(3)(a) of Utah's Special Education Rules. Information about the likelihood of a severe discrepancy can be found in the Estimator© manual.

Even when Method B — Severe Discrepancy is used, LEAs must have procedures for meeting all of the additional eligibility determination requirements required by IDEA and the Utah Special Education Rules (II.H.10 (a)).

## Ensuring That Opportunity to Learn or Lack of Progress Is Not Due to Lack of Instruction

While the problem-solving process is central to an RTI process, it is also a useful tool for documenting the provision of effective instructional intervention. The problem-solving process provides educators with a consistent, step-by-step process to identify academic or behavioral problems, select interventions, and evaluate the effectiveness of interventions. Many schools have such teams known by different names (e.g., school-wide assistance team, pre-referral team, instructional support team). Regardless of the name, the decision-making process is similar and should be based on data that clearly



defines the problem. Data the team may consider include, but are not limited to, items such as:

School historical data (cumulative file review).

- State and district-level testing information.
- Classroom curriculum-based measurements or other progress-monitoring results.
- Special needs (e.g., medical concerns).
- Observations.
- School readiness.
- Motivational factors.
- Recent trauma.
- Other information as determined by the school collaborative team.

When documenting instructional opportunity, there is an expectation that interventions will be provided prior to making a referral. Interventions are those instructional practices that are supplemental to classroom instruction and differentiated to meet unique needs of the student who is not progressing in the general curriculum.

Schools will want to identify, with input from the LEA, interventions that are scientifically research-based, proven effective, and aligned with the core curriculum and content programs. Interventions can be developed into menus that are available and readily used by problemsolving teams. Interventions that are similar for all struggling students are sometimes referred to as a standard protocol approach.

The most effective interventions will be those that are based on peer-reviewed studies, have positive reports from other LEAs that have used them, and have proven effective in the LEA based on progress-monitoring and outcome data.

Interventions should be used in accordance with the decision-making rules of the school and in accordance with the intended use of the intervention. Sometimes an intervention will be automatic (e.g., based on universal screening scores, a small group of students receives a set amount of time in a specific supplemental intervention). Other times, students might require a more individualized intervention that will be identified through the problem-solving process.

Many LEAs successfully combine the use of a standard protocol approach with a problem-solving process. Information about a standard protocol approach is found in Appendix J.

More information about problem-solving teams is found in Appendix F.

#### **Informing Parents**

Informing and involving parents throughout the instructional process is important. When included in the decision-making process, parents can provide a critical perspective on students, thus increasing the likelihood that interventions will be

effective. For this reason, schools should make a concerted effort to involve parents as early as possible, beginning with instruction in the core curriculum. This can be done through traditional methods such as parent-teacher conferences, regularly scheduled meetings, or other methods.

Criteria for determining SLD, regardless of the method used, require that parents be:

- Notified about the State's policies regarding the amount and nature of student performance data that would be collected, general education services that would be provided, strategies for increasing the student's rate of learning, and the parents' right to request an evaluation (34 CFR §300.311(a) (7)(ii)).
- Provided with data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction (34 CFR §300.309(b)(2)).

Parents can request an evaluation for special education consideration at any point in time. LEAs will respond in accordance with Utah's State Special Education Rules (II.C. (§300.300)).

A parental request for referral **cannot** be denied solely because the student has not completed a set number of interventions or a pre-referral process. However, parents are more likely to allow the continuing collection of data to determine the need for further evaluation when they:

- 1) Are informed of the schools overall instructional approach.
- 2) Receive regular progress reports.
- 3) Understand that trying interventions is not meant to delay evaluation.
- 4) Understand that interventions are part of an effective instructional process.

Parental consent is **not** required for assessments used to inform the instructional process, such as universal screening and progress-monitoring. However, written, informed parental consent is required at the point of referral for a comprehensive evaluation for any additional assessments that are needed.

#### Indicators of the Need for a Referral for Evaluation for Suspected SLD

When using Method B—Severe Discrepancy, the school will need a process for reviewing and considering the need for a referral for evaluation for suspected SLD. This is generally done by a problem-solving team. The team reviews student progress, identifies recommendations for instructional interventions as needed, and considers the need for a referral.

While the amount of time needed for learning to occur can vary, generally accepted rule of thumb is that six to eight weeks are needed to see the results of an intervention.

Generally, consideration for a referral should be made after:

- A student has been provided with scientifically research-based instruction with documented progress for a sufficient amount of time to allow for student learning to occur. The amount of time needed should be based on research, specifically the research conducted for a given instructional program or intervention.
- Student participation in instruction has been reasonably consecutive and consistent.
  - o It is suggested that a minimum attendance rate of 85 percent be established as a cutoff. It is further suggested that students who do not meet this requirement receive instruction and appropriate interventions until their attendance rate meets the time needed to document progress in accordance with research on the intervention chosen.
  - In addition to attendance, other interruptions in a child's participation in instruction (e.g., vacation or staff vacancies) have been taken into consideration.
- Measures have been taken to modify the child's behavior and/or provide the child with incentives to increase the child's motivation to participate in the general education classroom. Behavioral interventions should consider environmental changes that may affect a child's behavior.
- The student has received appropriate instruction. In determining appropriate instruction, the problem-solving team assures that:
  - Scientifically research-based materials are used.
  - Personnel are qualified and have received appropriate training in the use of the instructional materials or intervention.
  - Interventions are delivered with fidelity (i.e., in the manner for which they were designed and researched).

If data indicates that 30 to 40 percent or higher of the classroom is NOT achieving, then it might be a classroom or instructional implementation issue.

When considering a referral for special education evaluation:

- The first responsibility of the school problem-solving team is to review the existing data and determine whether interventions have been implemented with fidelity and sufficient time has been provided for the specific intervention. However, a referral cannot be delayed just because a student has not completed all elements of an intervention.
- Indicators that would suggest that further evaluation is needed include unexplained underachievement, lack of growth, gaps in skills, and intensity of

instructional need. Progress-monitoring data for a targeted skill should be used for decisions in these areas.

- Unexplained underachievement: Evidence that the student's lack of achievement cannot be explained by other factors.
  - Is the student meeting the state-approved grade-level achievement standards? Is the student achieving district and classroom curricular standards?
  - Are there known reasons why he or she is not meeting expected achievement?
- o Rate of learning: Evidence of the student's progress over time.
  - Given an equal opportunity to learn (including expanded classroom supports and interventions), is the student's learning rate significantly less than the rate of typical peers or of an expected rate?
  - What does it take, or what is it projected to take, for this student to learn at the expected rate (expected trajectory)?
- Gaps: Evidence of gaps in student skill areas compared to peers.
  - Is the student's performance in skill areas significantly different from peers in his or her class or school, or from district, state or national norms?
  - In what areas is the student's performance significantly different?
- o Intensity of instructional needs: Evidence of how the student needs to be taught and what it takes for the student to be successful.
  - Are the student's learning patterns such that sustaining learning requires support significantly different from the curriculum and instruction in the general education program, including comprehensive expanded supplemental supports, extensive differentiation of instruction, and precise measurement of progress?
  - If support is removed, does the student regress to such an extent that the student cannot achieve state or district standards?

#### **Parental Notification**

When a decision is made for a formal referral for additional assessment as part of a special education comprehensive evaluation, whether by the school or the parent, parents must be notified and written permission obtained. The problem-solving team or designated school personnel must:

- Complete the referral form or process as outlined by the LEA procedures.
- Follow the procedural safeguards for Written Prior Notice and Consent for Initial Evaluation.
- Provide the parent with a copy of the Procedural Safeguards.

 Obtain written parental consent for evaluation in the additional areas determined needed.

It is the LEA's responsibility to develop procedures for a referral process. During the referral and evaluation process, the student remains in the current intervention and data is collected until the comprehensive evaluation is completed and the evaluation team convenes. Progress-monitoring continues, and data can be included as part of the comprehensive evaluation.

#### **Comprehensive Evaluation**

The comprehensive evaluation must use a variety of technically sound assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. It is not permissible to use any single measure or assessment as the sole criterion for determining whether the child has a specific learning disability.

A comprehensive evaluation process includes:

- Review of all existing data collected to date, including at least:
  - o Results from classroom-based, district or State assessments.
  - o Evaluations and information provided by the parents.
  - o Data collected by the problem-solving team that verifies unexpected underachievement and insufficient growth.
  - o A review of attendance and discipline referral data.
  - o The results of the required observation of the student in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty.
- The results of all individual assessments conducted, and the educational implications.
- Review and consideration of the discrepancy found when comparing the student's aptitude (intelligence) and achievement results.
- A summary of behavioral assessment to address or rule out behavioral issues.
- Data demonstrating that the student was provided with appropriate instruction in the general education setting that rules out the following factors:
  - Lack of instruction in reading.
  - Lack of instruction in math.
  - o Limited English proficiency.

When all evaluation data have been collected, a group of qualified professionals and the parent(s)/guardian meet to review the data and determine eligibility. This evaluation/eligibility team must include at least:

- The student's regular education teacher or, if the student does not have a regular education teacher, a regular classroom teacher qualified to teach a student of his or her age.
- At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, reading teacher or reading specialist, or special education teacher.
- The student's parent(s)/guardian.

#### **Determining Eligibility**

Within 45 school days of receipt of signed written parental consent, all evaluations must be completed. Upon completion, the evaluation team must meet to review all the data, determine if there

The 45-school day timeline is triggered by consent, not referral.

is a need for any additional data, make an eligibility determination, and complete the evaluation report (assuming no additional data is needed to make a determination). All components of required documentation for Specific Learning Disability Eligibility must be considered. Lack of evidence of a severe discrepancy alone cannot be the deciding factor, but does play a critical role in the decision.

When making a determination of SLD, the evaluation team must consider all of the data and use the following to guide the decision:

- The evaluation must evidence unexpected underachievement and insufficient growth.
  - Evidence of underachievement can be made by documentation of classroom achievement data, state or district-wide assessment results, and the results of the achievement assessment used in the evaluation process.
  - Insufficient growth is substantiated when the child's rate of growth over a period of time is below the national rate of expected growth. If a student's rate of growth is within the average range for the norm group, the child cannot be determined to be a child with a disability in the area of SLD.
- The student's growth requires resources not available in the general education setting.
- The student has been assessed using Utah State Office of Educationrecommended norm-referenced tests in both aptitude and identified areas of achievement.
- There is a severe discrepancy between aptitude (intelligence) and achievement.

- The evaluation must assure, through signature or other appropriate means from the district representative responsible for supervising instruction, that core instructional programs and interventions were implemented with fidelity.
- The evaluation must rule out exclusionary conditions such as the effects of visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.
- All components of required documentation for Specific Learning Disability Eligibility must be considered. See page 10 of this document.

#### METHOD C: COMBINATION MODEL

As a part of eligibility determination for SLD, a combination of RTI (Method A) and Discrepancy (Method B) may be used. Data from the RTI method would be considered in combination with the confidence level from targeted, norm-referenced assessments, as identified in the ESTIMATOR© manual used with the Discrepancy method.

Where Method C is used, the LEA procedures must include the elements outlined for both Method A (pages 12–21 of this document) **and** Method B (pages 22–28 of this document).

### **A**PPENDICES

#### APPENDIX A: OSEP LETTER 1

OSEP-Policy letters - 2007



#### UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 24 2007

Dr. Carol Massanari Mountain Plains Regional Resource Center Utah State University 1780 North Research Parkway, Suite 112 Logan, UT 84341

Dear Dr. Massanari:

This letter is in response to your August 6, 2007, electronic mail (email) inquiry on behalf of the Wyoming Department of Education, in which you request clarification of an issue addressed in the technical assistance document "Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)," released in January 2007 by the Office of Special Education Programs (OSEP) to clarify the final Part B regulations implementing the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA).

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

In its letter to Art Cernosia, dated July 27, 2007, and attached, OSEP states that if the use of a process based on the child's response to scientific, research-based interventions, in identifying children with SLD is required [by the local educational agency (LEA)], then all children suspected of having an SLD, in all schools in the LEA, would be required to be involved in the process. However, [as stated in the Cernosia letter] research indicates that implementation of any process, across any system, is most effective when accomplished systematically, in an incremental manner, over time. If an LEA chose to "scale up" the implementation of the RTI model gradually, over time, as would be reasonable, the LEA could not require the use of RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA. Therefore, it is unwise to require the use of a process based on the child's response to scientific, research-based intervention before implementation of that process has been successfully scaled up.

On the other hand, if the use of a process based on the child's response to scientific, research-based intervention, is <u>not required</u> but is <u>permitted</u> by the LEA, a school would <u>not</u> have to wait until RTI is fully implemented in all schools in the LEA before using RTI as part of the identification of SLD. That is, if the LEA is <u>allowing, but not requiring</u> the use of RTI, and a particular school, using the criteria adopted by the State for determining whether the child has an SLD is identified under 34 CFR §300.8(c)(10), is implementing an RTI process, consistent with

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#### Page 2 - Carol Massanari

the LEA's guidelines, it would not have to wait until RTI is implemented in all schools in the LEA before it could use information from an RTI process as part of the identification of children with SLD.

Regarding the second part of your question, the differences between elementary school children and secondary school children, the final Part B regulations do not make such a distinction regarding the identification of children with SLD. However, under 34 CFR §300.307(a)(1)-(3), a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has an SLD as defined in 34 CFR §300.8(c)(10). The criteria adopted by the State: (1) must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; (2) must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) may permit the use of other alternative research-based procedures for determining whether a child has an SLD. A public agency, including an LEA, must use the State criteria in determining whether a child has an SLD. Nothing in the final Part B regulations would prohibit an LEA, if consistent with the State criteria, from using multiple methods of identifying a child with an SLD, as part of a full and individual evaluation, or reevaluation, across schools or across levels (e.g., elementary school, middle school or high school).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope you find this information responsive to your request. Please do not hesitate to contact me if you have further questions or if I can be of any further assistance.

Sincerely,

Patricia J. Guard Acting Director

Office of Special Education

**Programs** 

cc: Peg Brown-Clark John Copenhaver

Enclosure

## APPENDIX B: QUESTIONS AND ANSWERS ON RESPONSE TO INTERVENTION (RTI)

(Modified from the Office of Special Education and Rehabilitation Services [OSERS] January 2007)

The final regulations for the reauthorized Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Since publication of the final regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education has received requests for clarification of some of these regulations. This is one in a series of question and answer documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of highinterest topics. Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of IDEA and the regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&A's are not intended to be a replacement for careful study of IDEA and the regulations. The statute, regulations, and other important documents related to IDEA and the regulations are found at http://idea.ed.gov.

The final regulations incorporate new requirements regarding identifying children with specific learning disabilities (SLD)..... With regard to identifying children with SLD, the regulations: (1) allow a local educational agency (LEA) to consider a child's response to scientific, research-based intervention as part of the SLD determination process; (2) allow States to use other alternative research-based procedures for determining whether a child has a SLD; (3) provide that States may not require the use of a severe discrepancy between intellectual ability and achievement to determine whether a child has a SLD; and (4) require a public agency to use the State criteria in determining whether a child has a SLD and discuss the role that response to scientific research-based interventions plays in a comprehensive evaluation process.

#### **Authority:**

The requirements for using a process based on a child's response to scientific, research-based intervention when determining that the child is a child with a specific learning disability are found in the regulations at 34 CFR §§300.307, 300.309 and 300.311.

### A. General Education vs. Special Education

**Question A-1:** Please clarify how a child with a disability who is already receiving special education and related services also would be eligible to receive services using response to intervention (RTI) strategies.

Answer:

Response to intervention (RTI) strategies are tools that enable educators to target instructional interventions to children's areas of specific need as soon as those needs become apparent. There is nothing in IDEA that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RTI strategies unless the use of such strategies is inconsistent with their individualized education programs (IEPs). Additionally, under IDEA, a public agency may use data gathered through RTI strategies in its evaluations and reevaluations of children with SLD.

**Question A-2:** Why was RTI included in IDEA?

Answer:

The reports of both the House and Senate Committees accompanying the IDEA reauthorization bills reflect the Committees' concerns with models of identification of SLD that use IQ tests, and their recognition that a growing body of scientific research supports methods, such as RTI, that more accurately distinguish between children who truly have SLD from those whose learning difficulties could be resolved with more specific, scientifically based, general education interventions. Similarly, the President's Commission on Excellence in Special Education recommended that the identification process for SLD incorporate an RTI approach.

### B. Evaluation and Eligibility Determinations

Question B-1: Must an LEA evaluate a child upon the request of the parent at any time during the RTI process? May a parent request an initial special education evaluation at any time during the RTI process?

#### Answer:

If the LEA agrees with the parent that the child may be a child who is eligible for special education services, the LEA must evaluate the child. The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice as required under 34 CFR §300.503(a)(2) which states, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation.

# Question B-2: May an LEA require that all children suspected of having a SLD first be assessed using an RTI process before an eligibility determination may be made?

#### **Answer:**

If an LEA is using RTI for all its students, it may require the group established under 34 CFR §300.306(a)(1) and 34 CFR §300.308 for the purpose of determining the eligibility (eligibility group) of students suspected of having a SLD to review data from an RTI process in making an eligibility determination. Models based on RTI typically evaluate the child's response to instruction prior to the beginning of the evaluation time period described in 34 CFR §300.301(c)(1), and generally do not require as long a time to complete an evaluation because of the amount of information already collected on the child's achievement, including observation data. If the eligibility group determines that additional data are needed and cannot be obtained within the evaluation time period described in 34 CFR §300.301(c)(1), the parent and eligibility group can agree to an extension of the timeframe. However,...parents can request an evaluation at any time, and the public agency must either obtain consent to evaluate and begin the evaluation, or, if the public agency declines the parent's request, issue a prior written notice as required by 34 CFR §300.503(a)(2).

# Question B-3: Section 300.309(a)(2)(i) states that the eligibility group may determine that a child has a specific learning disability if "the child does not make sufficient progress to meet age or State-approved grade-level standards in one or more" identified areas. Section 300.309(a)(2)(ii) states that the group may determine that a child has a specific learning disability if "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 the group determines is relevant to making an eligibility determination. Please explain how these two criteria differ from one another.

#### Answer:

Section 300.309(a)(2)(i) reflects the use of the criterion that the child has not made sufficient progress in at least one of the following areas when using response to intervention as an aspect of the SLD identification process: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, and mathematics problem solving. Alternatively, based on 34 CFR §300.309(a)(2)(ii), the group could consider variation in a child's performance, achievement, or both relative to age, State-approved grade-level standards, or intellectual development that is determined by the eligibility group to be relevant to identification of a SLD using appropriate assessments. Under this criterion, a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State-approved grade-level standards or intellectual development would be part of the evidence that a child has a learning disability.

**Question B-4:** The regulations require an SEA to adopt criteria for determining if a child has a specific learning disability (34 CFR §300.307(a)). Does this preclude the SEA from mandating RTI as the sole criterion used to determine if a child has a specific learning disability? Must an LEA follow the State-developed criteria for determining if a child has a specific learning disability?

#### Answer:

An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 CFR §300.304(b). However, an SEA could require that data from an RTI process be used in the identification of all children with SLD.

An LEA must comply with the criteria adopted by their SEA regarding this requirement. The requirements at 34 CFR §300.307(a) require that a State adopt criteria for determining whether a child has a specific learning disability. The Analysis of Comments and Changes accompanying the final Part B regulations, page 46649, clarifies, "... the Department believes that eligibility criteria must be consistent across a State to avoid confusion among parents and school district personnel. The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State."

**Question B-5:** When implementing an evaluation process based on a child's response to scientific, research-based intervention, the regulations require that a "public agency must promptly request parental consent to evaluate a child (34 CFR §300.309(c))" if the "child has not made adequate progress after an appropriate period of time (34 CFR §300.309(c)(1))." Please define "promptly" and "adequate" in this context.

#### Answer:

The Federal regulations under 34 CFR §300.309(c) require that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. However, the regulations do not specify a timeline for using RTI or define "adequate progress." As required in 34 CFR §300.301(c), an initial evaluation must be conducted within 60 days of receiving consent for an evaluation (or if the State establishes a timeframe within which the evaluation must be completed, within that timeframe). Models based on RTI typically evaluate a child's response to instruction prior to the onset of the 60-day period, and generally do not require as long a time to complete an evaluation because of the amount of data already collected on the child's achievement, including observation data. A State may choose to establish a specific timeline that would require an LEA to seek parental consent for an evaluation if a student has not made progress that the district deemed adequate.

We do not believe it is necessary to define the phrase "promptly" because the meaning will vary depending on the specific circumstances in each case. There may be legitimate reasons for varying timeframes for seeking parental consent to conduct an evaluation. However, the child find requirements in 34 CFR §300.111 and section 612(a)(3)(A) of the Act require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, it generally would not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability. If it is determined through the monitoring efforts of the Department or a State that

there is a pattern or practice within a particular State or LEA of not conducting evaluations and making eligibility determinations in a timely manner, this could raise questions as to whether the State or LEA is in compliance with the Act.

**Question B-6:** May an eligibility determination be made using only information that was collected through an RTI process?

Answer:

Section 300.304 (b) states that in conducting an evaluation, a public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining eligibility and not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

The Department provided additional clarification regarding this issue in the *Analysis of Comments and Changes* section of the regulations, page 46648. This section states, "an RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §§300.304 and 300.305. As required in 34 CFR §300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services."

### **C. Service Delivery Models**

**Question C-1:** Is the use of RTI required or just permitted?

Answer:

Section 300.307(a)(2)–(3) requires that a State's criteria for identification of specific learning disabilities:

- Must permit the use of a process based on the child's response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

Section 300.307(b) states that a public agency must use the State's criteria in identifying children with specific learning disabilities. Thus, the State's criteria must permit the use of RTI and may require its use, in addition to other assessment tools and strategies, for determining whether the child has a specific learning disability.

**Question C-2:** Does each LEA have to select either RTI or a discrepancy model to determine if a child is a child with a specific learning disability?

**Answer:** No. The State agency must adopt criteria regarding the determination of SLD eligibility.

An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 CFR §300.304(b). An LEA must comply with the criteria adopted by its SEA. Section 300.307(a) requires a State to adopt criteria for determining whether a child has a specific learning disability.

The Analysis of Comments and Changes section accompanying the Federal regulations, page 46649, clarifies, "... the Department believes that eligibility criteria must be consistent across a State to avoid confusion among parents and school district personnel. The Department also believes that requiring LEAs to use State criteria for identifying children with disabilities is consistent with the State's responsibility under section 612(a)(3) of the Act to locate, identify, and evaluate all eligible children with disabilities in the State. We believe this provides the Department with the authority to require a public agency to use its State's criteria in determining whether a child has an SLD, consistent with §§300.307 through 300.311."

### D. General

**Question D-1:** When an RTI model is implemented, can an incremental process be used to train individual schools so that over time the entire LEA is implementing the model or must all the schools in the entire LEA be trained simultaneously?

Answer: If the State or LEA requires the use of a process based on the child's response to scientific, research-based intervention, in identifying children with SLD, then all children suspected of having a SLD, in all schools in the LEA, would be required to be involved in

the process. However, research indicates that implementation of

any process, across any system, is most effective when accomplished systematically in an incremental manner over time. If the LEA chose to "scale up" the implementation of the RTI model gradually over time, as would be reasonable, the LEA could not use RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA. Therefore, it is unwise for a State to require the use of a process based on the child's response to scientific, research-based intervention before it has successfully scaled up implementation.

### APPENDIX C: FREQUENTLY ASKED QUESTIONS

### Do all students require movement through all "tiers" or levels of intervention?

No, not all students need to complete all "tiers" or levels of intervention—severe problems may warrant immediate service or immediate, intense interventions.

### What are the differences between a "tier II" intervention and a "tier III" intervention?

The main differences are in frequency, intensity, duration, teacher-student ratio, and progress-monitoring requirements. Students receiving intense intervention might be helped by a commercial program in "tier III."

### If a student is not successful in a "tier III" intervention, should a team automatically refer for a special education evaluation?

Not necessarily; the data still need to be reviewed and team needs to determine if the appropriate skill deficit has been targeted, and that the appropriate interventions are being implemented with fidelity.

### How does a school know it has the capacity for implementing a tier model of instruction or an response to intervention model?

A school or LEA could use the administration checklist in *Utah's 3 Tier Model of Reading Instruction*, or check at Jim Wright's website for a self-assessment: <a href="http://www.jimwrightonline.com/pdfdocs/survey\_rti\_wright.pdf">http://www.jimwrightonline.com/pdfdocs/survey\_rti\_wright.pdf</a>.

### Can a student still be given a cognitive assessment?

Yes, that is a team decision.

### Can a student still be given an achievement test?

Yes, but the assessment should be targeted to the suspected disability. A full battery may not be necessary. Subtests would be sufficient.

### How long should an intervention last?

This is a team decision. The data collected should give a team information as to the effectiveness of the intervention. Research indicates that at least three data points (Barlow and Hersen,1984) are necessary to establish a trend line. Typically, at least 5–10 learning opportunities should occur before each assessment of learning.

### What happens if a student is not moving toward his/her aim line (or moving slowly) and there is no severe discrepancy?

The school team will need to review the intervention and data to date and make a recommendation. Was the appropriate skill deficit identified? Was the appropriate intervention tried and implemented with fidelity? Where there

interruptions in the student's prescribed intervention? Ultimately it will be a team decision whether the student's lack of progress rises to the level of a disability. If the team decides that the lack of progress DOES NOT rise to the level of a disability, this does not eliminate the need for continued targeted instruction or progress-monitoring of the student's need.

### What does "implemented with fidelity" mean?

"Implemented with fidelity" means that the classroom instruction or intervention recommended by the problem-solving team was provided in the way it was intended.

#### How does the team look at motivational factors?

Your school psychologist/behavior specialist/qualified interventionist may do an activity that is based on "can't do" vs. "won't do." Educators may wish to look at a student's interests academically and socially.

### What if a student is receiving supplementary/intensive interventions when a request for a special education comprehensive evaluation is made?

During any referral and evaluation process, the student shall remain in the last identified intervention until the comprehensive evaluation is completed and the evaluation team convenes to determine the eligibility for special education and related services. Progress-monitoring continues, and data are included as part of the comprehensive evaluation.

### Who might be the "tier III" students?

It is more appropriate to ask who are the students in need of very intensive, targeted interventions. Students receiving this intensity of intervention might be English language learners (ELL), or students who have moved multiple times, have received home/hospital, or have been in other situations which prevented them from accessing effective core classroom instruction.

## APPENDIX D: EXAMPLES OF QUESTIONS A SCHOOL COLLABORATIVE TEAM MIGHT ASK WHEN REVIEWING EXISTING DATA

What are the student's interests?

What are the student's strengths?

What are the student's needs?

What is the problem that is interfering with learning/behavior?

What is the magnitude of the problem/discrepancy?

What assessments (formal/informal)/progress-monitoring have been used?

How does the curriculum and setting affect the student's learning?

What interventions have been tried?

Data points Length Intensity

Has instruction been implemented with fidelity?

Has intervention(s) been implemented with fidelity?

What are the data telling us?

What is the status of the intervention(s)?

Is the appropriate deficit being targeted?

What approaches to instruction have been successful?

What additional supports are necessary?

Are there conflicting data?

Does the student appear to be trying to gain skills? If not, why?

### APPENDIX E—PART 1: INTERVENTION INTEGRITY CHECKLIST

(Davis School District)

Check the boxes considered in developing your intervention integrity. Sign and date the bottom of the form.

<b>1</b> .	Intervention is focused on area(s) of concern
<b>2</b> .	<ul> <li>High Probability Interventions:</li> <li>Empirically supported</li> <li>Interventions are easy</li> <li>Interventions are positive (constructive/educative approaches)</li> <li>Are at child's instructional level</li> </ul>
3.	Treatment integrity checks or intervention monitoring systems are employed:  Participant reports  Outside sources  Evaluation of permanent products  Intervention script  Guided practice/modeling
4.	Consult and support:  Who  When Frequency

### APPENDIX E — PART 2: DEFINITIONS OF CHECKLIST GUIDELINES

(Davis School District)

The following are definitions of the four areas above. These can be used to help in the development of an intervention integrity plan.

- 1. The intervention chosen is tied to the area of concern listed in your problemsolving or standard protocol. It is targeted to create behavior change and/or enhance the child's educational development.
- 2. This refers to choosing interventions that have a high probability of success. Successful interventions are usually supported by research and have been utilized with positive results in an applied setting (such as a school). Interventions should be free from complicated steps, positive rather than punitive in nature, and designed at the child's instructional level to lead to improved performance and skills.
- 3. These are ways to support the interventionist(s). Support can include: having the interventionist report back as to how the intervention is going, having an outside person come and observe the intervention, evaluating the permanent products of the intervention (graphs, charts, etc.), writing a script or outline for the intervention, or practicing/modeling the intervention before starting it. Please see team leader for examples of checklists/scripts.
- 4. Before the meeting is concluded, it is necessary to decide who will monitor treatment integrity, as well as when and how often it will be monitored (i.e., how often observations of the intervention will take place, how often teachers/team members will consult about the intervention, etc.).

Recorded by:	 
Date:	

### APPENDIX F: SCHOOL COLLABORATIVE TEAMS

(Adapted from Utah's 3 Tier Model of Reading Instruction)

In the implementation of the *Utah's 3 Tier Model of Reading Instruction*, a school that supports one or more collaborative team(s) is more likely to meet the needs of struggling students. Teams should be established based on the learning needs of students and availability of staff members. The collaborative team approach is supported by research and has been found to be most effective when the team addresses both prevention *and* intervention of reading difficulties. Successes include the following:

- A high rate of student achievement
- Increased capacity of teachers to meet specific needs of struggling students
- Decreased number of special education referrals and placements

In establishing collaborative teams, schools need to plan, organize, develop procedural guidelines, continue to evaluate effectiveness, and make adjustments as needed. Effective teams use a problem-solving process such as follows:

- Define the problem
- Analyze why it is occurring
- Develop and implement action plan
- Monitor student progress
- Evaluate plan effectiveness
- Continue with or adjust plan

Team members should have the skills, knowledge, and training listed below:

- Differentiated instruction
- Effective classroom organization and management
- Problem-solving and collaboration
- Data collection/evaluation
- Instructional and behavioral interventions
- The Utah Core Curricula
- Culturally sensitive instructional issues
- SBR instructional materials and practices
- A variety of research based and technically sound assessment tools
- Availability of school and community resources

### Team structure:

- Team leader sets agenda
- Meet regularly
- Administrative participation
- Presentation of pertinent data

- Problem-solving procedure
  Agreement on intervention recommendations
  Assignments
  Timeline for review

## APPENDIX G: SELECTING INSTRUCTIONAL INTERVENTIONS AND ENSURING IMPLEMENTATION FIDELITY

- 1. Instructional intervention is a current action that differs from activities that normally occur in the student's general education program.
- 2. An instructional intervention is NOT:
  - Preferential seating
  - Shortened assignments
  - Parent contacts
  - Classroom observations
  - The basal reader or core reading program
  - Advice and consultation contacts that are not student-specific, not targeted to a specific behavior,

or do not generate data that can be graphed or tabled to show change over time

Policy.pdf

Many students can benefit from

Accommodations Manual at the following

http://www.schools.utah.gov/assessment/d

ocuments/Special\_Needs\_Accommodations\_

accommodations. The USOE

website can provide additional

recommendations:

Retention

- Suspension
- Office Referrals
- Doing MORE of the general classroom assignments
- 3. Interventions should be implemented with fidelity, defined as "the delivery of instruction in the way in which it was designed to be delivered" (Gresham, MacMillan, Beebe-Frankenberger, & Bocian, 2000). Team members other than the classroom teacher have an important role in completing fidelity measures, which are usually an observational checklist of critical teaching behaviors of important intervention elements (NRCLD, 2007).
- 4. There should be a documented intervention plan. The written intervention plan should include the following basic components:
  - A clear statement of the problem
  - Baseline data
  - A problem analysis that uses current progress-monitoring to confirm the initial concern
  - Development of specific, research-based interventions based on the problem analysis
  - Documentation of intervention intensity, time, teacher-student ratio, and resources used
  - Measurable outcomes that can be used to make data-based adjustments as needed during the course of the intervention
  - · A graphic display of data

- A progress-monitoring schedule for the intervention period
- Procedures to ensure fidelity of the implementation of the intervention
- Assignment of responsibilities
- Timeline
- Scheduled review of intervention plan

### APPENDIX H: COMPREHENSIVE EVALUATION

	Requirements	Examples
Review of existing data	Evaluations and information provided by parents of student	<ul> <li>Medical records</li> <li>Health records</li> <li>Developmental history</li> <li>Social emotional issues</li> <li>Mobility</li> <li>School history (attendance, grades, achievement)</li> <li>Home language other than English</li> </ul>
	Current classroom-based, local or state assessments, and classroom-based assessments	<ul> <li>Statewide Assessments:</li> <li>lowa</li> <li>CRT</li> <li>DWA</li> <li>Benchmarks:</li> <li>CBM</li> <li>DIBELS</li> <li>Reading</li> <li>Math</li> <li>Writing</li> <li>Oral language</li> <li>DRA</li> </ul>
	Observations by teachers and related services providers	<ul> <li>Academic</li> <li>Behavioral</li> <li>On-task</li> <li>Language</li> <li>Peer interaction</li> <li>Classroom participation</li> <li>Social/emotional</li> </ul>
Use of a variety of assessment tools	Multiple and varied assessments	<ul> <li>Statewide assessments:</li> <li>lowa</li> <li>CRT</li> <li>DWA</li> <li>Benchmarks:</li> <li>CBM</li> <li>DIBELS</li> <li>Reading</li> <li>Math</li> <li>Writing</li> <li>Oral language</li> <li>DRA</li> </ul>

The eligibility group determines that its findings are not primarily the result of: (rule-outs)	Visual, hearing or motor problems Intellectual disability Emotional disturbance Cultural factors Environmental or economic disadvantage Limited English proficiency	<ul> <li>Norm-referenced assessments:         <ul> <li>Woodcock Johnson III</li> <li>Key Math</li> <li>Woodcock Reading</li> <li>Brigance</li> <li>WRAT</li> <li>Work sample analysis</li> <li>Portfolios</li> <li>Informal academic inventories</li> <li>MARS</li> <li>Not a single procedure</li> </ul> </li> <li>Screenings:         <ul> <li>Snellen (far-sighted)</li> <li>Near point (near-sighted)</li> <li>Hearing screening</li> <li>Audiological testing</li> <li>Gross and fine motor</li> <li>Psychomotor</li> </ul> </li> <li>Assessments:         <ul> <li>Intelligence test</li> <li>Adaptive</li> <li>Discipline referrals</li> <ul> <li>Behavior scales</li> </ul> </ul></li> <li>Other input:         <ul> <li>Parent information</li> <li>Classroom observations</li> </ul> </li> </ul>
Consideration of other factors		Are the items below compelling enough to indicate the student's educational performance is primarily due to environmental, cultural or economic disadvantage?  • Limited formal education (i.e., preschool, kindergarten, home schooled, etc.)  • Irregular attendance (absent > 20% of time in grading period for reasons other than verified illness)  • Days present:  • Current year  • Previous years

• Tardies	
→ History of changi	ing
schools during so	chool
months	
<ul> <li>→ Home responsibi</li> </ul>	lities
interfere with lea	
	0
activities (e.g., ca	•
siblings while par	rents work
or other home	
responsibilities)	
Limited learning	
opportunities	
(conversations w	ith adults.
exposure to book	
magazines, etc.)	
• Geographic isola	

### APPENDIX I: PARENT INFORMATION

When reviewing existing data, written parental consent is not required. Best practice indicates that these data sources should be available and shared with the parents.

### Parents should:

- 1. Be involved in all phases of their child's progress, beginning with instruction in the Core Curriculum.
- 2. Be informed of the school's recommendations to implement strategic interventions in order to address concerns regarding educational performance.
- 3. Be aware that they may request a comprehensive special education evaluation at any time. If the LEA determines that a comprehensive special education evaluation is unnecessary, the parent must be provided with written prior notice with justification.
- 4. Be informed that, if existing data collected from identified targeted interventions indicate that:
  - The student's rate of learning and performance (academically and/or behaviorally) is not commensurate with age or state approved grade level standards, and
  - b. The instructional intensity needed for the student to make progress requires curriculum and instruction significantly different from the general curriculum, the school team will promptly give prior notice and request parental consent to evaluate for special education.
- 5. Be informed that the evaluation process must be completed within **45 school days** of receiving written consent.

### APPENDIX J: STANDARD PROTOCOL

A standard protocol approach "uses a set of standard research-based interventions usually implemented in two, [or] three....levels." The interventions usually occur "in a natural progression from tier to tier, and are similar for all students experiencing the same learning problems rather than being specially designed for each individual student" (Bender, Shores, 2007, p. 12).

The following are the strengths and weakness of a standard protocol approach (Bender, Shores, 2007, p. 15).

### **Strengths**

- Clear scientific process in literature for strategies and assessment
- Standard interventions in place and readily available to students in need
- Structured progression between tiers

### Weakness

- Less flexibility with choice of interventions (one size doesn't fit all)
- May require additional staff, depending on available resources

### APPENDIX K: GLOSSARY

**Dual discrepancy.** "... two types of data to consider... (1) a comparison between the student and his or her peers and (2) the student's growth from the beginning to the end of the intervention, also known as 'slope'" (Bender, Shores, 2007, p. 55).

**High-quality instruction.** Classroom instruction in the general education setting that has these characteristics:

- Personnel are appropriately and adequately prepared and trained, including having the knowledge and skills to serve children with disabilities.
- The curriculum has been proved effective for the given population.
- Instructional practices are differentiated and chosen based on evidence of effectiveness.
- Data is used to track learning rates and achievement within and across grades (NRCLD, 2007).

**Scientifically based research.** Refers to empirical research that applies rigorous, systematic, and objective procedures to obtain valid knowledge. This research:

- Uses experimental (random assignment to treatment and control group) or quasi-experimental (matched treatment and comparison group) design.
- Employs reliable and valid measurements.
- Involves rigorous data analyses to test hypotheses and justify conclusions.
- Ensures studies are presented in enough detail for replication or building on findings.
- Is accepted by peer-reviewed journal or approved by a panel of independent experts.

**Slope.** This is when a team looks at a student's progress by ". . . comparing data points before, during and after the intervention" (Bender, Shores, 2007, p. 55).

**Targeted.** Focused instruction on an identified skill.

**Utah Core Curriculum.** The Utah Board of Education defines standards of learning essential for all students, which in turn define teacher instruction.