

# Memo

Date: 4/28/2011

From: Utah State Office of Education (USOE) – Special Education

To: LEA Special Education Directors

Re: Process and timeline for special education evaluation of students in schools where Response to Intervention (RtI) or Tiered Instruction is utilized in order to provide effective instruction to all students.

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The USOE agrees that one of the most important aspects of good teaching is the ability to determine when a student is learning and then to tailor instruction to meet the student's individual needs. Effective teachers use data to make informed decisions about the effectiveness of a particular instructional strategy or program. A critical hallmark of appropriate instruction is that data documenting a student's progress are systematically collected and analyzed and that parents are kept informed of their student's progress. Assessments of a student's progress are not bureaucratic, but an essential component of good instruction. CFR Vol. 71, No. 156 46657

**Situation: A Local Education Agency (LEA) is utilizing RTI or Tiered Instruction in the general education environment and a referral for special education evaluation is made by the parent or LEA staff.**

- Caution – An RtI or Tiered Instructional model used for eligibility determination exists only for the category of Specific Learning Disability (SLD). However, data collected from a Tiered Instruction model or RtI should be utilized for all eligibility determinations in the form of pre-existing data.
- Caution – LEAs may be in the process of building capacity for RtI or Tiered Instruction and be using a Discrepancy Model or Combination Model for SLD eligibility determination.
  - If using a Discrepancy Model, progress monitoring data should be used as part of a review of existing data.
  - If using a Combination Model, the LEA should follow their LEA policies and procedures for the Combination Model in connection with this guidance.
  - If the LEA is using an RtI model, the entire LEA must utilize this process in all schools at all grade levels.

## **Scenario #1**

Irrespective of the LEA's chosen model for determining SLD eligibility, the LEA may agree to the evaluation, provide prior written notice, permission to test, and the 45 school day evaluation time line begins. In order to ensure that the student has been provided with appropriate instruction, the school should continue with interventions being implemented and data collected in the general education classroom concurrently with the comprehensive evaluation. All data collected during the evaluation time period should be reviewed along with all pre-existing data and data from the comprehensive evaluation.

- If an LEA does not agree to an evaluation, then consider scenario #2.
- If an LEA reasonably suspect's eligibility under the SLD category, consider scenarios #2 and #3.

## **Scenario #2**

A parent makes a written or verbal request for a special education evaluation. However, using the SLD Guidelines, if the LEA believes that data do not adequately support the request, they may decline the request for evaluation. This process applies to eligibility determination under any category.

Some reasons for not evaluating a student at the time of a formal request:

- Lack of instructional/behavior data to support the need for evaluation.
- Inability to rule out "inappropriate instruction in math and reading."
- The student has limited English proficiency that has not been ruled out as the reason the student is struggling.
- Other data-based information *SLC Guidelines, pages 28, 29 and 52-54.*

In this situation, the LEA must provide prior written notice of refusal to evaluate, including a detailed rationale and the data supporting the decision not to proceed with evaluation.

In order to ensure effective educational decision making and defend an allegation of failure to identify if the student is later determined eligible, a group of qualified professionals and the parent should:

- Carefully document all data and information considered, including the rationale supporting the team's determination not to proceed with an evaluation, and schedule a date to review the student's progress and reassess the need for special education evaluation (in the form of prior written notice of refusal); and
- When the team reconvenes following the predetermined interval, all new information available should be considered by the team and a determination be made on:
  - Whether to proceed with special education evaluation (in the form of prior written notice of proposal or refusal), or
  - Whether to continue interventions and reconvene to reassess the need for special education evaluation, or
  - Whether evaluation for special education is unnecessary.

### **Scenario #3**

The IDEA and Utah State Board of Education Special Education Rules (USBE SER) II.D.3 provide limited exceptions to the 45 school day timeline for conducting an initial evaluation pertaining to all 13 categories of eligibility. In addition to the exceptions in II.D.3., the evaluation procedures for the SLD category provide that the 45 school day timeline may be extended by mutual agreement of the student's parent/guardians and a group of qualified professionals. (USBE SER § II.J.10. (c)(2))

If a parent or LEA staff member makes a written or verbal referral for a special education evaluation because the student is suspected to have an SLD, the LEA could agree to the evaluation and provide prior written notice of intent to evaluate. An extension of the 45 school day evaluation timeline is allowed, by mutual written agreement of the parent and LEA, if the eligibility group determines that additional data are needed and that these data cannot be obtained within the 45 school day timeline.

It is important to remember that the option of mutual agreement to extend the time period only exists for the category of SLD. Eligible students should be identified using the category that is most appropriate for the individual student.

The following is an example in which timeline extension would likely be appropriate:

A school implementing RTI with fidelity in the general education setting receives a written or verbal referral for a special education evaluation. The LEA has reason to suspect that the student may be eligible under the SLD category; however, the student is new to LEA and there is not adequate pre-existing data to address exclusionary factors. (USBE SER II.I.3.) The groups of qualified professionals, including parents, mutually agree, in writing, to extend the 45 school day evaluation timeline for a period of time specified in the agreement while additional information is collected.

- Since parental consent for evaluation has been obtained, special education staff should proceed with other elements of a comprehensive evaluation. (SLD Guidelines pages 28, 29 and 52-54)

In order to defend an allegation of failure to identify within the timeline, should the provision for extension under USBE SER §II.J.10.(c)(2) be utilized, the LEA should maintain detailed documentation of:

1. Mutual agreement to extend timeline;
2. Reason for extended timeline;
3. Specific duration of extended timeline;
4. Justification of the extension by providing that, if eligible, SLD could be the most likely classification of eligibility; and
5. Data collected during extension justifying the extension under the SLD exception.

The following is an example in which timeline extension would likely be inappropriate:

A school receives a written or verbal referral for a special education evaluation. The parent provides the school with information triggering consideration of eligibility under categories other than SLD (i.e., autism, epilepsy, traumatic brain injury, etc.). Absent adequate documentation supporting eligibility under the SLD

category, the LEA could be found out of compliance with the 45 school day timeline because extension is not permitted for other categories.

The USOE believes that LEAs have established efficient and collaborative evaluation systems and that all teachers, including general education teachers, are being trained to address the needs of students with different learning styles, identify early and appropriate interventions for students with behavioral challenges, and use data and assessment to improve classroom practices and learning. All students should be provided with appropriate instruction provided by qualified personnel. In order to assist LEAs in providing effective instruction for all students, the USOE has developed two documents that provide the framework for implementing Rtl or Tiered Instruction in reading<sup>1</sup> and mathematics instruction<sup>2</sup>.

IDEA eligible students should be identified using the category that is most appropriate for the individual student. The USOE Special Education Section (USOE SES) has developed guidelines to assist LEAs in determining special education eligibility under the category of Specific Learning Disability (SLD)<sup>3</sup>. The information in this memorandum is intended to provide further, supplementary technical assistance.

- ❖ Comments to the Federal Regulations provide additional insight into the reasoning behind the language used in §300.309(b,c). *CFR Vol. 71, No 156, 46651-46659.*

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<sup>1</sup> USOE – Special Education. Response to Intervention (RTI) for Reading Instruction.

<http://www.schools.utah.gov/sars/DOCS/resources/3-tierread.aspx>

<sup>2</sup> USOE – Special Education. Response to Intervention (RTI) for Math Instruction.

<http://www.schools.utah.gov/sars/DOCS/resources/math.aspx>

<sup>3</sup> USOE – Special Education. Specific Learning Disabilities Guidelines.

<http://www.schools.utah.gov/sars/DOCS/resources/sld.aspx>