

Specific Learning Disability Guidance Document

Updated January 2025



The following is non-regulatory guidance designed to work in conjunction with the procedural safeguard protections for students with disabilities under the Individuals with Disabilities Education Act (IDEA). It is intended to be informal guidance representing the interpretation of the applicable statutory or regulatory requirements in the context of the specific facts presented and is not legally binding.

Revision to guidance is reviewed annually and is based on feedback the Office of Special Education and Early Learning (OSEEL) receives from the directors of Special Education, state shareholder groups, the Kentucky Department of Education's (KDE) interpretation of law, court cases and guidance from the Office of Special Education Programs (OSEP). The OSEEL also revises guidance based on on-site monitoring visits, desk reviews and formal written complaints.

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I. Introduction

The overarching goal of this document is to assist schools in conducting appropriate and comprehensive educational evaluations for students suspected of having a specific learning disability (SLD). Additionally, this guidance document will provide an overview of Kentucky's SLD eligibility determination requirements, clarify the evaluation components and criteria, and answer frequently asked questions from the field as they relate to students with an SLD.

The SLD eligibility determination process is a systematic approach that schools use to determine whether a student does or does not have an SLD as defined in the state regulations. SLD "means a disorder that adversely affects the ability to acquire, comprehend, or apply reading, mathematical, writing, reasoning, listening, or speaking skills to the extent that specially designed instruction is required to benefit from education. The specific learning disability [SLD] may include dyslexia, dyscalculia, dysgraphia, developmental aphasia, and perceptual/motor disabilities. The term does not include deficits that are the result of other primary determinant or disabling factors such as vision, hearing, motor impairment, mental [intellectual] disability, emotional-behavioral disability, environmental or economic disadvantage, cultural factors, limited English proficiency, or lack of relevant research-based instruction in the deficit area." [707 KAR 1:002 Section 1 \(59\)](#).

The Individuals with Disabilities Education Act (IDEA) 2004 outlines the legal underpinnings of the eligibility determination process and further specifies how districts should approach the process. Within the parameters established in the federal regulations, state and local district policies define individual school-level SLD eligibility determination practices.

II. Making an Eligibility Determination for SLD

Kentucky's vision is that each and every student is empowered and equipped to pursue a successful future. In support of that vision, this document seeks to provide guidance for districts to ensure the accurate identification of and appropriate educational support for students with SLD. The [Kentucky Administrative Regulations \(KAR\) for Special Education Programs](#) outline two possible methods for making an eligibility determination for SLD. A district (Local Education Agency or LEA) must develop written procedures for SLD determinations.

Method A: Severe Discrepancy (Validated Regression)

Method A: Severe Discrepancy is a process based on the identification of a severe discrepancy between intellectual ability and achievement. As part of the eligibility determination for SLD, a district may choose to use the severe discrepancy method for determining students eligible for specially designed instruction.

A district determines a severe discrepancy using the [SLD Reference Tables](#) accessible via the Kentucky Department of Education website or a non-standard score method when standardized normative measures of ability and achievement are invalid or not available. Additional information on the non-standard score method can be found on page 11 of this

document.

Related Regulations: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with [707 KAR 1:300, Section 4](#); [707 KAR 1:310, Section 2\(3\)\(c\)](#)

Method B: Response to Intervention (RtI)

Method B: [Response to Intervention \(RtI\)](#) is a process based on the student’s response to scientific, research-based intervention/evidence-based practices as documented through progress monitoring and data analysis.

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.” National Association of State Directors of Special Education (NASDSE), 2006, p. 5.

Related Regulations: The child fails to achieve a rate of learning to make sufficient progress to meet grade-level standards aligned with [704 KAR 3:303](#) in [one or more of the eight SLD subcategory areas (reading comprehension, math calculation, etc.)] when assessed based on the child's response to scientific, research-based intervention [[707 KAR 1:310, Section 2\(3\)\(b\)](#)].

III. Regulatory Required components: Making an Eligibility Determination for SLD

Regardless of which eligibility determination method is used, Method A: Severe Discrepancy or Method B: Rtl, the process must include all of the elements of a comprehensive evaluation. This requirement includes the additional considerations outlined for SLD determination in [707 KAR 1:310, Section 2](#). The Admissions and Release Committee (ARC) must consider all components of the child find and evaluation process and document discussions with the parent(s) or guardian(s) before eligibility is finalized.

Referral System

[707 KAR 1:300, Section 3](#)

A district must develop a referral system that ensures the following:

- An LEA shall have a referral system that explains how referrals from district or non-district sources will be accepted and acted upon in a timely manner.
- The referral system shall be conducted in such a manner as to prevent inappropriate over identification or disproportionate representation by race and ethnicity of children in special education by ensuring that each child has been provided appropriate instruction and intervention services prior to referral.
- The LEA shall ensure that:
 - Prior to, or as a part of the referral process, the child is provided appropriate, relevant research-based instruction and intervention services in regular education settings, with the instruction provided by qualified personnel; and,
 - Data-based documentation of repeated assessments of achievement or measures of behavior is collected and evaluated at reasonable intervals, reflecting systematic assessment of student progress during instruction, the results of which were provided to the child's parents.

ARC Membership

[707 KAR 1:310, Section 2\(1\), \(2\), and \(5\); 707 KAR 1:320, Section 3](#)

An LEA shall ensure that the ARC for each child with a disability includes:

- The parents of the child;
- Not less than one (1) regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general curriculum for same-age peers;
- Not less than one (1) special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) special education provider of the child;
- A representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;
- An individual who can interpret the instructional implications of evaluation

results may be a member of the team as described above (i.e. regular education teacher, special education teacher, teacher, representative of the LEA);

- An individual who has knowledge or special expertise regarding the child, at the discretion of the parent or the LEA;
- Related services personnel, as appropriate;
- The child, if appropriate.

The ARC shall also include:

- Other professionals, relative to the area(s) of concern, such as a school psychologist, speech pathologist, or educational specialist; and,
- At least one (1) team member other than the child's regular education teacher shall observe the child in the learning environment, including the regular classroom setting, to document the student's academic performance and behavior in the area(s) of difficulty. If the child is less than school age or is out of school, these observations shall take place in an environment appropriate for the child.

Any ARC convened to discuss a child with a suspected or documented SLD shall be collectively qualified to:

- Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development;
- Interpret assessment and intervention data and apply critical analysis to that data;
- Develop appropriate educational and transitional recommendations based on the assessment data; and,
- Deliver and monitor specially designed instruction and services to meet the needs of a child with an SLD.

Exclusionary Factors

[707 KAR 1:310, Section 2\(8\)](#)

SLD eligibility determination requires that the following be ruled out as the primary cause(s) of the student's learning deficits:

- Visual Disability;
- Hearing Disability;
- Motor Disability;
- Intellectual (Mental) Disability;
- Emotional-Behavioral Disability;
- Cultural Factors;
- Environmental or Economic Disadvantage; and
- Limited English Proficiency.

A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:

- (a) A lack of appropriate instruction in reading, including the essential components of reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. 6301;
- (b) A lack of appropriate instruction in math; or
- (c) Limited English Proficiency and the child does not otherwise meet eligibility criteria.

ARC Discussions and Decisions

[707 KAR 1:310, Section 1](#)

The ARC may determine a child has an SLD if the LEA ensures the following:

- Prior to, or as part of the referral process, the child was provided appropriate instruction in regular education settings;
- The child is provided with learning experiences and instruction appropriate for the child's age or state-approved, grade-level standards aligned with [704 KAR 3:303](#); and,
- The child does not achieve adequately for the child's age or grade level standards aligned with [704 KAR 3:303](#), as indicated on multiple data sources, as appropriate, in one or more of the following areas:
 - Oral expression;
 - Listening comprehension;
 - Written expression;
 - Basic reading skills;
 - Reading fluency skills;
 - Reading comprehension;
 - Mathematics calculation; or
 - Mathematics reasoning.
- The ARC shall consider a referral for an evaluation to determine if the child needs special education and related services when the child has not made adequate progress after an appropriate amount of time.
- Method A: Severe Discrepancy (Validated Regression)
The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of an SLD, using appropriate assessments consistent with [707 KAR 1:300, Section 4](#); or,
- Method B: Response to Intervention (RtI)
The child fails to achieve a rate of learning to make sufficient progress to meet grade-level standards aligned with [704 KAR 3:303](#) in one or more of the eight SLD subcategory areas (reading comprehension, math calculation, etc.) when assessed based on the child's response to scientific, research-based intervention.

In making an SLD eligibility determination, an LEA shall draw upon information from a variety of sources, which may include:

- (a) Response to scientific, research-based interventions;
- (b) Vision, hearing, and communication screenings;
- (c) Parental input;
- (d) Aptitude and achievement tests;
- (e) Teacher recommendations;
- (f) Physical condition;
- (g) Social or cultural background;
- (h) Adaptive behavior; or
- (i) Behavioral observations.

Triangulation of data confirms the credibility and validity of results when different methods lead to the same conclusion.

An LEA shall ensure that information obtained from the above sources (a-i) as appropriate for each student, is documented and carefully considered.

The determination decision satisfies the three-prong test, as follows:

- Meets one or more of the eight specific learning disability areas;
- Adversely affects the student’s educational performance; and
- Needs special education and related services

SLD Eligibility Determination Form and Written Report

[707 KAR 1:310, Section 2 \(8\), \(9\) and \(10\)](#)

An ARC shall develop documentation of a specific learning disability. This documentation shall contain a statement of:

- Whether the child has an SLD;
- The basis for making that determination;
- The relevant behavior noted during observation;
- The relationship of that behavior to the child’s academic functioning;
- The educationally relevant medical findings, if any;
- Whether the child does not achieve commensurate with the child’s age and ability;
- Whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas that require special education and related services; and
- The determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the child's achievement level; and

- The instructional strategies used and the student-centered data collected are based on the child's response to scientific, research-based intervention.

Documentation for SLD eligibility shall include notification to the child's parents concerning the policies regarding:

- (a) The amount and nature of student performance data that are collected, and the general education services that are provided;
- (b) Strategies for increasing the child's rate and level of learning; and
- (c) The parents' right to request an evaluation.

Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusion, the team member shall submit a separate statement presenting the member's conclusions. Documentation on the [SLD Eligibility Determination Form and Written Report](#) is an essential final element of eligibility determination because it ensures that the data indicate that there is an adverse effect on the student's educational performance such that the student is performing significantly and consistently below same age peers in academic and/or functional skills.

Further, documentation within the Written Report reveals the student's specific educational needs which impact decisions about curriculum, instruction and environment thereby informing the development of the student's IEP services and placement. (For additional information, refer to the [Guidance Document for IEP Development](#) and [Eligibility Record Review Document Specific Learning Disability \(SLD\)](#)).

IV. Method A: Severe Discrepancy (Validated Regression)

One critical component of the 2004 Reauthorization of IDEA is that State Education Agencies (SEAs) can no longer require a severe discrepancy between measured intellectual ability and educational performance as one of the criteria for determining whether a student has an SLD.

Suppose the district chooses to use Method A: Severe Discrepancy. In that case, the ARC uses the aptitude/achievement discrepancy tables or the non-standard score method to determine initial eligibility, [Reference Tables for Identifying Students with a Specific Learning Disability](#).

For reevaluation purposes, the ARC may use the aptitude/achievement discrepancy tables, although it is not required for continuing eligibility for an SLD.

In individual situations, when standardized normative measures of ability and/or achievement are invalid or not available, a non-standard score method may be applied.

The psychologist/evaluator will need to provide a written rationale and summary of the non-standard method in the evaluation report. The summary includes:

- 1) Written rationale of why the formal evaluation procedures used with most students were invalid;
- 2) A list of the formal and informal assessment procedures used to evaluate the ability and/or achievement; and
- 3) Scores and their interpretation from the alternative procedure.

A comprehensive evaluation is required when using Method A: Severe Discrepancy to determine the existence of an SLD.

Parent Notification of Referral

[707 KAR 1:340](#)

When a decision is made for a written referral as part of a special education comprehensive evaluation, parents must be notified and written permission must be obtained.

The designated school personnel must:

- Complete the referral form or process as outlined by the district procedures.
- Follow the procedural safeguards for prior written notice and consent for initial evaluation.
- Provide the parent with a copy of the procedural safeguards.
- Obtain written parental consent for evaluation in the area(s) identified by the ARC.

Planning and Conducting a Comprehensive Evaluation

[707 KAR 1:300](#)

The comprehensive evaluation must include a variety of technically-sound assessment tools, interventions and observations to gather relevant 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 an SLD.

When all evaluation data have been collected, the ARC must follow procedural safeguards for prior written notice ([707 KAR 1:340, Section 4](#)) for an ARC to review the data and determine eligibility.

Determining Eligibility

[707 KAR 1:310](#)

Within 60 school days of receipt of signed written parental consent, the ARC must meet to review all the data and make an eligibility determination using the LD tables accessible via the Kentucky Department of Education or a non-standard score method when standardized normative measures of ability and achievement are invalid or not available.

All components of required documentation for SLD Eligibility must be considered.

Developing the Individual Education Program (IEP)

[707 KAR 1:320](#)

Once eligibility has been determined, the ARC shall develop a standards-based IEP for the student. The KDE's [Guidance Document for Individual Education Program \(IEP\) Development](#) provides instructions and examples for the ARC members on how to write standards-based IEPs.

V. Method B: Response to Intervention (RtI)

Schools must have comprehensive, differentiated instruction for all learners; this includes interventions and evidence-based practices and strategies that provide a continuum of educational supports for students as part of the general education program. Once schools are implementing effective RtI processes, referrals most likely will occur after multiple attempts at targeted, research-based interventions/evidence-based practices have documented a student's lack of adequate progress, even with interventions. For further guidance, please visit the [Kentucky Multi-Tiered System of Supports \(KyMTSS\)](#) webpage.

This documentation will reflect a level of performance and a rate of growth that is below same-age peers. The ARC will need to consider the results of multiple sources of documentation (triangulation of data) when analyzing an individual student's performance and rate of growth. Students should not be referred to special education simply because they need academic assistance and special education is thought to be the only avenue for extra help. However, if targeted interventions within general education have demonstrated minimal results and a team suspects that a student's learning difficulties are not due to a lack of appropriate instruction or other exclusionary factors, a referral for a special education evaluation on the basis of a suspected SLD must be considered. Once a referral is received, regardless of where the district is in the RtI process, the district must convene an ARC to review the referral.

Determining a child eligible for SLD utilizing the RtI process requires the collection of data and information from the general education environment as well as from increasing levels of interventions targeting specific skills. [Targeted Interventions](#), like RtI, are a part of [Kentucky's Multi-Tiered System of Supports \(KyMTSS\)](#), and are utilized to support student achievement and social-emotional behavioral competencies through the integration of differentiated core instruction, assessment and intervention.

While not required, districts may still choose to administer cognitive/intellectual assessments in situations where information on the cognitive abilities of the student is determined necessary by the ARC. The assessments selected by the ARC should directly measure the area(s) of identified concern(s). IDEA 2004 provides for the option to assess the relative contribution of cognitive factors in the determination of eligibility for special education services for students with a disability [[34 CFR § 300.304\(b\)\(3\)](#)]. Cognitive/Intellectual Assessments may also be useful for assessing specific types of abilities, including nonverbal areas such as spatial abilities and for helping team members better understand an individual student's strengths and weaknesses.

A full description of RtI or any multi-tiered approach to instruction goes beyond the purpose of this document. However, it is desirable to have as much consistency in the process as possible from district to district across the state when determining SLD eligibility. The 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.

General Education Interventions Prior to Referral and Evaluation

When using the RtI process, the district/school team must review student progress-monitoring data at reasonable intervals to ensure that students are making progress within the general education curriculum. Student progress data are used to make recommendations for instructional interventions. A student may be referred for a comprehensive evaluation to determine whether that student has a disability at the point where unexplained underachievement (level) and insufficient growth (rate) are documented. In addition, other reasons for the lack of student progress have been investigated (such factors might include attendance, office discipline referrals, in/out of school suspensions, medical history, language barriers and/or cultural factors).

The following should be considered before initiating a referral:

- Student has been provided with research-based interventions/evidence-based practices with documented progress monitoring data for a sufficient amount of time to allow 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.
- Student participation in interventions has been consecutive and consistent.
 - Interruptions in the child's participation of the prescribed intervention (e.g., snow days, school breaks, staff vacancies) will need to be considered.
- Student performance has been determined to be unrelated to behavior.
 - Measures have been taken to address the student's behavior and provide supports to increase the child's motivation to participate in prescribed interventions when needed.
 - Behavioral interventions should consider environmental changes and factors that may affect a student's behavior.
- Student has received appropriate instruction and intervention. In determining appropriate instruction, ensure the following:
 - Scientifically, research-based or evidence-based materials are used.
 - Personnel are qualified and have received appropriate training in the use of the instructional materials or interventions.
 - Interventions are delivered with fidelity (i.e., presented in the manner for which they were designed and researched).
- District/school RtI team has reviewed the existing data and determined whether interventions specifically designed to address student's concern(s) have been implemented with fidelity and that an ample amount of time has been provided for the specific intervention(s).
- A referral cannot be delayed just because a student has not moved through all tiers of the RtI process. Districts must not deny referrals or delay initial evaluation procedures for students suspected of having a disability because of RTI implementation. See letter from OSEP, 2011, [Appendix A](#).

- When a referral is made before the completion of an intervention cycle, interventions and progress-monitoring data collection should continue as part of the comprehensive initial evaluation process.
- District/school RtI team has analyzed unexplained underachievement (level), insufficient growth (rate), student skill level, and intensity of instructional need. Progress-monitoring data for a targeted skill should be used and documented for decisions in these areas.

The table below provides possible indicators suggesting further evaluation is needed:

Indicator	Questions to Consider
<p>Unexplained Underachievement (Level): Evidence that the student’s lack of achievement cannot be explained by other factors.</p> <p><i>Level: A student’s current academic or behavioral performance compared to their expected performance (either criterion or norm-referenced).</i></p>	<ul style="list-style-type: none"> • Is the student meeting the state-approved, grade-level academic standards? • Is the student achieving LEA and classroom curricular benchmarks? • Are there known reasons why the student is not meeting the expected achievement?
<p>Insufficient Growth (Rate): Evidence of student’s lack of progress over time.</p> <p><i>Rate: A student’s growth in achievement or behavior over time compared to prior levels of performance and peer growth rates.</i></p>	<ul style="list-style-type: none"> • 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 the expected rate of growth? • What does it take, or what is it projected to take, for this student to learn at the expected rate? • Are clear benchmarks for performance level and rate of learning defined so that intervention goals can be established?
<p>Student Skill Level: Evidence of gaps in student skill area(s) compared to peers.</p>	<ul style="list-style-type: none"> • 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?
<p>Intensity of Instructional Needs: Evidence of the student’s instructional needs and what is required for the student to be successful.</p>	<ul style="list-style-type: none"> • Are the student’s learning patterns such that sustained learning requires instruction and support significantly different from the general education program, including comprehensive, expanded supplemental supports, extensive differentiation of instruction and precise measurement of progress?

	<ul style="list-style-type: none"> • If the instruction and support is removed, does the student regress to such an extent that the student is unable to achieve state and district standards?
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Parent Involvement throughout the RtI Process

When designing a RtI framework, an essential component is to involve parents as partners in the process. As soon as a child exhibits difficulty meeting an academic or behavioral benchmark, parents should be advised as to what their child’s educational needs are and what steps will be taken to address those needs. Parents should also be encouraged to participate in decision-making about their child’s instructional programming.

Questions to consider:

- How do we tell parents that their child has been identified for intervention?
- How are parents involved in the development, implementation and monitoring of their child’s intervention and support?
- What are the different ways to communicate with parents about their student’s progress in meeting the school or district benchmarks?
- How do we communicate with parents about the continuum of supports and services provided to students within a RtI framework?
- In what ways are parents provided with strategies they can implement at home to help support their student’s progress?
- How are parents included in celebrating their student’s growth?

Interpreting and Analyzing RtI Progress Monitoring Data

Once a student has been provided interventions or evidence-based practices, the next step is to interpret and analyze the existing student data to determine how a student has responded.

- It is critical that an intervention be implemented long enough for a change in student performance to be possible. Student response to intervention should be monitored carefully and frequently throughout the intervention period so that an unproductive intervention is changed or intensified in a timely manner. For additional information on the length of time (see box on page 17).
- Districts must not deny referrals or delay initial evaluation procedures for students suspected of having a disability because of RtI implementation.
- For a student’s response to intervention to be deemed “inadequate,” his or her *level* of performance must be consistently and significantly below age-appropriate, grade-level expectations. Moreover, his or her *rate* of progress during intervention must

also be insufficient, even after repeated attempts to change or otherwise intensify the intervention.

- Assessment data must be analyzed and interpreted. Information obtained from the data must guide instructional decision-making. Student performance data must be clearly understood by all involved.

An informed decision-making process provides a framework for consistently monitoring and evaluating the progress of students based upon data; with that being said, the framework does not provide absolutes such as time-limited interventions. Limiting the amount of time for an intervention to be successful places too much emphasis on “when” is enough, rather than placing the emphasis on “what” instructional strategies the student needs to be successful. Although a student may be receiving additional supports through Tier 2 or 3, one should not automatically assume that the instructional strategies in the core program (Tier 1) are sufficient. Students who continue to need Tier 2 support (e.g., year after year) will likely need more differentiation within the core curriculum than other students who may only need Tier 2 supports on a short-term basis (e.g., three months). The focus of an effective system of intervention should be on finding instructional strategies that work rather than focusing on what did or did not work within a specified time frame. The nature of a true intervention system must be based upon evaluating the effectiveness of the intervention(s) at set intervals to make informed decisions.

Modified from Pamela Radford

Response to Hintze (2008) - *Conceptual & Empirical Issues Related to Developing a Response-to-Intervention Framework*

Note: After analysis of the intervention data has occurred and a student has been determined as not making sufficient progress on the intervention (rate and level), a referral for a special education evaluation on the basis of a suspected SLD may be considered.

Documentation of progress monitoring should include both a visual display of the student’s response to intervention (e.g., aim line and trend line) and a quantitative index of the student’s rate of improvement determined by the student’s slope of progress. The rate of improvement is the amount of improvement divided by the time devoted to the intervention. Information on progress monitoring assessments and calculating the slope of progress can be found at [Research Institute on Progress Monitoring](#) and [Vanderbilt University’s IRIS Center](#).

Parent Notification of Referral

[707 KAR 1:340](#)

When a decision is made for a written referral as part of a special education comprehensive evaluation, parents must be notified and written permission obtained.

The designated school personnel must:

- Complete the referral form or process as outlined by the district procedures.
- Follow the procedural safeguards for prior written notice and consent for initial evaluation.
- Provide the parent with a copy of the procedural safeguards.
- Obtain written parental consent for evaluation in the area(s) identified by the Admissions and Release Committee (ARC).

Planning and Conducting a Comprehensive Evaluation

[707 KAR 1:300](#)

The comprehensive evaluation must include a variety of technically-sound assessment tools, interventions and observations to gather relevant 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 an SLD.

When all evaluation data have been collected, the ARC must follow procedural safeguards for prior written notice for an ARC to review the data and determine eligibility.

Determining Eligibility

[707 KAR 1:310](#)

The comprehensive evaluation must include information from multiple sources in determining SLD eligibility. Lack of progress in a 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. Other factors such as lack of appropriate instruction, failure to implement appropriate interventions with fidelity, attendance, behavior, medical conditions, etc., must be considered when trying to determine the reason for a child's lack of progress.

Within 60 school days of receipt of signed written parental consent for initial evaluation, the ARC must meet to review all the data and make an eligibility determination.

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

- The RtI component of the evaluation must evidence underachievement (level) and insufficient growth (rate).
- Evidence of underachievement may be demonstrated through documentation of progress-monitoring data, classroom performance, observations, and norm-referenced or standardized assessments.
- If a student's rate of growth on benchmarks is within the average range when compared to the performance of peers, the student may not be a student with an SLD.

- The student requires ongoing intensive instruction and resources that are not sustainable in the general education setting alone without additional special education services. If the ongoing intensive instruction is removed, the student is once again not making progress sufficient to keep pace with similar-age peers.
- The evaluation must assure 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 SLD Eligibility must be considered.

Developing the Individual Education Program (IEP)

[707 KAR 1:320](#)

Once eligibility has been determined, the ARC shall develop an IEP for the student. The [Guidance Document for Individual Education Program \(IEP\) Development](#) provides instructions and examples for the ARC members on how to write IEPs.

VI. Appendix A: OSEP Memorandum, 11-07, January 2011

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 21, 2011

Contact Persons:	
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OSEP 11- 07

MEMORANDUM

TO: State Directors of Special Education

FROM: Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

SUBJECT: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)

The provisions related to child find in section 612(a)(3) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.

A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness.

While the Department of Education does not subscribe to a particular RTI framework, the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions.

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention¹. See 34 CFR §300.307(a)(2). OSEP continues to receive questions regarding the relationship of RTI to the evaluation provisions of the regulations. In particular, OSEP has heard that some LEAs may be using RTI to delay or deny a timely initial evaluation to determine if a child is a child with a disability and, therefore, eligible for special education and related services pursuant to an individualized education program.

Under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR §300.8(c)(10). In addition, 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. Although the regulations specifically address using the process based on the child's response to scientific, research-based interventions (i.e., RTI) for determining if a child has an SLD, information obtained through RTI strategies may also be used as a component of evaluations for children suspected of having other disabilities, if appropriate.

The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to

¹ The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel - 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke - 5-28-08; and Copenhaver - 10-19-07. Guidance related to the use of RTI for children ages 3 through 5 was provided in the letter to Brekken - 6-2-10. These letters can be found at [IDEA Individuals with Disabilities Act Policy Letters and Policy Support Documents](#)

delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The LEA must provide the parent with notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c).

If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR §300.507 or filing a State complaint under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

We hope this information is helpful in clarifying the relationship between RTI and evaluations pursuant to the IDEA. Please examine the procedures and practices in your State to ensure that any LEA implementing RTI strategies is appropriately using RTI, and that the use of RTI is not delaying or denying timely initial evaluations to children suspected of having a disability. If you have further questions, please do not hesitate to contact me or Ruth Ryder at 202-245-7513.

References:

Questions and Answers on RTI and Coordinated Early Intervening Services (CEIS), January 2007

Letter to Brekken, 6-2-2010

Letter to Clarke, 4-28-08

Letter to Copenhagen, 10-19-07

Letters to Zirkel, 3-6-07, 8-15-07, 4-8-08 and 12-11-08

cc: Chief State School Officers
Regional Resource Centers
Parent Training Centers
Protection and Advocacy Agencies
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