



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

March 1, 2007

Aurelio Prifitera, Ph.D.
Publisher, President
Harcourt Assessment, Inc.
19500 Bulverde Road
San Antonio, Texas 78259-3701

Dear Dr. Prifitera:

This is in response to your letter dated November 13, 2006, summarizing Harcourt Assessment's general understanding of the specific learning disability (SLD) procedures under the final implementing regulations for Part B of the Individuals with Disabilities Education Act (IDEA). Your letter contained an "Overview of the SLD Evaluation Process" that included six main points.

Before addressing each of the six main points, it is important to clarify a statement you made in the opening of your letter regarding discrepancy, response to intervention (RTI) and other alternative procedures. Information from discrepancy, RTI and other alternative procedures is just one component of an overall comprehensive evaluation of a child suspected of having a disability. The *Analysis of Comments and Changes* accompanying the final Part B regulations, page 46648, clarifies "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."

In addition, you stated, "A child does not have a SLD unless the evaluation results indicate that one of the criteria contained in §300.309 is met." This is inconsistent with Part B of the IDEA (see 34 CFR §300.309). Under the final implementing regulations for Part B of IDEA, the group described in 34 CFR §300.306 may determine that a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), if §300.309(a)(1) **and** §300.309(a)(2)(i) or §300.309(a)(2)(ii) **and** §300.309(a)(3) are met. Therefore, it is incorrect to say that *one* of the criteria contained in 34 CFR §300.309 could be used to determine that a child has a specific learning disability.

The remainder of this letter addresses the numbered points in the 'Overview of the SLD Evaluation Process' section of your letter:

Your statements in point number one, two and six are consistent with our understanding of the regulations.

In your letter, under point number three, you refer to the provisions of §300.309(a)(1), (a)(2)(i) and (a)(2)(ii), but incorrectly assert that these are alternative standards for determining the existence of a SLD. As stated above, the group described in 34 CFR §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if §300.309(a)(1) **and** §300.309(a)(2)(i) or §300.309(a)(2)(ii) **and** §300.309(a)(3) are met. For this reason, it is also incorrect to conclude that the regulation “means that in order to determine that a child has a SLD the LEA may use any of the procedures allowed by the State (RTI, discrepancy, other alternative research-based procedure) to determine which one of the three categories the child fits in.”

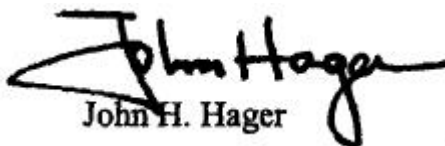
Under point number four you provided an overview of 34 CFR §§300.304 and 300.305. Your understanding of 34 CFR §§300.304 and 300.305 is consistent with Part B of the IDEA. It is important to note under 34 CFR §300.304(a), the public agency is required to provide notice to the parents of a child with a disability, in accordance with 34 CFR §300.503, which describes any evaluation procedures the agency proposes to conduct.

When describing 34 CFR §300.305(a)(1) in point number five, you state “this provision means that LEAs may use existing evaluation data as part of the comprehensive evaluation of the child but this data is not a substitute for the procedures required under §300.304.” While it is true that existing evaluation data are part of the comprehensive evaluation of the child, it is important to note that, as required under 34 CFR §300.306, it is a group of qualified professionals and the parent of the child who determine whether the child is a child with a disability, as defined in 34 CFR §300.8, rather than an LEA.

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 this response provides the necessary clarifications. Please do not hesitate to contact my office if you have any further questions.

Sincerely,


John H. Hager