



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

Aug 15, 2007

Perry A. Zirkel
University Professor of Education
Department of Education and Human Services
College of Education
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

This letter is in response to your letter of March 26, 2007, in which you ask the following question that you indicate arose subsequent to the Office of Special Education Program's (OSEP's) letter to you of March 6, 2007:

If a state chooses to comply with 34 CFR §300.307(a) by permitting LEAs [local educational agencies] to use RTI, severe discrepancy, and/or a third-research based alternative, may the LEA opt a) to use both RTI and severe discrepancy, or b) to continue to use severe discrepancy and not RTI as part of the comprehensive evaluation for SLD eligibility?

Under 34 CFR §300.307(a) of the final regulations for Part B of the IDEA, 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). The regulations further provide that a State, in adopting those criteria, must not require the use of a severe discrepancy between intellectual ability and achievement; must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability. 34 CFR §300.307(a)(1)-(3). Section 300.307(b) of the final Part B regulations requires that a public agency must use the State criteria in determining whether a child has a specific learning disability.

In the scenario presented in your question, the State permits the use of a severe discrepancy, the child's response to scientific, research-based intervention and/or the use of other alternative research-based procedures for determining whether a child has a specific learning disability. Under those State-adopted criteria, LEAs in that State would be permitted to use any of the three available options/models, or any combination of those options/models, as part of a comprehensive evaluation under 34 CFR §§300.301-300.311 to determine the presence of a specific learning disability.

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.

If you have further questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P".

Patricia J. Guard
Acting Director
Office of Special Education
Programs