



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

September 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 13 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 XXXXXX, 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 not required but is permitted by the LEA, a school would not 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 allowing, but not requiring 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

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(e)(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 L. Guard
Acting Director
Office of Special
Education
Programs

cc: Peg Brown-Clark
John Copenhaver