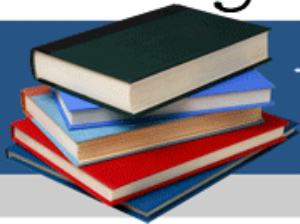


# OSEP Part B Regulations Regional Implementation Meetings



Building the Legacy: IDEA 2004



## Response To Intervention and Early Intervening Services



*U.S. Department of Education  
Office of Special Education Programs*



# Overview of Regulatory Requirements— Response to Intervention(RTI)

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- Federal regulations at 34 CFR §300.307-309 require that :
  - A state must adopt criteria for determining that a child has a specific learning disability (LD)
  - The criteria:
    - must not require the use of a severe discrepancy between intellectual ability and achievement;

# Overview of Regulatory Requirements-RTI

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- must permit the use of a process based on a child's response to scientific, research-based interventions (RTI) and
  - may permit the use of other alternative research-based procedures for determining whether a child is a child with a LD
- All local educational agencies (LEAs) must use the criteria adopted by the state educational agency (SEA) for determining eligibility under LD

# Overview of Regulatory Requirements-RTI (cont.)

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- RTI may **not** be used as the “**sole criteria**” for determining eligibility for LD
- A state may not use one single measure or assessment as the sole criteria for determining whether a child is a child with a disability and must use a variety of assessment tools and strategies

# Overview of Regulatory Requirements-RTI (cont.)

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- The evaluation group may determine the existence of an LD if the child does not achieve adequately for the child's age or to meet state-approved grade-level standards in the designated areas of:
  - Oral expression
  - Listening comprehension

# Overview of Regulatory Requirements-RTI (cont'd)

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- Written expression
  - Basic reading skills
  - Reading fluency skills
  - Reading comprehension
  - Mathematics calculation
  - Mathematics problem solving
- when provided with learning experiences and instruction appropriate for the child's age or state-approved, grade-level standards

# Overview of Regulatory Requirements-RTI (cont.)

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- To ensure that underachievement in a child suspected of having an LD is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation
  - Data demonstrating that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel and

# Overview of Regulatory Requirements-RTI (cont'd)

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- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- RTI does not replace a comprehensive evaluation and all other requirements required under 34 CFR §§300.301-300.306 (Evaluation and Reevaluations) are applicable



# Overview of Regulatory Requirements-RTI (cont.)

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- A comprehensive evaluation requires the use of a variety of data-gathering tools and strategies even if RTI is used
- Results of RTI may be one component of the information reviewed

# Overview of Regulatory Requirements-RTI (cont.)

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- 34 CFR §300.311(a)(7) requires that when a child has participated in a process that assesses the child's response to scientific, research-based interventions, documentation of the eligibility determination must include a statement that the child's parent's were notified about-

# Overview of Regulatory Requirements-RTI (cont.)

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- The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
- Strategies for increasing the child's rate of learning and
- The parent's right to request an evaluation

# Overview of Regulatory Requirements-RTI (cont.)

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- RTI may **not** be used to delay a parent's request for evaluation of their child for eligibility for special education
- The public agency must promptly reply to a parent's request to evaluate their child for eligibility for special education

# Overview of Regulatory Requirements-RTI (cont.)

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- If an LEA chooses to decline a parent's request for evaluation, it **must** issue the prior written notice required under 34 CFR §300.503(a)(2) that informs the parent of their refusal to initiate an evaluation
- The parent may choose to challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation

# Overview of Regulatory Requirements-RTI (cont.)

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The public agency must promptly request parental consent to evaluate, if a child needs special education and related services, and adhere to the required timeframes unless extended by **mutual** agreement of the child's parents and a group of qualified professionals (34 CFR §300.306(a)(1))

# Implications for Implementing an RTI Model

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- State agencies **must** adopt criteria for determining whether a child has an LD
- The criteria adopted **must** not require a severe discrepancy model, **must** permit the use of RTI and **may** use other alternative research-based interventions

# Implications for Implementing an RTI Model (cont.)

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- Once a State agency has adopted criteria for determining eligibility as LD, the LEAs **must** use the state criteria
- State agencies will need to consider the need for training/notification of LEAs once the state agency has adopted criteria for determining LD



# Implications for Implementing an RTI Model (cont.)

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- OSEP does **not** endorse specific criteria for determining whether a child has a LD
- The Analysis of Comments and Changes of the regulations state, “ The Department does not mandate or endorse any particular model. Rather the regulations provide States with the flexibility to adopt criteria that best meet local needs....”

# Implications for Implementing an RTI Model (cont.)

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- In developing LD criteria, state agencies may want to consider the impact on:
  - the collection of data to document a child was provided appropriate instruction in the regular education setting prior to referral for evaluation
  - reevaluation process and procedures

# Implications for Implementing an RTI Model (cont.)

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- the collection of data for those children being evaluated for LD who are attending private schools
- the collection of data as one component of a variety of data gathering tools and assessments in completing a comprehensive evaluation
- An evaluation cannot rely on a **single procedure** as the sole criteria for determining eligibility

# Implications for Implementing an RTI Model (cont.)

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- determination of the additional variety of assessment tools that will be considered in addition to RTI- if RTI is part of the criteria for determining LD eligibility- to complete a comprehensive evaluation to determine eligibility for special education

# Implications for Implementing an RTI Model (cont.)

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- timeline of the RTI process when a student is in the process of evaluation for eligibility for special education
- parent involvement in the RTI process
- training and dissemination of information regarding the RTI process for both regular education and special education staff

# Implications for Implementing an RTI Model (cont.)

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- OSEP does not endorse a specific RTI model.
- State agencies may select the RTI model they deem appropriate for their state
- All RTI models include student progress monitoring as a critical component to:
  - Pinpoint student's areas of difficulty
  - Keep close track of student's progress
  - Document that underachievement is not due to lack of appropriate instruction

# Implications for Implementing an RTI Model (cont.)

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- Typically, RTI models include three tiers. The tiers generally include:
  - Class-wide group instruction in their general education setting—**Primary Intervention**
  - Targeted or remedial intervention—**Secondary Intervention**
  - Intensive individual interventions—**Tertiary Intervention**

# Implications for Implementing an RTI Model (cont.)

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- Typical characteristics/practices that underpin an RTI model are:
  - Students receive high quality instruction in their general education setting that utilizes scientific/research-based instruction;
  - Continuous progress monitoring of student performance;



# Implications for Implementing an RTI Model (cont.)

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- Universal screening of academics and behavior; and
- The use of multiple levels (tiers) of instruction that are progressively more intense based on the child's response to instruction

# Implications for Implementing an RTI Model (cont.)

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- There are many RTI models and a state agency in developing their definition of LD may want to review the literature available regarding RTI
- National Research Center on Learning Disabilities
  - E-mail: [nrcld@ku.edu](mailto:nrcld@ku.edu)
  - <http://nrcld.org>

# Implications for Implementing an RTI Model (cont.)

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- OSEP does **not** take a position on:
  - a specific number of tiers within an RTI model
  - the slope of progress or absolute level of achievement that determines movement between tiers
  - whether or not an RTI process includes special education as a component of the tier system

# Implications for Implementing an RTI Model (cont.)

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In determining the existence of an LD, the evaluation group must specifically consider :

- Data based documentation of repeated assessments of achievement, at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents

34 CFR §300.309(b)(2)

# Implications for Implementing an RTI Model (cont.)

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This data-based documentation, reflecting formal assessment of student progress during instruction, is a component of RTI models; however, this regulatory requirement is mandated, whether or not a state chooses to implement an RTI model

# Implications for Implementing an RTI Model (cont.)

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States will need to consider the requirement to provide parents with the data-based documentation described in 34 CFR §300.309(b)(2) as they develop their criteria for determining the existence of an LD

# Implications for Implementing an RTI Model (cont.)

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At any time a public agency believes a child may be eligible for special education services, the agency must promptly request parental consent to determine if the child needs special education and related services

# Implications for Implementing an RTI Model (cont.)

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- 34 CFR §300.300 allows a parent to request an evaluation at any time
- In developing criteria for determining the existence of an LD, a state agency may **not** develop criteria that would prevent a parent from requesting an evaluation at any time



# Implications for Implementing an RTI Model (cont.)

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- If a parent requests an evaluation, the LEA may choose to either request permission to evaluate or, if the LEA chooses to decline the parent's request for evaluation, the LEA must issue the prior written notice required under 34 CFR §300.503(a)(2).
- The criteria developed by a state agency may not deny/delay this procedural safeguard

# Implications for Implementing an RTI Model (cont.)

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If an evaluation group (including the parent) determines that an evaluation is needed, including additional data that cannot be obtained within the evaluation period of 60 days or the state-established timeframe (34 CFR §300.301(c)(1)), the parent and evaluation group can agree to an extension of that timeframe

# Summary

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- State must adopt criteria regarding determination of the existence of LD that addresses all regulatory requirements
- All LEAs must use the state criteria
- State criteria must permit the use of RTI but also may include other alternative research-based procedures

# Summary (cont.)

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- A variety of RTI models are available for consideration in adopting criteria for determining LD eligibility
- The RTI models typically provide a data-based progress monitoring of student performance required to address the process of documenting a child's response to scientific research-based interventions

# Early Intervening Services

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# Key Issues: EIS

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## Committee Report:

*...and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children*

# Key Issues: EIS

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## Activities

- Professional development
- Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction

# Other Uses of EIS Funds

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- Providing educational and behavioral evaluations, services, and supports—
  - including scientifically based literacy instruction



# Key Issues: EIS

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## Relationship to FAPE

- Nothing in this section shall be construed to either limit or create a right to a free appropriate public education (FAPE) under Part B or to delay appropriate evaluation of a child suspected of having a disability
- EIS do not equate to FAPE
- **Regardless of LEA use of funds for EIS FAPE remains an entitlement**

# Key Issues: EIS

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## Coordination with *ESEA* (*NCLB*)

- Funds made available to carry out this section may be used to carry out coordinated, EIS aligned with activities funded by, and carried out under the *ESEA* if those funds are used to **supplement**, and **not supplant**, funds made available under the ***ESEA*** for the activities and services assisted under this section

# Key Issues: EIS

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## Significant disproportionality by race/ethnicity

- In the case of a determination of significant disproportionality...reserve the maximum amount of funds... to provide... EIS to serve children in the LEA, particularly, but not exclusively... children in those groups that were significantly overidentified

# Key Issues: EIS

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## Definition of significant disproportionality

- This requirement recognizes the fact that significant disproportionality in special education may be the result of inappropriate regular education responses to academic or behavioral issues

# Defining “Significant Disproportionality”

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- State defines “significant” for LEAs and for the state in general
- State determines criteria for what level of disproportionality is *significant*

# Key Issues: EIS

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## Definition of significant disproportionality

- Establishing national standard inappropriate - multiple factors to consider within each state
  - Population size
  - Size of individual LEAs
  - Composition of State population
  - Guidance:  
[www.ed.gov/policy/speced/guid/idea/bapr/index.html](http://www.ed.gov/policy/speced/guid/idea/bapr/index.html)

# Key Issues: EIS

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- Relationship to MOE:  
LEA can reduce MOE by 50% of increase in Part B funds
- Note: Reduced MOE goes to activities authorized under ESEA
- MOE EIS Interconnected



# For More Information

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Please go to:

<http://sites.ed.gov/idea>

for resources on *IDEA* 2004 Final Regulations

