

AUG 15 2008

Teresa T. Combs, Esq.
Senior Attorney
Kentucky School Boards Association
260 Democrat Drive
Frankfort, Kentucky 40601

Dear Ms. Combs:

This is in response to your April 24, 2008 letter to the Office of Special Education and Rehabilitative Services regarding the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) that govern evaluations of children suspected of having specific learning disabilities (SLD) during the time period in which disciplinary measures are used. Your letter was forwarded to the Office of Special Education Programs (OSEP) for response.

In your letter, you ask, "If a district is using the response to intervention method for determination of SLD [specific learning disability] eligibility, how does this work in the situation of the expedited evaluation required under 34 CFR 300.534?" You further state that, "Attorneys have generally interpreted the expedited evaluation provision in 34 CFR 300.534 to mean the IEP [individualized education program] Team does not have the option to decide not to conduct the evaluation."

Evaluations of children suspected of having an SLD must comply with the requirements in 34 CFR §§300.300 through 300.311. Under 34 CFR §300.307(a)(2), States must permit the use of a process based on the child's response to scientific, research-based intervention, referred to as response to intervention or RTI, consistent with 34 CFR §300.309, in their criteria for determining whether a child has an SLD, as defined in 34 CFR §300.8(c)(10). Regardless of whether an RTI model is used, once parental consent is obtained, an evaluation of a child suspected of having an SLD must be conducted within the 60-day timeline or the State-established timeframe, unless the timeline is extended by mutual written agreement of the parent and the group of qualified professionals responsible for making the eligibility determination. 34 CFR §§300.309(c), 300.301(c) and 300.303. However, if a request for an evaluation of a child is made during the time period in which the child is subjected to disciplinary measures under 34 CFR §300.530, 34 CFR §300.534(d)(2)(i) specifies that the evaluation must be conducted in an expedited manner. Therefore, following the request for the evaluation, and once parental consent has been obtained, a local educational agency (LEA) may not refuse to conduct the evaluation of a child during the time period in which disciplinary measures are used because the RTI process is ongoing. Note also that, although the Department has not specified a precise timeline for an expedited evaluation because the need for collecting additional information may vary, the Department's position is that the expedited evaluation "should be conducted in a shorter period of time than a typical evaluation conducted pursuant to section 614 of the Act." 71 Fed. Reg. 46540, 46728 (Aug. 14, 2006).

Under 34 CFR §300.304(b)(1) and (2), an evaluation of a child suspected of having a disability, including an SLD, must include a variety of assessment tools and strategies and cannot rely on any single measure or assessment as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. An RTI process does not replace the need for a comprehensive evaluation, and 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. 71 Fed. Reg. 46648 (Aug. 14, 2006). Models based on RTI typically evaluate the child's response to instruction prior to the beginning of the evaluation time period described in 34 CFR §300.301(c)(1), and generally do not require as long a time to complete an evaluation because of the amount of information already collected on the child's achievement, including observation data. 71 Fed Reg. 46658 (Aug. 14, 2006).

Once parental consent is obtained for an evaluation of a child suspected of having an SLD during the time period in which disciplinary measures are used, an LEA may have sufficient information from the RTI process to ensure that the evaluation can be conducted in an expedited manner. We recognize that there may be situations where a child has not participated in an RTI process prior to the request for the evaluation under 34 CFR §300.534(d)(2)(i). In those instances, the LEA would need to rely on other assessment tools and strategies to ensure that the evaluation can be conducted in an expedited manner.

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 Dr. Deborah Morrow, of my staff, at 202-245-7456.

Sincerely,

/s/

William W. Knudsen
Acting Director
Office of Special Education Programs