



“RTI and Learning Disability (LD) Identification”– Webinar

This is the webinar series on RTI and Learning Disabilities Identification. I am Lou Danielson, a managing director at the American Institutes for Research and a principle investigator on the National Center on Response Intervention. This webinar series will include several webinars. This is the first in the series, focuses on federal policy and will be divided into two parts: a part one, which will deal with regulatory requirements, and a part two, which will be a review of the policy letters of the Office of Special Ed Programs on this—that address this particular topic. This webinar on federal policy will be followed by a webinar on operationalizing responsiveness that will be available in July of 2011 and will be conducted by Dr. Lynn Fuchs from Vanderbilt University. Following that, we will do a series of three state perspectives on LD identification that will be posted on July, August, and September of this year, and we will conclude with a series of three district perspectives on LD identification, which will be posted in October, November, December of 2011.

So this first webinar on federal policy is divided into two parts. The first part provides an overview of regulatory requirements and the second part summarizes policy letters from the Department of Education in response to questions received from the field. I should first disclaim that I don't speak directly for the Department of Education and the Department does not necessarily endorse any of the statements that I make today, however I will attempt to follow as closely as I can the language of the regulations and hopefully thereby ensuring that I'm faithful to the intent of the statute and regulations.

Ok, so the regulations require that a state must adopt criteria for determining that a child has a specific learning disability. Additionally, these criteria must not require the use of a severe discrepancy between intellectual ability and achievement. The criteria may include the use of a discrepancy between intellectual ability and achievement, but they must not require it. A state can prohibit the use of severe discrepancy between intellectual ability and achievement. The state requirements must permit the use of a process based on a child's response to scientific, research-based interventions and this is the term that I think we've commonly come to refer to as response intervention and the procedures may permit the use of other alternative, research-based procedures for determining whether a child is a child with learning disabilities. In turn, all local education agencies must use the criteria adopted by the state educational agency for determining eligibility under IDEA. As we get into the letters, you will see that if the state plans to permit LEAs to scale up, that is to implement over time the response based on—process based on a child's response to scientific research interventions, the state should contemplate that in its policy, meaning that the state would probably need to provide some other options for states that—that districts are permitted to use in the in-room while they are scaling response intervention. There'll be more information on that as I go through the policy letters.

A very important point is RTI may not be used as the “sole criterion” for determining eligibility for learning disabilities. Based on information we're hearing, this is an area where there may be some confusion and, again, the policy letters will—will deal with this issues—with this issue, but



RTI provides one very important piece of data that would be part of a comprehensive evaluation, but by itself cannot be the sole criterion for determining eligibility for learning disability. A state may not use one single measure or assessment as the sole criterion, and that's the challenge with using RTI, is it would be using a single or sole criterion, for determining whether a child is a child with disability. It must use a variety of tools and strategies. The evaluation group may determine the existence LD if the child does not adequately for the child's age or meets state-approved grade-level standards in the designated areas of oral expression, listening comprehension, 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 standard.

To ensure that underachievement in a child suspected of having 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 part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel and 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 under the Evaluation and Reevaluations section of the regulations are applicable. A comprehensive evaluation requires the use of a variety of data-gathering tools and strategies even if RTI is used, however the results of response intervention may be one component of the information reviewed. The regulations require that when a child has participated in a process that assesses the child's response to scientific, research-based interventions, that is, RTI, documentation of the eligibility determination must include a statement that the child's parents were notified about: the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would provided; strategies for increasing the child's rate of learning; and the parent's right to request an evaluation. I might add that the timing of this is going to be important and states need to think about when this might be provided. The regulations provide no specific timeline on this, other than this needs to occur prior to the eligibility determination.

RTI cannot be used to delay or deny an evaluation of a child suspected of having a disability. I will be spending more time in the policy letters section since OSEP has recently written an OSEP memorandum on this issue. This appears to be an issue where there, at the local level, there seems to be some misunderstanding, and so this deserves much greater attention, which I will provide later on. A parent may request an evaluation at any time to determine if their child is eligible for special education. That means any time during the RTI process. The public agency must promptly reply to a parent's request to evaluate their child for eligibility for special education. There's no specific timeline on this, but the expectation is that it would be prompt. If an LEA chooses to decline a parent's request for evaluation, it must issue the prior written notice required under the regulations 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. Alternatively, 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. Typically the timeframe for conducting an evaluation would be sixty days. OSEP does not endorse a specific model for determining whether it has a— a child has a learning disability. Typically, this would be something that a state might do. Alternatively, states may defer to school districts to determine a specific model, but OSEP does not endorse a specific model. 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..." In reviewing LD criteria, state agencies need to consider: the collection of data to document a child was provided appropriate instruction in the regular education setting prior to referral for evaluation; reevaluation processes and procedures; the collection of data for those children being evaluated for LD who are attending private schools. As you'll see, one of the policy letters addresses this issue of children attending private schools. The collection of data as one component of a variety of data gathering tools and assessments in completing a comprehensive evaluation, it appears that this is an issue that states needs to be particularly attentive to 'cause there appears to be some confusion on this issue; an evaluation cannot rely on a single procedure as the sole criteria, or criterion, for determining eligibility; 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. Again, this is an area where it appears that local districts and schools may need some additional assistance. The timeline of the RTI process when a student is in the process of evaluation for eligibility for special education, it's become evident that this is an area where there were parents appeared to have some concerns about the timeline of the RTI process; parent involvement in the RTI process, while the regulations lay out some clear expectations on parent involvement, the regulations are silent with regard to parent involvement in the very early stages of RTI, such as whether and when parents might be provided information for students who might not be responsive to tier one or who might be screened as at risk at the beginning of the school year. This is an issue that is going to be important for states and districts to address. In addition, training and dissemination of information regarding the RTI process for both regular education and special education staff. This is particularly critical. In some cases, the information may be, kind of general, just information that kind of generally describes RTI. The needs are likely to be quite different, though, for schools and districts that are in the process of implementing RTI, and the states and districts will need to be attentive to that particular issue. I might mention also that it has implications for higher education in terms of the pre-service preparation of both regular and special education staff. The 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, and I think this is a really critical point, that is that even if a district is using an approach other than RTI, the regs require that formal assessment progress during instruction is necessary and this is intended to rule out the possibility of poor instruction being one aspect of why a student might not be responsive. States will need to consider the requirement to provide parents with the data-based documentation described in the regs as they develop their criteria for determining the existence of a learning disability, and this section of regulations, that is 309



(b)(2), requires information on data-based documentation of repeated assessments of achievement at reasonable intervals reflecting formal assessment of progress during instruction, which was provided to the child's parents.

That concludes part one of the policy—the section on policy. For those of that are interested in part two, there's a separate—that deals with the policy letters. There'll be an additional icon you can click on to pursue that.