"Learning Disabilities Identification: OSEP Policy Letters"– Webinar

This is Lou Danielson, Senior Advisor to the National Center on Response to Intervention and we're going to hear today Part Two of the webinar series on RTI in learning disability identification on the OSEP policy letters. It's a continuation of the federal policy portion of the webinar series. It covers questions submitted to the Department of Education regarding the use of RTI in comprehensive evaluations and identification of learning disabilities. The slides have a series of bullets that summarize, briefly, the primary issue identified in the policy letters. I will expand a bit on the issue identified in the letter, and then succinctly attempt to summarize the response of the Office of Special Ed Programs. All of these letters will be available in their entirety on our website. I will not—because of the challenge of citing specific sections of regulations, I won't cite specific sections of regulations, however for those of you that are interested in that detail, you'll find that detail on all of the letters, which thoroughly document citations to the relevant portions of the statute and regulations.

So the first of the policy letters that I'm going to discuss is one that deals with that RTI cannot be used to delay or deny an evaluation for eligibility. This first one is actually not a response to a policy letter, but is an OSEP memorandum that was issued in January 21 of 2011 from the director of the Office of Special Ed Programs to state directors of special education to clarify this issue that RTI cannot be used to delay or deny an evaluation and the essence of the letter is that the child provisions—the child find provisions of IDEA require that a state have in effect policies and procedures to ensure that the state identifies, locates, and evaluates all children with disabilities residing in the state, including children who are homeless or works with the state, children attending private schools, regardless of the severity of their disability and who are in need of special and related services. It's critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It's become apparent that local education agencies may be using RTI strategies to delay or deny a timely initiation of evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that an evaluation of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.

The IDEA regulations allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability. If the LEA agrees with the parent who refers their child for evaluation that the child may be a child who is eligible for special ed and related services, the LEA must evaluate the child. The LEA must provide the parent with notice and obtain informed parental consent before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parent consent, it has been the department's long-standing policy that LEA must seek parental consent within a reasonable period of time after the referral for evaluation if the LEA agrees that initial evaluation is needed. An LEA must conduct the initial evaluation within sixty days of receiving parental consent for evaluation or if the state

establishes a timeframe within which the evaluation must be conducted within that timeframe. If, however, the LEA does not suspect that the child has a disability and denies the request for initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as a basis for this decision. The parent can challenge this decision by requesting a due process hearing or filing a state complaint to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions for an LEA to reject a referral and delay provision of initial evaluation on the basis that a child has not participated in an RTI framework.

The first of the policy letters that I will discuss deals with local education agencies use of severe discrepancy and this is in a letter to Dr. Perry Zirkel, dated March 6, 2007 and in his letter, Dr. Zirkel asks OSEP, "If a state may prohibit LEAs from using severe discrepancy and require them to use response to intervention, permit severe discrepancy RTI in the third research-based model, thereby leaving the choice among the three options to each LEA, and three, prohibit or permit the use of successive combination of RTI and severe discrepancy. RTI's initial steps and severe discrepancy is part of the culminated determination." And in its response, OSEP indicates "the regulations provide that a state must adopt criteria for determining whether a child has a specific learning disability and LEAs must use the criteria adopted by the SEA. The criteria adopted by the states cannot require LEAs to use a severe discrepancy between intellectual achievement and ability—intellectual ability and achievement—to determine whether a child has a specific learning disability. States may prohibit the use of a discrepancy model. Accordingly, while the state cannot require the use of severe discrepancy model, a state may prohibit or make optional the use of severe discrepancy. An evaluation of a child suspected of having a disability, including specific learning disability, must include a variety of assessment tools and strategies and cannot rely on a single procedure as the sole criterion for determining eligibility for special education. With respect to a child suspected of having specific learning disability, state criteria must permit the use of a process based on the child's response to scientific research-based intervention and may permit the use of alternative research-based procedures. 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. Finally, the manner in which the state chooses to use RTI as one component of a comprehensive evaluation is left up to the states."

The next letter addresses public agencies requirement to use the state criteria. This again is a response to a letter from Dr. Perry Zirkel dated August 15, 2007 and the issue that Dr. Zirkel lays out is that if a state chooses to comply with IDEA by permitting LEAs to use RTI's severe discrepancy and/or a third-based—third research-based alternative—may the LEA opt to use both RTI and severe discrepancy or to continue to use severe discrepancy and not RTI's part of the comprehensive evaluation for SLD eligibility. In the scenario presented in the 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 adopting whether a child—determining whether a child has a specific learning disability. Under those state adopted criteria, LEAs net-state would be permitted to use any of the three available options or models or

any combination of those options or models as part of the comprehensive evaluation to determine the presence of a specific learning disability.

The next letter addresses issues among issues addressed, or issues related to the pattern of strengths and weaknesses and this again is a letter from Dr. Perry Zirkel dated, the response is dated April 8, 2008 and the first question addressed in this letter states, "Am I correct in interpreting the language, patterns of strengths and weaknesses, to encompass both the options of severe discrepancy and the other alternative research-based procedures?" The response is from OSEP is, "The eligibility group including parents can determine that a child has a specific learning disability if the child meets the criteria in section 309 (a)(1), (a)(2) or (a)(2) sub 2, and (a)(3). The first of these specifically applies to the failure of a child to make progress when an RTI process is used. Therefore the last of these, which references a child exhibiting a pattern of strengths and weaknesses, will apply to all other permissible means of identifying a child with specific learning disabilities."

An additional issue addressed in this letter is the question "Is my interpretation correct? That the requirement for the evaluation team to consider continuous progress monitoring, regardless of the approach, whether the approach is RTI, means the LEA must include continuous progress monitoring and the referral or evaluation process and give due weight to the results. The eligibility group must consider database documentation of repeated assessments of achievement at reasonable intervals reflecting formal assessment of student's progress during instruction which was provided to the child's parents in order to ensure that underachievement of a child suspecting of having SLD, that is, severe learning disabilities, is not due to inappropriate instruction in reading or math. The regulation does not use the term 'continuous progress monitoring.' The information referred to in the regulations may be collected as part of the evaluation process or may be existing information for the regular instruction program for a school or LEA. It must be reviewed and weighed by the evaluation group. A critical hallmark of appropriate instruction is that data documenting a child's progress are systematically collected and analyzed and the parents are kept informed of the child's progress. We believe that this information is necessary to ensure that a child's underachievement is not due to lack of appropriate instruction."

A third issue addressed in this letter is must a special educational law concerning SLD identification include provisions regarding the amount and nature of student performance data that would be collected and the general ed services that would be provided. And the OSEP response is, "that the part b regulations require state special education policy concerning identification of SLD through RTI process to address the amount and nature of student performance data that would be collected and the general ed services that would be provided in the RTI process. If a child suspected of having an SLD has participated in a process that accesses the child's response to scientific research-based intervention, the documentation of the determination of eligibility must contain a statement of the instructional strategies used and the student-centered data collected and the documentation that the child's parents were notified of the state's policies regarding the amount and nature of student performance data that would be

collected in the general ed services that would be provided, the strategies for increasing the child's rate of learning and the parent's right to an evaluation.
A fourth issue addressed in this letter is, "Does the absence of the qualifier scientific in the other alternative research-based procedures mean that this option may not meet all the defined and relatively rigorous requirements for scientifically based research?" Response: "The criteria that a state adopts for determining whether a child has SLD may permit the use of other alternative research-based procedures for determining whether a child has SLD. There is no requirement under this provision for such alternative procedures to be scientifically-based. They must, however, be research-based."

The next letter, again a letter from Dr. Perry Zirkel, dated—the response dating December 11, 2008, addresses the issue of the district's obligation to pay for the Independent Educational Evaluation. And in this letter, Dr. Zirkel raises the question that if a school district is pursuant to a mandatory or permissive state law, adopted response intervention is its official approach as a process prior to a formal evaluation for identifying children with SLD and early during the process, a parent, in disagreement with the RTI approach, obtained an Independent Educational Evaluation that determined the student was eligible as SLD based on severe discrepancy analysis. Is the district obligated to pay for the Independent Educational Evaluation assuming the district filed for a due process hearing?" The OSEP response, "In this hypothetical you propose, regardless of the method you used in the Independent Educational Evaluation, severe discrepancy analysis or other, or whether the school district has adopted RTI, the parent is not entitled to be reimbursed for the Independent Educational Evaluation because the district has not completed an evaluation. If a parent disagrees with the results of a completed evaluation that includes a review of the results of a child's response to intervention process, the parent has a right to an Independent Educational Evaluation at public expense subject to the conditions in the regulations. The parent, however, would not have the right to obtain an Independent Educational Evaluation at public expense before the public agency completes its evaluation, simply because the parent disagrees with the public agency's decision to use data from the child's response to intervention as part of its evaluation to determine if the child is a child with a disability. With respect to your parenthetical indicating that the district filed for a due process hearing, we note that when a parent requests reimbursement for an Independent Educational Evaluation prior to the completion of the district's evaluation, the school district may deny the request for a reimbursement without filing for due process hearing. If after the completion of the school district's evaluation, the parent requests an Independent Educational Evaluation at public expense and the school district subjects, the school district could file a due process complaint to show that its evaluation is appropriate or to demonstrate that the Independent Educational Evaluations obtained by the parent did not meet agency criteria."

A second question raised by this letter, "Would your answer be the same if the parent obtained the discrepancy-based Independent Educational Evaluation upon receiving notice from the district that the child had responded successfully in the RTI process, and thus had no reason to proceed to a formal evaluation for SLD eligibility?" The response by OSEP: "Yes, the response would be the same. A parent has a right to an Independent Educational Evaluation at public expense if the parent disagrees with the evaluation obtained by the public agency. In the scenario

described in your second question above, the school district had not completed an evaluation and therefore the parent would not be entitled to an Independent Educational Evaluation at public expense. However, a parent may request an evaluation by the school district to determine if a child is a child with disability if the district provides written notice that it declines to conduct an evaluation if the parent has all the available dispute resolution options afforded by IDEA."
A third question raised in this letter: "In any event, would the district be in compliance with its obligations in the regulations to consider the results either by rejecting them outright as not meeting the district's agency criteria or giving them negligible weight in light of a child's RTI results?" "In the scenario describing the third question, assuming that this question follows the other two questions, the school district declined based on the outcome of the RTI process to evaluate the child. At this point, the child has not been evaluated or determined to be a child with disability and therefore the school district would be under no obligation to consider the results of the Independent Educational Evaluation. If the parent disagrees with the district's decision not to conduct an evaluation, the parent may request an evaluation and if the school district declines to conduct an evaluation, the parent may use all of the available dispute resolution options to obtain an evaluation. It is important to remember that the data from an RTI process can be considered as one component of a full and individual evaluation using a variety of assessment tools and strategies and then determining whether a child is a child with a disability. The public agency may not use any single procedure assessment, including RTI, as a sole criterion."
In the next letter, we address the role of speech-language pathologists in the response intervention model. In this letter, addressed to Catherine Clarke, dated May 28, 2008, the letter requests clarification on the role of speech-language pathologists in the use of Response Intervention that can be a component of an evaluation of children suspected of having specific learning disabilities and goes on to say that the—"Although the part B regulations identify speech-language pathologists as one of the individuals qualified to conduct diagnostic examinations of children." Dr. Clarke is concerned that speech-language pathologists are not consistently included when appropriate as members of the RTI team. And the OSEP response indicates that the IDEA and the part B regulations do not address the role of speech-language pathologists or other qualified professionals in an RTI model. "If an LEA chooses to use an RTI model as one part of the full and individual evaluation, the LEA may choose the RTI model it wishes to implement. The response will leave the LEA to determine the roles and responsibilities of the various staff members to be involved in that particular model or which staff members the LEA chooses to involve in the RTI model. US Department of Education does not prescribe the models LEAs must use or how they will utilize their staff and implement any selected model."
The letter also requests clarification on whether children suspected of having communication disabilities other than SLD should go through RTI processes that are part of an identification process to determine eligibility for services. The statute and regulations are silent on this issue. The part B regulations do not address the use of an RTI model for children suspected of having other disabilities.

The next letter, dated October 19, 2007, addressed to Dr. John Copenhaver, and this letter addresses parental consent for initial evaluations when RTI is used. In this letter, Dr. Copenhaver asks, "Are there any circumstances in which a school district could conduct a full initial evaluation and determine eligibility without obtaining the parent's informed consent?" and also

asks the question, “What starts the sixty day timeline for evaluation if parent consent is not needed?” And the response is that, “a full and initial evaluation must be conducted in accordance to the regulations prior to initial provision to special ed and related services to a child with a disability. The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with disability must obtain informed consent from the parent before conducting the evaluation. The regulations also provide that parental consent is not required for review of existing data on the child as part of an initial evaluation or reevaluation. Requirements for review of existing evaluation data on the child as a part of initial evaluations and reevaluations were added to the IDEA in the 1997 reauthorization. The statute provides that in some instances an evaluation team may determine that additional data are not needed for evaluation or reevaluation. In all instances, parents have the opportunity to be part of the team which makes that determination; therefore, no parent consent is necessary if no additional data are needed to conduct the evaluation or reevaluation. Because many school districts are obtaining evaluation data as part of a Response to Intervention and process and progress monitoring, your inquiry was prompted. An RTI process does not replace the need for comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies, even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required. An evaluation must include a variety of assessment tools and strategies and cannot rely on a single procedure as the sole criterion. We do not believe that an RTI process alone would relieve a public agency of the obligation to conduct a comprehensive individual initial evaluation of a child for which parental consent would be required. The regulation describes the procedures applied to the review of existing evaluation data in a child. The IP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the child’s parent, current classroom-based local or state assessments, classroom-based observations, and observations by teachers or related service providers. On the base of that review and input from the child’s parents, the group must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. If the IP team and other qualified professionals determine based on review of existing data that those data are sufficient to determine whether the child is a child with a disability and the child’s educational needs and that no additional data are needed, the determination of whether the child qualifies as a child with a disability could be made without conducting further assessments of the child. In that situation, the public agency would not be required to obtain parental consent for an initial evaluation. The parent must always be given the opportunity or request for the assessment even if the public agency determines that no additional evaluation data are needed. If the public agency informs the parent that no additional data are needed to determine whether the child is a child with a disability and the child’s education needs but the parent requests that additional assessment be conducted, the public agency will be required to obtain parental consent prior to conducting that assessment. We believe that only in limited circumstances could a public agency conduct an initial evaluation only through review of existing data on the child and that in most instances, review of existing evaluation data on a child would generally be insufficient for a team to determine whether a child qualifies as a child with a disability. Since consent is not required for review of existing data on the child, you have also asked how the time layer requirement is applied in the situation. The evaluation time layer requirement begins to run from the day that

the public agency received parental consent to conduct the initial evaluation. The regulations do not establish a timeline for review of existing data on the child consistent with the public agencies' obligation to locate, identify, and evaluate all children who are in need of special ed and related services. Public agencies must ensure that the review of existing evaluation data does not operate to impede the child's right to the timely provision of special ed and related services. The review of existing data is a part of the eligibility determination process that occurs prior to the initiation of any evaluation timeline that would apply if additional evaluation data were needed. Therefore we would expect that the eligibility determination would occur properly if no further evaluation data were needed."

The next letter addresses RTI for SLD identification for parentally placed students in private schools. This is a letter from Dr. Perry Zirkel. The response is dated January 6, 2011 and in this letter the question is posed, "How may a district which has adopted RTI for SLD identification meet its child find obligations under IDEA where state law does not include provisions specific to these two situations for parentally placed students in private schools? A) The district where the private school is located has adopted RTI as its identification model for SLD and the private school personnel have suggested to the district's representative that the student warrants evaluation under the district's child find process and B) the district where the child is a resident has adopted RTI as its identification model for SLD and the student parents that request an evaluation for SLD eligibility and there is reason to suspect that they may be correct." And OSEP's response is, "In the two situations described in your question, the district is responsible for meeting a child find obligations under IDEA, even if the private school has not implemented an RTI process. In the case of a child who is enrolled by his or her parent in a private school, the purpose of the evaluation may be for providing equitable services or making a free appropriate public education available depending in part whether the referral is received by the LEA in which the private school is located or the LEA where the parents reside. When the LEA receives a referral, the LEA must initiate the evaluation process to determine if the child is a child with disability. The IDEA and its implementing regulations delineate the requirements that LEAs must use to conduct an initial evaluation to determine if the child qualifies as a child with disability. These requirements do not apply to private schools. Even if an LEA uses RTI to evaluate a child suspected of having SLD, IDEA does not require an LEA to use RTI for a parentally placed private school child within its jurisdiction. It would be inconsistent with the evaluation procedures for an LEA to reject the referral and delay provision of an initial evaluation on the basis that private schools is not implemented an RTI process with a child and reported the results to the LEA. If the LEA proposes to conduct an initial evaluation to determine if the child qualifies as a child with a disability, the LEA must provide notice and obtain informed parental consent before conducting the evaluation. Regardless of whether or not an RTI model is used, the LEA must conduct the initial evaluation within sixty days of receiving parental consent for the evaluation, or if the state establishes a time frame within which the evaluation must be conducted within that time frame. The timeline may be extended by written mutual agreement of the parents and the group of qualified professionals responsible for making the eligibility determination. If however the LEA does not suspect that the child has a disability and denies the request for an initial evaluation, the LEA must provide written notice to the parents explaining why the public agency refuses to conduct an initial evaluation and the

information that was used for the basis for this decision. If an RTI process is not used in a private school, the group making the eligibility determination for a private school child may need to rely on other information, such as any assessment data collected by the private school that would permit a determination of how well a child responds to appropriate instruction or identify what additional data are needed to determine whether the child is a child with disability, including whether a particular child has SLD."

The second question of this letter is the requirement for documentation of the child's behavior in addition to the child's academic performance. In the regulatory requirements for observation for SLD identification mean that the RTI process where the districts have adopted it must A) be based on behavior in addition to academic performance for SLD identification in extent to other classifications that are more closely connected behavior, such as ED, that is emotional disturbance. The regulation requires that a state, within its adopted criteria for determining whether a child has SLD, must permit the use of a process based on the child's response to scientific research-based intervention. However, the IDEA does not prescribe any particular model of RTI nor define how an LEA should implement any particular process. The requirement for observation that you reference is not intended to describe an RTI model in a separate requirement that must be met in the identification of a child with SLD. Observation can be part of RTI and may or may not include behavioral observation. If it does not include observations of a child's behavior and areas related to the child's academic difficulty, that observation would be done separately while the child is working with an RTI model or in other learning environments during the child's school day. RTI, as stated above, is only one component of a full and individual evaluation. Observation in the identification of a child with SLD is another component of that evaluation. The regulation requires that states permit the use of a process based on a child's response to a scientific research-based intervention as part of an evaluation only for children suspected of having SLD. The IDA statute and regulation do not preclude or prohibit an IDA from using data gathered through an RTI process or model in the identification of learning disabilities. There is no particular requirement in the IDEA that describe or prescribe a particular process or model of RTI. Therefore it would be inappropriate to assume either than an adopted RTI process must be based on behavior and/or that this process extends to other classifications more closely connected to behavior. If behavioral observations and data collection on behavior on part of an LEAs RTI model, then that data should be reviewed as part of any full and individual evaluation for any student that has participated in the model, regardless of the suspected disability.

The next letter addresses the use of RTI model for eligibility only in selected schools in the state or LEA and this is a letter addressed to Art Cernosia, dated July 27, 07. In this letter, the question is posed, "In the event of a local education agency in a state that leaves the use of an RTI model for the purpose of eligibility for SLD determination to each LEA, the LEA decides that we use an RTI model as opposed to a severe discrepancy model to determine whether a child is eligible for special ed as a child with SLD. Must every school in the LEA use the RTI model for SLD determination before any school in the LEA is permitted to do so? You also ask if every school in the LEA must implement RTI for the eligibility purposes. Are there provisions in the IDEA that would allow a state and/or LEA to pilot, or otherwise allow the use of and RTI model for

eligibility determinations only in selected schools in the state or LEA?" And the response is, "If the use of a process based on a child's response to scientific research-based intervention and identify a child with SLD is required, then all children suspected of having SLD in all schools in the LEA would be required to be involved in the process. If an LEA chose to scale-up the implementation of RTI model gradually over time, as would be reasonable, the LEA could not require the use of RTI for purposes of identifying child with an SLD in RTI until it was fully implemented in the LEA. Therefore it is unwise to require the use of the 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 the 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 in a particular school using the criteria adopted by the state for determining whether the child has SLD, 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." The next letter addresses differences between elementary schools and secondary schools in RTI implementation. This is a letter to Dr. Carol Massanari, and is dated September 24, 2007, and in this letter the question is posed, "Would it be possible the LD determination at the elementary level would be based on data using the RTI process while middle and high school levels would continue to use a discrepancy process?" In the letter in which OSEP that I just identified from Dr. Cernosia, OSEP stated, "That if the use of a process based on the child's response to scientific research-based interventions and identified children as SLD is required, then all children suspected having SLD in all schools in the LEA would require to be involved in the process. On the other hand, if the use of the process based on the child's response to scientific research-based intervention is not required but is permitted, the school would not have to wait until RTI is fully implemented 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 in a particular school using the criteria adopted by the state for determining whether the child has SLD is identified, 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. A public agency, including LEA, must use the state criterion to determine whether a child has SLD. Nothing in the final part B regulations would prohibit an LEA, if consistent with state criteria from using multiple methods of identifying a child with SLD as part of a full and individual evaluation or reevaluation across schools or across levels, for example, elementary school, middle school."

The next letter addresses the broad issue of RTI method for determining SLD eligibility in the situation of the expedited evaluation required under section 534 of the IDA regulations and this is a response to a letter from Theresa Combs and the response is dated August 15, 2008, and in the letter the question was posed, "If the district is using a response intervention method for determination of SLD eligibility, how does this work in the situation of expedited evaluation required under section 534?" And the response is, "If a request for an evaluation of a child is made during the time period in which a child is subjected to disciplinary measures, section 534

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, an LEA may not refuse to conduct the evaluation of a child during the time period during the time period in which the disciplinary measures are used because the RTI process is ongoing. Note also that although the Department has not specified the precise timeline for an expedited evaluation because the need for collecting the initial information may vary, the Department's position is the expedited evaluation should be conducted in a shorter period of time than a typical evaluation is conducted. Once parental consent is obtained for an evaluation for 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 of the evaluation under section 534. In those instances, the LEA will need to rely on other assessment tools and strategies to ensure that the evaluation can be conducted in an expedited manner."

And the last of the letters addresses the applicability of the RTI requirements to children ages three through five enrolled in Head Start. This is a response dated June 2, 2010 addressed to Dr. Linda Brekken. The inquiry addresses the applicability of RTI requirements to children ages three through five enrolled in Head Start programs, specifically how local education agencies may implement RTI when a Head Start program refers a child to the LEA as a child suspected of having a disability and being in need of special ed and related services. The first question in this letter asks whether the IDA introduces a new requirement or encourages LEAs to use an RTI approach in determining whether three, four, or five year old children enrolled in Head Start are eligible for special ed and related services under part B of IDA. In OSEP's response, "The IDA does not require or encourage an LEA to use the RTI approach prior to a referral for evaluation or as part of determining whether a three, four, or five year old is eligible for special ed and related services. The IDA in part B regulations do not address the use of an RTI model for children suspected of having other disabilities. It is up to the state to develop criteria for determining whether a child qualifies as a child with a disability."

A second question posed in this letter is whether an LEA can decline a child find referral from a Head Start program until the Head Start program monitors the child's development progress using RTI procedures. Once an LEA receives a referral from a Head Start program, the LEA must initiate evaluation procedures to determine if the child is a child with a disability. It would inconsistent with the evaluation provisions of IDEA for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a community-based early childhood program is not implemented an RTI process with a child and reported the results of that process to the LEA. A third question asks whether an LEA must inform a child's parents of their right to request an evaluation from the LEA and if the LEA requires a child be assessed through an RTI approach before it will accept a referral from Head Start. While a parent of a child may initiate a request for an initial evaluation to determine if a child is a child with a disability, the IDEA and its implementing regulations do not require the parents be informed of their right to request an initial evaluation. However, upon initial referral from Head Start, the LEA must give parents a copy of the procedure safeguards available to them. If an LEA declines to evaluate a child, it

must provide prior written notice, which includes reasons for refusing to conduct the evaluation. If a parent believes that their need for an evaluation is being delayed based on an LEA's refusal to conduct an initial evaluation until the Head Start program implements an RTI approach with a child, the parent may file a due process complaint or a state complaint.

That concludes the part 2 of the policy update on LD identification. As I indicated in the beginning, all of these letters are available in their entirety on our website. Thank you very much for your attention. This—to recap—this is the first in a series of webinars dealing with LD identification. We expect that by July that the operationalizing responsiveness will be available on the RTI center's website followed in July, August, and September, by the state's perspective and then in October, November, and December, by the district perspectives. We thank you very much for your attention and hope that this is informative.