



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

September 10, 2013

Perry A. Zirkel, Ph.D. JD
University Professor of Education and Law
Lehigh University
Mountaintop Campus
111 Research Drive
Bethlehem, PA 18015-4794

Dear Dr. Zirkel:

I am writing in response to your letter to the United States Department of Education's (Department) Office of Special Education Programs (OSEP) dated February 13, 2013, asking for OSEP's determination as to whether a longstanding general education intervention process constitutes a process based on a child's response to scientific, research-based intervention (commonly referred to as "response to intervention" (RTI)) that meets the requirements in 34 CFR §300.307(a)(2) of the regulations implementing the Individuals with Disabilities Education Act (IDEA). You describe a general education intervention process as often taking the "form of a school-based student assistance team that recommends strategies for individual children that are evidencing learning and/or behavioral problems." As part of this general education intervention process, you state that "the general education teacher typically refers the child to the team and implements [the team's] recommendations for a trial period, with the team reviewing the resulting progress or lack thereof at the end of the period. Depending on the local or [S]tate variation, the next step may be either another team review with recommendations or referral for a special education eligibility evaluation."¹

A multi-tiered instructional framework such as RTI is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. There are a number of RTI models, and, while the Department does not endorse a particular RTI model, essential components must be present in RTI. These components include: (1) high quality, evidence-based instruction in general education settings; (2) screening of all students for academic and behavioral problems; (3) two or more levels (sometimes referred to as "tiers") of instruction that are progressively more intense and based on the student's response to instruction; and (4) progress monitoring of student performance. See OSEP's "Questions and

¹ You refer to the "Student Teacher Assessment Team" (STAT), used in the El Paso Independent School District in Texas, as an example of a general education intervention process. In the case you cite, *El Paso Independent School District v. Richard R.*, 567 F.Supp.2d 918, 923 n.2 (W.D. Tex. 2008), the STAT is described as "a pre-referral committee that reviews student information, implements interventions to meet the student's needs, and documents the success of the interventions. If the interventions are unsuccessful, the [c]ommittee should refer the student for a special education evaluation. The STAT handbook states that a 'referral for evaluation for consideration of special education should be a last resort.'"

Answers on Response to Intervention (RTI) and Early Intervening Services (EIS),” January 2007; Letter to Dale, November 14, 2012 (60 IDELR 166).

When evaluating an intervention process to determine if it meets the requirements in 34 CFR §300.307(a)(2), the evaluator should compare the components of the questioned intervention to the essential RTI components mentioned above. As a matter of practice, OSEP does not evaluate local educational agencies’ RTI processes.

It is important to note that no intervention process, whether it includes the components listed above or not, may be used to delay or deny the provision of a full and individual evaluation that meets the requirements of 34 CFR §§300.304-300.311 to a child suspected of having a disability under 34 CFR §300.8. Consistent with IDEA section 612(a)(3), a State must 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 with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occur in a timely manner. See OSEP Memo 11-07, A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA), January 21, 2011.

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 any further questions, please do not hesitate to contact Rebecca Walawender, of my staff, at 202-245-7399 or by email at Rebecca.Walawender@ed.gov.

Sincerely,

A handwritten signature in cursive script that reads "Melody Musgrove Ed.D." with a small flourish at the end.

Melody Musgrove, Ed.D
Director
Office of Special Education Programs