

We are gravely concerned about the impact of the following proposed regulations, especially in how they relate to students with learning disabilities and their families.

Proposed New Section 100.2 (ii) Response to Intervention:

One of the greatest areas of concern for LDA in the proposed regulations is the response to intervention (RTI) process in section 100.2 of the Commissioner's regulations, and the lack of clarity and direction provided.

LDANYS is disappointed that NYSED did not heed the recommendations from the Stakeholders group that was assembled to provide input on RTI, which LDANYS participated in and is concerned with NYSED's position that many of the details of RTI implementation requested by stakeholders will be forthcoming in guidance documents. Guidance documents do not provide the same level of oversight as regulations and as such, we are deeply concerned with this proposed course of action.

LDA supports the appropriate implementation and use of RTI as a *pre-referral general education* mechanism to identify a pool of at-risk students in the earliest grades. We also support the concept of RTI as a means to provide high quality, research-based instruction and progressively more intensive intervention to young students identified as being at-risk in an effort to prevent the classification of students who may previously have been identified as having a learning disability due to lack of appropriate instruction. However, RTI represents a significant shift in how instruction will be provided in the general education classroom and should not be implemented hastily or hap-hazardly. Research on RTI to date has been very limited and its efficacy on a wide scale basis has yet to be established. We urge moving ahead with RTI very cautiously and urge the use of pilots to examine the impact of RTI prior to rolling RTI out statewide. We are extremely concerned that the proposed regulations do not go far enough in defining the parameters of RTI which will ultimately leave school districts without the direction they require to appropriately implement RTI. Without stronger definition of the process in regulation from NYSED there also exists the potential for each school district in New York State to develop and implement its own RTI process resulting in inconsistency and chaos across the state.

Ensuring teachers are adequately trained to appropriately deliver RTI in a general education classroom is also paramount to the success of RTI and the regulations do not adequately address teacher preparation requirements. Parent awareness and involvement in the RTI process is another key element. If parents are not adequately informed initially and throughout the process as to why, how and when RTI will be implemented and are not incorporated as equal partners into the process, this will likely lead to an increase in special education referrals and litigation for school districts. RTI cannot appear to parents to be a delay tactic and parents need to be clearly advised that they can stop the process at any time and refer their child for a full-scale, comprehensive evaluation. Process, duration, program goals and feedback of data to parents will be critical if this process is to work.

In order to ensure that parents are appropriately informed of how RTI, if being used, will impact on the education of their children we recommend the inclusion of language in

subdivision (ii) of section 100.2 that would require school districts who opt to use an RTI process to provide written notification to all parents of students in the general education classroom in which RTI will be utilized that includes the source of the scientifically-based research upon which the RTI model they will be using is based along with the projected timeframe for the completion of the RTI process; the corresponding anticipated outcomes of the process; a parent-teacher communication timeframe and which form of communication (paper, scheduled meeting, telephone) will be used to review progress data and the credentials of the highly qualified staff that will be delivering RTI. School districts should also be required to file this information to NYSED in order to ensure school districts are complying with the required critical components of an RTI.

Proposed New Section 200.4 (j) Additional Procedures for Identifying Students with Learning Disabilities:

LDA is extremely concerned with the entire proposed new section 200.4 (j) Additional Procedures for Identifying Students with Learning Disabilities. This section is so confusing that we find it difficult to provide concrete recommendations on how to improve it. Psychologists within our organization could not even decipher this section to a degree of being able to explain its content. We strongly urge NYSED to streamline this section so that it is more coherent. Again, without NYSED providing more clarity and direction to school districts in regulation, we could ultimately end up with a different procedure and criteria for determining whether a student has a learning disability in each school district throughout New York State and increased litigation as a result.

Section 200.4 (j) is also very repetitive. For example, first we have language on evaluations needing to include a variety of assessments, then the “process” for determining eligibility, which states school districts may use one of three procedures and then there is the “criteria” for determining the existence of a learning disability. This section is contradictory. For example, section 200.4 (j) (2) states that a variety of assessments must be used and no *single* procedure can be used as the sole criterion for determining eligibility, however, section 200.4 (j) (3) states that: “in determining whether a student has a learning disability, the school district shall use a process based on the student’s response to scientific, research based interventions OR an alternative research-based procedure OR a severe discrepancy between achievement and intellectual ability. The use of the word OR in this section suggests that school districts are to use only ONE process to determine whether a student has a learning disability. ***We recommend that NYSED add language that would require school districts to use a full-scale comprehensive evaluation.***

LDA is deeply concerned with the proposed use of RTI as an evaluation procedure for identifying students as having learning disabilities in section 200.4 (j). In this section NYSED proposes to allow school districts to use RTI as a process to determine whether a student has a learning disability. LDA opposes the use of RTI as an evaluation procedure for determining whether a student has a learning disability *after* a referral has been made. According to the National Research Center on Learning Disabilities, RTI is not sufficient to identify a specific learning disability. LDA concurs with this understanding of RTI and maintains that it is the ***data from a pre-referral RTI process***, not the utilization of the RTI process itself that can be considered as a component of a comprehensive evaluation but that the process itself does not

constitute an appropriate evaluation procedure. *We recommend that NYSED add the following underlined language in section 200.4(j) (3): In determining whether a student has a learning disability, the school district shall use: (i) data from a pre-referral process based on the student's response to scientific, research-based intervention pursuant to section 100.2 (ii) of this Title.*

The use of RTI in section 200.4 (j) as an evaluation procedure also conflicts with other subdivisions of this section as follows:

- Section 200.4 (b) (6) (i) (b) states that school districts must ensure that assessments and other evaluation materials used to assess a student under this section are used for purposes for which the assessments or measures are valid and reliable. As we stated previously, research to date on RTI has been very limited and focused predominantly on early grades (grades K-2). Therefore, we do not believe RTI is a valid and reliable evaluation procedure for use for older students.
- Section 200.4 (b) (6) (viii) states that an evaluation must be sufficiently comprehensive to identify all of the student's special education needs, whether or not commonly linked to the disability category in which the student has been identified. Because research on RTI has been limited to its use for reading intervention, we do not believe RTI would sufficiently evaluate a student suspected of having a learning disability who exhibits weakness in other areas such as math.
- Evaluations must be conducted within 60 calendar days from the date a referral is received by the school district. If a school district were to use RTI as an evaluation process then it would have to ensure that its RTI process pursuant to section 100.2 of the regulations can be completed within the 60-day timeframe. LDA is concerned that using an RTI process as an evaluation tool will result in the delayed implementation of special education services potentially needed by a student with a learning disability.
- Because we do not support the use of RTI as an evaluation procedure to be initiated *after* a student has been referred for an evaluation, we oppose the elimination of the discrepancy model for grades K-4 by 2010. Experts in the field agree that the efficacy of RTI as an assessment for identifying students with learning disabilities has not been established and so the proposed elimination of the discrepancy model at this time is unfounded and premature. **RTI is not an evaluation "tool" used in the same capacity as the discrepancy model in that it occurs before referral where as other evaluative assessments would be used after a referral. It is the data from the pre-referral RTI process that is to be considered during an eligibility determination not the process itself. Only methodologies that assess cognitive functioning and psychological processes can distinguish a student with a learning disability from a slow learner. RTI is not capable as a stand-alone assessment of identifying a student with a learning disability as defined in section 200.1 (zz) (6) of the proposed regulations.**

Section 200.5 Due Process:

LDANYS continues to see evidence of diminished parent and student rights under IDEA in the proposed due process regulations. Throughout section 200.5 of the proposed regulations, there are statements that are going to ultimately prevent parents from exercising their due process rights. One example is proposed section 200.5 (g) (v), which states that if an independent educational evaluation does not “meet school district criteria” the school district is not required to pay for the evaluation. What is this criterion? It is not defined in the regulation and if left up to each school district to define could essentially be anything a particular school district wishes it to be. Furthermore, in due process proceedings school districts have been required to consider the results of an independent educational evaluation regardless of whether it was performed at public or private expense. Section 200.5 (g) (vi) (1) now proposes that the results of this evaluation must be considered “if it meets the school district’s decisions made with respect to the provision of a free appropriate public education for the student”. What are these “decisions”? They are not defined in the regulation. These two proposed regulations clearly put all of the cards into the hands of the school districts with respect to independent educational evaluations. ***We recommend that section 200.5 (g) (vi) (1) be rewritten as follows: “...must be considered by school districts”, and that the language “if it meets the school district’s decisions made with respect to the provision of a free appropriate public education for the student” be removed.***

As a parent organization, one of our biggest concerns is that most parents are not aware of what their due process rights are under IDEA either because they never received a copy of them or because of their complexity they were not fully understood. ***To provide for additional protections for parents to ensure they are adequately notified of their rights and that these rights are explained to them we recommend the following:***

- ***The addition of the following underlined language in section 200.5 (f) Procedural Safeguards Notice (3) “a copy of such notice must be given to the parents of a student with a disability, at a minimum one time per year and school districts must document such notice was provided to, received by and explained to the parents in their native language or preferred mode of communication.”***
- ***We also recommend in this section the following underlined language: 200.5 (f) Procedural Safeguards Notice (4) A school district may place a current copy of the procedural safeguards on its Internet website if such website exists. This does not absolve a school district from its responsibility to document that the notice was received and understood by the parents.***

LDA is also concerned that under the proposed due process regulations, low-income parents will be further disadvantaged in exercising their due process rights. Currently, many low income parents who are not able to afford legal counsel are still able to access the assistance of attorneys who often accept cases with the understanding that their fees will be collected when hearing officers render a decision in a hearing. Under the proposed regulations, if an out of court decision is reached a hearing officer does not need to issue a decision and thus, no attorney fees can be collected. This limits low-income parents’ access to attorneys in non-hearing

proceedings. This provision coupled with the burden of proof now being put into the hands of parents will limit due process rights even more.

Discipline:

LDA is concerned that under new disciplinary procedures, students with disabilities who through a manifestation hearing are deemed to have committed an act not caused by or related to their disability will now lose all of their rights under IDEA. We are further concerned that parent participation in the manifestation determination process has been eliminated and that the CSE will no longer participate in the determination of whether or not a student will continue to receive necessary support services when placed in an alternative setting. While we realize the need to align with federal regulations and ensure the safety and protection of all students in a school building, we cannot support or endorse the regulations as written. They will deny students with disabilities, especially those with learning and behavioral disorders, the interventions, supports and services they need, at the time when they are most needed and have the greatest potential to result in positive outcomes.

In closing, LDA would like to repeat again how important parents are in the special education process. Writing regulations that are parent friendly and that ensure parents participate as equal partners in the decision-making processes that will impact on the education and future of their children is critical. When this does not occur the results are costly for our children, youth and families, and for our communities. The short and long-term outcomes for our students, especially those with learning and behavior disorders, are dependent on these regulations. We need regulations that will engage parents, encourage them to exercise their rights on behalf of their children, and partner on an ongoing basis with educators and schools. Effective parent training and advocacy services are vital. We urge NYSED to consider our comments, take steps to make necessary revisions and improvements, and take steps to increase parent advocacy, training and information programs. We also urge NYSED to reconsider its position that it must only enact what is in federal regulation and not exceed the federal minimums. New York has always been a leader in providing effective and reasonable protections for students in need of special education services and their parents. **Now is not the time to pull back on our commitment to students and their families. LDANYS continues to be a partner and stakeholder in this process, and we welcome any opportunity to help NYSED understand the concerns on behalf of the students and families we serve. We believe that we can both successfully meet the federal mandates, and at the same time, meet the needs of the students and families.**