

§300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must-

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

LDANYS also advises that parent involvement and regular and frequent communications with parents on the progress of their children undergoing an RTI process be required by any policies, procedures and guidelines implemented in New York State.

**Recommendations**

We recommend that policies and procedures include:

- A) A clear statement that the current definition of Specific Learning Disability has not changed in IDEA 2004 and that RTI is one new alternative model, the data from which may help schools to determine whether a child has a SLD in a timely and effective manner.
  
- B) An RTI process that includes the critical components identified by NRCLD ;
  - 1. All students receive high quality instruction in their general education setting.
  - 2. General education instruction is research based including differentiated curriculum.
  - 3. Classroom performance measures where general and special education instructors and staff assume an active role in assessing student performance.
  - 4. Universal screening of all students in academics and behavior.
  - 5. Continuous progress monitoring of student behavior designed to pinpoint student's specific learning difficulties
  - 6. Implementation of multiple tiers of increasing intense student focused research based individualized interventions to address each student's specific difficulties
  - 7. Fidelity measures designed to assess the staff and to ensure that the interventions being utilized were implemented as intended and with consistency.
  - 8. Progress monitoring during interventions where school staff uses progress monitoring data to determine the intervention's effectiveness and make documented

modifications as needed. Modifications include varied duration, frequency and time of interventions, group and individualized instructional placement decisions.

- C) Uniform accountability measures for RTI implementation to:
  1. ensure adequate documentation of type and intensity of instruction
  2. Ensure students with learning disabilities are not subjected to repeated ineffective methods of instruction in the same or subsequent years through RTI.
  3. Determine whether and how an RTI model is being implemented appropriately
  4. Ensure RTI is being used to inform the process of SLD eligibility on an individual basis.
  5. Demonstrate that RTI is an effective prevention system for academic failure for all students;
  6. And validate whether an RTI model improves SLD determination.
  
- D) Specific timelines that ensure that students who undergo an RTI process that exposes them to appropriate methods of intervention and yet continue to exhibit academic difficulty, will be referred for a comprehensive psycho-educational evaluation to be conducted by a qualified, multi-disciplinary team of experts.
  
- E) Provision for Immediate Referrals for Comprehensive Multi-disciplinary Evaluations: Identify circumstances when students who exhibit continuing academic, social and behavioral difficulties should be immediately referred for a comprehensive evaluation regardless of any other interventions that may be in place at that time. This referral process, depending on the circumstances, may or may not require that components of RTI have already been implemented, and that services and interventions provided as a result of substandard performance on statewide tests have already been delivered.

We recommend guidance documents that address:

1. Specific research strategies and interventions matched to specific learning disabilities, citing demonstration projects whenever possible.
2. Training, time requirements, levels and intensity of instruction required for specific instructional method.
3. Process on how to identify and match specific research based instructional methods and curriculum to students with specific learning characteristics.
4. Process for determination that an intervention is or is not effective for a specific group of learners.
5. Identification of RTI evaluation strategies and protocols for determining LD in older students.
6. The current limitations of an RTI approach, including the recognition that RTI is primarily intended to be used in the early grades and the efficacy of RTI decreases as a student ages. This limitation must be recognized to avoid delays in appropriately identifying older students as having specific learning disabilities.
7. The need for a prompt referral for a multidisciplinary team evaluation as an alternative option for any student experiencing difficulty with learning in comparison to their peers when there is not an appropriate RTI implementation process or intervention strategies in place.

8. An RTI evaluation model should never jeopardize the provision of any special education services in place for students already classified by the Committee on Special Education and evaluated by multi-disciplinary evaluation teams.
9. Staff Development and Training Requirements: Instructional services under RTI are delivered by qualified educators who are trained in explicit direct instruction for specific areas of learning. Fidelity in instruction is critical to success.
10. Parental involvement with RTI and the right of parents to request an evaluation for their child by a multi-disciplinary team at any time regardless of where their child is in the RTI process.
11. How RTI fits in with the 60-day required timeframe for evaluation.
12. Communication expectations between parent and school staff.

Whatever the criteria for evaluating students for specific learning disabilities that the New York State Education Department ultimately develops, they must make it their absolute goal to ensure that the field is well informed on the criteria, adequately trained and that strict requirements for adhering to these criteria are established and followed. The process of RTI can potentially leave a lot of room for interpretation by individual school districts, which ultimately may defeat the purpose of RTI. One of the goals of RTI is to improve upon the present “wait to fail” model by potentially identifying students at-risk of having specific learning disabilities much sooner. Another goal is to potentially avoid the over-identification of students with specific learning disabilities by providing intense, direct instruction much earlier in life at a time when the brain is more easily programmed. If RTI is not implemented appropriately and adequately, in the way for which it was intended, both of these goals will be defeated and we will potentially see even greater delays in identifying students and even more students being inappropriately diagnosed with SLD. Due to the serious implications of these new criteria, the process by which they will be established cannot and should not be rushed. Adequate time, research, input from all stakeholders and demonstration projects should be granted before any new processes are codified.