

Division of Special Education/Early Intervention Services

Using the Response to Intervention (RtI) Process for Identifying Specific Learning Disabilities (SLD)

This question and answer document was developed to support and provide additional clarifying information to *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework*. The page numbers referred to in these responses can be found in *A Tiered Instructional Approach* on our website, www.marylandpublicschools.org.

1. Can a local school system in Maryland implement RtI as an incremental process?

In January 2007, the U.S. Department of Education, Office of Special Education Programs (OSEP) provided guidance that discussed an incremental process for implementing RtI which was included in *A Tiered Instructional Approach* on page 26. In July of 2007, OSEP provided further clarification in the following verbatim informal guidance and interpretations of IDEA 2004 regarding the incremental implementation of RtI processes.

- “If the use of a process based on the child’s response to scientific, research-based intervention, is not required, but is permitted by the local education agency (LEA), a school would not have to wait until RtI is fully implemented in all schools in the LEA before using RtI as a part of the identification of SLD.”
- “That is, if the LEA is allowing, but not requiring the use of RtI, and a particular school, using the criteria adopted by the State for determining whether the child has an SLD as identified in [34 C.F.R. §300.8(c)(10)], 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.”

In Maryland, local school systems are not required to use a response to intervention approach as part of the identification of SLD. Local school systems therefore may start using RtI in a small number of schools. However, local school systems that opt to use RtI must establish policies that follow the criteria adopted by the State. The criteria are included in *A Tiered Instructional Approach* document on pages 31-36.

2. Who determines the need for a comprehensive evaluation?

When a student has received instruction as described in COMAR 13A.05.01.04A(3) and has not made adequate progress after an appropriate period of time, or whenever a student is referred for an evaluation, the public agency is required to determine what assessments may need to be conducted in order to complete a comprehensive evaluation, obtain parental consent and conduct those assessments consistent with the requirements of COMAR 13.A.05.01.04. For further information, please refer to pages 27-29 of *A Tiered Instructional Approach* as well as question # 3 of this Technical Assistance Bulletin.

The public agency must adhere to timeframes described in 34 C.F.R. §300.301 and COMAR 13.A.05.01.06. The public agency also must provide written notice to the parent that describes any evaluation procedures the agency proposes to conduct and a copy of Maryland's Procedural Safeguards Notice. The public agency should consider if the child's underachievement is caused by an instructional mismatch or ineffective instructional practices. A Response to Intervention process does NOT replace the need for a comprehensive evaluation.

3. What are the components of a comprehensive evaluation?

A comprehensive evaluation must address eligibility and the functional, developmental, and academic information, including information provided by the parent, using technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors to determine whether the child is a child with a disability and to determine an appropriate educational program for the child. [34 C.F.R. §300.304(b); COMAR 13A.05.01.05B]

The evaluation of a child with a suspected disability must be sufficiently comprehensive to identify all of the child's special education and related needs, whether or not commonly linked to the disability category in which the child has been classified. [34 C.F.R. §300.304(c)(6); COMAR 13A.05.01.05B]

The following information should be reviewed, documented, and considered as part of a comprehensive evaluation as appropriate:

- All relevant data (including all data collected and analyzed via tiered instructional interventions);
- Relevant work products;
- Results of student/teacher interviews;
- Teacher logs;
- Pertinent records;
- Research-based intervention services (Tiers I-III), strategies, accommodations;
- Interventions used as part of a data-based, collaborative, problem-solving process;
- Data and input provided by the parents;
- Current school-based assessments; and
- Data-based direct observations (NOT subjective observations) that occurred specifically during instructional activities when the child is experiencing difficulty.

A variety of individual assessment tools administered by qualified professionals for gathering relevant functional, developmental, and academic information as determined by the public agency. These tools may include, but are not limited to or contingent on norm-referenced or criterion referenced measures of cognitive and academic skills. No single measure, subtest, or grouping of subtests is to be used as the sole criterion for determining whether a child is a child with a disability. [34 C.F.R.§300.304(b)(1)(2); COMAR 13A.05.01.05B(2)(3)]

Additionally, a child is not considered a child with a specific learning disability if that child's learning problems are primarily the result of:

- A visual, hearing or motor disability;
- Intellectual disability;
- Emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

[34 C.F.R.§300.8(c)(10); COMAR 13A.05.01.03B(73); COMAR 13A.05.01.06D(2)(b)]

A determination must be made that the student's underachievement does not arise from a lack of appropriate instruction in reading and math. To make that determination, a qualified group of professionals must consider as part of the evaluation the following:

- Data that demonstrate 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 consisting of repeated assessments of achievement at reasonable intervals which reflect formal assessment of student progress during instruction and was provided to the child's parents.

[34 C.F.R.§300.309(b)(1)-(2); COMAR 13A.05.01.06D(3)]

In accordance with 34 C.F.R.§300.304(b) and COMAR 13A.05.01.05B, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services. Please refer to the bottom of page 41 of *A Tiered Instructional Approach* and information outlined above describing a comprehensive evaluation.

A child **must** meet the definition of one or more of the categories of disabilities, in accordance with 34 C.F.R.§300.8(c) to qualify for special education and related services. The definition of specific learning disability can be found on page 30 of *A Tiered Instructional Approach*.

4. Who makes the determination of the existence of a specific learning disability and eligibility for special education and related services?

In accordance with COMAR 13A.05.01.06D, the Individualized Education Program (IEP) team determines the existence of a specific learning disability and a child's eligibility for special education and related services after the review of assessment data. Please refer to page 31 in *A Tiered Instructional Approach*.

5. What are the achievement criteria for determining specific learning disabilities?

The IEP team may determine a child has a specific learning disability if the child does not achieve adequately for the child's age or meet State approved grade level standards in one or more of the following areas listed below. The child must have received learning experiences and instruction appropriate for the child's age or State approved grade level standards:

- Oral expression;
- Listening comprehension;
- Written expression;
- Basic reading skills;
- Reading fluency skills;
- Reading comprehension;
- Mathematics calculation; or
- Mathematics problem solving.

Please refer to pages 30-31 of *A Tiered Instructional Approach*.

Within an RtI process, IEP teams should consider that a specific learning disability is not just underachievement, but the persistent failure to achieve in one or more of the eight areas when given appropriate instruction and tiered interventions targeted to the needs of the student and provided with fidelity over time. Please refer to pages 33-35 of *A Tiered Instructional Approach*.

6. How will the implementation of RtI impact the identification of gifted and talented students who may also have a specific learning disability?

Implementation of RtI processes should not be any different for students who are gifted and talented. If all students are universally screened, then a gifted and talented student who has a skill deficit would receive an intervention just like any other student. Comprehensive evaluation procedures, as deemed necessary by an IEP team, will help determine eligibility as a student with a disability should be completed as described above.

7. Where can I find specific information regarding data collection elements for decision-making in each tier?

Information regarding essential elements and data collection for decision-making using response to intervention processes is on pages 32-35 of *A Tiered Instructional Approach*.

8. How will the use of the RtI process affect referrals received from private, parochial, or charter schools?

The use of the RtI process by a local school system should not affect referrals received from private, parochial or charter schools. Under 34 C.F.R. §300.301(b) either a parent or public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. As part of the Child Find process all children residing in the State who are in need of special education and related services must be identified, located and evaluated. [34 C.F.R. §300.111(a)(i)]

Neither the State nor local school systems have authority over private schools. When a private school refers a child to a local school system for a comprehensive evaluation, the local school system's evaluation cannot be delayed because the private school did not implement scientifically-based interventions. The comprehensive evaluation must occur in a timely manner regardless of whether the local school system uses RtI as part of its process before referral to the IEP team or in its SLD identification procedures. The local school system is encouraged to consider interventions used by private schools as part of the evaluation process.

9. How can RtI be used in a special education identification procedure and be consistent with the requirement for a variety of assessment tools?

IDEA requires that an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education services. The results of a response to intervention process are **one** component of the information reviewed as part of the evaluation procedures required by IDEA which should also include that:

- The child is assessed in all areas related to the suspected disability; and
- The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs whether or not commonly linked to the disability category [34 C.F.R. §300.304], and to address exclusionary criteria and rule out competing explanations. (See question # 3 regarding comprehensive evaluation).

10. How is the re-evaluation process impacted by the use of RtI for initial identification?

The re-evaluation process is the same regardless of what processes were used for identification and eligibility. A public agency shall ensure that a re-evaluation of each student with a disability is conducted as set forth in 34 C.F.R. §300.303 and 300.305. This includes re-evaluating a student when:

- The public agency determines that the educational and related services needs of the student, including improved academic achievement and functional performance, warrant reevaluation;
- The student's parent or teacher requests a reevaluation, no more than once a year, (unless both parties agree); or
- The IEP team is attempting to determine that a student is no longer a student with a disability.

As in the past, regardless of the SLD determination method used for the re-evaluation, the team should ensure that the impact of the specialized instructional support on the student's current educational performance is given careful consideration.

11. What are the procedures for transfer students when one jurisdiction or State uses RtI for identification purposes and the other does not?

The procedures for handling transfer students are the same regardless of what processes were used for identification and eligibility. When a student with a disability with an IEP **transfers from one Maryland local school system to another**, the local school system in which the student intends to enroll, in consultation with the student's parents, must provide a free appropriate public education (FAPE) to the student, including services comparable to those identified in the former local school system's IEP, until the new local school system either:

- Adopts the child's IEP from the previous district; or
- Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 C.F.R. §§300.320—300.324 and COMAR 13A.05.01.09E.

When a student with a disability with an IEP **transfers from another State to a local school system in Maryland**, the local school system in which the student intends to enroll, in consultation with the student's parents, must provide a free appropriate public education (FAPE) to the student, including services comparable to those identified in the former public agency's IEP, until the new local school system:

- Conducts an evaluation pursuant to 34 C.F.R. §§300.304—300.306 and COMAR 13A.05.01.06 (if determined to be necessary by the new public agency); and
- Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 C.F.R. §§300.320—324.

12. How is fidelity of implementation defined?

In general, fidelity of intervention implementation means that staff implements the intervention in the manner intended based upon the research and validation process. Fidelity also implies that there is a monitoring mechanism that ensures that the intervention is being delivered as designed, sufficient time is set aside for the intervention to be implemented, and data is collected to determine whether or not the student is benefiting from the intervention.

13. Can RtI be used in determining eligibility for disabilities other than SLD?

No, IDEA only included the use of a process based on the child's response to scientific, research-based intervention in the section regarding criteria for determining whether a student has an SLD. [34 C.F.R. §§300.307—300.311 and COMAR 13A.05.01.06D] However, data from the RtI process can be used to document student performance and the provision of appropriate instruction as part of the identification of other educational disabilities within a comprehensive evaluation.

14. What special considerations are needed when using an RtI approach to assist with the identification of English Language Learners who may also have specific learning disabilities?

Currently, a subgroup of professionals with expertise regarding English Speakers of Other Languages from MSDE's Division of Instruction, local school systems and an institution of higher education are developing additional guidance related to considerations for English Language Learners within a tiered instructional approach and how to apply information related to their response to interventions in the identification of specific learning disabilities. The information will be disseminated once it is completed.

For more information, call 410-767-7548

MARYLAND STATE DEPARTMENT OF EDUCATION
Nancy S. Grasmick, State Superintendent of Schools
Carol Ann Heath, Assistant State Superintendent
Division of Special Education/Early Intervention Services
200 W. Baltimore Street
Baltimore, MD 21201

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch, Voice (410) 767-0433, TTY/TDD (410) 333-3045, or Fax (410) 767-0431.

In accordance with the Americans with Disabilities Act (ADA) this document is available in alternative formats, upon request. Contact the Division of Special Education/Early Intervention Services, Maryland State Department of Education at Voice (410) 767-0858, Fax (410) 333-1571, or TDD (410) 333-0731.

This document was developed and produced by the Division of Special Education/Early Intervention Services, IDEA Part B Grant #HO27A090035 funded by the U.S. Department of Education, Office of Special Education and Rehabilitative Services. The views expressed herein do not necessarily reflect the views of the U.S. Department of Education or any other Federal agency and should not be regarded as such. This information is copyright free. Readers are encouraged to copy and share this document, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.