



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR - 6 2007

Dr. Perry A. Zirkel
Lehigh University
Department of Education and Human Services
College of Education
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

Thank you for your recent correspondence to Mr. John Hager, Assistant Secretary for the Office of Special Education and Rehabilitative Services, U. S. Department of Education regarding issues related to identifying children and youth with specific learning disabilities. Your letter was referred to the Office of Special Education Programs (OSEP), for response.

You requested guidance from OSEP relating to procedures for identifying children with specific learning disabilities, as required by 34 CFR §300.307(a). Specifically, you inquired if a State may: (1) prohibit local educational agencies (LEAs) from using severe discrepancy and require them to use response to intervention (RTI); (2) permit severe discrepancy, RTI, and a third research-based model, thereby leaving the choice among the three options to each LEA; and (3) prohibit or permit the use of a successive combination of RTI and severe discrepancy (i.e., RTI as the initial steps and severe discrepancy as part of the culminating determination).

The regulations at 34 CFR §300.307(a) 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 State educational agency (SEA). The criteria adopted by the States cannot require LEAs to use a severe discrepancy between intellectual ability and achievement to determine whether a child has a specific learning disability. 34 CFR §300.307(a)(1). Moreover, the Analysis of Comments and Changes section of the final Part B Regulations to the Individuals with Disabilities Education Act of 2004 (IDEA 2004) indicates that States may prohibit the use of a discrepancy model. 71 Fed. Reg. 46646 (August 14, 2006). Accordingly, while a State cannot require the use of a severe discrepancy model, a State may prohibit, or make optional, the use of a severe discrepancy model.

As required in 34 CFR §300.304(b)(1) and (2), consistent with section 614(b)(2) of the Act, an evaluation of a child suspected of having a disability, including a specific learning disability, 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. With respect to a child suspected of having a specific learning disability, in accordance with 34 CFR §300.307(a)(2) and (3), 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 other alternative research-based procedures (emphasis added). 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 under 34 CFR §§300.304 and 330.305. Finally, the manner in which the State chooses to use RTI as one component of a comprehensive evaluation is left up to the States.

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 us.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny, Ph.D.
Director
Office of Special Education
Programs