



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

NOV 14 2012

Dr. Rick Dale
Chair, Division of Rehabilitation Services and Special Education
University of Maine - Farmington
186 High Street
Farmington, Maine 04938

Dear Dr. Dale:

This is in response to your April 6, 2012 letter regarding response to intervention (RTI) and the use of Individuals with Disabilities Education Act (IDEA) Part B funds for coordinated early intervening services (CEIS). On September 7, 2012, Ruth Rydér, Deputy Director of the Office of Special Education Programs (OSEP), Rebecca Walawender, Deputy Director of the Monitoring and State Improvement Planning Division (MSIP), and Jennifer Wolfsheimer, State Contact, held a conference call with you to clarify the question posed in your letter. According to the conversation, your question was triggered by question A-1 from OSEP's *Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)*. As clarified during the call with my staff, you asked if a student who is currently identified as needing special education and related services can participate in RTI that is funded by IDEA Part B funds used for coordinated early intervening services (CEIS) pursuant to 34 CFR §300.226.

RTI strategies are tools that enable educators to target instructional interventions to children's areas of specific need as soon as those needs become apparent. There are a number of RTI frameworks, and while the Department does not endorse a particular RTI framework, several core characteristics tend to be present in RTI. These characteristics are: (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.

Under section 613(f) of the IDEA and 34 CFR §300.226, CEIS are services provided to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment. Local educational agencies (LEAs) may use up to 15 percent of their IDEA Part B funds for CEIS.¹ In implementing CEIS, an LEA may carry out activities that include: (1) professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

¹ For additional guidance on CEIS, please refer to: http://www2.ed.gov/policy/speced/guid/idea/ceis_pg2.html

and (2) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

CEIS funds may be used to support RTI as long as the CEIS funds are used for services to nondisabled students in need of additional academic or behavioral support, and supplement, but do not supplant, other funds used to implement RTI. LEAs must ensure that CEIS funds are used to provide services only to students who need additional academic and behavioral support, and not to students who currently receive special education and related services. 34 CFR §300.226(a). For example, one RTI framework includes a three-level continuum of instructional support. In this framework, tier one applies to all students in a general education setting. It would not be appropriate to use CEIS funds for tier one activities that support these students because these activities are designed to provide high-quality instruction to the entire class or school and are not principally intended to address the needs of students who are struggling.

Tier two activities provide specialized small group instruction for students determined to be at risk for academic and behavioral problems. It would be appropriate to use CEIS funds to support these tier two activities for at-risk, general education students. If students who are receiving special education and related services participate in the small group instruction, it would not be appropriate for CEIS funds to be used for these students as CEIS may not be provided to students that are currently identified as needing special education or related services. Tier three includes specialized individualized instructional or behavioral support for students with intensive needs. As in the case of tier two activities, CEIS funds could be used for activities that support general education students at risk for academic and behavioral problems, but could not be used for students who are receiving special education or related services.

Finally, an LEA or school may wish to consider split funding teachers from special education funds, general education funds, and CEIS funds. This funding mechanism offers full flexibility for a particular teacher to work with diverse groups of students, regardless of disability or intervention status. If a teacher is providing special education, general education, and RTI interventions and is supported by funds from several sources, an LEA must document separately, consistent with OMB Circular A-87, the amount of time the teacher spends providing services to students with disabilities, services to students who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, and services to nondisabled students who do not need additional support, to ensure that IDEA Part B funds are properly expended.

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 Jennifer Wolfsheimer, of my staff, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

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

cc: State Director of Special Education