

Thomeczek & Brink, LLC
1120 Olivette Executive
Parkway
Suite 210
St. Louis, MO 63132



Telephone
(314)-997-7733

Facsimile
(314)-997-4888

Response to Intervention: A Potpourri of Legal Issues

MO-CASE Winter Institute
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Overview of Rtl

- What is Rtl?
- How does it differ from CEIS?
- What do the federal regulations require?
- What do the state regulations require?
- What are the state's policy requirements?

RtI is a Process/System

- The integration of assessment and intervention
- within a multi-level prevention system to maximize student achievement.
- Schools identify students at risk for poor learning outcomes,
- monitor student progress,
- provide **evidence-based interventions**, and
- adjust the intensity and nature of those interventions depending on a student's responsiveness.

RtI is a Process/System

Research-based curricula

Verses

Evidence-based interventions

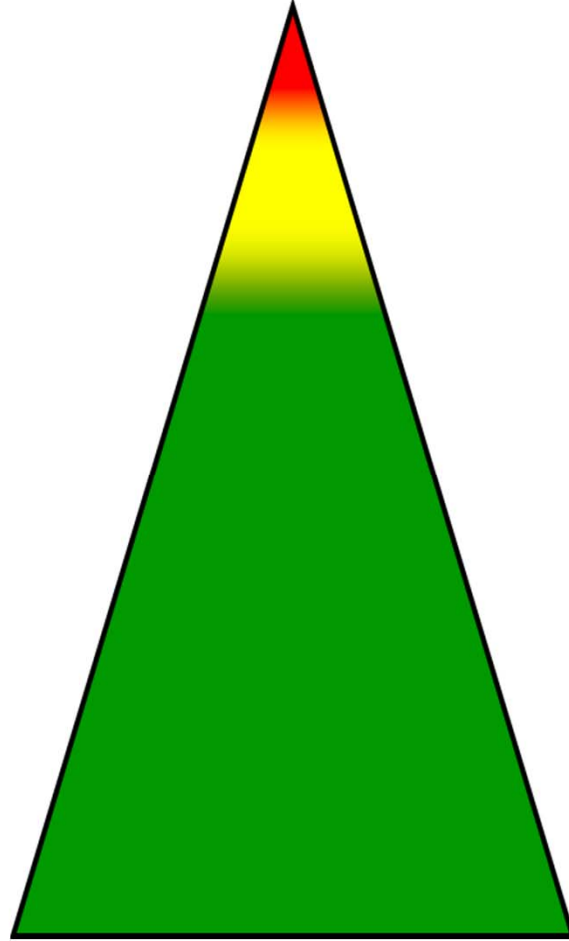
Research-based

Research-based curricula:
May incorporate design features that have been researched generally; but curriculum/program as a whole has not been studied using a rigorous research design

Evidence-based

Evidence-based interventions:
Interventions for which data from scientific rigorous research designs have demonstrated (or empirically validated) the efficacy of the intervention. The intervention is shown to improve the results for students who receive it.

Response to Intervention



RtI

Tier 1: General or core curriculum; All Students; Screening to determine which students are not responding to the core curriculum. PREVENTATIVE

Tier 2: Interventions/supplemental services – to supplement the core curriculum instruction received at Tier 1

Tier 3: Intense individualized interventions targeted to the needs of student who has not responded at Tier 1 and 2

Rti: Essential Elements

Research-based
materials and
instruction

Evidence-based
interventions

Universal
screening

Progress
Monitoring

Data Based
Decision
Making

Three-tiered
Intervention
Model

Implementation
Fidelity

RtI

Broad view: RTI as a general education process to provide appropriate instruction to all children with regular progress monitoring. Goal is to provide for the needs of most children in the general education setting

RtI verses CEIS

Coordinated Early Intervening Services is a set of coordinated services for students in kindergarten through grade 12 (with a particular emphasis on students in K-3) 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.

CEIS

CEIS funds may be used for:

- Professional development for teachers and other school staff to enable personnel to deliver scientifically based academic and behavioral interventions;
- Direct interventions, such as educational and behavioral evaluations, services, and supports; and
- Services aligned with activities funded under the ESEA

CEIS

- CEIS funds may only be used to provide interventions to students who need academic or behavioral support to succeed in the general education environment.
- CEIS funds may not be used to provide interventions to students who are already identified as special education students.

Rtl under IDEA

- Use of Rtl for identification of Specific Learning Disabilities (Narrow View)
- Federal regulations implementing IDEA
- State regulations implementing IDEA

Rtl under IDEA

Missouri

- Use Rtl model grade K-2 and discrepancy model grade 3-12
- Use discrepancy model until Rtl model in place for district
- Use different models in different buildings
- Use Rtl model district-wide
- Use discrepancy model district-wide

Rtl under IDEA

Broad View Application

verses

Narrow View Application

Rtl – Federal Regulations

Required documentation **if using RTI** for
SLD identification

Rtl Documentation

- Instructional strategies used and student-centered data collected
- Documentation that the child's parents were notified about: States' policies regarding amount/nature of student performance data collected and general education services that would be provided; Strategies for increasing the child's rate of learning; and Parent's right to request an evaluation.

Rtl Documentation

Eligibility determination:

If student has not made sufficient progress in one of the following areas:

Oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics problem-solving.

Rtl Documentation

ALTERNATIVELY -Eligibility determination:
Considered variation in the student's performance, achievement, or both, relative to age, state approved Grade Level Standards (GLEs), or intellectual development that is determined by the group to be relevant to identification of an SLD

RtI – Federal Regulations

- District written policy regarding process to be used to identify Specific Learning Disability
- LEAs must use the State criteria for Specific Learning Disability identification

RtI – State Requirements

- Parent notification is provided when the decision is made to move a student from general classroom interventions (Tier 1) to more targeted small group or individual interventions (Tier II).
- The provision of this notification means no disability is suspected at this time.
- The provision of this notification must be documented in the evaluation report if later evaluated and found to be eligible under IDEA

RtI – State Requirements

If using RTI in the narrow view (for SLD identification only), the notification would be in the form of prior written notice given at the beginning of the evaluation process

- Within 5 days of referral
- Notice of Intent to Evaluate with consent must be provided within 30 days of the referral

Rtl – State Requirements

- Intervention selection criteria
- Number of interventions selected (minimum of 2)
- Number of intervention sessions required prior to referral (24 sessions over 2 interventions)
- Documentation of intervention integrity
- Frequency and duration of progress monitoring (data collected 1X per week at least, no fewer than 6 data points per intervention)

Rtl – State Criteria

Criteria for determining the existence of a SLD

- Performance (final benchmark)
- Rate of Progress (how quickly student is responding to intervention—weekly rates of growth)

Decision rules for referral for special education evaluation (specific criteria to determine lack of responsiveness based upon performance and rate of progress)

RtI – State Requirements

Districts using interventions for purpose of special education evaluation only:

- Data collection/interventions would be conducted within an existing evaluation time frame (60 days)
- Timelines may be extended beyond the 60 days upon written mutual agreement between the child's parents and the group of qualified professionals

Legal Issues?

What is the impact of failing to comply with the federal and/or state requirements, criteria, and policy guidelines specific to RtI?

How do the IDEA funding/expenditure requirements impact use of RtI?

Child Find

Providing Interventions for too long a period is inconsistent with child find obligations under IDEA.

OSEP Letters

- 2007
- 2011

OSEP 2007

- RTI does not replace a comprehensive evaluation
- RTI cannot be used to delay or deny an evaluation of a child suspected of having a disability (see OSEP memorandum)
- Cannot use a single procedure as the sole basis for making an eligibility determination
- Must use a variety of data-gathering methods consisting of a variety of assessment tools and strategies

OSEP 2011

OSEP Letter (January 21, 2011):

- Parent request for special education evaluation
- Student is receiving interventions under an RtI model
- Special education evaluation process triggered, time-lines begin

Jackson v Northwest Local School District

U.S. District Court (S.D. Ohio 2010)

- Implementation of interventions under Rtl for over two years without gains or progress
- School district should have suspected had a disability
- School district's failure to evaluate led to her expulsion

Scott v D.C.

U.S. District Court

D.C. 2006

- Tourette's Syndrome
- ADHD diagnosis
- Parent agreement to try interventions did not excuse district failure to evaluate

El Paso Independent School District v R.R.

U.S. District Court

Texas 2008

- ADHD diagnosis
- Interventions for a three year period
- Little, if any, academic improvement
- Failure to meet child find requirements

Daniel P. v Downingtown Area School District

U.S. District Court (Pennsylvania 2011)

- Progress shown while receiving interventions
- Evaluation conducted when difficulties increased
- Student found eligible (SLD)
- District had no reason to act sooner.

Powers v Woodstock Board of Education

U.S. District Court (Conn. 2008)

- Progress shown
- No referral for special education evaluation triggered
- Not suspected as being “in need of special education.”

Marshall Joint School District No. 2 v C.D.

U.S. District Court (Wisconsin 2009)

- 3rd grader
- Performed on grade level with interventions
- District should have evaluated
- District should have found eligible
- **REVERSED** by 7th Circuit Court of Appeals

Eligibility

Eligibility determinations:

- Proper academic interventions?
- Proper assessments and data collection?
- Evidence of fidelity of implementation?
- Appropriate use of dual discrepancy criteria (both level and rate)?
- Appropriate determination of “responsiveness”?

Eligibility

Documentation for determination required by IDEA regulations:

Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular ed setting delivered by qualified personnel; and

Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

OSEP 2008

Letter to Zirkel: Documentation must include:

- Instructional strategies used and the individual student data collected;
- Parent notification regarding amount and nature of student performance data that would be collected, general ed. Services to be provided, strategies for increasing rate of learning, right to request an evaluation.

Funding

- IDEA monies
- CEIS funds
- Title I monies
- State monies
- Local monies

IDEA Funding

- IDEA funds
- IDEA CEIS monies

IDEA Funds

In general:

No IDEA funds for Tier 1

IDEA funds at Tier 2 and 3 only if student with a disability

Exceptions:

IDEA funds consolidated in a Title I School-wide program.

Scenarios

Special education teacher providing interventions to IDEA kids?

- Paid with IDEA monies?
- Paid with state/local monies?
- Paid with a combination of funding?

Scenarios

Title I teacher providing interventions:

- Paid with Title I monies in a Title I targeted program?
- Paid with Title I monies in a Title I School-wide program?

Title I School-Wide School

Consolidated/Blended Funding :
Title I, IDEA, Title III funds may be
used at all three tiers of an RtI
Model.

Title I School-Wide School

No Consolidated Federal Funding:
Title I and CEIS funds may be used at
all three Tiers.

Title I Targeted Assistance School

Title I School – Targeted Assistance

Tier 1 – no Title I, no CEIS, no Title III

Tier 2 – sometimes may use Title I,
CEIS, and Title III monies

Tier 3 – sometimes may use Title I,
CEIS, and Title III monies

Non-Title I Schools

Title I monies?

IDEA monies?

CEIS monies?

Title III monies?

Non-Title I Schools

Tier 1: no Title I, III, IDEA, CEIS monies

Tier 2: no Title I monies, sometimes Title III and CEIS, sometimes IDEA.

Tier 3: no Title I monies, sometimes Title III and CEIS, sometimes IDEA.

Rtl – Confidential Records

Where to keep:

Universal screening data

Progress monitoring data

Rtl – Fidelity Records?

What about records
maintained to prove fidelity
of implementation?

Educational records?

Confidential?

Storage issues?

DISCLAIMER

The information provided in this presentation is for informational purposes only and not for the purpose of providing legal advice. You should contact an attorney to obtain advice with respect to any particular issue or problem.

Thomeczek

& Brink, LLC
Attorneys at Law

**Heidi Atkins Lieberman,
attorney at law**

Direct Line: 314-292-8704

Heidi.AtkinsLieberman@tblawfirm.com