

The Effect of RtI on IDEA Eligibility & the Potential Pitfalls of Improper Implementation

MICHAEL D. HODGE, ESQ.

MICKES GOLDMAN O'TOOLE, LLC
555 MARYVILLE UNIVERSITY DRIVE, SUITE 240
ST. LOUIS, MO 63141
OFFICE: 314 878-5600
MHODGE@MICKESGOLDMAN.COM

What is RtI?

- Under 2004 Reauthorization, RtI is the new model for identifying students with specific learning disabilities.
- Philosophically, it is a process of providing high-quality research based instruction and intervention based on student need, with frequent progress monitoring and data collection to make important educational decisions for children.

What RtI is not

- It is not an eligibility model for learning disabilities.
- It is a pre-eligibility model of intervention that can and should be used for all students deficient in academics and/or with a lower rate of learning.
- It should be used for prevention rather than classification.

HOW DID WE GET HERE?



P.L. 94-142 AND DISCREPANCY



- A learning disability was identified if the student's academic achievement in a particular area was significantly discrepant from that student's intellectual ability.

Legal History and Context



- 1975 – PL 94-142 – Education for All Handicapped Children Act.
- Within several years of implementation, concerns arose that the discrepancy approach would lead to LD identification for children whose academic deficits were the result of ineffective instructional practices rather than a disability.
- Over 50% of children served in special education are identified as LD.

Legal History and Context

- **Between 1977 and 1997- the increase in learning disabilities in the United States rose by 283%!!!**

Legal History and Context

- **Some believe that much of the growth in LD identification is the result of misidentification:**
 - **Pressure from parents to avoid the stigmatizing labels of MR or ED;**
 - **Lack of services for academically struggling students;**
 - **Failure to have qualified personnel or inappropriate curriculum.**

PRESIDENT'S COMMISSION'S REPORT AND RTI

- **Oct. 31, 2001 – President Bush established Commission.**
- **Purpose – to collect information and study issues related to special education programs. To make recommendations for improving the educational performance of disabled students.**
- **Report – delivered to the President on July 1, 2002.**

Commission Report

- **A New Era: Revitalizing Special Education for Children and Their Families.**
- Available online at www.ed.gov/inits/commissionsboards/whspecialeducation/reports/index.html

Commission Report

- **Factual Basis for Recommendations:**
 - Disabled students drop out of high school at twice the rate of peers.
 - Students with disabilities enroll in higher education at a 50% lower rate.
 - Most public school educators do not feel well prepared to work with disabled students. (1998- only 21% of public school teachers felt very well prepared; 41% - moderately well prepared).

Commission Report

- Almost 1/2 of children in special education are identified as learning disabled.
- 80% of LD children are there simply because they have not learned to read.
- Few children placed in special education close the achievement gap to the point where they can learn and read as their peers.
- Children of minority status are overrepresented in some special education categories.

Commission Report

- Commission held 13 public hearings and heard from hundreds of individuals and organizations.
- The system needs a fundamental re-thinking and a shift in priorities.

Interesting Findings in Report Summary

- **Current system uses an antiquated model that waits for a child to fail, instead of a model based on prevention and intervention. Special education should be for those who do not respond to strong and appropriate instruction and methods provided in general education.**

Interesting Findings in Report Summary

- **Children placed in special education are general education children first.**
- **But educators and policy-makers think about the two systems as separate.**
- **As a result, the system creates incentives for misidentification and academic isolation.**

Interesting Findings in Report Summary

- General education and special education share responsibilities for children with disabilities.
- Current system does not always implement evidence-based practices once established.

Summary of Recommendations

1. Focus on results – not process. Raise expectations for students and become result-oriented.
2. Embrace a model of prevention, not a model of failure.
3. Consider children with disabilities as general education first.

Report – Assessment and Identification

- Report's Hypotheses:
 1. Improving the eligibility determination process, coupled with research-based early intervention programs, may reduce the number of children identified as disabled.

Report – Assessment and Identification

- **Hypotheses, con't:**
 - **2. A great deal of staff time is spent completing eligibility evaluations, which reduces the amount of time that can be devoted to direct services.**
 - **3. Results of these assessments are rarely used to evaluate progress or related in other meaningful ways to educational need.**

RESEARCH BASIS FOR RTI

- **2006 – OSEP concludes that more research is still required on how to implement RtI as part of the method of determining LD eligibility.**
- **\$1.5 million grant to study intervention systems that are simple to use, can be replicated nationwide, and are easily used in large school district.**

OSEP Grant – Study Results

- **OSEP acknowledges that the empirical research to support the application of RtI is very limited.**
- **Criticism – The research does not support using RtI as an eligibility method for learning disabilities.**
 - Too vague at this point.
 - Have we rushed into something that is not supported by the research?

Research Basis for RtI

- NCLB and 2004 Reauthorization require the use of scientifically based research interventions.
- But there is a lack of research to support RtI's effectiveness.
- RtI has not been scientifically proven to be effective.


Criticism of RtI

- The method lacks empirical support and does not detect all children who need services.
- May inappropriately identify children with MR or emotional problems as learning disabled.


FOOD FOR THOUGHT

- "While many psychologists and educators agree that IQ-achievement discrepancy has flaws, they are split on what to do next. Some argue for particular models as replacements; others caution that rushing to replace the discrepancy model could result in substituting one flawed system for another."
 - DEBORAH SMITH BAILEY, "WHO IS LEARNING DISABLED?"
 - WWW.APA.ORG/MONITOR/SEP03/DISABLED.HTML

**2004 REAUTHORIZATION
AND RTI**



2004 Reauthorization



- **Reliance on Commission Report**
- **Concerns about over-identification**
 - 15% early intervening services
 - RTI



**IMPACT ON RTI ON
IDEA ELIGIBILITY**

RtI and Need for Special Education

- 2004 Reauthorization supports use of RtI/general education interventions prior to referral to ensure learning and educational difficulties are not attributable to something other than disability.
- 15% early intervening services.

RtI Cases

- *E.M. v. Pajaro Valley Unif. Sch. Dist.*, 109 LRP 54340 (N.C. Calif. 2009) – holding that, because student performed well in class with general education interventions, the due process decision that student was not LD was affirmed. Reasoned that student did not require specialized instruction. General education small group settings helped the student with distractibility.

RtI Cases

- *A.P. v. Woodstock Bd. Of Educ.*, 50 IDELR 275 (D. Conn. 2008) – concluding that because elementary school student made progress with the use of general education interventions, there was no error in failing to refer student for a special education evaluation. Although the student demonstrated some difficulties in the classroom, the student responded to interventions and had passing grades.

RtI Cases

- *Ashli v. Gordon C. v. State of Hawaii*, 47 IDELR 65 (D. Ha. 2007) – finding that district had no obligation to provide special education to third grader with ADHD. Court noted that district used differentiated instruction in the general education setting. Court rejected parent argument that the need to adapt the regular education program showed an adverse effect.

RtI Cases

- “There is nothing in either the IDEA or in the state or federal implementing regulations to indicate that a student would qualify as a ‘student with a disability’ when the school voluntarily modifies the regular school program by providing differentiated instruction.”

RtI Cases

- *Bd. Of Educ. Of NYC*, 47 IDELR 120 (SEA NY 2007) – finding student with bipolar not to be eligible under IDEA because there was no adverse effect. Stating that the medical diagnosis did not, in itself, obligate the district to find her eligible. Acknowledging that student had some emotional and social issues and had a behavior plan. Concluding that general education interventions were sufficient to address her difficulties.

RtI Cases

- **Stone Cty. (MS) Sch. Dist., 52 IDELR 51 (OCR 2008)**
 - Finding the District did not violate Section 504 where the district refused to evaluate a student.
 - The district was justified where it based its refusal to evaluate on the fact that the student was already receiving Tier II interventions, his grades were improving, and he had done well on standardized tests the prior year and on the district's screening tests.
 - OCR did find the district had violated Section 504 where it neglected to notify the parent of its decision not to evaluate or provide the parent with Section 504 procedural safeguards.

BUT

- ***El Paso Ind. Sch. Dist. v. Richard R., 50 IDELR 256 (W.D. Tx. 2008)*** – finding that district violated child find where repeatedly referred student with ADHD for interventions rather than referring for IDEA evaluation. The teacher assistant team recommended interventions included 504 accommodations and tutoring. Student did not demonstrate any positive benefits, continued to struggle academically and failed the state test three years in a row.

RELATIONSHIP BETWEEN RTI AND SECTION 504?

OCR FAQ

- **March, 2009 FAQ**

- OCR explains the difference between a “regular education intervention plan” and a Section 504 Plan:
 - **Referring to Teacher Support Teams or Student Support Teams.** “[t]hese teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance...in addition to building teams, districts may utilize other regular education intervention methods...”
- Although not explicit, it is clear that regular education interventions are not to be considered “mitigating measures” pursuant to Section 504.
 - See also “Incorporate information about RTI in Section 504 manuals, trainings,” James McKethan, LRP Publications, May 12, 2009 at www.special-edconnection.com.
