

Response to Intervention and Learning Disability Eligibility

Local educational agencies (LEAs) may choose to use a response-to-intervention (RtI) process as one of a variety of measures of evaluating learning disability (LD) eligibility. The reauthorization of the Individuals with Disabilities Education Act (IDEA) of 2004 includes the use of RtI in determining LD eligibility because of concerns about IQ tests. Additional information about the use of RtI in determining LD eligibility is available in a question-and-answer format from the [U.S. Office of Special Education Programs \(OSEP\)](#).

Appropriate Instruction

As part of an evaluation of LD eligibility, a multidisciplinary team must determine that the student fails to achieve adequately when provided appropriate instruction by highly qualified teachers. A school may determine that the student received appropriate instruction in the general education setting by reviewing curriculum and grade-level student performance by class or subject area. This review is typically accomplished through a school improvement program that uses a grade-level or campus-level progress monitoring system.

RtI uses targeted, research-based interventions to meet a student's needs, to monitor student progress, and to ensure effective instruction in the general education setting. The RtI process can provide data that demonstrate an individual student has received appropriate instruction by showing whether the vast majority of students were able to master instructional objectives.

In determining whether a student received appropriate instruction, schools should consider primary language, limited English proficiency, and environmental and cultural factors, as well as whether a student has had frequent moves or absences that may have limited the student's access to the curriculum. The school should exclude these factors as the primary cause of a student's failure to achieve or make sufficient academic progress in determining LD eligibility. Schools should not determine that a student has an LD even though the student may show deficits on specific, norm-referenced achievement tests if the student is showing reasonable progress as a result of response to research-based instructional strategies.

Failure to Achieve

Schools may use measures such as in-class tests scores, grade average over time (six weeks), statewide assessment scores, standardized achievement test scores, criterion-reference measures, or the RtI process to determine a student's failure to achieve adequately for a student's age or to meet state-approved grade-level standards. A student's failure to pass the statewide assessment may not automatically result in a learning disability referral or determination. The determination of a learning disability may include a variety of information sources and measures, and schools may not base the determination on a single measure.

Repeated Assessments

The multidisciplinary team must also consider documentation of repeated assessments in determining LD eligibility. Data-based documentation of repeated assessments may include RtI progress monitoring results, in-class tests based on state standards, the [Texas Essential Knowledge and Skills or TEKS](#), benchmark assessment, criterion-referenced measures or other regularly administered assessments. Data from repeated assessment results used in the LD eligibility process should typically have been administered at evenly-spaced intervals, such as once per week, over a reasonable period of time. A reasonable period of time may typically fall within a four to eight week period, with six weeks being the average. Schools are not limited to such a time frame and should follow the requirements of the particular instruction program or assessment process in use.

Sufficient Progress When Provided RtI

To determine whether a student makes sufficient progress when provided RtI depends on the particular criteria of the scientific, research-based intervention. While schools are encouraged to follow a timeline specific to the RtI

process, a school should consider alternative actions when a student fails to respond to an increasing intensity of instruction and interventions. Schools have an obligation to ensure that evaluations of students suspected of having a disability are not delayed or denied because of implementation of RTI.

If a parent submits a written request to the LEA's director of special education services or to an administrative employee of the LEA that a student be evaluated for special education services, the LEA must follow requirements at TEC §29.004. The LEA must provide an opportunity for the parent to give written consent for the special education evaluation or refuse to provide the evaluation and provide the parent or legal guardian with the notice of procedural safeguards. Additionally the school must provide prior written notice to the student's parent in accordance with 34 CFR §300.503.

RTI does not replace the need for a comprehensive evaluation using a variety of data sources. A school will inform parents when a student is not making progress in the general education setting. If the student is not making progress in the general education setting and demonstrates lack of sufficient response to intervention(s) after an appropriate period of time (see above for discussion of RTI process), the school must request parental consent to evaluate a student suspected of having a learning disability.

The definition of "scientific, research-based" is in federal law at 20 USC, §7801(37). Local school districts are in the best position to determine interventions that qualify as meeting the definition of "scientific, research-based."

Pattern of Strengths and Weaknesses

Schools may determine a pattern of strengths and weaknesses by evaluating specific areas of cognitive function, academic achievement, or both and comparing those results against each other or in contrast to other measures of student performance.

This process may identify significant discrepancies between intellectual ability and achievement. However, a discrepancy cannot be the sole determinant for specific learning disability identification. If a discrepancy is a part of the identification process, it should be part of a standard regression procedure. Simple difference procedures should not be the basis for the discrepancy. Current research fails to support the validity of simple difference procedures in determining the existence of a learning disability. Evaluation instrument manuals typically provide information specific to identifying a significant discrepancy between intellectual ability and academic achievement.

In conducting an evaluation, schools should include criterion-referenced or curriculum-based measures to more accurately identify patterns of strengths and weaknesses and link eligibility determinations to instruction.

In evaluating specific areas of cognitive functioning to determine a pattern of strengths and weaknesses, schools must consider the federal definition of LD as "a disorder in one or more of the basic psychological processes involved in understanding or in using language" (34 CFR §300.8(c)(10)). There should be a link between an identified pattern of strengths and weaknesses and the failure to achieve adequately as described above when used as a determination of LD. Schools may not determine students to have an LD whose classroom achievement indicates a pervasive weakness that does not constitute a pattern of strengths and weaknesses to have a LD. Schools also may not determine students to have an LD who meet the criteria of having an intellectual disability.

Professional Judgment

Evaluators must use professional judgment, including consideration of multiple information or data sources to support the eligibility determination, in making the determination of LD. Information or data sources may include statewide assessment results, formal evaluation test scores (IQ, achievement, cognitive function or processing), RTI progress monitoring data, informal data (rating scales, student work samples, interviews, parent input) and anecdotal reports. Such information or data sources must include an observation of the student in the student's learning environment as related to the area of LD.

Re-evaluation

In conducting a reevaluation for LD eligibility, schools should continue to use a variety of data sources, possibly including an RTI process. During the reevaluation process, schools are encouraged to:

- use caution in determining that a student is no longer eligible for special education services;
- carefully consider the student's response to removal of such supports; and
- examine whether the special education instruction has been appropriate and, if so, whether such evidence argues for a continuation of LD eligibility.

A major consideration in the reevaluation process should be the student's ability to meet the instructional demands of grade-level standards without special education and related services.

Written documentation

Written reports of LD eligibility should include:

- the basis for making the determination;
- relevant behavior and medical findings, if any, and;
- whether the student fails to achieve adequately and does not make sufficient academic progress or exhibits a pattern of strengths and weaknesses.

Any data collected as a result of RTI as well as the instructional strategies implemented should be incorporated in the report.

The report should also include documentation that the school notified the student's parents of:

- the school policies regarding performance data collected and general education services provided;
- strategies for increasing the student's rate of learning, and;
- the parent's right to request an evaluation.