



Reading Recovery® Council
of North America

IDEA 2004 PART B REGULATIONS for EARLY INTERVENING SERVICES AND RESPONSE TO INTERVENTION.

*The complete regulations package for IDEA Part B was published in the Federal Register on August 14, 2006:
<http://www.ed.gov/legislation/FedRegister/finrule/2006-3/081406a.pdf>*

Introduction – RRCNA is pleased to identify key elements of the final regulations to implement Part B the Individuals with Disabilities Education Improvement Act of 2004 (IDEA reauthorization). The regulations, published in the Federal Register on August 14, 2006, become effective on October 13, 2006.

This is by no means an exhaustive analysis of more than 300 pages of comments, discussion and regulations. Rather, it identifies comments, discussion and regulations for implementing two key elements of the IDEA reauthorization: early intervening services (EIS), and response-to-intervention (RTI). Readers are encouraged to take advantage of other sources of information about implementation of the regulations.

RRCNA will follow opportunities to learn more about the impact of the regulations. For example, the National Association of State Directors of Special Education (NASDSE) has a number of resources, including a side-by-side comparison of the old and new regulations and a web based RTI project: <http://www.nasdse.org/>.

How this summary is organized – The summary is divided into two parts pertaining to: I) Early intervening services and II) Response-to-intervention/identifying children with specific learning disabilities. This division is necessary because EIS and RTI are authorized by different sections of the law (PL 108-446) and are addressed in different sections of the regulations.

Each part itself has three sections: Column A) Key topics/ “The bottom line,” Column B) Public comment/USDE discussion on each issue and Column C) Final regulation

Page and section numbers refer to the *Federal Register*, August 14, 2006: <http://www.ed.gov/legislation/FedRegister/finrule/2006-3/081406a.pdf>

A few highlights of interest:

1. Early intervening services (EIS) is encouraged by the USDE, with State education agencies (SEAs) and local educational agencies (LEAs) playing a major role in implementation, including determining whether approaches are scientifically research-based, what services to provide and which personnel should provide them (pp. 46626-7).
2. EIS can be provided to English language learners (p. 46627).
3. The amount LEAs can use for EIS (up to 15% of special education funds) is reduced by reductions in maintenance of effort (MOE) funding (pp. 46623-24, 46782)
4. LEAs found to have significant disproportionality in referrals to special education based on race or ethnicity must provide early intervening services (p. 46627, 46782).
5. The definition of scientifically research-based for the IDEA is the same as the Elementary and Secondary Education Act/NCLB (p. 46648, 46761).
6. The USDE doesn't mandate or endorse a particular RTI approach and SEAs have a major role in implementation, including establishing criteria for identifying children with specific learning disabilities that must permit RTI (p. 46653).
7. Children may not be identified as having a specific learning disability if the determining factor is that they have not received appropriate instruction in reading or they are English language learners (p. 46646, 46786, 46543, 46786-7).
8. Research citations for RTI effectiveness and meta-analysis (p. 46647, 46652)

PART I. EARLY INTERVENING SERVICES

A. THE BOTTOM LINE	B. COMMENT/ DISCUSSION	C. REGULATION
EIS is encouraged -	<p>p. 46626-7*</p> <p>The authority to use some Part B funds for EIS has the potential to benefit special education...by reducing academic and behavioral problems in the regular educational environment and reducing the number of referrals to special education that could have been avoided by relatively simple regular educational interventions. Therefore, we believe the <u>use of Part B funds for early intervening services should be</u></p>	

	<u>encouraged</u> rather than (emphasis added).	
State and local control for implementing EIS	<p>p. 46627</p> <p>State and local officials are in the best position to make decisions regarding the provision of early intervening services, including the specific personnel to provide the services and the instructional materials and approaches to be used.</p>	
<p>Funding authorized, linked to maintenance of effort – EIS expenditures are linked to reduced maintenance of effort (MOE) expenditures.</p>	<p>pp. 46623 - 46624</p> <p>The amount of funds expended by an LEA for early intervening services under §300.226 counts toward the maximum amount of expenditures that an LEA may reduce in its local maintenance of effort.</p>	<p>p. 46782 Section 300.226 (a) – Early Intervening Services General</p> <p>An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for 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 support to succeed in a general education environment. (See Appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)</p> <p>p. 46780, Section 300.203 p. 46817 - Appendix D</p>
EIS mandatory if LEA identifies children with disabilities	p. 44627	p. 46805 Section 300.646 (b)(2) Disproportionality

<p>disproportionately.</p>	<p>LEAs <i>must</i> use the maximum amount possible for EIS is when the SEA has determined that the LEA has disproportionately identified children with disabilities based on race, ethnicity and certain other factors.</p>	<p>In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must—</p> <p>(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section;</p>
<p>LEAs may use EIS funds for professional development & instruction in literacy -</p>		<p>p. 46782 Section 300.226 (b) Activities</p> <p>In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include-</p> <p>(1) Professional development (which may be provided by entities other than LEAs) 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; and</p> <p>(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.</p>
<p>LEA reporting of EIS data -</p>	<p>p. 46628</p> <p>Some comments recommended reporting requirements in addition to</p>	<p>p. 46782 Section 300.226(d) Reporting</p> <p>Each LEA that develops and maintains coordinated,</p>

	those in the law. The final regulation reflects the law.	early intervening services under this section must annually report to the SEA on-- (1) The number of children served under this section who received early intervening services; and (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
Bureau of Indian Affairs (BIA) –	p. 46742 BIA schools may implement EIS if they receive Part B funds.	p. 46810 Section 300.711 (a) – comparable language for activities and reporting as 300.226.
English language learners - EIS can be provided for ELLs	p. 46627 There is nothing in the Act that would preclude LEAs from using Part B funds for early intervening services, including literacy instruction, that target at risk limited English proficient students who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.	
Length of EIS	p. 46626 We do not believe it is appropriate or necessary to specify how long a child may receive early intervening services before an initial evaluation for special education services under 300.301 is conducted.	
Parental notification - Parental notification is not required before	p. 46628	

and LEA provides EIS.		
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PART II. RESPONSE TO INTERVENTION AND IDENTIFICATION OF SPECIFIC LEARNING DISABILITES

THE BOTTOM LINE	COMMENT/ DISCUSSION	REGULATION
Special rule for eligibility:	<p>p. 46646</p> <p>Schools...must ensure that the determinant factor in deciding that a child is a child with a disability is not a lack of appropriate instruction in reading and math.</p>	<p>p. 46786 300.306(b) Determination of eligibility.</p> <p>A child must not be determined to be a child with a disability under this part-- (1) If the determinant factor for that determination is-- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);</p>
Limited English proficiency must also be ruled out before a disability determination is made.	<p>p. 46543</p>	<p>p. 46786-7 Section 309(b)(3)(vi)</p> <p>The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-- The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of-- (vi) Limited English proficiency.</p>
RTI is effective	<p>p. 46652</p> <p>Well implemented RTI models and models that identify problems early and promote intervention have reduced, not increased, the number of children identified as eligible for special education services and have helped raise achievement levels for all children in a</p>	

	schools.	
USDE does not mandate or endorse any RTI model.	<p>p. 46653</p> <p>The Department does not mandate or endorse any particular model. Rather, the regulations provide States with the flexibility to adopt criteria that best meet local needs.</p>	
USDE to provide technical assistance for implementing RTI	<p>p. 46654</p> <p>The Department recognizes the need for technical assistance and training to implement RTI models and is directing technical assistance funds under Part D of the Act, administered by the Department’s Office of Special Education Programs (OSEP), toward this effort. OSEP plans to develop and disseminate an RTI resource kit and devote additional resources to technical assistance providers to assist States in implementing RTI models. OSEP will also continue to identify and develop model RTI implementation sites and evaluate SLD identification models in math and reading. In addition, the Comprehensive Center on Instruction, jointly funded by OSEP and the Office of Elementary and Secondary Education (OESE), will provide technical assistance to States on RTI implementation.</p>	
Definition of RTI – regulations alter slightly the description of RTI from that in the law PL 108-446	<p>p. 46646</p> <p>From the statute - “a process that determines if the child responds to</p>	<p>p. 46786 Section 300.307 (a)(2)</p> <p>“a process based on the child’s response to scientific,</p>

	scientific, research-based intervention”	research-based intervention;”
Determination of SBR for RTI purposes – State and local officials determine SBR.	<p>p. 46648</p> <p>SBR - The definition of “scientifically based research” that EIS must meet is the same as the definition in the No Child Left Behind Act.</p> <p>The Department does not intend to dictate how extensive the research must be or who, within an LEA or State, should determine that the research is of high quality. We believe that this is a matter best left to State and local officials because determining the presence of an appropriate instructional process is part of the State-adopted criteria.</p>	<p>p. 46761 Section 300.35</p> <p>Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.</p>
State education agencies (SEA) play a key role	<p>p. 46646</p> <p>States are responsible for developing criteria to determine whether a child is a child with a disability...including whether a particular child meets the criteria for having a specific learning disability (SLD).</p>	<p>p. 46786 300.307 (a)</p> <p>A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10).</p>
SEA criteria/discrepancy testing May not require discrepancy testing	<p>p. 46646</p> <p>States are free to prohibit the use of a discrepancy model.</p>	<p>p. 46786 300.307 (a)(1)</p> <p>Criteria adopted by the State-- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10)</p>
SEA criteria/RTI – criteria <i>must</i> permit LEAs to use RTI	<p>p. 46657</p> <p>New Section 300.307 (a)(2) requires</p>	<p>p. 46786 300.307 (a)(2)</p>

	States to permit the use of a process that examines whether a child responds to scientific, research-based interventions as part of the information reviewed to determine whether a child has an SLD.	Criteria adopted by the State – Must permit the use of a process based on the child’s response to scientific, research-based intervention;
SEA criteria/Alternative research-based procedures –	<p>p.46648</p> <p>There are alternative models to identify children with SLD that are based on sound scientific research and give States flexibility to use these models.</p>	<p>p. 46786 300.307 (a)(3)</p> <p>Criteria adopted by the State – May permit the use of other alternative research based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).</p>
Evidence base for RTI –	<p>p. 46647 and 46652 – References & meta-analysis:</p> <p>References: Tilly III, W. D. (2002). School psychology as a problem solving enterprise. In A. Thomas & J. Grimes (Eds.), Best Practices in School Psychology IV. Washington D.C.: National Association of School Psychologists; Van Der Heyden, A.M, Witt, J.C, & Gilbertson, D. (in press). Effect of a problem solving intervention on the accurate identification of children. Journal of School Psychology; Marston, D., Muyskens, P., Lau, M., & Canter, A. (2003). Problem-solving model for decision making with high incidence disabilities: The Minneapolis experience. Learning Disabilities Research and Practice, 18, 187-200; Gresham, F., Van Der Heyden, A.M, & Witt, J.C. (in press). Response to intervention in the identification of learning disabilities: Empirical support</p>	

	<p>and future challenges. School Psychology Review; National Association of State Directors of Special Education (2005). Response to intervention: policy considerations and implementations. Alexandria VA.</p> <p>Meta-analysis: Burns, M., Appleton, J., Stehouwer, J. (2005). Meta-analytic review of responsiveness-to-intervention research: Examining field-based and research-implemented models. Journal of Psychoeducational Assessment, 23, 381–394.</p>	
<p>Data-based documentation of a specific learning disability</p>	<p>p. 46657</p> <p><u>We believe that one of the most important aspects of good teaching is the ability to determine when a child is learning and then to tailor instruction to meet the child’s individual needs.</u> Effective teachers use data to make informed decisions about the effectiveness of a particular instructional strategy or program. A critical hallmark of appropriate instruction is that data documenting a child’s progress are systematically collected and analyzed and that parents are kept informed of the child’s progress (emphasis added).</p>	

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