

## Module 6

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### Early Intervening Services

*and*

### Response to Intervention



Written by: Patricia Hozella  
Office of Special Education Programs  
U.S. Department of Education

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#### With Special Thanks To...

NRCLD, the National Research Center on Learning Disabilities  
nrclد@ku.edu • <http://nrclد.org/>

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### **NICHCY is here for you.**

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.



### **Thanks to the Author of This Module**

NICHCY would like to express its appreciation for the hard work and expertise of:

**Patricia Hozella**, Office of Special Education Programs, U.S. Department of Education, who is the primary author of this module.

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We'd also like to recognize the contributions and guidance of **Louis Danielson**, Director, Research to Practice Division, OSEP, and **Larry Wexler**, also of OSEP, both of whom have helped shape the organization and content of this module.

## Background and Discussion

Here we are in the module on early intervening services and response to intervention (RTI). These may be familiar subjects to you, but they are new to IDEA 2004 and, frankly, new to a lot of folks, maybe even most. So before delving into the details of what IDEA requires about either, let us start at the beginning—with what these two IDEA-new approaches are. After that, we'll see why they've been added to IDEA 2004.

### What Are Early Intervening Services?

*Early Intervening Services*—in this module, EIS for short—are not the same thing as early intervention. These are two very different initiatives, although, to be fair, both are about intervening early. Early intervention is for babies and toddlers with disabilities; EIS are about catching problems early in school-aged children. EIS are aimed at grades K-12, with an emphasis on K-3. EIS are about identifying children who are struggling to learn—especially apparent in the early grades and in tasks like reading and math—and quickly intervening to provide support. Under IDEA 2004, school districts may use up to 15% of their Part B funds to develop and provide early intervening services to children who are not currently identified as “children with disabilities” but who need academic or behavioral support to succeed in a general education environment. EIS are not services designated for children with disabilities—in fact, if a child has been determined eligible for

### How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You'll note the “*New in IDEA*” icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.<sup>1</sup>

special education and related services, that child would not be eligible for EIS.

The rationale behind using IDEA funds to pay for EIS is that the earlier that school staff can identify children's learning problems or difficulties, the quicker and less expensive will be the task of helping those children catch up. The longer a child goes without assistance, the longer the remediation time and the more intense those services will have to be. From child, administrative, fiscal, and instructional perspectives, providing EIS makes very good sense.



### What is Response to Intervention—RTI?

RTI. RTI. You'll see it both ways, and both are acceptable. For our purposes here, in this training module, we're going to give it to you in ALL CAPS—RTI. Which still doesn't answer the question. What is it?

RTI is an approach, new to IDEA 2004, for sorting out whether a struggling child really is a “child with a disability” as defined by IDEA or just needs more intensive regular education strategies to succeed in school. (See why RTI and EIS are being addressed in this training curriculum in the same module?)

RTI usually consists of 3 stages or levels of assistance. When a child is identified as struggling to learn—usually through systemwide screening tests or through a teacher's observation or testing—RTI may be used to see how the child responds to deliberate research-based interventions and other direct supports. If the child fails to learn

adequately in the first level of help, then he or she moves to Level 2, and so on, where the help (or, in the lingo, the *intervention*) becomes more intensive. Progress is closely monitored, so the school will know if the child is learning or improving. If the child is not responding to the intervention, then he or she may be referred for evaluation under IDEA to determine eligibility for special education and related services.

## This Module in Time and Space

This module on *Early Intervening Services and Response to Intervention* falls within the umbrella topic of **IDEA and General Education**. Within that broader area, there are six modules in all, as follows:

- *NCLB and IDEA*, on hold pending reauthorization of NCLB, will provide an overview of the No Child Left Behind (NCLB) Act and how many of IDEA 2004's new provisions have purposefully been aligned to NCLB.
- *Statewide and Districtwide Assessments*, also on hold pending reauthorization of NCLB, will take a closer look at IDEA 2004's provisions that require children with disabilities to participate in large-scale assessment programs.
- *Disproportionality and Overrepresentation* focuses on IDEA's provisions addressing the overidentification of specific racial and ethnic groups for special education.

- *Early Intervening Services and Response to Intervention* (this module) examines two new sets of provisions in IDEA intended to allow districts to identify learning or behavior problems early and to permit methods of identification of children with specific learning disabilities that focus on children's responses to appropriate instruction in regular education.
- *Highly Qualified Teachers* provides an overview of another new area within IDEA that comes to us from NCLB and that sets new standards of quality for special educators.
- *NIMAS*, also new to IDEA 2004, discusses standards that will greatly improve access to the general education curriculum for children with print disabilities.

All of these modules are intended for general audiences. The background materials (what you're reading right now) and *Resources for Trainers* include substantial additional information that trainers can use to adapt training sessions to specific audience needs and the amount of time available for training.

You are currently reading the background section and discussion in the module on *Early Intervening Services and Response to Intervention*.



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## References for This Module

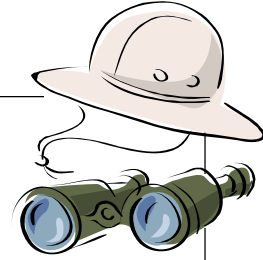
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Speece, D. (2006). *How progress monitoring assists decision making in a response-to-instruction framework*. Washington, DC: National Center on Student Progress Monitoring. (Available online at: [www.studentprogress.org/library/decisionmaking.pdf](http://www.studentprogress.org/library/decisionmaking.pdf))



## Looking for IDEA 2004?

### *The Statute:*

- [www.nichcy.org/reauth/PL108-446.pdf](http://www.nichcy.org/reauth/PL108-446.pdf)
- <http://idea.ed.gov>

### *Final Part B Regulations:*

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
- <http://idea.ed.gov>

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## Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means “Section.”) These references can be used to locate the precise sections in the federal regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of the IDEA regulations so that you don’t have to go looking for them.

The final Part B regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It’s not unusual to see references to specific sections of IDEA’s regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

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## Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. at 46738

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

[www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)

## Early Intervening Services



and



## Response to Intervention

*How to Operate the Slide:*

- No clicks necessary. Slide self-presents.

CLICK to advance to next slide.

Use Slide 1 (above) to orient your audience to what this training will be about: Two new aspects that IDEA 2004 brings to addressing the needs of children—and, surprisingly, not necessarily those with disabilities! Just as the title of the slide indicates, the two topics under the microscope will be:

- Early Intervening Services (EIS), and
- Response to Intervention (RTI).

Given the very newness of these topics within IDEA, this module begins with an activity designed to see what your audience already knows about these two topics and what they *want* to know. The activity sheet for participants is **Handout B-7**. The activity itself is described on the next page.

### Theme B, Among Other Themes

While this slide presents the title for the training session, it can also be used to highlight that this module on EIS and RTI

is just one of six in *Building the Legacy's* Theme B, IDEA and General Education. The titles of the other modules in Theme B were identified in the introduction.

#### Themes in *Building the Legacy*

##### Theme A

Welcome to IDEA

##### Theme B

IDEA  
and General Education

##### Theme C

Evaluating Children  
for Disability

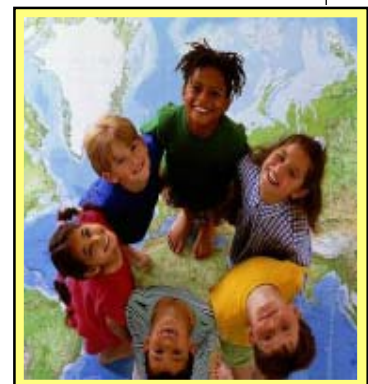
##### Theme D

Individualized Education  
Programs (IEPs)

##### Theme E

Procedural Safeguards

Available online at:  
[www.nichcy.org/training/contents.asp](http://www.nichcy.org/training/contents.asp)



And just as this module exists within a series, Theme B exists within a curriculum of multiple themes. Those themes represent critical components and organizing elements within IDEA. You may wish to make participants aware that there are other

themes around which important IDEA-related issues can be (and are!) meaningfully grouped. A list of themes in this training curriculum is provided in the box on the previous page. If participants want to learn more on their own (or share informa-

tion with their family or colleagues), they're welcome to visit NICHCY's Web site and download any and all modules they wish.



### Opening Activity

#### Total Time Activity Takes

10 minutes.

#### Group Size

Small groups of 4.

#### Materials

Handout B-7  
Flip chart, or notetaker.

#### Instructions

1. Refer participants to **Handout B-7**. Indicate that this is the activity sheet they have to complete. They will have 5 minutes.
2. Have the room count off 1 to 4 (1, 2, 3, 4) and form into groups of 4 that have each number represented.
3. Tell the room that, in each group, the "1" is the "focuser" who will read the instructions and keep the group focused on the task, and that the "4" is the notetaker who will write down the answers that the "2" and the "3" generate. The "1" and "4" members can throw in their ideas, too.
4. Give the groups the allotted 5 minutes. Then call them back to

large group focus.

5. Take 5 minutes to see what "questions-to-be-answered" groups listed on their activity sheets. Write key Qs on a flipchart or have someone take notes. Don't have a full report-out from the groups. Mix it up, jump around the groups, get input in a free-form, call-out-your-answer fashion.

#### For example:

Ask the group farthest from you to give one of their items. Ask the room, *"Did anyone in your group also have that?"*

*What else did you have?*

*Anyone else have another question they'd like to put on this list?*

6. When you have a nice collection of questions-to-be-answered—say, 4 or 5—stop taking more, noting that *"There are probably more we could put on this list, but let's see what we have here."* Then read aloud from the list, reiterating the questions, which will serve as the segue into the module to have these questions answered.



View I

This module looks at...



- **EIS:** Early intervening services
  - What they are
  - Why they're part of IDEA now
  - What IDEA 2004 requires

Slide loads with header "This module looks at..." and then the EIS info, with all its bullets, appears.

Click I

This module looks at...



- **EIS:** Early intervening services
  - What they are
  - Why they're part of IDEA now
  - What IDEA 2004 requires
  
- **RTI:** Response to intervention
  - What it is
  - Why it's part of IDEA now
  - What IDEA 2004 requires

Click 1: RTI info, with all bullets, appears.


(continued on next page) 



## This module looks at...

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- **EIS:** Early intervening services
  - What they are
  - Why they're part of IDEA now
  - What IDEA 2004 requires
  
- **RTI:** Response to intervention
  - What it is
  - Why it's part of IDEA now
  - What IDEA 2004 requires



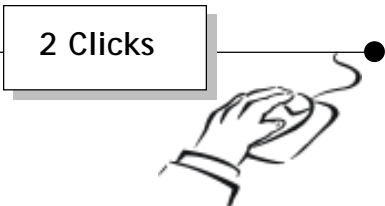
What do EIS and RTI have to do with one another?

**Click 2**

*Click 2:*  
Question appears:  
What do EIS and RTI have to do with one another?

CLICK AGAIN to advance to next slide.

**Slide 2: Background and Discussion**



Slide 2 is an advance organizer for the audience as to what content they're going to hear and discuss in this module.

The slide loads only the header "This module will look at..."

**CLICK 1** will bring up the topic of "EIS: Early Intervening Services" and the bullets:

- What they are
- Why they're in IDEA now
- What IDEA 2004 requires

How does the list of EIS questions generated in the activity relate to these agenda items about EIS? Given what these three bullets contain, are

the questions going to be answered?

**CLICK** again and bring up the topic of "Response to Intervention" and the bullets:

- What it is
- Why it's in IDEA now
- What IDEA 2004 requires

Now, how does the list of RTI questions generated in the activity relate to these agenda items about RTI? Given what these three bullets contain, are the questions going to be answered?

**CLICK** again and bring up the final part of the agenda, which is another question: *What do EIS and RTI have to do with one another?*

Let's find out!

**View I**

## Michael's Story

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← Slide loads with this view.

**Click I**

## Michael's Story

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- First grader
- Is learning to read using the district's standard reading curriculum

← *Click 1:*  
Items 1 and 2 about Michael appear, setting the stage.

(continued on next page) 

## Michael's Story

- First grader
- Is learning to read using the district's standard reading curriculum
- Isn't progressing in pace with the class
- Scores below county cut-off line for adequate progress at Thanksgiving time.

### Clicks 2-3

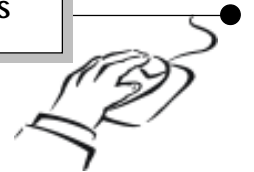
Click 2:  
Item 3 about Michael appears, identifying his lack of reading progress.

Click 3:  
Last item about Michael appears. He's scored below the county cut-off line.

CLICK AGAIN to advance to next slide.

### Slide 3: Background and Discussion

3 Clicks



Slide 3 describes a situation that many people will find familiar: a first grader who is unexpectedly having trouble learning to read.

Michael is a first grader who, like the rest of the class, is being taught to read using a standard reading curriculum adopted by the district in which he lives. Most children succeed with this curriculum, but Michael is not progressing as well as the rest of the class. Differences between how quickly children pick up the skill of reading are also not uncommon, so Michael's teacher keeps an eye on the matter as the marking period continues.

At Thanksgiving time the entire first grade is given a screening test to check their progress, as part of the district's normal monitoring protocols. At this point it becomes clear that something is going to have to be done about Michael's lack of progress. He scores far below the cutoff line the county uses to mark adequate progress for first graders learning to read.

What to do now? What action might the district take to address Michael's difficulties in acquiring this new but extremely important academic skill?

Having described this scenario, ask participants what actions their own school systems would take in these circumstances. Collect a few answers, then move on to the next slide which introduces early intervening services as an option for a school system's response.

## What are Early Intervening Services?

### Assistance given to students:

- Who haven't been identified yet as needing special education and related services

### But—

- Who may need additional support to succeed in general education environment



Slide loads, and automatically fills itself in. No clicks are necessary except to advance the slide.

CLICK to advance to next slide.

Slide 4 introduces Early Intervening Services—EIS—as an appropriate response to addressing Michael's early problems in learning to read.

The research literature is very clear that addressing children's academic and behavioral needs as early as possible can be critical in ensuring those problems don't deepen and solidify. New within IDEA, EIS provide schools with another vehicle by which to take early and strategic action when children appear at risk of academic failure or behavioral challenges.



As the slide indicates, EIS involve assistance given to children who have not yet been identified as eligible for special education and related services under IDEA but who need extra

help and support to progress in the general education environment. As the Department observes in the Analysis of Comments and Changes to the final Part B Regulations:<sup>1</sup>

The authority to use some Part B funds for early intervening services has the potential to benefit special education, as well as the education of other children, 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 education interventions. (71 Fed. Reg. at 46627)

In a school district that chose to use up to 15% of its Part B dollars for early intervening services, Michael, our fictitious child, would almost certainly be identified as an at-risk learner who could benefit from EIS to address his struggles with reading.

<sup>1</sup> Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (to be codified at 34 C.F.R. pt.300). Available online at:

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
- <http://idea.ed.gov>

## **Underpinnings of EIS**

IDEA's EIS provisions—to be examined more closely in the next slide—extend important concepts found within the NCLB, particularly in the Reading First program. Reading First focuses on putting proven methods of early reading instruction in classrooms, applying scientifically based reading research—and the proven instructional and assessment tools consistent with that research—to ensure that all children learn to read well by the end of third grade.

Similarly, EIS can help children acquire readiness for learning and the essential components of specific skills (e.g., phonological skills, fluency), so that they will then be better prepared to apply those skills to important academic content areas. Providing EIS across the academic spectrum (e.g., reading, math, science) can result in fewer referrals for special education evaluation and better enable children to have success in school. EIS can also focus on a child's behavior so that the personal and social skills important to classroom success

can be developed and reinforced. Improving children's academic success frequently improves their behavior and vice versa, so providing appropriate services as early as possible makes good sense and sound educational policy.

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**—Space for Notes—**

**View 1**

**IDEA's Brand-New EIS Provisions**

No more than 15% of Part B funds  
to develop and implement EIS

Slide loads with this view, where the header and the first item in the list (15% cap) are visible.

**Clicks 1-3**

**IDEA's Brand-New EIS Provisions**

No more than 15% of Part B funds  
to develop and implement EIS

Emphasis on students in K-3

K-12 students as well

Professional development  
of teachers and other school staff

Clicks 1—3:  
Each click loads  
another item.

CLICK AGAIN to advance to next slide.

## Slide 5: Background and Discussion

3 Clicks



Slide 5 indicates the regulatory framework for EIS found at §300.226 (refer participants to **Handout B-8**). Four initial points will be introduced in this slide. Each will be examined more closely and at greater length in their own individual slides (coming up), so don't delve in deeply to any particular one here, unless you intend to speed through the more detailed ones or use them to review what you say here on this slide.

- No more than 15% of Part B funds may be used to develop and implement early intervening services.
- EIS emphasizes assistance to children in grades K-3.
- EIS may also be used with children in grades 4-12.
- EIS funds may be used for professional development of teachers and other school staff.

### How Much Can a Local Educational Agency (LEA) Spend?

An LEA is allowed to use not more than 15% of their IDEA Part B funds to develop and implement EIS, as the provision at the right shows.

And what does the rest of that intricate provision mean? What is "less any amount reduced by the LEA pursuant to §300.205..." referring to?

Section 300.205 contains provisions regarding local maintenance of effort (MOE). The section specifies conditions

under which an LEA may reduce its local (or state and local) expenditures from one year to the next. So the amount of money an LEA may spend on EIS is affected by the amount an LEA reduces its MOE and vice versa. The two aspects are interconnected, as we will see in slides a bit later in this presentation.

### To What Age Groups May the LEA Provide EIS?

As this slide shows (in items 2 and 3), EIS are meant for children K-12, with an emphasis on those in K-3. What's significant here is that preschool is specifically excluded from the age and grade range IDEA 2004 permits. As stated in the Analysis of Comments and Changes to the final Part B regulations:

Early intervening services may not be used for preschool children. Section 300.226(a) tracks the statutory language in section 613(f)(1) of the Act, which states that early intervening services are for children in kindergarten through grade

12, with a particular emphasis on children in kindergarten through grade 3. (71 Fed. Reg. at 46627)

### Use of Funds for Professional Development

As the slide also indicates, professional development for teachers and other school staff may also be a part of implementing EIS. (Relevant provisions are presented in the box on the next page.) This allowance should be very helpful to ensuring that all of the staff involved in instruction can receive the necessary staff development.

Although it's not necessary to delve into this right here—Slide 7 takes a deeper look—the funds are intended to build the school

#### Lead-In of IDEA 2004's EIS Regulation: 15% Cap

#### §300.226 Early intervening services.

(a) *General.* 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...

§300.226(a)





staff's capacity for delivering scientifically-based academic and behavioral interventions, including, among other skills:

- scientifically based literacy instruction
- instruction on the use of adaptive and instructional software (where appropriate).

### **The Lead-In Continues: More of IDEA 2004's EIS Regulation**

*[As the lead-in from previous page began...]*

#### **§300.226 Early intervening services.**

(a) *General.* An LEA may not use more than 15 percent of the amount the LEA receives under Part B...to develop and implement coordinated, early intervening services...

*[Age Range?  
The phrase continues...]*

...for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) ...

*[Professional Development?  
And yet more provisions...]*

(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(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

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

§300.226



**View 1**

**Early Intervening Services Are For Children:**

Slide loads with this view, including the first part of Bullet 1.

- Who are *not currently* receiving special education and related services under IDEA



**Click 1**

**Early Intervening Services Are For Children:**

Click 1: The 2nd part of Bullet 1 appears and picture changes.

- Who are *not currently* receiving special education and related services under IDEA

This could include students who were *previously eligible* for special education but who are not identified as needing it now



(continued on next page) 

## Click 2

### Early Intervening Services Are For Children:

- Who are *not currently* receiving special education and related services under IDEA

This could include students who were *previously eligible* for special education but who are not identified as needing it now

- Who may need *additional support*, academically or behaviorally



Click 2:  
Bullet 2 appears  
and picture  
changes.

CLICK AGAIN to advance to next slide.

## Slide 6: Background and Discussion

2 Clicks



Slide 6 narrows the focus to how IDEA 2004 defines the population of children with whom early intervening services may be used. Two populations are identified:

- Children who are not currently receiving special education and related services under IDEA, including children who were previously eligible for special education but who are not identified as needing it now
- Children who may need additional support, academically or behaviorally.

At the right, we've reproduced the key parts of IDEA's EIS provisions identifying the scope

of children that may be served via EIS. You'll notice that children who were previously eligible for special education are not specifically identified in IDEA's provision. This group of children is evident, however, when one considers the use of the phrase "children ...who are not currently identified." In the Analysis of Comments and Changes to the final Part B regulations, the Department speaks to this point, indicating that the word current was added to make the distinction clear.

### Yet More of the Lead-In: IDEA's EIS Regulation(cont.)

...for children ...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.

§300.226(a)

A child previously identified as being a child with a disability who currently does not need special education or related services would not be prevented from receiving early intervening services. For example, a child who received special education services in kindergarten and had

services discontinued in grade 1 (because the public agency and the parent agreed that the child was no longer a child with a disability), could receive early intervening services in grade 2 if the child was found to be in need of additional academic and behavioral

supports to succeed in the general education environment. We believe that language should be added to §300.226 to clarify that early intervening services are for children who are not currently identified as needing special education or related services.

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**—Space for Notes—**

**View I**

**EIS Funds Used for Professional Development**

Purpose: To improve staff capacity to deliver scientifically based academic and behavioral interventions



Slide loads with this view.

**Click I**

**EIS Funds Used for Professional Development**

Purpose: To improve staff capacity to deliver scientifically based academic and behavioral interventions

*Including—*

- scientifically based literacy instruction

Click 1:  
Pictures disappear,  
Bullet 1 appears.



(continued on next page)

**Click 2**

## EIS Funds Used for Professional Development

Purpose: To improve staff capacity to deliver scientifically based academic and behavioral interventions

Including—

- scientifically based literacy instruction
- instruction on the use of adaptive and instructional software *(where appropriate)*

← Click 2:  
Bullet 2 appears.

CLICK AGAIN to advance to next slide.

### Slide 7: Background and Discussion

Slide 7 zooms in to take a closer look at the regulation’s provisions regarding EIS and professional development. As the slide indicates, the purpose behind using EIS funds to support professional development is to improve staff capacity to deliver scientifically based academic and behavioral interventions.

IDEA 2004 regulation’s verbatim language indicating this is provided in the box at the right (and on **Handout B-8**).

#### What Does “Scientifically Based” Mean?

‘Scientifically based’ is a term of significance in NCLB that has now been integrated into IDEA

2 Clicks



**More of IDEA’s EIS Regulation:  
EIS Funds for Professional Development**

(b) *Activities*. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(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...

*§300.226(b)(1)*

as part of the purposeful aligning of the two Acts. The term is defined in NCLB—referred to in IDEA as ESEA, the Elementary and Secondary Education Act—and adopted in IDEA 2004’s regulation at §300.35, as follows:

*Scientifically based research* has the meaning given the term in section 9101(37) of the ESEA.

So—what does it mean?

NCLB’s definition of scientifically based research is straightforward. Appearing at section 9101(37) of the ESEA and provided on **Handout B-8**:

*Scientifically based research*—

(a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(b) Includes research that—

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

### **Professional Development Emphasizing Scientifically Based Interventions**

In keeping with other provisions within IDEA 2004’s regulation emphasizing the use of research-based interventions, its provisions for the allowable use of EIS funds for professional development similarly stresses the importance of basing interventions on research. In the Analysis of Comments and Changes to the final Part B regulations, the Department further emphasizes this, indicating that the “definition of scientifically based research is important to the implementation of Part B” and:

We expect that the professional development activities authorized under §300.226(b)(1) will be derived from scientifically based research. The statute and regulations do not refer to “recommended practices,” which is a term of art that, generally, refers to practices that the field has adopted as “best practices,” and which may or may not be based on evidence from scientifically based research. (71 Fed. Reg. at 46627)



**Other Uses of EIS Funds**

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Providing educational and behavioral evaluations, services, and supports—  
 — including scientifically based literacy instruction.



Slide loads fully. No clicks are needed except to advance to the next slide.

CLICK to advance to next slide.

Slide 8 finishes the discussion of allowable uses of EIS funds under IDEA 2004’s regulation by looking at the sweeping provision presented in the box below and on **Handout B-8**.



**May LEAs Use EIS Funds to Purchase Supplementary Instructional Materials?**

Yes, the Department (2006) answers, drawing upon note 269 in the Conference Report, which it quotes (71 Fed. Reg. at 46628) as saying:

[E]arly intervening services should make use of supplemental instructional materials, where appropriate, to support child learning. Children targeted for early intervening services under IDEA are the very children who are most likely to need additional

One would suppose that the phrase “educational and behavioral evaluations, services, and supports” is broad enough to include more than what the regulations specifically mention—which is “scientifically based literacy instruction.” The Analysis of Comments and Changes to the final Part B regulations makes it apparent that the term is purposefully broad, and that use of EIS funds may include such applications as discussed below.

**More of IDEA’s EIS Regulation:  
 Other Uses of EIS Funds**

(b) *Activities*. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(1) ...

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

§300.226(b)(2)

reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum.

The Department adds its own opinion on the matter:

We believe the terms “services” and “supports” in §300.226(b)(2) are broad enough to include the use of supplemental instructional materials. (71 Fed. Reg. at 46628)

It also adds the following caveat:

Of course, use of funds for this purpose is subject to other requirements that apply to any use of funds, such as the limitation on purchase of equipment in

section 605 of the Act and applicable requirements in 34 CFR Parts 76 and 80.

### **May Related Services Personnel Be Involved in EIS?**

Yes, the Department indicates—as State and local officials determine appropriate:

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. Nothing in the Act or regulations prevents States and LEAs from including related services personnel in the development and delivery of educational and behavioral evaluations, services, and supports for teachers and other school

staff to enable them to deliver coordinated, early intervening services. (71 Fed. Reg. at 46627-8)

### **How About Literacy Instruction for At-Risk Children with Limited English Proficiency?**

This, too, the Department assents, would be an allowable use of EIS funds, as follows:

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 children 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. (71 Fed. Reg. at 46627)

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—Space for Notes—

**View 1**

Early Intervening Services:



- Do not limit right to FAPE

Slide loads with  
Bullet 1 in view.

**Clicks 1-2**

Early Intervening Services:



- Do not limit right to FAPE
- Do not create right to FAPE
- May not be used to delay appropriate evaluation of a child suspected of having a disability

Click 1:  
Bullet 2 appears.

Click 2:  
Bullet 3 appears.

(continued on next page) 

## Early Intervening Services:



- Do not limit right to FAPE
- Do not create right to FAPE
- May not be used to delay appropriate evaluation of a child suspected of having a disability

### Regardless of IDEA funds being used to provide EIS:

FAPE is an entitlement **only** for children currently eligible for special education under IDEA, as outlined in their IEPs

Click 3

Click 3:  
Text at bottom  
appears regarding  
entitlement to FAPE.

CLICK AGAIN to advance to next slide.

## Slide 9: Background and Discussion

3 Clicks



Slide 9 makes a series of interesting points about the meaning of EIS within IDEA 2004, which is essentially a special education law. While EIS are meant to be provided to children who are not currently receiving special education and related services under IDEA, doing so neither creates nor limits a child's right to FAPE. A child receiving early intervening services may later be found to be a "child with a disability," as IDEA 2004 defines that term, and may begin to receive special education and related services instead of EIS. But receiving EIS does not automatically create a right to eligibility for special education and the provision of

FAPE. In this sense, FAPE and EIS are not connected at all. As the text at the bottom of the slide indicates, regardless of the fact that EIS may be paid for with IDEA funds, FAPE is an entitlement only for children currently eligible for special education under IDEA. This is embodied in the regulation at §300.226(c):

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

This latter point—that EIS may not be used as a reason to delay an appropriate evaluation of a child suspected of having a disability—is critical. EIS have been introduced into IDEA 2004 as a way to "benefit both the regular and special education programs by reducing academic and behavioral problems in the regular education program and the number of inappropriate referrals for special education and related services" (71 Fed. Reg. at 46628). Having the option of providing early inter-

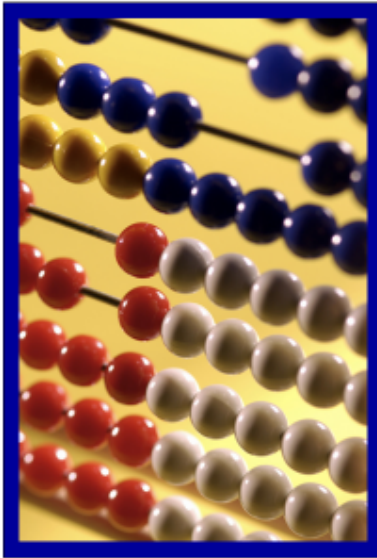
vening services to children who are struggling does not change the public agency's affirmative obligation to evaluate any child it suspects of having a disability. For this reason, the Department did not specify a time limit on how long a child could receive EIS before an initial evaluation for special education services must be conducted.

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—Space for Notes—

We do not believe it is appropriate or necessary to specify how long a child can receive early intervening services before an initial evaluation is conducted. If a child receiving early intervening services is suspected of having a disability, the LEA must conduct a full and individual evaluation in accordance with §§300.301, 300.304 and 300.305 to determine if the child is a child with a disability and needs special education and related services. (71 Fed. Reg. at 46626)

## Reporting Requirements on EIS



### LEAs must report:

- Number of children served by EIS
- Number of children who subsequently receive special education and related services under IDEA in preceding 2-year period

← Slide loads completely with this view.

Click to advance to next slide.

Slide 10 addresses the reporting requirements that public agencies will have regarding early intervening services. This, too, is new with IDEA 2004. Specifically, LEAs must report:



- the number of children served by EIS; and
- the number of children who subsequently receive special education and related services under IDEA in the preceding two-year period.

**Handout B-8** includes these provisions, which are also presented in the box at the top of the next page.

The data on EIS that LEAs must collect and report to the State educational agency (SEA) will be important to track the usefulness of EIS in reducing referrals to special education. As the Department notes:

We believe that these data are sufficient to provide LEAs and SEAs with the information needed to determine the impact of early intervening services on children and to determine if these services reduce the number of referrals for special education and related services. (71 Fed. Reg. at 46628)

### Meaning of “Preceding Two Year Period”

It’s helpful to realize that the phrase “during the preceding two year period” actually refers to “the two years *after* the child has received early intervening services” (71 Fed. Reg. at 46628, emphasis added). This may have been a bit confusing, given that the word “preceding” means “before.” But the Department clarifies that the “before” refers to before the child began receiving special education and related services as a “child with a disability”—as follows:

The Department intends for LEAs to report on children who began receiving special education services no more than two

years after they received early intervening services. For the preceding two year period, the LEA would report on the number of children who received both early intervening services and special education services during those two years. (71 Fed. Reg. at 46628)

**More of IDEA's EIS Regulation:  
Reporting Requirements**

(d) *Reporting.* Each LEA that develops and maintains coordinated, 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.

§300.226(d)

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—Space for Notes—



**View 1**

**EIS' Relationship with Disproportionality:**

**Concern of Congress:**  
Children from racial or ethnic backgrounds overidentified as children with disabilities or overrepresented in particular educational settings.



Slide loads with this view.

**Click 1**

**EIS' Relationship with Disproportionality:**

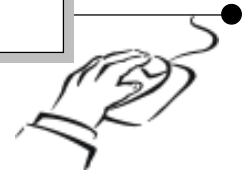
**Concern of Congress:**  
Children from racial or ethnic backgrounds overidentified as children with disabilities or overrepresented in particular educational settings

**If an LEA has such a disproportionality:**  
Must reserve **full 15%** of Part B funds for EIS, especially targeting overidentified groups.



Click1:  
Bottom text appears: "If an LEA has such a disproportionality..."

CLICK AGAIN to advance to next slide.



Slide 11 introduces the interaction between EIS and disproportionality, which will be discussed across the next three slides.

### What is Disproportionality?

In the context of this discussion, disproportionality refers to overrepresentation or the underrepresentation of children of specific racial or ethnic groups:

- in special education;
- in particular educational settings; and
- subjected to various forms of discipline.

Used more generally, the term could refer to the overrepresentation or underrepresentation of any given population group in an area of interest or concern—individuals from specific racial and ethnic backgrounds, socioeconomic status, national origin, English proficiency, or gender, for example.

In special education, our area of concern, research has repeatedly shown the relationship between race and ethnicity and other variables to children's placement in special education classes. The past 30 years have been marked by discussions of this phenomenon, research into what is causing it, and direct action against it, as can be seen in many of IDEA 97's provisions and those of IDEA 2004.

### Congressional Concern

As the slide indicates, Congress has expressed its concern about this issue over the years and taken action to investigate and ameliorate it. IDEA '97, for example, mandated new State reporting requirements concerning enrollment by race and ethnicity in special education and the suspension and expulsion of children with disabilities. Public Law 108-446—IDEA 2004 signed by President Bush on December 3, 2004—opens with a list of findings that specifically identify disproportionality as an issue to be addressed. These findings are presented in the box on the next page. As you can see, they are extensive.

### Addressing Disproportionality

As might be expected, given the findings of Congress, IDEA 2004 includes numerous provisions intended to directly address disproportionate representation by race and ethnicity in special education. This topic will be dealt with separately and much more fully in the module *Disproportionality and Overrepresentation*, but it's important to discuss it here as well, where it intersects with IDEA's EIS provisions. Refer participants to **Handout B-4**, which presents §300.646, Disproportionality. Indicate that States receiving funds under IDEA must collect and examine data "to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs" with respect to:

- identification of children as children with disabilities, including identification in particular disability categories;
- the placement in particular educational settings of these children; and
- disciplinary actions (how many, how long, what type), including suspensions and expulsions.

If an LEA is identified as having significant disproportionality in any of these areas, then specific action must be taken. This includes requiring the LEA to:

...reserve the maximum amount of funds...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 ..." [§300.646(b)(2)].

More will be said in the next two slides about what's involved in using EIS funds to address disproportionality.

### **Excerpts from Findings in IDEA 2004**

“(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

“(B) America’s ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

“(C) Minority children comprise an increasing percentage of public school children.

“(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these children.

“(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

“(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

“(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation’s children from non-English language backgrounds.

“(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

“(B) More minority children continue to be served in special education than would be expected from the percentage of minority children in the general school population.

“(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

“(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

“(E) Studies have found that schools with predominately White children and teachers have placed disproportionately high numbers of their minority children into special education.

Public Law 108-446 (IDEA 2004), Section 601(c), *Findings*.

### Defining "Significant Disproportionality"

State defines for LEAs  
and for State in general



View 1

Slide loads with this view, with first paragraph visible.

### Defining "Significant Disproportionality"

State defines for LEAs  
and for State in general



State determines  
criteria for what level of  
disproportionality is  
*significant*

Click 1

Click 1:  
2nd paragraph  
appears.

CLICK AGAIN to advance to next slide.

(discussion on next page)



## Slide 12: Background and Discussion

1 Click



So what IS “significant disproportionality” and how is it defined? How does an SEA determine if an LEA in the State has a disproportionality and whether or not it is significant? Slide 12 shines a light on how IDEA 2004 expects SEAs and LEAs to answer these questions.

As both paragraphs on the slide indicate, it is each State, not IDEA 2004, that defines what constitutes “significant disproportionality” in the State and in its LEAs. Furthermore:

[T]he determination of significant disproportionality by race or ethnicity is based on a collection and examination of data and not on a district’s policies, procedures, or practices. (71 Fed. Reg. at 46738)

Thus, the process begins with scrutinizing the data collected on the numbers and types of children in special education and the other factors mentioned in IDEA (e.g., placement, disciplinary actions) to see if a significant disproportionality exists. If it is identified, then the SEA would review the LEA’s policies and practices to determine if those are consistent with what IDEA requires, as described here:

[I]n identifying significant disproportionality, a State may determine statistically significant levels. The State’s review of its constituent LEAs’ policies, practices, and procedures for identifying and placing children with disabilities would occur in LEAs with significant disproportionality in identification, placement, or

discipline, based on the examination of the data. The purpose of this review is to determine if the policies, practices, and procedures are consistent with the Act. (71 Fed. Reg. at 46738)

More will be said on the next slide about why the Department did not establish a national standard for findings of significant disproportionality and factors that States may need to consider when they establish their own standards and criteria for making such a determination.



**View 1**

Defining "Significant Disproportionality"

IDEA recognizes that:



← Slide loads with this view.

Defining "Significant Disproportionality"

IDEA recognizes that:

- Problem may be result of inappropriate regular education responses to academic or behavioral issues
- A "national standard" for disproportionality is not appropriate
- Multiple factors must be considered within each state:
  - ✓ Population size
  - ✓ Size of individual LEAs
  - ✓ Composition of state population

**Clicks 1-3**

Clicks 1—3:  
Click by click, bullet by bullet appears.  
Three bullets of information, three clicks.

CLICK AGAIN to advance to next slide.

(discussion on next page) 





Slide 13 further examines disproportionality as a State-defined matter, although it may well have its roots in “inappropriate regular education responses to academic or behavioral issues,” as the first bullet states.

### Why Does Disproportionality Occur?

Research into disproportionate representation of children from particular racial and ethnic groups in special education and in certain placements has identified a wide variety of contributing factors, including “language, poverty, assessment practices, systemic issues, and professional development opportunities for teachers” (Elementary and Middle Schools Technical Assistance Center, 2002). It’s interesting that, in connecting EIS and disproportionality, the Department noted “the fact that significant disproportionality in special education may be the result of inappropriate regular education responses to academic or behavioral issues” (71 Fed. Reg. at 46627).

### State-Defined, Not Nationally Defined

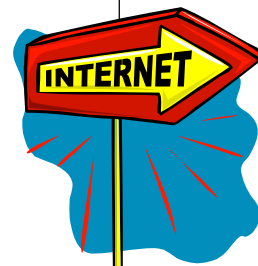
As the last slide indicated and this slide further examines, it is the State’s role to define what level of disproportionality will be considered “statistically significant” and, thus, a genuine cause for concern and action. The Department believes that establishing a national standard for significant disproportionality would not be appropriate “because there are multiple factors at the State level to consider in making such determinations” (71 Fed. Reg. at 46738).

For example, States need to consider the population size, the size of individual LEAs, and composition of State population. States are in the best position to evaluate those factors. (71 Fed. Reg. at 46738)

These comments are reflected on the slide.

### Sources of Additional Information

Obviously, disproportionality is an issue of importance to Congress, to the Department, to States and LEAs, and to stakeholders, especially those from racial or ethnic groups who may be inappropriately identified as children with disabilities or placed inappropriately. There are many sources of additional information about this issue as well as resources to assist States and LEAs in addressing it. Look at those listed in the module focused on *Disproportionality and Overrepresentation*. We also point you toward the guidance developed by the Department on methods that States can use for calculating disproportionality, available online at:



[www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf](http://www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf)



View I

A Mini-Lesson on Maintenance of Effort (MOE)

Year 1



Local

Year 2



Local



State-Local



State-Local

← Slide loads with this view.

A Mini-Lesson on Maintenance of Effort (MOE)

Year 1



Local

MOE may be calculated based on **local funds** spent from one year to the next...

Year 2



Local

**or**



State-Local



State-Local

Click I


Click 1:  
The top paragraph appears, and the word "or" in the middle.

(continued on next page) 

**A Mini-Lesson on Maintenance of Effort (MOE)**

---


**Year 1**



*Local*


MOE may be calculated based on **local funds** spent from one year to the next...

**Year 2**




*Local*

**or**



*State-Local*

...the combination of **state-local funds** spent from one year to the next.



*State-Local*

**Click 2**

Click 2:  
Text at bottom appears.

CLICK AGAIN to advance to next slide.

## Slide 14: Background and Discussion

Slide 14 takes up the complicated topic of “Maintenance of Effort”—otherwise known as MOE. How is this topic relevant to EIS? The next 7 slides will answer that question.

### Guessing the Meaning of the Slide

When this slide on MOE appears, it will be important to set the stage for the upcoming discussion, since it may seem to come out of left field for the audience. We’d suggest first engaging the group in a guessing game about what the slide actually means. There are very few words on the slide, although its title (Mini-Lesson on Maintenance of Effort) is a substantial clue.

The slide is meant to represent the two frames of reference within which an LEA may calculate the level of effort it must maintain from year to year: (a) the amount of *local* funds expended for the education of children with disabilities, or (b) the amount of *State-local* funds combined that it spends. While ultimately this is intended to set up a discussion of local maintenance of effort, leaping there directly may leave many participants in the ravine, wondering what you’re talking about. So take a few minutes to see what they think the slide’s emerging pictures mean.

So What Is Local MOE?

Maintenance of effort, not surprisingly, is exactly what it sounds like. Generally speaking, an LEA may not reduce expenditures from local (or State and local) funds spent for the education of children with disabilities below the level it spent the year before. The general MOE provision appears at §300.203(a) and (b), which is provided in the box on the next page. It also appears on **Handout B-9**.

2 Clicks



## How the Slide Loads

The slide opens with the two possible pots of money shown: the *local funds* spent for the education of children with disabilities or the *State-local funds combined*. You also see Year 1 and Year 2, meant to indicate the year-to-year nature of MOE. Ask participants what they think MOE is and how this slide might depict what is required with respect to MOE.

*Click 1:* When you click, text will appear in the open space between the two sets of pictures, as follows:

MOE may be calculated based on *local* funds spent from one year to the next...

OR

*Click 2:* When you click the 2nd time, now this other option for calculating MOE will appear:

...the combination of *State-local* funds spent from one year to the next.

The concept of MOE really is relevant to the discussion of EIS, as we will see soon enough. Ask your participants what they imagine the relevance will be, because unless they are already aware of IDEA 2004's provisions interconnecting local MOE and EIS, their answers are likely to be quite imaginative. This is also a means of engaging attention in a rather dry subject.

### §300.203 Maintenance of effort.

(a) *General.* Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

View I

A Mini-Lesson on Maintenance of Effort (MOE)

LEAs must budget (on a per capita or total basis) EITHER:



Slide loads with this view.

Click I

A Mini-Lesson on Maintenance of Effort (MOE)

LEAs must budget (on a per capita or total basis) EITHER:

- at least as much in **local funds** as they spent in local funds in the most recent prior year for which data are available;



OR--

Click 1: Bullet 1 appears, and the word "or" rotates, indicating there's more to come.

(continued on next page)

## A Mini-Lesson on Maintenance of Effort (MOE)

LEAs must budget (on a per capita or total basis) EITHER:

- at least as much in **local funds** as they spent in local funds in the most recent prior year for which data are available



*OR--*

- at least as much in **state and local funds** combined as they spent in state and local funds combined in the most recent prior year for which data are available



Click 2

Click 2:  
Bullet 2 appears.

CLICK AGAIN to advance to next slide.

## Slide 15: Background and Discussion

2 Clicks

Slide 15 allows you to summarize the information presented in the last slide, namely that:

LEAs must budget (on a per capita or total basis) EITHER:

- at least as much in local funds as they spent in local funds in the most recent prior year for which data is available; OR
- at least as much in local and State funds combined as they spent in local and State funds combined in the most recent prior year for which data is available.

This is called *local maintenance of effort*, a concept to be carried forward into the next slides, where the connection between MOE and EIS is explained. Notice that no Federal funds are mentioned or enter into the discussion of local MOE. If you refer to §300.203(b)(3) (in the box where the last slide was discussed and on **Handout B-9**), you'll see that IDEA is explicit about Federal funds *not* being used in any calculation of MOE.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for

which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.



**View I**

**Maintenance of Effort (MOE) and EIS**

---



- LEA may reduce their MOE by 50% of their increase in Part B funds.

← Slide loads with Bullet 1 in view.

**Maintenance of Effort (MOE) and EIS**

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- LEA may reduce their MOE by 50% of their increase in Part B funds
- This amount goes to activities authorized under ESEA

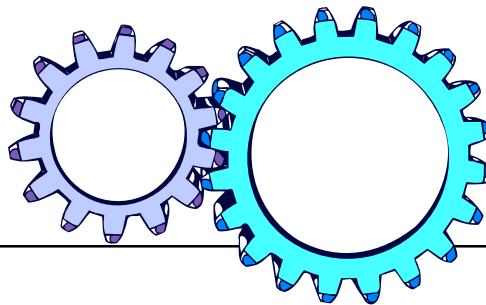
**Click I**

← *Click 1:* Bullet 2 appears.

CLICK to advance to next slide.



Slide 16 introduces the new provision in the IDEA 2004 that permits LEAs to reduce their local MOE up to a specified limit, on the condition that those funds go to activities authorized under ESEA.



And the limit of how much an LEA may reduce its MOE? Up to 50% of how much the LEA's Part B funding increased this year.

Yes, that requires some thought. Up to 50% of this year's increase in Part B funds over last's year's funds...Turn it around...this year's funding. How much more is it than last year's? Well, 50% of that figure is the limit by which an LEA may reduce its local MOE—in other words, local (or State and local) spending on special education and related services—in the set of circumstances IDEA specifies and that we're going to discuss on this slide.

IDEA 2004's exact regulation governing this allowable reduction in local MOE appears in the box at the right.

Let's also look again at the general MOE provision, mentioned on Slide 14 and appearing at §300.203(a) as follows:

(a) *General.* Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those

**The IDEA Regulation at §300.205:  
Where EIS and MOE Intersect**

**§300.205 Adjustment to local fiscal efforts in certain fiscal years.**

(a) *Amounts in excess.* Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.

(b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

expenditures for the preceding fiscal year.

The “except as provided in... §300.205” leads directly to the provisions in the box—§300.205. These provisions are new in IDEA 2004’s regulation. As you can see:



- The first paragraph—(a)—specifies the 50% MOE reduction we’ve been talking about and that’s captured on the slide.
- The second paragraph—(b)—is the regulation’s verbatim iteration of the 2nd point on

the slide: “This amount goes to activities authorized under ESEA.”

- The third paragraph—(c)—clearly prohibits an LEA from reducing its level of expenditures when the State has found that LEA unable to establish and maintain programs of FAPE or has taken action against the LEA [under section 616 of the Act and subpart F of the regulations].
- The fourth paragraph—(d), the special rule—brings EIS into the equation, and we

have the actual, verbatim connection between these two issues at last.

“Special rule.” The amount of funds expended by an LEA for early intervening services under §300.226 “shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section” [§300.205(d)].

How does this work? The next slides provide several examples you can use to both illustrate this interconnection and elaborate upon it.

---

—Space for Notes—



View 1

Slide loads with this view listing prior year's allocation and the current year's. This is a fine time to ask audience, "How much of an increase in funding did this LEA receive?"

Example: Part 1

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000

Click 1: The answer appears "Increase: \$1 million."

Fine time to ask audience, "How much may the LEA reduce its MOE, given that increase? What's the percentage IDEA permits?"

Example: Part 1

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000
Increase:	\$1,000,000

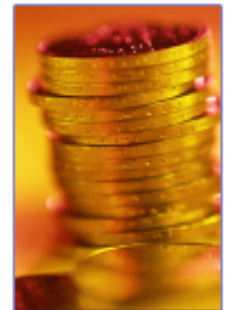
Click 2: Answer appears: \$50,000. (That's 50% of the increase.)

Slide's not done yet! More slide operation on the next page!

Example: Part 1

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000
Increase:	\$1,000,000

50% of that increase is maximum available for MOE reduction: \$500,000



(continued on next page)

### Example: Part 1

**Click 3**

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000
Increase:	\$1,000,000

50% of that increase is maximum available for MOE reduction:	\$500,000
--	-----------

*Calculating Funds Available for EIS*

Click 3:  
"Calculating Funds Available for EIS" box appears, connecting EIS into discussion. Ask audience, "What percentage of the LEA's current funds can it use for early intervening services?"

### Example: Part 1

**Click 4**

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000
Increase:	\$1,000,000

50% of that increase is maximum available for MOE reduction:	\$500,000
--	-----------

*Calculating Funds Available for EIS*

15% of \$2,000,000 (Current allocation)

Maximum Available for EIS: \$300,000

Click 4:  
The answer appears: "15% of \$2 million (Current allocation)" — which is \$300,000.

(discussion on next page) 

CLICK AGAIN to advance to next slide.

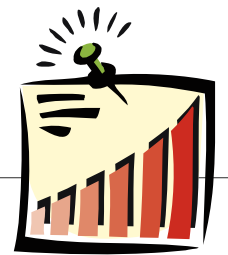


Slide 17 is complicated, isn't it? It's designed so that at each step of the way the audience must answer your question and generate the next figure or fact. You've provided all necessary information for them to do so. A back-and-forth between you and participants can then serve both as a review of what you've told them so far and to hold their focus.

This first slide sets up the conversation, taking all the funds and combining them with IDEA's provisions, so that the work slate of numbers is available to calculate (on the next slides) how many funds an LEA can put toward early intervening services if the LEA decides to reduce maintenance of effort a specific amount. The various numbers calculated on this slide will be used again and again across the next four examples. What will change will be the amount the LEA decides to reduce its MOE. This will give a clear illustration of how reducing MOE affects the funds available for EIS.

At this point, tell participants that they now have all the

numbers they need to see how MOE and EIS are interconnected. In the next slides they will *apply* these numbers. So they shouldn't be worried if they are baffled right now. They may have just walked through calculating all these numbers with you, but they haven't yet gone to the next step—*using* the numbers.



### Important Training Consideration

Does your audience need to take this information back to their professional activities and apply it, perhaps making decisions regarding MOE and EIS? If so, then strongly consider having them actually practice these calculations with additional examples. Appendix D of the Part B regulations provides examples you can use. These are included on **Handout B-6**, OSEP's *Topic Brief*. You may share these with the audience and have them work with a partner to run through the calculations necessary to determine if, given a specific set aside for EIS, the LEA may reduce its MOE.

View I

Example (cont.)

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000

Slide loads with this view, carrying forward the critical numbers from the last slide.

Click 1

Example (cont.)

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
LEA decides to use <u>none</u> for MOE reduction:	\$ 0

Click 1: Decision A appears: that the LEA might use *none* of the funds to reduce MOE.

The question appears: *How does this affect how many \$\$ the LEA can put toward EIS?*

How does this affect how many \$\$ it can put toward EIS?

Click 2

Example (cont.)

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
LEA decides to use <u>none</u> for MOE reduction:	\$ 0
Amount LEA may spend on EIS:	\$ 300,000

Click 2: The math is performed, and the answer appears at the bottom: The LEA may put the maximum allowable toward EIS.

The LEA may put the maximum allowable toward EIS

(discussion on next page) 

CLICK AGAIN to advance to next slide.



Slide 18 connects the dots between how the funds an LEA decides to commit toward reducing its MOE will affect the amount it then may put toward developing or implementing EIS. Believe it or not, that's where all these numbers have been going!

This slide operates easily—only 2 clicks are necessary to unfurl its components—but read this next part carefully so you know what's going to happen on each **CLICK** and how IDEA 2004 pertains to the calculations and conclusions that appear.

### Making EIS-MOE Calculations

*Slide Loads:* The slide opens with a minimum amount of information carried over from the previous slide, specifically:

- Max Available for MOE: \$500,000
- Max Available for EIS: \$300,000

Tell participants that this slide, and the next several slides, will illustrate how the amount of funds an LEA uses toward MOE reduction will directly affect how many funds it may use toward establishing EIS services—up to the available amounts in either category, of course. Each of the next slides will show the LEA deciding to use a different amount toward MOE, and the corresponding effect that will have on the amount it may use for EIS.

*Click 1:* In this first example, the LEA decides to put none of the available MOE reduction funds toward reducing its MOE. This appears with the click, as does the question box at the bottom of the screen: *How does this affect how many \$\$ the LEA can put toward EIS?* This is the question the audience must answer. Explicitly draw participant attention to it.

*Click 2:* This click launches the calculation of the math and brings up the answer to the question: *The LEA may put the maximum allowable toward EIS, \$300,000.*

### Regrouping and Reconsidering

Is the audience completely confused? It's quite possible. This slide has been set up to show how the different parts combine to make the calculations necessary and answer the basic questions about whether or not the LEA may reduce its level of effort. What's important for participants to grasp is that these are interconnected and



moving parts. Putting funds toward MOE will impact upon the amount available to be spent on EIS.

This is why the Department provides the following caution to LEAs:

LEAs that seek to reduce their local maintenance of effort in accordance with §300.205(d) and use some of their Part B funds for early intervening services under §300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. (71 Fed. Reg. at 46817)

To be explicit, when an LEA decides to take advantage of IDEA's regulation at §300.205(d) and to reduce its local expenditures for special education by an amount that is not larger than 50% of the increase in Part B funds from one year to the next, the amount of IDEA funds that LEA may put toward early intervening services will be directly affected. The same is true in reverse: Deciding to put IDEA funds toward EIS will directly affect the amount by which the LEA may reduce local expenditures for special education. This

latter will not be examined in these slides, although you may certainly do so as an activity with participants who are going to be making these sorts of decisions when they leave this training session. It is extremely important to illustrate to participants who will have that responsibility that what they do in one area will impact what they can do in the other. The Department's caution (quoted above) needs to be considered carefully by both the technical personnel who decide

how funds will be allocated and by the accounting personnel who keep track of how funds are used. Given the newness of these MOE-EIS provisions, administrators of these two areas need to fully understand the implications of decisions they might make, fiscally and programmatically, and communicate with one another about the decisions they are making, in order to apply these provisions legally.

The next slide takes a second look at the same scenario, this time with the LEA deciding to put a different amount toward MOE: \$100,000. Before you move on to that slide, you might have your audience team up with a partner and make their own calculations for this new amount. What's their answer? If the LEA does that, how much can it then spend on EIS, up to the allowable maximum of \$300,000?

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—Space for Notes—

**View 1**

Example 2

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000

Slide loads with the same view as the last slide, carrying forward the same critical numbers.

**Click 1**

Example 2

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 100,000

Click 1: Decision B appears: that the LEA might use \$100,000 of the funds to reduce MOE.

The question appears: *How does this affect how many \$\$ the LEA can put toward EIS?*

How does this affect how many \$\$ it can put toward EIS?

**Click 2**

Example 2

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 100,000
Amount LEA may spend on EIS:	\$ 200,000

Click 2: The math is performed, and the answer appears at the bottom: The LEA may put \$200,000 toward EIS.

LEA may only put \$200,000 toward EIS

(discussion on next page) 

CLICK AGAIN to advance to next slide.

## Slide 19: Background and Discussion

2 Clicks



Slide 19 operates and presents itself *exactly in the same way* that Slide 18 did (and as Slides 20 and 21 will). It also repeats the calculations made on the last slide, this time from the point where the LEA decides to use \$100,000 for MOE (not “none” as on Slide 18). As can be seen, when the math is calculated, this results in \$200,000 that the LEA may put toward EIS. What summary might the audience offer to capture the interconnection between MOE and EIS?

Indicate that another example is coming up, and this time the LEA is going to commit \$200,000 to reducing MOE. Again, can pairs of participants calculate how this decision will affect the amount of funds the LEA may spend on EIS, up to the maximum allowed? Give them a moment to confer, and move on to the next slide where this new calculation will play out.

---

—Space for Notes—



**View 1**

**Example 3**

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000

Slide loads with the same view as the last slide, carrying forward the same critical numbers.

**Click 1**

**Example 3**

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 200,000

Click 1:  
Decision C appears: that the LEA might use \$200,000 of the funds to reduce MOE.

The question appears: How does this affect how many \$\$ the LEA can put toward EIS?

How does this affect how many \$\$ it can put toward EIS?

**Click 2**

**Example 3**

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 200,000

Amount LEA may spend on EIS: \$ 100,000

Click 2:  
The math is performed, and the answer appears at the bottom: The LEA may put \$100,000 toward EIS.

(discussion on next page) 

LEA may only put \$100,000 toward EIS

CLICK AGAIN to advance to next slide.

## Slide 20: Background and Discussion

2 Clicks



Did the audience come up with the correct answer for the example at hand? Are they grasping how MOE decisions will affect EIS funds that may be used? Give them one more example, this time ending up with *no funds* being available to use for EIS. Can they guess what the LEA must put toward MOE to lead to that result?

---

—Space for Notes—

View I

Example 4

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000

Slide loads with the same view as the last slide, carrying forward the same critical numbers.

Click I

Example 4

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 300,000

Click 1: Decision D appears: that the LEA might use \$300,000 of the funds to reduce MOE.

The question appears: How does this affect how many \$\$ the LEA can put toward EIS?

How does this affect how many \$\$ it can put toward EIS?

Click 2

Example 4

Maximum available for MOE reduction:	\$500,000
Maximum available for EIS:	\$300,000
→ LEA decides to use for MOE reduction:	\$ 300,000

Click 2: The math is performed, and the answer appears at the bottom: The LEA may put **no money** toward EIS.

Amount LEA may spend on EIS:	\$ 0
------------------------------	------

LEA may put **no money** toward EIS

(discussion on next page) 

CLICK AGAIN to advance to next slide.

## Slide 21: Background and Discussion

2 Clicks



As you can see, if the LEA decides to use \$300,000 (of the maximum available, \$500,000) to reduce its MOE, then it has effectively eliminated the ability to put any money toward establishing or implementing EIS. Considering what EIS is intended to accomplish, and what it may offer to children in need of additional academic or behavioral support, that is a decision that should be made carefully. It is also a decision that may lead

to unexpected consequences further down the line if the LEA is found to have significant disproportionality, as the upcoming slides will introduce. The IDEA and its regulations are very specific about how a finding that an LEA has significant disproportionality affects the interplay between EIS and MOE.

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—Space for Notes—

**View I**

**When There's Significant Disproportionality**



← Slide loads with this view.

**When There's Significant Disproportionality**



LEA **must use full 15%** of Part B funds for EIS

**Click I**

← *Click 1:*  
Top text appears:  
"LEA must use full 15% of Part B funds for EIS."

(continued on next page) 

## When There's Significant Disproportionality

Click 2



LEA **must use full 15%** of Part B funds for EIS

This means the LEA **may not take an MOE reduction**

Click 2:  
The bottom paragraph appears.

CLICK AGAIN to advance to next slide.

### Slide 22: Background and Discussion

2 Clicks



Slide 22 puts the final note on this discussion of EIS within IDEA 2004. It adds the limitation that the regulations include as to reduction of MOE and the EIS set aside when an LEA is found to have significant disproportionality under IDEA. IDEA 2004's relevant regulatory provisions are presented in the box at the right. As they indicate, and the slide echoes, an LEA determined to have significant disproportionality must reserve the maximum amount of funds permissible—15% of its Part B funds—to “provide intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified.” This will mean that an LEA identified by the SEA as having significant disproportionality will not be able to take

#### **Reduction of MOE, EIS Funding, and Significant Disproportionality: Relevant Regulatory Provisions**

(b) *Review and revision of policies, practices, and procedures.* 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—

(1) ...

(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 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 ...

*§300.646(b)(2)*

advantage of any MOE reduction because it will be required to use the full 15% for EIS.

## In Conclusion

This has been a detailed look at the regulations' new provisions regarding EIS. These introduce an intriguing mix between NCLB and IDEA, general and special education, and the perhaps unnecessarily short path between them for many children. The premise underlying EIS and IDEA's funding of them is the need to address as early as possible the struggles that children may have. The provisions acknowledge that early academic or behavior problems may not be a manifestation of disability but, rather, inadequate supports, instruction, or both. When additional supports are provided in this timely fashion, at the beginning of the learning cycle and before children fall too far behind, many children will be able to flourish within general education.

Not all children will, however. IDEA provides for their circumstances, too, and the reality that some children will not respond adequately to EIS. These children will be referred for evaluation under IDEA to determine if they are children with disabilities in need of special education and related services.

As conceptualized by Congress (see remarks on the right) and detailed in these regulations, the impact of EIS will be an interesting issue to monitor in the coming years.

## Excerpted Remarks from the Senate Committee on Health, Education, Labor, and Pensions

from

Senate Report No. 108-185 (to accompany S.1248)

November 3, 2003

### *Early intervening services (section 613(f))*

The committee is greatly concerned that too many children are being identified as needing special education and related services, and has sought approaches to help prevent children from being inappropriately identified for services under IDEA. Research shows that with appropriate, early regular education interventions, many children can learn to perform effectively in the regular education environment without the need for special education services. These procedures also have the promise of reducing the amount or intensity of services needed for children who ultimately do get appropriately referred for special education. For example, both the President's Commission on Excellence in Special Education and the National Research Council's report on minority children in special education cited with approval to the results of large scale clinical trials indicating that early intervention on reading skills in conjunction with positive behavior programs resulted in improved academic achievement and reduction in behavioral difficulties in high-risk, predominantly minority children. Research supported by OSEP on addressing behavioral and emotional problems in schools also indicates that universal screening can greatly assist in early identification of children at risk for these problems and that more significant behavioral problems and emotional disabilities can be significantly reduced through classroom-based approaches involving positive behavioral interventions and classroom management techniques. Other evidence shows that when schools make available services, such as mental health services, not normally available in schools, to at-risk children the number of special education referrals can be reduced.

Therefore, the committee believes that it makes sense to give school districts flexibility to use up to 15 percent of their IDEA

*continued on the next page*



**Excerpted Remarks**  
**from the Senate Committee on Health, Education, Labor, and Pensions**

(continued from previous page)

funds to develop and implement coordinated, early intervening educational services for children who are not receiving special education services but who require additional academic and behavioral support to succeed in a regular education environment, and who may be likely referrals to special education programs and services at a later time. These activities have the promise of benefiting both the regular education environment and the special education program by reducing academic and behavioral problems in the regular education environment and the number of referrals for special education and the intensity of special education services required for some children.

Section 613(f) of the act would be revised to authorize such use of IDEA funds, in combination with other non-special education funds, to develop and implement coordinated, early intervening educational support services that include activities such as professional development for teachers and other school staff so that they can deliver scientifically-based academic and behavioral interventions; providing educational and behavioral evaluations, services and

supports, including scientifically-based literacy instruction; and developing and implementing interagency financing strategies for the provision of those evaluations, services and supports. An example of innovative early intervening services may include programs that develop children's cognitive and perceptual abilities.

It has come to the committee's attention that many children struggle in school as a result of trauma and the effects of traumatic events. The committee encourages local educational agencies to respond to the needs of these children through early intervening programs established in this section.

The committee does not intend for early intervening to prevent or delay a child from receiving an evaluation to determine the presence of a disability and the need for special education and related services. The committee encourages local educational agencies to develop a systematic process by which they determine whether or not a child receiving early intervention services should be subsequently referred for an evaluation. (pp. 22-23)

**Reference**

Committee on Health, Education, Labor, and Pensions. (2003, November 3). *Senate Report No. 108-185 (to accompany S.1248)*. Washington, DC: Government Printing Office.

And Now...

## Response to Intervention

Using research-based interventions  
to help determine if a child has  
a specific learning disability.

No clicks necessary.  
Slide self-presents.

CLICK to advance to next slide.

Slide 23 provides the segue into the next section of this module and the indepth exploration of Response to Intervention, RTI.

Before launching into the slides, however, we provide the following background discussion of RTI both within IDEA and in practice. Additional information is given in the background text of upcoming slides as well. This discussion is provided as a foundation for information you may impart to the audience as you progress through the slides. At this point, in this opening slide, you wouldn't need to share all this! Wait until the appropriate slide comes up.

### The Roots of RTI

Response to intervention—hereafter referred to as RTI—is a new component within IDEA

2004 and the final Part B regulations and represents a process that schools may use to help children who are struggling. One of its underlying premises is the possibility that a child's struggles may be due to inadequacies in instruction or in the curriculum either in use at the moment or in the child's past.

Optimal learning outcomes occur when the curriculum and instruction within the classroom are closely compatible with children's skills and abilities. When there is a poor fit, child outcomes and learning suffer. Quality classroom instruction usually is a good fit for meeting the needs of most children. But for other children, success is not easy. The hypothesis is that, with RTI, these struggling children can be identified early and provided appropriate instruction, thus increasing the likelihood that

they can be successful and maintain their class placement.

### Describing RTI

The National Joint Committee on Learning Disabilities (2005) sums up the core concepts of RTI in the following way:

Core concepts of an RTI approach are the systematic (1) application of scientific, research-based interventions in general education; (2) measurement of a child's response to these interventions; and (3) use of the RTI data to inform instruction.

How these concepts play out in reality can readily be observed in almost any RTI implementation. Typically, struggling children are identified through a

poor performance on a classwide, schoolwide, or districtwide screening process intended to indicate which children are at risk of academic or behavioral problems. A child may also be identified through other means, such as teacher observation. The school may then ensure that an RTI process is faithfully implemented and provides the child with research-based interventions while the child is still in the general education environment.

RTI typically has different levels of intensity. At the first level, interventions focus more on helping struggling children in a group. A certain amount of time is allotted to see if the child responds to the intervention—hence, the name RTI. Progress is monitored closely. If the child does, indeed, respond to the research-based intervention, then this indicates that perhaps his or her difficulties have resulted from less appropriate or insufficiently targeted instruction.

If, however, the child does not respond to the first level of group-oriented interventions, he or she typically moves to the next RTI level, which is more targeted and intensive. Again, child progress is closely monitored. The time allotted to see if the child responds to interventions in this more intensive level may be longer than in the first level—a marking period, for instance, rather than six weeks—but the overall process is much the same. If the child shows adequate progress, then the intervention has been successful and a “match” has been found to what type of instruction works with that child. It is quite

possible that, if the problem is caught early enough and addressed via appropriate instruction, the child learns the skills necessary to continue in general education without further intervention.

On the other hand, if the child does not respond adequately to the intervention, then a third level becomes an option for continued and yet more intensive intervention. This third level is typically more individualized as well.

*Important Note:* It is worthwhile saying that, regardless of RTI as an option for struggling children or its potential use in diagnosing learning disabilities, at any point in its multileveled process a child may be referred for evaluation under IDEA to determine if he or she is a “child with a disability” as IDEA 2004’s regulation defines that term at §300.8. Becoming involved in RTI does not mean that a child has to complete a level, or all levels, of an RTI approach before he or she may be evaluated for eligibility for special education and related services. The IDEA 2004’s regulation is very clear about this. Similar to EIS, RTI may not be used as a means of delaying or refusing to conduct such an evaluation if the LEA suspects that the child has a disability or if the parents request that the school system evaluate the child.



## RTI in General Education Classrooms

The National Research Center on Learning Disabilities, NRCLD, has been focusing closely on RTI as an approach since its funding began in 2003. Its work will be very useful to stakeholders wanting to know more about RTI, how RTI fits into the bigger picture of the general education classroom, and what it means for children generally and for those with learning disabilities in particular. We’ve included in the box on the next page the “Core Concepts of RTI” according to NRCLD. These core concepts illustrate the importance of high-quality, research-based instruction in general education.

### What About RTI for Children with Disabilities in Special Education?

The use of an RTI process with children who are struggling in school naturally raises questions regarding its use with children with disabilities who are receiving special education and related services. When asked if children with disabilities would be eligible to receive services using RTI strategies, the Department responded:

Response to intervention (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 is nothing in IDEA that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RTI

strategies unless the use of such strategies is inconsistent with their... IEPs....(U.S. Department of Education, 2007, p. 2).

The Department *does* note an exception, however—a child with a disability who is currently receiving special education and related services “may not receive

RTI services that are funded with IDEA funds used for EIS pursuant to 34 CFR §300.226” (*Id.*).

Why this restriction? If the audience considers the intent and scope of EIS, they should be able to guess the answer. As the Department explains, this restriction exists:

...because EIS is...”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.” (*Id.*)

## The Intersection of RTI and LD

The role of RTI is to address the needs of children who are not succeeding within the general instructional approach by identifying and implementing other research-based interventions that will work with those children. The probability exists that some of those children will have learning disabilities and will not respond in the same way to these interventions as children without LD. This is where the intersection of RTI and LD occurs and why RTI is seen as a promising component in identifying LD.

## How Does RTI Relate to LD Determinations?

The information gleaned from a child’s performance while implementing a specific intervention can now be considered important in distinguishing children with LD. IDEA’s regulations now specifically allow an LEA to include a child’s response to scientific, research-based intervention as part of determining whether or not that child has a specific learning disability (SLD). Not responding or making sufficient progress within that intervention is an indication that learning disabilities may lie at the root of the child’s academic difficulties.



### Core Concepts of RTI

- Children receive high quality instruction in their general education setting
- General education instruction is research-based
- General education instructors and staff assume an active role in children's assessment in that curriculum
- School staff conduct universal screening of academics and behavior
- Continuous progress monitoring of child performance occurs
- Continuous progress monitoring pinpoints children's specific difficulties
- School staff implement specific, research-based interventions to address the child's difficulties
- School staff use progress-monitoring data to determine interventions' effectiveness and to make any modifications as needed
- Systematic assessment is completed of the fidelity or integrity with which instruction and interventions are implemented

Excerpted from National Research Center on Learning Disabilities (2006). *Core concepts of Rtl*. Nashville, TN: Author. (Available online at: [www.nrclid.org/research/rti/concepts.shtml](http://www.nrclid.org/research/rti/concepts.shtml))

The Department provides an interesting background discussion on RTI in its Analysis of Comments and Changes to the final Part B regulations; these serve to further illuminate the connection between RTI and LD determination. We've excerpted relevant remarks in the box on the right. (Note: The acronym SLD is used for specific learning disabilities.)

The RTI language, while new to the statute and its implementing regulations, has been conceptually connected to the determination of LD in the past. IDEA '97 specifically included a provision (maintained in IDEA 2004) that, in evaluating children to determine eligibility for special education, the child must not be determined to be a "child with a disability" if the determining factor is a lack of appropriate instruction in reading or math [§300.306(b)]. The responsiveness-to-intervention concept in IDEA 2004 is an elaboration or greater specification on this basic concept.

### **LD Determinations in the Past**

To date, the "severe discrepancy" model has been the prevailing tool for determining LD. This is because many children with LD manifest a "severe discrepancy" between intellectual ability and academic achievement. This approach has been faulted in several areas, including the lack of agreement on how severe a discrepancy has to be in order for an LD to be determined. Another genuine concern has been the amount of time needed to establish the "discrepancy" between achievement and ability. A child might literally fail

year after year before a disability determination would be made.

Still another criticism of LD identification practices has been that children were diagnosed with LD without assessing the benefits of general education interventions that have proven effective for youngsters presenting similar behaviors of concern

(e.g., limited reading acquisition). One could not be confident that the achievement and behavior problems that a child presented were inherent to the child or to shortcomings in the instructional settings. This lack is at the very heart of what RTI is expected to address.

#### **Excerpted Remarks**

from the Analysis of Comments and Changes to the Final Part B Regulations

The Act requires that LEAs be permitted to use a process that determines if a child responds to research-based interventions. Further, there is an evidence base to support the use of RTI models to identify children with SLD on a wide scale, including young children and children from minority backgrounds. These include several large-scale implementations in Iowa (the Heartland model; Tilly, 2002); the Minneapolis public schools (Marston, 2003); applications of the Screening to Enhance Equitable Placement (STEEP) model in Mississippi, Louisiana, and Arizona (VanDerHeyden, Witt, & Gilbertson, in press); and other examples (NASDE, 2005).<sup>1</sup> While it is true that much of the research on RTI models has been conducted in the area of reading, 80 to 90 percent of children with SLD experience reading problems. The implementation of RTI in practice, however, has included other domains. RTI is only one component of the process to identify children in need of special education and related services. Determining why a child has not responded to research-based interventions requires a comprehensive evaluation.

(71 Fed. Reg. 46647)

<sup>1</sup> 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; VanDerHeyden, 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., VanDerHeyden, A.M, & Witt, J.C. (in press). Response to intervention in the identification of learning disabilities: Empirical support and future challenges. *School Psychology Review*; National Association of State Directors of Special Education (2005). Response to intervention: policy considerations and implementations. Alexandria VA: Author.

## Other Contributions of RTI

The RTI component focuses on developing a profile of a child's in-class performance over a designated time interval rather than just cognitive and achievement measures that represent one point in time performance and are less tied to in-class performance. So RTI is considered as yielding more ecologically or socially accurate information. Additionally, information about a child's response should be helpful in designating the features of instruction, curriculum, goals, and placement considerations that are beneficial regardless of the child's disability determination. When RTI is incorporated into the LD determination process, instructional staff will likely emerge with a clearer framework for evaluating the child's performance and setting targets for successful outcomes.

What RTI is, and how it intersects in IDEA with LD determination, will be the main focus of the upcoming slides.

## Using the Introductory Slide

Having brought the slide up and clearly indicated where the training is going now, you may wish to take a moment to revisit Handout B-7 and the questions about RTI that participants generated and recorded there. Reiterate them, or ask participants to recall what they can, as the springboard to diving into this topic.



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## References

National Joint Committee on Learning Disabilities. (2005, June). *Responsiveness to intervention and learning disabilities*. Austin, TX: Pro-Ed. (Available online at: [www.nclcd.org/index.php?option=content&task=view&id=497](http://www.nclcd.org/index.php?option=content&task=view&id=497))

National Research Center on Learning Disabilities (2006). *Core concepts of RTI*. Nashville, TN: Author. (Available online at: [www.nrcld.org/research/rTI/concepts.shtml](http://www.nrcld.org/research/rTI/concepts.shtml))

**View I**

## What is RTI?

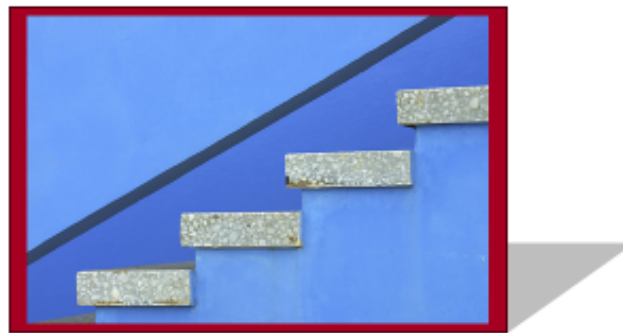
Research-based approach to helping children who are struggling



Slide loads with this view.

## What is RTI?

**Click I**



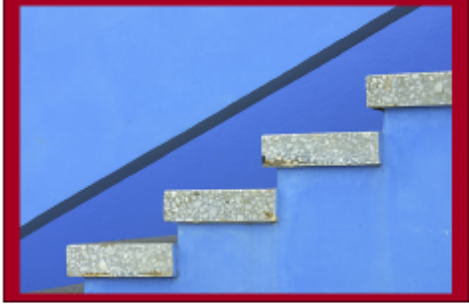
Typically involves 3 levels of assistance that increase in intensity

Click 1: Picture changes, summary text appears.

(continued on next page) 



## What is RTI?



Typically involves 3 levels of assistance that increase in intensity

1. Screening and classwide interventions
2. Targeted, small-group interventions
3. Intensive interventions

Click 2

CLICK AGAIN to advance to next slide.

Click 2:  
The 3 typical levels of intervention appear.

### Slide 24: Background and Discussion

Slide 24 provides an introductory summary of RTI in answer to the question at the top of the slide, “What is RTI?”

As the slide shows, and as described in the background text of the last slide, RTI typically involves 3 levels of assistance that increase in intensity.

1. Classwide interventions
2. Targeted, small-group interventions
3. Intensive interventions

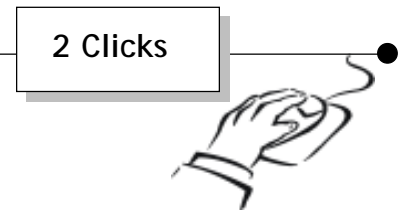
There may be more levels than three in a local implementation of RTI, or levels within levels, but the central elements will be the same:

- Research-based interventions are delivered for a specified period of time.

- Child progress is continuously monitored.
- Children move on to the next level and a more targeted intervention if, at the end of the current intervention, they have not made adequate progress.

Upcoming slides will provide more detail about what each level in an RTI approach might involve, so there’s no need to go into that here.

The final regulations do not provide a definition of RTI. In fact, the regulations don’t really even mention it directly or call it by name. The closest the law or regulations come to using the term RTI is to permit the use of “a process based on the child’s response to scientific, research-based intervention” in making a determination as to whether a



child has a learning disability or not [§300.307(a)(2)].

As part of this slide’s introduction to RTI and a swift summary of its features, you may wish to share with the audience some of the background material on RTI provided under Slide 23, including the core concepts as described by the National Joint Committee on Learning Disabilities or those concepts identified by NRCLD as excerpted in the box. It may be useful as well to plant the seed regarding RTI’s emergence as a tool in diagnosing learning disabilities. The next slide in this module will take up that topic directly.

**View 1**

**§300.307 Specific learning disabilities**

State must adopt criteria for determining if a child has a specific learning disability

Slide loads with this view.

**Click 1**

**§300.307 Specific learning disabilities**

State must adopt criteria for determining if a child has a specific learning disability

**More about the Criteria**  
*Among other things—*

Click 1:  
"More about the Criteria" appears.

**Click 2**

**§300.307 Specific learning disabilities**

State must adopt criteria for determining if a child has a specific learning disability

**More about the Criteria**  
*Among other things—*

- Must permit use of a process based on the child's response to scientific, research-based intervention
- May permit use of other alternative research-based procedures for determining whether a child has LD

Click 2:  
Both bullets load slowly and automatically.

*(discussion on next page)* 

CLICK AGAIN to advance to next slide.



Slide 25 folds in the issue of specific learning disabilities to this training on RTI by looking at specific aspects of the regulatory LD provisions. These are drawn from §300.307, which appears under the broad heading of “Additional Procedures for Identifying Children with Specific Learning Disabilities.”

The introductory paragraph represents a longstanding requirement of IDEA’s regulations—that States must adopt criteria for determining if a child has a specific learning disability. It is within this context that the discussion should begin, then move on to introduce the new provisions for LD determination that the IDEA 2004 regulations bring.

What, precisely, are these new provisions for LD determination? As the slide indicates, the IDEA regulation now stipulates that the criteria adopted by the State for determining whether a child has LD:

- must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

You can see the precise language of the regulations in the box on the right—specifically, items (2) and (3)—and on **Handout B-10**.

Although not identified on the slide, you’ll also see that the IDEA regulation now states outright that the criteria adopted by the State “*must not require* the use of severe discrepancy between intellectual ability and achievement” (emphasis added), which is also a significant change in the law. In the prior regulations [at §300.541(a)(2) (1999)], a team could determine that a child had a specific learning disability if, among other things, the team found that the child had a “severe discrepancy between achievement and intellectual ability” in one or more listed areas (e.g., oral expression, basic reading skill). While a team may still do so under the revised



regulations if the State’s criteria includes that option, no longer may the State require the use of the severe discrepancy formula.

So IDEA 2004 opens the door to a new element in making determinations of specific learning disabilities. While it does not specifically mention RTI, it does require that States permit the use of a process based on a child’s “response to scientific, research-based intervention.” Similarly, the State may permit—note the word “may” instead of “must”—the use of other alternative research-based

**§300.307 Specific learning disabilities.**

(a) *General.* 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). In addition, the criteria adopted by the State—

(1) 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);

(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and

(3) 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).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

procedures in making an LD determination. This wording gives States latitude in the response-to-intervention or alternative research-based procedures they might develop and implement, as the Department points out in its Analysis of Comments and Changes to the final regulations. Relevant remarks of the Department are excerpted at the right, including a Department response (2007) in its *Questions and Answers on Response to Intervention and Early Intervening Services* that has implications for SEAs and LEAs that require the use of an RTI process in identifying children with SLD. While providing RTI with legitimacy as a tool for States to use in determining LD, the law clearly does not endorse or require any specific approach to, or model of, RTI.

It is not the purpose of this module to delve into the details of identifying specific learning disabilities. That will occur in a separate module called—surprise!— *Identifying Children with Specific Learning Disabilities*, which is part of the **Evaluating Children for Disability** topic area. You may wish to explicitly limit the amount of discussion (or expectation of discussion) regarding identification of LD, pointing out the later module on the subject. What is salient here is that IDEA 2004 now includes a child’s response to RTI-like approaches as a potential source of valuable information when determining if a child has a specific learning disability. The next slide sums this up, so that the focus can move back to RTI and what it is.

### Excerpted Remarks

from the Analysis of Comments and Changes to the Final Regulations

New §300.307(a)(3)...recognizes that there are alternative models to identify children with SLD that are based on sound scientific research and gives States flexibility to use these models. For example, a State could choose to identify children based on absolute low achievement and consideration of exclusionary factors as one criterion for eligibility. Other alternatives might combine features of different models for identification. We believe the evaluation procedures in section 614(b)(2) and (b)(3) of the Act give the Department the flexibility to allow States to use alternative, research based procedures for determining whether a child has an SLD and is eligible for special education and related services.

(71 Fed. Reg. 46648)

### Excerpted Remarks

from the Department’s *Questions and Answers on Response to Intervention and Early Intervening Services*<sup>1</sup>

**Question F-4:** When an RTI model is implemented, can an incremental process be used to train individual schools so that over time the entire LEA is implementing the model or must all the schools in the entire LEA be trained simultaneously?

**Answer:** If the State or LEA requires the use of a process based on the child’s response to scientific, research-based intervention, in identifying children with SLD, then all children suspected of having a SLD, in all schools in the LEA, would be required to be involved in the process. However, research indicates that implementation of any process, across any system, is most effective when accomplished systematically in an incremental manner over time. If the LEA chose to “scale up” the implementation of the RTI model gradually over time, as would be reasonable, the LEA could not use RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA. Therefore, it is unwise for a State to require the use of a process based on the child’s response to scientific, research-based intervention before it has successfully scaled up implementation. (pp. 13-14)

<sup>1</sup> U.S. Department of Education. (2007, January). *Questions and answers on response to intervention (RTI) and early intervening services (EIS)*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>

**View I**

## RTI and IDEA

---

Thus, IDEA 2004 gives LEAs the option of including a child's response to scientific, research-based intervention as part of process used to determine LD

Slide loads with this view, summarizing.

**Click I**

## RTI and IDEA

---

Thus, IDEA 2004 gives LEAs the option of including a child's response to scientific, research-based intervention as part of process used to determine LD

### Three ✓s Needed to Determine LD

§300.309(a)(1)		
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Click 1: Bottom part of slide appears, with the first element in determining LD visible on the far left.

(continued on next page) 

## RTI and IDEA

### Click 2

Thus, IDEA 2004 gives LEAs the option of including a child's response to scientific, research-based intervention as part of process used to determine LD

Three ✓'s Needed to Determine LD

§300.309(a)(1)	§300.309(a)(2) (i) or (ii)	
✓	and	

Click 2: 2nd element in making an LD determination appears in the center box, with relevant provision circled.

## RTI and IDEA


### Click 3

Thus, IDEA 2004 gives LEAs the option of including a child's response to scientific, research-based intervention as part of process used to determine LD

Three ✓'s Needed to Determine LD

§300.309(a)(1)	§300.309(a)(2) (i) or (ii)	§300.309(a)(3)
✓	and	✓
	and	✓

Click 3: 3rd element in making an LD determination appears in the far right box.

(discussion on next page) 

CLICK AGAIN to advance to next slide.

**Slide 26: Background and Discussion**

3 Clicks



The top part of Slide 26, which loads automatically, summarizes the significant new provision of IDEA that permits a child’s response to intervention to be considered as part of determining whether or not he or she has a specific learning disability. How does this actually work in practice? The bottom part of the slide shows how IDEA’s criteria for determining an SLD is organized.

Section 300.309(a) states that “The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—” and then come three items, not surprisingly numbered as (1), (2), and (3). As the table below shows,

the item at (a)(2), however, has two parts, with an OR between [to be read as: (i) or (ii)], which means that either one of these two conditions is sufficient to find that the child has met the criteria at (a)(2). The part of (a)(2) that relates to RTI is the first one: (i)—or, to give its full address, §300.309(a)(2)(i). It reads:

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention; or

And this is how RTI weaves itself into the decision-making process for determining SLD. Let’s take a look at IDEA’s provisions, match them to the organization of the slide, and how this works will be clear.

As the chart shows, to make a determination of SLD, the group must find that the statement in the first column [(a)(1)] is true about the child, the statement in the last column [(a)(3)] is also true about the child, and that *one* of the two statements in the middle column [(i) or (ii)] is also true about the

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—				
Yes	Yes to One of These		Yes	
(a)(1)	(a)(2)(i)	OR	(a)(2)(ii)	(a)(3)
(1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:  (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation. (viii) Mathematics problem solving.	(2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention...		(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305...	(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of— (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.



child. The slide shows this as three check marks, corresponding to the three columns.

Thus, whether or not the child makes sufficient progress under an RTI approach is only one element of determining whether or not that child has an SLD. The child's response to a research-based intervention can only form *part* of the picture the group must examine in making its determination. Given that, how a child responds to RTI can never be the sole basis for a determination of SLD.

The process by which a child is evaluated for and/or determined to have a specific learning disability is addressed in detail in the separate module *Identification of Children with Specific Learning Disabilities*. This slide is not intended to delve into SLD determination but, rather, to show how IDEA's provisions intersect with RTI and the determination of LD, adding a new element to that process.

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—Space for Notes—

**View I**

**Level 1: Screening and Interventions**



← Slide loads with this view.


**Clicks 1-4**

**Level 1: Screening and Interventions**

- Screenings identify “at-risk” children
- Children receive specific research-based instruction, usually in small groups
- Progress is closely monitored
- This step usually doesn’t last longer than 8 weeks

Click 1:  
The picture disappears on Click 1, and Bullet 1 appears.

Clicks 2, 3, and 4:  
Bullets 2, 3, and 4 appear one by one.

(continued on next page) 

## Level 1: Screening and Interventions

- Screenings identify “at-risk” children
- Children receive specific research-based instruction, usually in small groups
- Progress is closely monitored
- This step usually doesn’t last longer than 8 weeks

Is student progress sufficient?

Yes

Child goes back to regular instruction

No

Child moves to Level 2

Click 5

Click 5:  
The box at the bottom appears, “Is child progress sufficient?” and the possible answers and actions.

CLICK AGAIN to advance to next slide.

### Slide 27: Background and Discussion

5 Clicks



Slide 27 returns to the mechanics of RTI as a process for addressing the needs of struggling children and zooms in to take a closer look at the first level: Screening and Interventions.

#### Screening

Screening begins the process and is intended to identify children who are at risk of academic or behavioral difficulties and failure. Screening is not generally limited to RTI approaches; we are all familiar with the routine screenings that schools conduct for a variety of reasons, including the one mentioned here. What’s important in RTI, however, is the diligence with which the school

system includes progress monitoring as a component of instruction and decision making. Speece (2006), writing for the National Center on Child Progress Monitoring (an OSEP-funded project), summarizes the role of progress monitoring within RTI as follows:

Progress monitoring is a method of keeping track of children’s academic development. Progress monitoring requires frequent data collection (i.e., weekly) with technically adequate measures, interpretation of the data at regular intervals, and changes to instruction based on the interpretation of child progress....The approach

requires a different way of thinking about children’s learning but is a powerful method of judging responsiveness. (p. 3)

The National Center on Child Progress Monitoring makes available a great deal of useful information about progress monitoring and RTI on its Web site, at: [www.studentprogress.org](http://www.studentprogress.org)

#### Level I Intervention

As the slide indicates, at-risk children who have been identified through the screening

process receive research-based instruction, sometimes in small groups, sometimes as part of a classwide intervention. Models of RTI vary, as has been repeatedly said, so the delivery of research-based instruction might be part of a whole-class approach or some other arrangement. The point here is that the school addresses the evidence it's collected that specific children are having difficulties—and does something about it, using methods and techniques found through research to be effective in helping children learn.

This description is necessarily general, because the range of skills in which children may be having difficulties is large. In the early grades, RTI approaches tend to focus on reading and math and the early building of these critical school skills.

## Progress Monitoring

RTI is very dependent upon continual monitoring of progress, which serves multiple purposes but is especially critical for (a) identifying where there are skill deficits or where difficulties are occurring; and (b) tracking how children are responding to the instructional interventions.

## Length of Time for Level I

As the National Center on Learning Disabilities states in its *Parent's Guide to Response-to-Intervention*: "The length of time for this step can vary, but it generally should not exceed eight weeks" (Cortiella, 2006, p. 3). That is sufficient time to provide whatever research-based interventions the school system has chosen as appropriate for children's needs and to monitor their responsiveness to the instruction.

At the end of the allotted time, a decision must be made as to what to do next. As the bottom of the slide indicates, the decision revolves around the adequacy of student progress. If the child has made sufficient progress, then he or she will likely return to more general instruction. However, lacking sufficient progress, the child would move to the second level of interventions (covered in the next slide), which are more intensive and targeted.



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## References

Cortiella, C. (2006). *A parent's guide to response-to-intervention*. New York: National Center on Learning Disabilities. (Available online at: [www.nclld.org/images/stories/downloads/parent\\_center/rti\\_final.pdf](http://www.nclld.org/images/stories/downloads/parent_center/rti_final.pdf))

Speece, D. (2006). *How progress monitoring assists decision making in a response-to-instruction framework*. Washington, DC: National Center on Child Progress Monitoring. (Available online at: [www.studentprogress.org/library/decisionmaking.pdf](http://www.studentprogress.org/library/decisionmaking.pdf))

**View I**

**Level 2: Targeted Interventions**



← Slide loads with this view.

**Level 2: Targeted Interventions**

**Clicks 1-4**

- Child receives more intensive services and intervention, usually in small groups
- In K-3 these services are usually in reading and math
- Progress is closely monitored
- Level 2 usually doesn't last more than a marking period

Click 1:  
The picture disappears on Click 1, and Bullet 1 appears.

With Clicks 2, 3, and 4, Bullets 2, 3, and 4 appear one by one.

(continued on next page) 

**Level 2: Targeted Interventions**

- Child receives more intensive services and intervention, usually in small groups
- In K-3 these services are usually in reading and math
- Progress is closely monitored
- Level 2 usually doesn't last more than a marking period

**Is student progress adequate?**

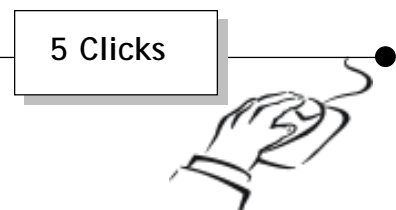
<input type="checkbox"/> Yes  Child goes back to regular instruction	<input type="checkbox"/> No  Child moves to Level 3
--	---

**Click 5**

*Click 5:*  
The box at the bottom appears, "Is child progress adequate?" and the possible answers and actions.

CLICK AGAIN to advance to next slide.

**Slide 28: Background and Discussion**



Slide 28 takes a look at Level 2, where more targeted interventions are provided to children who have not made adequate progress in Level 1 intervention. The design of this slide is the same as the previous one; the notable differences are in the description of Level 2. The length of time in this secondary level of intervention is generally a bit longer than in Level 1, and the level of intensity of the interventions is greater. They may also be more closely targeted to the areas in which the child is having difficulty.



**View 1**

**Level 3: Intensive Interventions**



Slide loads with this view.

**Clicks 1-2**

**Level 3: Intensive Interventions**

- Child receives individualized intensive interventions targeting his or her skill deficits
- Progress is closely monitored

Click 1:  
The picture disappears, and  
Bullet 1 appears.

Click 2:  
With Click 2,  
Bullet 2 appears.

(continued on next page) 



**Level 3: Intensive Interventions**

---

- Child receives individualized intensive interventions targeting his or her skill deficits
- Progress is closely monitored

**If child does not respond to Level 3 interventions:**

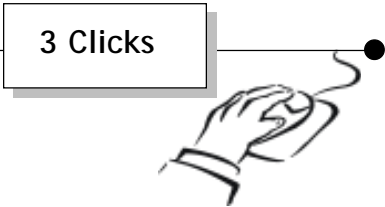
Child is considered for evaluation under IDEA	Data gathered in Levels 1, 2, and 3 help to inform the evaluation
---	---

Click 3

*Click 3:*  
The box at the bottom appears and the likely actions.

CLICK AGAIN to advance to next slide.

**Slide 29: Background and Discussion**



Slide 29 finishes this look at the different levels of instruction in many RTI approaches. Again, the slide operates as the last two slides did, although there are fewer bullets in the top section (only two). This also typically marks a turning point in the decision-making process. If the child has not responded to the intensive and more individualized research-based instruction in this level, then he or she is likely to be referred for a full and individual evaluation under IDEA. The data gathered on the child's response to interventions in Levels 1, 2, and 3 become part of the information available during the evaluation process and afterwards, when a determination must be made as to

disability and the child's possible eligibility for special education and related services. Considering the amount of data typically collected in an RTI approach, thanks to its reliance upon progress monitoring all along the way, the information that will now be available should be very helpful to the team of individuals involved in evaluating the child and determining his or her eligibility for special education services.

**View I**

## Parent Participation

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When? How?

Slide loads with this view. The questions "When? How?" refer to the issue of parent participation.

## Parent Participation

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**Click I**

Can you say §300.311(a)(7)(ii)?



Another question appears, referring to §300.311(a)(7)(ii).

CLICK AGAIN to advance to next slide.

*(discussion on next page)*





Slide 30 addresses a topic that has probably come up in this training session—parent involvement. What is the parent’s role in RTI, what does the law require regarding their notification and consent, and how does RTI affect parents’ right to request their child be evaluated under IDEA?

The next slide deals with the parents’ right to request an evaluation of their child under IDEA at any time, as well as what the law requires if the child has not made adequate progress after spending an appropriate amount of time in an RTI approach. Here, let’s look at parent notification and involvement when the child is actually involved in the RTI approach.

### Informing Parents Along the Way



There are several issues associated with parent involvement in RTI and the question of when they should be made aware that the public agency has involved their child in an RTI approach to see how well he or she responds. Among these is that parents should expect to be informed when their child is not making expected academic or behavioral progress, the very reasons that a public agency might involve a child in an RTI approach. The use of RTI acknowledges that whatever academic or behavioral difficulties the child has had to this point may be attributable to inappropriate instruction or a

mismatch between instruction and the child’s needs and skills. The sticky issue is that RTI is typically used *before* a child is evaluated under IDEA, before the public agency is even proposing to evaluate the child, so many of IDEA’s provisions for parent notification have not yet come into play.

What’s clear from practice in the field—and, indeed, from the longtime underpinnings of IDEA—is that informing parents along the way is important, valuable, and good policy. In practice, parents are generally informed when the child is unsuccessful in Level 1 and moves on to Level 2 (Cortiella, 2006; National Joint Committee on Learning Disabilities, 2005). The National Association of School Psychologists (NASP) provides parents with the comments we’ve excerpted in the box on the next page.

As you might expect, many people and organizations expressed concern about parent involvement in RTI during the public comment period following publication of IDEA’s regulations in draft (proposed) form. As a result of their suggestions and recommendations, the Department added another provision to the Part B regulations that has relevance to this discussion.

We will also add a new §300.311(a)(7)(ii) to ensure that the parents of a child suspected of having an SLD who has participated in a process that evaluates the child’s

response to scientific, research-based intervention, are notified about the State’s policies regarding collection of child performance data and the general education services that will be provided; strategies to increase their child’s rate of learning; and their right to request an evaluation at any time. (71 Fed. Reg. at 46658)

Thus, as a part of the new provisions regarding RTI, the IDEA regulations include specific provisions designed to ensure that parents are informed and aware of both what is going on (e.g., the general education services that will be provided, the strategies to be used to increase their child’s rate of learning) and what other options they have (e.g., the right to request an evaluation of their child under IDEA at any time).

### The Regulation at §300.311(a)(7)(ii)

The provisions at §300.311 are entitled: **Specific documentation for the eligibility determination.** Refer participants to page 3 of **Handout C-7**, where these provisions appear (the handouts for Theme C, Evaluation, are provided in that theme’s section). The provisions require that “if the child has participated in a process that assesses the child’s response to scientific, research-based intervention,” the documentation of

the determination of eligibility must contain a statement of the documentation—and here comes (a)(7)(ii)—that the parents were notified about:

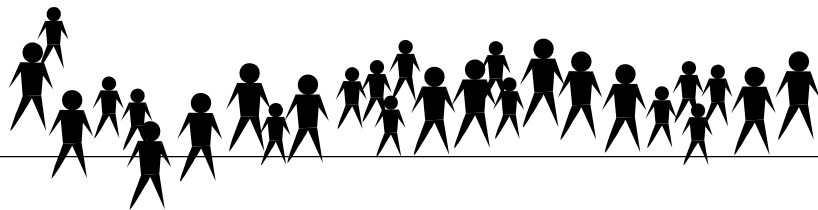
(A) The State’s policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child’s rate of learning; and

(C) The parents’ right to request an evaluation. [§300.311(a)(7)(ii)]

So this answers several questions, including what the parents must be told about the RTI process (at a minimum) and when they must be told. The Department (2007) also sheds light on this issue in its *Questions and Answers on Response to Intervention and Early Intervening Services*. We’ve excerpted the Department’s relevant comments on the next page.

Practice in the field indicates that a child's lack of progress in RTI's Level 1 (where research-based instruction is delivered in the regular classroom) typically results in a movement to Level 2 interventions for that child. These latter interventions typically are more intensive, with the instructional intervention delivered to small groups of children, not the entire class. It is at this point that parents are generally informed, perhaps meeting with school staff to discuss their child's lack of progress and—as stated above—hear what the school has in mind. This would include:



### How Can Parents Be Involved in the RTI Process?

The hallmarks of effective home-school collaboration include open communication and involvement of parents in all stages of the learning process. Being informed about your school’s RTI process is the first step to becoming an active partner. Both the National Center for Learning Disabilities and the National Joint Committee on Learning Disabilities advise parents to ask the following questions:

- Does our school use an RTI process? (Be aware that your child’s school may call their procedures a “problem solving process,” or may have a unique title for their procedures, e.g., Instructional Support Team, and not use the specific RTI terminology.)
- Are there written materials for parents explaining the RTI process? How can parents be involved in the various phases of the RTI process?
- What interventions are being used, and are these scientifically based as supported by research?
- What length of time is recommended for an intervention before determining if the child is making adequate progress?
- How do school personnel check to be sure that the interventions were carried out as planned?
- What techniques are being used to monitor progress and the effectiveness of the interventions? Does the school provide parents with regular progress monitoring reports?
- At what point in the RTI process are parents informed of their due process rights under IDEA 2004, including the right to request an evaluation for special education eligibility?
- When is informed parental consent obtained and when do the special education evaluation timelines officially commence under the district’s RTI plan?

Klotz, M.B., & Canter, A. (2006). *Response to intervention (RTI): A primer for parents*. Washington, DC: National Association of School Psychologists. (Available online at: [http://bsnpta.org/geeklog/public\\_html//article.php?story=RTI\\_Primer](http://bsnpta.org/geeklog/public_html//article.php?story=RTI_Primer))

- What type of performance data will be collected, and how much;
- What general education services are planned; and
- What strategies the school will use to increase the child's rate of learning.

Parents would also be informed that they have the right to request that their child be evaluated under IDEA—a full and individual evaluation. This is the subject of the next slide. If they do request such an evaluation, the public agency must promptly ask for their written consent and conduct the evaluation in keeping with IDEA's timeframe requirements.

*References for this section are provided on the next page.*

### Excerpted Remarks

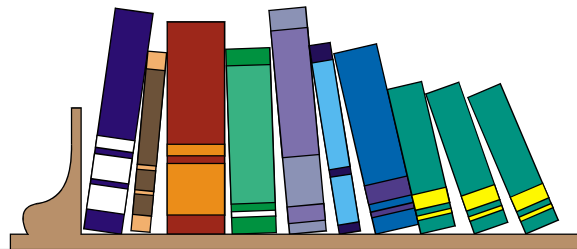
from the Department's *Questions and Answers on Response to Intervention and Early Intervening Services*<sup>1</sup>

**Question C-5:** When implementing an evaluation process based on a child's response to scientific, research-based intervention, the regulations require that a "public agency must promptly request parental consent to evaluate a child (34 CFR §300.309(c))" if the "child has not made adequate progress after an appropriate period of time (34 CFR §300.309(c)(1))." Please define "promptly" and "adequate" in this context.

**Answer:** The Federal regulations under 34 CFR §300.309(c) require that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. However, the regulations do not specify a timeline for using RTI or define "adequate progress." As required in 34 CFR §300.301(c), an initial evaluation must be conducted within 60 days of receiving consent for an evaluation (or if the State establishes a timeframe within which the evaluation must be completed, within that timeframe). Models based on RTI typically evaluate a child's response to instruction prior to the onset of the 60-day period, and generally do not require as long a time to complete an evaluation because of the amount of data already collected on the child's achievement, including observation data. A State may choose to establish a specific timeline that would require an LEA to seek parental consent for an evaluation if a student has not made progress that the district deemed adequate.

We do not believe it is necessary to define the phrase "promptly" because the meaning will vary depending on the specific circumstances in each case. There may be legitimate reasons for varying timeframes for seeking parental consent to conduct an evaluation. However, the child find requirements in 34 CFR §300.111 and section 612(a)(3)(A) of the Act require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, it generally would not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability. If it is determined through the monitoring efforts of the Department or a State that there is a pattern or practice within a particular State or LEA of not conducting evaluations and making eligibility determinations in a timely manner, this could raise questions as to whether the State or LEA is in compliance with the Act.

<sup>1</sup> U.S. Department of Education. (2007, January). *Questions and answers on response to intervention (RTI) and early intervening services (EIS)*. Washington, DC: Author. (Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>)



## References

Cortiella, C. (2006). *A parent's guide to response-to-intervention*. New York: National Center on Learning Disabilities. (Available online at: [www.nclد.org/images/stories/downloads/parent\\_center/rti\\_final.pdf](http://www.nclد.org/images/stories/downloads/parent_center/rti_final.pdf))

Klotz, M.B., & Canter, A. (2006). *Response to intervention (RTI): A primer for parents*. Washington, DC: National Association of School Psychologists. (Available online at: [http://bsnpta.org/geeklog/public\\_html//article.php?story=RTI\\_Primer](http://bsnpta.org/geeklog/public_html//article.php?story=RTI_Primer))

National Joint Committee on Learning Disabilities. (2005, June). *Responsiveness to intervention and learning disabilities*. Austin, TX: Pro-Ed. (Available online at: [www.nclد.org/index.php?option=content&task=view&id=497](http://www.nclد.org/index.php?option=content&task=view&id=497))

U.S. Department of Education. (2007, January). *Questions and answers on response to intervention (RTI) and early intervening services (EIS)*. Washington, DC: Author. (Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>)

**View I**

**Parent Participation**

Parents may request that their child be evaluated under IDEA at any time



Slide loads with this view.

**Parent Participation**

Parents may request that their child be evaluated under IDEA at any time

When child is provided appropriate instruction...

...and does not make adequate progress after appropriate period of time...

**Public agency must:**

- promptly request parent consent to evaluate child

**Click I**

Click 1:  
The middle part of the slide loads, tracking the "if-then" and ending at Bullet 1 of what the public agency must do.

(continued on next page) 



**Parent Participation**

Parents may request that their child be evaluated under IDEA at any time

When child is provided appropriate instruction...

...and does not make adequate progress after appropriate period of time...

**Public agency must:**

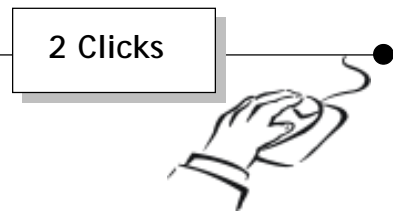
- promptly request parent consent to evaluate child
- adhere to evaluation timelines (unless extended by mutual written agreement with child's parents)

**Click 2**

← Click 2: Bullet 2 loads.

CLICK AGAIN to advance to next slide.

**Slide 31: Background and Discussion**



As the slide summarizes: *Parents may request that their child be evaluated under IDEA at any time.*

Using an RTI approach to see how a child responds to research-based interventions before evaluating that child under IDEA is one option school systems may choose. As has been explained, RTI acknowledges the possibility that a child's difficulties may result from inappropriate or insufficient instruction to date. However, RTI may not be used to delay or deny a child's evaluation. And parents may always request one.

The second part of the slide is derived directly from pertinent regulatory provisions that we've cited verbatim in the box on the

next page. These touch again on the possibility that underachievement in a child suspected of having LD may be "due to lack of appropriate instruction in reading or math" [§300.309(b)]. This possibility must be considered as part of determining the existence of such a disability. This is more than a judgment call, however. The consideration must be data-driven, as (b)(1) and (b)(2) make clear.

What is crucial to point out about these provisions is that they apply regardless of whether the LEA is using an RTI approach to identification or some other process that is permitted under State criteria. And, as you can see in §300.309(b)(2), IDEA requires that parents be informed about the child's progress during

instruction, as measured by repeated assessments at reasonable intervals.

In the event that the child has not made adequate progress, as the slide states and as described in §300.309(c)(1)—and here comes the slide's conclusion—then the public agency must:

- promptly request parent consent to evaluate the child; and



- adhere to the timelines established within IDEA (unless extended through the mutual written agreement IDEA describes).

### What are the Regulations' Timelines for Evaluation?

The timelines for evaluation under IDEA are covered in detail in the *Initial Evaluation and Reevaluation* module. As described there:

The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe...[§300.301(c)(1)]

Under prior law, public agencies were required to conduct initial evaluations within a “reasonable period of time” after receiving parental consent, so the specification of a 60-day timeframe in IDEA 2004 represents a significant change that should be identified as such to your audience. Do note, however, any timeframe established by the State for this initial evaluation takes precedence over IDEA’s new 60-day period, regardless of whether that timeframe is longer or shorter than IDEA’s.



Putting this information together with the slide and the regulations’ provisions in the box above, then, the public agency must adhere to estab-

### IDEA 2004’s Regulations at §300.309(b) and (c): Two Elements in Determining the Existence of a Specific Learning Disability

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

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

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child’s parents and a group of qualified professionals, as described in §300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

§300.309(b) and (c)

lished timeframes in seeing that the child’s evaluation is conducted. That is, unless those timelines are “extended by mutual written agreement of the child’s parents and a group of qualified professionals, as described in §300.306(a)(1)” [§300.309(c)].

View I

**RTI in Practice**

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- There are many RTI models in use\*

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\* The Department does **not** mandate or endorse any particular RTI model

Slide loads top bullet and the bottom disclaimer.

**RTI in Practice**

---

- There are many RTI models in use\*
- In RTI, progress monitoring is critical to:
  - ✓ Pinpoint child's areas of difficulty
  - ✓ Keep close track of child's progress

---

\* The Department does **not** mandate or endorse any particular RTI model

Click I

Click 1:  
The 2nd bullet loads fully, including the sub-bullets.

(continued on next page) 

## RTI in Practice

- There are many RTI models in use\*
- In RTI, progress monitoring is critical to:
  - ✓ Pinpoint child's areas of difficulty
  - ✓ Keep close track of child's progress
- Staff use formal guidelines to decide which children are not making adequate progress or responding to the intervention

\* The Department does **not** mandate or endorse any particular RTI model

Click 2

Click 2:  
Bullet 3 loads.

CLICK AGAIN to advance to next slide.

### Slide 32: Background and Discussion

2 Clicks

Slide 32 begins the wind-down of training by looking at RTI in practice. Emphasized on this slide are the following points:

- There are many RTI models in use. *The U.S. Department of Education does not mandate, recommend, or endorse any one specific model.*
- In RTI, progress monitoring is critical to:
  - Pinpoint child's area(s) of difficulty
  - Keep close track of child's progress.
- Staff use formal guidelines to decide which children are not

making adequate progress or responding to the intervention.

The first two points should have been made clear during the training proper, so mentioning them now can serve as a reminder. The third, however, has only been alluded to and is the field's answer and recommendation to those interested in developing or implementing RTI. Intrinsic to RTI is the question, "Has the child made sufficient progress?"

Answering that question "yes" versus "no" leads in two distinct directions—one, back to regular instruction, and the other, on to a more intensive level of intervention or to com-

prehensive evaluation under IDEA 2004. So—what is adequate progress, significant progress? How much progress is enough? Are there guidelines for making these decisions? Formal guidelines? Written down. Understood by practitioners. Implemented. Monitored to make sure they are consistently applied. Documented.

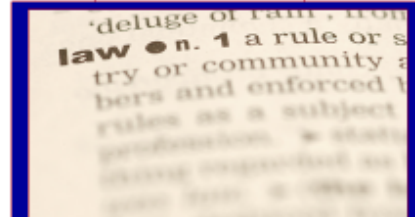
Obviously, a great deal could be said about the benefits of implementing RTI with formal guidelines that spell out where performance cutoffs will be for children—and more.



**View 1**

**IDEA and RTI**

- IDEA 2004 regulations do not define RTI
- Regulations are written to accommodate different models of RTI

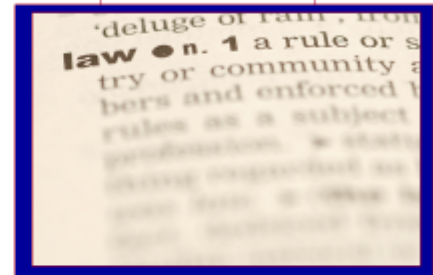


Slide loads with this view, Bullets 1 and 2 showing.

**Clicks 1-3**


**IDEA and RTI**

- IDEA 2004 regulations do not define RTI
- Regulations are written to accommodate different models of RTI
- RTI does not replace a comprehensive evaluation
- Evaluation teams must use a variety of tools and strategies, even if RTI is used
- Results of RTI may be one part of information reviewed



Click 1, 2, and 3: Each click brings up a different bullet.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



Slide 33...Almost done...The top half of the slide loads with these two bulleted items:

- IDEA 2004’s regulations do not define RTI.
- Regulations are written to accommodate different models of RTI.

Both of these items may already be apparent to some who are reading between the lines of what IDEA 2004 does state about RTI, but it is worthwhile to explicitly draw audience attention to these two points.

The bottom half of the slide puts RTI within the broader context of IDEA-required evaluation. One disadvantage of focusing narrowly upon a given provision of IDEA is that the big picture and other requirements of law fall out of focus. Here, to bring that bigger picture back into view, are three points to emphasize:

- RTI does not replace a comprehensive evaluation.
- Evaluation teams must use a variety of tools and strategies, even if RTI is used.
- Results of RTI may be one part of information reviewed.

RTI is not intended to replace comprehensive evaluation in IDEA, as the Department discusses in the Analysis of Comments and Changes to the final Part B regulations (see excerpted remarks in the box on the right). It’s meant to intervene in a research-based and hopefully effective way to address

difficulties children are having, either academically or behaviorally. It rests on the possibility that prior instruction, not disability, might be at the root of the problem. It’s meant for all children, even as it may also be used as part of making LD determinations. IDEA 2004 requires that evaluation teams gather a wide range of information about a child suspected of having a disability, any disability. This evaluation must involve a variety of tools and strategies, as explored in *Introduction to Evaluation*. The part that RTI results can play in diagnosing a specific learning disability has been summarized in this training, so

that participants see the connections between this approach and the identification of LD. The details of IDEA 2004’s regulations for identifying LD will be thoroughly examined in their own right, in the module on *Identification of Children with Specific Learning Disabilities*. Make it clear to your audience that there is more involved than the summary presented here.

**Excerpted Remarks**  
from the Analysis of Comments and Changes to the Final Regulations

An RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§300.304 and 300.305. As required in §300.304(b)...an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services.

It is up to each State to develop criteria to determine whether a child has a disability, including whether a particular child has an SLD. In developing their criteria, States may wish to consider how the criteria will be implemented with a child for whom systematic data on the child’s response to appropriate instruction is not available. ...However, under §300.306(b), a public agency may not identify any public or private school child as a child with a disability if the determinant factor is lack of appropriate instruction in reading or math.)

(71 Fed. Reg. 46648)

# Roundup Time!



Slide loads fully. No clicks are necessary except to END the slide show.

CLICK to END the slide show.

Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Depending on how much time you have available for this training session, you can have participants work in small groups on an EIS or RTI objective; make a quick list of what information they've gleaned from this session; or once again revising the opening

activity and run through the initial list of "I-need-to-know" questions they generated, making the participants answer them themselves, correcting misinformation as necessary. Emphasize the local or personal application of the information presented here.