

FACT SHEET

Requirement for a School System’s Determination of Learning Disability and Use of Response to Intervention (RTI)

The final regulations incorporate new requirements regarding identifying children with specific learning disabilities (SLD) and early intervening services (EIS). With regard to identifying children with SLD, the regulations:



- (1) Allow a local educational agency (LEA) to consider a child’s response to scientific, research-based intervention as part of the SLD determination process;
- (2) Allow States to use other alternative research-based procedures for determining whether a child has a SLD;
- (3) Provide that States may not require the use of a severe discrepancy between intellectual ability and achievement to determine whether a child has a SLD; and
- (4) Require a public agency to use the State criteria in determining whether a child has a SLD and discuss the role that response to scientific research-based interventions plays in a comprehensive evaluation process.

The requirements for using a process based on a child’s response to scientific, research-based intervention when determining that the child is a child with a specific learning disability are found in the regulations at 34 CFR §§300.307, 300.309 and 300.311.

34 CFR § 300.307 Specific learning disabilities.



~~(a) General. A State must adopt, consistent with § 300.309, criteria for~~ The In Child, Inc. Center for Infertility Information Dissemination
determining whether a child has a specific learning disability as defined in §
300.8(c)(10). In addition, the criteria adopted by the State—

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(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.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

34 CFR § 300.309 Determining the existence of a specific learning disability.

(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—

(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; or

(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; and

(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.

(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 student 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.

34 CFR§ 300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and

(ii)

(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or

(B) 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 consistent with § 300.309(a)(2)(ii);

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student 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.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group

member must submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

The InterNational Council on Infertility Information Dissemination (INCIID - pronounced "inside") is a nonprofit organization that helps individuals and couples explore their family-building options. INCIID provides current information and immediate support regarding the diagnosis, treatment, and prevention of infertility and pregnancy loss, and offers guidance to those considering adoption or childfree lifestyles. INCIID continues to support families after their creation.

INCIID added a “Special Needs” parenting section to the website and an “Expert Moderator on Parent Advocacy”. INCIID also added a 24 part series of articles and online workshops to help parents learn to advocate. To sign up for the series and for future notification for Webinars and workshops sign up for the INCIID Insights Newsletter:

<https://inciid.org/sign-up>

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