



*RtI and the
Special Education
Eligibility Process*

Frequently Asked Questions

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Virginia Department of Education
Office of Student Services
Division of Special Education and Student Services

This document complements and extends information disseminated by the Virginia Department of Education in an earlier document entitled, *Responsive Instruction: Refining Our Work of Teaching All Children*, Virginia’s “Response to Intervention” Initiative. The earlier document can be accessed at the following Web site: http://www.doe.virginia.gov/VDOE/studentsVCS/RTI/guidance_document.pdf.

The Virginia Department of Education does not mandate or prescribe a particular eligibility form or format. The information contained herein is provided only as a resource that educators may find helpful and use at their option in guiding their special education eligibility determination process.

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Preface

In November 2007, the Virginia Department of Education issued a guidance document on Response to Intervention (RtI) to every Local Educational Agency (LEA) in Virginia. That document, *Responsive Instruction: Refining Our Work of Teaching All Children*, defined RtI as an instructional framework that embraces both general and specialized education practices. The guide identified five essential components of responsive instruction: sound core instruction, universal screening, tiered intervention and support, student progress monitoring, and fidelity of implementation. This Frequently Asked Questions (FAQ) monograph is designed to provide supplementary guidance to *Responsive Instruction: Refining Our Work of Teaching All Children* by answering technical questions regarding RtI and the special education eligibility process. It should be read in conjunction with the primary guidance document.

If implemented with fidelity within the general education setting for a child being referred for evaluation because of a suspected disability, the RtI process should provide additional information that could be critical in assisting LEAs in making special education eligibility decisions. Special education administrators should have a clear and concise understanding of how this information should be viewed and used in the special education eligibility process to ensure that regulatory procedures are followed and non-compliance is avoided. RtI information should be used to ensure that eligibility decisions are made based on multiple sources of data and the educational needs of the student. Doing this decreases the impact of assessment biases, or the lack of quality instruction.

VDOE recognizes that it is virtually impossible to answer all the questions that may arise about RtI and the Eligibility Process in this document. Additional information is available through the VDOE Office of Special Education Instructional Services at (804) 225-2707, the toll free voice number (804) 422-2083, or VDOE's toll free TDD number (800) 422-1098. This document will be available at the following VDOE Web Site:

<http://www.doe.virginia.gov/VDOE/studentsrvcs/RTI/>

Question #1: Which provisions in the federal regulations implementing the *Individuals with Disabilities Education Improvement Act (IDEA)* establish the use of a RtI process in determining a student’s eligibility for special education services?

The use of RtI as an instructional intervention model is supported in several provisions of the federal regulations implementing the IDEA, most notably at 34 CFR §§ 300.307 - 300.311.¹

According to the federal regulations, the school team reviewing a child’s performance may use a process based on the child’s response to scientific, research-based interventions. As the U.S. Department of Education has stated in its commentary on these requirements, this review may not delay evaluations of a child suspected of having a disability. (Fed. Reg., p. 46657-46658, August 14, 2006). The review of the child’s response to scientific, research-based interventions may result in the team referring the child to the special education administrator or designee for an evaluation to determine if the child is eligible for special education and related services.

The federal and state law and regulations governing special education also require the eligibility determination for special education and related services be made on an individual basis by a group of qualified professionals and parents. This eligibility group is expected to follow specific and consistent procedures as detailed in the regulations governing special education for determining eligibility and educational need. The eligibility group is required to draw upon information gathered from a variety of sources and ensure that the child is observed in the child’s learning environment. (34 CFR §§ 300.305; 300.310; 300.311). The eligibility group must consider, as part of the evaluation, data that demonstrates that the child was provided appropriate high-quality, research-based instruction in general education settings and that the instruction was delivered by qualified personnel. (34 CFR §§ 300.305; 300.306; 300.309).

Question #2: Must Local Educational Agencies (LEAs) provide RtI practices or activities?

The IDEA regulations at 34 CFR § 300.307 delineate that the *state* must provide criteria for determining whether a child has a specific learning disability, and that said criteria:

- a) *Must not require* the use of a severe discrepancy between intellectual ability and achievement

¹ Federal regulations present RtI in the framework of the category of Specific Learning Disability. Virginia, however, does not restrict RtI to this category of special education alone.

- b) *Must permit* the use of a process based on the child's response to scientific, research-based interventions (RtI)
- c) *May permit* the use of other alternative research-based procedures for determining whether a child has a specific learning disability (emphasis added).

This section seems to leave open the possibility that LEAs need not develop RtI practices or processes. VDOE, however, fully embraces the concept as permitted in the federal regulations that RtI is a viable option for school-based teams to consider in responding to the educational needs of children, including children who may later be suspected of having a disability. In addition, as documented in *Responsive Instruction: Refining Our Work of Teaching All Children* (pp.2-4), several provisions of the *Code of Virginia* at § 22.1-253.13:1 (*Standards of Quality*), and the *Regulations Establishing Standards for Accrediting Public Schools In Virginia* (8 VAC 20-131-310), support the development of instructional practices consistent with RtI practices. If LEAs align their instructional practices to these documents, they are already well on the way to adopting RtI practices.

Federal law promotes the use of RtI activities and procedures in cases where a child is suspected of having a *specific learning disability* (emphasis added). RtI as defined by Virginia encompasses sound instructional practices and evidence-based interventions that would benefit any child in educational need. As such, the student data could be of benefit for *any* child referred for consideration of special education eligibility, while considering the respective disability definitions and eligibility requirements. *Responsive Instruction: Refining Our Work of Teaching All Children* extends the use of RtI's application to all children.

Question #3: Who is responsible for implementing RtI practices in a LEA?

The superintendent and the team of individuals in the LEA who oversee general and special education services and monitor the effectiveness of instruction and intervention efforts in the school division are responsible for RtI practices. At the building level, the school principal and student progress monitoring team (student focused problem-solving team) are responsible for implementing RtI practices.

The student progress monitoring team oversees the RtI process at the school level. It ensures the provision of sound core instruction in the classroom, oversees universal screenings for identifying struggling learners, provides a tiered system of intervention, and ensures the frequent monitoring of student progress. Additionally, and in accordance with VDOE's

Responsive Instruction: Refining Our Work of Teaching All Children, a school's student progress monitoring team ensures that the RtI process is a collaborative one that includes parents.

The progress monitoring team develops a plan that identifies a student's learning or behavioral problem, addresses the amount and duration of education services that will be provided in the RtI process, and the nature of student performance data that will be collected to determine the effectiveness of the intervention. VDOE's guidance document suggests that four to eight weeks of formative assessment data in the areas of concern at each tier of intervention is a reasonable amount of time to intervene.² (p. 35) These instructional interventions should be conducted with a high level of fidelity prior to convening any team to consider a child's need for evaluation for a suspected disability. As part of progress monitoring, the team must provide documentation that research-based instruction has been delivered, repeated assessment of achievement at reasonable intervals has been conducted, and student progress data has been systematically collected and analyzed (pp.34-36). (See Appendix A: Sample Documentation of RtI Activities)

In summary, RtI practices should be delivered in the local school building, guided by a multidisciplinary team. (*Responsive Instruction: Refining Our Work of Teaching All Children*, pp. 37-47)

Question #4: How is RtI used in the eligibility process?

RtI can be useful in the eligibility process in the following ways:

- By helping the eligibility group decide if more evaluation data is needed
- By documenting that the student was provided appropriate high-quality research-based instruction in general education settings, and that the instruction was delivered by qualified personnel
- By providing data to the eligibility group as one part of the evaluation process used to determine if the student has a disability that requires special education and related services.

RtI practices that help identify unexpected lower learning *levels* and lower learning *rates* can be used to determine the need for an individual comprehensive evaluation. Research-based

² *Responsive Instruction: Refining Our Work of Teaching All Children* is Virginia's policy as regards requirements in 34 CFR § 300.311(a)(7).

practices implemented with fidelity will help school teams monitor student progress to decide when there is a need for additional information about a child that can only be gathered through comprehensive individual assessment obtained through the special education evaluation process. (*Responsive Instruction: Refining Our Work of Teaching All Children*, p. 2)

Question #5: When using RtI as a component of eligibility determination, does a pattern of strengths and weaknesses have to be established?

Yes. Whether RtI is used, or any other permissible method of identifying a specific learning disability or other disability, a pattern of strengths and weaknesses in performance, achievement, or both, must be established relative to age, grade level standards or intellectual development. This evidence/documentation must be considered as part of the evaluation as described in 34 CFR § 300.309.

Question #6: Can eligibility be determined solely by RtI?

No. RtI practices can assist eligibility groups in determining special education eligibility by providing useful information to the evaluation and eligibility process, as well as determining the educational needs of the child. The information obtained through RtI progress monitoring will provide the eligibility group with documentation that the student's lack of academic progress is not the result of inappropriate instruction in reading or mathematics, or the result of limited English proficiency. (34 CFR §§ 300.301 through 300.311).

Question #7: Can a child be found eligible for special education services without using RtI?

Yes, as long as the eligibility team's decision is compliant with state regulations that outline the individual disability identification requirements and procedures. However, as noted in the RtI guidance document, when a student is suspected of having a specific learning disability, the data collected during the course of RtI is an assessment that is part of the evaluation leading to the eligibility determination process.

Question #8: Can a LEA continue to use the discrepancy between intellectual ability and achievement model in determining that a child has a specific learning disability?

Yes, the LEA can continue to use a discrepancy between intellectual ability and academic achievement model to determine whether or not a child has a specific learning disability. It is important to note that the *state* cannot mandate that LEAs use a discrepancy model for making such a determination, and that *state* criteria *must* permit the use of a process based on a child's response to scientific, research-based intervention (RtI). Additionally, the state *may* permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability. (emphasis added) 34 CFR §§ 300.307(a); 300.308.

The discrepancy model utilized by LEAs must provide information to the eligibility group that allows consideration of the child's pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development. (34 CFR § 300.309(a)(2)(ii)). Note, consideration of a child's pattern of strengths and weaknesses may require the modification of protocols utilized prior to the enactment of IDEA 2004.

Student performance data gathered through a RtI process that includes sound instruction, universal screening, evidence-based tiered interventions, progress monitoring with formative assessments, and fidelity of implementation will assist school divisions in using discrepancy models more effectively and judiciously. A RtI process does not take the place of a comprehensive evaluation, and the information collected from the RtI process is one component reviewed as part of individual evaluation procedures at 34 CFR § 300.304(b), and § 1414(b)(2) of IDEA, which states 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.

Finally, the federal definition of specific learning disability should always guide the eligibility decision-making process. It provides that a specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, speak, read or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include a learning problem, which is primarily the result of visual, hearing, or motor disabilities,

of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. 34 CFR § 300.8 (c) (10).

Question #9: What is considered a reasonable amount of time to measure student progress, in response to intervention(s), prior to a special education referral?

The frequency and the duration of any intervention will vary according to the individual needs of the student. Factors such as the student's baseline performance level, response to prior intervention, stability of the student's current school and instructional environment, the intensity of the interventions, and the fidelity with which they are implemented, must be considered in the decision-making process. *Responsive Instruction: Refining Our Work of Teaching All Children* suggests that four to eight weeks of intervention at a tier is reasonable (p.35), and that movement between the tiers will depend on the student's responsiveness to intervention (Appendix B: RtI and the Eligibility Process Flowchart). The student progress monitoring team should make decisions based on the student's progress and the student's needs. Importantly, referral for special education evaluation must be made at any time during the RtI process if the parent or educational professionals suspect a disability. (*Id* at p.49)

Question #10: How will RtI practices impact students who are currently receiving special education services?

The IDEA statute and its implementing regulations, as well as case law, are quite clear that a LEA may not disrupt or interrupt a child's Individualized Education Program (IEP) services or placement, unless the IEP team reconvenes to make revisions or amendments.³ Therefore, specialized education and related services delivered in keeping with an IEP must not be disrupted. However, students receiving special education can participate in RtI practices and intervention as determined by the IEP team. This data will help inform the IEP team about the student's progress toward IEP goals.

During a re-evaluation, if the RtI process has been used as a method of providing specialized instruction, then the data collected through progress monitoring would provide useful information to the evaluation and eligibility process, as well as determining the educational

³ Upon agreement of the parent and the school division, changes may be made to the child's IEP after the annual IEP team meeting for a school year through a written document to amend or modify the child's current IEP. The school division must ensure that the child's IEP team is informed of the changes. 34 CFR § 300.324(a)(4).

needs of the child. The information obtained through RtI progress monitoring will provide the eligibility group with documentation that the student's lack of academic progress is not the result of inappropriate instruction in reading or mathematics, or the result of limited English proficiency.

If a student was found eligible for special education services using the severe discrepancy model and is due for re-evaluation, the re-evaluation process should be followed. Review of existing evaluation data and the determination of whether additional data are needed are required elements of that process. The eligibility group should consider all evaluation data, including but not limited to, review of records, information provided by the parents, various forms of student assessments, classroom/teacher observations and whether with appropriate accommodation the student is able to meet grade level behavioral and academic expectations. Based on this information, a decision concerning the continuation of special education and related services should be made.

Question #11: Do timelines apply to a student receiving intervention in Tiers 1, 2, or 3?

Regulatory timelines are part of the special education eligibility process and are not part of a RtI process. Special education timelines begin when educators, in consultation with a child's parents, suspect that a child has a disability that is adversely impacting his or her educational performance and, as a result, an oral or written referral is made to the special education administrator. Timelines adhere in the following ways.

When the LEA suspects that a child may have a disability, then the child *must* be evaluated within 65 business days from receipt of the referral by the special education director or designee. If the child is already engaged in a RtI process, review of the intervention data is essential. If it is determined that additional information is needed and will extend beyond the mandated eligibility evaluation timeline prescribed in the special education state regulations (i.e., the 65 business days), the eligibility group and the parent(s) may agree to an extension of the mandated timeline.

Federal regulations, at 34 CFR § 300.301(b), allow a parent to request an evaluation at any time. However, with documented reasons and prior written notice as required under 34 CFR § 300.503(a)(2), the LEA may decline a parent's request for an evaluation. The notice must be given to the parents of a child with a suspected disability in "...a reasonable time before the

public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of Free Appropriate Public Education (FAPE) to the child.” (*Id.*). Parents have a right to challenge the LEA decision to not evaluate by initiating a due process hearing and/or requesting mediation to resolve the dispute. (34 CFR § 300.507).

Question #12: When do members of a team that determines eligibility become involved in decision-making with RtI?

If the RtI process leads to initiation of the special education evaluation process to determine whether a child has a disability and needs special education and related services, then the special education eligibility group would become involved in decision-making regarding the student’s eligibility. The eligibility group reviews all available information regarding the academic or behavioral concerns, determines if additional data is required, and what that data might be, and ensures that all information and data obtained in this process are used to determine the child’s eligibility for special education and related services. If the child was involved in the RtI process, then the eligibility group (in accordance with federal regulations) must review, and record in the eligibility determination documentation, the instructional strategies used and the student-centered data collected. (34 CFR §§ 300.306(c)(1); 300.311(a).

Finally, as described above, documentation must be provided that indicates the parents were notified of state policies regarding the amount and nature of student performance data that would be collected, the general education services that would be provided, the strategies for increasing the child’s rate of learning, and the parents’ right to request an evaluation. 34 CFR § 300.311(a) (7)(ii). The eligibility group must determine “[t]he child does not achieve adequately for the child’s age or to meet State-approved grade-level standards...when provided with learning experiences and instruction appropriate for the child or State-approved grade-level standards...” 34 CFR § 300.309(a)(1). The review of data collected during the RtI process helps to ensure that underachievement in a child that is suspected of having a disability is not due to the lack of appropriate instruction.

Question #13: How do parents participate in the RtI process?

Response to Intervention: Refining Our Work of Teaching All Children addresses the importance of parent participation in the educational and instructional decision-making during

the RtI process. (pp.48-49) Instructional best practices presume that parents will be included in RtI activities from the very beginning. Several provisions in the *Code of Virginia* at § 22.1-253.13:1 (*Standards of Quality*), and the *Regulations Establishing Standards for Accrediting Public Schools In Virginia* (8 VAC 20-131-220), support the RtI process by establishing the requirement of assessing and reporting student progress to parents and providing remediation to students who are at-risk of failure on the Standards of Learning tests.

In Virginia, parents must be notified of any universal screening tool that is part of a LEA's core instructional practices. Parents must be informed of their children's performance on screenings and should be notified when instructional interventions to enhance/improve student performance are instituted. Such information would be shared with parents prior to intervention and at regularly scheduled parent-teacher conferences designed to monitor student progress and communicate progress to parents. At the earliest suspicion of learning difficulties, schools should involve parents in the problem-solving process. (*Response to Intervention: Refining Our Work of Teaching All Children, p.48-49*)

There are a number of resources to which parents can be directed for a more thorough explanation of how they can participate in collaborative efforts designed to help their children learn. Two of these resources are:

National Research Center on Learning Disabilities' *ABC's of RTI* (for parents).

http://www.nrclid.org/free/downloads/ABC_of_RTI.pdf

Klotz, M. & Canter, A (2007). *Response to Intervention (RTI): A Primer for Parents*.

<http://www.ldonline.org/article/>

Question #14: What does RtI look like for preschool children who exhibit signs of delay or difficulty?

Two major universities are in the forefront of research regarding preschool age intervention: the University of Wisconsin and the University of North Carolina at Chapel Hill. A study supported by the U.S. Department of Education at the University of Wisconsin, *Applying A Response-to-Intervention for Early Literacy Development in Low Income Children*, suggests that the preschool RtI process is very similar to the process recommended for school age students, and includes the five key components: scientifically-based curriculum and instruction/activities delivered in tiers of intensity; screening, monthly progress monitoring and outcome assessment;

high literacy-rich environments; ongoing professional development of educators; and family involvement.

Following a screening process, at the preschool age level, Tier 1 instruction should be provided in a literacy-rich environment with scientifically-based early literacy practices. Tier 2 services are provided in small groups with emphasis on additional practice of literacy skill development based on individual needs. The Tier 3 instructional model of individual tutoring is provided to children identified with the highest risk of developing difficulties. Just as with the school age model, progress monitoring and fidelity of implementation are necessary components for the successful implementation of this RtI model at the preschool level. (Gettinger, 2007)

Research findings from the Frank Porter Graham Research Center (FPGRC), at the University of North Carolina, outline early intervention processes very similar to those described by the University of Wisconsin. The RtI preschool intervention process there, *Recognition and Response*, is designed around four components: tiers of intervention, screening/assessment/progress monitoring, research-based instruction and collaborative decision making. Included in their research publication are several resources available to schools implementing RtI preschool programs. (Coleman, 2006)

It is important to remember that federal regulations require LEAs to maintain an active child find program for all children with disabilities. 34 CFR § 300.311. This includes preschool age children who exhibit delays. Furthermore, child find activities should involve parents, community agencies, and other consumers in the school division in an effort to address the educational needs of its children.

Question #15: How would a LEA use a RtI process in identifying a child with a suspected disability who had been placed in a private school by his or her parents?

Children who are placed by their parents in private schools may evidence educational challenges that lead private school personnel to suspect the child has a disability. LEA special education administrators are responsible for implementing child find regulations for such children in private schools located in their jurisdictions. (34 CFR § 300.131 –§300.132). The special education administrator may assess the concerns of the private school personnel and parents through the lens of RtI practices. Since RtI practices evolve out of sound general education instructional practices, it would not be unusual to be able to identify systematic

attempts at intervention and/or tiers of interventions that private school educators had made in their efforts to teach the child.

The LEA would work collaboratively with private school educators and parents in addressing concerns about a child's need for a special education evaluation. However, the LEA would be expected to comply with the regulations governing special education in those efforts. They must ensure that the school division does not needlessly delay a child suspected of having a disability from being evaluated to determine eligibility for special education and related services. (*Fed. Reg.*, p. 46657-46658, August 14, 2006) The U.S. Department of Education's Office of Special Education Programs notes in their commentary to the federal regulations that §300.309(c) was revised to ensure that the school division promptly requests parental consent to evaluate a child suspected of having a specific learning disability (SLD) who has not made adequate progress when provided with appropriate instruction and whenever a child is referred for an evaluation. (*Id.*)

References

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Appendix A
Sample Documentation of Response to Intervention (RtI) Activities

Student:	School:	Grade:
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Date	Initial meeting to define the problem. Parent, teacher and the progress monitoring team convene and discuss academic concerns. Check appropriate items below. Attach samples of additional information if needed.
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Reading <input type="checkbox"/> Phonemic Awareness <input type="checkbox"/> Phonics <input type="checkbox"/> Fluency <input type="checkbox"/> Comprehension <input type="checkbox"/> Vocabulary <input type="checkbox"/> Other	Mathematics <input type="checkbox"/> Numeracy <input type="checkbox"/> Calculation <input type="checkbox"/> Fluency <input type="checkbox"/> Problem Solving <input type="checkbox"/> Other	Writing <input type="checkbox"/> Letter Knowledge <input type="checkbox"/> Letter Writing <input type="checkbox"/> Fluency <input type="checkbox"/> Other	Behavior Please describe:
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Analyze the problem:
The review of existing data indicates (Attach academic, discipline, and attendance data if appropriate):

Development of Intervention Plan: Goal(s)/Objective(s):

Research-based intervention	Persons responsible	Services/delivery model	Frequency and duration of services	Progress monitoring assessment & schedule
		<input type="checkbox"/> Tier 1 <input type="checkbox"/> Tier 2 <input type="checkbox"/> Tier 3 Describe:		

Implementation to Begin ___/___/___ Meeting to Evaluate Progress ___/___/___	Signatures: Team Leader _____ Teacher _____ Parent _____
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Date	Follow-Up Meeting to Evaluate: Collection of data that includes progress notes, observations, assessments, etc., should be reviewed, analyzed and summarized for the follow-up meeting. Summarize intervention results and decision below. Attach appropriate documentation or referral forms.
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Results of Discussion: <input type="checkbox"/> Goal was met. Discontinue intervention(s) on ___/___/___ <input type="checkbox"/> Progress was made, continue current intervention(s). Review progress ___/___/___ <input type="checkbox"/> Insufficient progress. Revise or develop new plan. <input type="checkbox"/> Insufficient progress. Committee referral to special education* <input type="checkbox"/> Parent requested referral to special education*	Signatures Team Leader _____ Parent _____ Teacher _____
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Appendix B Rtl and the Eligibility Process Flow Chart

