



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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OSEP MEMO 16-07

MEMORANDUM

TO: State Directors of Special Education, Preschool/619 State Coordinators, Head Start Directors

FROM: Ruth E. Ryder
Acting Director
Office of Special Education Programs

SUBJECT: A Response to Intervention Process Cannot Be Used to Delay-Deny an Evaluation for **Preschool Special Education Services** under the Individuals with Disabilities Education Act

It has been brought to the attention of the Office of Special Education Programs (OSEP) that some local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for preschool children suspected of having a disability.

The requirements related to child find in Part B of the Individuals with Disabilities Education Act (IDEA) require that each State and its LEAs have in effect policies and procedures to ensure that all children with disabilities residing in the State who need special education and related services, regardless of the severity of their disability, are identified, located, and evaluated. 34 CFR §§300.111 and 300.201. The IDEA child find requirements permit referrals from any source, including private and public preschools (e.g., Head Start) and community-based child care programs (hereinafter “preschool programs”), that suspects a child may be eligible for special education and related services. It is critical that this identification occurs in a timely manner and that no procedures or practices result in delaying or denying this identification. States and LEAs have an obligation to ensure that evaluations of all children suspected of having a disability, including evaluation of 3-, 4-, or 5-

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year-old children enrolled in preschool programs, are not delayed or denied because of implementation of an RTI strategy.¹

A multi-tier system of supports, often referred to as RTI, means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to a child's needs, with regular observation to facilitate data based instructional decision-making. OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs and preschool programs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions. The IDEA, however, does not require, or encourage, an LEA or preschool program to use an RTI approach prior to a referral for evaluation or as part of determining whether a 3-, 4- or 5-year old is eligible for special education and related services.

Once an LEA receives a referral from a preschool program, the LEA must initiate the evaluation process to determine if the child is a child with a disability. 34 CFR §300.301(b). An LEA may not decline a child find referral from a preschool program until the program monitors the child's developmental progress using RTI procedures. If the LEA proposes to conduct an initial evaluation to determine if the child qualifies as a child with a disability under 34 CFR §300.8, the LEA must provide notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation.

Although IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule*, 71 FR 46540, 46637 (August 14, 2006). An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c). If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). Therefore, it would be

¹ See OSEP Memorandum 11-07, A Response to Intervention Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act, issued on January 21, 2011 and OSEP Letter to Brekken (June 2, 2010).

inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.311 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a preschool program has not implemented an RTI process with a child and reported the results of that process to the LEA. If a parent believes a needed evaluation is being delayed based on an LEA's refusal to conduct an initial evaluation until the preschool program implements an RTI approach with the child, the parent may file a due process complaint under 34 CFR §300.507 or a State complaint under 34 CFR §300.153.

We hope this information is helpful in clarifying the relationship between RTI and evaluations pursuant to the IDEA. Please examine the procedures and practices in your State and LEAs to ensure that the use of RTI is not delaying or denying timely initial evaluations to preschool children suspected of having a disability.

Based on section 607(e) of the IDEA, we are informing you that this memorandum is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Lucille Sleger at Lucille.Sleger@ed.gov or Laura Duos at Laura.Duos@ed.gov.

Cc: Chief State School Officers
Early Childhood Technical Assistance Center
National Center on Systemic Improvement
Parent Centers
National Center on Parent, Family, and
Community Engagement
Protection and Advocacy Agencies