

*FAQ: SRBI and identification of students with learning disabilities
Comparison of state and federal requirements
September 18, 2011
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1. Does the law require Connecticut school districts to use SRBI to determine whether or not a child has a learning disability (LD)?

Federal regulations: No.

Connecticut proposed regulations: Yes.

A. COMMENTS

The proposed Connecticut regulations require that every district utilize response to SRBI as part of its eligibility determination for students with suspected LD (§10-76d-9).

In contrast, the federal regulations require only that the state give districts the option to use SRBI as part of its initial assessment for identification of learning disabilities (§300.307).

B. RECOMMENDATION

The state regulations should permit but not require the use of SRBI in the identification of learning disabilities, consistent with IDEA.

2. If a discrepancy between intellectual ability and educational achievement has been identified, do the regulations permit the PPT to consider this information?

Federal: Yes.

Connecticut: No.

A. COMMENTS

The state's proposed regulations prohibit any consideration of an existing discrepancy between a child's educational performance and intellectual disability—even when SRBI is used as well--restricting the PPT's ability to consider all relevant information (10-76d-9). The federal regulations do not include this prohibition but permit states to give districts the option to consider discrepancy as part of a comprehensive evaluation (300.307).

B. RECOMMENDATION

A PPT should be permitted to consider any information that it considers relevant to decision-making.

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3. Must a child complete all tiers of SRBI prior to being referred to special education?

Federal: No.

Connecticut: Yes, maybe no, no. Not clear.

A. COMMENTS

This is a source of widespread confusion in Connecticut, and OSEP has noted that Districts may be using SRBI to delay or deny a timely evaluation, as described in OSEP's *1/21/2011 Memo to State Directors of Special Education*. This problem needs to be clearly addressed in the Connecticut regulations.

An additional difficulty is that federal and state regulations are not consistent, with the federal regulations (300.309) indicating that alternative procedures may be implemented *prior to or as part of* an initial evaluation, whereas the Connecticut regulations (10-76d-7) say these procedures must be implemented *before* a referral is made.

The proposed state regulations (10-76d-7) also seem internally contradictory, stating that:

1. Prior to referral, alternative procedures must be explored. But then
2. Notwithstanding No. 1, districts must accept referrals for evaluation and convene a PPT (presumably even if alternative procedures have not been explored). And then
3. There must be prompt referral to a PPT of children who have even marginal attendance, behavior, or academic performance.

2 and 3 are consistent with federal "child find" regulations, which require that states have a process in place to identify students with disabilities "regardless of the severity" of the disability. 1 may mislead (has misled) Districts to committing child find violations.

The *Bureau's Analysis of Comments to the Proposed Special Education Regulations* (September 2011) also seems to contradict No. 1, stating on Page 39 that "as specified in IDEA 2004, families and school personnel always have the right to refer a student for consideration of eligibility for special education services by requesting an evaluation at any time, including prior or during the SRBI process."

OSEP's *1/21/2011 Memo to State Directors of Special Education* supports the Bureau's analysis, stating that "States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI² strategy. . . ."

B. RECOMMENDATION

The proposed state regulations should be revised to state that, "Before a child is referred to a planning and placement team or as part of the initial evaluation, alternative procedures and programs in general education should be explored. . . ." The regulations should also state that "families and school personnel have the right to refer a student for consideration of eligibility for special education services by requesting an evaluation at any time, including prior to or during the SRBI process," consistent with federal requirements.

² RTI (Response to Intervention) in the federal regulations is called SRBI (Scientific Research-Based Intervention) in the Connecticut regulations.

4. **Does a child's response/lack of response to SRBI determine whether or not a child has a learning disability?**

Federal: No.

Connecticut: Not clear.

A. COMMENTS

Connecticut districts and families have demonstrated considerable confusion about this issue. The federal regulations (§300.304) are much more clear, than the proposed state regulations (10-76d-9), with the federal regulations explicitly stating that no single measure may be the sole criterion for determining eligibility. This is further supported in the *Federal Register/Vol. 71, No. 156/Monday, August 14, 2006/Rules and Regulations*, which states on Page 46648 that "An RTI process does not replace the need for a comprehensive evaluation." Page 46646 also states, "the evaluation of a child suspected of having a disability, including an SLD, 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."

B. RECOMMENDATION

To align state regulations with IDEA, Connecticut regulations should use the same language as is found in OSEP's interpretation of the federal regulations, "the evaluation of a child suspected of having a disability, including a learning disability, must include a variety of assessment tools and strategies and cannot rely on any one procedure as the sole criterion for determining eligibility for special education."

5. **Is it reasonable for the state to require districts to use SRBI to identify students with learning disabilities even if SRBI is not yet in place in all grades of all schools in the District?**

Federal: No.

Connecticut: Yes.

A. COMMENTS

Although the Bureau, at times, asserts that SRBI is in place in every district, the Bureau also acknowledges that SRBI may not be in place and/or may not be properly implemented. The Bureau's *Analysis of Commentary of Proposed Special Education Regulations* (September 2011) states on Page 35 that "A board has a curriculum based on the state standards and is using SRBI all the time for the instruction of its students; it is not a situation where SRBI is implemented after a referral to special education is made." In contrast, on Page 39, it states, ". . . If there is any question or suspicion that a child may have a learning disability, a comprehensive evaluation must be performed even if the child did not receive appropriate instruction or the district did not provide appropriate interventions through their SRBI process."

Although the Bureau required that all Connecticut districts have in place SRBI no later than June 2010, the Bureau has not verified that this has properly occurred. Per an email to me from Perry Murdica at the Bureau of Special Education, "we have not formally collected this information and have no immediate plans to do so."

The federal interpretation of its regulations (OSEP's 9/24/2007 *Letter to Massanari*) indicates that it is not reasonable to require that districts use SRBI (called RTI in the federal regulations) as part of an evaluation for LD prior to SRBI being implemented in every school in every district. Further, it states that ". . . research indicates that the implementation of any process, across any system, is most effective when accomplished systematically, in an incremental manner, over time. If an LEA chose to 'scale up' the implementation of the RTI model gradually, over time, as would be reasonable, the LEA could not require the use of RTI for purposes of identifying children with SLD until RTI was fully implemented in the LEA."

B. RECOMMENDATION

Given that the state's proposed regulations rely heavily on districts' proper implementation of SRBI, the state's requirement that SRBI be relied upon for LD identification in every school district is premature. Instead, districts should be permitted to use SRBI if they have SRBI already in place.

6. Are the proposed state criteria for identifying a specific learning disability currently aligned with the federal criteria?

No.

A. COMMENTS

The state's proposed regulations identifying criteria for a learning disability fail to include a key piece of federal language, which references the need to consider a student's patterns of strengths and weaknesses in performance or achievement. However, §300.309 of the federal regulations states that the PPT "may determine that a child has a specific learning disability. . . if. . . 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. . . ."

B. RECOMMENDATION

The state regulation (10-76d-9) should incorporate the federal language in §300.309 in order to align state standards to IDEA.