

SLD, IDEA 2004 and RTI

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) was signed into law by President Bush on December 3, 2004. While the new law contains several significant changes from IDEA '97, the new language surrounding the identification of a specific learning disability (SLD) has seemingly generated more discussion, concern and confusion than all the other changes combined. The purpose of this article is to briefly explore that change and speculate how it might impact the identification of SLD in Minnesota.

Historical Context:

The use of an IQ-achievement discrepancy to identify SLD has existed since the first regulations implementing the Education for All Handicapped Children Act of 1975 (PL 94-142) were enacted in 1977. In a survey conducted by the National Research Center on Learning Disabilities in 2003, 48 of 50 states, including Minnesota, required a severe discrepancy as part of their SLD eligibility criteria (Reschley, Hosp & Schmeid, 2003). However, a growing body of research challenges the efficacy of the continued use of the IQ-achievement discrepancy model.

The President's Commission on Excellence in Special Education, in its report entitled *A New Era: Revitalizing Special Education for Children and their Families*, criticized the use of IQ-achievement discrepancy model to identify SLD as being "fraught with statistical and other interpretative problems," and as being a "wait to fail model." (p. 25) The Commission went on to recommend that "appropriate steps be taken to amend current federal regulations to indicate that IQ achievement discrepancies (and therefore IQ tests) are not necessary for the identification of children as having a learning disability," (p. 25) and that "To prevent the wrong children from being served, the Commission recommends that current regulations be modified so that the student's response to scientifically based instruction is part of the criteria for diagnosing the existence of SLD." (p. 26)

IDEA 2004

The statutory definition of SLD has not changed – both IDEA '97 and 2004 define SLD as: "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." Both definitions contain the same inclusions: "Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;" and the same exclusions: "Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (see PL 105-17 Part A §602 (26) and PL 108-446 Part A §602 (30))

What IDEA 2004 changes is the process by which a specific learning disability is identified. Following the recommendations of the President's Commission, IDEA 2004 states that "when determining whether a child has a specific learning disability . . . the local education agency shall not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability." (§614 (b)(6)(A)). This effectively prohibits states from requiring that local school districts use an IQ-achievement discrepancy formula as of July 1, 2005, the effective date for that section of the law.

The law goes on to state: “In determining whether a child has a specific learning disability, the local education agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures . . .” (PL 108-446 §614 (b)(6)(B)). This concept has become known as response to intervention, or RTI. However, it is important to note that IDEA 2004 does not mandate that RTI be part of a State’s SLD criteria – rather it simply permits districts to include RTI “as part of the evaluation procedures.”

The Proposed Regulations:

The Office of Special Education and Rehabilitative Services of the US Dept. of Education published draft regulations implementing IDEA 2004 in the Federal Register (Vol. 70 No. 118) in late June. Within the proposed regulations lies a grouping of sections entitled “Additional Procedures for Evaluating Children With Specific Learning Disabilities.” While much of the proposed language within this grouping is similar to the IDEA ’97 Regulations (i.e., composition of the evaluation team, requirement for an observation, etc.), two sections contain new language regarding SLD criteria.

§300.307 requires that each state develop criteria for identifying an SLD that is consistent with the federal law. In so doing, the proposed regulations further require that:

- 1) States cannot require that districts use an IQ-achievement discrepancy formula to determine the presence of SLD. However, state criteria may be written to either allow or prohibit individual districts the option to utilize a discrepancy model as part of the evaluation process;
- 2) State criteria may require, but minimally must allow districts the option to utilize RTI as part of the evaluation process; and
- 3) State criteria may permit the use of “alternate research-based procedures” to determine the existence of a SLD.

§300.309 requires that when determining that a child has SLD, the evaluation team must document that:

- 1) The child, having received “learning experiences appropriate to the child’s age,” does not achieve commensurate with their age in one or more of the basic qualifying areas (i.e., oral expression, listening comprehension, basic reading skills, etc.);
- 2) The student is failing to meet the state-approved standards “when assessed with a response to scientific, research-based intervention process;” or that they display a pattern of intellectual strengths and weakness relative to IQ that is “relevant to the identification” of SLD;
- 3) The achievement deficits noted in #1 and #2 are not the result of one of the exclusionary factors (i.e, sensory deficits, mental retardation, etc.); and
- 4) The evaluation report must include documentation that the child “was provided appropriate, high-quality, research based instruction in regular education . . . delivered by qualified personnel,” and that the parents have been provided documentation of ‘repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.’” (§300.309(b)(3))

Sections 300.307 and 300.309 appear somewhat contradictory. While §300.307 states that the use of RTI to identify SLD is permissive, §300.309 requires that evaluation teams document that the child was provided “appropriate, high-quality, research-based” instruction, and that student progress be monitored through the use of frequent, repeated measures of achievement – which are both key components of RTI.

What is RTI?

RTI is *not* a new form of eligibility criteria. Rather, it is a process that provides high quality interventions to at-risk students so that potential academic and behavioral problems are resolved before they become severe – as such, it is the exact opposite of a “wait to fail” model. At its core, RTI is a problem-solving

process. As the goal of the RTI process is early identification and intervention, questions about special education eligibility don't arise until the RTI process has proven unsuccessful in resolving the child's learning or behavioral problems.*

RTI can be broken into four basic components:

- 1) Early screening of all students to identify those who are at-risk for academic failure;
- 2) Providing well-implemented, high-quality, research-proven instruction and other interventions to at-risk students;
- 3) Conducting frequent and repeated measures of student progress to assess the effectiveness of interventions; and
- 4) Special education is provided to those students who:
 - a. are achieving below age/grade expectations,
 - b. fail to make adequate progress having been provided well-implemented, high-quality, research-proven interventions, and
 - c. their inability to make adequate progress is not the result of one or more of the exclusionary factors.

Perhaps the most persuasive rationale for moving toward a RTI approach is contained within the President's Commission Report, which states:

Witnesses provided the Commission with compelling evidence indicating how early intervention can prevent disabilities in many children and ameliorate their impact in those who develop them. Although the focus of early intervention has largely been on reading, this is understandable given that up to 90 percent of children identified as SLD have reading as their primary area of difficulty. The Commission found compelling research sponsored by OSEP on emotional and behavioral difficulties indicating that children at risk for these difficulties could also be identified through universal screening and more significant disabilities prevented through classroom-based approaches involving positive discipline and classroom management. The Commission also found that these approaches are widely used in some states and that they are at a stage where increased implementation is feasible. The Commission's findings parallel the work of the National Research Council report on minority students in special education, which found that early screening followed by effective interventions in the classroom prevented many disabilities. Most impressive were the results of large-scale clinical trials indicating that early intervention of reading skills in conjunction with positive behavior programs resulted in improved academic achievement and reduction in behavioral difficulties in high-risk, predominantly minority children. (p. 22)

So What's the Problem?

Given that there is ample proof the IQ-achievement model for identifying SLD does not work and that RTI is little more than good common sense, why then is there so much wide-spread confusion and concern? Perhaps it all comes down to one simple concept: fear of change! Abandoning the IQ-achievement discrepancy model in favor of a system that includes RTI does require that we change both our thinking and our behavior.

* For additional information on RTI, see the MASE position paper "Response to Intervention and IDEA" available at: <http://mnase.org/Calendar/archive.htm>

First, it changes the whole emphasis from remediating learning and behavior problems once they have developed, to preventing them from occurring in the first place.

Secondly, it shifts the primary responsibility for identifying SLD away from special educators and places it squarely upon the shoulders of regular education. Instead of special educators administering norm-referenced tests to determine the existence of SLD, regular educators will be required to implement frequent and repeated curriculum-based measures to determine the effectiveness of their instruction – and only after implementing high-quality, research-proven instruction and other interventions over an extended period of time can an assertion be made that a child may have SLD.

Thirdly, it fundamentally changes our conceptualization of SLD. Although at its core SLD remains a neurologically-based learning problem, we must accept that the majority of students currently identified as SLD are a result of our failure as a society to provide the resources necessary to prevent learning and behavior problems from occurring. The focus shifts from a problem within the child to a problem within the system. The good news is that instead of feeling helpless to cure SLD within the child, there is hope in knowing that we can prevent the vast majority of learning and behavior problems.

Finally, it necessitates a reprioritization of resources by our political leaders. Systems must be created that facilitate universal early screening for all children. Once those children who are at-risk for academic failure are identified, intensive early-interventions must occur. Such an effort will require personnel who are trained in early identification techniques; training teachers to implement high-quality, research-proven instructional strategies; training staff to conduct frequent, repeated measures of academic progress to track the effectiveness of interventions; and the funding of high-quality, research-proven, early interventions programs.

SLD and RTI in Minnesota:

Once the Federal Regulations are finalized and adopted (currently scheduled for late Dec., 2005), Minnesota will undoubtedly draft new criteria for the identification of SLD. Until new criteria is adopted in the form of Rule, the existing criteria (M.R. 3500.1341) remains in. However, as Federal law trumps state law and rule, and as IDEA 2004 states that districts cannot be required to use an IQ-achievement discrepancy for determining whether a student has SLD, the severe discrepancy component of the MN criteria is now moot. That is, while M.R. 3500.1341 Subp. 2 B can no longer be enforced by MDE, the remaining portions of the SLD criteria remain in effect.

Until new criteria is adopted, Minnesota school districts have several potential options regarding the identification of students with SLD:

1. Districts could choose to continue utilizing the existing criteria in MN Rule, including the IQ-achievement discrepancy requirement, when determining whether a student has SLD.
2. Districts may elect to continue to use an IQ-achievement discrepancy model to identify SLD, but choose to define a “severe discrepancy” as something other than 1.75 Std. Deviation as specified in the existing criteria.
3. Districts could choose not to utilize any form of IQ-achievement discrepancy when determining whether a student has SLD, while simply following the remaining components of the MN criteria.
4. Districts may choose to incorporate RTI as part of their SLD identification process, while following those parts of the MN criteria that remain in effect.

5. Districts could conceivably elect to incorporate RTI as part of the SLD identification process and also continue utilizing the IQ-achievement discrepancy formula as outlined in options #1 or #2 above.

Until such time as MN adopts new criteria, districts may end up applying differing standards to the identification of SLD. This creates the potential that a student could be identified as SLD in one district, while being ineligible in a neighboring district. The potential problems that could result from the application of differing SLD criteria across Minnesota are indeed legitimate reasons for discussion, concern and confusion.

References:

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