



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

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Dear Dr. Zirkel:

This letter is in response to your electronic mail (email) addressed to Lisa Pagano of the Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In that email, you asked a series of questions regarding the implementation of response to intervention (RTI) and multi-tiered systems of support (MTSS). Each of your questions is answered below. We apologize for the delay in providing this response.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Question 1: Is there a difference between RTI and MTSS under IDEA?

Answer: IDEA does not define RTI or MTSS. RTI is only mentioned in IDEA when determining eligibility for specific learning disability. 20 U.S.C. § 1414(b)(6)(B) and 34 C.F.R. § 300.307(a)(2).

Question 2: Is it permissible for a school district to provide special education services (e.g., resource room instruction in reading via multisensory approach) under Tier 2 or 3 prior to an evaluation for IDEA eligibility? If so, what are the legal and related funding limitations?

Answer: Under IDEA Part B, special education and related services are provided to an eligible child with a disability as an element of a free appropriate public education (FAPE) in conformity with the child's individualized education program (IEP). 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.17. The provision of special education and related services occurs only after a child is evaluated in accordance with 34 C.F.R §§ 300.304–300.311 as having a disability, as defined in 34 C.F.R § 300.8 and, who by reason thereof, needs special education and related services. 20

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U.S.C. §§ 1414(a)(1)(A) and (b)(4), and 34 C.F.R. §§ 300.301(a) and 300.306. In addition, special education services cannot be provided without parental consent after completing an evaluation and eligibility determination. 20 U.S.C. §§ 1414(a)(1)(A), (a)(1)(D)(i)(II), and (b)(4), and 34 C.F.R. §§ 300.300(b), 300.301(a), and 300.306. Therefore, IDEA Part B funds cannot be used to provide special education and related services during the secondary or tertiary level of an RTI framework to a child who has not been evaluated and found to be a child with a disability and eligible under IDEA, and whose parents have not provided parental consent for the initial provision of services.

Question 3: Is an RTI approach applicable to special education students (i.e., after rather than before an eligibility evaluation) as a framework for implementing least restrictive environment and/or FAPE under IDEA?

Answer: As discussed in response to Question 2, FAPE includes the provision of special education and related services provided in conformity with an IEP. While there is nothing in IDEA that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RTI strategies, all special education and related services must continue to be provided consistent with each child's IEP.

If you have any further questions, please do not hesitate to contact Ms. Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs