

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

REPRESENTATIVES

Rick Miera, Vice Chair
Joni Marie Gutierrez
Dianne Miller Hamilton
Mimi Stewart
Thomas E. Swisstack
W. C. "Dub" Williams

State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
PH: (505) 986-4591 FAX: (505) 986-4338
<http://legis.state.nm.us/lcs/lesc/lescdefault.asp>

SENATORS

Cynthia Nava, Chair
Gay G. Kernan
Mary Kay Papen
William E. Sharer

ADVISORY

Ray Begaye
William "Ed" Boykin
Kandy Cordova
Roberto J. Gonzales
Jimmie C. Hall
John A. Heaton
Harriet I. Ruiz
Sheryl M. Williams Stapleton
Richard D. Vigil
Teresa A. Zanetti



ADVISORY

Vernon D. Asbill
Mark Boitano
Carlos R. Cisneros
Dianna J. Duran
Mary Jane M. Garcia
John Pinto
Leonard Tsosie

D. Pauline Rindone, Ph.D., Director
Frances R. Maestas, Deputy Director

September 12, 2006

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

**RE: STAFF BRIEF: INDIVIDUALS WITH DISABILITIES EDUCATION
IMPROVEMENT ACT (IDEA 2004): RESPONSE TO INTERVENTION
PROCESS**

The 2006 interim workplan of the Legislative Education Study Committee (LESC) includes a presentation on a process known as Response to Intervention (RtI), which is a recommendation of the federal *Individuals with Disabilities Education Improvement Act* (IDEA 2004) and the federal regulations to implement the act. This presentation expands upon a brief discussion of RtI included in a presentation during the 2005 interim that focused on the reauthorization of IDEA.

Issues:

Concept and Potential Benefits

The Public Education Department (PED) defines RtI as "a systematic commitment to meet all individual student needs in school settings, with efficient use of resources," in a manner consistent with what scientific research shows to be effective. Although it may eventually lead to a referral for special education services, RtI is primarily an approach within general education to addressing the specific needs of all students as soon as they arise.

Even so, the special education context of RtI is well established. As one commentator explains, RtI attempts “to identify students with learning difficulties by requiring that all students – those potentially with learning disabilities and those without – be given a variety of ‘interventions,’ or lessons, on subjects that are causing them difficulty. If a student fails to make progress after a series of interventions, further investigation may be warranted.” The National Joint Committee on Learning Disabilities (NJCLD) notes that this “interdependence” may be difficult to develop in schools that treat general education and special education as separate activities.

One impetus behind RtI is the recent research on reading, which has found, among other things, that “well-designed instructional programs or approaches result in significant improvements for the majority of students with early reading problems” and that early intervention may reduce the number of students with reading problems by as much as 70 percent.

Proponents of RtI typically cite four potential benefits of the approach:

1. earlier identification of particular learning needs when they can be addressed more effectively;
2. a reduction in the number of students referred for special education and related services. On this point, several sources, NJCLD among them, suggest that RtI will decrease the number of “false positives,” that is, students determined to have a disability but whose low achievement is the result of poor instruction rather than an inherent disability;
3. a reduction in the over identification of minority students in particular for special education and related services. On this point, the National Center for Culturally Responsive Educational Systems (NCCRESt) is “encouraged” by the potential of RtI to enhance educational opportunities for culturally and linguistically diverse students but also concerned that, without proper “dialogue about how culture mediates learning,” it may not live up to the potential; and
4. a collection of “instructionally relevant data” – what worked, what did not work – that will be especially helpful if a referral for special education is eventually made.

Federal Provisions

While the concept of RtI has been known and practiced for a number of years, it has attracted more attention recently as a result of IDEA 2004 and the regulations recently published by the US Department of Education (USDE), both of which strongly encourage the use of RtI though without using the term itself.

In particular, the federal documents promote RtI as a more effective and efficient means of ultimately determining the need for special education services than the discrepancy model that the previous version of IDEA had specified. (Previously, a child could be determined to have a specific learning disability, or SLD, if the child's achievement were not commensurate with his or her age and ability levels and if there were a severe discrepancy between achievement and intellectual ability.)

As provided in IDEA 2004:

. . . when determining whether a child has a specific learning disability . . . a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning . . . [Instead] a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures

Correspondingly, the federal regulations published recently in the *Federal Register* read as follows:

A State must adopt . . . criteria for determining whether a child has a specific learning disability . . . In addition, the criteria adopted by the State . . . [m]ust not require the use of a severe discrepancy between intellectual ability and achievement . . . [m]ust permit the use of a process based on the child's response to scientific, research-based intervention; and [m]ay permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability

According to the USDE's *Commentary and Explanation about Proposed Regulations for IDEA 2004*, "[r]ecent consensus reports and empirical syntheses concur in suggesting major changes in the approach to the identification of an SLD."

- "These reports recommend abandoning the IQ-discrepancy model and recommend the use of response to intervention (RTI) models."
- The USDE commentary continues to say that there are "many reasons why use of the IQ-discrepancy criterion should be abandoned." For one, this approach may actually harm students by delaying intervention until the discrepancy is achieved (a situation known informally as "wait to fail"); for another, the assessment itself is costly.
- As a more desirable alternative, USDE "strongly recommends . . . a process based on systematic assessment of the student's response to high quality, research-based general education instruction." The focus, USDE continues, "should be on assessments that are related to instruction, and . . . identification should promote intervention."

- Even so, USDE notes that an RtI process does not replace the need for a comprehensive evaluation to determine whether a child needs special education services.

Other sources have also advised against the discrepancy model:

- According to an analysis in 1999, “. . . the ‘discrepancy formula’ has undermined the ability of teachers to provide timely and effective assistance for students with learning disabilities. It virtually requires that students ‘crash and burn’ academically before they can gain access to special education services and it reinforces failure, ultimately making remediation much more difficult.”
- Another report two years later noted that discrepancy models delay special education determinations until the student is in grade 3 or 4, “when academic achievement problems are more difficult to resolve.”
- The Senate report on IDEA 2004 says, “. . . [the IQ-achievement discrepancy formula] has been found to be particularly problematic for students living in poverty or culturally and linguistically different backgrounds, who may be erroneously viewed as having intrinsic intellectual limitations when their difficulties on such tests really reflect lack of experience or educational opportunity.”

On a related point, IDEA 2004 does not allow a determination that a child has a disability if the “determinant factor” is a lack of appropriate instruction in reading, a lack of instruction in math, or limited English proficiency – a condition that one authority calls “teaching disabled.”

Finally, to support this recommended approach, IDEA 2004 allows school districts to use up to 15 percent of their IDEA Part B funding for early intervention services for children who have not been identified as children with disabilities but who nonetheless “need additional academic and behavioral support to succeed in a general education environment,” with the expectation that these services will be concentrated on students from kindergarten through grade 3.

State Provisions

According to PED, RtI performs two distinct functions: the first that of an “instructional model” to improve instruction by ensuring the use of research-based practices and research-based materials in the general education classroom; and the second that of an “evaluation model” that should produce reliable student assessment data that may be used in determining whether a student has a specific learning disability. As PED explains, “there is a specific point at which the response to intervention process becomes a part of a special education evaluation.” Furthermore, PED expects overall student achievement to improve as a result of the widespread implementation of RtI.

The RtI model in New Mexico is based on a three-tiered sequence of interventions, which is perhaps the most common model.

- The first, applicable to the vast majority of students, consists of “quality, whole-group, research-based general instruction combined with general screening processes.” It is primarily the responsibility of general education staff.
- The second tier of intervention is “targeted, small-group or individual instruction in specific areas.” Although still a function of general education, this second tier is more intensive and restrictive and it includes the formation of a student assistance team. It may also involve a multi-disciplinary evaluation to determine whether a student who has not demonstrated “significant improvement” should remain in Tier 2 and receive other interventions or move into Tier 3.
- The third tier is “individualized instruction through the delivery of special education and related services, if necessary.” At this tier the parental rights under IDEA take effect.

Implementation

As with most education initiatives, the concept of RtI is one thing and the implementation – or rollout – is another. As some educators and researchers have suggested, the implementation is especially critical in this case.

One of the fundamental questions about the implementation of RtI, according to NJCLD, is the balance between rigidity and flexibility. In the organization’s words, “A relatively stable framework involving greater consistency across schools, districts, and states may increase the opportunity and likelihood that successful models can be researched and replicated. On the other hand, flexibility in timelines and structure can be more responsive to the . . . individual needs of students . . . and maximize problem-solving opportunities.”

The NJCLD also identifies several other issues related to implementation:

- selection and monitoring of the particular research-based interventions;
- time for and nature of professional development, both before and during implementation;
- physical space to conduct small group or tutoring interventions, as well as the necessary materials;
- increased paperwork related to data collection and documentation of progress, movement between levels, and other records; and
- funding to support all these activities.

Regarding professional development, NJCLD adds that all of the RtI models currently proposed or in use require either new roles or changes in roles of teachers, administrators, and service providers; and the NCCRESt contends that, as RtI models are being implemented, too little attention is being focused on the role of the classroom teachers.

Background:

As an educational approach, especially as an approach to providing special education, RtI has its critics. The Learning Disabilities Association of America (LDAA), for one, objected to USDE's original proposal to make RtI the only way of diagnosing a child with a learning disability, noting that the method needs further study.

Other objections and questions arose during the period when the proposed IDEA regulations, issued in June 2006, were available for public comment prior to adoption. When USDE published the final regulations in the *Federal Register* on August 14, 2006, it included paraphrases and discussions of some 5,500 comments it had received from "commenters."

- A number of them shared the view expressed by the LDAA, while others wanted the department to require the use of the RtI model and prohibit the use of the discrepancy model, and while still others spoke in support of offering the option, which is the direction that the final regulations took.
- Other commenters objected to RtI on the grounds "that there is a lack of scientific evidence demonstrating that RTI models correctly identify children with SLD."
 - One commenter in particular stated that RtI is "a subjective method of determining whether treatment is effective and is not a treatment itself."
 - A few others asked for additional research on the "efficacy of the wide-scale use of RTI models," particularly in terms of achievement gains and long-term success.
- Other commenters suggested that, when a child fails to respond to a particular intervention, it may be unclear why the child failed, whether the failure is the result of "inappropriate intervention, ineffective teaching, [or] unreasonable expectations."

The call for more research is often heard. One response is underway under the auspices of the National Research Center on Learning Disabilities (NRCLD). Jointly coordinated by Vanderbilt University and the University of Kansas and funded by the USDE, the NRCLD is encouraging several field studies whose long-term goal is to identify sites that produce improved student achievement beyond elementary school for all students, including those students with SLDs, and to recommend these sites as models that other states may adopt.

Presenters:

For this presentation:

- Dr. Catherine Cross Maple, Deputy Secretary for Learning and Accountability, PED; and Mr. Dan Farley, Education Consultant, Assessment and Evaluation Bureau, PED, will discuss the department-led implementation of RtI; and
- Dr. Dorothy Baker, Director of Special Services, Moriarty Municipal Schools; and Ms. Tita Gervers, Director, Office of Student Wellness, Santa Fe Public Schools, will discuss the implementation of RtI in their respective school districts.

Questions the committee may wish to consider:

1. To what extent and in what ways have parents been involved in the plans to implement RtI?
2. What sort of professional development has PED provided to support the implementation of RtI?
3. How long-lasting are the effects of successful interventions with students likely to be?
4. To what extent might interventions for specific students carry over into the classroom?
5. What provisions has PED made to evaluate the implementation of RtI?
6. If the statewide implementation of RtI eventually reduces the number of students placed in special education, what effect is that reduction likely to have on the distribution of funds to school districts through the Public School Funding Formula?
7. Should the Public School Funding Formula Study Task Force consider RtI in its review of the formula?
8. How will the RtI model address the needs of special education students in private schools?