

## Evaluation - 6.7 Specific Learning Disabilities

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### State Performance Plan (SPP):

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(See Overview in the Introduction for more information on the SPP.)

### Intent:

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To provide guidance on identifying children with specific learning disabilities (SLD), including the additional procedures required for eligibility determination, the assessment procedures that can be used for determination and the additional documentation required when a child is suspected to have an SLD.

### Timelines:

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#### Consent for evaluation

**Within 30 days of receiving a request for an initial evaluation of a child from either the child's parents or a public agency**, the school district of residence will either obtain parents' consent for an initial evaluation or provide the parents prior written notice stating that the school district does not suspect a disability and will not be conducting an evaluation. It is recommended that the child's parents put the request for an evaluation in writing to document the request.

#### Conducting the evaluation

**Within 60 days from receipt of parental consent to evaluate a child**, the school district will conduct a comprehensive initial evaluation of the child to identify the child's educational needs and to determine if the child is a child with a disability.

**Exceptions to 60- day timeline:** The 60- day timeline for conducting the evaluation does not apply to a school district if:

- The parents of the child repeatedly fails or refuses to produce the child for the evaluation; or
- The child enrolls in a new school district of residence after the 60- day period has begun and prior to a determination by the child's previous school district of residence regarding whether the child is a child with a disability. This exception applies **only** if the current school district of residence is making sufficient progress to ensure a prompt completion of the evaluation and **the parents and the current school district agree** to a specific time when the evaluation will be completed.

**When the existence of a specific learning disability is being determined**, the 60- day timeline also can be extended with mutual written agreement between the parents and eligibility team if additional data are needed that cannot be obtained within the 60- day timeline.

#### Evaluation team report (ETR) and documentation of eligibility status

**Within 14 days from the date of eligibility determination or the determination of continued eligibility and prior to the next IEP meeting**, the school district of residence must provide the parents a copy of the evaluation team report and the documentation of determination of eligibility or continued eligibility.

#### Preschool Note

Timelines reflect the maximum number of days. For children transitioning from Help Me Grow, timelines may be less than 120 days since an IEP must be implemented by the child's third birthday.

## REQUIREMENT

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### 3301-51-01

#### **(B) Definitions**

The following terms are defined as they are used in rules 3301-51-01 to 3301-51-09 and 3301-51-11 of the Administrative Code:

(10) "Child with a disability" means a child evaluated in accordance with rule 3301-51-06 of the Administrative code as having a cognitive disability (mental retardation) a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this rule as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

**(d) Definitions of disability terms.** The terms used in this definition of a "child with a disability" are defined as follows:

#### **(x) Specific learning disability**

**(a) General.** "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

**(b) Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

### 3301-51-06

#### **(H) Additional procedures for determining eligibility and educational need**

##### **(1) Specific learning disabilities**

###### **(a) General**

The Ohio Department of Education adopts in this rule, criteria for determining whether a child has a specific learning disability as defined in paragraph (B) (10) (d) (x) of rule 3301-51-01 of the Administrative Code. The criteria adopted by the state in this rule:

- (i) Do not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in paragraph (B) (10) (d) (x) of rule 3301-51-01 of the Administrative Code.
- (ii) Permit the use of a process based on the child's response to scientific, research-based intervention; And
- (iii) Permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in paragraph (B) (10)(d) (x) of rule 3301-51-01 of the Administrative Code.

###### **(b) Consistency with state criteria**

A school district must use the state criteria adopted in this rule pursuant to paragraph (H) (1) of this rule in determining whether a child has a specific learning disability.

### 3301-51-06

#### **(H) Additional procedures for identifying children with specific learning disabilities**

##### **(2) Additional group members**

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, must be made by the child's parents and a team of qualified professionals which must include:

- (a) The child's regular teacher; or
- (b) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of the child's age; or

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(c) For a child of less than school- age, an individual qualified by the Ohio Department of Education to teach a child of the child's age; and

(d) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech- language pathologist, or remedial reading teacher.

### 3301-51-06

#### **(H) Additional documentation required for SLD eligibility determination**

##### **(3) Determining the existence of a specific learning disability**

(a) The group described in paragraph (G) of this rule may determine that a child has a specific learning disability, as defined in paragraph (B)10 (d) (x) of rule 3301-51-01 of the Administrative Code, if:

(i) The child does not achieve adequately for the child's age or to meet state- approved grade- level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state- approved grade- level standards:

- (a) Oral expression;
- (b) Listening comprehension;
- (c) Written expression;
- (d) Basic reading skill;
- (e) Reading fluency skills;
- (f) Reading comprehension;
- (g) Mathematics calculation; or
- (h) Mathematics problem- solving.

(ii) The child does not make sufficient progress to meet age or state- approved grade- level standards in one or more of the areas identified in paragraph (H) (3) (i) of this rule when using a process based on the child's response to scientific, research- based intervention; or

(iii) 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, using appropriate assessments, consistent with paragraphs (E) and (F) of this rule; and

(iv) The group determines that its findings under paragraphs (H) (3) (a) (i) to (H) (3) (a) (iii) of this rule are not primarily the results of:

- (a) A visual, hearing, or motor disability;
- (b) Mental retardation;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in paragraphs (E) to (G) of this rule:

(i) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) Data- based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

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(c) The school district must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the time frames described in paragraphs (B) and (D) of this rule unless the time frames are extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in paragraph (G) (1) (a) of this rule:

- (i) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in paragraphs (H) (3) (b) (i) and (H) (3) (b) (ii) of this rule; and
- (ii) Whenever a child is referred for an evaluation.

(d) An evaluation may utilize a process based on the child's response to scientific, research- based intervention to determine whether a child has a specific learning disability. This process:

- (i) Begins when sufficient data have been gathered and analyzed under conditions of targeted and intensive individualized intervention conditions, when there is evidence of an inadequate response to intervention on the part of the child, and the group determines that the child's needs are unlikely to be met without certain specialized instruction in addition to the regular classroom instruction;
- (ii) Employs interventions that are scientifically- based and provided at appropriate levels of intensity, frequency, duration, and integrity, relative to the child's identified needs;
- (iii) Is based on results of scientifically- based, technically adequate assessment procedures that assess ongoing progress while the child is receiving scientifically- based instruction, and that have been reported to the child's parents;
- (iv) Includes the analysis of data described in paragraphs (H) (3) (b) (i) and (H) (3) (b) (ii) of this rule to determine whether a discrepancy is present between actual and expected performance, in both the child's rate of progress in developing skills, and in the child's level of performance on measures assessing one or more of the academic areas listed in paragraph (H) (3) (a) (i) of this rule;
- (v) May not be used to delay unnecessarily a child's being evaluated to determine eligibility for special education services.

(e) A school district may use alternative, research- based procedures for determining whether a 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, if prior approval of the procedures has been granted by the Ohio Department of Education.

(f) The school district must develop written procedures for the implementation of any method used to determine the existence of a specific learning disability that, at a minimum, incorporate guidelines developed the Ohio Department of Education as specified in this rule.

### **(4) Observation**

(a) The school district must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in paragraph (G) of this rule, in determining whether a child has a specific learning disability, must decide to:

- (i) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- (ii) Have at least one member of the group described in paragraph (G) of this rule conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with rule 3301-51-05 of the Administrative Code, is obtained.

(c) In the case of a child of less than school- age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

## GUIDANCE

### Eligibility determination - specific learning disabilities

#### Additional procedures required for specific learning disability (SLD) determination

To determine if a child has a specific learning disability that requires special education, the district must follow procedures in addition to those required to identify a child as "a child with a disability." These additional procedures include:

- The inclusion of additional team members, including at least one person who is qualified to conduct individual diagnostic examinations;
- Specific observation requirements. These allow the district to use information from observations conducted during routine classroom instruction before referral for evaluation, or to conduct observations after referral for evaluation has occurred and parental consent has been obtained. The purpose of the observation is to identify any behavior related to the child's academic functioning;
- A determination by the group based on evidence that its findings are not primarily the result of these identified exclusionary factors:
  - A visual, hearing or motor disability;
  - Mental retardation;
  - Emotional disturbance;
  - Cultural factors;
  - Environmental or economic disadvantage; or
  - Limited English proficiency;
- The consideration of information and data providing evidence that the determining factor for the child's underachievement is not a lack of appropriate instruction in reading and math. To satisfy this requirement, the group **MUST** consider data that demonstrate that the child has been provided appropriate instruction in general education, delivered by qualified personnel. The group also must consider data- based documentation reflecting formal assessment of child progress during instruction. Note that this requirement pertains to the identification of any child as SLD, regardless of the process used to make this determination. This requirement does **NOT** pertain only to districts who utilize a "process based on the child's response to scientific, research- based intervention" to determine if the child has a specific learning disability.
- **For preschool, appropriate procedures would relate to language, spoken language or the child's ability to listen, think, and speak. This should be closely reviewed to ascertain whether a speech/ language disability exists or a specific learning disability is appropriate.**

When determining the existence of a specific learning disability, the parents and the eligibility team can mutually agree to extend the 60- day timeline if the team determines that additional data are needed and these data cannot be obtained within the 60- day timeline. The decision to extend the timeline must be made on a case- by- case basis, depending on the needs of the child. This agreement must be in writing and must indicate the target date for the end of the extended timeline.

### Eligibility determination - specific learning disabilities

#### Assessment procedures for identifying children with specific learning disabilities (SLD)

Before the reauthorization of IDEA 2004, districts were required to demonstrate that a child had a severe discrepancy between achievement and ability in one or more specific areas in order to identify a child as a child with a specific learning disability (SLD). Many years of research have challenged the validity of this discrepancy model in determining eligibility for SLD. The use of the discrepancy model forced districts to wait until a child had failed for a considerable period of time before the child could be identified for assistance leading to that model being referred to as a "wait to fail" model. In addition, the use of this identification method of did not provide relevant information to assist in the design of effective instruction and interventions. As a result, the requirements of IDEA 2004 indicate that states cannot require the use of a severe discrepancy between intellectual ability and achievement for determining eligibility for SLD.

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Regardless of the evaluation process used to determine eligibility for SLD, the district must establish that a child has been provided with appropriate learning experiences and instruction before identifying the child as SLD.

### SLD - Use of a process based on the child's response to scientific, research- based intervention (Response to Intervention - Rtl)

The new requirements of IDEA allow districts to use a "process based on the child's response to scientific, research- based intervention" as part of the eligibility determination for SLD. This process is commonly referred to as "response to intervention" or "Rtl;" however, the actual phrase "response to intervention" does not appear in federal law.

Note that Rtl is NOT a special education initiative, a program or a new pre- referral process. The primary purpose of Rtl is not the determination of a child's eligibility for special education services; however, the information and data collected as part of the Rtl process can become a significant component of a comprehensive evaluation when this process is used to determine eligibility for SLD. Before using an Rtl process as part of the comprehensive assessment for determining eligibility for SLD, districts should self assess their current level of Rtl implementation to ensure that the requisite systems are in place to use this process with confidence. Two tools that can assist in this process, *Response to Intervention Blueprints for Implementation: District Level* and *Response to Intervention Blueprints for Implementation: School Building Level* are available for free download at [www.nasdse.org](http://www.nasdse.org).

Rtl is more accurately described as a process that brings together general, special, compensatory and gifted education to provide a unified system of education that meets the needs of ALL children. Rtl provides a conceptual framework for the implementation of scientifically- based practices for both academics and behavior at all levels of the system. This helps districts make sound instructional decisions.

Response to intervention is defined as the practice of:

- Providing high- quality instruction/ intervention matched to child needs; and
- Using learning rates over time and level of performance to make important educational decisions.

The essential components of an effective Rtl model include:

- Multiple tiers of intervention service delivery;
- Use of a problem- solving method; and
- An integrated data collection/ assessment system to inform decisions at each tier of service delivery (NASDSE, 2005)

Rtl - Discrepancy between a child's expected and actual performance

- Ohio's Operating Standards include additional language that expands on what constitutes a "process based on the child's response to scientific, research- based intervention" or response to intervention. Although this language uses the term "discrepancy," it does not refer to a discrepancy between ability and achievement. Instead it refers to the presence of a discrepancy between a child's expected and actual performance. This discrepancy is determined by analyzing data gathered during instruction and interventions that are targeted to the child's areas of deficit. The focus is on the child's rate of progress in developing skills and performance level in relation to peers and/ or benchmark standards in one or more of the academic areas listed for SLD eligibility.

Rtl - Scientifically based, technically adequate assessment procedures

- The data necessary to assess a child's progress when provided with research- based interventions is gathered through the use of scientifically based, technically adequate assessment procedures. These assessment procedures, which include curriculum- based measurement (CBM), must have the following characteristics in order to provide the necessary data for decision making within the Rtl process:
  - Allow for direct measures of specific skills (derived from the content standards) that are being targeted for intervention;
  - Allow for frequent administration, so that progress can be systematically monitored;
  - Be sensitive to small increments of growth in skills; and

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- Provide data that can be easily summarized and displayed in an educator- friendly manner, in order to facilitate the ability to make instructional decisions rapidly.

### RtI - Scientifically based intervention

- A scientifically based intervention is a specific strategy or procedure that targets factors, usually of an environmental nature, that are functionally related to a learning or behavior problem. Factors that may be targeted by an intervention include:
  - Instructional practices and materials;
  - Opportunities to perform desired behaviors or skills;
  - Instructional tasks;
  - Prompts;
  - Child skills, attitudes and motivation;
  - Error correction procedures;
  - Contingencies for successful performance; and
  - Performance feedback.
- An intervention is considered to be scientifically based when there is adequate empirical support for its effectiveness, in the form of published, peer- reviewed studies of the intervention itself or of major components of the intervention using research methods with adequate internal and external validity. Intervention intensity, frequency and duration refer to the quality and "degree" of the intervention, while effectiveness depends on the delivery of a degree of intervention that matches the child's needs and is provided on a frequent basis for an adequate period of time. Intervention integrity refers to the fidelity with which the intervention is delivered as designed, as documented by an appropriate record- keeping procedure.

### SLD - Assessment process to identify a child's strengths and weaknesses

- Districts can use information and data gathered from an evaluation process that identifies a child's pattern of strengths and weaknesses in performance, achievement or both, relative to age; state- approved, grade- level standards or intellectual development.
- The evaluation process used to identify a pattern of strengths and weaknesses must employ valid, reliable techniques. Valid techniques are those that reliably measure constructs or factors that research has shown to be functionally related to children's learning and behavior problems, to the extent that the interventions targeting such constructs or factors result in improvements in children's learning and behavior.

### SLD - Alternative research- based assessment procedures

- A school district may use any alternative, research- based assessment procedures for determining whether a child has a specific learning disability (SLD). To use any alternative assessment for determining SLD eligibility, the district must contact the Ohio Department of Education/ Office for Exceptional Children (ODE/ OEC) to initiate the approval process. Any proposed alternative assessment must meet the evaluation requirements for assessment tools and strategies identified in Evaluation - 6.4 Planning and Conducting the Evaluation. This option will be used very infrequently since almost all current assessment practices will be included in the procedures described above.

### Written procedures

Ohio has added language to the standards indicating the district must develop written procedures for the implementation of any assessment method that it uses to identify children with a SLD. In the case of the use of a "process based on the child's response to scientific, research- based intervention," or response to intervention, the procedures must clearly address all of the components of effective interventions included in Evaluation - 6.1 Instruction and Intervention Supported by Scientifically- Based Research.

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Language added to the standards addresses the conditions that must be in place if the district chooses to use RtI as part of a comprehensive evaluation to determine eligibility for SLD. These requirements should be addressed in the written procedures and include the following:

- Sufficient data must be gathered and analyzed under conditions of targeted and intensive individualized intervention that provide evidence that the child's needs are unlikely to be met without certain specialized instruction, in addition to the regular classroom instruction;
- The interventions implemented during this process must be scientifically- based and provided at appropriate levels of intensity, frequency, duration and integrity, relative to the child's identified needs;
- Scientifically based, technically adequate assessment procedures must be used to assess ongoing progress while the child is receiving scientifically based instruction; and
- Data- based documentation of child progress must be analyzed to determine whether there is a discrepancy between actual and expected performance, in both the child's rate of progress in developing skills and in the child's level of performance on measures assessing one or more of the following areas:
  - Oral expression;
  - Listening comprehension;
  - Written expression;
  - Basic reading skills;
  - Reading fluency skills;
  - Reading comprehension;
  - Mathematics calculation; or
  - Mathematics problem- solving.

The procedures developed by the district need not be submitted to ODE for approval; however, these procedures will serve as documentation of the assessment process(es) used in the district for SLD determination. Districts may revise these procedures as needed, since RtI implementation in districts will likely increase the use of RtI for SLD determination.

## REQUIREMENT

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### 3301-51-06

#### ***(H) Additional procedures for identifying children with specific learning disabilities***

#### ***(5) Specific documentation for the eligibility determination***

**(a)** For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in paragraph (G) (1) (b) of this rule, must contain a statement of:

- (i) Whether the child has a specific learning disability;
- (ii) The basis for making the determination, including an assurance that the determination has been made in accordance with paragraph (G) (3) (a) of this rule;
- (iii) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (iv) The educationally relevant medical findings, if any;
- (v) Whether:
  - (a) The child does not achieve adequately for the child's age or to meet state- approved grade- level standards consistent with paragraph (H) (3) (a) (i) of this rule; or
  - (b) The child does not make sufficient progress to meet age or state- approved grade- level standards consistent with paragraph (H) (3) (a) (ii) of this rule; and

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(c) 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 consistent with paragraph (H) (3) (a) (iii) of this rule;

(vi) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(vii) If the child has participated in a process that assesses the child's response to scientific, research- based intervention:

(a) The instructional strategies used and the student- centered data collected; and

(b) The documentation that the child's parents were notified about:

(i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(ii) Strategies for increasing the child's rate of learning; and

(iii) the parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

## GUIDANCE

### Additional documentation required for specific learning disability determination

In addition to the information required for all evaluation team reports (ETRs) (see [Evaluation 6.6 - Evaluation Team Report and Eligibility Determination](#)), specific documentation must be included in the ETR when a child is suspected to have a specific learning disability. This additional documentation of the eligibility determination should include:

- Whether the child is determined to have a specific learning disability;
- The basis for making that determination, including an assurance the determination has been made by drawing on information from a variety of sources that have been documented and carefully considered;
- Any relevant behavior identified during observation of the child and the relationship of that behavior to the child's academic functioning;
- A description of any educationally relevant medical findings;
- Identification of any of eight specific area(s) in which the team has determined that the child is not achieving adequately for the child's age or meeting state- approved grade- level standards when provided with appropriate learning experiences and instruction. These areas are:
  - Oral expression;
  - Listening comprehension;
  - Written expression;
  - Basic reading skills;
  - Reading fluency skills;
  - Reading comprehension;
  - Mathematics calculation; and
  - Mathematics problem solving.
- Results from the assessment process used to make this determination which could include:
  - An assessment process based on the child's response to scientific, research- based intervention (response to intervention); or
  - An assessment process to determine if the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both.

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- The team's determination concerning the effects of the following exclusionary factors on the child's performance:
  - A visual, hearing or motor disability;
  - Mental retardation;
  - Emotional disturbance;
  - Cultural factors;
  - Environmental or economic disadvantage; or
  - Limited English proficiency.
- If the child has participated in a process that assesses the child's response to scientific, research- based intervention (response to intervention):
  - A description of the instructional strategies used by the district and the child- centered data collected; and
  - Documentation that the child's parents were notified about:
    - The state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided;
    - Strategies that were used for increasing the child's learning rate; and
    - The parents' right to request an evaluation.

### State's policies - student performance data collected and services provided when implementing a response to intervention process

Response to intervention is a process of matching high quality instruction and intervention to student need and using student performance data to make instruction decisions. As a result, the amount and nature of student performance data collected and the specific services and interventions provided as part of general education services will vary based on the particular needs of the child, including the specific skills being addressed, the age and grade level of the student and the gap between the child's expected and actual performance.

Given all of these variables, decisions about the intensity, frequency and duration of scientific, research- based interventions, as well as the type and frequency of student performance data collected, are appropriately determined at the local level by building and district leadership teams and, in the cases of students requiring individualized, intensive intervention, by specialized problem- solving teams. The Ohio Department of Education does require that these decisions be aligned with the district's written procedures addressing both the key components of effective intervention and the conditions that must be in place if the district chooses to use RtI as part of the comprehensive evaluation to determine specific learning disability eligibility.

**LEGAL CITATIONS:**

**Federal Statutes:**

20 U.S.C. 1414(b) (4) - (6), 1401(3) and (30)

**Code of Federal Regulations:**

34 CFR §300.306 -300.311

**Ohio Revised Code:**

3323.01(A), 3323.03

**Operating Standards:**

3301-51-01

3301-51-06(G) and (H)

3301-35-06(A)

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**FORMS** (\* = required)

- Prior Written Notice to Parents PR-01\*
- Parent Invitation PR-02\*
- Parent Consent for Evaluation PR-05\*
- Evaluation Team Report PR-06\*
- Whose IDEA Is This?\*