

Adopted by COPAA Board of  
Directors June 16, 2016



## ***RESPONSE TO INTERVENTION POLICY STATEMENT***

Written by: Matt Cohen, J.D.

Response to Intervention (RTI) is an educational strategy that was originally developed as a model to provide more systematic, research-based instruction within regular education to students that were suspected of having learning disabilities or that were at-risk academically. RTI is also known in many places by other names and the generic term used is multi-tier system of supports (MTSS) which is now defined in federal law under the most recent amendment of the Elementary and Secondary Education Act, the Every Student Succeeds Act (ESSA) of 2015. <sup>1</sup> While not specifically applicable to IDEA, this new definition does provide the field with a new foothold for use and interpretation by states, districts, schools and courts. RTI was incorporated into the 2004 amendment of the Individuals with Disabilities Act (IDEA) as an option for serving these students prior to or as part of the process of evaluating them to determine if they have a learning disability and to address several concerns, including: agreement that the IQ discrepancy model required in all states to identify students with learning disabilities wasn't working; a perception that some children being labeled as LD were actually just underachieving due to inadequate instruction in regular education; and, that a disproportionate number of minority children were labeled as LD due to inadequate evaluation and education. Prior to its inclusion in IDEA, RTI was used as an intervention strategy to address problem behavior and reading difficulties. <sup>2</sup> Following its inclusion, the use of RTI has expanded in some places to apply to virtually all areas of education for all ages, despite the fact that there is limited scholarly literature supporting the use of RTI for students beyond early elementary school or outside the context of literacy and exhibition of challenging behaviors. <sup>3</sup> Furthermore, recent research on the efficacy of RTI has shown that it has little positive effect and may have negative impact for first through third graders, calling into question the entire RTI initiative:

“Assignment to Tier 2 or Tier 3 intervention services in impact sample schools had a negative effect on performance on a comprehensive reading measure for first---graders just below the Tier 1 cut point on a screening test. The estimated effects on reading outcomes

in Grades 2 and 3 are not statistically significant.” “Evaluation of Response to Intervention Practices for Elementary School Reading,” National Center for Educational Evaluation, November, 2015.

This is consistent with the results of a study commissioned by the Illinois State Board of Education by ASPIRE (2010), which found that “in the 57 school buildings in Illinois that had received the most assistance in implementing RTI...the data show that the percentage of schools making Adequate Yearly Progress has actually decreased over time.” These reports raise serious question about the efficacy of RTI as an instructional intervention, in addition to its highly problematic use as a diagnostic process.

It should be noted that RTI is only mentioned in IDEA within the context of SLD eligibility.<sup>4</sup> The lack of a definition or clarifying regulatory language within IDEA, has inappropriately shifted the emphasis of RTI from use as an intervention strategy to use as a diagnostic tool for learning disabilities and determination of eligibility for special education.<sup>5</sup> While RTI represents a potentially promising educational strategy for *some children*, without consistent guidelines or regulations for implementation, its inclusion in the IDEA and use in disability determination is problematic. Further complicating the use of RTI in relation to the evaluation of learning disabilities is continuing confusion over the definition of learning disabilities and controversy over what criteria should be used for establishing eligibility. Notably, U.S. Representative Bill Lehman highlighted this confusion in the legislative history of the original EAHCA, commenting that “no one really knows what a learning disability is,” Congressional Record 25.531 (daily ed. July 29, 1975). It should also be noted that there are significant differences between the research-based methods employed in many RTI programs for students in regular education and the research-based methods that have been recognized as appropriate for remediation of particular learning disabilities.

RTI is often highly problematic in its implementation because there are no consistent guidelines or regulations for implementation.

**PROBLEM:** RTI is based on the scientific strategy that, where there is a deficit, you should take baseline data, implement an intervention, collect additional data, and then either continue or discontinue the intervention based on comparison of the data. This requires rigid implementation to ensure that all variables are accounted for. However, in many schools, RTI is being implemented: without appropriate time limitations; without clear entrance, service or exit criteria; by personnel that are not adequately trained in providing research-based instruction; and, without consistent and accurate data collection that provides a meaningful evaluation of the student's progress. Even where data indicates that a student is making some progress in RTI programs, the school's program is often narrowly tailored and does not address all of the student's academic and non-academic problems. OSEP has provided some guidance <sup>6</sup>; however, OSEP has not gone far enough. <sup>7</sup> And even despite this guidance, there continues to be frequent violations and delay.

**SOLUTION:** Structural changes in RTI procedures are needed. If RTI is to continue, there needs to be a precise, articulated methodology for its use. These should include at minimum:

- 1) a precise statement of the targeted deficit and intervention to be used;
- 2) mandatory time limits on the length of the intervention, with baseline of eight to twelve weeks and limited extension with parental permission;
- 3) an explicit statement as to the frequency, intensity, and appropriate group size and instructional levels to be used, which should comply with the particular intervention protocols;
- 4) a requirement that RTI services be provided by properly trained teachers with certification in the area of intervention being addressed and methodologies being employed; and,
- 5) systematic monitoring for fidelity of implementation by the school district.

RTI procedures in some school districts constitute violations under IDEA, Section 504, the ADA and the U.S. Constitution.

**PROBLEM:** Because RTI procedures are implemented with a lack of fidelity in many school

districts, the theoretical benefit of the intervention process, either for remediation or diagnosis, is absent. This constitutes a violation of Child Find under both IDEA and Section 504. In addition to being a violation of IDEA, this is arguably discrimination based on the nature or severity of the student's disability, a violation of Section 504 and the ADA and the Equal Protection Clause of the US Constitution. This occurs because children with less severe, but impairing, learning disabilities may be more likely to be referred for RTI, rather than for special education, which constitutes discrimination based on the severity of disability.

**SOLUTION:** Absent corrective action by Congress, the U.S. Department of Education, and the State Education Agencies and local school districts, litigation will be necessary to compel due process protections.

### RTI should not be used as a “diagnostic” tool

**PROBLEM:** Before 2004, eligibility for special education services under SLD was based on the “discrepancy model,” which compared a student's IQ scores and achievement scores to determine eligibility for IDEA services. There was little disagreement that the discrepancy model was not working. Many students were being improperly diagnosed as having learning disabilities when other factors were the actual cause for underachievement.<sup>8</sup> While the discrepancy formula is now disfavored, RTI is not a viable replacement, as it was not developed to be a diagnostic tool and there is little, if any, data to support its efficacy for that purpose. Further, there is no clear, research based and consistent standard in IDEA for LD eligibility.<sup>9</sup> There is no evidence that failure to progress in response to intervention is by itself evidence of the presence of a learning disability. In sum, RTI is not (and was never meant to be) a diagnostic tool for learning disabilities or any other disability - RTI is an intervention strategy.

**SOLUTION:** We need to focus on identifying and requiring use of valid diagnostic procedures that actually address whether neurological processing deficits are present, rather than framing the choice as one between two inadequate evaluation methods – RTI and the discrepancy formula. Psychological testing that specifically assesses processing should be included as a necessary component of the assessment of children suspected of having learning disabilities. RTI data, when based on appropriate RTI programming and data collection, can (and should) be used as data in the determination of

eligibility, but not the primary source of information. However, RTI should be rejected as the sole or primary means of determining whether a student needs an evaluation and/or meets the eligibility criteria for LD.

### RTI is often used to delay referral for evaluation or even as an alternative to provision special education services

**PROBLEM:** Currently, RTI is often used for prolonged periods of time either: a) without the parent receiving prior written notice of their right to request an evaluation for special education or, if they request it, the reason for denial; b) with schools frequently deflecting requests for evaluation by citing the need to continue with RTI procedures; c) with parents not being provided timelines or criteria for the RTI process; or d) even school staff requests for evaluation being deflected indefinitely based on the school's commitment to extended RTI services. In fact, it is routine for some schools to share *little or no* RTI information with parents, including that their children are actually getting intensive instruction. As a consequence, parents are often not aware or misinformed of their rights, and are discouraged from pursuing an evaluation. The result is that some students are delayed or denied access to timely evaluations and services, and this continues despite OSEP guidance to the contrary.<sup>10</sup> Confusion persists as to the criteria for diagnosing LD, leading to variation in means and outcomes for diagnosis around the country.

**SOLUTION:** Expand the prior written notice requirements to include students who are referred for RTI services. Require notice to parents at point of referral to RTI explaining the reason for referral, the target of intervention, the data gathering procedure, review and exit criteria, and the right to request an evaluation under IDEA and the school's obligation to respond to that request. Require written parent consent for RTI services. Require schools to share data on a weekly basis. Require parents to be notified of completion of the RTI process and the team's assessment of whether intervention was successful. If not successful, the team should refer the student for an evaluation for special education and provide parents with notice containing all relevant procedural safeguards. Require that any request for evaluation must be granted if the intervention period has exceeded 16 weeks. Clear federal standards for LD eligibility should be promulgated by the US Department of Education to address continuing confusion about how learning disabilities should be diagnosed.

## Research-based intervention should be used for all students

**PROBLEM:** The underlying assumption of RTI is that many students, especially students of color and low socio-economic status, were being inappropriately identified as eligible for special education, particularly via inappropriate identification as having a learning disability, because of the ineffectiveness of regular education instruction. Sadly, the educational system is falling short for many students, as reflected in the intense focus on the need for better outcomes and more accountability. And there is no research indicating that RTI has either reduced the inappropriate identification of students, particularly minority students, or increased the use of research-based instruction.<sup>11</sup>

**SOLUTION:** Research-based intervention should not be a “fallback” intervention for students that are at risk or failing. Instead, systematic and research-based instruction should be provided to *all students*. This means strengthening standards for curriculum development, providing quality training for teachers and other school staff, monitoring fidelity of implementation and ensuring that teachers have the resources to provide effective, research-based teaching to a diverse student population. Further, for those students properly diagnosed as actually having learning disabilities, research-based programs designed to remediate those disabilities should be provided and implemented with fidelity.

## CONCLUSION

Despite a variety of potentially positive contributions to the quality of education for students with academic difficulties, the actual application of RTI in the school setting has resulted in widespread denial of evaluation and services to students with disabilities. Further, the inconsistency of regulatory requirements, their interpretation and implementation throughout the U.S., has led to intolerable variation in the meaning, quality and impact of RTI by state, district, school, and even by student. The absence of consistent and adequate standards, training and funding, has placed a burden on educators, setting them up to fail, and has disrupted the educational process for all students. Given the potential value of RTI conceptually, it is worth redefining its role and use so as to maintain its potential contribution to the range of educational options for educators and students. However, it is imperative that massive changes be made to improve the rules and procedures for RTI, and how it relates to eligibility for special education services under IDEA. This effort can and should occur nationally, at the state level, and local level.

<sup>1</sup> Pub.L. 114–95 Title 8, Sec. 8002 – Definitions “(33) MULTI-TIER SYSTEM OF SUPPORTS.—The term ‘multitier system of supports’ means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students’ needs, with regular observation to facilitate data-based instructional decision-making.”

<sup>2</sup> RTI was used as school--wide problem-solving process to prevent “problem” behavior, and to implement “standardized protocols to deliver interventions with increasing intensity and differentiation” for struggling readers. Fletcher, J.M. & Vaughn, S. “Response to Intervention: Preventing and Remediating Academic Difficulties.” *Child Development Perspectives* 3.1 (2009): 30–37. *PMC*.

<sup>3</sup> Ferri, Beth A. (2011). “Undermining Inclusion? A Critical Reading of Response to Intervention (RTI).” *International Journal of Inclusive Education*, First published on: 17 June 2011.

<sup>4</sup> 34 C.F.R. §§ 300.307, 300.309, 300.311.

<sup>5</sup> This paper does not address RTI’s efficacy for children suspected of having behavior disorders, either in relation to diagnosis or intervention.

<sup>6</sup> RTI should include four distinguishing characteristics: 1) high quality, research--based instruction in general education; 2) continuous progress monitoring; 3) screening for academic problems; and 4) multiple tiers of progressively more intense instruction. See *Memorandum to Chief State School Officers*, 2008; *Memorandum to State Directors of Special Education*, 2011.

<sup>7</sup> For example, in policy interpretations concerning RTI, OSEP has specifically declined to define “an appropriate period” or “adequate progress.” See *OSEP Questions & Answers on RTI and EIS*, 2007.

<sup>8</sup> See Hale, J.B. (2008). “Response to intervention: Guidelines for Parents and Practitioners. *Special Education Advocate Newsletter*. Available at [www.wrightslaw.com/idea/art/rti.hale.htm](http://www.wrightslaw.com/idea/art/rti.hale.htm) (last accessed Feb. 5, 2015).

<sup>9</sup> See Ruth Colker, “The Learning Disability Mess,” *Journal of Gender, Social Policy & the Law*, 10/14/11.

<sup>10</sup> See OSEP Memo 11-07 dated January 21, 2010.

<sup>11</sup> There is significant lack of research--based interventions in areas beyond early literacy, and even those claiming to be research--based are questionable. Ferri, Beth A. (2011). “Undermining inclusion? A Critical Reading of Response to Intervention (RTI).” *International Journal of Inclusive Education*, First published on: 17 June 2011.

---

**Matt Cohen** is founder of *Matt Cohen & Associates* and is well known for his work in special education law and has extensive experience in health care and mental health law. He has been the principal litigator in a number of important special education cases and is the primary or collaborating author of several amendments to the mental health and special education laws of Illinois. Nationally, Matt is a founding board member of the Council of Parent Attorneys and Advocates (COPAA) a national special education advocacy organization, where he served on the Executive Committee from 1999 to 2003. He was recently reappointed to the Board of Directors and regularly serves on various committees and task forces.

**The Council of Parent Attorneys and Advocates, Inc. (COPAA)** is an independent, nonprofit, §501(c)(3) tax-exempt organization of attorneys, advocates, parents and related professionals. There are 6.4 million children with disabilities in America. COPAA members work to protect the legal and civil rights of and secure excellence in education on behalf of tens of thousands of students with disabilities and their families each year at the national, state and local levels. With over 1700 members nationwide, each of whom represents families of eligible students, COPAA is at the forefront of special education advocacy. [www.copaa.org](http://www.copaa.org)