IDEA 2004 changed the requirements on how to determine if a child has a specific learning disability (SLD) under the IDEA. Under IDEA 2004, school districts are no longer required to use the severe discrepancy method (which measures the discrepancy between intellectual ability and achievement) to determine eligibility for the SLD category. School districts may use a method known as Response to Intervention (RTI), but they are not required to do so.

The text of IDEA 2004 states:
In determining whether a child has a specific learning disability, 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 described in paragraphs (2) and (3). 20 U.S.C. § 1414 (b)(6) (emphasis added).

The IDEA 2004 Regulations state:
§ 300.307 Specific learning disabilities.
(a) General. A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—
(1) Must 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 § 300.8(c)(10);
(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10). (emphasis added) 34 C.F.R § 300.307

What is RTI?

The Office of Special Education Programs defines RTI as a “multi-tiered instructional framework... that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors.”

Under an RTI model, students who are at risk for poor learning outcomes are given evidence-based

1 OSEP Memorandum (January 21, 2011)
interventions, which are adjusted in nature and intensity depending on the student’s responsiveness to the interventions. The RTI process is not part of special education, though children receiving RTI may qualify for special education.

The essential components of RTI include:

“1) high quality, evidence-based instruction in general education settings; (2) screening of all students for academic and behavioral problems; (3) two or more levels (sometimes referred to as "tiers") of instruction that are progressively more intense and based on the student’s response to instruction: and (4) progress monitoring of student performance.”

RTI and Evaluations

RTI may not be used to delay or deny evaluations for eligibility under IDEA. A parent may request an evaluation of the child at any time, regardless of whether RTI has been implemented. A school district must evaluate the child if the district suspects that the child has a disability. If the school district does not suspect that the child has a disability and declines to evaluate, the school district must provide parents with written notice explaining why they refuse to conduct the evaluation and the information that was used as the basis of that decision. The parents may then challenge the decision by filing for a due process hearing. See the January 21, 2011 OSEP memorandum (link below) for more on this.

Advocacy Tip

If you suspect a child has a disability, do not hesitate to ask the school to conduct evaluations to determine whether the child is eligible for special education and related services. If the school tells you that they are using RTI and that you must wait until the RTI process is complete, that is not true. You do not need to wait. Under federal law, school districts are obligated to evaluate children suspected of having a disability or to provide written notice of why they refuse to evaluate. You can show them the 2011 OSEP memorandum, which clearly states that RTI may not be used to delay or deny an evaluation of a child suspected of having a disability.

Once a parent provides written consent, the school district must conduct the evaluation within 60 days or within a timeframe established by the state, if applicable. Therefore, parents should provide the school with written consent to evaluate as quickly as possible to start the clock ticking on the evaluation process.

2 OSEP Letter (September 10, 2013)
3 OSEP Memorandum (January 21, 2011)
Additional Resources on RTI

The following links and articles provide further information on RTI:

**Parent Rights in the Era of RTI**
This article from the National Center on Learning Disabilities includes a summary of several RTI cases (a federal district court case, a due process hearing decision and the findings of a state complaint.)

**Legal Implications of Response to Intervention and Special Education Identification** By: Jose L. Martín, Attorney at Law, RICHARDS LINDSAY & MARTÍN, L.L.P

**The Legal Dimension of RTI: Part I. The Basic Building Blocks**
by Perry A. Zirkel, University Professor of Education and Law, Lehigh University, Bethlehem, PA

**The Legal Dimension of RTI: Part II. State Laws and Guidelines**
by Perry A. Zirkel, University Professor of Education and Law, Lehigh University, Bethlehem, PA

**The Legal Dimension of RTI: Part III. RTI Legal Checklist for SLD Identification**
by Perry A. Zirkel, University Professor of Education and Law, Lehigh University, Bethlehem, PA

**What You Need to Know about IDEA 2004 Response to Intervention (RTI): New Ways to Identify Specific Learning Disabilities**
Wrightslaw website has a complete page of resources on this topic.

**OSEP and OSERS Documents**

- OSEP Memorandum (January 21, 2011)
- OSEP Letter to Zirkel (September 10, 2013)
- Q&A from the Office of Special Education and Rehabilitative Services (OSERS)

**Office for Civil Rights Findings**

- Summaries of OCR Letters of Finding on RTI