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November 30, 2011

MEMORANDUM

TO: Exceptional Student Education Directors
Student Services Directors

FROM: Cathy Bishop, *Interim Chief*

SUBJECT: FOLLOW-UP TO ADMINISTRATORS' MANAGEMENT MEETING (AMM) 2011

Julie Weatherly, Esq., Attorney and Owner, Resolutions in Special Education, Inc. presented a keynote address at the AMM 2011 in St. Petersburg entitled "I Only Have 'I's" (Interventions) for You: The Tension Between RtI and IDEA's Child Find Requirements." The information that was shared with attendees included important information about using students' response to intervention (RtI) data within a multi-tiered system of supports (MTSS) to make important educational decisions, including when to initiate evaluation procedures for determining special education eligibility.

The Bureau of Exceptional Education and Student Services has previously provided guidance to the districts and parents on this topic. The existing guidance can be accessed as follows:

1. Memorandum regarding Clarification of Consent and Evaluation Requirements When Determining Eligibility for Special Education: <http://www.florida-rti.org/docs/ConsentEvaluationRequirements.pdf>
2. Evaluations for Special Education Services: Information for Parents: <http://www.florida-rti.org/docs/EvaluationsSpecialEd.pdf>

CATHY BISHOP, INTERIM CHIEF
Bureau of Exceptional Education and Student Services

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In addition to this guidance, we have attached a Question and Answer (Q & A) document entitled "Multi-tiered System of Supports (MTSS) and the Individuals with Disabilities Education Act (IDEA) Child Find Requirements: How to Ensure Compliance within the "Response to Intervention" Culture" as a follow-up to the keynote presentation.

This Q & A will assist school teams in determining what instruction and interventions accelerate students' learning, and what resources must be allocated to meet their intervention needs. If you have any questions please contact Heather Diamond, Program Specialist, via telephone at (850) 245-0478 or via email at hdiamond@usf.edu.

CB/hdm

Attachment

cc: Mary Jane Tappen
Bureau Leadership Team
Heather Diamond
Julie Weatherly

**Multi-tiered System of Supports and the
Individuals with Disabilities Education Act
Child Find Requirements:
How to Ensure Compliance within the “Response to Intervention” Culture**

1. What should educators and parents understand about MTSS and RtI?

The multi-tiered system of supports (MTSS) often referred to as Response to Intervention (RtI), is a school-wide approach that addresses the needs of all students including struggling learners, students with behavioral difficulties, and students with disabilities. In a MTSS, resources and services are organized efficiently on a continuum of intensity based on students' academic and behavioral needs, and response to instruction and interventions implemented through a problem-solving process.

What should parents and educators expect with MTSS?

- Parents and educators will be informed and involved in planning and providing interventions for students
- Parents and educators will see levels of support (academic and behavioral) that increase or decrease in intensity depending on students' needs
- Parents and educators will receive, review, and analyze frequent progress monitoring data about how students respond to the interventions provided
- Parents and educators will be involved in a team that uses information gathered from students' response to instruction and intervention to make important decisions regarding the students' educational needs
 - This may include decisions about special education services. Visit www.florida-rti.org/ for more information, including a parent brochure about RtI

Parents have a right to request an initial evaluation to determine if a student is a student with a disability and in need of special education services. The use of RtI strategies cannot be used to delay or deny an evaluation for eligibility under the Individuals with Disabilities Education Act (IDEA). If the district agrees that there is reason to suspect that the student may be a student with a disability, the district must conduct the evaluation. If the district does not suspect that the student has a disability, the district may deny the request but must provide the parent with a written notice of refusal.

2. What is the district's “Child Find” responsibility?

The state must have in effect policies and procedures to ensure that all children with disabilities residing in the state, and who are in need of special education and related services, are identified and evaluated (34 CFR § 300.111). The district responsibility to evaluate a student is triggered when there is “reason to suspect” that a student in the district may be student with a disability and in need of special education services. The problem-solving process using RtI data, which involves universal screening and ongoing progress monitoring, provides a systematic method for identifying a student “suspected” of being a student with a disability who may need special education. This is accomplished by student response to instruction and intervention data over time (i.e., student performance data) in making child find decisions.

3. When must the district obtain informed consent from the parent and begin an initial evaluation to determine whether a student is a student with a disability and in need of special education services?

In accordance with Rule 6A-6.0331, Florida Administrative Code, the school district must promptly request consent to conduct an evaluation to determine if a student is a student with a disability and needs special education when:

1. The student's response to intervention indicates that intensive interventions implemented are effective but require a level of intensity and resources to sustain growth or performance that is beyond that accessible through general education resources; or
2. The student's response to interventions implemented indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or
3. A parent requests that the district conduct an evaluation to determine the eligibility for special education.

The district should also consider other indicators that may constitute a “reason to suspect” that the student is a student with a disability and is in need of special education services, *even if the student is advancing from grade to grade.*

4. What are the common indicators that, *when in combination*, may constitute a “reason to suspect” that the student has a disability and needs an evaluation to determine eligibility for special education services?

- Academic concerns in school:
 - Student is failing or has noticeably declining grades
 - Student demonstrates poor or noticeable declining progress on standardized assessments
 - Student negatively and significantly stands-out from same-age peers
 - Student has been receiving increasingly intensive interventions and Rtl data indicate persistently poor or questionable response
 - Student has accommodations through a Section 504 Plan with minimal evidence of benefit
- Behavioral concerns in school:
 - Student has numerous or increasing disciplinary referrals for violations of the code of conduct
 - Student demonstrates signs of depression, withdrawal, and/or inattention
 - Student has truancy problems and/or increased unexcused absences
 - Student negatively and significantly stands-out from same-age peers
- Teacher or other service provider suggests that the student may be a student with a disability
- Outside sources of information:
 - Evidence that the student has been hospitalized, particularly for mental health or chronic health issues
 - Evidence that the student has received a DSM-IV diagnosis
 - Evidence that the student is taking medication
 - Evidence that the student is seeing a private counselor, therapist, or other health care provider
 - A suggestion from a private evaluator that the student be evaluated
 - Parent indicates that they suspect that their child has a disability

5. What information should be communicated to parents or teachers who believe that an evaluation is the only way to get help?

Sometimes teachers or parents believe that getting a label through a special education evaluation is the only way to help a child, when, in fact, finding out what instruction works best for students is the key to helping them have successful school experiences. Schools have a responsibility to provide effective instruction and behavioral supports to all students. When a student needs help in addition to core instruction and supports, a team of people uses a problem-solving process to find ways to improve learning. The team may include teachers, parents, students, administrators, and other types of specialists who may be able to help find solutions. Parents are an integral part of the problem-solving team and are encouraged to work with the school to help find solutions.

During the problem-solving process, progress monitoring and diagnostic assessments are used to help the team find out what works best. The most important goal of any type of assessment is to help school personnel know how to support students more effectively. If a team loses sight of that goal and begins to focus on how to “get a label,” then decisions are made based on the assumption that a special education label alone will show what type of help a student needs. If this assumption is made, then the team may lose focus on achieving the shared goal: finding out what instruction the student responds positively to and then taking responsibility for providing that level of instruction for as long as your child needs it. This approach to helping students is usually referred to as response to instruction/intervention or “Rtl.” Rtl is the students’ response to instruction/intervention data that teams use in the fourth step of the problem-solving process to evaluate the effectiveness of what they are providing to students. This problem-solving process is the way schools work to improve the effectiveness of instruction within a multi-tiered system of supports continually.

6. What must a school do when a parent requests an evaluation to determine eligibility for special education?

If a parent requests that the district conduct an evaluation for special education and related services, the school must do one of the following:

- Obtain informed parental written consent to conduct the evaluation. The district has 60 school-days, of which the student is in attendance, after receiving parental consent to complete the evaluation; or
- Provide a formal, written refusal to conduct the evaluation with an explanation for the refusal

7. What does an “evaluation” and eligibility determination actually include?

An evaluation consists of all the procedures used to determine whether a student has a disability and the nature and extent of the student’s special education needs (34 CFR § 300.15). The evaluation procedures include ongoing assessments of the student’s response to the instruction and interventions, interviews, observations, the analysis of all the available information about the student, and *may include* individual tests that are given by a specialist such as a school psychologist or a speech/language pathologist. The details and decisions about what evaluation procedures will be conducted are determined by the team, which includes the parent.

A group of qualified professionals determines whether the student meets the eligibility criteria as a student with a disability as established in applicable State Board of Education Rules. The parent is invited to a meeting and encouraged to participate as a member of the team. If the student is eligible for special education and related services, an individual educational plan (IEP) will be developed. Parents must give written consent before the provision of special education and related services for the first time. If the student is not eligible, the problem-solving team will continue to implement instruction and interventions that are matched to the student’s needs.

8. What additional guidance exists to help clarify this information?

The Department has previously released two additional resources to clarify the relationship between RtI and evaluations for special education:

1. Memorandum regarding Clarification of Consent and Evaluation Requirements When Determining Eligibility for Special Education: <http://www.florida-rti.org/docs/ConsentEvaluationRequirements.pdf>.
2. Evaluations for Special Education Services: Information for Parents: <http://www.florida-rti.org/docs/EvaluationsSpecialEd.pdf>