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Identifying Specific Learning Disabilities

Legislation, Regulation, and Court Decisions

Rebecca O. Zumeta, Perry A. Zirkel, and Louis Danielson

Specific learning disability (SLD) identification and eligibility practices are evolving and sometimes contentious. This article describes the historical context and current status of the SLD definition, legislation, regulation, and case law related to the identification of students eligible for special education services. The first part traces the history of research related to identification practices and federal legislation. The second part discusses current federal law, state policies, and case law. The concluding part provides a synthesis and, based thereupon, future policy recommendations. The primary suggestions are the future policy priorities (a) provide clear regulatory guidance on the basis of available research evidence; (b) pay more specific attention to identification timelines; and (c) provide clarification of procedures for referral and eligibility determination when implementing response to intervention. **Key words:** *discrepancy*, *identification*, *Individuals with Disabilities Education Act*, *learning disabilities*, *RTI*, *specific learning disabilities*

THE IDENTIFICATION of specific learning disabilities (SLD[1])—the largest eligibility category covered within the Individuals with Disabilities Education Act (IDEA)—is a complex topic for a variety of etiological, psychological, and political reasons. As a result of this complexity, understandings of SLD, identification patterns, and procedures for determining students' eligibility for special education services vary widely (Etscheidt, 2013; Weintraub, 2005).

In particular, the 2004 reauthorization of IDEA expanded SLD identification options to include "a process that determines if the child responds to scientific, research-based intervention" (§ 1414[b][6]), or what is most commonly known as response to intervention (RTI)[2]. Although the United States Congress intended this expansion to remedy problems with the traditional approach to identification that required presence of a severe discrepancy between IQ and achievement, the resulting implementation of RTI has created considerable uncertainty regarding how best to determine eligibility for special education services within the SLD category. This issue is problematic for SLD identification and eligibility determinations generally, and particularly in eligibility areas where scientific, research-based assessment and intervention options and access to trained staff are limited (Vaughn et al., 2010), such as in the areas of written language and oral expression and in secondary

Author Affiliations: *American Institutes for Research, Washington, District of Columbia (Drs Zumeta and Danielson); and College of Education, Lehigh University, Bethlehem, Pennsylvania (Dr Zirkel).*

The authors have indicated that they have no financial and no nonfinancial relationships to disclose.

Corresponding Author: *Rebecca O. Zumeta, PhD, American Institutes for Research, 1000 Thomas Jefferson St NW, Washington, DC 20007 (rzumeta@air.org).*

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[1]Although SLD and LD may be used synonymously, we refer to SLD throughout the article to enhance consistency.

[2]RTI may also be known as response to instruction, responsiveness to instruction/intervention, or response to instruction and intervention. We use RTI to refer to all of these terms.

grades. In addition, requirements related to use of funds authorized by federal programs such as Title I, IDEA Part B, and Coordinated Early Intervening services (National Center on Response to Intervention [NCRTI], 2010b) can make it difficult for schools to leverage their resources to develop staff capacity to implement and sustain high-quality RTI systems that can reliably identify and support at-risk students, including those with SLD.

Given these issues, understanding the historical context of how SLD policy emerged may provide important background to inform current challenges with identification policy and practice, as well as plans for future legislation (Britt, 2002). Specifically, the development of the SLD definition, its foundational tenets, resulting policy, later revisions, and case law are essential components underpinning progress to date, as well as current challenges. Furthermore, this context may provide direction as leaders consider how to refine identification and service delivery procedures for students with SLD under the law.

In this article, we address the history of policy related to service delivery for students with SLD and describe identification issues within the context of various legislative initiatives. First, we provide a summary of the emergence of the SLD definition, resulting early federal policy, and its subsequent evolution. Next, we discuss current federal law, changes to identification procedures that include RTI, and policy memoranda issued by the Office of Special Education Programs (OSEP) that provide guidance related to identification of SLD. Then, we provide a discussion of current state policy and case law related to SLD identification. We conclude with recommendations intended to inform the future reauthorization of IDEA and subsequent guidance. Our collective knowledge of the empirical, historical, and policy literature and case law related to SLD identification informs these recommendations, as does the experience of authors Danielson and Zumeta in leading state and national technical assistance (TA) projects, including the NCRTI and the National Center on Intensive Intervention (NCII), as well as Danielson's prior leadership of OSEP's Research to Practice Division.

EMERGENCE OF SLD AND EARLY FEDERAL LEGISLATION

Developing the SLD construct

Early research on SLD can be traced back Gall's and Bouillaud's work on brain–behavior relationships in the early 1800s and to Broca's and Wernicke's later writings on language impairment and aphasia (Hallahan & Mercer, 2002). German neurologist Kussmaul (1877) was the first person to name "word blindness," describing it as an individual's blindness to text, despite having typical visual, speech, and cognitive skills. In 1887, German ophthalmologist Berlin further refined this definition and coined the term "dyslexia" (Wagner, 1973), now the most common and most researched type of SLD (Colker, Shaywitz, Shaywitz, & Simon, 2013).

Research on language, reading, perceptual, and motor disabilities and related intervention continued during the early and middle parts of 20th century, with the work of Orton, Monroe, Kirk, and Bateman, among others (Hallahan & Mercer, 2002). This work laid the foundation for current conceptualizations of SLD, and it had significant influence on subsequent policy developments. First, Orton was a key figure in the early study of reading disabilities in the United States because his work reinforced the notion that reading disabilities were internal, brain-based disorders. He was also among the first to argue that reading should be taught using specialized phonics-based approaches that incorporate instruction in phonological and phonemic awareness (Orton, 1937).

Monroe, who was Orton's research associate, produced work (Monroe, 1932) that is particularly germane to the SLD policy discussion because it introduced the concept of discrepancy to the identification of reading disabilities. This was a concept upon which Kirk and Bateman expanded later. Monroe's empirical work also suggested that reading

disabilities could be successfully treated through individually designed, precise, and explicit instruction, which provided an important rationale for the later inclusion of SLD in special education law. The approach to using diagnostic data to drive instruction became known as diagnostic–prescriptive teaching, which continues to play a prominent role in recommended practices for teaching students with intensive learning needs (Hallahan & Mercer, 2002; Monroe, 1932; NCII, 2013).

Creating the next landmark, Kirk (1962) coined the term "learning disability" in his textbook, *Educating Exceptional Children*. Components of this initial definition are used to date:

> A learning disability refers to a retardation, disorder, or delayed development in one or more of the processes of speech, language, reading, writing, arithmetic, or other school subject resulting from a psychological handicap caused by a possible cerebral dysfunction and/or emotional or behavioral disturbances. It is not the result of mental retardation, sensory deprivation, or cultural factors. (p. 263)

Inherent in Kirk's description is the notion of exclusion, which later became one of the foundational tenets of the federal SLD definition. That is, the source of an individual's low achievement must not be due to other factors; rather, these potential sources of low achievement must be "excluded" before identification occurs.

Shortly thereafter, Bateman (1965), a student of Kirk's, expanded this definition to include explicitly Monroe's (1932) notion of discrepancy:

> Children who have learning disorders are those who manifest an educationally significant discrepancy between their estimated potential and actual level of performance related to basic disorders in the learning process, which may or may not be accompanied by demonstrable central nervous system dysfunction, and which are not secondary to generalized mental retardation, educational or cultural deprivation, severe emotional disturbance, or sensory loss. (Bateman, 1965, p. 22)

While including Kirk's notion of exclusion, Bateman's definition introduced the concept that SLD can be characterized by the presence of a significant discrepancy between aptitude and achievement, which later became a primary eligibility requirement for SLD classification under IDEA. Although traditional approaches to measuring discrepancy by assessing aptitude using IQ tests have fallen out of favor in the last decade (Fletcher, Coulter, Reschly, & Vaughn, 2004), the construct is implicit to the definition of SLD and continues to play an important role in several states' implementation of identification requirements under IDEA.

SLD's Emergence In Federal Legislation

Early efforts

Despite an empirical history of SLD that covers more than two centuries, its presence in federal law related to access to, and delivery of, educational services did not occur until the latter half of the 20th century. The 1950s and 1960s brought early federal legislation that authorized, but did not mandate, services and educational opportunities for people with disabilities. Although these laws were not specific to learning disabilities, they reflected expanding interest in educational service delivery for all people with disabilities (OSEP, 2000).

In 1966, Congress mandated the creation of the Bureau of Education of the Handicapped (BEH, the predecessor to OSEP) under Title VI of the 1965 Elementary and Secondary Education Act (ESEA; P.L. 89-10). This program, which was the predecessor of IDEA, was known as legislatively the "education of the handicapped act" (EHA). It provided grants to states to expand educational programs for students with disabilities (Martin, Martin, & Terman, 1996), but it did not include SLD as an eligible category. This exclusion was largely due to lobbying efforts from parents of students with other disabilities who were concerned that SLD would constitute a "catchall" category comprising low-achieving and

economically disadvantaged students, thereby diverting resources away from their children (Hallahan & Mercer, 2002; Martin, 2002).

After significant BEH lobbying, Congress passed the Children with Specific Learning Disabilities Act of 1969, which supported model demonstrations of service delivery programs for students with SLD. Later, this law was consolidated under the EHA as part of the 1970 ESEA Amendments (P.L. 91-230) (Martin et al., 1996) and was expanded to include research investments related to SLD. SLD, however, still was not an eligible category for funding to states and local schools (Hallahan & Mercer, 2002).

Although federal legislation expanded opportunities for children with disabilities at this time, case law also played an integral role in the 1975 passage of P.L. 94-142, the Education for All Handicapped Children Act (EHA), which was the first iteration of IDEA. Specifically, two court consent decrees, *Pennsylvania Association for Retarded Children v. Commonwealth* (1971) and *Mills v. Board of Education of the District of Columbia* (1972) applied the Fourteenth Amendment's due process and equal protection clauses to establish that state and local education agencies have the responsibility to provide meaningful educational access to children with disabilities (OSEP, 2000; Weintraub, 2005). These decisions were significant because at the time of the passage of P.L. 94-142, more than one million children with disabilities were excluded entirely from the educational system, and more than 50% of all students with disabilities were given only limited access to public schools (OSEP, 2000). Thus, these decisions laid the groundwork for the free and appropriate public education provision in P.L. 94-142 that is foundational to special education law.

The successive reauthorizations of the EHA, a funding act, included various major amendments, including the 2004 reauthorization that first allowed RTI to be used as an alternative to discrepancy in the identification of SLD. Other notable changes to the law since 1975 included the following: (a) the 1986 amendments requiring reimbursement of attorneys' fees for prevailing parents, which was a feature imported from federal civil rights acts; and (b) the 1990 amendments, which renamed the initial EHA legislation IDEA and added autism as a recognized classification. A new set of federal regulations followed each major reauthorization, such as the 2006 regulations pursuant to the 2004 amendments that first included RTI.

SLD under P.L. 94-142

Historical analysis of P.L. 94-142 reveals three fundamental issues related to SLD identification in the earliest form of the law: (a) tenets of the federal definition, (b) problematic trends in identification, and (c) identification timelines that may delay provision of appropriate services for students with disabilities.

Tenets of the original federal definition of SLD

The concept of SLD has been predicated historically on four tenets that emerged from the early research and advocacy noted previously: discrepancy, heterogeneity, exclusion, and student-centered origin (Fletcher et al., 2004; United States Office of Education [USOE], 1977). These tenets shaped subsequent emergence of policy related to identification and eligibility. Although the field's understanding of these components has changed over time, they continue to play an important role in legislation and regulation.

Discrepancy, which Monroe (1932) and Bateman (1965) set forth in their early descriptions of SLD, has historically been the greatest single driver in identification and eligibility determinations for students. Although derived from early research, political motivations also played a role in the centrality of discrepancy in identification requirements. Specifically, as part of lobbying efforts for greater inclusion of students with SLD in federal legislation during the 1960s, the National Advisory Committee on Handicapped Children estimated that, although 1%–3% of school-aged children

had SLD, most did not receive services. These prevalence estimates were important because they not only created justification for these much needed services but also provided a basis for a congressional amendment that mandated a funding cap for SLD under the original 1975 EHA, which was lifted when the associated federal regulations mandated procedures for SLD identification. The regulations required determination of severe discrepancy between ability, as measured by IQ and achievement, and they defined areas of eligibility (Hallahan & Mercer, 2002; Weintraub, 2005). These early federal regulations laid the foundation for eligibility procedures still used today.

Heterogeneity, the second tenet of the early federal definition, provided the basis for use of the term "specific" in "specific learning disability." That is, it refers to the fact that there are a variety of specific learning domains that may be affected by SLD. This heterogeneity makes it possible for one student to have an SLD that impacts reading skills, whereas another student's SLD may impact mathematics. As a result of this tenet, the regulations of USOE in 1977 specified seven domains of potential eligibility under the SLD category: basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning, written expression, oral expression, and listening comprehension (Hallahan & Mercer, 2002). In response to research that expanded understanding of learning disabilities, the 2006 IDEA regulations added an eighth domain—reading fluency (§ 300.309[a][1]). A student must qualify in at least one of these domains for identification to occur.

The third tenet, exclusion, refers to the principle that other factors cannot explain the individual's low achievement. That is, if low achievement can be attributed to lack of instruction, linguistic diversity, economic disadvantage, or a disabling condition impacting vision, hearing, cognition, attention, or behavior, then the condition should not be considered an SLD (Hallahan & Mercer, 2002). As noted previously, this tenet is rooted in Kirk's initial 1962 SLD definition and means that SLD identification requires that other factors must be evaluated and excluded before determination of eligibility occurs.

The fourth and final tenet of the original federal definition is that SLD is a student-centered condition internal to the individual. This tenet specifies that the low achievement characteristic of SLD is due to neurobiological characteristics of the individual, not external factors. This relates closely to the exclusion tenet. Although research is still emerging beyond its well-established confines in the area of dyslexia (Colker et al., 2013), current identification processes typically determine this internality through a process of elimination of potential external factors.

Problematic trends in SLD eligibility under IDEA

Despite regulations intended to prevent overidentification of SLD, significant growth in the category occurred during the latter part of the 20th Century (Zirkel, 2013b), with prevalence reaching a rate well above the 1%–3% Congress initially intended. It was approximately 6.1% in 2000–2001 (Snyder & Dillow, 2012). This growth can be traced to a number of potential sources. Some advocates argued that the initial prevalence estimates Congress used were too low (Weintraub, 2005). Other concerns stemmed from the belief that the exclusion and student-centered origin tenets were not sufficiently assessed as part of the comprehensive evaluation process. In other words, students received an SLD label without systematic elimination of other potential causes of low achievement, including inadequate or low-quality instruction (Vaughn & Fuchs, 2003). Relatedly, concerns with standardized testing and resulting disproportionate trends in identification of certain ethnic groups, as well as students living in poverty (Cortiella, 2011) further underscored concerns that SLD was not being reliably identified under the discrepancy approach (Vaughn & Fuchs, 2003).

Dissatisfaction with identification delays

Over time, concern developed over the time it took the severe discrepancy tenet of

SLD to emerge in students, which delayed provision of special education services. Critics argued that waiting for students to be old enough to demonstrate a discrepancy constituted a "wait-to-fail" model (Fuchs & Deschler, 2007). That is, students had to endure years of academic failure before the discrepancy between their IQ and achievement was large enough to warrant special education services. As an alternative, advocates argued for a model oriented around early identification, intervention, and monitoring of students at-risk for SLD; we now refer to this model as RTI (Fuchs, Fuchs, & Zumeta, 2008; Vaughn & Fuchs, 2003). Despite its promise, however, challenges with identification timelines have persisted under RTI because of variability in numbers of tiers, time spent in intervention, and ambiguity about when referral to special education should occur.

SHAPING CURRENT FEDERAL POLICY

The learning disabilities initiative

In 1997, as the U.S. Department of Education (ED) developed what became the 1997 amendments to IDEA, the National Joint Committee on Learning Disabilities sent a letter to the Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS) identifying major concerns that the Committee had with the current SLD regulations and asked the ED to consider these issues in the 1997 reauthorization process. These concerns included the persistent increase in students identified with SLD, disproportionate representation of subgroups, problems with identification practices, and issues with special education program quality (Bradley, Danielson, & Hallahan, 2002).

Because of the complex set of issues facing OSERS at the time, the Assistant Secretary postponed addressing these issues until after the completion of the 1997 reauthorization and subsequent regulations, but OSEP undertook the Learning Disabilities Initiative in 2000. OSEP prioritized basing new policies on research evidence, and they provided opportunities for broad-based input from stakeholders including researchers, parents, educators, administrators, policy makers, and disability advocates. Staff convened a stakeholder panel to advise the process and, based on advice from this group, commissioned a set of papers and held an invitational conference where authors and reactants presented and responded to papers. OSEP published all materials related to the Initiative, including each commissioned paper and response, and descriptions of all other Initiative activities (Bradley et al., 2002).

The commissioned papers reflected issues for which there was significant consensus and other areas where there was less agreement. OSEP conducted a researcher roundtable and an organizational roundtable. The goal of these roundtables was to find agreement where it existed, particularly around issues associated with SLD identification procedures. The researcher roundtable resulted in a brief series of statements reflecting the consensus positions of the 15 individuals who participated. The following statements were particularly notable:

> IQ/achievement discrepancy is neither necessary nor sufficient for identifying individuals with SLD. IQ tests do not need to be given in most evaluations of children with SLD. There should be some evidence that an individual with SLD is performing outside the ranges associated with mental retardation, either by performance on achievement tests or by performance on a screening measure of intellectual aptitude or adaptive behavior. (Bradley et al., 2002, p. 796)

For the aforementioned statement, a minority group provided the following opinion:

> Aptitude/achievement discrepancy is an appropriate marker of SLD, but is not sufficient to document the presence or absence of underachievement, which is a critical aspect of the concept of SLD. (Bradley et al., 2002, p. 796)

Taken together, these statements reflected a consensus view of the researcher roundtable that IQ/achievement discrepancy was insufficient for identifying students with SLD. This agreement provided a basis for the amendments to the SLD identification criteria in the

2004 reauthorization of IDEA. The roundtable concluded the following:

> There should be alternative ways to identify individuals with SLD in addition to achievement testing, history, and observations of the child. Response to quality intervention is the most promising method of alternative identification and can both promote effective practices in schools and help to close the gap between identification and treatment. Any effort to scale up response to intervention should be based on problem-solving models that use progress monitoring to gauge the intensity of intervention in relation to the student's response to intervention. Problem-solving models have been shown to be effective in public school settings and in research. (Bradley et al., 2002, p.798)

This statement—for which there was no minority dissent—provided the basis for SLD identification requirements enacted in IDEA 2004 that specify, "In determining whether a child has a specific learning disability, a local education agency may use a process that determines if the child responds to scientific, research-based intervention" (§ 1414[b][6]). Notably, this statement also conceptually addressed the exclusion, heterogeneity, and student-centered tenets of the SLD definition described earlier in this article, providing the basis for a clearer link between identification policy and empirical understandings of the disorder. Subsequent federal and state regulations failed to specify how to identify these tenets procedurally, however, contributing to many of the identification challenges that persist today.

IDEA 2004 statute and regulations

IDEA 2004 statutory language on SLD identification is brief and straightforward: (a) States are required to adopt criteria for SLD determination, (b) these criteria may not require the use of severe discrepancy, and (c) the criteria must permit the use of a process on the basis of the child's response to scientific, research-based intervention (§ 1414[b][6]). The regulations expanded on this language, adding that criteria adopted by states must permit the use of other research-based procedures for SLD identification (§ 300.307[a][3]).

As noted, current regulations continue to require evidence that a child does not achieve adequately in at least one of eight areas related to reading, writing, spoken language, and mathematics. In addition, there must be a determination that the child either has not made sufficient progress to meet standards using RTI or has exhibited a pattern of strengths and weaknesses in performance. Since the publication of the final regulations for IDEA 2004 in 2006, a great deal of attention has focused on the criteria associated with the use of RTI for SLD identification. Current federal regulations do not specify a particular RTI model or approach to determining responsiveness when making eligibility decisions. This lack of specificity has resulted in significant variation in identification practices and continued reliance on the discrepancy model in many districts and states (Hauerwas, Brown, & Scott, 2013), despite the presence of articulated RTI models (Fuchs, Fuchs, & Stecker, 2010; NCRTI, 2010a). In addition, little discussion and attention has focused on the use of the criteria associated with states' use of the pattern of strengths and weaknesses option for SLD identification, and a literature review for this article revealed no data on the extent to which this approach has been used.

To ensure that underachievement is not due to lack of appropriate instruction, the regulations published in 2006 require that eligibility teams consider data demonstrating that a child received appropriate instruction in regular education settings and also consider data-based documentation of repeated assessments of student progress. If a child does not make adequate progress after an appropriate period of time, the public agency must promptly request parent consent to conduct a comprehensive evaluation. Parents may also request an evaluation at any point in this process. The data collected on a child's response to appropriate instruction in the regular education setting are important data but are not the only information required to determine

eligibility. The Code of Federal Regulations sections 300.301-306 require that all components of a comprehensive evaluation be met.

Consistent with earlier versions of the law, exclusionary factors remained important in the 2006 regulations. To be eligible under the SLD category, the evaluation team must rule out visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency as a primary cause of the lack of achievement, even if there is inadequate RTI. This requirement also means that the discrepancy tenet is still relevant to SLD identification under RTI, because it assumes the presence of low achievement despite generally intact cognitive skills.

Although IDEA 2004 statute and 2006 regulations clearly establish RTI as perhaps the primary option for states to adopt for SLD identification, many details related to this option are not addressed by the regulations and are left, therefore, to the discretion of states and/or districts. For example, regulations require data to demonstrate (a) that the child was provided appropriate instruction in regular education settings and (b) the child's progress in instruction was inadequate. There is no requirement, however, that this regular education includes anything beyond core instruction.

RTI approaches as implemented across the United States typically include at least three tiers of instruction, with at least two of these tiers considered to be provided within regular education settings. In the case of a three-tier RTI system, a child typically would need to demonstrate inadequate response to at least two tiers of instruction before referral might occur. Given the lack of legal specificity at both the federal and state levels (Hauerwas et al., 2013) related to data use and time spent, as well as the number of rounds of intervention, it may be possible for students with SLD to spend months, or even years, in intervention before referral for evaluation occurs. In addition, the limited number of research-based intervention and assessment programs outside the area of elementary reading can make it difficult for eligibility teams to verify accurately and efficiently that a student has indeed received "adequate" general education instruction in other content areas or grade levels. Similarly, the limited amount of research on intervention and assessment with culturally and linguistically diverse groups, including English language learners (NCII, 2012a, 2012b), may make timely eligibility determinations for these populations similarly challenging.

The regulations are also silent on the issue of what constitutes inadequate achievement and progress within an appropriate duration of intervention. This lack of regulation is not surprising, because researchers continue to debate these issues (Fuchs & Deshler, 2007). In fact, review of comments related to the 2006 IDEA regulations indicates that the ED deliberately chose to provide flexibility for states, resulting in inevitable variation in how they operationalize and implement RTI.

At the same time, although the 2004 legislation attempted to link identification procedures conceptually and comprehensively to the tenets of SLD definition, the lack of procedural specificity in the subsequent regulations, such as time in intervention and how to assess responsiveness, means that there continues to be significant confusion and implementation variation in the field. In addition, disproportionality, one of the major concerns with discrepancy that RTI was intended to help remedy, remains a persistent problem (Cortiella, 2011). When considered in light of research progress in the field (Fuchs, Fuchs, & Compton, 2012), these issues suggest that future policy decisions should incorporate further refinement and specificity with respect to how to identify reliably the defining elements of SLD.

It is also important to note that, in many cases, RTI is implemented as a whole-school improvement approach designed to lead to early identification and prevention of learning problems in the general education program. In this type of model, the primary goal of RTI is school improvement, not SLD identification (NCRTI, 2010a). However, a

well-implemented RTI system should also assist schools to identify students whose lack of responsiveness to intervention may indicate the existence of SLD. Our collective experience providing TA to states and school districts suggests that it may take 2 years or more to achieve high-quality implementation of the general education tiers of intervention (i.e., primary and secondary intervention or tier 1 and tier 2). In states that have mandated RTI for SLD identification, this situation may create significant obstacles for the timely identification of SLD.

OSEP policy clarification

From time to time, OSEP issues policy memoranda and responds to policy questions that come from the field, typically in the form of letters. The policy letters and memoranda are available through the ED Web site (http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html). These responses are meant to provide informal guidance but are not legally binding. Several policy memoranda and letters are relevant to SLD identification. For example, OSEP issued a policy memorandum on January 21, 2011 (http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf), addressing the use of RTI in the identification of students with disabilities. This memorandum responded to OSEP concerns that some school districts might use RTI to delay or deny a timely evaluation of children suspected of having a disability. The memorandum made several critical points in responding to this concern, noting that IDEA, "regulations at 34CFR 300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability" (OSEP, 2011). The memorandum further stated that,

> It would be inconsistent with the evaluation provisions at 34 CFR 300.301 through 300.311 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

These points addressed what is one of the most significant challenges with use of RTI to identify SLD—the tension between IDEA expectation that identification and evaluation of a child with a disability (i.e., Child Find) be implemented expeditiously versus the extensive time required for a child to move through multiple intervention tiers. In an instance in which several unsuccessful tiers of intervention occur over many months, it is not surprising that parents could become frustrated with an RTI process.

OSEP also has issued policy letters that are relevant for a discussion of the tension between timely identification and use of RTI in evaluation. Space does not allow us to discuss all of these letters, but we will discuss those that are particularly relevant. First, in a letter to Zirkel on March 6, 2007 (http://www2.ed.gov/policy/speced/guid/idea/letters/2007-1/zirkel030607eval1q2007.pdf), OSEP responded to questions concerning procedures for identifying students with SLD because of confusion about the relationship between the use of RTI and any other evaluation requirements for SLD. The response stated that "while a State cannot require the use of a severe discrepancy, a State may prohibit, or make optional, the use of a severe discrepancy model." The letter went on to clarify that RTI is only one part of the comprehensive evaluation required by IDEA and does not eliminate the obligation to conduct a comprehensive evaluation that meets the requirements of 34 CFR 300.304 and 300.305.

A second letter to Zirkel dated April 8, 2008 (http://www2.ed.gov/policy/speced/guid/idea/letters/2008-2/zirkel040808rti2q2008.pdf), responded to questions about requirements related to the use of continuous progress monitoring data as part of SLD identification. OSEP indicated that, although regulations do not use the term, "continuous progress monitoring," they do require at 34 C.F.R. 300.309(b)(2), "documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction."

The letter also stated that this information "may be collected as a part of the evaluation process, or may be existing information from the regular instructional program of a school or LEA." This response from OSEP is significant because it suggests that a school may use general education assessment data when considering referral or eligibility for special education. This guidance contrasts with recommendations provided by RTI researchers and TA providers who typically promote the use of progress-monitoring tools that meet high technical standards for monitoring student's responsiveness to instruction (NCRTI, 2010a). This distinction is also important because it provides a basis for determining what might be minimally sufficient to meet the regulatory requirements versus what might constitute optimal implementation of RTI. For example, an RTI TA provider might recommend that a school collect several weeks of data using a high-quality progress-monitoring tool to determine whether a student is progressing at an adequate rate. This letter from OSEP, however, suggests that data might already be available from regular classroom assessments that could be sufficient (although not necessarily optimal).

A third letter to Zirkel, dated January 6, 2011 (http://www2.ed.gov/policy/speced/guid/idea/index.html), is also relevant to this discussion because it responded to a series of questions about students who attended private schools. OSEP indicated that school districts are responsible for Child Find in private schools, and that it would be inconsistent with IDEA requirements to reject a referral from a private school on the basis that the school had not implemented RTI. In this case,

> The group making the eligibility determination for a private school child may need to rely on other information, such as any assessment data collected by the private school that would permit a determination of how well a child responds to appropriate instruction.

Related to the issue of timely evaluation, OSEP responded in a letter to Combs dated August 15, 2008 (http://www2.ed.gov/policy/speced/guid/idea/letters/2008/combs081508rtieval3q2008.pdf), to questions about the use of RTI for evaluation in a circumstance of a child subjected to disciplinary measures who required an expedited evaluation. In this letter, OSEP indicated that the district might need to rely on other tools and strategies to ensure an expedited evaluation if the child did not participate in an RTI process prior to referral.

Finally, in a letter to Brekken dated June 2, 2010 (www2.ed.gov/policy/.../letters/2010-2/brekken060210rti2q2010.doc), OSEP responded to questions about the applicability of RTI requirements of IDEA for children aged 3 through 5 years enrolled in Head Start Programs. OSEP responded that,

> It would be inconsistent with the evaluation provisions at 34 CFR 300.301 through 300.311 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a community-based early childhood program (e.g., Head Start) has not implemented an RTI process with a child and reported the results of that process to the LEA.

The letter went on to say that,

> If the parent believes a needed evaluation is being delayed based on an LEA's refusal to conduct an initial evaluation until the Head Start program implements an RTI approach with the child, the parent may file a due process complaint under 34 CFR 300.507 or a State complaint under 34 CFR 300.153.

This series of OSEP policy letters provides an indication of the need for districts and schools to balance Child Find requirements and identification timelines carefully with the rigorous implementation of RTI. These letters seem to indicate further that, if the RTI process results in delay of the expeditious referral of a student suspected of having SLD, districts must address the issue. Some districts may need to rely on more efficient classroom-based assessments or monitoring of student progress in order to respond to OSEP guidance on this issue.

CURRENT STATUS OF STATE POLICIES

Traditional SLD eligibility requirements

As reviewed more comprehensively by Zirkel (2006), a series of studies provided a longitudinal look at state laws concerning SLD eligibility, but with variation as to the source and scope of the data. For example, early surveys of state-submitted definitions, procedures, criteria, and guidelines identified an increasing emphasis on the discrepancy component of the SLD definition but a wide variety of measurement standards and methods (Frankenberger & Harper, 1987; Mercer, King-Sears, & Mercer, 1990). A related study found no statistically significant relationship between the percentage increase in the state's SLD population from 1976–77 to 1988–89 and the state's application of the discrepancy criterion or method (Frankenberger & Fronzaglio, 1991). In a later survey that similarly was not limited to laws and legally binding policies, Reschly and Hosp (2004) found that the classification criteria continued to focus on specified areas, severe discrepancy, and exclusion conditions, with a trend toward federal nomenclature. They also found continuing "enormous variability" (p. 209) among states, despite movement toward applying more statistically sound methods for the severe discrepancy component.

As of the year prior to the 2006 IDEA regulations, Zirkel (2006) provided a snapshot of state laws for SLD identification. Although the boundary was not clear across states, he generally excluded guidelines and other policies that did not have the binding force of statutes or regulations. Canvassing state statutes and regulations from the framework of the template of the SLD components in IDEA regulations, Zirkel found that the majority of states approximated IDEA model for most of the components, particularly the identification of specific areas, such as reading comprehension and math calculation, the definitional element of a psychological processing disorder, and the listing of examples of this disorder. The two exceptions were (a) the disorder definition, for which the majority of state laws contained more strict specifications than IDEA and (b) the exclusion for lack of proper instruction in general education, related to which the majority of state laws were silent.

State laws and policies for RTI

In accordance with the 2006 IDEA regulations, states exercised their choice among three options: (a) permitting or prohibiting severe discrepancy, (b) requiring or permitting RTI, or (c) requiring or permitting an "other alternative research-based procedures" (§ 300.307[a]). In an early report of states' responses, Berkeley, Bender, Peaster, and Saunders (2009) reported that 15 states "have currently adopted an RTI model" (p. 87); yet they classified only two states—Delaware and Georgia—as using this model exclusively for SLD eligibility. The results were difficult to decipher in terms of state laws, because the researchers' data source was state education agency Web site materials, thus including guidelines and practice documents without any clear differentiation from, and tabulation of, state laws or legally binding policies.

In a more precise and up-to-date analysis that provided due differentiation of state guidelines and various features of the RTI approach, such as the duration of the tiers and the frequency of continuous progress monitoring, Zirkel and Thomas (2010b) noted that 13 state laws partially or completely required RTI for SLD identification, with Iowa added as a singular hybrid requiring either RTI or the third, research-based option. Moreover, as Zirkel (2011a) subsequently reported, Wisconsin was the last state to choose, adding itself to the mandatory RTI states. Other findings of Zirkel and Thomas included that (a) 11 states require local education agencies to develop implementation plans but with varying levels of state education agency involvement; (b) all but seven states covered the core characteristics of RTI but often only in their guidelines; (c) the minority ($n = 23$) addressed the duration of intervention at each tier, with variety and latitude being their norm; (d) the

majority of states have criteria for the frequency and intensity of interventions, but most often in the form of recommendations rather than requirements; (e) most of the states have criteria for progress monitoring, more often in the form of recommendations, and few states have specified decision rules for movement from one tier to the next as either recommendations or requirements; and (f) only six states have specified criteria for the transition from RTI to evaluation for special education eligibility.

In a follow-up analysis, Zirkel (2011b) found that (a) state laws often provide general education interventions but not in coordination with the RTI provisions; (b) more than two-thirds of the states provide for a dual model of RTI (i.e., the behavioral as well as the academic dimension) but largely via guidelines rather than requirements; (c) less than half of the states specify an individual intervention plan as part of their RTI provisions; and (d) only a handful of states have extended RTI for classifications beyond SLD.

CASE LAW ON SLD ELIGIBILITY: WHAT DO THE COURTS SAY?

A series of successive tabulations of case law, including not only court decisions but also hearing and review officer decisions, are available in the *Individuals With Disabilities Education Law Reports*. These reports portray a trend related to SLD eligibility. First, in a comprehensive compilation of approximately 90 hearing/review officer and court decisions from 1980 to mid-2006 specific to SLD identification, Zirkel (2006) found that (a) approximately four-fifths of the decisions were at the hearing/review officer level; (b) the frequency of the decisions rose gradually during this period to an annual average of approximately seven during the last 6 years, with the majority in California ($n = 20$), Pennsylvania ($n = 15$), and New York ($n = 11$); and (c) school districts, typically defending that the child was not eligible as SLD, won approximately 80% of the cases, with the most frequent decisional factors being lack of severe discrepancy ($n = 68$) or lack of demonstrated need for special education ($n = 31$).

Second, a preliminary update limited to the subsequent 3.5-year period found 18 decisions concerning SLD eligibility (Zirkel, 2010). The proportion of court decisions doubled to approximately two-fifths of the cases. Continuing the previous trend, California accounted for more of the decisions than any other state ($n = 7$), with Pennsylvania remaining in second place ($n = 3$). The outcome trend during this period increased even more in favor of districts, with parents prevailing in establishing the child's eligibility in only one of the 18 cases. The primary decisional factors were lack of severe discrepancy and, to only a slightly less frequent extent, the lack of demonstrated need for special education. Relevant to the current discussion, RTI was conspicuous in its absence, surfacing in just two decisions and then in only a negligible role.

Finally, in a more complete update that extended to the 6-year period after the first compilation, thus subsuming the second one, Zirkel (2013a) found that the frequency of decisions totaled 26, with annual average dropping during the most recent period, but with California ($n = 8$) and Pennsylvania ($n = 4$) continuing to be the leading jurisdictions. Approximately three-fifths of these cases were court decisions, confirming an upward trend in litigation. Of these decisions, 22 (85%) favored districts, with eligibility being inconclusive in a few cases. Notably, RTI surfaced in a few cases, but largely as a peripheral consideration and without generalizable guidance.

The two cases in which RTI was a major factor were narrowly limited for several reasons. The first case, *Joshua Independent School District* (2010), was at the hearing officer level, which is of negligible precedential value. Moreover, it is not clear that the hearing officer's reference to RTI was correct, contributing to questions about the case's categorization as one related to RTI. In Texas, where the case was heard, RTI is permitted rather than required, and the district's "problem-solving team" may have

constituted its process for general education interventions, which are distinguishable from, but often confused with RTI (Zirkel, 2011b). The hearing officer did not examine the details specifically to evaluate the defensibility of the district's approach in terms of the applicable criteria for RTI. Instead, the officer provided traditional broad deference to the district.

The second case, *Michael P. v. Department of Education, State of Hawaii* (2011) reached the precedential level of the federal Ninth Circuit Court of Appeals. However, the decision was unique to Hawaii, the only state that consists of a single school district. In choosing as a state to permit severe discrepancy and then choosing as a district to rely on this approach, the appellate court ruled that Hawaii had violated IDEA requirement for states to permit RTI as an option. The Ninth Circuit did not provide any further analysis, instead sending the case back to the federal district court, which in turn remanded the case back to the hearing officer. The case has resurfaced, and in the interim, the federal district court decided another SLD identification case in favor of Hawaii's application of the severe discrepancy approach (Zirkel, 2013a).

Despite warnings of and guidance from RTI-based litigation (e.g., Walker & Daves, 2010; Yell, Katsiyannis, & Collins, 2010), case law to date is notably limited in its breadth and depth. The time lag in not only the state and local education agencies' implementation of RTI but also in the ponderous process of litigation under IDEA may well be the contributing factor in the limited case law to date. Nevertheless, at this point the contours of the litigation, like those of the legislation, leave the specific details of RTI and its particular effects on SLD identification largely within the province of practitioners, researchers, and policy makers.

LOOKING FORWARD: CURRENT CHALLENGES AND FUTURE POLICY

Challenges persist despite efforts to address problems associated with the historic discrepancy-based approach to identification of SLD in the 2004 reauthorization of IDEA and 2006 regulations. In particular, the addition of RTI as an option for identification, while arguably a better approach to assessing the exclusion, heterogeneity, and student-centered tenets of the SLD definition because environmental variables such as access to quality instruction may be systematically evaluated, has resulted in additional issues and questions for the field.

First, although students need not wait for a severe discrepancy between IQ and achievement to emerge to access prevention services, poor implementation of RTI may mean that some students languish in ongoing tiers of general education before referral to special education can occur. If these students are not referred for formal assessment and, therefore, cannot access special education services when needed, the wait-to-fail problem is not adequately addressed. In addition, the silence of the 2006 regulations regarding the magnitude of achievement and progress discrepancies between struggling learners and peers means that identification practices continue to vary. As a result, the lack of clarity regarding when referral for evaluation should occur suggests potential for further delays to eligibility and variation in progress monitoring and intervention quality. This ambiguity also may explain why many districts and states still rely on discrepancy formulas to identify SLD, despite noted limitations.

In addition, high-quality implementation of RTI relies on a well-functioning general education system to employ confidently the exclusion provision of the SLD definition. That is, if general education instruction is of poor quality, it can be difficult to determine whether a student's low achievement is internal to the individual. As an unfortunate result, students with SLD may be difficult to identify reliably unless general education instruction improves. In grade levels and content areas where evidence-based interventions are limited, it also may be difficult to verify intervention quality. This issue is similarly problematic when considering SLD identification for

English language learners. Given the paucity of research on appropriate intervention, assessment, and response rates for students who are learning English, it can be difficult for school teams to differentiate SLD from characteristics of second language acquisition.

With these challenges in mind, we offer several policy recommendations. First and foremost, policy makers should provide clear implementation guidance when crafting future legislation to help reduce variability and ambiguity related to SLD identification practices across schools, districts, and states. Although we are cautious about making policy recommendations that may inhibit important innovation, policy makers should craft policies that, (a) draw on the best available research about reliable identification of SLD, (b) do not delay identification for needy students, and (c) enhance consistency and reduce confusion related to SLD referral and eligibility procedures, specifically within an RTI context.

First, evidence should drive policy decisions when possible. Although flexibility may be warranted in cases in which evidence is unclear, policies should clearly specify practices in which research exists to warrant a particular approach. In addition, policy makers should continue to support federal investments in research that have clear implications for improving identification and intervention practices for students with and at risk for disabilities.

Emerging research (Compton et al., 2012; Fuchs et al., 2012) suggests that educators reliably may identify primary-grade students unlikely to respond to general education interventions (i.e., secondary or tier 2 interventions) on the basis of general education responsiveness data or their performance on dynamic assessment (i.e., assessments that evaluate students' response to instruction in a single sitting). That is, students with certain characteristics, such as very low achievement or poor initial response to instruction (as measured by dynamic assessment), may not need lower intervention tiers before they receive a comprehensive evaluation. Although time in intervention may still be necessary for students with borderline performance, these findings may help reduce identification delays for the neediest students. Support for this type of high-quality, practical research should continue and be replicated with English language learners, older students, and in other content areas.

The field would also benefit from greater clarity about the relationship between special education and RTI. Specifically, when in the RTI process should referral to special education occur? How much time should students spend in general education intervention before responsiveness is determined? How might school teams identify and implement interventions on the basis of the best available evidence when rigorously evaluated evidence-based interventions are unavailable for a specific population or content area? And, what elements of a tiered service delivery system constitute special education?

Guidance on these issues would prove beneficial to both students and service providers. First, it would help students with unidentified SLD who have previously languished in unending tiers of RTI. In addition, this clarity may improve the efficiency and quality of services provided to students across levels of the system. In particular, schools likely would find clear articulation of critical features of general versus special education intervention useful as they plan assessment and service delivery and allocate resources.

Given the authors' experience providing TA related to RTI, we believe that the field sorely needs this guidance. We continue to find significant confusion and disparity related to identification of SLD and provision of special education services across schools, districts, and states. Anecdotally, we regularly encounter schools where students receiving special education services get *less* time in intervention and *less* frequent progress monitoring than their general education peers, despite their demonstrated need. Practitioners note several reasons for this tendency, including

prohibitive special education staff caseloads, school and district policies related to placement of students with disabilities, resource restrictions, and exclusion of special education from RTI systems, among others. Although these trends warrant further empirical investigation, we urge policy makers to provide clear guidelines about expectations for referral, eligibility, intervention, and monitoring procedures so that students with disabilities who need intensive services can actually receive them, just as their typically developing peers can.

Taken together, the history and current status of SLD identification policies reinforce the persistent nature of the challenges the field faces related to accurate articulation of disability, characteristics, appropriate methods and timelines for identification, and defensible procedures for accessing services. These challenges underscore the need for rigorous research that attends to implementation issues. In addition, they reinforce the need for clear guidelines coupled with high-quality TA to ensure students' timely access to appropriate services.

REFERENCES

Bateman, B. (1965). An educational view of a diagnostic approach to learning disorders. In J. Hellmuth (Ed.), *Learning disorders: Vol. 1* (pp. 219–239). Seattle, WA: Special Child Publications.

Berkeley, S., Bender, W. N., Peaster, L. G., & Saunders, L. (2009). Implementation of response to intervention: A snapshot of progress. *Journal of Learning Disabilities*, *42*, 85–95.

Bradley, R., Danielson, L., & Hallahan, D. (2002). Specific learning disabilities: Building consensus for identification and classification. In R. Bradley, L. Danielson, & D. P. Hallahan (Eds.), *Identification of learning disabilities: Research to practice* (pp. 69–73). Mahwah, NJ: Lawrence Erlbaum Associates.

Britt, S. (2002). Response to "Learning disabilities: Historical perspectives" (b). In R. Bradley, L. Danielson, & D. P. Hallahan (Eds.), *Identification of learning disabilities: Research to practice* (pp. 69–73). Mahwah, NJ: Lawrence Erlbaum Associates.

Colker, R., Shaywitz, S., Shaywitz, B., & Simon, J. (2013). Comments on proposed DSM-5 criteria from a legal and medical/scientific perspective [Online comment]. Retrieved from http://dyslexia.yale.edu/CommentsDSM5ColkerShaywitzSimon.pdf.

Compton, D. L., Gilbert, J. K., Jenkins, J. R., Fuchs, D., Fuchs, L. S., Cho, E., et al. (2012). Accelerating chronically unresponsive children to tier 3 instruction: What level of data is necessary to ensure selection accuracy? *Journal of Learning Disabilities*, *45*(3), 205–216. doi:10.1177/0022219412442151

Cortiella, C. (2011). *The state of learning disabilities*. New York, NY: National Center for Learning Disabilities.

Etscheidt, S. (2013). "Truly disabled?": An analysis of LD eligibility issues under the Individuals with Disabilities Education Act. *Journal of Disability Policy Studies.* Advance online publication. doi:10.1177/1044207312453323

Fletcher, J. M., Coulter, W. A., Reschly, D. J., & Vaughn, S. (2004). Alternative approaches to the definition and identification of learning disabilities: Some questions and answers. *Annals of Dyslexia*, *54*, 304–332.

Frankenberger, W., & Fronzaglio, K. (1991). A review of states' criteria and procedures for identifying children with learning disabilities. *Journal of Learning Disabilities*, *24*, 495–500.

Frankenberger, W., & Harper, J. (1987). States' criteria and procedures for identifying learning disabled children: A comparison of 1981-82 and 1985-86 guidelines. *Journal of Learning Disabilities*, *20*, 118–121.

Fuchs, D., & Deshler, D. (2007). What we need to know about responsiveness to intervention (and shouldn't be afraid to ask). *Learning Disabilities Research and Practice*, *22*, 129–136.

Fuchs, D., Fuchs, L. S., & Compton, D. L. (2012). Smart RTI: A next generation approach to multilevel prevention. *Exceptional Children,* *78*(3), 263–279.

Fuchs, D., Fuchs, L. S., & Stecker, P. (2010). The blurring of special education in a new continuum of general education placements. *Exceptional Children*, *76*(3), 301–323.

Fuchs, L. S., Fuchs, D., & Zumeta, R. O. (2008). Responsiveness to intervention: An alternative strategy for the prevention and identification of learning disabilities. In E. L. Grigorenko (Ed.), *Educating individuals with disabilities: IDEIA 2004 and beyond* (pp. 225–233). New York, NY: Springer.

Hallahan, D. P., & Mercer, C. D. (2002). Learning disabilities: Historical perspectives. In R. Bradley, L. Danielson, & D. P. Hallahan (Eds.), *Identification of learning disabilities: Research to practice* (pp. 1–67). Mahwah, NJ: Lawrence Erlbaum Associates.

Hauerwas, L. B., Brown, R., & Scott, A. N. (2013). Specific learning disability and response to intervention:

State-level guidance. *Exceptional Children*, *80*(1), 101–120.

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 *et. seq*. (2006).

IDEA regulations, 34 C.F.R. §§ 300.1 *et seq*. (2012).

Joshua Indep. Sch. Dist., 56 IDELR ¶ 88 (Tex. SEA 2010).

Kirk, S. A. (1962). *Educating exceptional children*. Boston: Houghton Mifflin.

Kussmaul, A. (1877). Disturbances of speech: An attempt in the pathology of speech. In H. von Ziemssen (Ed.), *Cyclopedia of the practice of medicine* (Vol. *XIV*, pp. 581–875). New York, NY: William Wood.

Letter to Brekken, 56 IDELR ¶ 80 (OSEP 2010).

Letter to Combs, 52 IDELR ¶ 46 (OSEP 2008).

Letter to Zirkel, 47 IDELR ¶ 268 (OSEP 2007).

Letter to Zirkel, 52 IDELR ¶ 77 (OSEP 2008).

Letter to Zirkel, 56 IDELR ¶ 140 (OSEP 2011).

Martin, E. W. (2002). Response to "Learning disabilities: Historical perspectives" (b). In R. Bradley, L. Danielson, & D. P. Hallahan (Eds.), *Identification of learning disabilities: Research to practice* (pp. 69–73). Mahwah, NJ: Lawrence Erlbaum Associates.

Martin, E. W., Martin, R., & Terman, D. L. (1996). The legislative and litigation history of special education. *The Future of Children: Special Education for Students with Disabilities*, *6*(1), 25–39.

Memorandum to State Directors of Special Education, 56 IDELR ¶ 50 (OSEP 2011).

Mercer, C. D., King-Sears, P., & Mercer, A. R. (1990). Learning disabilities definitions and criteria used by state education departments. *Learning Disability Quarterly*, *13*, 141–152.

Michael, P. v. Dep't of Educ., State of Hawaii, 656 F.3d 1057 (9th Cir. 2011), *further proceedings sub nom Elizabeth G. v. Dep't of Educ., State of Hawaii*, 58 IDELR ¶ 68 (D. Hawaii 2012).

Mills v. Bd. of Educ. of Dist. of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

Monroe, M. (1932). *Children who cannot read.* Chicago, IL: The University of Chicago Press.

National Center on Intensive Intervention. (2012a). *Academic intervention tools chart*. Washington, DC: U.S. Department of Education, Office of Special Education Programs, National Center on Intensive Intervention. Retrieved from http://www.intensiveintervention.org/sites/default/files/pdf/2637_NCII_Academic%20Intervention%20Tool%20Chart_d6.pdf

National Center on Intensive Intervention. (2012b). *Progress monitoring tools chart*. Washington, DC: U.S. Department of Education, Office of Special Education Programs, National Center on Intensive Intervention. Retrieved from http://www.intensiveintervention.org/sites/default/files/2922%20Progress%20Monitoring%20Tools%20Chart.pdf

National Center on Intensive Intervention. (2013). *Data-based individualization: A framework for intensive intervention*. Washington, DC: Office of Special Education, U.S. Department of Education. Retrieved from http://www.intensiveintervention.org/sites/default/files/DBI%20a%20Framework%20for%20Intensive%20Intervention.pdf

National Center on Response to Intervention. (2010a, March). *Essential components of RTI: A closer look at Response to Intervention*. Washington, DC: U.S. Department of Education, Office of Special Education Programs, National Center on Response to Intervention. Retrieved from http://www.rti4success.org/pdf/rtiessentialcomponents_042710.pdf

National Center on Response to Intervention. (2010b, December). *Response to Intervention (RTI): Funding questions and answers*. Washington, DC: U.S. Department of Education, Office of Special Education Programs, National Center on Response to Intervention. Retrieved from http://www.rti4success.org/resourcetype/response-intervention-rti-funding-questions-and-answers

Office of Special Education Programs, United States Department of Education. (2000). *History: Twenty-five years of progress in educating students with disabilities through IDEA*. Retrieved from http://www2.ed.gov/policy/speced/leg/idea/history.pdf

Office of Special Education Programs, United States Department of Education. (2011). *Response to intervention (RTI) memo (11-07)*. Retrieved from http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html#memos

Orton, S. T. (1937). *Reading, writing, and speech problems in children*. New York, NY: W.W. Norton & Company, Inc.

Pennsylvania Ass'n of Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971).

Reschly, D. J., & Hosp, J. L. (2004). State SLD identification policies and practices. *Learning Disability Quarterly*, *27*, 197–213.

Snyder, T. D., & Dillow, S. A. (2012). *Digest of education statistics 2011 (NCES 2012-001)*. Washington, DC: National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education.

U.S. Office of Education. (1977). Assistance to states for education of handicapped children: Procedures for evaluating specific learning disabilities, *Federal Register*, *42*(250), 65082–65085.

Vaughn, S., Cirino, P., Wanzek, J., Wexler, J., Fletcher, J., Denton, C., et al. (2010). Response to intervention for middle school students with reading difficulties: Effects of primary and secondary intervention. *School Psychology Review*, *39*(1), 3–21.

Vaughn, S., & Fuchs, L. S. (2003). Redefining learning disabilities as inadequate response to instruction: The promise and potential problems. *Learning Disabilities Research & Practice*, *18*(3), 137–146.

Wagner, R. F. (1973). Rudolph Berlin: Originator of the term dyslexia. *Bulletin of the Orton Society*, *23*(1), 57–63.

Walker, D. W., & Daves, D. (2010). Response to intervention and the courts: Litigation based guidance. *Journal of Disability Policy Studies*, *21*(1), 40–46.

Weintraub, F. (2005). The evolution of LD policy and future challenges. *Learning Disability Quarterly*, *28*, 97–100.

Yell, M. L., Katsiyannis, A., & Collins, J. C. (2010). *Compton Unified School District v. Starvenia Addison*: Child find activities and response to intervention. *Journal of Disability Policy Studies*, *21*(2), 67–69.

Zirkel, P. A. (2006). *The legal meaning of specific learning disabilities for special education services eligibility*. Arlington, VA: Council for Exceptional Children.

Zirkel, P. A. (2010). The legal meaning of specific learning disability for special education eligibility. *Teaching Exceptional Children*, *42*(5), 62–67.

Zirkel, P. A. (2011a). The law and RTI. *West's Education Law Reporter*, *268*, 1–16.

Zirkel, P. A. (2011b). State laws and guidelines for RTI: Additional implementation features. *Communiqué*, *39*(7), 30–33.

Zirkel, P. A. (2013a). The legal meaning of specific learning disability for IDEA eligibility: The latest case law. *Communiqué*, *41*(5), 10–14.

Zirkel, P. A. (2013b). The trend in SLD enrollments and the role of RTI. *Journal of Learning Disabilities*, *473*, 473–479.

Zirkel, P. A., & Thomas, L. B. (2010a). State laws for RTI: An updated snapshot. *Teaching Exceptional Children, 42*(3), 56–63.

Zirkel, P. A., & Thomas, L. B. (2010b). State laws and guidelines for implementing RTI. *Teaching Exceptional Children*, *43*(1), 60–73.