UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 2 2010

Dr. Linda Brekken, Director
SpecialQuest Birth-Five
Head Start/Hilton Foundation Training Program
5789 State Farm Dr., Suite 230
Rohnert Park, CA 94928

Dear Dr. Brekken:

This is in response to your November 3, 2009 electronic mail (e-mail) correspondence and the attached letter to Ruth Ryder, Director, Monitoring and State Improvement Planning Division (MSIP), Office of Special Education Programs (OSEP), regarding the applicability of the response to intervention (RTI) requirements in section 614(b)(6)(B) of Part B of the Individuals with Disabilities Education Act (IDEA) to children ages 3 through 5 enrolled in Head Start Programs. Specifically, your questions focus on how local educational agencies (LEAs) may implement RTI when a Head Start program refers a child to the LEA as a child suspected of having a disability and being in need of special education and related services.

Your questions and OSEP's responses follow.

1. You ask whether the IDEA introduces a new requirement or encourages LEAs to use an RTI approach in determining whether a 3-, 4-, or 5-year-old child enrolled in a Head Start program is eligible for special education and related services under Part B of the IDEA.

OSEP's Response: No. The IDEA does not require, or encourage, an LEA to use an RTI approach prior to a referral for evaluation or as part of determining whether a 3-, 4- or 5-year old is eligible for special education and related services. IDEA section 614(b)(6)(B) and its implementing regulation at 34 CFR §300.307(a)(2) require States to adopt criteria for determining whether a child has a *specific learning disability* as defined in 34 CFR §300.8(c)(10), and these criteria, among other factors, must permit the use of a process based on the child's response to scientific research-based intervention (known as RTI).[1] The category of specific learning disability is generally not applicable to preschool children with disabilities. The IDEA and the Part B regulations do not address the use of an RTI model for children suspected of having other disabilities. It is up to the State to develop criteria for determining whether a child qualifies as a child with a disability under 34 CFR §300.8, provided those criteria include a variety of assessment tools and strategies and do not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, or for determining an appropriate educational program for the child. 34 CFR §300.304(b)(1)-(2).

[1] The Department has provided guidance regarding the use of RTI in the identification of specific learning disabilities in its letters to: Zirkel: 3-6-07, 8-15-07, 4-8-08, and 12-11-08; Clarke: 5-28-08; and Copenhaver: 10-19-07; which can be found at http://www2.ed.gov/policy/speced/guid/idea/index.html.

The requirements related to child find in IDEA section 612(a)(3) and 34 CFR §300.111, require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. The IDEA child find requirements permit referrals from any source, including a Head Start program, that suspects a child may be eligible for special education and related services.

2. You ask whether an LEA can decline a child find referral from a Head Start program until the Head Start program monitors the child's developmental progress using RTI procedures.

OSEP's Response: No. Once an LEA receives a referral from a Head Start program, the LEA must initiate the evaluation process to determine if the child is a child with a disability. 34 CFR §300.301(b). If the LEA proposes to conduct an initial evaluation to determine if the child qualifies as a child with a disability under 34 CFR §300.8, the LEA must provide notice under 34 CFR §§300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR §300.9, before conducting the evaluation. Although IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 FR 46540, 46637. An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c). If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR §300.503(a) and (b). Therefore, 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 IDEA and its implementing regulations at 34 CFR §§300.301–300.311 delineate the requirements LEAs (not non-LEAs, such as other community-based early childhood programs) must use to conduct an initial evaluation to determine if a child qualifies as a child with a disability under Part B.

3. You ask whether an LEA must inform a child's parents of their right to request an evaluation from the LEA if the LEA requires a child be assessed through an RTI approach before it will accept a referral from Head Start. You also ask how to proceed if the parents believe a needed evaluation is being delayed until the Head Start program implements RTI with the child.

OSEP's Response: While a parent of a child may initiate a request for an initial evaluation to determine if the child is a child with a disability under 34 CFR §300.301(b), the IDEA and its implementing regulations do not require that parents be informed of their right to request an

initial evaluation. However, under 34 CFR §300.504, upon initial referral from Head Start, the LEA must give the parents, a copy of the procedural safeguards available to them. These procedural safeguards must include information regarding the parents' opportunity to present and resolve complaints through the IDEA due process complaint and State complaint procedures, including the time period in which to file a complaint, the opportunity for the agency to resolve the complaint, and the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures, along with the availability of mediation. As noted above in response to #2, if an LEA declines to evaluate a child, it must provide prior written notice consistent with 34 CFR §300.503, which includes the reasons for refusing to conduct the evaluation. 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.

You may be interested to know that the Center on Response to Intervention in Early Childhood (http://www.crtiec.org/), funded by the Institute of Education Sciences, is currently conducting research and development to document the effect of multi-tiered instruction designed specifically for preschool children.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

OSEP continues to appreciate its historic partnership with Head Start regarding the development and implementation of policies and procedures designed to address the developmental and educational needs of young children with disabilities enrolled in Head Start programs. Please contact Deborah Morrow at 202-245-7456, or by e-mail at Deborah.Morrow@ed.gov if you have further questions regarding the implementation of the IDEA.

Sincerely,

Alexa Posny

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs