UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR - 6 2007

Dr. Perry A. Zirkel
Lehigh University
Department of Education and Human Services
College of Education
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

Thank you for your recent correspondence to Mr. John Hager, Assistant Secretary for the Office of Special Education and Rehabilitative Services, U. S. Department of Education regarding issues related to identifying children and youth with specific learning disabilities. Your letter was referred to the Office of Special Education Programs (OSEP), for response.

You requested guidance from OSEP relating to procedures for identifying children with specific learning disabilities, as required by 34 CFR §300.307(a). Specifically, you inquired if a State may: (1) prohibit local educational agencies (LEAs) from using severe discrepancy and require them to use response to intervention (RTI); (2) permit severe discrepancy, RTI, and a third research-based model, thereby leaving the choice among the three options to each LEA; and (3) prohibit or permit the use of a successive combination of RTI and severe discrepancy (i.e., RTI as the initial steps and severe discrepancy as part of the culminating determination).

The regulations at 34 CFR §300.307(a) provide that a State must adopt criteria for determining whether a child has a specific learning disability, and LEAs must use the criteria adopted by the State educational agency (SEA). The criteria adopted by the States cannot require LEAs to use a severe discrepancy between intellectual ability and achievement to determine whether a child has a specific learning disability. 34 CFR §300.307(a)(1). Moreover, the Analysis of Comments and Changes section of the final Part B Regulations to the Individuals with Disabilities Education Act of 2004 (IDEA 2004) indicates that States may prohibit the use of a discrepancy model. 71 Fed. Reg. 46646 (August 14, 2006). Accordingly, while a State cannot require the use of a severe discrepancy model, a State may prohibit, or make optional, the use of a severe discrepancy model.

As required in 34 CFR §300.304(b)(1) and (2), consistent with section 614(b)(2) of the Act, an evaluation of a child suspected of having a disability, including a specific learning disability, must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special

education and related services. With respect to a child suspected of having a specific learning disability, in accordance with 34 CFR §300.307(a)(2) and (3), State criteria must permit the use of a process based on the child's response to scientific, research-based intervention, and may permit the use of other alternative research-based procedures (emphasis added). An RTI process does not replace the need for a comprehensive evaluation, and the results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §§300.304 and 330.305. Finally, the manner in which the State chooses to use RTI as one component of a comprehensive evaluation is left up to the States.

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.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

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

UNITED STATES DEPARTMENT OF EDUCATION

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THE ASSISTANT SECRETARY

MAR -6 2007

Buck Gwyn, Esq.
Senior Staff Attorney
Protection and Advocacy for
Individual Rights Program
320 West 25th Street, 2nd Floor
Cheyenne, Wyoming 82001

Dear Mr. Gwyn:

This is in response to your letter dated January 16, 2007, regarding the Wyoming Department of Education's (WDE) interim special education form entitled "Eligibility Criteria Learning Disability." In your letter, you ask whether WDE's form for determining whether a child has a specific learning disability is inconsistent with section 614(b)(6) of the reauthorized Individuals with Disabilities Education Act (IDEA). IDEA provides that in determining whether a child has a specific learning disability, an LEA may not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. 20 U.S.C. 1412(b)(6)(A).

Under the final regulations for Part B of IDEA (Part B), a State must adopt criteria, consistent with §§300.309, for determining whether a student has a specific learning disability , as defined in §300.8(c)(10). 34 CFR §300.307(a). In addition, the criteria adopted by the State must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has specific learning disability. 34 CFR §300.307(a)(1). The State criteria must permit the use of a process based on the child's response to scientific, research-based intervention and 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). 34 CFR §300.307(a)(2)-(3). The criteria a public agency uses for determining whether a child has a specific learning disability must be consistent with the criteria adopted by the State. 34 CFR §300.307(b). In addition, when the State develops its criteria for determining whether a child has a specific learning disability, the State must include a variety of assessment tools and strategies and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability. 34 CFR §300.304(b).

As a result of your inquiry, Susan Falkenhan, the Office of Special Education Programs Part B State Contact for Wyoming, has had conversations with Peg Brown Clark, Director of the Special Education Unit at the WDE. It is my understanding that, based on these conversations, the State has removed the form prompting your inquiry from its

website. Ms. Falkenhan is continuing to assist the State in issuing guidance that is consistent with the Part B requirements described above and that accurately reflects the State's criteria for determining whether a child has an SLD.

Thank you for writing and sharing your concerns with us. Please do not hesitate to contact my office if you have any further questions.

Sincerely,

John H. Hager

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR - 1 2007

Aurelio Prifitera, Ph.D.
Publisher, President
Harcourt Assessment, Inc.
19500 Bulverde Road
San Antonio, Texas 78259-3701

Dear Dr. Prifitera:

This is in response to your letter dated November 13, 2006, summarizing Harcourt Assessment's general understanding of the specific learning disability (SLD) procedures under the final implementing regulations for Part B of the Individuals with Disabilities Education Act (IDEA). Your letter contained an "Overview of the SLD Evaluation Process" that included six main points.

Before addressing each of the six main points, it is important to clarify a statement you made in the opening of your letter regarding discrepancy, response to intervention (RTI) and other alternative procedures. Information from discrepancy, RTI and other alternative procedures is just one component of an overall comprehensive evaluation of a child suspected of having a disability. The *Analysis of Comments and Changes* accompanying the final Part B regulations, page 46648, clarifies "an RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §§300.304 and 300.305. As required in 34 CFR §300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services."

In addition, you stated, "A child does not have a SLD unless the evaluation results indicate that one of the criteria contained in §300.309 is met." This is inconsistent with Part B of the IDEA (see 34 CFR §300.309). Under the final implementing regulations for Part B of IDEA, the group described in 34 CFR §300.306 may determine that a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), if §300.309(a)(1) **and** §300.309(a)(2)(i) or §300.309(a)(2)(ii) **and** §300.309(a)(3) are met. Therefore, it is incorrect to say that *one* of the criteria contained in 34 CFR §300.309 could be used to determine that a child has a specific learning disability.

The remainder of this letter addresses the numbered points in the 'Overview of the SLD Evaluation Process' section of your letter:

Your statements in point number one, two and six are consistent with our understanding of the regulations.

In your letter, under point number three, you refer to the provisions of §300.309(a)(1), (a)(2)(i) and (a)(2)(ii), but incorrectly assert that these are alternative standards for determining the existence of a SLD. As stated above, the group described in 34 CFR §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if §300.309(a)(1) **and** §300.309(a)(2)(i) or §300.309(a)(2)(ii) **and** §300.309(a)(3) are met. For this reason, it is also incorrect to conclude that the regulation "means that in order to determine that a child has a SLD the LEA may use any of the procedures allowed by the State (RTI, discrepancy, other alternative research-based procedure) to determine which one of the three categories the child fits in."

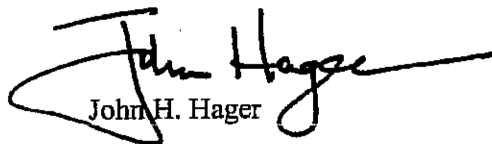
Under point number four you provided an overview of 34 CFR §§300.304 and 300.305. Your understanding of 34 CFR §§300.304 and 300.305 is consistent with Part B of the IDEA. It is important to note under 34 CFR §300.304(a), the public agency is required to provide notice to the parents of a child with a disability, in accordance with 34 CFR §300.503, which describes any evaluation procedures the agency proposes to conduct.

When describing 34 CFR §300.305(a)(1) in point number five, you state "this provision means that LEAs may use existing evaluation data as part of the comprehensive evaluation of the child but this data is not a substitute for the procedures required under §300.304." While it is true that existing evaluation data are part of the comprehensive evaluation of the child, it is important to note that, as required under 34 CFR §300.306, it is a group of qualified professionals and the parent of the child who determine whether the child is a child with a disability, as defined in 34 CFR §300.8, rather than an LEA.

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.

We hope this response provides the necessary clarifications. Please do not hesitate to contact my office if you have any further questions.

Sincerely,



John H. Hager