

Ethical and legal issues associated with using response-to-intervention to assess learning disabilities[☆]

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Abstract

The Individuals with Disabilities Education Improvement Act of 2004 allows schools to use a child's response to research-based intervention (RTI) as a part of procedures to identify students with learning disabilities. This paper considers whether RTI-based assessment models meet ethical and legal standards for acceptable assessment practices. Based on a review of available research, it was concluded that RTI-based assessment practices, when carefully crafted and implemented, have the potential to be multifaceted, fair, valid, and useful. Threats to acceptable RTI-based assessment practices include: the lack of research-based interventions appropriate for diverse academic domains, ethnic groups, grades K-12, and students with limited English proficiency; uncertainty regarding how to determine when nonresponse to intervention warrants formal referral for evaluation of special education eligibility; difficulty translating scientifically sound RTI practices to the local school level; and inadequate staff training and poor treatment fidelity. Suggested directions for future research are included.

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In the 2004 amendments to the Individual's With Disabilities Education Act (IDEA) Congress responded to long-standing criticisms of the IQ-achievement discrepancy model for identifying children with specific learning disabilities. Although the definition of specific learning disability remains unchanged, the law now states that local educational agencies (LEAs):

... shall 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. (Pub. L. No. 108–446 § 614 [b][6][A]).

The law goes on to say that an LEA “may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures” (Pub. L. No. 108–446 § 614 [b][6][A]; § 614 [b][2 & 3]). Thus, under IDEA schools may use a response-to-intervention (RTI) model as part of the process of identifying students as LD and subsequently eligible for special education services. Moreover, IDEA also allows school districts to use up to 15% of their federal special education funds each year to develop and implement coordinated early intervening services. These services are for students in all grades who require additional academic and behavior support to be successful in general education, but who have not been identified as needing special education and related services (Pub. L. No. 108–446, § 613 [f]).

The RTI process generally involves providing effective instruction for students within general education, monitoring student progress, providing different or more intense services for children who do not demonstrate adequate progress, again monitoring progress, and those who still do not respond adequately will either qualify for special education services or for a special education eligibility evaluation (Fuchs, Mock, Morgan, & Young, 2003). Special education attorneys encourage schools to consult the professional literature as well as law for operational definitions of RTI terms (Alexander, 2006), and to locate exemplary procedural protocols for using RTI in the LD eligibility decision making process (e.g., Batsche et al., 2005; Reschly, Hosp, & Schmied, 2003). Schools that adopt clear definitions of RTI terms, along with carefully crafted policies and procedural protocols for implementation of RTI, are more likely to make LD eligibility decisions that benefit children and withstand court challenges. However, many essential aspects of RTI remain vaguely defined in the literature (Burns & Ysseldyke, 2005). Therefore, the goal of this paper is to evaluate the ethical and legal issues associated with the use of RTI as an LD diagnostic approach including ethical and legal obligations with regard to parent involvement and consent, and development and implementation of RTI protocols that are likely to both benefit children and withstand court challenges. Finally, challenges for the profession and areas for future research are identified.

Legally defensible practices for interventions

As noted above, under IDEA, 2004 schools may now use a process that determines if the child responds to *scientific, research-based interventions* as a part of the evaluation

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