



HELPING PARENTS HELP THEIR KIDS SUCCEED

March 7, 2011

**RE: Raised Bill No. 6501  
AN ACT CONCERNING DELAYS IN THE EVALUATION AND DETERMINATION PROCESS  
FOR STUDENTS SUSPECTED OF REQUIRING SPECIAL EDUCATION SERVICES**

*Testimony of Diane Willcutts on behalf of SmartKids with Learning Disabilities*

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**This testimony is in support of Raised Bill No. 6501, with modification, described in No. 3, below.**

Smart Kids with Learning Disabilities, Inc., is a nonprofit organization including parents and professionals, dedicated to providing support to families of children with learning disabilities and/or attention deficit disorders. I am testifying on their behalf and as a parent of two school-aged children with disabilities.

Thank you to the Education Committee for raising an important bill that has the potential to correct some common misperceptions about special education evaluation. The language also serves to better align Connecticut regulations with the federal IDEA<sup>1</sup> regulations.

Many Connecticut parents report that schools are delaying the evaluation of students suspected of having disabilities, and school staff seem to have genuine misperceptions about what the law requires.

It is important that the state regulations provide clarification to enable Districts to comply with federal law and to ensure qualified students with disabilities are assessed, identified, and provided with a Free and Appropriate Public Education (FAPE) in a timely manner.

*1. Many parents report that schools are delaying initial evaluations because of SRBI. What is SRBI?*

SRBI stands for Scientific, Research-Based Intervention, which is a key component of IDEA.

SRBI refers to proven methods of instruction, as demonstrated in published, peer-reviewed research. Most people talk about SRBI in reference to reading because that's where most of the research has been done. But it's also supposed to apply to math, writing, behavior, and other types of instruction.

When you hear about SRBI, you'll hear a lot about a "3-tier system." Tier 1: This refers to the research-based instruction every child receives in the regular classroom. Tier 2: Students who are struggling in Tier 1 are referred to Tier 2, where they receive more individualized instruction, typically in small groups, along with more frequent assessment. Tier 3: Students who are struggling in Tier 2 are referred to Tier 3, where they receive instruction that is still more individualized and intensive.

The term SRBI is used interchangeably with RTI, signifying Response to Intervention.

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<sup>1</sup>Individuals with Disabilities Education Act

2. *Does a child need to go through all three tiers of SRBI prior to being evaluated for special education?*

No. A child can receive a comprehensive evaluation for special education at any time, even while still in Tier 1. The U.S. Department of Education's Office of Special Education Programs (OSEP) commentary on the federal regulations<sup>2</sup> (bold added) makes this clear:

We will also. . . ensure that the parents of a child suspected of having an SLD<sup>3</sup> who has participated in a process that evaluates the child's response to scientific, research-based intervention are notified about. . . their right to request an evaluation at any time.

3. *When does IDEA require a District to seek parental consent to do a comprehensive evaluation of a child to determine special education eligibility and educational needs?*

Per IDEA regulations<sup>4</sup> (bold added):

**The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)— (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation.** (Authority: 20 U. S. C.1221e-3; 1401(30); 1414(b)(6)).

*Although the language in HB 6501 is similar to the federal regulations it is more limited than what is in IDEA. To avoid misunderstanding and to facilitate compliance with federal regulations, the federal language should be substituted for Lines 7-12 of the raised bill.*

The key difference between the IDEA regulations and HB 6501 is that HB 6501 implies that a Board is required to promptly request parental consent for evaluation only when "a board suspects that a child requires special education." In contrast, the IDEA regulations indicate that the duty to request parental consent is triggered "whenever a child is referred for an evaluation," which includes referrals made by parents.

4. *Can the SRBI process be used to "delay" an eligibility evaluation?*

No. OSEP issued a recent memo addressing this issue<sup>5</sup> (bold added):

It is critical that this identification (of students with disabilities in need of special education and related services) occur in a timely manner and that no procedures or practices result in delaying or denying this identification. **It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.**

Parents may request a comprehensive evaluation at any time, and once the parents provide consent, the time frame for completing eligibility evaluations is 45 school days from the date of the parents' written consent. OSEP's commentary on the federal regulations<sup>6</sup> (bold added) makes this clear:

<sup>2</sup> *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46658.

<sup>3</sup> Specific Learning Disability

<sup>4</sup> 34 CFR §300.309 (c)

<sup>5</sup> OSEP's 1/21/2011 Memorandum to State Directors of Special Education, Page 1

<sup>6</sup> *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46658.

We will also . . . ensure that the parents of a child suspected of having an SLD who has participated in a process that evaluates the child's response to scientific, research-based intervention are notified about the State's policies regarding collection of child performance data and the general education services that will be provided; strategies to increase their child's rate of learning, and their right to request an evaluation at any time. If parents request an evaluation and provide consent, the timeframe for the evaluation begins and the information required in Section 300.309(b) must be collected (if it does not already exist) before the end of that period.

5. *If a child suspected of having a disability is responding to SRBI, does this mean the student does not qualify for special education?*

No. Per OSEP guidance<sup>7</sup> (bold added):

**An SEA must include a variety of assessment tools and may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, as required under 34 CFR §300.304(b).** However, an SEA could require that data from an RTI process be used in the identification of all children with SLD.

6. *Connecticut's Bureau of Special Education does require that SRBI data be used as part of a comprehensive evaluation to identify students with specific learning disabilities. Unless a child has participated in all three tiers of SRBI, how can we do this?*

OSEP provided guidance about this in the commentary to IDEA regulations<sup>8</sup> (bold added):

There needs to be evidence "that the child was provided appropriate **instruction either before, or as a part of, the referral process.**"

7. *If a child is suspected of having a disability that is not necessarily severe, is the District still required to assess the child for special education?*

Yes. From IDEA regulations relating to child find<sup>9</sup> (bold added):

**All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated . . .**

8. *If a child suspected of having a disability is receiving passing marks and is promoted from grade to grade, does this mean that school districts should not evaluate them for special education?*

No, this would be a violation of child find. From the IDEA regulations<sup>10</sup>:

Child find also must include—Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade. . .

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<sup>7</sup> OSEP (January 2007). *Questions and Answers On Response to Intervention (RTI) and Early Intervening Services (EIS)*, Page 7

<sup>8</sup> *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46656.

<sup>9</sup> 34 CFR §300.309 (c)

<sup>10</sup> 34 CFR §300.309 (c)

9. *If we revise the state regulations in the way that is suggested in this testimony, what are the additional costs to state and local boards of education?*

Nothing. IDEA already requires the processes described in the language above, and any state or district accepting IDEA funds must agree to comply. The proposed revisions to state regulations seek to clarify common misperceptions and to ensure school districts are in compliance with IDEA.