



**COMMONWEALTH of VIRGINIA**  
DEPARTMENT OF EDUCATION

DATE: April 21, 2023  
TO: Division Superintendents  
FROM: Dr. Lisa Coons, Superintendent of Public Instruction  
SUBJECT: **Response to Intervention/Multi-Tiered System of Supports May Not Be Used to Delay or Deny Special Education Evaluations**

The United States Department of Education, Office of Special Education Programs (OSEP) recently reissued its guidance previously shared in OSEP Memoranda [11-07](#) and [16-07](#). These memos address the prohibition of the use of Response to Intervention (RtI) to delay or deny evaluation for education services under the *Individuals with Disabilities Education Act* (IDEA) for school-aged and preschool children, respectively. The most recent reminder from OSEP reiterates that the prohibition of utilizing RtI to delay or deny evaluations of students suspected of having disabilities applies to all tiered systems of support, including multi-tiered system of supports (MTSS).

The [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#) permit referrals for students suspected of having a disability to be made to either the principal of the school or their designee, or the special education administrator or their designee, in written, electronic, or oral form (8VAC20-81-50 D.3.a., b.). Upon receipt of a special education referral, the principal of the school or their designee must route it to the “team” as noted at 8VAC20-81-50 D.2.a.–c. Similarly, if a special education referral is received by the special education administrator or their designee, they have the option of routing the referral to the same specified team. Within ten days of receipt of the referral from the principal/designee or special education administrator/designee, the team must decide what should be done to meet the child’s educational and behavioral needs.

In addition to recommending that the referral move to or back to the special education administrator or their designee for the evaluation eligibility process, the remaining options available to this team include:

1. The above-mentioned option with the additional request that the child begins or continues a general education intervention process (8VAC20-81-50 D.4.). Local educational agencies should be aware that the Regulations expressly forbid the team reviewing the special education referral to delay the process if it elects to refer the student for RtI/MTSS (8VAC20-81-50 D.4.a.); or
2. Denying the referral for an evaluation for special education and related services (8VAC20-81-50 D.5.c.) and providing recommendations for addressing the student's needs within the general education setting which could include RtI/MTSS. This decision in effect stops the special education referral process and associated timelines.

Documentation of all decisions made by the team that reviews special education referrals must be accompanied by the provision of prior written notice and parental rights.

The Virginia Department of Education (VDOE) regards RtI as a beneficial general education process that uses high-quality instruction, tiers of interventions, and student performance data to help *all* students learn. RtI can effectively assist educators in identifying and preventing potential learning problems and providing targeted support to meet the individual needs of students. The RtI process encourages parent participation and requires that if a parent or educational professional suspects a disability, a referral for special education evaluation can be made at any time during the process.

For questions regarding this information, please contact Bonnie English, Related Services, Evaluation and Eligibility Specialist, at (804) 786-9775 or [Bonnie.English@doe.virginia.gov](mailto:Bonnie.English@doe.virginia.gov); or Dr. Zenia Burnett, Director of Instructional Services, at (804) 225-2707 or [Zenia.Burnett@doe.virginia.gov](mailto:Zenia.Burnett@doe.virginia.gov).

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