

RSA/SPECIAL EDUCATION

FAQ's

This document serves as guidance from the Oklahoma State Department of Education (OSDE) relating to the applicability of the Reading Sufficiency Act (RSA) to students with disabilities. Consistent with the intent of the law, implementation of RSA should ensure that all students, including students with disabilities, receive additional support and services required to achieve success. One intended effect of the RSA law is that school districts will identify the needs of students earlier, and implement targeted support services for all students.

Retention requirements in the RSA are applicable to all students, regardless of disability status. The special education services received by a student with a disability are meant to ensure that every student receives a free and appropriate public education (FAPE) under federal law. [34 CFR 300.39(b)(3)(ii)]. FAPE requires that a student be afforded the means to fully and equally engage in the general education curriculum. Importantly, academic success should not be the sole factor in determining eligibility for special education services. Further, FAPE is required regardless of whether a student with a disability has been retained or is advancing from grade to grade [34 CFR 300.101(c)]. The retention requirement of RSA does not function as a penalty to special education students. Rather, the retention requirement is a means to ensure that students with disabilities experience academic success in future grades through purposeful intervention.

1. General Questions Relating to Special Education

Are students on a Section 504 Plan able to qualify for promotion under any good cause exemption?

Possibly. There is no good cause exemption that applies exclusively or solely to students on a Section 504 plan. However, students on a 504 accommodation plan may qualify for any of the four good cause exemptions that do not have Individualized Education Program (IEP) requirements. (Section 504 plans are not equivalent to IEPs under the RSA law.)

Are students with disabilities provided alternative options to meet the requirements of RSA needed for promotion?

Yes. The RSA law provides for six “good cause exemptions” that are available to all students, including students with disabilities. These exemptions serve as alternatives and allow a student who is unable to score above the Unsatisfactory level to be promoted to the fourth grade. Within those exemptions, alternative means are provided to ensure all students (including students with disabilities) are able to meet the requirements of RSA. There are two specific exemptions applicable only to students with disabilities (although any of the six good cause exemptions could apply). All students are required to participate in programs based on state and federal law, according to the established criteria. All students with disabilities must participate in RSA.

May students on an IEP be retained?

Yes. Application of the RSA applies to all students. These requirements do not violate federal law or adversely impact the quality of education made available to students with disabilities. Part B of the Individuals with Disabilities Education Act (IDEA) specifically does not address standards for retention or promotion of students with disabilities. Because IDEA does not address promotion and retention standards, there is nothing to require or prevent a state from applying those standards (in state law) to a child with a disability.

May a student with an IEP who is reading below grade level and has never been retained be promoted using a student portfolio that contains work products reflecting below grade-level achievement?

No. With regard to the student portfolio exemption, the student must demonstrate mastery of the third-grade Oklahoma State Standards. (For purposes of the student portfolio, mastery of the third-grade standards has been set at 70%.) The expectations for students with disabilities who participate in the Oklahoma Core Curriculum Test (OCCT) are the same as non-disabled students who participate in it (34 CFR § 200.1). Portfolios reflecting below grade-level mastery do not meet this requirement.

What are the RSA assessment requirements for a child who is blind and receives reading instruction through Braille?

All students with disabilities should be given the screener that the district has chosen. Students with disabilities may have allowable accommodations as documented on the IEP. If the screener is attempted but no score is given, then this should be noted. The district can determine if some other measure would assist in providing valid data to assist the team in program planning for the student in reading. Also, the district should have a teacher qualified to work with students with visual impairments who can assist the team in determining appropriate reading instruction. This individual might determine what “some other measure” may entail.

What are the RSA requirements for a child reading with Braille in regard to needed components of the assessment and how many times per year?

RSA requirements are the same for a student learning to read with Braille. These students need to be assessed with the district-selected screener three times per year (and possibly with “some other measure”) and an Academic Progress Plan (APP) must be completed if necessary.

Are teachers able to give longer time on (RSA) formative screening assessments if the student's IEP documents the need for this accommodation on classroom assessments & assignments?

Yes. It is permissible if additional time is an allowable accommodation for that particular screening assessment.

Are there alternative screening assessments that may be administered to students on an IEP?

Yes. Each respective vendor that produces the 13 approved assessments has determined and identified allowable accommodations for the screening assessments.

What assistance can be provided by teachers who are struggling with administering certain assessments in early grades to deaf students?

Under RSA requirements, all students with disabilities should be given the screener that the district has chosen. All students with disabilities may be provided allowable accommodations as long as those are documented on their IEP. If the screener is attempted but no score is given, then this should be noted. The district can determine if some other measure would assist in providing valid data to assist the team in program planning for the student in the area of reading.

In addition, the district should have a teacher of the Deaf/Hearing Impaired working with students with Deafness/Hearing Impairments. This individual might determine the “some other measure” and should assist the team in determining appropriate reading instruction for the student.

If a student is on an IEP, should he or she also have an Academic Progress Plan (APP)? If so, may he or she receive services from both programs?

Yes. Students with disabilities are required to have an IEP that addresses their educational needs. In addition to the requirements of IDEA, the RSA also applies to students with disabilities on an IEP. As such, if a student with disabilities is identified as reading below grade level, the student must be placed on an APP to meet the requirements of RSA and to remedy the reading

deficiency. (See OAC 210:15-27-2) Services could be provided through the use of both IDEA and RSA funds, and possibly through the use of federal Title I reading funding. However, this would be a determination by the district based on requirements of IDEA, No Child Left Behind (NCLB) and RSA.

Can the APP be used as Response to Intervention (RtI) documentation necessary as part of a special education evaluation under IDEA instead of doing two sets of paperwork?

Yes. However, Special Education Services will designate paperwork according to state and federal guidelines. The APP may serve as documented evidence. The special education multidisciplinary evaluation and eligibility group members may use information from the APP.

Are teachers who have Visually Impaired students required to write an APP?

Yes, if the student is not reading on grade level based on one of the approved RSA assessments. (Certain assessments are provided in Braille.) This is a requirement for all students.

Can students on an IEP be serviced by a Title I teacher?

Yes. If the school is Title I school-wide, then yes, the student can be served by the Title I teacher. The child may also be served if the school is identified as Targeted Assistance and the child has been placed on the “most at risk” list.

Can students on an IEP have accommodations on the Oklahoma Core Curriculum Test (OCCT)? What are the accommodations?

Yes. Accommodations the student receives in the classroom are typically, but not always, available to the student for purposes of statewide testing. Accommodations should be implemented during daily classroom instruction as well as during assessments. For further questions, contact the OSDE Office of Accountability and Assessments.

Does the IEP trump the RtI program of reading instruction/intervention?

No. The RSA law goes above and beyond federal law in establishing criteria for set amounts of time for reading. However, an IEP documents the types of services and amount of time a student needs to ensure mastery of the goals and objectives listed on the IEP. The IEP could be expanded to address additional services needed to allow the student to meet all requirements of RSA. For example, the 90 minutes of uninterrupted reading may be determined by the IEP to best be implemented in the special education classroom, general education classroom or a combination of both. Any additional time needed would be added to that uninterrupted 90 minutes.

Example: If a third-grade student is currently on an IEP for reading, and the special education teacher pulls the student out individually to work on reading for the Tier 2 time required (30-45 min.), is this acceptable for the “intensive instruction” – or does the intensive instruction have to be in addition to the 90 minutes of reading time AND the extra special education time? If a student is in Tier 2 for RSA – they need 90 minutes of Daily scientific-research-based reading instruction PLUS at least 30 to 45 minutes (RSA website) and the IEP services can work in conjunction with these minutes. Otherwise, the student would be receiving 90 minutes plus 30 to 45 minutes plus IEP minutes of intensive reading instruction.

Example: After the 90-minute block in class (which does have some special education reading time), can the special education teacher pull that child, individually, for an EXTRA intensive instruction, or does the intensive instruction have to be a different teacher than the special education teacher? Yes, if the special education teacher is teaching the reading intervention that is meeting the specific reading deficit and APP goals. It does not matter who the teacher providing the interventions – what matter is that

the deficits have been identified and intervention implemented and progress monitoring occurring.

Are all IEP students expected to participate in the general education reading block?

The IEP team needs to balance the curriculum used for a student with a disability. The team may determine that it is more appropriate for the student to use an alternate core program. That alternate core, however, should be such that it assists the student in remediating lacking skill sets while still assessing grade-level content skills. All students, including special education students, receive instruction in reading that is appropriate to their needs. In general, the most effective way to do this is by having IEP teachers serve students in their regular classroom. This means that if a student is in a pull-out program, the special education teacher will come to serve the child instead of having the child leave his/her primary classroom.

However, there may be a small percentage of students with disabilities who have an IEP that describes special reading interventions that would more appropriately be delivered in the special education setting. The IEP may note that the students are served in self-contained IEP classes. In those instances, the 90-minute block may be delivered in the special education classroom by a special education teacher.

Instruction for IEP students needs to be focused at the appropriate level and with appropriate content, and students should receive instruction in reading that is more intensive, or extensive, than children who learn to read more easily. IEP students can profit from instruction that is provided by the regular classroom teacher during the 90-minute block, but may also receive additional instruction from the IEP teacher.

Can RtI tiered interventions be delivered in the IEP classroom by the IEP teacher?

Yes, if the local school personnel, taking into consideration the skills of all the teachers involved, think this is the best solution. The Oklahoma State Department of Education (OSDE) wants to strongly guard against a situation in which IEP students actually receive less reading instruction than their peers because they are taken to a special education classroom where their time is divided between instruction in content, reading and math.

This Tier 3 instruction should take place outside of the 90 minutes. OSDE highly encourages schools and districts to involve as high a percentage as possible of their special education students in the 90-minute reading instructional block. In all cases, careful consideration should be given to the setting and the instructional personnel to most effectively meet the students' needs for instruction in reading.

If an IEP states that the student cannot be retained if he/she is meeting the IEP goals, does the IEP trump requirements of the RSA law?

No, the IEP team must develop IEPs within the scope of both federal and state law. IDEA does not address the promotion or retention of a child with a disability as an IEP team decision. Further, a retention or promotion decision is not synonymous with a placement decision for IDEA purposes. RSA addresses the retention of students, specifically requiring retention for students who score unsatisfactory on the third-grade reading assessment.

Should the IEP be changed to reflect the RtI/reading intervention time?

No. The RSA law goes above and beyond federal law in establishing criteria for set amounts of time for reading. However, an IEP documents the types of services and amount of time a student needs to ensure mastery of the goals and objectives listed on the IEP. The goals and objectives listed on the IEP may (or should) be the same goals listed on the APP and all staff should be assisting the student with interventions directed at the stated goals and objectives. And, the IEP documents the type of special education services.

Is the RtI model used only for special education students?

No. Under IDEA, districts may choose to use the RtI method for determining whether a student is eligible for special education services under Specific Learning Disability (34 C.F.R. § 300.207). RtI is a tiered-intervention process that integrates assessment and intervention within a multi-level prevention system to maximize student achievement. It is an approach that benefits all students.

Are students who already are on an IEP for reading difficulties in need of being placed in RtI as well?

Yes. Best practices indicate that RtI should fit within the IEP plan for the student. Part of receiving special education is to receive specialized instruction. This includes the provision of intensive instruction and specific interventions that address the respective skill set of the student.

Students who are promoted to the fourth grade on a good cause exemption must be provided intensive reading instruction during an altered day. Is this a pull-out program where students work with a reading specialist?

This is a district decision. It is important to ensure these students, who will need more support and instructional services than a typical fourth grader, get the intervention services they need to help them to be on grade level with their peers. This should be more than what they've received in the past. They should participate in their general reading block and additional intervention services.

A speech/language therapist is required for students retained twice in the third grade. Is the therapist to work with these students on a weekly basis?

The use of a speech language pathologist would only be necessary if determined to be educationally appropriate by the student's IEP team. If a speech language pathologist is deemed necessary/educationally appropriate, the amount of therapy provided should be determined by the IEP team.

2. Good Cause Exemption #2: OAAP Students

The provisions of RSA apply to students who are assessed by virtue of the Oklahoma Alternative Assessment Program (OAAP). However, the law provides a good cause exemption for students who are on an IEP that indicates they should be assessed with alternate achievement standards through the OAAP. Therefore, if a student on an IEP who is assessed by an OAAP scores unsatisfactory on the reading portion of the third-grade assessment, that student may be promoted to the fourth grade.

Do other provisions of the RSA (unrelated to retention) apply to OAAP students?

Yes. For example, the RSA contains a parental notification requirement for students who are identified as not reading on grade level. These requirements would apply to OAAP students and any other student promoted to the fourth grade on the basis of one of the six good cause exemptions.

Are all IEP students eligible for this good cause exemption?

No. Only students with disabilities who are eligible to participate in the OAAP may qualify under this exemption. Eligibility for participation in the OAAP is determined by the IEP team through the completion of the Criteria Checklist (OSDE Form 12).

Do the APP requirements apply to OAAP students who qualify for this good cause exemption?

Yes. RSA regulations state that "any student promoted on the basis of a good cause exemption listed in 70 O.S. 1210.508C(K) should continue to receive intensive reading instruction and

intensive instructional services and supports through the continued implementation of an Academic Progress Plan (APP) to remedy the reading deficiency.”

Therefore, if an OAAP student scored unsatisfactory on the third-grade assessment and is promoted to the fourth grade under this good cause exemption, an APP must still be written to ensure the student continues to receive instructional services in reading.

3. Good Cause Exemption #5: Students on an IEP

The provisions of the RSA apply to students who are on an IEP. However, the law provides a specific exemption for students with disabilities who have an IEP if the student meets the following criteria:

(A) The student must have been previously retained in kindergarten, first grade, second grade, or third grade; and

(B) The student's IEP must:

(1) Identify reading as an area of educational need for the student or identify some type of special education service in the area of reading; and

(2) Reflect that the student has received intensive remediation for more than two (2) years. Intensive remediation may include any type of program offering intensive reading instruction that is identified as appropriate by the IEP team.

Will an IEP student who moves into the district but has no documentation of receiving more than two years of intensive remediation be retained?

Yes. The definition of special education is specialized instruction – which means it should be more intensive than the instruction received within the general education environment (34 CFR § 300.39). There must be documentation of the intensive reading remediation in the IEP. If a district can obtain documentation from the previous district that demonstrates the student has received more than two years of intensive remediation, the district may promote the student (assuming all other criteria are met).

Does a student qualify for this exemption if the student is receiving all accommodations in the classroom? (The student is not pulled out of the classroom for other services)

Yes, assuming all other criteria of the exemption are met. The application of this exemption is not based on the location or manner in which services are provided.

If an IEP states that the child is "for monitor only," does he or she still qualify for good cause exemption #5 even though the student is not technically receiving services?

Yes, assuming all other criteria for the exemption are met. Students with disabilities who are on a “monitor only” IEP would still qualify for this good cause exemption.

Must the student have the IEP in place for two years?

No. The rule only requires that the IEP be in place prior to the third-grade OCCT test administration. However, the IEP must document that the student has received more than two years of intensive remediation. Intensive remediation may include any type of program offering intensive reading instruction that is identified as appropriate by the IEP team.