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# Lessons in Legal Literacy: State Laws for SLD Identification

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**Abstract**

This article demonstrates the need for an accurate categorization of state laws governing SLD identification that have arisen in the wake of the 2004 reauthorization and the 2006 IDEA regulations. The analyses in the professional literature to date contribute to the confusion in implementing these laws by not only containing errors in categorization but also failing to distinguish the ambiguities in these laws. The primary recommendation is to provide practitioners and policymakers with a careful canvassing of state laws for SLD identification by a small collaborative team of legal experts and special education or school psychology professionals, all with specialized experience interpreting state laws for SLD identification.

The law plays a significant, although not starring, role in the education of students with disabilities. Yet, the professional literature in special education and related fields, such as school psychology, is notably limited in both the quantity and accuracy of information about the Individuals with Disabilities Education Act (IDEA, 2004) and other applicable laws.

The long line of journal articles that canvass the state laws specific to the identification of students with learning disabilities (SLD) under the IDEA serves as a clear example of the lack of legal accuracy. The basic question that these articles purportedly address is "To what extent do these state laws require, permit, or prohibit the competing approaches for SLD identification within the bounds of the 2004 amendments of the IDEA and the follow-up IDEA regulations in 2006?" Their answer tends to engender confusion rather than comprehension.

This article will revisit this core question through a careful legal lens to provide the foundation for accurately answering it with a collaborative dual lens. In accordance with the previous analyses, the scope is limited to the permissible approaches for the second criterion specific to the SLD classification. Thus, it does not address the first, foundational criterion in the IDEA regulations: inadequate achievement in one or more of the eight identified areas, such as reading comprehension and mathematical calculation (§ 300.309[a]-[1]). Similarly, it does not extend to the threshold definition of SLD (§ 300.8[c][10]) or the subsequent exclusions, such as lack of appropriate instruction, or related procedures, such as parental notification or classroom observation (§§ 300.308–300.311). Finally, the analysis uses response to intervention (RTI) as shorthand for the IDEA reference to "response to scientific, research-based intervention" and its variations in state laws, extending to the broader and more recent use of multi-tiered system of supports (MTSS).

In providing the foundation for accurately addressing the aforementioned core question, this analysis's underlying wider purpose is twofold: (a) to identify the sources and extent of inaccuracy in the previous series of journal articles, and (b) to provide a prescription for a corrected categorization of the applicable state laws along with recommendations for the legal literacy of practitioners and scholars. The first part of this analysis delineates the scope and sequence of law with a focus on the special education context. The second part identifies the prevailing limitations in the professional literature's coverage of special education law. The third part provides the legal framework in the IDEA for the specific bounds of the analysis. The fourth part analyzes the body of extensive journal articles on state laws governing SLD identification for legal accuracy. The fifth part ex-

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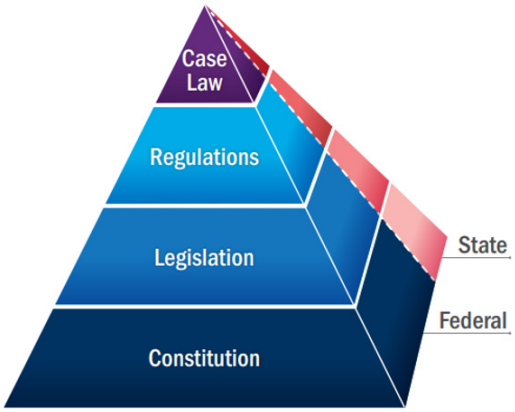
amines selected state laws to illustrate the insufficiently addressed nuances in categorizing these state laws. The final part discusses the wider implications of these observations, including recommendations for researchers and practitioners in special education and school psychology.

## I. THE SIGNIFICANCE AND SCOPE OF "LAW" IN SPECIAL EDUCATION

As shown in Figure 1, "law" in this country refers to the (a) Constitution, (b) legislation, or statutes, (c) regulations, and their interpretation and application to varying factual situations in (d) court decisions on the federal and state levels (e.g., Progress Center, 2024).

In the context of special education, the first three successively more detailed and less strong sources consist primarily of (a) the due process and equal protection clauses of the Fourteenth Amendment (at federal tier 1 of the Figure); (b) the IDEA (at federal tier 2); (c) the regulations of the IDEA (at federal tier 3). Next, the corollary state legislation and regulations (at state tiers 2 and 3 in the Figure) provide customized variations above the uniform federal minimums in the IDEA. In contrast, the policy interpretations issued by federal and state education agencies are nonbinding guidance that lacks the force of law. Finally, for the related case law, the IDEA provides a relatively user-friendly system of administrative adjudication that, in general, must be exhausted before proceeding to a court decision. This pre-judicial system in most states consists of a due process hearing, with the remaining states also having a review officer level (e.g., Connolly et al. 2019).

**Figure 1**
*Primary Sources of Law in the United States*




Special education is the most legalized area of P–12 public schooling in this country (e.g., Kirp & Neal, 1985). The IDEA, which dates back to 1975, provides a detailed set of requirements for state education agencies and local school districts. The most recent of its several comprehensive amendments was in 2004, with the resulting regulations issued in 2006. The extensive case law begins with due process hearing decisions, particularly in a relatively small group of litigious states led by New York. It culminates in a well-developed body of decisions predominantly from the federal judiciary (Zirkel, 2023).

## II. THE OVERALL PROBLEMS OF THE LAW-BASED PROFESSIONAL LITERATURE

The literature in special education and school psychology on legal issues under the IDEA and corollary state laws is problematic not only in quantity but also in quality. At the threshold level of quantity, the relevant articles have been notably limited compared with the significance and scope of the legal activity under the IDEA. This problem is particularly acute in the otherwise fertile literature in school psychology (Zaheer & Zirkel, 2014). As an overlapping matter, a systematic analysis found that the overall quality of the legal articles in the leading school psychology journals warranted improvement,

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particularly for the slight majority that did not include at least one author with a law degree (Zirkel, 2014b). The law-based articles in special education journals have been less numerous but commensurately questionable in quality. Due to the specialization of the subject matter, a small group of scholars is predominant, serving not only as authors but also as reviewers.

Attributable in significant part to these scholars having extensive formal training in and an overall orientation to special education but not law, the quality-related problems of the law-based articles in the professional literature are threefold. First is the tendency of these articles to fuse and thus confuse legal and professional lenses. The result is inaccuracy by failing to differentiate the "shall" or "must" of the prevailing judicial case law from the "should" of professional best practice. Conflating or coloring the requirements that court rulings have established in interpreting and applying the IDEA's provisions with the professional recommendations of evidence-based research leaves practitioners with a lack of objective accuracy as to their legal obligations, as distinct from their ethical aspirations. Examples, as identified in the previous critiques, include the various inaccurately inflated accounts in the professional literature of (a) the Supreme Court's *Endrew F.* decision (Zirkel, 2018); (b) the IDEA provision for peer-reviewed research (Zirkel, 2022); and (c) the legal requirements for functional behavioral assessments and behavior plans (e.g., Collins & Zirkel, 2017), the Orton-Gillingham methodology (Sayeski & Zirkel, 2023), progress monitoring (Zirkel, 2022a), and response to intervention (RTI) (Zirkel, 2011).

The overlapping second problem in these examples is the inaccuracy resulting from a failure to be transparent about adopting a parent/child advocacy perspective rather than an objective, impartial stance (Zirkel, 2020b). Advocacy is ethically and legally appropriate, but it should be made clear to the reader whether the authors are offering their personal prescription for what the law should be or their objective description of what the law is.

Their third problem of legal inaccuracy is reliance, in notable part, on due process hearing decisions, federal agency guidance, or unrepresentative court decisions, as in the published legal analyses reviewed in Zirkel (2014a) and Zirkel (2018). This reliance is contrary to the scope and precedential sequence of the sources of law.

## III. THE SLD ELIGIBILITY FRAMEWORK IN THE IDEA

The 2004 amendments of the IDEA changed the framework for SLD identification by providing that states (a) must permit school districts to use RTI and (b) shall no longer require school districts to use severe discrepancy (SD) and (§ 1414[b][6]). The 2006 IDEA regulations effectively clarified that states must choose among the three approaches within these respective options (§ 300.307):

- RTI – permit or require
- SD – permit or prohibit
- "other alternative research-based procedures" – permit or omit

A separate but accompanying 2006 regulation provided the following language as the two alternate criteria for SLD eligibility that are in addition to the aforementioned foundational inadequate-achievement requirement:

> (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the [enumerated] areas … when using a process based on the [RTI]; or
>
> (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a [SLD] …. (§ 300.309[a][2])

The U.S. Department of Education, which issued the regulations, subsequently interpreted the second, "pattern" provision as referring to SD and the third alternative (Letter to Zirkel, 2008). The logical inference that makes this agency interpretation persuasive is based on (a) the identification in § 300.307 of RTI, SD, and a third alternative (as compared with two options here); (b) the connector here of "or" between the RTI provision and the pattern provision (thus potentially leaving two of the three alternatives for the second, pattern option); and (3) the broad breadth of the pattern provision extending to "intellectual development" (thus, reinforcing the SD alternative fitting here in addition to any third alternative). Yet, despite this clarifying inference, the "pattern" language is problematic because it encompasses, but does not necessarily equate to, the third alternative. More specifically, "pattern of strengths and weaknesses" (PSW) in this regulatory context may refer to one of the professionally recognized approaches to PSW (e.g., Maki et al. 2022) or any other research-based alternative beyond SD.

## IV. THE LITERATURE SPECIFIC TO STATE LAWS FOR SLD IDENTIFICATION

The previously published analyses of the post-2006 state SLD identification laws largely reflected a professional rather than a legal lens. For example, most of these analyses were not careful about the sources and distinctions among these laws, and either ignored the third alternative or equated it with PSW as referenced in the peer-reviewed literature. However, they gradually made progress in incorporating legal methodology.

For example, in the early articles, Berkeley et al. (2009) relied on information on state education websites about RTI without clarifying the distinction between regulations and guidance and without addressing the third alternative at all. The focus instead was on implementing RTI, including its critical features. With a similar focus and reliance on information from state education websites, Hauerwas et al. (2013) used a "qualitative content analysis" (p. 103) that differentiated regulations from guidance but did not provide a nuanced or comprehensive categorization of the regulations across the three alternatives. In partial contrast, Zirkel and Thomas's (2010) analysis clearly specified the scope of state "laws," directly sourced and cited them, and included the third alternative, but did not differentiate this broad "other" from PSW as a professionally specific approach.

A more recent pair of analyses also relied on information from state education websites, which are not necessarily current or complete with respect to applicable statutes and regulations, without clearly explaining how they distinguished "regulations" from "guidance." First, Maki et al. (2015) reported the percentage of states in the SD, RTI, and PSW categories. However, they did not identify the approaches required, permitted, or prohibited on a state-by-state basis, nor did they clarify how they differentiated PSW from other research-based alternatives within the broad language of the above excerpted IDEA regulations. Second, using the same data collection method in 2018, a subsequent article reported the results on a state-by-state basis (Benson et al., 2020). However, some of their entries were not sufficiently clear: "RTI combination," as contrasted with "RTI isolation," did not differentiate required and permitted, and "NS" encompassed both "not specified" (i.e., absent) and "not clear" (i.e., ambiguous). Moreover, some of the entries were clearly questionable, starting with the asterisked grade groupings for the approaches in the laws of Delaware, New Mexico, and New York.

## V. INSUFFICIENTLY ADDRESSED NUANCES IN THE STATE LAWS

An accurate categorization of state laws' choices among the three SLD identification approaches identified in the IDEA regulations requires several features that have largely been neglected in previous analyses. The overall prerequisite for an accurate categorization is the inclusion of one or more authors with a specialized, impartial legal lens as an addition to those with a commensurate expert professional lens. The results can provide practitioners with a more reliable roadmap of the applicable boundaries for SLD identification in their state, thus minimizing undue confusion and promoting informed practices.

### LAW DIFFERENTIATED FROM GUIDANCE

First, an accurate analysis should be carefully limited to state "laws," showing not only the internal difference between statutes and regulations but also the outer boundary for states that have policies that have the de facto force of law in the absence of regulations. In line with this requisite differentiation, data collection must primarily rely on a reputable legal database rather than state education agency websites. Legal databases, such as Westlaw, provide current statutes and, with due differentiation, regulations that are readily searchable with Boolean operators. Unlike state education agency websites, legal databases are current, complete, and devoid of policy documents, which amount to guidance rather than law.

The only justifiable data-collection extension to state education agency websites for SLD laws, as distinct from guidance, is limited to a few states. More specifically, if the state law refers to such policy documents via express "incorporation by reference," the documents clearly have the force of law. The two states with SLD state regulations that incorporate state policies are Idaho (Idaho Admin. Code r. 08.02.03.004) and Missouri (Mo. Code Regs. Ann. tit. 5, § 20-300.110). In the absence of either incorporation or an SLD state regulation, the suggested boundary for "law" is, per Zirkel and Thomas (2010), formal adoption or approval by the state board of education. Examples are the Special Education Rules in Utah (https://schools.utah.gov/specialeducation/programs/rulespolicies) and Vermont (https://education.vermont.gov/documents/VT-State-Board-of-Education-Rule-Series-2360). The only state left in question is South Car-

olina. Neither its statutes nor its regulations address its choice for SLD identification model(s). Although South Carolina legislation authorizes the state board of education to prescribe standards and approve policies for special education (S.C. Code Ann. § 59-33-20), there is no publicly available evidence that it has done so for the pertinent South Carolina State Department of Education "process guide" (2013) that is posted on its website. In the absence of such state board of education approval, this document appears to amount to guidance rather than law.

## AMBIGUOUS DIFFERENTIATED FROM CLEAR LAWS

Second, the analysis should consistently and transparently distinguish between pertinent provisions that are ambiguous and those that are clear. The principal locus of such ambiguity comprises the state law provisions that include the "pattern" provision either with the same wording as in the IDEA or with variations, such as the omission of the phrase "or intellectual development." The context of the pattern provisions, such as the addition of a separable provision that expressly prohibits or permits SD, is relevant in determining whether the analysis's categorizing entry should be differentiated from a clear "required" or "permitted."

More specifically, the aforementioned persuasive agency interpretation that the IDEA's pattern language in § 300.309 refers to the two options other than RTI, i.e., SD and the third alternative in § 300.307, provides the basis for the warranted differentiation of "unclear." State laws that mirror the IDEA's RTI and pattern provisions in § 300.309 accompanied by a provision expressly permitting SD but not any separate provision for the third alternative arguably, but unclearly, mean that the only applicable choices for local education agencies are severe discrepancy and RTI (e.g., Mo. Code Regs. Ann. tit. 5, § 20-300.110; S.D. Admin. R. 24:05:24.01:19). Conversely, the concomitant prohibition of SD, as exemplified in the SLD regulations of Indiana (511 Ind. Admin. Code r. 7-40-5) and Delaware (14 Del. Admin. Code § 925), on balance seem to sufficiently imply the permissibility of the third alternative. Other state laws present further variations in the wording of the pattern provision or in the accompanying provisions that warrant a coding entry that differentiates "unclear" from sufficiently definitive "permit," "require," or "prohibit" for each of the three approaches. As a related matter, "permits" warrants an express distinction from "requires," such as limiting "requires" to states that only allow one option for districts, including a specified combination of approaches.

The final problematic differentiation that arises from the various appearances of the pattern provision is determining whether their specific wording and the other pertinent provisions of the state law permit the broad, inclusive third alternative or are exclusively specific to what is a recognized form of PSW (e.g., McGill et al, 2016; Maki et al., 2022). The instances of those laws that, at least arguably, limit the third alternative exclusively to PSW are very few. For example, Louisiana's SLD regulation (La. Admin. Code tit. 28, Pt. CI, §719) requires, in addition to RTI, documentation of the following (with a limited exception for professional judgement): "area of strength as demonstrated by performance no more than one-half standard deviation below the mean in grades 1 and 2 or no more than one standard deviation below the mean in grades 3 through 12 using chronological age norms in one or more of [eight enumerated areas]." As another example, Texas's SLD regulation (19 Tex. Admin. Code § 89.1040[c][9]) limits its pattern provision to "significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement." As a third example, in addition to its general education regulatory requirement for universal MTSS (N.M. Admin. Code § 6.29.1.9), New Mexico requires for SLD identification "the dual discrepancy model" (N.M. Admin. Code § 6.31.2.10[k]). As a final example, Georgia's regulations clearly require RTI based on both their general child find prerequisite for all IDEA disability classifications (Ga. Comp. R. & Regs. 160-4-7-.03[2]) and their specific requirement for SLD identification (Ga. Comp. R. & Regs. 160-4-7-.05); however, the SLD provision concomitantly includes a "pattern" provision that requires "a comprehensive assessment of intellectual development designed to assess specific measures of processing skills that may contribute to the area of academic weakness." In all of these illustrative instances, the recommended combination of legal and professional experts should determine whether the appropriate coding entry for PSW, in contrast with the broad third alternative, should be "permits," "requires," or "unclear."

## ILLUSTRATIVE APPLICATION OF THESE NUANCES

The accuracy of the previous analyses is illustrated by a preliminary critique of the entries in Benson et al.

(2020, p. 151), which is the most recent and complete categorization to date. Since then, revisions to the pertinent state laws for their categorized entries have been negligible. However, this critique is of limited scope, because Benson used "PSW" as a generic term for the third alternative, without the warranted differentiation.

Table 1 presents this preliminary, limited critique. The first column lists the Benson et al. categories, which are various combinations of the aforementioned "required," "permitted," and "prohibited" alternatives, with the shorter acronym "SD" replacing the term "IAD" (intelligence-achievement discrepancy). The second column shows my tentative suggestions for the collaborative review and revisions by legal and professional specialists. Specifically, these provisional suggestions consist of (a) cross-outs for the abbreviated state entries that warrant particular reconsideration, with brackets for a tentatively revised categorization, and (b) parentheses for the abbreviated state entries that warrant consideration of a differentiated categorization of "unclear" (in addition those identified above for the three states with grade-grouping differentiations and for the exemplified pattern provisions that include "of intellectual development").

Thus, slightly more than half of the entries in the most recent and complete prior state law analysis are subject to question, in addition to issues that warrant due differentiation, such as the distinction between the broad third alternative and PSW's specific approach. The specific nature and extent of a more nuanced and accurate categorization await a concerted dual approach.

## VI. RECOMMENDATIONS AND IMPLICATIONS

For research, the primary recommendation is for a small team of legal experts and special education or school psychology professionals, who all have specialized experience in interpreting state laws for SLD identification, to collaborate in a careful canvassing of the relevant legislation, regulations, and qualifying policies per the nuances identified in part IV of this article. Rather than relying on interrater reliability, which can lead to shared inaccuracy, the focus should be on team consensus after a robust discussion, with any remaining disagreement or dissent identified. The non-legal experts should have special weight in determining which coding entries are entitled to the specific, recognized PSW approach, as differentiated from the broad third alternative or SD.

**Table 1**

*Provisional Critique of the Benson et al. Categorization of State SLD Identification Laws*

| Category | State Laws |
|---|---|
| SD and RTI permitted, with PSW not specified | ~~AL~~, ~~AK~~, ~~CA~~, (DC), HI, ~~KS~~, ~~NE, NC~~, ND, [NJ], (NY), [OK], ~~VT~~ |
| SD and RTI permitted, with PSW prohibited | ~~MA~~, ~~MN~~, MO, MT, ~~NV~~, ~~NJ~~, ~~OK~~, [PA], (SD), (WA), WY |
| RTI required alone | CO, CT, ~~DE~~, FL, (ID,) ~~NM~~, [NC], (RI), TN, WI |
| RTI required in combination | ~~GA~~ & (ME) (with unspecified other); ~~IL~~ (with SD or PSW); [GA], ~~IA~~, LA & ~~WV~~ (with PSW); NM (with SD) |
| RTI permitted alone | ~~KY~~, [ND], ~~SC~~ |
| RTI permitted, with SD prohibited | IN [& IA] (with PSW permitted), NY |
| RTI, SD, and PSW permitted | [AL], [AK], AZ, AR, [CA], [KS], [KY], MD, [MA], MI, MS, [NE], NH, OH, OR, ~~PA~~, [SC], (TX), ~~UT~~, VA, [WV] |
| [Other] | [DE–RTI and PSW permitted]; [HI–combination of inadequate achievement or SD and RTI or PSW]; [IL–RTI required, SD permitted]; [MN–two alternate RTI combinations]; [NV–RTI or PSW-SD combination]; [NM–PSW with consideration of RTI]; [UT-three specific options]; [VT–RTI or PSW |

*Note*: SD = severe discrepancy; RTI = response to intervention; PSW = pattern of strengths and weaknesses.

More long-range research recommendations include (a) impact analysis that traces the relationship between these laws and actual practice, including the intervening effects of state education agency guidance, the professional literature, social media, and the culture of the local school district; (b) statistical analyses of the relative weight of state law and various other factors, including SLD-identification court decisions, related laws (e.g., specific to dyslexia, MTSS, and Section 504 eligibility), special education funding, and the shortage of assessment specialists at the district level, in relation to the percentage of students identified with SLD in each state during the past decade; and (c) qualitative studies on practitioner and parent perceptions of SLD identification practices.

For practitioners, parts III–V of this article, through an examination of state SLD identification laws, highlight the significant difference between legal and professional lenses. Moreover, wider consideration of the formulation, interpretation, and implementation of these laws in light of parts I-II serves, on an overlapping basis, as a reminder of the limits of law.

## FOR PRACTITIONERS

These state laws resulted from what amounted to a compromise in the IDEA legislation between the traditional requirement for SD and the profession's general, though not uniform, push for RTI (e.g., Elksnin et al. 2001). The compromise was to delegate to each state the choice between permitting or requiring RTI and permitting or prohibiting SD. The resulting IDEA regulations compounded the lack of clarity by (a) adding a third alternative for each state's choice and (b) expressing the two options other than RTI into a broad "pattern of strengths and weaknesses" provision that did not specifically refer to SD but ambiguously identified "intellectual development" as one of three alternative reference points. The gradual finalization of state law choices, primarily through administrative agency regulations, was rife with wording that was subject to misinterpretation in the professional literature, particularly due to the predominant lack of legal expertise.

Research on SLD identification practices at the local level, as reported by school psychologists and other practitioners, varies considerably among the three applicable options. Table 2 summarizes the published research to date on the use of the three approaches at the local level. The predominant choices are designated in bold font with highlighting, although the percentage allocation is limited to 100% for surveys identifying *primary* actual use rather than *any* actual use. The table does not include the results of Hudson and McKenzie's (2016) survey of special education directors because (a) their relevant results were limited to six RTI-permissive states, and, more importantly, (b) their overall percentage

**Table 2**
*Published Research on Actual District Approaches for SLD Identification*

| Source | Survey Participants | SD | RTI | PSW |
|---|---|---|---|---|
| Unruh & McKellar (2013) | practicing school psychologists | 60% | 56% | 57% |
| Cottrell & Barrett (2016) | practicing school psychologists | **72%** | **75%** | 48% |
| Maki & Adams (2019) | practicing school psychologists | 30%* | 35%* | 34%* |
| Benson et al. (2020) | practicing school psychologists | 37% | **51%** | **53%** |
| Al Dahhan et al. (2021) | generic SLD reading ID professionals | **63%** | **60%** | 9% |
| Lockwood et al. (2022) | special education administrators | ~37%* | ~34%* | ~28%* |

Notes. * = total of 100% based on "most relied upon"; ~ = including extrapolated increases from combined choices

of primary actual use was limited to RTI (36%), with no survey item addressing the other two approaches.

Although the implicit baseline was 100% for SD prior to the 2004 amendments to the IDEA, RTI was more widely known than PSW in the immediate years after these amendments and the 2006 regulations. A review of Table 1 reveals that it is difficult to determine whether prevailing practice has shifted markedly toward RTI or PSW over the past decade. The likely reason is methodological variation, including the role and representativeness of participants and the wording of the relevant survey items. More significantly, only the Benson et al. (2020) study examined the relationship between state law and actual practice, and their conclusion that "practitioners tend to use frameworks that are required, or at least explicitly allowed, per state regulations" (p. 152) is subject to question for two reasons. First, this finding was limited to about 50% of respondents, which is particularly low for states with laws reported as *requiring* RTI. Second, and ultimately more problematic, as shown in Table 1 above, the Benson et al. categorization of applicable approaches warrants reexamination for confirmation or correction in at least half of the state laws.

Overall, the relationship between state laws and actual practice is less than straightforward due not only to the varied ambiguities in and published misinterpretations of these laws but also to other factors. For example, as Table 2 shows, those surveyed were samples from three role groups with different levels of knowledge of actual school practice. As a general matter, school psychologists are most often central to the actual school practice of SLD compared to special education administrators, who are a hierarchical step above, and reading specialists, who generally are not responsible for the five of eight enumerated SLD areas not specific to reading. Moreover, among school psychologist samples, state and local sources were potential intervening factors. Illustrating the state factor, Maki and Adams (2019) found that 61% of the participating school psychologists reported using state education agency guidance documents to inform their SLD identification practices. Even if social desirability has not inflated this percentage, such guidance may differ from state law. For example, in states that permit SD and RTI, the guidance may recommend RTI and discourage SD. For the second potentially significant intervening factor, only Cottrell and Barrett (2016) considered school policy choices. However, their imprecise reference to "school guidelines" and their failure to consider state law lead to imprecision or confusion. For example, they reported that "despite IDEA 2004 allowance of the use of alternative research-based practices, such as PSW, almost half of the participants (48.0%) indicated their school guidelines *never allowed* PSW to be used for SLD identification" (p. 153). However, it was the 2006 IDEA regulations, not the 2004 IDEA legislation, that set forth a third alternative to SD and RTI. That allowance was an option for each state's required choice, and thus not necessarily available at the district level.

Second, in line with the differentiation between the legal and professional lenses, this critical examination offers a lesson in the limits of law. Even if the state laws for SLD identification were crystal clear, the extent of their implementation would be subject to question for several reasons, including the wide variability within as well as among states as to the particular values, available resources, enforcement mechanisms, and the various other factors that contribute to the local culture of the community and its schools (e.g., Datnow & Park, 2009; Hall & Chapman, 2018; Zirkel, 2023). Given the continuing congestion of law in our society (e.g., Manning, 1977) and its particular extension to special education (e.g., Kirp & Neal, 1985), enforcement that assures compliant actual practice at the local level with the IDEA and its corollary state laws, much less nuanced gap-filling for improved outcomes, is illusory.

Using the limited legal example of litigation as a mechanism for not only overall enforcement but also for elaborated specifications, judicial rulings addressing RTI/MTSS in the context of SLD identification have been notably infrequent, and those addressing PSW or any third alternative have thus far been completely absent. More specifically, court decisions addressing RTI/MTSS have largely occurred within the child-find phase of SLD identification, with mixed outcomes (e.g., Zirkel, 2020a, p. 15). For the ultimately crucial phase of eligibility, RTI has played only a peripheral or nonexistent role in the long line of SLD case law, including due process hearing decisions, since the 2006 IDEA regulations; instead, the primary decisional factors systematically identified in this case law have been (a) SD with the addition in more recent years of (b) the need for special education (Zirkel, 2020a, p. 13; Zirkel, 2021; Zirkel, 2024). Thus, despite the seemingly paradigmatic change in the IDEA framework for state SLD law, the traditional SD approach continues to predominate in the case law, with increasing focus—regardless of the approach—on the ultimate eligibility requirement of whether the child needs special education.

The very few court rulings addressing RTI have been rather anticlimactic. For example, in a New Jersey case,

the parents of a child whom a district evaluated as not eligible for SLD challenged this determination, claiming that the child qualified under SD. Based on the New Jersey law that permits SD and RTI for SLD identification and the school district's choice of RTI, the federal district court ruled against the parents, with the judge reasoning that "because the District choice of [the RIT] methodology was permissible, and the Parents have presented no arguments attacking the [application of this] methodology …, I cannot conclude that the District erred in determining that [the child] did not have a [SLD]" (*J.M. v. Summit City Board of Education*, 2020, p. *6). On appeal, the Third Circuit affirmed on the broader grounds of child find, concluding that "although New Jersey regulations permit the [SD] method, a school district does not violate its child-find obligation by disregarding the results of … [this] approach" (*J.M. v. Summit City Board of Education*, 2022, pp. 140–141).

Moreover, the alternate IDEA enforcement mechanisms of due process hearings and state complaints have provided similarly limited application and elaboration for the RTI approach and no treatment of the PSW or other third approach to SLD identification (e.g., Zirkel, 2020a). These alternatives have the additional limitation of lacking precedential weight, i.e., a binding effect on future cases. Thus, the only way of strengthening the legally binding effect of RTI or variants within the third alternative, such as a particular PSW approach, or increasing the specificity of these permitted or required alternative approaches for SLD identification, is either by (a) revising the applicable state law or (b) attaining a major judicial decision. The first alternative requires concerted advocacy and leverage at the legislative or regulatory level, and it adds to the legalization of special education and to the already overburdened enforcement system. Similarly, the litigation alternative is a time-consuming and costly process that requires one or more parents with legal "standing" and specialized attorney representation, and the odds of obtaining a court decision with significant precedential weight are in favor of the district in light of judicial deference to school authorities; the "calloused," or non-nuanced, approach of the courts that is attributable to their congested and nonspecialized nature; and the prevailing non-activist trend of the judiciary led by the current Supreme Court.

Thus, practitioners and other concerned parties need to be strategically effective in understanding the role of law. While continuing its priority on proactive and effective professional practices, the field would benefit from more dual-lens scholarship for legal issues. Moreover, as suggested elsewhere (e.g., Zirkel, 2014b), professional development for legal literacy should focus on supervisory and support specialists rather than teachers (Zirkel, 2023).

Specific to SLD identification, the recommended categorization of state laws would be a useful step in providing practitioners with clearer boundaries for local customization. With such a more legally reliable baseline, district personnel may make choices for conducting SLD eligibility determinations that are not only legally defensible but also professionally proactive. The dual-approach categorization would also serve as a reminder to policymakers, district administrators, and research scholars of the need for clear differentiation and a prudent balance between the limits of the law and the implementation of best practices. Thus, carefully informed legal literacy can and should work hand in hand with evidence-based professional judgment to achieve more effective practice.

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