How Long Can Students Receive Interventions Prior to Comprehensive Evaluation

In the last several years, districts have seen changing requirements and recommendations to provide interventions for students who are not making sufficient progress to meet grade-level targets and/or likely to need special education services. In 2017, the Minnesota Legislature added the provision that:

“(a) For each student identified under subdivision 2, the district shall provide reading intervention to accelerate student growth and reach the goal of reading at or above grade level by the end of the current grade and school year. If a student does not read at or above grade level by the end of grade 3, the district must continue to provide reading intervention until the student reads at grade level.”

Minnesota Statutes, section 120B.12, subd. 3

Local Literacy Plans that address the requirements of Reading Well by Third Grade must also comply with state and federal requirements to identify students with disabilities. Because the Local Literacy Plan and Total Special Education System (TSES) Plan are typically put together by different staff with different roles and functions, there is a possibility that procedures outlined in one plan will not provide staff the data and rigor to meet compliance requirements of the other. District teams working on the Local Literacy Plan and Total Special Education System (TSES) Plan need to align the process and procedures with the rules and procedures required under both statutes and rules (Legal references are provided at the end). This article provides a quick recap of the guidance the Minnesota Department of Education (MDE) has provided on defining response to intervention while maintaining a Free and Appropriate Public Education (FAPE) for those with disabilities.

Schools must determine the rules that teams are to follow when monitoring a student’s progress and the need for changing interventions when a student is not responding. Minnesota Statutes requires that teams document the rules they use to determine the length of time a student may continue with intervention. These rules must be documented and publically available to parents. Every effort needs to be made to implement progress monitoring and data-based decision-making procedures as designed. Based on complaints received by MDE, the most likely reason schools may be found to be denying FAPE with respect to the length of interventions is a district’s failure to follow their own procedures and make decisions to change interventions or move to evaluation.

The most likely reason schools may be found to be denying Free Appropriate Public Education (FAPE) with respect to the length of interventions is a failure to follow their own procedures and make decisions to change interventions or move to evaluation.
Options for Defining Response: Three Indicators for Decision Making

There are three indicators, slope, level and shift, which are used in combination to specify when a student is responding to an intervention. Each holds value but alone is insufficient for decision making. The procedures and intended purpose of each may be one place where misalignment between the Local Literacy Plan and TSES can become a problem.

**Slope:** A slope or “trend line” represents a weekly or bi-weekly rate of improvement, and is the rate at which the student makes progress toward closing the gap between current and expected performance. A slope of progress is created when each student’s score is graphed against days on the calendar, and a line of best fit is drawn through the scores. At the start of the intervention, a line is drawn between current performance using a reasonable rate of growth per week ending in the target that is likely achievable by the end of an intervention cycle. The projected growth rate may be provided by the vendor of the progress monitoring measure or referenced in the research. When the student’s slope of growth is parallel or steeper than the goal line, the student is responding. If the students’ trend line is shallower than the goal line, the student is not responding. The student’s slope is typically drawn from a specified number of data points. Recent research indicates that linear growth (a steady trend) can be expected up to 80 percent of the time. There are some groups of students for which growth is nonlinear. Students with nonlinear growth hit a plateau. Students who plateau early on are more likely to begin growing again than to stay on a plateau. Students who plateau later on in the intervention cycle will likely have a persistent flat rate for growth. The more data points that are collected, the more accurate the decision-making process becomes. However, the more data points that are required, the longer the student will need to persist with an intervention that may not be a good fit. MDE has noted that there is variation across the state in how the slope is calculated. Since the slope is dependent on the number of data points required over time, the process for determining the slope for accurate decision making becomes critical in determining response and ensuring FAPE.

**Level:** Level of performance refers to whether the student performs above or below the long-range goal that was set. A simple decision rule determines when to change instruction. For example, if a student’s performance falls below the goal line on three consecutive data points when data are collected once per week, change instruction. If the data are above the goal line for six consecutive data points, raise the goal line. The level should increase incrementally until the student is at grade level. Sometimes teams disagree on where to set the level, long-range goal. The level of expected performance is established relative to the student’s instructional level and not to grade-level expectations. The intervention may be targeting skills that are significantly below grade level, so the response should be measuring growth in the developing skills and not on the grade-level expectations.

**Shift:** Shift refers to the immediate effect seen for an intervention. The judgment of the shift in data with the change in instruction is an additional aspect of determining responsiveness. The implication of a shift up of student data immediately after an intervention that continues for a number of days is that the intervention had an immediate and lasting effect. If the shift is downward, and the data stay down, it implies that the

---

intervention must change. Some students may take a period of time before they experience a shift in performance. Changing the intervention too early can be costly but also frustrating for the learner. Changing the intervention too late can be a violation of FAPE.

Each of the three indicators holds value for representing a student’s response to an intervention. Most vendors will have established rules for their products based on research and best practice. Districts will need to review the technical manuals and research for specifications and procedures to be followed. If different vendors are used across a district or for different levels of student support, then extra care in communicating and being transparent will be required. Whenever there is a change in products, the district and decision making teams need to review the decision rules and update their procedures and training of staff.

Reasons Why There Is Not One Rule for Defining Response

A question frequently asked to MDE is whether there is a black and white rule for defining response. In the table below are six scenarios brought up by specialists and evaluation teams in Minnesota that explain why it is not possible to have a predetermined definition of response.

<table>
<thead>
<tr>
<th>Reason Why</th>
<th>Example and Why</th>
</tr>
</thead>
<tbody>
<tr>
<td>Response to skill-based interventions can be established within just a few weeks.</td>
<td>For example, changes in phonemic awareness, decoding, encoding or computational fluency, measured weekly, will reliably show growth in six to nine weeks. Progress-monitoring tools and products, such as AIMS, FAST-Bridge, DIBBLES, etc., will have examples of decision rules that take into account how quickly students are likely to grow. There are also procedures to follow that increase the likelihood that scores are a reflection of the student’s true ability and not related to background knowledge, guessing, etc.</td>
</tr>
<tr>
<td>Response to knowledge and concept application interventions take significantly longer to show reliable changes in performance.</td>
<td>For example, vocabulary, listening comprehension, reading comprehension, oral expression, written expression, mathematical reasoning and problem-solving take an extensive amount of exposure and practice to show reliably small changes in improvement. The research-based practice may come with examples of how long the intervention typically takes. At the moment, weekly measures of progress in the span of six to nine weeks do not reliably discriminate responsive from non-responsive learners. Teams need to understand and follow the research and guidance in using the specific progress monitoring measures for which they were designed. Note: CLOSE or MAZE tasks do not measure comprehension and should not be used to show a response to comprehension instruction. Accuracy in spelling is not an indicator of progress in written expression and should not be used as a measure of progress. Nor is the mean length of utterance an appropriate measure of language development.</td>
</tr>
<tr>
<td>Reason Why</td>
<td>Example and Why</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------</td>
</tr>
</tbody>
</table>
| Fidelity of and dosage of the intervention must be consistent. | Many times poor attendance, interruptions in the schedule or incomplete intervention sessions delay the student in making measurable progress or showing a positive response.  
It is critical that the student participates and receives the full amount of intervention as designed for teams to separate the cause of the non-response. A student should not be determined as unresponsive to intervention when the intervention is not received. The team should ensure the intervention is delivered with fidelity and problem-solve and document resolution of issues related to missed instruction. |
| To make sustained growth in closing the gap, sometimes the focuses of interventions have to switch. | This happens for schools using Whole-to-Part assessment; for example, the student’s decoding improves, and when the next benchmark is taken, the student improves in the area of greatest concern to a point where a different skill presents lower. 
The team needs to alter the content of the intervention to match emerging needs and sustain a positive response. If the student does not respond to the new intervention, the intervention that was getting positive results should be re-established. |
| English language learners and students with limited formal schooling will show a different rate of growth. | Students with limited English and formal schooling may show different trends or rates of growth than their English-speaking peers. Differences in growth rates or decision rules should always be accounted for and based on evidence stated in technical manuals or peer-reviewed research.  
If teams choose not to follow the guidelines established by a district in making determinations of what to do with an intervention, they must clearly document their rationale and communicate this decision with parents.  
Students may have had a lack of instruction in the past, but as long as there is fidelity to the intervention, it is well matched to the student’s need, and the majority of the group with similar characteristics is growing, then, the team can have greater confidence in their decision to determine that a student’s response is unexpected. |
Decision rules are validated for each assessment product.

Depending on the type of assessment, the age, task and the technical research behind a given assessment, a vendor may provide product-specific decision rules based on their own research. For example, a school may switch from AIMS to FastBridge; each is a research-based system of assessments. AIMS assessments come with norms and guidance on cut points for AIMS probes. FastBridge, created by a different provider, will have different norms and established decision rules. In this case, clear communication with parents and staff about changes in which data is to be used to establish progress or non-response is critical.

As schools change or shift from one assessment tool to another, the decision rules should be revised to fit recommended practices that go with the chosen assessment.

In summary, the length of time a student participates in an intervention prior to being referred for an evaluation may vary depending on the measure used, the definition of response, skills being addressed, the age of the student, intensity, and frequency and fidelity of the intervention. The decision to delay evaluating a student cannot be the result of:

- Mistakes made in data collection.
- Poor training and coaching in the use of progress monitoring practices.
- Individuals, however well intentioned, making decisions contrary to defined procedures, technical guidance from the vendor, peer-reviewed research practices, school, and district policies.

**Recommendations:**

1. Staff responsible for the Local Literacy Plan and TSES plan should review the legal requirements for each and ensure alignment and coherence of procedures across the plans.
2. Staff responsible for documenting, communicating and training on the procedures should verify that the decision rules are in place and followed.
3. Establish a system to trigger a review of processes and procedures any time assessment products are changed.
4. Have teams establish a process for reviewing students who persist with interventions. Make continuous improvements to ensure interventions are matching the needs and demonstrating a record of effectiveness. Move quickly to resolve system and organizational barriers.
**Legislative References**

There are several statutes and laws that refer to interventions and timelines. District and school staff need to be aware of these to ensure students’ rights are protected as they create coherent Local Literacy Plans that also comply with state and federal requirements to identify students with disabilities.

[Minnesota Statutes, section 120B.12 Reading Proficiently No Later Than the End of Grade 3](https://www.revisor.mn.gov/statutes/?id=120B.12) can be reviewed at https://www.revisor.mn.gov/statutes/?id=120B.12.

[Minnesota Statutes, section 125A.56 Alternate Instruction Required Before Assessment Referral](https://www.revisor.mn.gov/statutes/?id=125A.56) can be reviewed at https://www.revisor.mn.gov/statutes/?id=125A.56.

[Minnesota Rule 3525.1100 State and District Responsibility for Total Special Education System Plan](https://www.revisor.mn.gov/rules/?id=3525.1100) can be reviewed at https://www.revisor.mn.gov/rules/?id=3525.1100.


[Federal Law 34 CFR 300.304 Evaluation procedures](https://www.law.cornell.edu/cfr/text/34/300.304) can be reviewed at https://www.law.cornell.edu/cfr/text/34/300.304.

**Additional Resources**


[Data-based Individualization](http://www.intensiveintervention.org/implementation) can be viewed at National Intensive Intervention Center: http://www.intensiveintervention.org/implementation