

# **IDEA Regulations**

## **Changes in Initial Evaluation and Reevaluation**

(See also Procedural Safeguards:

**Surrogates, Notice, and Parental Consent and Identification of Specific Learning Disabilities)**

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup>

This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding initial evaluation and reevaluation.

### **IDEA Regulations**

#### **1. Add a provision regarding initiation of a request for initial evaluation.**

Consistent with the consent requirements in 34 CFR 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

[34 CFR 300.301(b)] [20 U.S.C. 1414(a)(1)(B)]

#### **2. Add a 60-day timeline to complete initial evaluation (unless the state has an established timeline).**

The initial evaluation:

- Must be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
- Must consist of procedures to determine if the child is a child with a disability under 34 CFR 300.8 and to determine the educational needs of the child.

[34 CFR 300.301(c)] [20 U.S.C. 1414(a)(1)(C)]

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

The timeframe described in 34 CFR 300.301(c)(1) does not apply to a public agency if:

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- A child enrolls in a school of another public agency after the relevant timeframe in 34 CFR 300.300(c)(1) has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR 300.8.

[34 CFR 300.301(d)] [20 U.S.C. 1414(a)(1)(C)]

The exception in 34 CFR 300.301(d)(2) applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

[34 CFR 300.301(e)] [20 U.S.C. 1414(a)(1)(C)]

### **3. Clarify that screening for instructional purposes is not evaluation.**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

[34 CFR 300.302] [20 U.S.C. 1414(a)(1)(E)]

### **4. Revise procedures for reevaluations.**

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 300.311:

- If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

A reevaluation conducted under 34 CFR 300.303(a):

- May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

[34 CFR 300.303] [20 U.S.C. 1414(a)(2)]

### **5. Add a requirement that evaluation procedure be administered in form that is most likely to yield the most accurate information.**

Each public agency must ensure that assessments and other evaluation materials used to assess a child under Part 300 are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on

what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

[34 CFR 300.304(c)(1)(ii)] [20 U.S.C. 1414(b)(3)(A)(ii)]

## **6. Add a requirement regarding transfer from one public agency to another in the same school year.**

Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 CFR 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

[34 CFR 300.304(c)(5)] [20 U.S.C. 1414(b)(3)(D)]

## **7. Revise the review of existing data provisions.**

As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part 300, the IEP Team and other qualified professionals, as appropriate, must:

- Review existing evaluation data on the child, including:
  - o Evaluations and information provided by the parents of the child;
  - o Current classroom-based, local, or State assessments, and classroom-based observations; and
  - o Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
  - o Whether the child is a child with a disability, as defined in 34 CFR 300.8, and the educational needs of the child; or, in case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
  - o The present levels of academic achievement and related developmental needs of the child;
  - o Whether the child needs special education and related services; or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
  - o Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

[34 CFR 300.305(a)] [20 U.S.C. 1414(c)(1)-(4)]

The group described in 34 CFR 300.305(a) may conduct its review without a meeting.

[34 CFR 300.305(b)] [20 U.S.C. 1414(c)(1)-(4)]

The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under 34 CFR 300.305(a).

[34 CFR 300.305(c)] [20 U.S.C. 1414(c)(1)-(4)]

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of:

- That determination and the reasons for the determination; and
- The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

The public agency is not required to conduct the assessment described in 34 CFR 300.305(d)(1)(ii) unless requested to do so by the child's parents.

[34 CFR 300.305(d)] [20 U.S.C. 1414(c)(1), (2), (4)]

## **8. Revise the provisions regarding the exception to requirements for evaluation before a change in eligibility.**

Except as provided in 34 CFR 300.305(e)(2), a public agency must evaluate a child with a disability in accordance with 34 CFR 300.304-300.311 before determining that the child is no longer a child with a disability.

[34 CFR 300.305(e)(1)] [20 U.S.C. 1414(c)(5)]

The evaluation described in 34 CFR 300.305(e)(1) is not required before the termination of a child's eligibility under Part 300 due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education (FAPE) under State law.

[34 CFR 300.305(e)(2)] [20 U.S.C. 1414(c)(5)]

For a child whose eligibility terminates under circumstances described in 34 CFR 300.305(e)(2), a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

[34 CFR 300.305(e)(3)] [20 U.S.C. 1414(c)(5)]

## 9. Revise provisions regarding determinant factors.

A child must not be determined to be a child with a disability under Part B:

- If the determinant factor for that determination is:
  - o Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA<sup>2</sup>);
  - o Lack of appropriate instruction in math; or
  - o Limited English proficiency; and
- If the child does not otherwise meet the eligibility criteria under 34 CFR 300.8(a).

[34 CFR 300.306(b)] [20 U.S.C. 1414(b)(5)]

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<sup>2</sup> For purposes of this document, *NCLB* also is referred to as the *Elementary and Secondary Education Act* of 1965, as amended (*ESEA*).