



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR 16 2001

[REDACTED]
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Dear [REDACTED]

Thank you for your letter dated February 13, 2000, written to former Assistant Secretary Judith Heumann at the U.S. Department of Education (Department), in which you seek policy clarification regarding "unscheduled reevaluations" requested by parents. Please excuse the delay in issuing this response.

In your letter, you state that the "MA. Parents Rights Brochure Addendum dated September, 1997, specifically informs parents 'If it appears that sufficient information is already available to determine your child's initial or continuing eligibility for special education or your child's special education program, the school district may recommend to you that no additional assessments are needed. If you disagree with the recommendation, then you have the right to request that the school conduct as [sic] assessment (s) of the child.'" Further, you ask the following three questions regarding reevaluation under Part B of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97):

- 1. If a parent (or Educational Surrogate Parent) requests a formal reevaluation of a child who has already been identified with a disability and who has an IEP, is the school district required to send the parent a consent form proposing the reevaluation? Is the parent's right to request an unscheduled reevaluation absolute?**
- 2. Are there any circumstances under which the school district is not required to conduct the parent requested reevaluation under IDEA-97? If the district refuses to conduct the reevaluation, what steps must be taken by the district?**
- 3. If the district refuses the parent's request for the reevaluation, would the parent be advised to file a formal complaint with the state Department of Education?**

Under §300.500(b)(2), evaluation is defined as "procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." An initial evaluation of the child is the first completed assessment of the child to determine if he or she has a disability under IDEA, and the nature and extent of special education and related services to be provided. Once a child has been fully evaluated the first time in a State, a decision has been rendered that a child is eligible under

IDEA, and the required services have been determined, any subsequent evaluation of the child would constitute a reevaluation. (See the Analysis of Comments and Changes published as Attachment 1 to the March 12, 1999 final regulations at 64 Fed. Reg. at 12606.)

As a general matter, under §300.536, each public agency must ensure that the IEP of each child with a disability is reviewed and a reevaluation is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. If the parent requests a reevaluation, the public agency must either: (1) provide the parents with written notice of the agency's proposal to conduct the reevaluation; or (2) provide parents with written notice of the agency's refusal to conduct a reevaluation.

Further, under §300.533(a), as part of any reevaluation, a group that includes individuals described in §300.344, and other qualified professionals, as appropriate, must review existing evaluation data on the child. On the basis of that review, and input from the child's parents, the group must identify what additional data, if any, are needed to determine, among other things: whether the child continues to have a particular category of disability; the present levels of performance and educational needs of the child; and 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 curriculum. (§300.533(a)(2)). Whether additional data are needed as part of a reevaluation must be determined on a case-by-case basis, depending on the child's needs and the information available regarding the child, by the group members, which include the child's parents. If the group, after reviewing the existing data, determines that no additional data is needed, then the LEA need not provide additional assessments for the child. However, if the purpose of the evaluation is for determining whether the child continues to be a child with a disability and the parent requests additional assessments, the LEA must provide them. See 34 CFR 300.533(d). Note that parental consent is not required for the review of existing data (§300.505(a)(3)(i)). However, parents must give informed consent before their child is reevaluated, including if additional assessments or other evaluation procedures are necessary (§300.505(a)(1)(i)).

If a parent requests a reevaluation or additional assessments performed on his or her child (for purposes other than determining continued eligibility of the child) and the public agency refuses, the agency must provide notice (§300.503(a)(1)(ii)). The parent may then challenge the public agency's refusal to conduct the reevaluation by requesting a due process hearing (§300.507(a)). Section 300.507(a) permits a parent or public agency to initiate a due process hearing on any matters related to the identification, evaluation or educational placement of the child with a disability, or the provision of a free appropriate public education to the child. If the parent initiates a due process hearing, the parent or attorney representing the child also must provide notice to the public agency in a request for hearing (§300.507(c)). Mediation also must be made available at a minimum when a due process hearing is requested (§300.506(a)). In addition, the parent could file a State complaint under the procedures described at §§300.660-300.662 if the parent believed that the action taken by the district violated a provision of IDEA or its implementing regulations.

We hope that you find this explanation helpful. If you would like further assistance, please contact the Office of Special Education Programs and speak with Dr. Ken Kienas, the Massachusetts State contact in the Monitoring and State Improvement Planning Division at (202) 205-9057, or Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Ms. Marcia Mittnacht
Massachusetts Department of Education