



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 19 2007

Dr. John Copenhaver, Director  
Mountain Plains Regional Resource Center  
Utah State University  
1780 North Research Parkway, Suite 112  
Logan, Utah 84341

Dear Dr. Copenhaver:

This letter is in response to your electronic mail inquiry to the Office of Special Education Programs (OSEP), transmitted on July 13, 2007, regarding requirements in Part B of the Individuals with Disabilities Education Act (Part B) for parental consent to be obtained for initial evaluations when a response to intervention (RTI) process is used. Your specific questions and our responses follow.

Are there any circumstances in which a school district could conduct a full initial evaluation and determine eligibility without obtaining the parent's informed consent?

What starts the 60-day timeline for evaluation if parental consent is not needed?

A full and initial evaluation must be conducted in accordance with 34 CFR §§300.304-300.305 prior to the initial provision of special education and related services to a child with a disability under Part B. 34 CFR §300.301(a). Under 34 CFR §300.300(a)(1)(i), the public agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability under 34 CFR §300.8 must obtain informed consent from the parent of the child before conducting the evaluation. The regulations also provide that parental consent is not required for review of existing data on the child as part of an initial evaluation or reevaluation. 34 CFR §300.300(d)(1)(i).

Requirements for review of existing evaluation data on the child as part of initial evaluations and reevaluations were added to the IDEA in the 1997 reauthorization. To respond to public comments asserting that parental consent should be required for all evaluations, not just those for which new tests were conducted, the Department provided the following clarification of the new statutory provision:

The statute provides that in some instances, an evaluation team may determine that additional data are not needed for an evaluation or reevaluation. In all instances, parents have the opportunity to be part of the team which makes that determination. Therefore, no parental consent is necessary if no additional data are needed to conduct the evaluation or reevaluation. (Assistance to States for the Education of Children with Disabilities and Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12564, 12610 (Mar. 12, 1999))

You indicate that your inquiry was prompted because many school districts are obtaining evaluation data as part of a response to intervention (RTI) process and progress monitoring. The U.S. Department of Education provided the following pertinent explanation regarding the use of RTI in its discussion of public comments accompanying publication of the final Part B regulations in the Federal Register:

An RTI process does not replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§ 300.304 and 300.305. As required in § 300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services.

(Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, Final Rule, 71 Fed. Reg. 46540, 46648 (Aug. 14, 2006))

Therefore, we do not believe that an RTI process alone would relieve a public agency of the obligation to conduct a comprehensive, individual, initial evaluation of a child, for which parental consent would be required.

The regulation at 34 CFR §300.305 describes the procedures that apply to review of existing evaluation data on the child. Under 34 CFR §300.305(a)(1), the individualized education program (IEP) Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the child's parent, current classroom-based local or State assessments, classroom-based observations and observations by teachers and related services providers. 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 whether the child is a child with a disability and the educational needs of the child, the present levels of academic achievement and related developmental needs of the child, and whether the child needs special education and related services. 34 CFR §300.305(b)(2)(i)(a), (ii), and (iii)(A). If the IEP Team and other qualified professionals determine, based on review of existing data, that those data are sufficient to determine whether the child is a child with a disability and the child's educational needs, and that no additional data are needed, the determination of whether the child qualifies as a child with a disability, within the meaning of 34 CFR §300.8, could be made without conducting further assessments of the child. In that situation, the public agency would not be required to obtain parental consent for an initial evaluation. 34 CFR §300.300(d)(1)(i).

Please note that under this regulation, the parent must always be given the opportunity to request further assessment even if the public agency determines that no additional evaluation data are needed. If the public agency informs the parent that no additional data are needed to determine whether the child is a child with a disability and the child's educational needs, but the parent requests that additional assessment be conducted, the public agency would be required to obtain parental consent prior to conducting that assessment. The purpose of the additional assessment

would be to determine whether the child has a disability and the nature and extent of the child's educational needs. 34 CFR §§300.300(a)(1)(i) and 300.15.

Under 34 CFR §300.304, any initial evaluation or reevaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 CFR §300.8 and the content of the child's IEP. In addition, the public agency may not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR §300.304(b)(1)-(2).

Based on these evaluation requirements, we believe that only in limited circumstances could a public agency conduct an initial evaluation only through review of existing data on the child, and that, in most instances, review of existing evaluation data on the child generally would be insufficient for a team to determine whether a child qualifies as a child with a disability and the nature and extent of the child's educational needs.

Since consent is not required for review of existing data on the child, you have also asked how the timeline requirement is applied in this situation. The evaluation timeline requirement at 34 CFR §300.301(c)(1) begins to run from the date that the public agency received parental consent to conduct the initial evaluation. The regulations do not establish a timeline for review of existing data on the child. Consistent with the public agency's obligation under 34 CFR §300.111 to locate, identify, and evaluate all children who are in need of special education and related services, public agencies must ensure that the review of existing evaluation data does not operate to impede the child's right to the timely provision of special education and related services. The review of existing data is a part of the eligibility determination process that occurs prior to the initiation of any evaluation timeline that would apply if additional evaluation data were needed. Therefore, we would expect that the eligibility determination would occur promptly if no further evaluation data were needed.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope this provides the information you require. If you have further questions, please do not hesitate to contact Deborah Morrow at 202-245-7456.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education  
Programs