



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

DIRECTOR

OSEP Policy Letter 22-05

November 1, 2022

Virginia Sharpless
Sent via email

Dear Ms. Sharpless:

This letter responds to your email correspondence to Lisa Pagano, Policy Specialist, Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In that email you asked that OSEP clarify the requirements under the Individuals with Disabilities Education Act (IDEA) related to the procedures parents must follow when requesting an initial evaluation to determine their child's eligibility for special education and related services. Specifically, you asked the following:

When a parent asks for "testing because I think there might be a problem" (or similar wording), would this request count as an "oral request for an initial evaluation?" If not, is the LEA obligated in any way to provide assistance and explain to the parent of their right to request an initial evaluation? Or, when the parent is having a verbal conversation with the school and the parent asks a school to "test their child," can a school stay silent about the parent's right to request an initial evaluation?

We sincerely regret the delay in responding to your inquiry and thank you for your patience.

We note that Section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of Section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA Section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Under IDEA Part B, each eligible child with a disability is entitled to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 34 C.F.R. § 300.101. All States and local educational agencies (LEAs) share

an obligation to make FAPE available to each eligible child, ages 3-21, residing in their jurisdiction. To meet this obligation, States must adhere to IDEA's child find requirements in the Part B regulations at 34 C.F.R. § 300.111. Each State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a)(1)(i).¹

While IDEA requires every State to identify, locate, and evaluate all children with disabilities who need special education and related services, it does not provide specific requirements regarding the manner in which a request for an initial evaluation of a child suspected of having a disability must be made. In the absence of specific provisions, States may develop their own procedures, provided they are not inconsistent with, and do not substantially limit, a parent's² right to request an initial evaluation under IDEA.

Many States utilize similar practices and procedures for conducting child find activities, including specific methods for parents to make referrals for an evaluation for special education and related services under IDEA. We are aware that States and LEAs often require that parents submit their request for an IDEA initial evaluation in writing. Some States may further require that parents use a specific form to make an official request. Such procedures are often designed to provide a simple and consistent format to ensure parental consent, establish the date of the parent's request, and for measuring against the evaluation timeline. While States may require that a parent submit their request for an IDEA evaluation in writing, because some parents may be unaware of how or when to submit such requests, additional actions may be necessary to effectively carry out its child find obligations. For example, a parent may need assistance in understanding or completing the required forms for a variety of reasons, such as lacking resources such as a computer or internet access or having limited proficiency in English – any of which could substantially limit their ability to submit their request in writing.³

¹ Child find efforts must include— (1) children who are suspected of being a child with a disability under 34 C.F.R. § 300.8 and in need of special education, even though they are advancing from grade to grade; and (2) highly mobile children, including migrant children. 34 C.F.R. § 300.111(c)(1)-(2). While addressed in separate provisions, the requirements for special education referrals and child find are closely related and need to work in concert.

² Under 34 C.F.R. § 300.30(a), the term “parent” means: (1) a biological or adoptive parent of a child; (2) a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or Section 639(a)(5) of the IDEA. Under 34 C.F.R. § 300.520(a)(1)(ii), a State may provide that when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law), all rights accorded to parents under Part B of the IDEA transfer to the child.

³ States and LEAs have certain communication responsibilities to parents under Federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, which are beyond

IDEA does not directly address whether a State or LEA may completely ignore a verbal request, because it was not in writing or did not contain specific language, terminology, or “trigger words,” or because it otherwise fails to meet a specific technical requirement. In the Department’s view, when these additional steps pose a substantial limitation for certain parents to access an initial evaluation for their child under IDEA, the failure to provide additional information or assistance could potentially violate IDEA’s child find obligations. Therefore, States and LEAs need to properly address a parent’s verbal request that can be reasonably understood as a request for an initial evaluation under IDEA, but where additional actions are required under State or local provisions. Examples of reasonable and appropriate responses for school personnel include: providing the parent with information and assistance such as a copy of its notice of procedural safeguards required under IDEA; further explaining the right to, and procedures for, initiating an evaluation under IDEA; and, providing any assistance the parent requires to submit the request. Because the responsibility for meeting IDEA’s child find requirements rests with States and LEAs – not with parents – the evaluation referral process must support, and not undermine, the effectiveness of the child find process.

OSEP encourages all States and LEAs to examine their rules and procedures to determine if those rules create barriers for a parent to request an evaluation of their child under IDEA. OSEP further encourages States to determine if their child find procedures offer fair and equitable opportunities for all parents to request an initial evaluation under IDEA to address their child’s academic or behavioral needs.⁴

We thank you for your interest in ensuring that States and LEAs have appropriate procedures in place to address a parent’s request for an evaluation of their child under IDEA. We trust that the information in this letter is responsive to your inquiry. If you have further questions, please contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Valerie C. Williams

the scope of this document. Additional information is available from the Department’s [Office for Civil Rights web site](#).

⁴ This letter only addresses requirements under IDEA. Children with disabilities also have rights under the two civil rights laws that prohibit discrimination on the basis of disability referenced in footnote 3.