STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION SERVICES
ADMINISTRATIVE CODE

CHAPTER 290-8-9
SPECIAL EDUCATION SERVICES

290-8-9-.02 Evaluations.

Public agencies must develop and implement procedures to evaluate those children suspected of having a disability that adversely affects their educational performance and who may need special education (specially designed instruction) and related services.

(1) **Evaluation Requirements.** If the IEP Team determines that the child should be evaluated, the evaluation must be conducted as follows:

(a) Before an initial evaluation can be conducted, the public agency must, after providing notice consistent with these rules, obtain informed written consent as required. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

1. The public agency must make reasonable efforts to obtain the informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability. If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue an evaluation through mediation and/or due process in accordance with these rules. The public agency does not violate its Child Find or evaluation obligations if it declines to pursue the evaluation. If a parent of a child who is enrolled in a private school or who is home schooled at their own expense does not provide consent for the initial evaluation or fails to respond to the request, the public agency may not use the override procedures of mediation and/or due process.

2. For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an

initial evaluation to determine whether the child is a child with a disability if:

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(b) The public agency has sixty (60) calendar days from the date the public agency receives a parent's signed consent for initial evaluation to conduct and complete an initial evaluation. The public agency has thirty (30) calendar days from the completion of the evaluation to determine initial eligibility. The timeline runs regardless of any scheduled interruptions in the scholastic year or the scheduled summer vacation. EXCEPTION:

(1) The timeline does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(2) The timeline does not apply to the public agency if a child enrolls in a school of another public agency after the relevant timeframe has begun and prior to completion of the initial evaluation. This only applies if the receiving public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and receiving public agency agree to a specific time when the evaluation will be completed.

(c) Before the initial provision of special education and related services to a child with a disability, a full and individual evaluation of the child's educational needs must be conducted.

(d) As part of an initial evaluation and as part of all required reevaluations, the IEP Team and other qualified professionals, as appropriate, must:

1. Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local,

or state assessments and classroom-based observations; and observations by teachers and related services providers; and

2. On the basis of the review of existing evaluation data and input from the child's parents, identify what additional data, if any, are needed to determine:

(i) Whether the child has a disability, and the educational needs of the child; or, in the case of a reevaluation of a child, whether the child continues to have a disability; and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) 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

(iv) 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.

(e) The public agency must administer any assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team.

(f) When conducting a review as part of an initial evaluation or reevaluation, the IEP Team must conduct its review through a meeting. The parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(g) The child must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(h) No single measure or assessment may be used as the sole criterion for determining whether the child has a disability or in determining an appropriate educational program for a child.

(i) Tests must be 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 so provide or administer.

(j) Standardized tests must be validated for the specific purpose for which they are used and administered by trained and knowledgeable personnel in conformance with the instructions provided by the producer of the test.

(k) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities for services must be selected and administered so as not to be discriminatory on a racial or cultural basis. Tests and evaluative materials selected and administered should be sensitive to environmental, cultural, linguistic, and economic differences.

(l) A variety of assessment tools and strategies must be utilized to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved and progress in the general curriculum or, for preschool children, to participate in age-appropriate activities.

(m) Technically sound instruments that may assess the relevant contribution of cognitive and behavioral factors in addition to physical or developmental factors must be utilized.

(n) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child must be used.

(o) Assessments and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(p) Assessments must be selected and administered to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless

those skills are the factors that the test purports to measure).

(q) Children with special needs, such as those who have significant communication needs, limited English proficiency, hearing impairments, visual impairments, multiple disabilities, language impairments, physical impairments, etc., must be administered evaluations appropriately developed and/or modified for their needs.

(r) Materials and procedures used to assess a child with limited English proficiency must be selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(s) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.

(t) In evaluating each child with a disability, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been identified.

(u) Interview versions of test instruments that require parental input must be completed by school personnel in conjunction with parents. Interviews may be completed by telephone, home visit, or other mutually agreed upon arrangements if allowed by the test publishers.

(v) Assessments of children with disabilities who transfer from one education agency to another education agency in the same academic year must be coordinated with the child’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(2) **Length of Time Evaluations are Valid for Initial Eligibility Determination**. Any evaluation is considered valid for determining initial eligibility for special education services if that evaluation is conducted within one year to the date of the IEP Team meeting to discuss what additional data, if any, is needed to determine eligibility.

(3) **Individual Intellectual Evaluations**. Public agencies must conduct or have conducted individual intellectual evaluations in accordance with the following rules:

(a) Individual intellectual evaluations may only be conducted by clinical psychologists, school psychologists, school psychometrists, clinical psychiatrists, and counselors qualified to administer such evaluations. Graduate students currently enrolled in approved training programs leading to being qualified to administer individual intellectual evaluations may administer individual intellectual tests as part of training if the test is part of a reevaluation and written reports are approved and cosigned by a person properly qualified.

(b) *The person conducting the individual intellectual evaluation must develop a comprehensive written report*.

(c) The person conducting the individual intellectual evaluation may not independently determine eligibility for special education services.

(4) **Independent Educational Evaluations.** Parents have the right to obtain an independent educational evaluation of their child subject to the following criteria:

(a) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria, including the location of the evaluation and the qualifications of the examiner that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to obtain an independent educational evaluation.

(b) A public agency may not impose conditions or timelines related to obtaining an independent educational evaluation, except as described in (a) above.

(c) For purposes of this section:

1. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

2. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(d) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an individual evaluation(s) (e.g., OT, PT, achievement) obtained by the public agency. If a parent requests an

independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process hearing request to show that its evaluation is appropriate or ensure that the independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision in a due process hearing is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(e) If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child, and may be presented by any party as evidence at a due process hearing regarding that child.

(f) If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(g) If the parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he/she objects to the agency's evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend its evaluation.

(h) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an individual evaluation(s) with which the parent disagrees.

(5) **Out-of-State Evaluations**. Decisions regarding out-of-state evaluations used to determine initial eligibility for special education services and the length of time these evaluations are valid, are at the discretion of the public agency.

(6) **Reevaluation**.

(a) Once the initial evaluation to determine whether a child has a disability is completed, any subsequent evaluation is considered to be a reevaluation that requires parental consent as described herein and in accordance with the consent procedures. However, for students who transfer from out of state, any evaluation conducted is an initial evaluation that requires notice

and consent procedures in accordance with the procedures for initial evaluation.

(b) A reevaluation must be conducted if the IEP Team determines that the education 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. The public agency must maintain written documentation of the IEP Team's decision regarding reevaluation and a copy must be given to parent.

(c) Reevaluations shall not occur more than once a year, unless the parent and the public agency agree otherwise, and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(d) 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 educational needs of the child, the public agency must provide written notice to 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 continued eligibility. The public agency will not be required to conduct an assessment to determine continued eligibility, unless requested to do so by the child's parents.

(e) Public agencies must obtain parental consent prior to obtaining additional evaluation data as part of the reevaluation of a child with a disability, unless the public agency can document reasonable efforts (at least two attempts) to obtain consent with no response from the parent. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures of mediation and/or due process. The public agency does not violate its Child Find or evaluation obligations if it declines to pursue mediation and/or due process.

(f) A reevaluation is not required before a child with a disability exits school due to graduation with a regular or advanced diploma or reaching the maximum age of eligibility (21), but prior written notice must be given. A regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED). The public agency must provide the child a summary of his or her academic achievement and functional performance

including recommendations on how to assist the child in meeting the child's postsecondary goals.

(g) A public agency must evaluate a child with a disability before determining that a child is no longer a child with a disability.

(h) To the extent possible, the public agency should encourage the consolidation of reevaluation meetings with other IEP Team meetings for the child.

(7) **Other Consent Requirements Regarding Evaluations**.

(a) Parental consent is not required before:

1. Reviewing existing data as part of an evaluation or a reevaluation; or

2. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(b)1. If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the mediation and or due process override procedures; and

2. The public agency is not required to consider the child as eligible for services.

(c) The public agency must document its attempts to obtain parental consent.

(8) **State and District wide Assessments**. Public agencies must develop and implement procedures to ensure that every child with a disability is provided the opportunity to participate in the same state and district wide assessments as his or her nondisabled peers. The IEP Team must also determine appropriate accommodations, if necessary, for the child's participation. These accommodations must be documented through the IEP Team process. If the public agency administers district wide assessments in addition to the state required assessments, the public agency is responsible for developing an alternate assessment for the district wide assessment should it be determined by the IEP Team that the child will participate in an alternate assessment.

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