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through partnership

Education
Team

**LET'S GET EXCITED ABOUT
EVALUATING FULLY**



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Child Find Obligations and Its Relationship to Referrals, Evaluations and Eligibility

- A school district must conduct child find in order to seek out and identify all students with disabilities residing within its jurisdiction and attending private schools within its jurisdiction.
- It is not sufficient to handle the student exclusively through the RTI process when the parent has asked for an evaluation.
- The delay in making a decision regarding the referral can result in an obligation to provide compensatory education.

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Definition of Evaluation and Other Aspects of Evaluations

- An initial evaluation must be "full and individual."
- An evaluation must "... determine whether a child has a disability and the nature and extent of the special education and related services that the child needs."
- An evaluation may be conducted at the request of a parent or at the request of the LEA.

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- Informed consent from the parent is needed for an initial evaluation.
- Informed parental consent must be sought for a reevaluation.
- Parentally-placed private school students with disabilities cannot be forced into an evaluation over parental objection.

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- A reevaluation should be conducted: 1) once every three years; 2) earlier if the LEA determines a reevaluation is warranted due to changing needs; or 3) at the request of a parent or teacher, except not more frequently than once a year unless agreed by LEA and parents.
- The team can determine that no additional data is needed for a reevaluation, but must provide notice to the parents of this determination and of the reasons and must notify the parents of their right to request an assessment.

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- Evaluations must be conducted before finding an eligible child is no longer eligible.
- The timeframe for an evaluation and eligibility in federal law is 60 days after receipt of parent consent.

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- The timeframe may be extended if the student transfers during the evaluation period and the new school division "...is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and the subsequent local educational agency agree to a specific time when the evaluation will be completed...."
- The evaluation may be conducted by school personnel or by outside personnel.

Scope and Content of Evaluation

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- The evaluation must provide information to determine whether a child is a child with a disability and the educational needs of such child.
- The evaluation must use a variety of assessments and strategies.
- No single measure may be used.

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- Screenings and observations are not necessarily evaluations.
- School districts are entitled to conduct their own evaluations.
- Failing to conduct an evaluation for six years can result in a lack of sufficient information for IEP planning and for FAPE.

SOME AREAS TO AVOID IN EVALUATIONS

- Do not identify a disability within the evaluation. Leave that determination to the eligibility committee.
- Do not give as the purpose for the evaluation "referred by attorney" or "parent is threatening a due process hearing."
- Be careful not to link behaviors with the disability. For example, do not suggest that the student is likely to be aggressive as a result of his emotional disability.

- Do clarify, when appropriate, that the behaviors or characteristics exhibited by the student are not necessarily attributable to a disability.
- Do clarify that recommendations are not necessarily linked to a disability or required for FAPE.

Review of Cases

Missteps in Evaluations

- The school district should always conduct its own evaluations.
- It is not necessarily required that the school district conduct an evaluation just because a parent requested it.

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- Do not wait the entire school year to refer a student who is not experiencing success and who might have a disability.
- Look for the red flags that indicate a possible need to evaluate.
- Conduct a thorough evaluation prior to finding a student eligible.

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- Be sure to meet all time requirements.
- Carefully review and determine the specific evaluations to be conducted.
- If the parents mention a private provider or private evaluation, be sure to ask for copies of the evaluations or input from the private provider.

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- Staff must feel confident that their evaluations are thorough and professional and that they have the expertise to assess any suspected disability.
- Watch for inappropriate statements in evaluations.

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Independent Educational Evaluations

- An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the child's education.
- The school division can establish IEE criteria regarding location, suggested personnel and qualifications. The criteria must be waived if the criteria will prevent the receipt of an IEE.

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- It is important to verify that the individuals on the school division's list of IEE sources will actually do the evaluations and for the agreed-upon cost.
- Be sure to establish written criteria for IEEs and make clear that no payment is made for the IEE until the evaluation is received by the school division. Get a release executed as part of the IEE process.

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Right to an IEE

- A parent is entitled to only one IEE at public expense when an evaluation is conducted.
- A review of existing information is not an evaluation which would trigger the right to an IEE.
- Parents may request an evaluation prior to the completion of the RTI process.

- When a parent requests reimbursement for an IEE before the completion of the district's evaluation, the district can deny the request without filing for a due process complaint.
- Parents may forfeit their right to an IEE by failing to provide consent for a district assessment.

District's Response to Request for an IEE

- When a parent requests an IEE at public expense, the district must, without unnecessary delay, either:
 - File a due process complaint for a hearing to show that its evaluation is appropriate (or that the evaluation obtained by the parent did not meet district criteria); or
 - Provide the IEE at public expense.

IEE Criteria

- The criteria under which the IEE at public expense is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation.
- Except for a district's evaluation criteria, a district cannot impose other conditions or timelines related to obtaining an IEE at public expense.

IEE Criteria: Cost

- Districts can limit the cost of IEEs, so long as the cap does not prevent the parent from obtaining an IEE.

IEE Criteria: Location

- Reimbursement for an IEE may be denied when the IEE does not meet the district's criteria regarding the location of the IEE.

IEE Criteria: Substantial Compliance

- “[I]nsignificant or trivial deviations from the letter of agency criteria may be acceptable as long as there is substantive compliance with all material provisions of the agency criteria and the IEE provides detailed, rigorously produced and accessibly presented data.” *Seth B. ex rel. Donald and Cheryl B., et al. v. Orleans Parish Sch. Bd.*, 67 IDELR 2 (5th Cir. 2016).

Timeliness of the IEE Request

- There appears to be no consensus among courts as to whether the IDEA's two-year statute of limitations applies to IEE requests.

Top Evaluation Tips

- Make an immediate decision through the correct process as to whether an evaluation is needed even if RTI and child study continue to be pursued.
- Consider all disability categories at each eligibility meeting.
- Do not over-identify students as having a disability.

- Do not rely solely on a DSM diagnoses or on a doctor's statement.
- Not every academic failure results from a disability.
- Consider the reason for the absences and the student's situation following a hospitalization in deciding whether the student may have a disability.

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- A student who has a disability must also need special education services to qualify under the IDEA.
- Be sure to have knowledgeable staff present to make the eligibility determination.
- Do not turn every case where a student is subject to discipline into an eligibility case.

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- Be careful about what is written in the eligibility records to document the basis for eligibility.
- Provide the parents with copies of all eligibility documentation and a prior written notice following the eligibility meeting.
- If a student is found ineligible under the IDEA, the school division should then consider whether the student qualifies under Section 504.

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