

COMPREHENSIVE EVALUATIONS

by

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1. Top Fifteen Mistakes in Evaluations

(a) Child Find

(i) **All staff should be reminded on multiple occasions during the course of a school year of their obligation to make referrals if it is suspected that a student might have a disability.** Typically referrals are made to the Child Study Team and that team determines and documents whether an evaluation is needed. Not every referral will result in a finding by the Child Study Team that an evaluation is needed. Prior written notice must be given of the evaluation determination even if the decision is made not to evaluate. By handling this type of matter through the Child Study process, the school division is able to protect itself from allegations that a student has a disability and no action was taken by the school division. The documentation and prior written notice from Child Study shows that the situation was considered, even if the ultimate decision is made that no evaluation is required. 34 C.F.R. Sections 300.111, -.131 and -.301.

(ii) **Teachers and staff should make referrals of those students suspected of having a disability as soon as possible in order to avoid a glut of evaluations and eligibility meetings over the summer months.** It does not make sense to delay a referral when it is known that school staff will not be around. It is also important to have school staff available to conduct evaluations so that timelines can be met.

(iii) **It is permissible to refuse a parent's request for an evaluation but be sure to give prior written notice of the refusal. Also give prior written notice of any proposal to evaluate.** 34 C.F.R. Section 300.300(a). Parental consent for

an initial evaluation is not tantamount to consent to a special education placement. A due process hearing may be requested due to the failure of the parents to consent to the initial evaluation. 34 C.F.R. Section 300.300(a)(3)(i). There cannot be a due process hearing initiated to obtain permission for implementation of the initial IEP if the parents will not consent and no IEP needs to be developed. 34 C.F.R. Section 300.300(b) (2) and (3).

(b) Referrals

(i) **Staff need to know about the child find process so that they can explain to parents the method for handling a referral for a suspected disability.** If the child study team (CST) screens a referral and makes a decision regarding the need for an evaluation, this action can forestall any later suggestion that the school division failed to consider whether the student had a disability. If the decision is made by CST that no special education evaluation is needed, the school division must provide prior written notice of that determination.

(c) Prereferral Strategies

(i) **Be aware of events which may trigger a need to review a student's status through formal, prereferral procedures, such as child study or other early intervention programs, in order to determine whether the student should be referred for a full evaluation and consideration for special education services.** Some of the events that may trigger the need to determine whether to conduct a full evaluation include diagnoses of psychiatric or medical illnesses and hospitalizations for medical or emotional reasons. While these conditions do not always require a referral and an evaluation, it is a good practice to conduct a prereferral staffing through a child study meeting to make a decision whether an evaluation is needed. Making an informed decision not to evaluate accompanied by a prior written notice provides some protection to the school division. Ignoring the situation does not provide any protection.

(d) Evaluations

(i) **One of the most important things to remember about evaluations is that school divisions have the right to conduct their own evaluations.** Parents may not want the school division to conduct evaluations using its own personnel

and may supply private evaluations for use in eligibility or IEP planning. The school division, however, still has the right to conduct its own assessments of the student and should insist on exercising that right. The evaluations should be comprehensive, within professional standards, even if private evaluations were already completed. There are usually other tests that can be administered to test intelligence or achievement without duplicating testing.

(ii) An evaluation must be conducted prior to the initial provision of special education services and parent permission is necessary to conduct the evaluation. 34 C.F.R. Sections 300.300(a) and .301. Parental consent must be sought for a reevaluation and there is no obligation to initiate a due process hearing to obtain consent to evaluate if the parents will not consent. 34 C.F.R. 300.300(c). A due process hearing cannot be utilized to override a parental refusal to consent to an initial evaluation or a reevaluation for a student who is placed by the parents at their expense in a private school or home school. 34 C.F.R. Section 300.300(c)(4).

(iii) Conduct evaluations within time requirements to avoid exposure for the cost of private placements. Evaluations must be completed within 60 calendar days of the receipt of parent permission. 34 C.F.R. Section 300.310(c)(1)(i); See, Forest Grove S.D. v. T.A., 129, Sup. Ct. 987 (2009). Reevaluations must be conducted every three years, unless a reevaluation is deemed unnecessary by agreement. The reevaluation can occur more frequently, but not more frequently than once a year, if requested by the parents or teacher or if the school district believes there are circumstances which warrant a reevaluation. 34 C.F.R. Section 300.303. The reevaluation must also be used to determine any changes in educational needs. 34 C.F.R. Section 300.305(a)(2)(iii)(B).

(iv) Conducting evaluations by school district staff provides school personnel with direct knowledge and additional expertise regarding the student and provides additional credibility for school professionals regarding the validity of special education determinations. Do not place the school district at a disadvantage in the battle of the experts. Use appropriate instruments for the evaluation that are individualized, non-discriminatory and appropriate for use in the circumstances. 34 C.F.R. Section 300.304. The eligibility determination is made by a group of qualified professionals and by the parent. 34 C.F.R. Section 300.306. Lack of appropriate

instruction in reading and in math cannot be the sole determinant for eligibility. The student must be observed in the learning environment as part of the evaluation process. 34 C.F.R. Section 300.310(a).

(e) Eligibility Meetings

(i) In order to make sure that all suspected disabilities are considered by the eligibility team, ask the parents and staff at the beginning of the eligibility meeting to list the one or more suspected disability categories that the team should consider and list those categories in the eligibility documentation. Any category not listed was still considered but rejected as a possibility. The Prior Written Notice sent following the eligibility meeting should mention the specific categories agreed upon by the committee for consideration and the categories selected for identification. This simple approach would preclude parents from later claiming that there was a different disability category that should have been considered. There are additional eligibility and evaluation requirements for LD. 34 C.F.R. Sections 300.307-.309, -.311. The members of the eligibility team must certify whether he or she agrees with the eligibility report and file a dissent if there is disagreement. 34. C.F.R. Section 300.311(b).

(ii) At the beginning of an eligibility meeting and after the introductions are made, one of the first questions to be asked is whether the parents or their invitees have any additional information for the committee's consideration. Asking this question at the beginning of the meeting avoids the possibility that information will be presented by the parents at the end of the meeting and after the decision has already been made. If additional information is obtained at the beginning of the meeting, be sure to date stamp the new information and make copies for the committee members for their review. If the information is not shared until the end of the meeting, still make copies of the reports to share with the committee. Next the committee chairman should ask the committee whether the new information changes the decision that has just been made. If it does not change the decision, then document that the information was considered and that the decision of the committee did not require modification. If the decision does require modification after the review, then make the necessary changes to the documentation. Handling the last minute submission of new information in this manner can avoid the need for a second eligibility meeting.

(iii) **Be sure to consider carefully the scope of the evaluation and perform all necessary evaluations.**

Sometimes parents refuse certain evaluations but do not back down if the evaluation is needed to correctly determine the student's special education needs. The evaluations must be sufficient to identify whether the child has a disability and the educational needs. 34 C.F.R. Section 300.301(c)(2). Screening for instructional purposes is not an evaluation. 34 C.F.R. Section 302. Be sure to give the parents a copy of the school district's evaluations.

(iv) **Make sure to obtain copies of the private evaluations that parents refer to as part of the evaluation and eligibility process.**

Do not allow parents to keep information hidden from the school district and, if they do, document in writing that they withheld information. Also, request parental permission to consult with any private evaluators or providers.

(v) **Consider all evaluations supplied by the parents, including privately obtained evaluations.**

These evaluations must be considered even if the school district does not agree with the recommendations.

(vi) **Train staff so that they feel confident in their expertise to administer evaluations.**

This training is particularly important in administering tests to students who have low incidence disabilities.

2. Case Decisions and Administrative Rulings

(a) Natrona County S.D. No. 1, et al. v. Ryan, 764 P.2d 1019 (Wyoming Sup. Ct. 1988). Wyoming does not require best education or every service that a student might require. Also, FAPE is not available to students after they exceed the maximum age of eligibility.

(b) In re: Laramie County (WY) S.D., 51 IDELR 169 (OCR 2008). Student was allegedly not evaluated for a disability. During the investigation, OCR learned that the staff were not familiar with Section 504 evaluation requirements, did not convene a meeting to determine eligibility with personnel who were knowledgeable about the student and there was no individualized determination of accommodations.

(c) Big Horn (WY) S.D. # 3, 52 IDELR 49 (OCR 2008). Student who was not evaluated filed complaint. School District then decided to evaluate but

OCR required an agreement because of failure to have written procedures covering evaluation, placement and reevaluation.

(d) Natrona County (WY) S.D., 110 LRP 24397 (OCR 2009). In a voluntary Commitment to Resolve, OCR and the District agreed to conduct staff training regarding evaluation and placement.

(e) Big Horn County (WY) S.D. #2, 108 LRP 61752 (OCR 2007). Parent alleged failure to evaluate her son who had ADHD. OCR investigated and found that tests and materials were administered by trained personnel and the school psychologist was qualified to conduct evaluations for ADHD.

(f) Fremont County S.D. #25, 106 LRP 30203 (WY SEA 2005). Student had Charcot-Marie-Tooth Syndrome and parents argued that student was not adequately evaluated by school district. The Hearing Officer found that the information presented warranted an individualized evaluation of student and that it was not appropriate to rely on observations of kindergarten teacher alone to determine that an evaluation was not required.

(g) Fremont County S.D. #25, 103 LRP 8040 (WY SEA 2002). School district appropriately identified student as having an emotional disturbance. Hearing officer held that there were other alternatives that could be explored prior to the proposal to place the student in the behavior resource room. School district was to confer with the student's private counselor and treating physician.

(h) Lincoln Co. S.D. No. 1, 106 LRP 38253 (WY SEA 2000). Hearing officer remained in case despite parent's request to remove the hearing officer. The evidence revealed that the student was ED due to physical complaints, inappropriate behaviors and inability to maintain satisfactory relationships. A mental health counselor agreed that the student needed a comprehensive evaluation but the parent would not agree to the recommended involuntary commitment. Identifying ADHD requires a physician's verification conducted in the past twelve months according to Wyoming law. Student needed a comprehensive psychological evaluation.

(i) Lincoln Co. S.D. NO. 1, 106 LRP 38251, (WY SEA 2001). Parent stated 97 issues for resolution in the due process hearing. The student was now 16 years of age and not subject to compulsory attendance. She was only taking an online computer class at the local college. The prior comprehensive psychological evaluation that was ordered was not conducted because the parent and student refused to cooperate and student did not attend school. Parent refused to reenroll the student until she knew what services would be provided but the school district could not know what services to provide until the evaluation was completed. Hearing officer held that the school district

was not at fault and that it had not obligation to provide services until the student re-enrolled.

(j) Parini v. Missoula County H.S. Dist. No. 1, et al., 944 P.2d 199, 26 IDELR 299 (Montana Sup. Ct. 1997). Student who was diagnosed with a learning disability did not receive his three year comprehensive re-evaluation. The court held that the failure to conduct the evaluation was a procedural error which did not deny FAPT because student received some educational benefit from his IEP program, his IEPs were based on his individual needs, abilities and performance, there was not evidence his IEPs would have been materially different and no evidence of a failure to allow the parents to participate in preparing IEPs.

(k) Letter to Anonymous, 21 LRP 2770 (OSEP 1994). Parents may request an evaluation at any time but the school district is not required to conduct that initial evaluation unless there is reason to suspect a disability. Prior written notice of the refusal to evaluate must be provided.

(l) Letter to Moffett, 110 LRP 17264 (OSEP 2009). A reevaluation is required when the student has changing educational needs or when the parents or teachers request a reevaluation. The evaluation must produce information necessary to determine if the student still has a disability, the scope of educational needs of the student, the present levels of academic achievement and related developmental needs, the student's need for special education and related services and the student's need for accommodations and modifications to the education program. It is not necessary to do additional testing, if none is otherwise needed, simply to satisfy a parent and testing service requirements for evaluations to determine whether the student meets College Board criteria for accommodations on testing.