

## **Evaluation and Determination of Eligibility**

### **Federal Regulations: Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities (Effective October 13, 2006, 34 C.F.R. 300.301 through 300.305, inclusive)**

#### **Evaluations and Reevaluations**

##### **Section 300.301 Initial evaluations.**

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with Sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) *Request for initial evaluation.* Consistent with the consent requirements in Section 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is child with a disability.

(c) *Procedures for initial evaluation.*

The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under Section 300.8; and

(ii) To determine the educational needs of the child.

(d) *Exception.* The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under Section 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))

##### **Section 300.302 Screening for instructional purposes is not evaluation.**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E))

##### **Section 300.303 Reevaluations.**

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sections 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

**Section 300.304 Evaluation procedures.**

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with Section 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) 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—

(i) Whether the child is a child with a disability under Section 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are 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;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

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

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment 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).

(4) The child is 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;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Section 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under Sections 300.304 through 300.306, the evaluation is 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 classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3); 1412(a)(6)(B))

**Section 300.305 Additional requirements for evaluations and reevaluations.**

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in Section 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

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

(iii)(A) Whether the child needs special education and related services; or

(B) 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.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) *Requirements if additional data are not needed.* (1) 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 child's educational needs, the public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

- (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
- (e) *Evaluations before change in eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with Sections 300.304 through 300.311 before determining that the child is no longer a child with a disability.
- (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
- (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.
- (Authority: 20 U.S.C. 1414(c))

**Section 300.306 Determination of eligibility.**

- (a) *General.* Upon completion of the administration of assessments and other evaluation measures—
- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in Section 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
- (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—
- (1) If the determinant factor for that determination is—
- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency; and
- (2) If the child does not otherwise meet the eligibility criteria under Section 300.8(a).
- (c) *Procedures for determining eligibility and educational need.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under Section 300.8, and the educational needs of the child, each public agency must—
- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Sections 300.320 through 300.324.
- (Authority: 20 U.S.C. 1414(b)(4) and (5))