



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

Dated March 31, 2008

This letter is in response to your correspondence dated November 16, 2007, to the Office of Special Education Programs at the U.S. Department of Education. You stated in your letter that a local educational agency (LEA) is required to conduct an initial evaluation within 60 days of receiving parental consent for the evaluation (or within the State timeframe if the State establishes a timeframe within which the evaluation must be conducted). However, you are concerned that there is no requirement for the time period within which parental consent must be obtained following referral for an evaluation. This could be important because the evaluation timeline is not triggered until parental consent is obtained. You suggested some strategies to compel an LEA to request parental consent and asked the Department whether other strategies are available.

Section 614(a)(1)(C)(i)(I) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.301(c)(1) require that an initial evaluation to determine whether a child is a child with a disability occur within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The IDEA and the final Part B regulations do not include a timeline for requesting parental consent following referral. States may, but are not required to, establish such a timeline to ensure that LEAs request parental consent within a reasonable period of time and without undue delay. Consistent with §300.199(a)(2) of the Part B regulations and section 608(a)(2) of the Act, should a State choose to require that parental consent for evaluation be requested within a specific time period from the date of referral, it would have to identify in writing to its LEAs and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act and Federal regulations.

If a State does not choose to require parental consent for evaluation within a specific time period from the date of referral, an LEA must still act in a timely manner to meet child find requirements. 34 CFR §§300.201 and 300.300 through 300.311. This is because the LEA must ensure that eligible children with disabilities receive required instruction and services without undue delay and within a reasonable period of time.

The issue of a timeframe for requesting parental consent prior to initial evaluation and its relationship to child find requirements is addressed in the Analysis of Comments and Changes to the final Part B regulations in the following manner:

The child find requirements in §300.111 and section 612(a)(3)(A) of IDEA require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, it would generally not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability.

If it is determined through the monitoring efforts of the Department or a State that there is a pattern or practice within a particular State or LEA of not conducting evaluations and making eligibility determinations in a timely manner, this could raise questions as to whether the state or LEA is in compliance with the Act.

With regard to the total timeframe from referral to IEP development, this will vary based on a number of factors, including the timing of parental consent following referral for an evaluation and whether a State establishes its own timeframe to conduct an initial evaluation.

Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 FR 46540, 46637 (Aug. 14, 2006).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented. We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact my office.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Carrie Johns, State Director for the
Office of Special Education, VI