

April 11, 2012

Ruben A. Reyes
Executive Director
Exceptional Children's Programs
Cumberland County Schools
P.O. Box 2357
Fayetteville, North Carolina 28302

Dear Mr. Reyes:

This is in response to your October 10, 2011 letter to me in which you seek clarification of the requirements for timely initial evaluations under the Individuals with Disabilities Education Act (IDEA) as reported in North Carolina's State Performance Plan/Annual Performance Report (SPP/APR) under IDEA Part B Indicator 11.

Under 34 CFR §300.301(c)(1), the initial evaluation must be conducted within 60 days after receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. Pursuant to 34 CFR §300.301(d), the timeframe does not apply if: (1) the parent of a child repeatedly fails or refuses to produce the child for evaluation; or (2) a child enrolls in a school of another public agency after the relevant timeframe in 34 CFR §300.301(c)(1) 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 34 CFR §300.8. In the regulations, a day is a calendar day unless otherwise indicated as a business day or school day. 34 CFR §300.11. In general, Indicator 11 measures a State's compliance with the timely initial evaluation requirements in 34 CFR §300.301(c). Each State, in turn, must measure and report on each local educational agency's (LEA's) compliance with this indicator. 34 CFR §300.602(a).

As contemplated in the regulation, a State is permitted to establish a timeframe that is different from the 60-day timeframe. North Carolina has established a timeframe of 90 days from receipt of the referral to conduct the initial evaluation and make the initial placement determination. This State-established timeframe generally also incorporates the exceptions in 34 CFR §300.301(d), as described above. There is no exception in 34 CFR §300.301(d) that would permit the applicable initial evaluation timeline to be suspended because of a school break.

The State and its LEAs have an affirmative obligation to identify, locate and evaluate all children with disabilities (34 CFR §300.111) and ensure that a free appropriate public education (FAPE) is available to all eligible children (34 CFR §300.100). A meeting must be held to develop an individualized education program (IEP) within 30 days of a determination that a child is an eligible child with a disability under 34 CFR §300.8 and requires special education and related services. 34 CFR §300.323(c)(1). An IEP must be in effect at the beginning of each school year

for each eligible child with a disability attending a public school within the LEA's jurisdiction. 34 CFR §300.323(a).

The Office of Special Education Programs recognizes that conducting evaluation activities during extended breaks, such as the typical school's summer vacation, can be challenging for school districts, particularly if fewer staff members are available. Nevertheless, the IDEA contemplates that the initial evaluation of a child suspected of having a disability not be unreasonably delayed so that eligible children with disabilities are not denied a FAPE.

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.

If you have additional questions, please do not hesitate to contact Lynne Fairfax, State contact for North Carolina, at 202-245-7337 or by email at Lynne.Fairfax@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: State Director of Special Education