

IDEA—Reauthorized Statute

CHANGES IN INITIAL EVALUATION AND REEVALUATION

(See also Procedural Safeguards: Surrogates, Notice, and Consent)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.¹ This document addresses only the changes to the provisions of IDEA regarding initial evaluation and reevaluation that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Provides for parental consent for initial evaluation of children who are wards of the state.

If the child is a ward of the state and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in Section 602(23)) of the child for an initial evaluation to determine whether the child is a child with a disability (as defined in Section 602(3)). The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

[614(a)(1)(D)(iii)]

Definition of “ward of the state.”

The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 602(23). [602(36)]

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

2. Adds a 60-day timeline to complete initial evaluation (unless the state has an established timeline).

An initial evaluation shall consist of procedures to determine whether a child is a child with a disability (as defined in Section 602(3)) 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 such timeframe; and to determine the educational needs of such child.

The relevant timeframe above shall not apply to a local education agency (LEA) if:

- A child enrolls in a school served by the LEA after the relevant timeframe has begun and prior to a determination by the child's previous LEA as to whether the child is a child with a disability, but only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed; or
- The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

[614(a)(1)(C)]

3. Authorizes procedures in case of an absence of consent for an initial evaluation.

If the parent of a child for which the agency is proposing to conduct an initial evaluation does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the LEA may pursue the initial evaluation of child by utilizing the procedures described in Section 615, except to the extent inconsistent with state law relating to such parental consent.

[614(a)(1)(D)(ii)(I)]

4. Establishes procedures for evaluating a child suspected of having a specific learning disability.

Notwithstanding Section 607(b), when determining whether a child has a specific learning disability as defined in Section 602:

- An LEA shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
- An LEA may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

[614(b)(6)]

5. Revises procedures for reevaluations.

An LEA shall ensure that a reevaluation of each child with a disability is conducted in accordance with Sections 614(b) and 614(c) if:

- The LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- The child's parents or teacher requests a reevaluation.

A reevaluation conducted under Section 614(a)(2)(A) shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise; and at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary. [614(a)(2)]

6. Exception to requirements for evaluation before a change in eligibility.

An evaluation is not required before the termination of a child's eligibility under Part B due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education (FAPE) under state law. [614(c)(5)(B)(i)]

For a child whose eligibility under Part B terminates under circumstances described above, an LEA shall 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. [614(c)(5)(B)(ii)]

7. Adds a requirement to evaluate the child's present levels of academic achievement and the related developmental needs of the child.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under Section 614, the individualized education program (IEP) team and other qualified professionals, as appropriate, shall review existing evaluation data on the child ... and, on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

- Whether the child is a child with a disability as defined in Section 602(3), and the educational needs of the child, or, in the case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs; and
- The present levels of academic achievement and related developmental needs of the child....

[614(c)(1)(A) and (B)(i)-(ii)]