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## **IDEA Fact Sheet #2: Initial Evaluation and Reevaluation for Special Education Services**

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### **Federal Summary**

The final IDEA regulations add new provisions regarding the initial evaluation and reevaluation of students for special education services. Following are the highlights of these changes:

- + The request of an initial special education evaluation may be requested by either the parent, school district, state education agency, or other state agency.
- + The initial evaluation and determination of a student's eligibility for special education must be completed within 60 calendar days of receipt of written consent for the evaluation.
- + The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility or special education and related services.
- + A reevaluation may occur more than once a year, unless the parent and school district agree otherwise.
- + A reevaluation must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.
- + A student must not be determined to be a student with a disability if the determinant fact is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in NCLB; math and limited English proficiency and if the student does not otherwise meet the eligibility criteria for a student with a disability.
- + An evaluation is not required before the termination of a student's eligibility due to graduation from high school with a regular diploma or due to exceeding the age criteria (21 years old in NYS) for a free appropriate public education. A school district, however, must provide a student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her postsecondary goals.

### **New York State's Response**

Chapter 378 of the Laws of 2007 amended State Law to implement the federal requirements listed above with the following changes that are specific to New York State:

Regarding initial referrals, while consistent with the federal requirement that professional staff members of school district cannot make an initial, direct referral to CSE upon the suspicion that a student has a disability...

***Additional protections in New York State require that:***

- + ***Teachers or other professional members can request the school district make a referral for an initial evaluation.***

***The Board of Regents subsequently amended the Regulations of the Commissioner of Education to include the following additional provisions:***

- + ***Upon a request for a referral by a professional staff member, the school district must, within ten school days, either:***
  - ***Request parent consent to initiate the evaluation;***  
~ Or ~
  - ***Provide the parent with a copy of the request;***
  - ***Inform the parent of his or her right to refer the student for an initial evaluation; and***
  - ***Offer the parent an opportunity to meet to discuss the request for referral with the district administrator and the professional staff member making the request for the referral.***

Regarding reevaluations of students with disabilities, while consistent with the federal requirement that a school district and a parent can agree not to conduct reevaluation...

***Additional protections in New York State require that:***

- + ***The school district and parent must agree in writing that the reevaluation is unnecessary.***

### **Frequently Asked Questions**

1. **Q. What has changed regarding requests for an initial evaluation? How does this affect teachers?**
  - A. According to the IDEA, only a parent of a child or a public agency may initiate a request for an initial evaluation to determine if a student has a disability. "Public agency" (i.e., a school district) as defined in IDEA does not include employees such as teachers or related service providers unless they are acting on behalf of the school district. Guidance from the United States Department of Education (USDOE) indicates that state requirements cannot identify additional individuals who may request an initial evaluation. **However, school districts have the authority to exceed the federal requirements and may identify teachers and related service providers as appropriate sources of initial evaluation requests.**
2. **Q. What happens when a parent refuses to provide consent for an initial evaluation or special education service for their child?**
  - A. The IDEA requires school districts to make reasonable efforts to obtain informed parental consent to an initial evaluation or reevaluation. A school district must carefully document attempts to obtain parental consent. If a parent fails to provide consent, the school district may pursue a due process impartial hearing for authorization to conduct the evaluation. If the parent refuses to consent for initial special education programs and services, the district may not request mediation or an impartial hearing. In this situation the student would remain in the general education program without special education services. School districts should provide parents with appropriate information to enable parents to make an informed decision about declining services for their child.
3. **Q. How often must a child be reevaluated?**
  - A. A school district must conduct a reevaluation at the request of a teacher or parent or if the school district determines the need for a reevaluation. A reevaluation may occur not more than once a year unless the parent and district agree otherwise. In addition, a reevaluation must occur at least once every three years unless the parent and district agree otherwise that a reevaluation is unnecessary.

### **Advice to Local Leaders**

- + Local leaders should inform members about these changes.
- + Since the IDEA allows school districts, but not states, to exceed the federal requirements, local leaders should work with school administrators in revising local procedures regarding the evaluation and reevaluation of students with disabilities as identified in the district's special education plan. These

efforts should seek to continue the current practice that recognizes requests for evaluations or reevaluations made by teachers and related service providers.

- + Local leaders should monitor district compliance with the new procedures concerning:
  - o Teacher or other professional staff requests for a referral for an initial evaluation; and
  - o Parental agreement in writing waives triennial evaluations.
- + For more information on this topic, see NYSUT Information Bulletin on The Reauthorized IDEA and Recent Changes in New York State Law.

**NYSUT is currently collecting information on the implementation of the recent IDEA changes through a web-based IDEA Feedback Survey. Please take a few minutes to share how these changes have impacted you and the special education students in your district by visiting [www.nysut.org/outreach](http://www.nysut.org/outreach). The Survey data will be used to support NYSUT's special education advocacy and legislative efforts at both the federal and state levels.**

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