

Wyoming Department of Education
Special Programs Unit

Reference Guide:
Reevaluations in Special Education

A comprehensive evaluation is critical to compliance with the Individuals with Disabilities Education Act (IDEA) and the Federal Regulations. The expectations for initial evaluations and reevaluations, and our understanding of them, have evolved over the history of the IDEA. It is important to have a historical perspective of the evaluation process to clarify today's expectations.

The History

In 1975 the Education for All Handicapped Children Act (EAHCA) was signed into law, and served as the predecessor for today's IDEA. In 1983, the Federal Regulations implementing the EAHCA contained a section entitled "Protection in Evaluation Procedures," addressing the "preplacement" (now referred to as the "initial") evaluation and reevaluation requirements. *34 C.F.R. §§300.530 through 300.534 (1983).** The entire evaluation section was quite brief, and required preplacement evaluations, as well as reevaluations, to comport with the requirements of 34 C.F.R. §300.532, which states:

SEC. 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when impaired sensory, manual, or speaking skills, the test 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 (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

In its entirety, the reevaluation section states:

SEC. 300.534 Reevaluation.

Each State and local educational agency insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with Sections 300.340- 300.349 of Subpart C, and

* According to IDEA 2004, implementing Federal Regulations must maintain the same level of protection for children with disabilities as provided by the regulations in effect on July 20, 1983, unless Congress clearly and unequivocally states its intent otherwise [See Sec. 607(b).] The same language was included in IDEA 97.

(b) That an evaluation of the child, based on procedures which meet the requirements under Sec. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

In the 1983 Federal Regulations, there was no mention of review of existing data, or the possibility of an agreement to not reevaluate a special education student. The evaluation process required the team to gather assessment data, meaning that tests had to be conducted. To emphasize this point, the Regulations stated that “In interpreting evaluation data and in making placement decisions, each public agency shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior, and insure that information obtained from all of these sources is documented and carefully considered. . . .” 34 C.F.R. §300.533(a). In practice, this provision resulted in the administration of a full battery of tests as part of each preplacement evaluation and reevaluation, with test scores being utilized to determine or redetermine eligibility for special education.

For many years, the Federal Regulations implementing EAHCA remained largely unchanged. The Federal Regulations were amended in 1987. However, the Protection in Evaluation Procedures section remained substantively identical to its predecessor, including the comments. (Amendments were limited to the correction of spelling errors and the insertion of an LRE requirement when drafting IEPs. See 34 C.F.R. §300.533(a)(4)(1996).) The practice of administering a full battery of tests during each reevaluation continued.

Despite the need for assessment data to be collected at each reevaluation, the United States Department of Education, Office of Special Education Programs (OSEP) recognized that reevaluations may be procedurally and substantively different than initial evaluations. In 1986, OSEP responded to an inquiry regarding reevaluations by stating, in relevant part, “it is permissible under EHA-B to use different procedures in the reevaluation from those used in the preplacement evaluation.” *Letter to Feehley, 211 IDELR 415 (OSEP 1986)*. This official position was reiterated in 1990, when OSEP described the term “evaluation” to mean the following: “The term ‘evaluation’ in the IDEA-B means procedures used selectively with an individual child. It is not limited to written tests or tests designed to provide a single, general intelligence quotient.” OSEP further stated that “IDEA-B leaves the selections of testing and evaluation materials and the procedures to be used for reevaluations to the individual States, with the understanding that all IDEA-B requirements must be satisfied.” *Letter to Shaver, 17 IDELR 356 (OSEP 1990)*.

A subsequent reauthorization of the IDEA in 1997 resulted in additional amendments to the Federal Regulations published in 1999. Substantive changes were made to the evaluation and reevaluation process, including the introduction of the *review of existing data* requirement. The section, entitled “Procedures for Evaluation and Determination of Eligibility,” retained many of the old provisions, but added several new requirements. See 34 C.F.R. §§300.530 through 300.536 (1999). The most notable modification was the addition of Section 300.533: Determination of needed evaluation data. “As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall review existing evaluation data on the child. . . .” 34 C.F.R. §300.533(a) (1999). The purpose of the review of existing data was to “. . . identify what additional data, if any, are needed to determine whether the child has a particular category of disability, as described in §300.7, or, **in case of a reevaluation of a child, whether the child continues to have such a disability.** . . . and whether the child needs special education and related services, **or in the case of a reevaluation of a child, whether the child continues to need special education and related services.** . . .” 34 C.F.R. §300.533(a)(2) (1999) (Emphasis added).

The comments to the 1999 Federal Regulations addressed the suggestion that a public agency be required to collect additional data to determine whether a child continues to be a child with a disability unless the agency obtains parental consent to not collect such additional data in the following manner: “Requiring public agencies to obtain informed written consent permitting them not to collect, as part of a reevaluation, additional data to determine whether a child continues to be a child with a disability, would exceed the requirements of the statute.” *64 Federal Register 12637*. It appears to be with specific intent that the IDEA and Federal Regulations were amended to allow, when appropriate, reevaluations based solely on review of existing data.

In 2001, OSEP issued an opinion affirming that as part of a reevaluation, the group must review existing evaluation data on a child, and determine what, if any, additional data are needed to determine whether the child “continues to have a particular category of disability,” and the continued need for special education. “Whether additional data are needed as part of a reevaluation must be determined on a case-by-case basis, depending on the child’s needs and the information available regarding the child. . .” *Letter to Anonymous, 35 IDELR 218 (OSEP 2001)*.

The IDEA was reauthorized again in 2004, followed by amendments to the Federal Regulations in 2006. One of the most obvious changes regarding evaluation was relocation of these provisions to §§300.301-300.306 under the heading entitled “Evaluations and Reevaluations.” Substantively, major modifications were made throughout the evaluation provisions, but for the purpose of this document, the most notable changes were the addition of the response to scientific, research based interventions as a method of specific learning disability identification, and also the provision that permits parents and a public agency to agree that a reevaluation is not necessary. *34 C.F.R. §§300.310 through 300.306*.

The 2006 Regulations retained the language requiring the IEP team, and other qualified professionals, to review existing data on a child as part of an initial evaluation (if appropriate) and as part of any reevaluation. *34 C.F.R. §300.309(a)(1)*. On the basis of that review, the team must determine what additional data, if any, are needed to determine, in the case of a reevaluation, whether the child continues to have such a disability, and the educational needs of the child, and whether the child continues to need special education and related services. *34 C.F.R. §300.305(a)(2)*.

The Present

Since 1999, reestablishing eligibility criteria has no longer been the standard on a reevaluation. Based on the plain language of the Federal Regulations since 1999, it is possible to complete a reevaluation without conducting any additional assessments. In 2007, OSEP was asked the following question: “May a review of extant data alone, with the finding that no additional data are needed, constitute a reevaluation in toto?” In response, OSEP advised that an IEP team, based on a review of existing data, and input from the child’s parents and other qualified professionals, must determine whether additional data are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education; and 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 curriculum. *See Letter to Anonymous, 48 IDELR 136 (OSEP 2007)*. It is clear that OSEP’s interpretation of the Federal Regulations permits a reevaluation to be conducted based only on a review of existing data. It was no longer necessary to produce assessment data in order to re-meet eligibility criteria when conducting a reevaluation.

Even when states continue to utilize formulaic criteria for determining continued eligibility, other evidence of a student's performance must be considered in order for a reevaluation to be valid. In a recent case that upheld the use of a severe discrepancy formula, the district also relied on other standardized test results, observations, and the student's in class performance. The district's decision to declassify a student was upheld because it did not rely solely on the severe discrepancy formula. *South Orange-Maplewood Board of Education, 53 IDELR 134 (NJ SEA 2009)*.

Reevaluations serve a broad purpose, including determining whether the child continues to have a disability, the educational needs of a child, the present levels of academic achievement and functional performance of the child, whether the child continues to need special education, and whether modifications to the child's existing IEP are necessary. The purpose of a reevaluation is now focused on how the child performs, rather than what scores are obtained on assessment instruments.

In Perspective

Of the 13 disability categories identified in Federal Regulations and Wyoming Chapter 7 Rules, there are only three categories that historically relied on criteria for continued eligibility:

1. Specific Learning Disability (SLD), but only when originally identified by a severe discrepancy, since RTI does not have numeric cutoff scores;
2. Emotional Disability, which has never had numeric cutoff scores; and
3. Speech/Language, but only when used as a primary disability category, not a related service.

All of the other categories are either self-limiting, i.e. Developmental Delay and possibly Other Health Impaired, or are more likely to be permanent, i.e. Autism Spectrum Disorder, Cognitive Disability, Visually Impaired, Hearing Impaired, Orthopedic Impaired, Deaf-Blind, Multiple Disabilities, or TBI.

The inclusion of SLD eligibility determinations based on a child's response to scientific, researched based interventions as a component of an initial evaluation or a reevaluation altered the historical methods of evaluating or reevaluating children. OSEP encourages a method of eligibility determination that does not require standardized assessment scores and a severe discrepancy between ability and achievement. *34 C.F.R. §§300.307 through 300.311, and 71 Federal Register 46646*. OSEP also encourages states to reconsider their prior methods of reevaluation. "States that change their eligibility criteria for SLD [i.e. add RTI criteria] may want to carefully consider the reevaluation of children found eligible for special education services using prior procedures. States should consider the effect of exiting a child from special education who has received special education and related services for many years and how the removal of such supports will affect the child's educational progress, particularly for a child who is in the final year(s) of high school. Obviously, the group should consider whether the child's instruction and overall special education program have been appropriate as part of the process. If the special education instruction has been appropriate and the child has not been able to exit special education, this would be strong evidence that the child's eligibility needs to be maintained." *71 Federal Register 46648*.

In Summary

Wyoming has adopted an approach to reevaluations that focuses on the child, whether the child continues to have a disability and continues to need special education, as well as the educational performance and future needs of the child. Each reevaluation will be unique based on the needs of the child. IEP teams must document in the Evaluation Report a process that address the determinations required by 34 C.F.R. §300.305(a). If the child has received special education and related services, but has not yet attained the skill level to be successful at State or grade level expectations, then this would be strong evidence that the child's eligibility needs to be maintained. It is no longer necessary to re-meet eligibility criteria.