

Initial Evaluations

A Fact Sheet from the Minnesota Disability Law Center

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INTRODUCTION

The initial evaluation is the necessary formal process to determine and document a child's eligibility for special education services and identify the child's needs arising from the disability. The initial evaluation is also the basis for developing the IEP.

This factsheet reviews the initial evaluation process (including legal standards for notice, consent, content, timelines, and criteria), discusses the new changes in this areas created by IDEIA 2004, and highlights particular legal trouble-spots (including general problems and specific issues about obtaining medical diagnoses) in initial evaluations as shown by Minnesota special education complaints and hearings.

OVERVIEW OF PROCESS

Following the district's child find responsibilities to locate and identify children who may need special education, the initial evaluation actually determines eligibility. To initiate this evaluation, a number of steps are required.

Notice and Consent

First, the public school must provide *notice* to the parents of its proposal to evaluate the child for special education service eligibility.¹ This parental notice must describe the evaluation in sufficient detail so that parents may make an informed decision whether to proceed.²

Second, the district must obtain *parental consent* prior to starting the evaluation.³ The notice and evaluation plan may be discussed at an "evaluation planning meeting." Parents may provide their written consent at this meeting or following the meeting. Consent is required prior to conducting an evaluation. If parents do not consent, districts cannot request a due process hearing to conduct the evaluation.⁴ Importantly, a district cannot condition an initial evaluation or receipt of services on a child taking medication.⁵

Parental consent may be difficult to obtain for some students, especially those who are wards of the state. The new 2004 IDEIA requires districts to actively seek and obtain consent from parents of children who are wards of the state, unless parental rights have been terminated.⁶

Screening for Instructional Purposes Permitted

Districts are expressly permitted by IDIEA 2004 to conduct screening measures without parental consent as long as these measures are specifically for instructional or curricular purposes.⁷

Timeline

After consent is obtained, the entire evaluation must be completed within 30 school days. Technically, if an evaluation is begun with less than 30 days remaining in a school year, the district's timeline may extend into the new school year when "school days" are resumed. However, the new IDEIA requires evaluations to be conducted with 60 calendar days, if a state law does not contain a quicker timeline. For children ages 0-2, the timeline is 45 calendar days.⁸ Within these timelines, to be complete, all parts of the evaluation plan must be conducted and it must contain an *evaluation report*.

Evaluation Report

The evaluation report (ER) is a critical document. It contains a summary of evaluation results, documentation of a child's disability, present levels of performance, education needs stemming from the disability, and a statement of whether the student needs special education services. The ER must be presented to the parents within the timelines noted above.

Evaluation Technical Requirements

There is a long list of federal and state requirements that the initial evaluation must fulfill.⁹ Here is a summary:

- The evaluation must be non-discriminatory, technically sound, comprehensive, adequate, and conducted with the proper procedures and completed by people with appropriate training.
- The evaluation must include a variety of evaluation tools, obtain information from parents, use technically sound and valid instruments, be conducted in an appropriate environment, and must not use any one evaluation tool as a sole criterion for determining eligibility.
- The evaluation must recognize and account for the effect on test results of a student's sensory, manual, and speaking skills.
- The evaluation must be administered in the student's native language (unless clearly not feasible), be administered in such a way to not be discriminatory, protect against identification because of limited English proficiency, and review all areas of suspected disability.
- The evaluation process must be sufficient to address all of a student's individual needs whether or not commonly linked to the student's disability classification and must be done to identify and assess educational needs..

- IDEIA 2004 requires districts to review a child's performance on district and state tests as part of the evaluation as well as to focus on relevant functional, developmental, and academic information.¹⁰

Criteria

The initial evaluation must be designed to allow the district to determine whether the student's is eligible for special education under Minnesota's specific eligibility criteria. Federal law allows states to determine their own eligibility criteria. As such, a student who is eligible in one state may not be eligible in another state. Minnesota has different, but similar, criteria than other states.¹¹

Federal law can set minimum standards for eligibility and has recently enacted such a standard for the specific learning disorder (SLD) category. IDEIA 2004 states that a severe discrepancy between ability and achievement cannot be required.¹² Prior to this change, many state criteria, including Minnesota, for SLD required such a discrepancy. Eliminating the requirement of having a severe discrepancy seeks to ensure that the provision of services to students with SLD *before* they demonstrate this discrepancy by poor performance. Schools *may* use tests that show discrepancies, but cannot require a severe discrepancy to identify a student as having a SLD.

Next Steps if a Child is Eligible

If a child is eligible for special education services, a meeting to develop an IEP must happen within 30-days of the eligibility determination.¹³ Also, the resulting IEP must be implemented as soon as possible following this IEP meeting.¹⁴ Parent consent for the initial evaluation is not the same as parent consent for the initial provision of services.¹⁵ Separate parent consent must be obtained prior to the implementation of the IEP, even where eligibility and consent are anticipated.¹⁶

If parents do not agree with the eligibility determination, they can withhold consent for the initial provision of services. Districts may engage in dispute resolution options to address the disagreement. While Minnesota law prohibits a district from overriding a parent refusal for initial evaluation or a reevaluation, there is no such restriction on overriding parent refusal for initial provision of services.¹⁷ The new IDEIA changes prohibit parents from succeeding on a claim that the district failed to provide special education services or FAPE if the parents refused consent for an initial evaluation.

Next Steps if a Child is Not Eligible

If a child is not eligible, but there are some evident needs, the district and parents may consider regular education support services and/or eligibility for Section 504 services.¹⁸ The special education initial evaluation may be used to determine Section 504 eligibility or it can be determined through a separate evaluation.

If parents disagree with the special education eligibility determination, they may formally contest the district's eligibility decision in a number of processes. If so, the district would be required engage in dispute resolution processes to address the disagreement.¹⁹

Parents may also file an administrative complaint with MDE²⁰ or request a due process decision.²¹

Parents May Revoke Consent

Parents can also revoke consent to evaluation procedures even after their initial consent to the evaluation.²² Once the notice of revoked consent is obtained, the district must stop conducting the evaluation (or parts of it) according to the parent's desire. However, the district must engage due process procedures to address the disagreement leading to the revocation of consent.²³

IMPORTANT CHANGES IN 2004

There are a number of changes in the new IDEIA in 2004 directly relate to Initial Evaluation:

- Districts cannot condition a special education evaluation on a student taking medication.²⁴ (This has generally been the law in Minnesota for a number of years, but Minnesota law²⁵ also requires the parent to consult with medical or educational professionals.)
- Barring parents who do not allow schools to conduct an initial evaluation from prevailing in a subsequent legal action claiming the district failed to offer or provide services;²⁶
- Clarifying that parents, schools or other state agencies may request an initial evaluation;²⁷
- Requiring schools to make reasonable efforts to find parents of children who are wards of the state;²⁸
- Establishing that screening for curricular purposes is not an initial evaluation;²⁹ and
- Directing districts to review performance on local and state assessments and classroom based observations as a part of initial evaluations.³⁰

COMPLAINT AND HEARING REVIEW OF TROUBLE SPOTS

There are two main types of trouble spots for districts in the initial evaluation area: general legal compliance and particular concerns around obtaining medical diagnoses. First, districts have run into trouble in not conducting a complete evaluation in terms of 1. not performing all required elements,³¹ 2. not completing it within the 30 day timeline,³² 3. not providing notice or the required explanation,³³ 4. not conducting an FBA when required,³⁴ 5. not performing the required evaluation prior to the use of non-emergency conditional procedures,³⁵ 6. not performing an assistive technology evaluation,³⁶ 7. not evaluating the student in all areas of suspected need,³⁷ and 8. not including parents in the group to determine the information needed in the initial evaluation.³⁸

Second, districts cannot require parents to obtain their own medical diagnosis for special education eligibility.³⁹ However, districts are not obligated to obtain a medical diagnosis at public expense if a medical condition is not suspected. Conversely, of course, where a medical condition is suspected to negatively affect a student's performance, the district is

obligated to obtain the medical diagnosis.⁴⁰ Further, under the Other Health Disorder (OHD) category, a district may not limit what is considered a qualifying medical condition. For example, districts cannot refuse to accept a medical diagnosis of fetal alcohol effects as evidence under the OHD criteria. Similarly, a medical diagnosis must be obtained to document eligibility under OHD.⁴¹ As a side note, a medical diagnosis is not required, but can be used to determine, Section 504 eligibility.

Relatedly, a district cannot justify not conducting an initial evaluation for an undue amount of time based on the student's limited English proficiency. Delaying the evaluation for up to three years to account for acquiring English was not a valid excuse.⁴² In that case, MDE ordered the district to ensure its contracted alternative school did not wait more than 6 months before conducting a special education evaluation. Examples of where districts were found in compliance.⁴³

SUMMARY

This factsheet has reviewed the legal requirements for initial evaluations, the necessary formal process to determine and document a child's eligibility for special education services and to identify the child's needs arising from the disability. The review included the legal standards for notice, consent, content, timelines, and criteria and identified the new changes in this areas created by IDEIA 2004.

Further, this factsheet highlighted particular legal trouble-spots in initial evaluations as shown by Minnesota special education complaints and hearings. Problems in this area included issues with completing a technically sound and complete evaluation within the required timelines and not involving parents in the eligibility decision. One other main concern related to districts requiring a medical diagnosis as a condition of eligibility determination.

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¹ Minn. R. 3525.2710, subpt. 3A

² See, e.g. 34 CFR §300.503

³ 34 CFR §300.300

⁴ Minn. Stat. §125A.091, subd. 5a

⁵ Minn. Stat. §125A.091, subd. 5(b), Public Law 108-446, 20 USC 1412, §612 (A) (25).

⁶ 34 CFR §300.300

⁷ 34 CFR §300.302

⁸ 34 CFR §303.321

⁹ 34 CFR §300.304 and .305, Minn. R. 3525.2710

¹⁰ 34 CFR §300.304 and .305

¹¹ Minnesota's criteria are found at: Minn. R. 3525.1325 (autism spectrum disorders); Minn. R. 3525.1327 (deaf blind); Minn. R. 3525.1329 (emotional or behavioral disorders); Minn. R. 3525.1331 (deaf and hard of hearing); Minn. R. 3525.1333; (developmental cognitive disability); Minn. R. 3525.1335 (other health disabilities); Minn. R. 3525.1337 (physically impaired); Minn. R. 3525.1339 (severely multiply impaired); Minn. R. 3525.1341 (specific learning disability); Minn. R. 3525.1343 (speech or language impairments); Minn. R. 3525.1345 (visually impaired); Minn. R. 3525.1348 (traumatic brain injury); Minn. R. 3525.1350 (early childhood special education)

¹² 34 CFR §300.307

¹³ 34 CFR 300.343(b)(2)

¹⁴ 34 CFR 300.323

¹⁵ 34 CFR 300.505

¹⁶ Minnesota Department of Education Complaint Decisions 1846, 2027

¹⁷ Minn. Stat. §125A.091, subd. 5

¹⁸ MDE has resources on Section 504 at:

http://education.state.mn.us/mde/Accountability_Programs/Compliance_and_Assistance/Section_504_of_the_Rehabilitation_Act/index.html

¹⁹ Minn. R. 3525.3700-3750;

²⁰ 34 CFR §300.151-.153

²¹ Minn. Stat. §125.091, 34 CFR §300.507-517

²² Minnesota Department of Education Complaint Decision 1562

²³ Minn. R. 3525.3700; Minnesota Department of Education Complaint Decision 1562

²⁴ 20 USC 1412, §612(A)(25)

²⁵ Minn. Stat. §125A.091, subd. 5(b)

²⁶ 20 USC 1414, §614(a)(1)(D); 34 CFR §300.300 (b) (4)

²⁷ 20 USC 1414, §614(a)(1)(B)

²⁸ 20 USC 1414, §614(a)(1)(D)

²⁹ 20 USC 1414, §614(a)(1)(E)

³⁰ 20 USC 1414, §614(b)(2)(C)

³¹ Minnesota Department of Education Complaint Decisions, 1326, 1508 (reevaluation), 2108, 2124, 2145

³² Minnesota Department of Education Complaint Decisions 1615, 1897, 1997, 2034, 2145

³³ Minnesota Department of Education Complaint Decisions 1678, 1857, 1904

³⁴ Minnesota Department of Education Complaint Decisions 1971, 2124

³⁵ Minnesota Department of Education Complaint Decisions 1776, 1847

³⁶ Minnesota Department of Education Complaint Decision 1544

³⁷ Minnesota Department of Education Complaint Decisions 1826, 2131

³⁸ Minnesota Department of Education Complaint Decision 1826

³⁹ Minnesota Department of Education Complaint Decisions 2081, 2131

⁴⁰ Minnesota Department of Education Complaint Decision 1897

⁴¹ Minnesota Department of Education Complaint Decision 1897; Minn. R. 3525.1335

⁴² Minnesota Department of Education Complaint Decision 2132

⁴³ Minnesota Department of Education Complaint Decisions 1619, 1812, 2010, 2081, 2082