

Evaluations and Eligibility Determinations – Sec. 614(a - c)
 Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)

STATUTORY COMPARISON

IDEA 1997 P.L. 105 – 17	IDEA 2004 P.L. 108 – 446	GUIDANCE
<p>SEC. 614. EVALUATION, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</p> <p>(a) EVALUATIONS AND REEVALUATIONS-</p> <p>(1) INITIAL EVALUATIONS-</p> <p>(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.</p>	<p>SEC. 614 EVALUATIONS, ELIGIBILITY DETERMINATIONS. INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.</p> <p>(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS-</p> <p>(1) INITIAL EVALUATIONS-</p> <p>(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(B) REQUEST FOR INITIAL EVALUATION- Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p>	<p>Informational Update 5 “<i>Evaluation, Eligibility (LD), and Reevaluation</i>” Developed May 2005</p> <p>Web resources regarding the use of a response to intervention (RTI) eligibility model include:</p> <p>http://texasreading.org</p> <p>www.nrcl.org</p> <p>www.marylandpublicschools.org</p>

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<p>(B) PROCEDURES- Such initial evaluation shall consist of procedures --</p> <p>(i) To determine whether a child is a child with a disability (as defined in section 602(3)); and</p> <p>(ii) To determine the educational needs of such child.</p>	<p>(C) PROCEDURES-</p> <p>(i) IN GENERAL- Such initial evaluation shall consist of procedures--</p> <p style="padding-left: 40px;">(I) to determine whether a child is a child with a disability (as defined in section 602) 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</p> <p style="padding-left: 40px;">(II) to determine the educational needs of such child.</p> <p>(ii) EXCEPTION- The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—</p> <p style="padding-left: 40px;">(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's</p>	

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<p>(C) PARENTAL CONSENT- (i) IN GENERAL- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.</p>	<p>previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or (II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.</p> <p>(D) PARENTAL CONSENT- (i) IN GENERAL- (I) CONSENT FOR INITIAL EVALUATION. --The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a</p>	

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<p>(ii) REFUSAL- If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.</p>	<p>disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.</p> <p>(II) CONSENT FOR SERVICES. - -An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.</p> <p>(ii) ABSENCE OF CONSENT- (I) FOR INITIAL EVALUATION- If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to</p>	

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	<p>provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.</p> <p>(II) FOR SERVICES- If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.</p> <p>(III) EFFECT ON AGENCY OBLIGATIONS- If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--</p>	

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	<p>(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and</p> <p>(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.</p> <p>(iii) CONSENT FOR WARDS OF THE STATE-</p> <p>(I) IN GENERAL- 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</p>	

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	<p>informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.</p> <p>(II) EXCEPTION- The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--</p> <p>(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;</p> <p>(bb) the rights of the parents of the child have been terminated in accordance with State law; or</p> <p>(cc) 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</p>	

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<p>(2) REEVALUATIONS- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted --</p> <p>(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and</p> <p>(B) in accordance with subsections (b) and (c).</p>	<p align="center">judge to represent the child.</p> <p>(E) RULE OF CONSTRUCTION- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.</p> <p>(2) REEVALUATIONS-</p> <p>(A) IN GENERAL- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--</p> <p>(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(ii) if the child's parents or teacher requests a reevaluation.</p> <p>(B) LIMITATION- A reevaluation conducted under subparagraph (A)</p>	

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<p>(b) EVALUATION PROCEDURES-</p> <p>(1) NOTICE- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.</p> <p>(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local educational agency shall --</p> <p>(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;</p>	<p>shall occur--</p> <p>(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and</p> <p>(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.</p> <p>(b) EVALUATION PROCEDURES-</p> <p>(1) NOTICE- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.</p> <p>(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local educational agency shall--</p> <p>(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent,</p>	

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<p>(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that --</p> <p>(A) tests and other evaluation materials used to assess a child under this section --</p> <p>(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and</p> <p>(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and</p> <p>(B) any standardized tests that are given to</p>	<p>that may assist in determining--</p> <p>(i) whether the child is a child with a disability; and</p> <p>(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;</p> <p>(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that—</p> <p>(A) assessments and other evaluation</p>	

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<p>the child --</p> <ul style="list-style-type: none"> (i) have been validated for the specific purpose for which they are used; (ii) are administered by trained and knowledgeable personnel; and (iii) are administered in accordance with any instructions provided by the producer of such tests; <p>(C) the child is assessed in all areas of suspected disability; and</p> <p>(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p>(4) DETERMINATION OF ELIGIBILITY- Upon</p>	<p>materials used to assess a child under this section—</p> <ul style="list-style-type: none"> (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments; <p>(B) the child is assessed in all areas of suspected disability;</p> <p>(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and</p> <p>(D) assessments of children with</p>	

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<p>completion of administration of tests and other evaluation materials --</p> <p>(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5);and</p> <p>(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.</p> <p>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.</p>	<p>disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.</p> <p>(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED- Upon completion of the administration of assessments and other evaluation measures--</p> <p>(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and</p> <p>(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.</p> <p>(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be</p>	

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	<p>a child with a disability if the determinant factor for such determination is--</p> <p>(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);</p> <p>(B) lack of instruction in math; or</p> <p>(C) limited English proficiency.</p> <p>(6) SPECIFIC LEARNING DISABILITIES-</p> <p>(A) IN GENERAL- Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency 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.</p> <p>(B) ADDITIONAL AUTHORITY- In</p>	

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<p>(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-</p> <p>(1) REVIEW OF EXISTING EVALUATION DATA- As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall --</p> <p>(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and</p> <p>(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine --</p> <p>(i) whether the child has a particular category of disability, as described in</p>	<p>determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).</p> <p>(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-</p> <p>(1) REVIEW OF EXISTING EVALUATION DATA- As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--</p> <p>(A) review existing evaluation data on the child, including--</p> <p>(i) evaluations and information provided by the parents of the child;</p>	

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<p>section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;</p> <p>(ii) the present levels of performance and educational needs of the child;</p> <p>(iii) 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; and</p> <p>(iv) 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 individualized education program of the child and to participate, as appropriate, in the general curriculum.</p> <p>(2) SOURCE OF DATA- The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).</p>	<p>(ii) current classroom-based, local, or State assessments, and classroom-based observations; and</p> <p>(iii) observations by teachers and related services providers; and</p> <p>(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <p>(i) whether the child is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;</p> <p>(ii) the present levels of academic achievement and related developmental needs of the child;</p> <p>(iii) 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; and</p> <p>(iv) whether any additions or</p>	

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<p>(3) PARENTAL CONSENT- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.</p> <p>(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED- If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency --</p> <p>(A) shall notify the child's parents of --</p> <p>(i) that determination and the reasons for it; and</p> <p>(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and</p> <p>(B) shall not be required to conduct such an assessment unless requested to by the</p>	<p>modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.</p> <p>(2) SOURCE OF DATA- The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).</p> <p>(3) PARENTAL CONSENT- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.</p> <p>(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED- If the IEP Team and other qualified professionals, as appropriate,</p>	

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<p>child's parents.</p> <p>(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY- A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.</p>	<p>determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--</p> <p>(A) shall notify the child's parents of--</p> <p>(i) that determination and the reasons for the determination; and</p> <p>(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and</p> <p>(B) shall not be required to conduct such an assessment unless requested to by the child's parents.</p> <p>(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-</p> <p>(A) IN GENERAL- Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.</p> <p>(B) EXCEPTION-</p> <p>(i) IN GENERAL- The evaluation</p>	

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	<p>described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.</p> <p>(ii) SUMMARY OF PERFORMANCE- For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency 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.</p>	