



## Division of Special Education/Early Intervention Services

### Evaluations and Eligibility Determinations

The reauthorized Individuals with Disabilities Education Act (IDEA 2004) was signed into law on December 3, 2004, by President George W. Bush. The provisions of the Act take effect July 1, 2005 with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the Act. This is one in a series of documents, prepared by the Division of Special Education/Early Intervention Services, Maryland State Department of Education (MSDE) that cover a variety of high-interest topics to support local school systems, local Infants and Toddlers Programs, and other public agencies in preparing to implement the new requirements. This document only addresses the changes in the provisions regarding initial evaluations and eligibility determination that take effect July 1, 2005. It does not address any changes that may be made in the final federal regulations or potential changes to State statutes or regulations.

#### 1. In IDEA 2004 what changes made in the evaluation, eligibility determination, and reevaluation provisions?

Changes were made in several areas including:

- Who may request an initial evaluation to determine if the child is a child with a disability;
- Timeline for completing the initial evaluation;
- Procedures when there is absence of consent for an initial evaluation;
- Procedures for evaluating a child suspected of a specific learning disability;
- Procedures for reevaluations; and
- Requirements to evaluate a child’s present levels of academic achievement and functional performance.

[Sec. 614(a)-(c)]

## **2. Who may request an initial evaluation?**

In IDEA 2004 either a parent of a child, or a State educational agency, other State agency, or local school system may initiate a request for an initial evaluation to determine if the child is a child with a disability.

[Sec. 614(a)(1)(B)]

## **3. What will the 60-day timeline to complete initial evaluation mean to the evaluation process in Maryland?**

According to the statute, the initial evaluation must be completed within 60 days of receiving parental consent for the initial evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted. This timeframe is to be used in conjunction with the COMAR 13A.05.01.06A that states, "An IEP team shall complete an evaluation of a student within 90 days of receiving a written referral." Thus, the date of a student's initial evaluation may not exceed 60 days from the date of parental consent for initial evaluation, or the 90 day timeline from the date of receiving a written referral.

The relevant timeframe shall not apply to a local school systemic:

- A child enrolls in a school served by the local school system after the relevant timeframe has begun and prior to a determination by the child's previous LOCAL SCHOOL Systems to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local school system is making sufficient progress to ensure a prompt completion of the evaluation, and the parents and subsequent local school system agree to a specific time when the evaluation will be completed; or
- The parent of the child repeatedly fails to, or repeatedly refuses to, produce the child for evaluation.

[614(a)(1)(C)(i) and (ii)]

## **4. What changes were made in IDEA 2004 regarding absence of consent for an initial evaluation?**

IDEA 2004 states that If the parent of a child does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the local school system may pursue the initial evaluation of the child by using the procedures described in Section 615 of the statute (Procedural Safeguards), except to the extent

it is inconsistent with state law relating to such parental consent.

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

**5. What are the provisions of IDEA 2004 relative to a parental refusal to provide a public agency with initial consent for the provision of services?**

IDEA 2004 states that a local school system that is responsible for making a free appropriate public education available to a child with a disability shall seek to obtain informed consent from the parent before providing special education and related services to the child. If the parent of such child refuses to consent to services, the local school system shall not provide special education and related services to the child and shall not initiate a request for mediation or a due process hearing.

[Sec. 614(a)(1)(D)(ii)(II)]

**6. What is a local school system's responsibility when a parent refuses consent for the provision of services, or when the parent fails to respond to a request to provide such consent?**

The local school system shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for failure to provide such child with the special education and related services for which the local school system requests such consent; and

The local school system shall not be required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the local school system requests such consent.

[Sec. 614(a)(1)(D)(ii)(III)]

**7. What is the 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 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).

In accordance with Sec. 602(23), the term 'parent' means:

- A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- A guardian (but not the State if the child is a ward of the State);

- An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- An individual assigned under sections 615(b)(2) and 639(a)(5) to be a surrogate parent.

Although the statute includes a foster parent in the definition of “parent,” the definition of parent in Education Article §8-412, Annotated Code of Maryland does not include a foster parent, unless the foster parent is a relative or stepparent. Therefore, individuals serving as foster parents who are not relatives or stepparents, must be appointed as the student’s parent surrogate in order to represent the child in the educational decision making process.

[Sec. 602 (23) and (36); Education Article §8-412]

**8. What are the new provisions regarding consent for an initial evaluation for a child who is a ward of the State?**

The new statute adds a provision for parental consent for initial evaluation for children who are wards of the State. If the child is a ward of the State and not residing with the child’s parent, the local school system must make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine whether the child is a student with a disability. The school system is not required to obtain informed consent from the parent for an initial evaluation if:

- Despite reasonable efforts to do so, the school system cannot discover the whereabouts of the parents of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parents 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.
- The judge overseeing the welfare of a child who is a ward of the State may appoint a surrogate parent for the child.

[615(b)(2)(A)(i)(ii); 602 (23); and 602(36)]

**9. What does the new “Rule of Construction” in Sec. 614(a)(1) mean for local school system IEP teams?**

The new Rule of Construction clearly states that the use of informal assessments and screening procedures used by a teacher or specialist for a student to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education and related services.

[614(a)(1)(E)]

**10. What is the new language in the statute for reevaluations?**

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

- The local school system determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child’s parent or teacher requests a reevaluation.

However, a reevaluation shall not occur more frequently than once a year, unless the parent and local school system agree otherwise; and at least once every three years, unless the parent and the local school system agree that a reevaluation is unnecessary.

[614(a)(2)]

**11. What are the changes in IDEA 2004 regarding how to conduct the evaluation?**

IDEA 2004 states that when conducting the evaluation, the local school system shall:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent.
- The local school system may not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability or determining an appropriate educational program for the child.

Each local school system shall ensure that:

- Assessments and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis; and

- 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 do so or administer.
- Assessments of children with 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.

[614(b)(3)(A)(i-v)]

**12. Describe the new requirement to evaluate the child's present levels of academic achievement and functional performance.**

As part of an initial evaluation (if appropriate) and as part of any reevaluation the Individualized Education Program (IEP) team and other qualified professionals, as appropriate, shall, on the basis of that review, and input from the child's parents, identify what additional data, are needed to determine:

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

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

**13. What is the language in the IDEA 2004 statute regarding procedures for evaluating a child suspected of having a specific learning disability?**

When determining whether a child has a specific learning disability as defined in Section 602:

- The LEA is not required to consider 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. [614(b)(6)(A)]
- The LEA may use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in paragraphs (2) and (3). [614(b)(6)(B)]

### Guidance for Local School Systems:

Please keep in mind that research indicates that Response to Intervention (RTI) models are promising; however, there are still many unanswered questions regarding the implementation of an RTI models). In addition, you will need to consider the implications resulting from school system choice regarding the use of an RTI model or the continued use of the discrepancy model.

If an LEA chooses to develop a process that determines if a child responds to scientific research-based intervention as part of their evaluation process, the following are considerations for policy and procedure development.

A tiered intervention process that is dynamic and involves students entering and exiting based on documentation of student performance over time should be considered. An example of a three-tiered reading model consisting of a scientific research-based core reading program, supplemental instruction and targeted instruction for intensive intervention is available on the University of Texas Center for Reading and Language Arts at <http://texasreading.org> . It is essential that implementation of scientific research-based core, supplemental and intervention programs are consistent with the student's learning needs and implemented with integrity. Student progress must be monitored on an ongoing basis. Documentation of student progress is used in instructional planning and decision-making regarding the student's status in entering and exiting the tiered intervention process.

Additionally, the National Research Center on Learning Disabilities (NRCLD) at [www.nrclid.org](http://www.nrclid.org) (scroll to the link entitled, *Responsiveness to Intervention*, see second bullet entitled, *Understanding Responsiveness to Intervention in Learning Disabilities Determination*. The information provides an in-depth description of RTI features and attributes as well as links to additional information regarding RTI. On the NRCLD website you can also find an *Executive Summary of the NRCLD Symposium on Responsiveness to Intervention December 2003* which provides an overview of discussions surrounding RTI.

Please refer to Chapter II (pages 15-26) in the *Identifying Specific Learning Disabilities Maryland's Technical Assistance Guide* disseminated to all local school systems regarding school-based problem-solving teams. The chapter outlines processes that can assist in the development of procedures for an RTI model.

The Technical Assistance Guide is available at [www.marylandpublicschools.org](http://www.marylandpublicschools.org) Click on *Divisions* listed at the top of the page. Then select *Special Education and Early Intervention*. In the center of the page in the "In Focus" box, click on *Publications and Reports*. Then scroll down to *Additional Information* heading and select *Identifying Specific Learning Disabilities*. The guide is available for viewing on line or can be printed).

**14. Is MSDE going to provide information regarding scientific research-based programs that can be implemented as a component of the RTI model?**

The decision regarding program selection is left to the local school system's decision makers. However, the Office of Reading First at the MSDE has a list of scientific research-based core reading programs that have been reviewed for use in Maryland schools based upon research-based review criteria. Currently, a review of supplemental and intervention programs is in progress. Information available to date can be found at [www.marylandpublicschools.org](http://www.marylandpublicschools.org) Go to *Programs* listed at the top of the page. Then scroll down to *Reading First*. Click on *Reading First*. Go to "In Focus" box where you will find information regarding core reading programs in Maryland.

**15. What are the specific eligibility considerations regarding children who have not had appropriate instruction in the area of reading?**

IDEA 2004, under the area of Eligibility Determination, it states that when making a determination of eligibility under Section 614(b)(4)(A) of the IDEA, a child **shall not** be determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in reading, including essential components of reading instruction as defined in Section 1208(3) of the Elementary and Secondary Education Act. Section\* 1208 (3) states the essential components of reading instruction' means explicit and systematic instruction in—

- phonemic awareness;
- phonics;
- vocabulary development;
- reading fluency, including oral reading skills; and
- reading comprehension strategies.

[Sec. 614(b)(5)(A)]

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\* IDEA 2004 references the Elementary and Secondary Education Act (ESEA) 1965. ESEA is also known as the No Child Left Behind (NCLB). References to either Elementary and Secondary Education Act (ESEA) 1965 or NCLB within this document are synonymous.  
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**16. Is there exception to requirements for evaluation before a change in eligibility?**

An evaluation is not required before the termination of eligibility if termination of eligibility is:

- Due to graduation from secondary school with a regular high school diploma; or
- Because the child exceeds the age of eligibility for a free and appropriate public education (FAPE) under state law.

However, for a child in Maryland whose eligibility under IDEA terminates under the circumstances described above, a local school system or public agency must provide the child with a summary of his or her:

- Academic achievement,
- Functional performance, and
- Recommendations on how to assist the child in meeting postsecondary goals.

[614(c)(5)(B)]

For more information, call 410-767-0858

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