



OLR RESEARCH REPORT

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SPECIAL EDUCATION EVALUATIONS AND PARENTAL NOTICE AND CONSENT TO EVALUATIONS AND SERVICES

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You asked two questions about requirements for school district evaluations for children who may be eligible for special education. The questions are answered individually below.

Can a school district delay an evaluation to determine if a child is eligible for special education until the child undergoes interventions under Connecticut's Response to Intervention (RtI) Program?

No. A child's parents or other authorized person (appropriate school personnel, physician, or clinic or social worker) may refer a child for special education at any time before or during the RtI process. A special education referral triggers the requirement that the school district either (1) evaluate the child or (2) provide the required notice to parents that it refuses to do so. A parent may appeal the refusal through the special education dispute resolution process (34 CFR §300.503 (a)(2)).

Response to Intervention (RtI). RtI (also known as Scientific Research-Based Intervention or SBRI) is a method of evaluating how children respond to instruction or evidence-based intervention in order to make decisions about their educational needs and eligibility for special education or other educational services. RtI is used to identify children with learning disabilities and to refer those who do not respond to intensive intervention in the regular education setting to special

education. It can be used instead of, or in conjunction with, “discrepancy model” methods that use severe discrepancies between a child’s IQ and his educational achievement to identify learning disabilities.

RtI is included in the [2004 reauthorization](#) of the federal Individuals with Disabilities Education Act (IDEA) as one option that school districts can use to identify students with specific learning disabilities. The federal law states:

. . .When determining whether a child has a specific learning disability as defined in § 602 (29), 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. In 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 part of the evaluation procedures. . . (P.L. 108-446 § 614(b)(6)).

In response to the federal law, Connecticut revised its guidelines for identifying children with learning disabilities to require school districts to implement RtI. The new guidelines took effect on July 1, 2009 but the state allowed school districts to apply to extend the implementation deadline to either January 15 or June 30, 2010 (*New State Criteria and Effective Implementation for Specific Learning Disability Eligibility Determinations*, Mark K. McQuillan, Commissioner of Education, [Circular Letter C-1, Series: 2009-10](#), July 10, 2009.)

Use of RtI in Special Education Determinations. When seeking to determine if child has a specific learning disability and is therefore eligible for special education, [federal regulations](#) allow a child’s special education planning and placement team (PPT) to consider the child’s response to intervention as part of the determination process. Because federal regulations require the PPT to find that a child’s underachievement is not due to lack of proper instruction, they require the PPT to consider (1) data showing that, before or during the special education referral process, the district provided “appropriate instruction in regular education settings, delivered by qualified personnel” and (2) the results of repeated assessments conducted at reasonable intervals that reflect the child’s progress during instruction and are provided to the child’s parents. A district must evaluate a child for special education

eligibility if (1) he or she fails to make adequate progress after an appropriate period or (2) his or her parent or other appropriate person refers the child for special education (34 CFR § 300.309 (b) and (c)).

Timing of RtI and Special Education Referrals. The parents of a child who may be eligible for special education may refer the child for special education at any time, including during implementation of an RtI program undertaken to determine whether the child has a specific learning disability (34 CFR §300.301 (b)). In its RtI guidelines, the U.S. Education Department specifies:

If the LEA [local education agency or school district] agrees with the parent that the child may be a child who is eligible for special education services, the LEA must evaluate the child. The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice as required under 34 CFR §300.503(a)(2) The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation. ([Questions and Answers on Response to Intervention \(RTI\) and Early Intervening Services \(EIS\)](#), Question C-1, January 2007.)

The State Department of Education's RtI guidelines (which it refers to as SRBI - Scientific Research-Based Intervention) echo the requirement that an ongoing RtI process does not prevent a special education referral:

As specified in IDEA 2004, families and school personnel always have the right to refer a student for consideration of eligibility for special education services by requesting an evaluation at any time, including *prior* to completion of an SRBI process. The PPT must respond to all referrals by holding a PPT meeting to determine whether a comprehensive evaluation is warranted. . . . (34 CFR § 300.309 (c)). However, a PPT may conclude, through analysis of data that document a student's progress through the use of appropriate, technically adequate assessments, that a student is making sufficient, adequate progress through SRBI, and that further evaluation, therefore, is currently unnecessary. Families then would have the right to challenge that conclusion through a complaint resolution or due process hearing if they choose, and may use mediation if agreed to by the district. A PPT also may determine that a trial diagnostic placement (i.e., structured placement of not

more than eight weeks' duration) is appropriate to assess the needs of a student for whom an IEP [individualized education program] may be needed but for whom the evaluation is either inconclusive or the data insufficient to determine the student's IEP (Connecticut Regulations § 10-76d-14(b)). A diagnostic placement is an evaluation. ([2010 Guidelines for Identifying Children with Learning Disabilities](#), September 2010, p. 26).

Evaluation Deadlines. Federal regulations specify that, once the child's parent consents to an initial evaluation, it must be completed within 60 days (34 CFR § 300.301(c)). States may establish other time limits if they wish and Connecticut has done so. Connecticut regulations require that, if a special education referral is made during the academic year, the district must not only complete the initial evaluation but also implement the required IEP within 45 school days thereafter, excluding the time required to obtain parental consent. If the PPT recommends an out-of-district or private placement, the IEP must be implemented within 60 school days of the referral date, excluding the time required for obtaining parental consent (Conn. State Agency Regs. § 10-76-13). For referrals made between school years, the effective date is considered to be the first school day of the next school year ([Letter to Special Education/Pupil Personnel Directors](#), Anne Louise Thompson, Chief Bureau of Special Education, Connecticut State Department of Education, June 27, 2008).

What are the requirements for parental notice and consent to psychological testing of their children for special education purposes?

There is no requirement for parental notice and consent specifically for psychological testing. Instead, parents must receive notice of and, with certain exceptions, consent to (1) initial evaluations to determine if their child is eligible for special education, (2) initial provision of special education to their child, and (3) each reevaluation of their child who is receiving special education. These evaluations may involve psychological testing.

Notice Requirements. Federal and state regulations require school districts to notify the parent of a child with a disability of the actions and decisions it proposes to take. Federal regulations specify that the district must notify parents in writing within "a reasonable time" before initiating or changing, or refusing to initiate or change, the child's identification, evaluation, or educational placement or its provision of a free and appropriate public education for the child. Connecticut state law and

regulations specify that the “reasonable time” for the notice is at least five days before the school district takes or refuses to take the proposed action (CGS § 10-76d(a)(8)(A)).

Federal regulations require the notice to:

1. describe the district’s proposed action or refusal to act and explain the reasons;
2. describe each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
3. state that the parents are protected under federal procedural safeguards and, if the notice is not an initial referral for evaluation, how they can obtain a copy of the procedural safeguards;
4. provide resources for parents to contact to get help to understand the notice;
5. describe other options the PPT considered and why they were rejected; and
6. describe any other factors relevant to the district’s proposed action or refusal (34 CFR § 300.503).

Connecticut also requires written notice to parents within five days after a special education referral that includes (1) the source and date of the referral and (2) a statement that parents are entitled to (a) review and obtain copies of all records used as the basis for the referral, (b) be fully informed of the evaluation results, and (c) obtain an independent educational evaluation as part of the evaluation process. When parental consent is needed (see below), Connecticut requires the notice to include statements that:

1. the parents have the right to refuse consent, and if they give consent, they may revoke it at any time;
2. failure to respond within 10 days of the notice will be construed as refusal to consent; and
3. if contested, the child’s current educational placement will not change until due process procedures are completed (Conn. State Agencies Regs. § 10-76d-8).

Federal and state regulations require the notice to be written in layperson's language and, unless it is clearly unfeasible to do so, provided in the parent's native language or other mode of communication. If the parent's language or mode of communication is not written, a district must take steps to see that (1) the notice is translated to the parents orally or by other means, (2) the parents understand it, and (3) there is written evidence that these requirements have been met.

Consent Requirements. With certain exceptions, federal regulations require school districts make reasonable efforts to obtain informed consent from a child's parents before (1) conducting an initial evaluation to determine if a child is eligible for special education, (2) starting to provide special education, or (3) conducting any reevaluation of a child receiving special education. If parents revoke their consent to special education services in writing, the district does not have to continue services or convene a PPT for the child.

A district is not required to get consent to an initial evaluation if the child is a ward of the state and not living with his or her parents if (1) despite reasonable efforts, it cannot find out where the parent is, (2) the parent's parental rights have been legally terminated, or (3) the parent's rights to make educational decisions for the child have been taken over by a court and the person the judge appointed to represent the child consents.

If the parent does not consent to an initial evaluation or does not respond and the child is enrolled in public school, the district, if not inconsistent with state law, may, but is not required to, appeal through the special education administrative dispute resolution process. This right does not apply to children who are home-schooled or placed in private school at their parents' expense and whose parents do not consent to evaluation or reevaluation.

If the parent does not consent to initial provision of special education services or to reevaluations, a district cannot appeal. A district that does not provide an initial evaluation, initial special education services, or reevaluation when the parent does not consent or does not respond is not considered to have violated its responsibilities under the special education law.

Parental consent is not required for:

1. reviewing existing data as part of an evaluation or reevaluation;

2. administering a test or other evaluation that is administered to all children, unless that evaluation or test requires consent of the parents of all the children; or
3. convening a PPT or developing an IEP.

Schools districts are barred from using a parent's failure to consent to one service or activity to deny the parent or child any other available service, benefit, or activity, except as specified in the federal regulations (34 CFR § 300.300).

HYPERLINKS AND ADDITIONAL INFORMATION

Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446.
<http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2C>

New State Criteria and Effective Implementation for Specific Learning Disability Eligibility Determinations, Mark K. McQuillan, Commissioner of Education, Circular Letter C-1, Series: 2009-2010, July 10, 2009.
<http://www.sde.ct.gov/sde/lib/sde/pdf/circ/circ09-10/c1.pdf>

Final Regulations, Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, Office of Special Education and Rehabilitative Services, Department of Education. 34 CFR Parts 300 and 301.
<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C>

Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS), U.S. Department of Education, pp. 6-9, January 2007.
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>

2010 Guidelines for Identifying Children with Learning Disabilities, Connecticut State Department of Education, September 2010.
http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/2010_Learning_Disability_Guidelines_Acc.pdf

Letter to Special Education/Pupil Personnel Directors, Anne Louise Thompson, Chief Bureau of Special Education, Connecticut State Department of Education, June 27, 2008.
http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Evaluation_Timelines.pdf

Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, U.S. Department of Education, pp. 10-11 and 18-22, Revised June 2010.
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

Guidance and Update on the Implementation of Scientific Research-Based Interventions (SRBI) in Connecticut Public Schools, Mark K. McQuillan, Commissioner of Education, Circular Letter C-2 - Revised, Series: 2010-2011, September 15, 2010.
<http://www.sde.ct.gov/sde/lib/sde/pdf/circ/circ10-11/c2.pdf>

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