

72-986. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties. (a) (1) An agency shall conduct a full and individual initial evaluation in accordance with this section before the initial provision of special education and related services to an exceptional child.

(2) An initial evaluation may be initiated either by the parent of a child or by an agency.

(3) An initial evaluation shall consist of procedures to determine whether a child is an exceptional child and the educational needs of such child.

(4) 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 under this act.

(5) An agency proposing to conduct an initial evaluation of a child shall obtain 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.

(6) If the parent of a child refuses consent for an initial evaluation of the child, or fails to respond to a written request to provide consent, the agency may, but shall not be required to, continue to pursue an initial evaluation by utilizing the mediation or due process procedures prescribed in this act.

(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;

(2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

(c) An agency shall ensure that:

(1) Assessments and other evaluation materials used to assess a child under this section: (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (B) are provided and administered in the language and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally and functionally, unless it is not feasible to so provide or administer; (C) are valid and reliable for the specific purpose for which they are used; (D) are administered by trained and knowledgeable personnel; and (E) are administered in accordance with instructions provided by the producer of such tests;

(2) the child is assessed in all areas of suspected exceptionality;

(3) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(4) the assessments of any child who transfers from another agency during the school year are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school.

(e) Upon completion of the administration of assessments and other evaluation materials:

(1) The determination of whether the child is an exceptional child shall be made by a team of qualified professionals and the parent of the child in accordance with this section; and

(2) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(f) In making a determination of eligibility under this section, a child shall not be determined to be an exceptional child if the determinant factor for such determination is lack of instruction in reading, including instruction using the essential components of reading instruction, math or limited English proficiency.

(g) (1) If it is determined that a child is an exceptional child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. No such services shall be provided until consent is given by the parent.

(2) If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency: (A) Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;

(B) shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child; and

(C) shall not be required to convene an IEP meeting or develop an IEP for the child.

(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or

(B) if the child's parent or teacher requests a reevaluation.

(2) An agency shall conduct a reevaluation of a child:

(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and

(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

(i) 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:

(1) 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' observations; and

(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine: (A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child; (B) the present levels of academic and related needs of the child; (C) 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 (D) 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 education curriculum.

(j) Each agency shall obtain informed parental consent prior to conducting any reevaluation of an exceptional child, except that such informed consent need not be obtained if the agency can demonstrate that it took reasonable measures to obtain such consent and the child's parent failed to respond.

(k) 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 an exceptional child and the child's educational needs, the agency:

(1) Shall notify the child's parents of: (A) That determination and the reasons for it; and (B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child and the child's educational needs; and

(2) shall not be required to conduct such an assessment unless requested by the child's parents.

(l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.

(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

(m) For a child whose eligibility for services under this act terminates under either of the circumstances described in subsection (l), the 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.

History: L. 1999, ch. 116, § 11; L. 2005, ch. 171, § 13; July 1.