

Evaluations & Reevaluations FAQ

The federal Office of Special Education and Rehabilitative Services (OSERS) updated its question and answer document on Individualized Education Programs, Evaluations & Reevaluations in June, 2010. The answers in the document “generally are informal guidance representing the interpretation of the department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding.” Listed are questions that parents frequently do or may encounter.

Question D-3: *What may a public agency do if a parent does not respond to the public agency’s request for the parent to provide consent to a reevaluation?*

Answer: Under 34 CFR §300.300(c)(2), the public agency need not obtain informed parental consent for the reevaluation if the public agency can demonstrate that it made reasonable efforts to obtain consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. This means that a public agency may conduct a reevaluation of a child with a disability without using the consent override procedures if the public agency can demonstrate that it made reasonable efforts to obtain parental consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. Section 300.300(d)(5) of the regulations provides that in order to meet the reasonable efforts requirement, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR §300.322(d). These procedures include detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent’s home or place of employment and the results of those visits.

Question D-4: *The regulations provide, in 34 CFR §300.303(b)(2), that a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. What options are available to a public agency if a parent believes that the public agency should continue to provide special education and related services to their child but refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2)?*

Answer: If a parent refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2), but requests that the public agency continue the provision of special education and related services to their child, the public agency has the following options:

1. The public agency and the parent may, as provided in 34 CFR §300.303(b)(2), agree that the reevaluation is unnecessary. If such an agreement is reached, the three-year reevaluation need not be conducted. However, the public agency must continue to provide FAPE to the child.
2. If the public agency believes that the reevaluation is necessary, and the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the Act’s consent override procedures described in 34 CFR §300.300(a)(3), so long as overriding a parental refusal to consent to a reevaluation is permissible under State law. These consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300, including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.
3. If the public agency chooses not to pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3), and the public agency believes, based on a review of existing evaluation data on the child, that the child does not continue to have a disability or does not continue to need special education and related services, the public agency may determine that it will not continue the provision of special education and related services to the child. If the public agency determines that it will not continue the provision of special education and related services to the child, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with 34 CFR §300.503(a)(2), including the right of the parent to use the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516 if the parent disagrees with the public agency’s decision to discontinue the provision of FAPE to the child.

Question D-5: *Does the requirement that a school obtain parental consent for the initial provision of special education and related services mean that parents must consent to each service included in the initial IEP developed for their child?*

Answer: No. Under 34 CFR §300.300(b)(1), a public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services. However, this consent requirement only applies to the initial provision of special education and related services generally, and not to the particular special education and related services to be included in the child's initial IEP. In order to give informed consent to the initial provision of special education and related services under 34 CFR §300.300(b)(1), parents must be fully informed of what special education and related services are and the types of services their child might need, but not the exact program of services that would be included in an IEP to be developed for their child. Once the public agency has obtained parental consent and before the initial provision of special education and related services, the IEP Team would convene a meeting to develop an IEP for the child in accordance with 34 CFR §§300.320 through 300.324. Decisions about the program of special education and related services to be provided to the child are left to the child's IEP Team, which must include the child's parents, a public agency representative, and other individuals, consistent with 34 CFR §300.321. While the IDEA does not require public agencies to obtain parental consent for particular services in a child's IEP, under the regulations in 34 CFR §300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services. In cases where a State creates additional parental consent rights, the State must ensure that each public agency in the State has effective procedures to ensure that the parent's exercise of these rights does not result in a failure to provide FAPE to the child.

Question D-6: *What recourse is available to parents who consent to the initial provision of special education and related services but who disagree with a particular service or services in their child's IEP?*

Answer: In situations where a parent agrees with the majority of services in his/her child's IEP, but disagrees with the provision of a particular service or services, such as physical therapy or occupational therapy, the public agency should work with the parent informally to achieve agreement. While the parent and public agency are attempting to resolve their differences, the agency should provide the service or services that are not in dispute.

In situations where a parent disagrees with the provision of a particular special education or related service, and the parent and public agency later agree that the child would be provided with FAPE if the child did not receive that service, the public agency could decide not to provide the service with which the parent disagrees. If, however, the parent and the public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service with which the parent disagrees, and the parent and public agency cannot resolve their differences informally, the parent may use the procedures in subpart E of the IDEA regulations to pursue the issue of whether the service with which the parent disagrees is not appropriate for their child. This includes the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516.

Question D-7: *May a foster parent provide consent for an initial evaluation even if the biological parent refuses to provide such consent?*

Answer: If the biological parent of the child refuses consent for an initial evaluation of the child, and the parental rights of the biological parent have not been terminated in accordance with State law, or a court has not designated a foster parent to make educational decisions for the child in accordance with State law, a foster parent may not provide consent for an initial evaluation. See 34 CFR §300.30(b)(1).

The full document is at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>



The contents of this factsheet were developed under a grant from the US Department of Education, H328M120025 (PEN), H328M120026 (TEAM), & H328M120027 (PATH). However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government. Project Officer, Greg Knollman.



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