



COLORADO
Department of Education

Exceptional Student Services Unit
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TO: Administrative Unit Special Education Directors
Child Find Coordinators

FROM: Angela Denning, Executive Director

RE: Colorado Context and Reminders Regarding OSEP Memorandum on Delays and Denials of Evaluations for Preschool Special Education under IDEA

DATE: September 15, 2016

Ruth Ryder of the Office of Special Education Programs issued a [Memorandum on April 29, 2016](#) to State Directors, Preschool Coordinators and Head Start Directors stating that RtI cannot be used to delay-deny an evaluation and urging states and LEAs to examine their procedures and practices to ensure that preschool children suspected of having a disability do not face delays or denials for timely initial evaluations. In order to support all children to enter school ready to learn and to fulfill each child's potential, early identification of significant delays or disability is critical. Preschool aged children who are in need of special education who are not timely located and identified have lost valuable instruction and service time by school entry.

While CDE is not aware of specific instances in which RtI has been used to delay-deny evaluations for preschool special education under IDEA in Colorado, if you are currently utilizing RtI approaches with very young children ensure that your local practices do not delay or deny initial evaluations for special education services. We also want to point out several other important messages within the memorandum that influence local child find policies, procedures, and practices. Specifically, local practices should 1) permit referrals for evaluation from any source, 2) seek parental consent within a reasonable period of time after the referral for evaluation, and 3) ensure that informed parental consent is obtained prior to conducting individualized screening activities, following IDEA requirements when screening is conducted after the initiation of the special education referral process.

Permit referrals from any source

First, the memo states "The IDEA child find requirements permit referrals from any source, including private and public preschools (e.g. Head Start) and community-based child care programs that suspects a child may be eligible for special education and related services." While ECEA Rule 4.02 (3) (a) states that Special Education Referrals may be initiated by the parent or the Administrative Unit, and that any other interested person who believes that a child is in need of an initial evaluation must work with the parent or the appropriate AU, it does not relieve the AU of the affirmative duty to timely act on any information related to a potentially eligible student. In fact, any information shared about a child suspected to be a child with a disability facilitates the AU in fulfilling its affirmative duty to locate and identify students that may be in need of special education services, whether or not that information is considered a formal Special Education Referral. Further, the ECEA Rules in 4.02 (2) clearly obligate the AU to coordinate a referral process among relevant community partners, which reasonably includes child care centers, health care providers, and others who have knowledge of a young child who may have a need for special education services. If local policies prohibit accepting referrals for evaluation from primary referral sources, these need to be adjusted.



Seek parental consent within a reasonable period of time

Second, the memo states “Once an LEA receives a referral from a preschool program, the LEA must initiate the evaluation process to determine if the child is a child with a disability,” and re-states the United States Department of Education’s longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed. CDE is aware that very often AUs obtain parental consent for initial evaluation of children who are not yet enrolled in public school on the date of the initial evaluation, even though the LEA has known about the potentially eligible child for a period of time prior to the actual evaluation date. OSEP, in the *Analysis of Comments and Changes* released with the Final Rules and Regulations for IDEA 2004, states “it would generally not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability” (71 Fed. Reg. 46637, August 14, 2006).

ECEA obligates AUs to document actions taken upon discovering a potentially eligible child, and to initiate the evaluation process promptly. Children who have not received timely evaluation due to system constraints and capacity issues are denied FAPE and special education services and therefore may be entitled to compensatory services.

When is Screening Subject to IDEA Prior Written Notice and Informed Parental Consent Requirements?

AUs are required to implement screening procedures to identify from the total population of children those who may need more in-depth evaluation in order to determine eligibility for special education and related services (ECEA 4.02 (2)(c)(iii)). Screening of this type is most typically provided within a regular education process, *prior to a referral for special education being initiated*, for example, when a teacher administers screening to an entire classroom, or to determine appropriate instructional strategies for curriculum implementation (34 CFR 300.300(d)(1) and 300.302). Consistent with ECEA and IDEA, a teacher may request support from another team member or specialist to observe a child in their classroom, for example, as long as the informal observation is a part of determining appropriate instructional strategies. This type of informal observation of an individual child is not considered formal screening but could result in a decision to initiate a referral for special education.

Children who are not yet attending public school, who have been referred to Child Find due to a concern, may sometimes be individually screened (with parent knowledge and consent) in order to establish if there is a need for more in-depth evaluation. In those instances when the information shared at the time of referral does not clearly suggest that a special education evaluation is needed, and when there is no general education data available, parents may consent to gather some preliminary formal screening data prior to initiating the special education referral process, in order to inform that decision. Parent consent for individualized screening obtained before the initiation of the special education referral process occurs prior to triggering IDEA parent consent requirements. Therefore, AU policies and procedures dictate how this consent process occurs and CDE suggests that the consent be written.

At whatever point in the process AU personnel determine that more in-depth evaluation is warranted, the special education referral process should be initiated, which includes issuing IDEA Prior Written Notice obtaining parent consent. If at the time of a referral, it is clear that a special education evaluation is warranted, then screening activities that are conducted are considered a component of a comprehensive initial evaluation, therefore the special education referral must be initiated, and the screening activity described in the IDEA Part B Prior Written Notice.

Please review the OSEP memo alongside local child find practices and carefully consider whether any policies, procedures, or practices need adjustment.

CDE Resources that may be helpful related to community referral systems include:

- [A Model Referral Form from Assuring Better Child Health and Development](#)
- [Referral Status Update Fact Sheet](#)

