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MEMORANDUM

TO: District School Superintendents

FROM: Dr. Frances Haithcock

DATE: February 28, 2011

SUBJECT: Technical Assistance Paper 2011-04: General Education Intervention Procedures, Child Find, and the Initial Provision of Exceptional Education Services to Eligible Students

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DPS: 2011-04

We are pleased to provide you with technical assistance paper (TAP) 2011-04: General Education Intervention Procedures, Child Find, and the Initial Provision of Exceptional Education Services to Eligible Students. This TAP revises and replaces existing TAP: FY 2001-10; *Change in Identification, FAPE, Placement, or Dismissal from Special Education* and describes the problem solving/response to intervention (PS/RtI) framework to address the varying academic and behavioral needs of students. It is based on the requirements of Rule 6A-6.0331, Florida Administrative Code (F.A.C.), *General Education Intervention Procedures, Child Find, and the Initial Provision of Exceptional Education Services*.

Effective PS/RtI teams often include school or district staff with specialized training such as special education teachers and related service providers, student services personnel, and positive behavioral support specialists. When implementing a PS/RtI framework, it is important to be familiar with the requirements related to the use of funds available under the Individuals with Disabilities Education Act (IDEA), and to consider whether personnel are fully funded through IDEA or whether a portion of their costs are covered through other sources.

In general, IDEA funds may be expended only for the provision of special education and related services for students with disabilities who have been determined eligible for services under IDEA and for evaluative and diagnostic services for students who are eligible for, or suspected of being eligible for, services under IDEA, but who have not yet been determined to have a disability.

DR. FRANCES HAITHCOCK
CHANCELLOR OF PUBLIC SCHOOLS

There are two situations where there is some flexibility in the use of funds:

- IDEA funds may be used to support special education and related services for eligible students with disabilities that also provide incidental benefit to nondisabled students in the same setting, in accordance with Sections 300.202 and 300.208 of Title 34 of the Code of Federal Regulations (CFR).
- A district may use up to 15 percent of its IDEA allocation to develop and implement coordinated early intervening services (CEIS) to assist students in kindergarten through grade 12 who are not currently identified as needing special education and related services but who need additional academic and behavioral support to succeed in a general education environment. For additional guidance, go to http://www2.ed.gov/policy/speced/guid/idea/ceis_pg3.html, in accordance with 34 CFR §300.226.

For additional information or assistance regarding the content of the TAP, please contact Patricia Howell, Program Director, at Patricia.Howell@fldoe.org. For information or assistance regarding the allowable use of funds, please contact Karen Denbroeder, Administrator, at Karen.Denbroeder@fldoe.org. They also may be reached via phone at (850) 245-0476.

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A. Background and Terminology

A-1. What is the purpose and intent of State Board of Education Rule 6A-6.0331, Florida Administrative Code (F.A.C.), *General Education Intervention Procedures, Child Find, and the Initial Provision of Exceptional Education Services*?

Rule 6A-6.0331, F.A.C., was revised to align with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations found in Section 300 of Title 34 of the Code of Federal Regulations (34 CFR §300) and to incorporate a problem-solving/response to instruction/intervention (PS/RtI) framework for student success and school improvement. Specifically, section (1) of the rule requires school districts to develop and implement coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment. In addition, the rule establishes procedures for identifying, evaluating, and providing appropriate exceptional education services to students with disabilities or students who are gifted.

A-2. What is meant by “scientifically based” instruction/intervention as referenced in Rule 6A-6.0331(1), F.A.C.?

The phrase “scientifically based” refers to instructional methods and interventions that are grounded in research. In addition to being validated by research, there should also be evidence that the instruction/intervention strategies are effective with students of a similar demographic group to that of the student targeted for intervention and for whom the instructional conditions are similar.

The focus in the Elementary and Secondary Education Act (ESEA) on scientifically based instruction/intervention has been incorporated into IDEA as part of the alignment of the two Acts, with research-based decision making emphasized as the cornerstone of effective educational practice. Under IDEA and its implementing regulations at 34 CFR §300.35, “scientifically based research” has the meaning given the term in section 9101(37) of the ESEA, which states that:

[s]cientifically-based research – (A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and (B) includes research that – (i) employs systematic, empirical methods that draw on observation or experiment; (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for

random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

A-3. What is “problem solving/response to intervention and instruction”?

“Problem solving/response to instruction/intervention,” commonly referred to as PS/RtI, is a multi-tiered system of supports designed to provide high-quality instruction and intervention matched to student needs, using learning rate over time and level of performance to inform instructional decisions. It involves the systematic use of assessment data to inform instructional decisions and efficiently allocate resources to improve learning for all students. The core characteristics that underpin all PS/RtI models are as follows:

- High-quality, research-based instruction provided to students in the general education setting
- Continuous monitoring of student performance
- Screening of all students for academic and behavioral problems
- Multiple levels or tiers of instruction that are progressively more intense and based on the student’s response to instruction
- Implementation of a problem-solving method across all levels or tiers

Across the multiple tiers of support, a problem-solving process that includes the following steps is used to inform instruction and the development of interventions:

- Define the problem by determining the discrepancy between what is expected and what is occurring. Ask, “What’s the problem?”
- Analyze the problem using data to determine why the discrepancy is occurring. Ask, “Why is it taking place?”
- Establish a student performance goal, develop an intervention plan to address the goal, describe how student progress will be monitored, and identify how integrity of implementation will be ensured. Ask, “What are we going to do about it?”
- Monitor student response to the intervention, and use the progress-monitoring data to evaluate the effectiveness of the intervention. Ask, “Is it working?” If not, how will the intervention plan be adjusted to better support the student’s progress?

Additional information and resources, including the *Florida Department of Education Statewide Response to Instruction/Intervention (RtI) Implementation Plan*, are available at <http://www.florida-rti.org/RtI.pdf>.

B. General Education Intervention Procedures

B-1. Who should be on a team involved in the PS/RtI process?

The composition of any team engaged in problem solving will vary based on the student in question and the specific nature of the concerns. A problem-solving team should include personnel knowledgeable about the student; grade-level academic and behavioral expectations; academic and behavioral interventions; the problem-solving process, including data collection and screening; progress monitoring; and diagnostic assessments. The core membership of the PS/RtI team should include the parent(s) of the student, a school administrator such as the principal or assistant principal, and, depending upon the specific area of concern, school or district staff such as general and special education teachers; reading, math, and behavior specialists; school-based student services personnel; and PS/RtI, positive behavior support (PBS), and data specialists.

When determining appropriate participants, it is important to remember that this is the **student's** problem-solving team, not the school's or district's team. Any school or district staff knowledgeable about the student should be considered as potential team members or sources of information. For example, special area teachers, bus drivers, or family members other than the parents may be able to provide critical information regarding a specific student or situation. Related service providers who are not currently working with a student but who have experience in the targeted skill area would be valuable contributors as the team identifies potentially effective interventions. The school-based leadership team can help identify appropriate team members.

B-2. Must a district involve parents in the development and implementation of these general education interventions?

Yes. Rule 6A-6.0331(1)(a), F.A.C., states that:

Opportunities for parents to be involved in the process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent of the student's responses to interventions, supporting data and potential adjustments to the interventions and of anticipated future action to address the student's learning and/or behavioral areas of concern. Documentation of parental involvement and communication must be maintained.

Parent involvement increases the effectiveness of both academic and behavioral interventions. Assistance and input should be solicited from a student's parents as soon as difficulties are evidenced. Communicating with parents on a regular basis facilitates collaboration between home and school. Providing parents with student data enables them to better understand why particular interventions are needed; when, how, and by whom they are being implemented; and how their child is responding to those interventions. When parents have this type of information, they can more effectively support school-based interventions with home-based interventions and supports.

B-3. What is the role of PS/RtI in the general education procedures required under Rule 6A-6.0331, F.A.C.?

The general education intervention requirements found in Rule 6A-6.0331(1)(e), F.A.C., reflect a PS/RtI framework for the development, implementation, and monitoring of general education interventions. Evidence-based interventions are developed and implemented by a school-based team using student performance data and a systematic problem-solving process. As part of the process, the team may request that qualified professionals conduct screenings, diagnostic evaluations, progress monitoring, and other assessments to inform the development of effective academic or behavioral interventions that promote and support success in the general education environment. The school-based team engaged in problem solving at the individual student level should maintain documentation of the problem-solving process and intervention implementation, the student's response to intervention, intervention intensity and fidelity, parent participation and input, classroom observations, review of existing data (including attendance), and any screenings or diagnostic evaluations conducted.

B-4. Who is responsible for implementing the general education interventions?

The school staff members responsible for implementing interventions will depend on the nature of the intervention and the level of support that the student needs. Teachers, paraprofessionals, and other support staff may deliver interventions for which they have adequate training and experience. As a general rule, the qualifications and training of implementers should match the level of student need. Only highly effective teachers, educational specialists, or other staff members with training and expertise in the specific intervention procedures should provide intensive, individualized interventions.

B-5. What is meant by the requirement in Rule 6A-6.0331(1)(e), F.A.C., that general education interventions "...be implemented as designed for a reasonable period of time and with a level of intensity that matches the student's needs"?

Delivery of instruction or an intervention in the way in which it was designed is often referred to as "fidelity" or "integrity of implementation." Implementing an intervention with fidelity includes both adherence to the intervention's core content components and competent execution using accomplished clinical and teaching practices. It is important to note that the concepts of fidelity and integrity of implementation also apply to screening and progress-monitoring procedures conducted when following an explicit decision-making model. Within a PS/RtI framework, fidelity is important at both the school level (implementation of the problem-solving process) and the teacher level (implementation of instruction and progress monitoring). It is important to note that the purpose of measuring fidelity is not to evaluate the individual implementing the intervention but rather to increase the likelihood of a positive student response. The PS/RtI team should consider and include in the implementation plan the support needed for the intervention to be implemented with fidelity.

In addition, instructional strategies and interventions must be delivered for a “reasonable period of time” (i.e., of sufficient duration to allow the team to gather adequate data to determine effectiveness). The determination of what is a reasonable period of time cannot be established arbitrarily but must be decided individually based on a number of factors, including discrepancy in the student’s level of performance and rate of progress in comparison with peers, intensity of the intervention, duration of implementation in a standard intervention protocol, and rate of progress that can realistically be expected.

Interventions can vary in their “level of intensity” across multiple dimensions, including length of intervention sessions (e.g., five minutes, 60 minutes), frequency (e.g., twice per day, once per week, every 30 minutes), and duration (e.g., three weeks, one grading period). In addition, some interventions are more intense than others (e.g., specialized instruction in targeted skills delivered one-on-one or to a small group of students vs. additional instructional time in the core curriculum delivered to a class of students).

Interventions matched to the individual needs of the student implemented with fidelity and appropriate intensity for a sufficient period of time are critical to an effective PS/RtI framework.

B-6. How is fidelity of implementation evaluated and documented?

Although there is no established or required method for evaluating and documenting intervention fidelity or integrity, it should be verified through multiple approaches that may include direct observations, self-reports, student work, etc. Any member of the problem-solving team may complete observations to support the individual implementing the intervention. In addition to observations, permanent products and completed checklists may assist in evaluating and documenting both treatment fidelity and the integrity of the problem-solving process. When developing intervention plans, teams should include a schedule of actions to take to verify fidelity and provide support to the individual(s) designated to implement the intervention.

B-7. What should be done if it is determined that an intervention is not being implemented with fidelity?

The PS/RtI process relies upon a team’s ability to make informed decisions based on the relative effectiveness of a given intervention. If a student’s response is questionable or poor, the team must be able to determine if that response reflects the effectiveness of the intervention. If the intervention was not implemented as intended, the team cannot make this determination. If an intervention has not been implemented with fidelity, the team should identify the barriers to implementation and modify the intervention and support to increase fidelity. Supports for fidelity, such as training or coaching, should be included in the intervention plan, provided early in the process, and monitored on an ongoing basis.

For example, assume that a reading curriculum is designed to be implemented in groups of no more than five students, in 30–40 minute sessions, five days per week. If a student is exposed to that curriculum, implemented as designed, for a reasonable period of time

and limited or no progress is made, the team may reliably determine that this intervention is not effective for this student. In contrast, if the group is made up of 10–12 students with instruction provided only three days per week, and the student does not make progress, the team has no way of knowing whether the curriculum is effective. It was not implemented with fidelity, and as a result, the data on which decisions are based will not be valid or reliable. In the latter case, the team must make appropriate adjustments to the scheduling and assignment of students to the reading group or identify an alternative intervention that targets the area of concern and can be implemented with fidelity.

B-8. Is there a specific amount of time the district should implement general education interventions prior to referring a student for evaluation or determining a student’s eligibility for exceptional student education (ESE) services?

No. In response to a request that the regulations implementing IDEA include definitions of “appropriate period of time” and “adequate progress,” the U.S. Department of Education, Office of Special Education Programs (OSEP) responded that:

Instructional models vary in terms of the length of time required for the intervention to have the intended effect on a child's progress. It would not be appropriate for the Department to establish timelines or the other requirements proposed by the commenters in Federal regulations, because doing so would make it difficult for LEAs to implement models specific to their local school districts. These decisions are best left to State and local professionals who have knowledge of the instructional methods used in their schools. (71 Federal Register [Fed. Reg.] 46658)

It is not appropriate to establish or require minimum or maximum time limits for interventions to be implemented. The length of time necessary for a student to respond to an intervention will vary as a function of the age or grade of the student, the targeted skill area, and the complexity of the targeted skill. If the measure is sensitive to changes in growth and there are enough data points to establish a reliable slope or trend line, response to a specific intervention can be determined in a relatively short period of time. Other interventions or measures may require a longer period.

If a student or group of students evidences a positive response to intervention at a rate likely to result in the attainment of grade-level standards, then the intervention should be continued. If a student is improving, but not at a rate necessary to ultimately reach grade-level standards, then increasing the intensity of the intervention is indicated. If a student is evidencing a poor response to intervention, the school-based team should return to the problem-solving process to identify adjustments or alternative interventions. Ultimately, response to intervention will determine the length of time that a student or group of students should be exposed to interventions.

It is important to note that the PS/RtI process does not end when the student is referred for evaluation or determined to be eligible for ESE services. Instead, the student’s progress and response to intervention/instruction will continue to be monitored to support

data-based decision making regarding the interventions, instructional strategies, or services provided to the student.

B-9. Who is responsible for determining whether an intervention has an adequate level of intensity? How is this done?

The problem-solving team determines the level of intervention intensity required based on the student's response data. There is no established criterion or formula for identifying the appropriate level of intensity for an intervention. The team must review the relevant data and determine, on a case-by-case basis, the extent to which the intensity of an intervention is appropriate and effective. The team is responsible for ensuring that the intervention is clearly defined and linked to the identified concern or skill deficit, that the individual implementing the intervention is appropriately trained and supported, and that the intervention is being delivered as designed. If the intervention is not being delivered as designed, more support should be provided to the staff involved. If the intervention does not result in sufficient improvement, the intervention should be revised, modified, or intensified.

B-10. When communicating the student's response to instruction or intervention to parents in accordance with Rule 6A-6.0331(1)(e), F.A.C., what are some examples of an "understandable format"?

Data-based decision making requires the team to analyze objective, quantitative data reflecting learning rate or progress and level of performance to evaluate student response to a given intervention. A graphical representation is a very effective method for presenting that data to parents, students, and education professionals involved in a problem-solving process. Through its visual impact, a graphical representation quickly and clearly conveys the degree to which the student has responded to an intervention by answering the question "Is the slope going up, going down, or remaining flat?" The reviewer cannot as easily process and interpret a series of documents or a list. Because they clearly illustrate the student's performance, graphical representations support the team as it makes objective, data-based decisions and discourages the team from making subjective decisions based on perceived progress.

For some types of qualitative data, a narrative report may be an appropriate method of communicating the student's response to intervention or instruction. Narrative representations also must be data-based and include the evidence of the student's response, comparison of the student's performance to relevant benchmarks, expected performance, and group comparisons.

B-11. How often should data be collected and over what period of time?

Data collection should match the nature and severity of the problem and the intensity of the instruction/intervention. Students receiving supplemental (tier 2) interventions may be monitored biweekly or even monthly. In contrast, students receiving intensive,

individualized interventions (tier 3) will be monitored more frequently (e.g., weekly) until sufficient data points are gathered to obtain a reliable slope.

B-12. How often should the student’s response to intervention/instruction be communicated with parents?

In accordance with Rule 6A-6.0331(1)(a), F.A.C., “...there must be discussion with the parent of the student’s responses to interventions, supporting data and potential adjustments to the interventions and of anticipated future action to address the student’s learning and/or behavioral areas of concern. Documentation of parental involvement and communication must be maintained.” Therefore, data-based documentation of a student’s response to instruction/intervention should be communicated to parents in an understandable format each time the problem-solving team uses the data to make decisions. This communication may occur through parent participation in PS/RtI team meetings, parent-teacher conferences, telephone calls, e-mail messages, notes home, or any other mode of communication.

B-13. Are general education interventions continued for students who demonstrate need for supplemental (tier 2) or intensive (tier 3) interventions but don’t qualify for special education services?

Yes. Approximately 15–20 percent of students will need additional support to make adequate progress. The majority of these students will not be identified as eligible for services as a student with a disability, and problem-solving teams will continue to focus on solutions for these students through general education resources.

B-14. Can districts use funds received under Part B of IDEA to implement general education interventions for students who have not yet been evaluated and found eligible?

Yes. Rule 6A-6.0331(1)(g), F.A.C., allows school districts to use up to 15 percent of their Part B funds to develop and implement coordinated early intervening services (CEIS) for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. CEIS funds must not be used for students who have already been found eligible for ESE services. CEIS funds may be used to implement interventions that are aligned with activities funded by and carried out under the ESEA as long as they supplement, and do not supplant, ESEA funds.

In addition to funds allocated to CEIS, 34 CFR §300.208(a) addresses the issue of incidental benefit to nondisabled students by stating that IDEA Part B funds can be used “...for the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individual educational plan (IEP) of the child, even if one or more nondisabled children benefit from these services.”

B-15. Can an ESE teacher or service provider implement a tier 3 intervention for a student who has not been found eligible for ESE services?

Section 1003.57(1)(b), Florida Statutes (F.S.), states that a student “may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by the rules of the State Board of Education.” In addition, 34 CFR §300.300(b) states that the school district “must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.”

When a PS/RtI team determines that a struggling student needs a specific intervention, the team also should develop an implementation plan that identifies who will implement it, how it will be implemented, and when and where it will be implemented. With few exceptions, interventions are provided in the general education environment through the use of supports available through general education resources. However, if an intervention requires specialized training or knowledge and a given ESE teacher or service provider is the only staff member available with the required skills, it would be reasonable to have that individual implement the intervention.

C. Coordinated Early Intervening Services (CEIS)

C-1. Are districts required to use CEIS funds to develop and implement general education interventions?

In general, districts *may* voluntarily use up to 15 percent of Part B funds for CEIS activities. However, when a district has significant disproportionality based on race or ethnicity with regard to identification, placement, and disciplinary action, the district *must* reserve the maximum amount allowable (i.e., 15 percent) to provide services targeting students in those groups that were significantly overidentified. (34 CFR §300.646)

C-2. What services can be provided under CEIS? Can it be used for services such as physical or occupational therapy or for assistive technology?

In accordance with 34 CFR §300.226(b), allowable CEIS activities include:

- Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software
- Educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction

When providing CEIS, it is important to remember that these funds may only be used for nondisabled students who need supplemental or intensive interventions (tiers 2 and 3) in addition to the core curriculum (tier 1). Decisions regarding the provision of early intervening services, including the specific personnel to provide the services and the

instructional materials and approaches to be used, will be based on the circumstances and identified needs of the students. Nothing in IDEA or its implementing regulations prevents districts from including related services personnel in the development and delivery of educational and behavioral evaluations, services, and supports for teachers and other school staff to enable them to deliver coordinated early intervening services.

C-3. Does Part B funding for CEIS include services for prekindergarten students?

No. In accordance with 34 CFR §300.226(a), early intervening services are for children in kindergarten through grade 12, with a particular emphasis on children in kindergarten through grade three.

C-4. What are the reporting requirements for districts that use CEIS?

In accordance with 34 CFR §300.226(d), the state is required to report to the U.S. Department of Education the following information:

- The number of children who received services under CEIS within a fiscal year
- The number of children who received services under CEIS and subsequently (within two years) received special education and related services under IDEA

Therefore, districts must report by student through the automated student database those students who received CEIS funded through IDEA, Part B. This information is reported in survey 5 using the fund source data element.

Refer to the most recent *Database Manual* for updated information regarding this and other data elements. These manuals are accessible via the FDOE website at <http://www.fldoe.org/eias/dataweb/default.asp>.

D. Consent for Evaluation

D-1. What does “consent” mean in reference to a parent providing consent under IDEA and Rule 6A-6.0331, F.A.C.?

In accordance with 34 CFR §300.9 and Rule 6A-6.03411(1)(g), F.A.C., consent means that:

- The parent has been given all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication
- The parent understands and agrees in writing to the activity for which his or her consent is sought
- The parent understands that granting consent is voluntary on the part of the parent and may be revoked at any time
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked)

The school district must obtain informed, written consent from a parent whenever it proposes to conduct an evaluation or reevaluation to determine if a student is an eligible student with a disability and before the initial provision of special education and related services to the student. To ensure that the parent's consent is "informed," the district must give prior written notice of its proposal that includes the following:

- A description of the action proposed or refused by the district
- An explanation of why the district proposes or refuses to take the action
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action
- A statement that the parents of a student with a disability have protections under the procedural safeguards and the means by which a copy of the procedural safeguards can be obtained, unless this notice is an initial referral for evaluation and a copy of the procedural safeguards is provided with it
- Sources for parents to contact to obtain assistance in understanding the notice
- A description of other options that the district considered and why those options were rejected
- A description of other factors that are relevant to the district's proposal or refusal

Thus, for the parent to provide informed consent, the written notice of the district's proposal must include a description of the evaluation procedures the district proposes to use, including progress-monitoring data to be collected as well as the areas to be assessed through administering formal instruments. (34 CFR §300.503; Rules 6A-6.0331(4)(a) and 6A-6.0331(1), F.A.C.)

D-2. When must informed, written consent be obtained?

Parental consent for an evaluation is required before the district conducts an initial evaluation to determine whether a student is eligible for special education and related services. Within an on-going PS/RtI process there may come a time when the student's response to intervention leads the team to suspect that the student might need special education and related services. In accordance with Rule 6A-6.0331(3)(b), F.A.C., the team **must promptly request parental consent to conduct an initial evaluation to determine eligibility for special education:**

- (1) When the student's response to interventions indicates that intensive interventions are effective but require a high level of intensity and resources to sustain growth, measured relative to state-approved, grade-level benchmarks or standards or relative to behavioral expectations, or performance (this is empirically established by fading the intervention and measuring student response).
- (2) When the student's response to interventions indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions.
- (3) Whenever a parent initiates a request for an initial evaluation. If, upon review of the parent's request, the district determines an evaluation is not appropriate, the parent must be provided with written notice of the district's refusal to conduct the evaluation.

Consent is required whenever the district proposes to conduct assessment procedures for the purpose of determining eligibility for special education and related services; therefore, once the team suspects a disability, consent is required for **any** subsequent assessment procedure, including the collection of additional progress-monitoring data.

D-3. Is informed, written consent required to administer assessments or collect data used to inform general education interventions?

It is the **purpose** for which the data are being collected, not the **nature** of the assessment or data collection procedures, which drives the need for parental consent. In accordance with Rule 6A-6.0331(1), F.A.C.:

It is the local school district's responsibility to develop and implement coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment. In implementing such procedures, a school district may carry out activities that include the provision of educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction...

Screening to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services; therefore, informed consent of the parent **is not required**. (34 CFR §300.302; Rule 6A-6.0331(1)(d), F.A.C.)

For example, consent is not required if a PS/RtI team determines that a diagnostic or functional assessment, including a functional behavioral assessment (FBA), is required to develop an effective strategy for a struggling student with no expectation of potential ESE eligibility, as the purpose is to inform instructional or intervention decisions. However, Rule 6A-6.0331(1)(a), F.A.C., requires that parents be afforded opportunities for involvement in the process to address their child's need for academic interventions. Therefore, parents should be informed and aware of the nature and purpose of activities conducted through the PS/RtI process and, in the example above, should be key participants in the FBA process.

If assessments or screenings are administered to help the PS/RtI team identify appropriate general education interventions and the student is later referred for an evaluation, any screening and diagnostic data gathered during general education interventions become part of the "existing data" that the group of qualified professionals reviews when determining eligibility.

D-4. Is informed, written consent required to conduct vision and hearing screenings?

No. Rule 6A-6.0331(1)(d), F.A.C., states that vision and hearing screenings:

...shall be conducted for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress . . . 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 for eligibility for special education and related services.

However, if the screenings were not conducted **prior to** the student's referral for evaluation (e.g., the parent requests an evaluation prior to the completion of general education interventions or the PS/RtI team seeks an immediate evaluation in accordance with Rule 6A-6.0331(3)(a)2, F.A.C.), they would be considered a component of the evaluation itself and therefore should be reflected in the prior written notice provided to parents when obtaining consent for evaluation.

D-5. Can a parent provide informed, written consent for some parts of an evaluation but not others?

No. Although the district's written notice must include a description of the proposed evaluation procedures, which may include multiple types of assessments, the proposal itself reflects the single action of conducting a comprehensive evaluation. Therefore, the parent provides consent or refuses consent for the evaluation as a whole. As part of an initial evaluation, the team, including the parent, must review existing data on the student and, based on that review, identify what additional data are needed to determine eligibility and the nature and extent of the student's special education needs. The team must ensure that the evaluation identifies all of the student's special education and related services needs in addition to establishing the presence or absence of a disability. (34 CFR §300.304(c)(4) and (6); Rule 6A-6.0331(5), F.A.C.)

If there is disagreement between a parent and the district regarding the nature of the evaluation procedures, this must be addressed in the written notice provided to the parent. The notice requirements (see D-1) include a description of the sources of information used as a basis for the district's evaluation proposal as well as a description of any other options considered and refused. As a member of the team, the parent's wishes regarding the evaluation process would be addressed in the relevant sections of the district's written notice of proposal to evaluate. Similarly, if a parent asks for additional assessment instruments to be administered or areas of concern to be addressed **after** consent for evaluation has been provided (based on the district's original evaluation proposal), and the team of professionals does not believe the request is warranted, the district would provide a separate notice of refusal regarding the parent's new request.

D-6. Can a student be determined eligible for ESE services without informed, written consent for evaluation from the parent?

Policy guidance from the U.S. Department of Education, Office of Special Education Programs states that parental consent for an evaluation is not required if the team of qualified professionals determines that existing data are sufficient to establish the existence of a disability and educational need without conducting further evaluation procedures (Letter to Copenhagen, October 19, 2007). OSEP's guidance reflects the U.S. Department of Education's belief that a review of existing data would be sufficient to

determine disability and need **in limited circumstances**. Examples of when consent to evaluate would not be required include, but are not limited to, the following:

- A child transitioning from Part C Early Steps to Part B services for whom the assessment data Early Steps provided are sufficiently comprehensive to make an eligibility decision
- A student for whom comprehensive evaluation data are available as a result of treatment received in a rehabilitation center

If a team concludes that existing data are sufficient to determine both the presence of a disability and the educational needs of the student, the parent must be given the opportunity to request further assessment even if the public agency determines that no additional assessment data are needed. As welcomed participants engaged in problem solving and educational planning, parents should always be aware and informed of proposed actions. The 60-day timeline from consent to completion of the evaluation does not apply if the evaluation is based on review of existing data, as parent consent is not obtained. In these situations, the eligibility determination must occur promptly.

D-7. If the parent does not provide informed, written consent for an initial evaluation, must the school district pursue an evaluation through mediation or due process procedures?

In the case of an initial evaluation of a student who is enrolled in or is seeking enrollment in a public school, the district **may, but is not required to**, pursue mediation or file a request for a due process hearing to obtain consent for evaluation. In the case of a home education or private school student, the district **may not** use mediation or due process procedures to obtain parental consent. The district does not violate its child find or evaluation obligations if it declines to pursue the evaluation. (34 CFR §300.300(d)(4)(i); Rule 6A-6.0331(4)(e), F.A.C.)

E. Referral and Evaluation

E-1. Are general education interventions *always* required before a school district can refer a school-age student for an evaluation?

No. In accordance with Rule 6A-6.0331(1), F.A.C., districts are not required to implement general education interventions and observations prior to referring a student for evaluation under the following circumstances:

- The student is suspected of being gifted
- The student is being considered for eligibility as a student who is homebound or hospitalized
- The student is not enrolled in public school (i.e., the student is enrolled in a private school or in a home education program)

In addition, the general education intervention requirements related to parent involvement, observations, and evidence-based interventions are not required if the team of qualified professionals and the parent determine that the nature or severity of the

student's area of concern make the procedures inappropriate to address the immediate needs of the student. (Rule 6A-6.0331(3)(a)(2), F.A.C.)

E-2. Must general education interventions be implemented prior to referring a prekindergarten child for an evaluation?

No. General education interventions are not required for a prekindergarten student prior to a referral for evaluation. Rule 6A-6.0331(2), F.A.C., states that, "For children who are below mandatory school attendance age and who are not yet enrolled in kindergarten, the activities specified in subsection (1) of this rule are not required." However, there must be a review of existing data. If the child has participated in a formal educational program, information regarding the child's performance and response to instruction/intervention in that setting should be included in the review.

The exception in Rule 6A-6.0331(2), F.A.C., regarding general education interventions for prekindergarten-age children applies only to activities conducted prior to referral for evaluation. In contrast, for some disabilities (i.e., specific learning disabilities, emotional/behavioral disability), a process based on the student's response to scientific, research-based intervention is a critical component of the evaluation itself. Refer to Rules 6A-6.03011 through 6A-6.03019, 6A-6.03020 through 6.03027, and 6A-6.03030, F.A.C., for specific evaluation and eligibility requirements.

E-3. What is the district's obligation when a parent requests an evaluation while the PS/RtI team is implementing general education interventions?

As participants in the PS/RtI process, parents should be involved in planning the types of interventions being implemented; why those particular interventions are needed; when, how, and by whom they are being implemented; and how their child is responding to those interventions. However, if the parent requests that an evaluation be conducted, the district must obtain consent and complete the evaluation within the 60-day timeline. (Rule 6A-6.0331(3)(b)1. and 2., F.A.C.; 34 CFR §§300.301(b) and 300.309(c)(2))

As a fundamental component of a comprehensive evaluation, the PS/RtI process would continue. Based on the areas of concern and additional information the team needs, one or more standardized, norm-referenced assessments may be administered. In some cases, standardized assessment will not be required, and multiple sources of formative assessment data used within the PS/RtI process, including review of existing data, will comprise the comprehensive evaluation.

If the district determines that there is a compelling reason to refuse the parent's request for evaluation, the parent must be provided a written notice of refusal that includes an explanation of why the district is refusing to conduct the evaluation; a description of each evaluation procedure, assessment, record, or report that the district used as a basis for its refusal; a description of other options considered and why they were rejected; and any other factors relevant to the district's decision. (Rule 6A-6.0331(3)(b)3., F.A.C.; 34 CFR §300.503)

E-4. Can the district require that the parent of a private school or home education student provide information regarding the student’s response to instruction or intervention in the student’s current setting, prior to accepting the parent’s request for evaluation?

No. The parent of a private school or home education student may request an evaluation and potentially provide no other data regarding the student’s response to intervention in the current setting. The district’s obligation to ensure general education interventions are implemented **prior to referring a student for evaluation** does not apply to students enrolled in private schools or home education programs. (Rule 6A-6.0331(1), F.A.C.)

E-5. What is meant by the term “sufficiently comprehensive” with regard to an evaluation?

Neither IDEA nor State Board of Education rules require that specific types of evaluation procedures or specific tests be administered to all students. However, both 34 CFR §300.304(c)(6) and Rule 6A-6.0331(5)(g), F.A.C., require that evaluations are “sufficiently comprehensive” to identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student is classified. Therefore, an evaluation that only identifies the existence of a disability would not be considered sufficiently comprehensive.

In accordance with Rule 6A-6.0331(5), F.A.C., the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information from the parent, to determine whether the student is eligible for ESE and the content of the student’s IEP or educational plan (EP). The district must not rely on a single measure or assessment and must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Many types of assessment procedures contribute to a comprehensive evaluation. For a student suspected of having a disability, a comprehensive evaluation includes all the existing information on the student (e.g., graphic representations of the student’s rate of progress and level of performance; observations; reports; parent input; and local, state, and district assessments) as well as any additional assessments that the group of qualified professionals and the parent deem necessary to identify the special education needs of the student and determine whether a student is a student with a disability. A group of qualified professionals and the parent determines the type of additional information needed on a student-by-student basis, taking into consideration the requirements of Rules 6A-6.03011 through 6A-6.03019, 6A-6.03020 through 6.03027, and 6A-6.03030, F.A.C.

E-6. How is PS/RtI implemented with students enrolled in private schools or home education programs?

Once a parent requests an evaluation and consent is received, the district should collaborate with the parents and private school personnel, as appropriate, to gather any

information that may be available. The group of qualified individuals must make decisions about what additional data are needed—including standardized assessment or progress-monitoring data and how best to collect it—to determine whether a student is a student with a disability in need of special education and related services. School districts include in their ESE Policies and Procedures (SP&P) documents a description of their referral procedures for school-age students not enrolled in the public schools. Those procedures often incorporate methods for identifying and obtaining relevant data, including progress-monitoring data that can be used to inform the PS/RtI process. As with any evaluation, the team must complete the evaluation within the established timeline (i.e., 60 school days of which the student is in attendance), and determine, based on the available data and the criteria established in the relevant State Board of Education rules, whether the student has a disability and needs special education and related services.

Because of the unique nature of the PS/RtI framework, districts must ensure that all reasonable effort is directed toward communicating and working with home education parents and private school staff to obtain the required information regarding the nature of interventions implemented by the private school or parents and the students' response to those interventions. In the event that a private school or parent is unable or unwilling to assist in the process or provide the information necessary to meet the evaluation and eligibility requirements for a given disability, despite reasonable efforts by the district to provide support or obtain the information in other ways, the team may decide that there are not sufficient data to determine eligibility. In that case, the student would be determined to be ineligible for ESE services.

E-7. What personnel are qualified to conduct evaluations?

The district's ESE policies and procedures document (SP&P) and publishers' administration manuals provide guidance on the qualifications required for individuals conducting evaluations, which will vary depending on the specific action being taken or instrument being administered. In addition to being appropriately licensed or certified, evaluation specialists must be trained and knowledgeable about diagnostic assessment in general, and knowledgeable about the specific procedures or instruments being used. Examples of professionals qualified to conduct evaluations include physicians, school psychologists, psychologists, speech-language pathologists, teachers, reading specialists, audiologists, and social workers. (Rules 6A-6.0331(3)(c) and 6A-6.03018, F.A.C.)

Specific requirements include the following:

- Only psychologists or school psychologists qualified in accordance with Rule 6A-4.0311, F.A.C., or licensed under Chapter 490, F.S., are qualified to administer tests of intellectual functioning.
- Standardized assessment of adaptive behavior must include input from the parent regarding their child's adaptive behavior.
- In circumstances where the student's medical care is provided by a physician licensed in another state, at the discretion of the district administrator for ESE, a

report of a physician licensed in another state may be accepted for the purpose of evaluation and consideration of eligibility as a student with a disability.
(Rule 6A-6.0331(3)(c), F.A.C.)

E-8. If a student exhibits difficulty in one academic area (e.g., math), but not in another (e.g., reading comprehension, written expression), must the evaluation address all academic areas?

No. The student must be assessed in all areas of suspected disability. In this example, the team may suspect that the student has a learning disability in math, but has no evidence to suggest that the student has a learning disability in any other area listed in Rule 6A-6.03018(4)(a)1., F.A.C. (e.g., reading comprehension, written expression). Targeted interventions would be implemented in the identified area(s) of concern and the team would collect progress-monitoring data on the student's response to those interventions prior to conducting an evaluation. If a given area is not of concern, then interventions addressing that area would not be implemented, and it would not be considered as an area of disability. (34 CFR §300.304(b)(4); Rule 6A-6.0331(5)(f), F.A.C.)

Note, however, that Rule 6A-6.0331(5)(g), F.A.C., states that the student must be evaluated in all identified areas of need, even those not directly related to the suspected disability. In this example, if the team hypothesized that the student's difficulties in math might be related to problems with oral listening or reading comprehension, attention, or behavioral issues, then the evaluation must address these related areas as well.

E-9. What is the timeline for completing an initial evaluation?

For students enrolled in school, the initial evaluation to determine if the student has a disability must be completed within 60 school days of which the student is in attendance after the school district receives parental consent for an evaluation. The determination of whether a student is "in attendance" must be made consistent with school board policies implementing Rule 6A-1.044, F.A.C., which requires the reporting of students' attendance. For prekindergarten children, the evaluation must be completed within 60 school days from receipt of consent. (Rule 6A-6.0331(3)(d), F.A.C.)

The 60-day timeline for evaluation does not apply if any of the following occurs:

- The parent repeatedly fails or refuses to produce the student for the evaluation
- The student enrolls in a school served by the school district after the timeline has begun and prior to an eligibility determination, if the current school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent agrees to a specific timeline for completion
- For a student suspected of having a specific learning disability, the student's parent or guardian and a group of qualified professionals agree in writing to extend the timeline

(Rule 6A-6.0331(3)(e), F.A.C.)

E-10. Does the 60-day timeline apply to the evaluation of students for eligibility for gifted education?

No. Rule 6A-6.0331(3)(f), F.A.C., requires that evaluations of students suspected of being gifted must be completed within a reasonable period of time. Districts specify in their SP&Ps the target timelines for the evaluation of students suspected of being gifted.

E-11. Does the 60-day timeline apply to students who transfer from out of state for whom the district had determined that evaluation is necessary to determine eligibility in Florida?

No. If the district decides that an evaluation is necessary to determine whether the student is an eligible exceptional student, this is considered an initial evaluation in the sense that the student must meet the initial eligibility criteria under one or more of Rules 6A-6.03011 through 6A-6.03019, 6A-6.03020 through 6.03027, and 6A-6.03030, F.A.C. However, the timeline for completion of an initial evaluation does not apply, and these students are not reported in the 60-day timeline data submitted annually to the Bureau of Exceptional Education and Student Services. (34 CFR §300.323(f)(1); Rule 6A-6.0334(2)(a), F.A.C.)

The district must, however, provide a free appropriate public education (FAPE) to a transferring exceptional education student through the implementation of the out-of-state IEP or EP, or the provision of comparable services, until the district conducts an evaluation, if necessary, and develops, adopts, and implements a new IEP or EP. The purpose of the 60-day timeline for initial evaluations is to ensure that students with disabilities are identified in a timely manner to receive FAPE. For out-of-state transfer students, services that are the same as or comparable to those on the out-of-state IEP are provided immediately upon enrollment.

E-12. How is the “evaluation completion date” determined for the purpose of meeting the required timeline and for reporting in the Automated Student Information System?

The “evaluation completion date” is defined in the *2010–11 Database Manual* for the Automated Student Information System as “the date all applicable initial evaluation procedures prescribed in Rules 6A-6.03011 through 6A-6.03019, 6A-6.03020 through 6.03027, and 6A-6.03030, F.A.C., are completed for the purpose of determining a student’s eligibility for each special education program.” For most students, this will be the date of the last standardized norm-referenced assessment, observation, progress-monitoring data collection, or other evaluation procedure. However, if the team determined that existing data were sufficient to establish disability and educational need without conducting further evaluation procedures (see D-6), the evaluation completion date is the date that decision was made.

Refer to the most recent *Database Manual* for updated information regarding this and other data elements. These manuals are accessible via the Florida Department of Education (FDOE) website at <http://www.fldoe.org/eias/dataweb/default.asp>.

E-13. Is a referral for a child transitioning from services under IDEA Part C Early Steps to IDEA Part B considered an initial evaluation or a reevaluation?

The evaluation of a child currently served through Part C Early Steps for the purpose of determining eligibility under Part B is an initial evaluation, not a reevaluation. All consent, evaluation, and eligibility requirements related to an initial evaluation apply, including the 60-day timeline for completion of the evaluation. However, children transitioning from Part C services to Part B services must be evaluated and, if eligible, have an IEP developed and in effect **no later than the child's third birthday**.

The Family Educational Rights and Privacy Act (FERPA) requires that the district obtain consent from the parent to access the child's records from Part C. If the school district decides that the existing data available from Part C Early Steps are sufficient to determine eligibility under Part B, informed, written consent for additional evaluation is not needed. In that case, it is recommended that districts document in the child's file that eligibility was determined based on the review of existing data from Part C, and the team deemed that no further testing was needed. In this case, the 60-day timeline is moot as the timeline addresses the time from consent to completion of evaluation—which in this example is already complete when the child comes to Part B. However, it is important that the eligibility decision be made without undue delay once the parent has provided the release of information.

F. Eligibility

F-1. What factors must be considered in determining a student's eligibility?

A student is eligible for special education and related services if the student has a disability **and** needs special education and related services. The evaluation and eligibility requirements for specific exceptionalities are provided in the relevant State Board of Education rules, accessible online at <https://www.flrules.org/default.asp>. However, a student **cannot** be determined eligible as a student with a disability if the determinant factor is one or more of the following:

- Lack of appropriate instruction in reading, including instruction in:
 - Phonemic awareness
 - Phonics
 - Vocabulary development
 - Reading fluency
 - Reading comprehension strategies
- Lack of appropriate instruction in math
- Limited English proficiency

(34 CFR §300.306; Rule 6A-6.0331(6)(d), F.A.C.)

However, a student who has experienced lack of appropriate instruction or who is an English language learner **can** be determined eligible as a student with a disability if there is sufficient evidence that this is **not** the determinant factor.

F-2. If a student is already eligible for ESE services under one disability category and the team suspects that the student may also be eligible under another disability category, must the student be reevaluated to “add or change” the additional category?

A student should be identified as a student with a disability using the most appropriate category, but this does not mean that the team must identify every possible category under which the student may be eligible. In addition, there is no requirement that a student be eligible under a given category in order to receive specific services. For example, eligibility as emotionally/behaviorally disabled is not required for a student to receive counseling as a related service or to have a functional behavioral assessment conducted and a behavior intervention plan developed.

The *Analysis of Comments and Changes* section of the federal regulations related to enforcement at 71 Fed. Reg. 46737, states that IDEA:

...does not require children to be identified with a particular disability category for purposes of the delivery of special education and related services. In other words, while [IDEA] requires that the Department collect aggregate data on children’s disabilities, it does not require that particular children be labeled with particular disabilities for purposes of service delivery, since a child’s entitlement under the Act is to FAPE and not to a particular disability label.

In accordance with 34 CFR §300.320(a) and Rule 6A-6.03028(3)(h), F.A.C., the IEP must include a description of how the student’s disability affects the student’s involvement and progress in the general curriculum and a statement of annual goals (and short-term objectives or benchmarks, if required) designed to meet the student’s needs resulting from the disability. Therefore, for some students, the team may feel that the current disability category (e.g., speech impaired, other health impaired) does not reflect the primary exceptionality impacting the student’s performance and ability to progress in the general curriculum. In that situation, the team may propose a reevaluation for the purpose of determining eligibility under a different category that more accurately reflects the nature of the disability (e.g., intellectual disability, specific learning disability).

G. Consent for Services

G-1. If the school district has obtained parental consent for evaluation and determined that the student is a student with a disability, can special education services be provided prior to parental consent for the provision of services?

No. A school district may not provide ESE services until they receive parental consent for special education and related services. However, an ESE teacher or other service provider may implement an intervention under certain clearly defined circumstances as part of the PS/RtI process (see C-13). In addition, if the parent refused or has not responded to the district’s request for consent, the district may not use mediation or due

process to obtain consent. In this situation, the district is not considered to be in violation of the requirement to make FAPE available to the student. (34 CFR §300.300(b))

G-2. Can a parent limit consent to certain types of ESE services? For example, can a parent consent to language therapy, but refuse consent for specially designed instruction in reading or for counseling as a related service?

No. The *Analysis of Comments and Changes* section of the federal regulations related to consent at 71 Fed. Reg. 46734, states that:

...we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special education and related services that their child receives. Instead...parents have the right to consent to the initial provision of special education and related services. 'Fully informed,' in this context, means that the parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP.

G-3. Once a parent has provided consent for a student to receive ESE services, can the parent revoke that consent?

Yes. In accordance with 34 CFR §300.300(b)(4), a parent of a student with a disability who has been receiving specially designed instruction and related services may revoke consent for such services. The revocation cannot be for some services but not others. If consent for services is revoked, the district is not considered out of compliance with IDEA for failure to provide FAPE to an otherwise eligible student. The following procedures apply to parental revocation of consent:

- The parent's request for revocation must be in writing.
- The district must provide the parent with prior written notice of change of FAPE/placement before ceasing services.
- The district cannot continue to provide special education and related services to the child.
- The district cannot use mediation or due process procedures to challenge the parent's revocation of consent.
- Revocation of consent constitutes dismissal from ESE services as a student with a disability.
- The district is not required to convene an IEP team or develop an IEP for further provision of special education and related services for the student.
- The district is not required to amend the child's education records to remove any reference to the child's previous receipt of such services.

When a parent of a student with a disability revokes consent for services, the requirements that previously applied solely as a result of the student's status as a student with a disability will no longer apply. Examples include:

- Instructional and testing accommodations available only to students with disabilities will no longer be allowable for the student.

- The procedural safeguards that apply to students with disabilities, including disciplinary protections, will no longer apply to the student.
- The student will not be eligible for a waiver from the Florida Comprehensive Assessment Test (FCAT) graduation requirements or end-of-course examination requirements as a student with a disability or for a special diploma.

G-4. Does parental consent for services as a student with a disability or as a gifted student apply if the student is later found eligible for the *other* type of exceptionality (i.e., disability or giftedness)?

No. IDEA, its implementing regulations, and corresponding state statutes and rules govern ESE services to **students with disabilities**. In contrast, state statutes and rules govern ESE services to **gifted** students; there are no federal requirements. There are differences in the protections and procedural safeguards for these two types of exceptionalities. Therefore, consent for evaluation or services as a student with a disability under IDEA does not apply to evaluation or services as a gifted student, and consent for evaluation or services as a gifted student does not apply to evaluation or services as a student with a disability.

If the parent of a student who is both gifted and has a disability revokes consent for services under IDEA, the revocation does not apply to gifted services. The district retains the obligation to provide services to meet the student's needs related to giftedness.

H. Reevaluation

H-1. When is a reevaluation required?

There is no requirement for reevaluation of a student identified solely as gifted. However, an ESE student with a disability must be reevaluated:

- At least once every three years, unless the parent and the school district agree that no reevaluation is needed
- If the school district determines that the educational or related services needs of the student, including improved academic achievement and functional performance, warrant reevaluation
- If the parent or teacher of the student requests reevaluation

Reevaluation may not occur more than once per year, unless the parent and the school district agree otherwise. (34 CFR §§300.303, 300.304, and 300.305; Rule 6A-6.0331(7), F.A.C.)

H-2. What are the minimum requirements for conducting a reevaluation?

As part of any reevaluation, the IEP team, including the parent, must review existing evaluation data on the student, including current classroom-based, local, or state assessments; observations by teachers and related services providers; and input from the

parent. Based upon that review, the team must decide whether any additional data are needed to determine:

- Whether the student continues to have a disability
- The educational needs of the student
- The present levels of academic achievement and related developmental needs of the student
- Whether the student continues to need special education and related services
- Whether any additions or modifications to the special education and related services are required to enable the student to meet the measurable annual goals set forth in the student's IEP and to participate, as appropriate, in the general curriculum

(34 CFR §300.305(a); Rule 6A-6.0331(7), F.A.C.)

For some disabilities (i.e., deaf or hard-of-hearing, visual impairment, dual-sensory impairment), additional requirements for reevaluation apply in accordance with the corresponding State Board of Education rule. (Rules 6A-6.03013, 6A-6.03014, and 6A-6.03022, F.A.C.)

The IEP team may conduct the review to determine the need for additional data without convening a meeting. However, if a meeting is held for that purpose, the parent must be invited to attend. (34 CFR §§300.305(b) and 300.501(b); Rule 6A-6.03028(3)(b), F.A.C.)

If the IEP team determines that no additional assessment is needed, the district must notify the parent of that decision and the reasons for it, and that the parent has a right to request an assessment. (34 CFR §300.305(d); Rule 6A-6.0331(8)(e), F.A.C.)

H-3. Is informed, written consent from a parent required to conduct a reevaluation?

Informed, written consent is not required for the IEP team to review existing data as part of a reevaluation. If the team determines that additional information is needed (e.g., administration of a standardized assessment, collection of additional progress-monitoring data), the district:

- Must seek parental consent prior to conducting a reevaluation
- May use the consent override provisions of mediation or due process if the parent refuses to provide consent for reevaluation, but is not required to do so
- May conduct the reevaluation without consent of the parent if the district can demonstrate that it made reasonable efforts to obtain consent and the parent failed to respond; in this case, the district must have a record of its attempts to obtain consent (e.g., copies of prior written notice of reevaluation sent to the parents and any responses received)

(34 CFR §300.300(c) and (d)(5); Rule 6A-6.0331(7)(c)-(e) and (8)(g), F.A.C.)

H-4. What is the role of PS/RtI in the reevaluation process?

Because PS/RtI is integrated into the instruction/intervention process for all students, progress-monitoring, intervention fidelity, and response to instruction/ intervention data

should be collected as frequently for ESE students as for general education students, and will be dependent upon the specific interventions and progress-monitoring tools. The PS/RtI data should be part of the existing data the IEP team reviews to decide whether additional information is needed to determine whether the student continues to be a student with a disability in need of special education and related services.

With the exception of deaf or hard-of-hearing, visual impairment, and dual-sensory impairment, the process for conducting a reevaluation is the same for all students with disabilities. Upon review of all relevant existing data, including data collected through progress monitoring, the team must determine what additional information, if any, is needed. Relying on the student-centered data and the problem-solving process, the team may decide that administration of a standardized norm-reference assessment instrument targeting a given area is required, additional progress-monitoring data are needed, or no additional data are required, or make some other decision.

H-5. Is a reevaluation required prior to dismissing a student from ESE services?

The reevaluation process must be followed before determining that a student is no longer eligible for ESE services. In conducting the reevaluation, the IEP team reviews available data and determines whether additional information is needed to determine if the student continues to be a student with a disability in need of special education and related services. **Note:** Reevaluation is not required for a student before the termination of eligibility due to graduation with a standard diploma or exiting from school upon reaching age 22, or if the parent of the student revokes consent for services.

A student must be dismissed from ESE services for students with disabilities if, upon reevaluation, it is determined that:

- The student no longer has a disability
- The student continues to have a disability but no longer needs special education and related services (i.e., the student's needs can be met solely through general education resources)
- The student continues to have a disability but only needs related services and does not need special education services

(34 CFR §§300.8(a)(2) and 300.305(e)(1)-(2); Rule 6A-6.03028(8)(f), F.A.C.; section II.C. of the SP&P)

Dismissal from ESE is considered a change in identification and placement for which prior written notice must be provided. If a student is determined no longer to be eligible under one disability category but is eligible under another, this does not result in dismissal. For example, if upon reevaluation it is determined that a student no longer has a language impairment (LI) but continues to have a visual impairment (VI), the student's eligibility as LI is discontinued, but the student continues to be eligible for specially designed instruction and related services under VI.

H-6. Must general education interventions be implemented prior to referring a student for reevaluation to consider changing or adding an eligibility category?

The school district's obligation to develop and implement coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment applies to students being referred for an *initial* evaluation and, therefore, is not required for reevaluation. However, to ensure that a student is not inappropriately identified as having a given disability, there are situations in which implementation of general education interventions prior to pursuing reevaluation is best practice. For example, if a student identified solely as speech impaired (SI) begins to exhibit academic or behavioral difficulties, PS/RtI procedures addressing the area(s) of concern must be implemented. The decision to refer the student for reevaluation to consider eligibility other than SI would be based on the student's response to instruction and intervention. (Rule 6A-6.0331(1), F.A.C.)

H-7. How are the due dates for reevaluations determined?

Based on the *2010–11 Database Manual* for the Automated Student Information System, reevaluation due dates are established as follows:

- The due date for the first triennial reevaluation is the three-year anniversary date of the last assessment administered or data collected during the initial evaluation process
- The due date for subsequent reevaluations is the three-year anniversary date of the completion of the previous reevaluation process
- “Completion” of the previous reevaluation is defined as:
 - If formal assessment or additional data collection was required (i.e., if parent consent to collect additional data was obtained), the date the last assessment was administered or data was collected
 - If no additional information was required, the date that decision was made

For subsequent school years, refer to the most recent *Database Manual* for updated information regarding this and other data elements. These manuals are accessible via the FDOE website at <http://www.fldoe.org/eias/dataweb/default.asp>.

H-8. Is a school district required to conduct a comprehensive reevaluation for high school students with disabilities requesting accommodations on the American College Test (ACT), on the Scholastic Aptitude Test (SAT), or in college courses?

No. The *Analysis of Comments and Changes* section of the Federal regulations related to 34 CFR §300.305(e)(2) states:

We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities

transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. (71 Fed. Reg. 46644)

Although the district is not required to conduct a reevaluation to determine the student's eligibility for another agency, it must provide a summary of the student's academic achievement and functional performance that includes recommendations on how to help the student meet postsecondary goals. Specific content for the student's summary of performance must be based on the student's individual needs and postsecondary goals, and should facilitate documentation of the student's disability so that eligible students may receive testing accommodations on college entrance examinations. (34 CFR §300.305(e)(3); Rule 6A-6.0331(8)(f), F.A.C.)