

US Department of Education, comments regarding implementation and edits of IDEA 2004, related to the evaluation and timeline. From <http://idea.ed.gov/explore/view/p/.root,regs,preamble2,prepart2,D,1822>,

Procedures for initial evaluation (Sec. 300.301(c))

1. **Comment:** Numerous commenters requested that the regulations clarify when the 60-day timeframe for a public agency to conduct an initial evaluation begins. One commenter requested that the 60-day timeframe include completing both the evaluation and eligibility determination.

Several commenters recommended reducing the timeframe for evaluations from 60 days to 30 days. Some commenters recommended that the 60-day timeframe be 60 school days. A few commenters stated that the timeframe for evaluation should be longer if additional time is required for specific assessments, such as behavioral assessments or other assessments based on scientific practices.

Discussion: It would be inconsistent with the Act to reduce the timeframe from 60 days to 30 days, require the 60-day timeframe to be 60 school days, extend the timeframe for particular types of assessments, or require that the 60-day timeframe cover both the evaluation and determination of eligibility. Section 614(a)(1)(C)(i)(I) of the Act requires an initial evaluation to be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The regulations in Sec. 300.301(c) reflect this requirement.

Changes: None.

2. **Comment:** A few commenters asked whether a State could establish a timeframe of more than 60 days to complete an initial evaluation. A significant number of commenters recommended that if a State establishes its own timeframe within which an evaluation must be conducted, that the timeframe be less, but not more, than 60 days. Several commenters recommended that if a State has its own timeframe for evaluation, the timeframe should be reasonable and "reasonable" should be defined. Some commenters recommended that if a State's timeframe is greater than 60 days, the Department should provide guidance to the State and to parents in that State. One commenter recommended that if a State establishes its own timeframe, the State must offer parents an adequate opportunity to assert their procedural rights.

Discussion: Section 300.301(c), consistent with section 614(a)(1)(C)(i)(I) of the Act, requires an initial evaluation to be completed within 60 days of receiving parental consent for evaluation or, if the State establishes a

timeframe within which the evaluation must be conducted, within such timeframe. The Department declines to require that a State-established timeframe be less than 60 days or to place additional requirements on States with timeframes of greater than 60 days because the Act gives States the authority to establish different timeframes and imposes no restrictions on State exercise of that authority. We believe this is evidence of an intent to permit States to make reasoned determinations of the appropriate period of time in which evaluations should be conducted based on particular State circumstances.

Changes: None.

3. **Comment:** Numerous commenters requested clarification regarding the timeframe to complete an initial evaluation and convene the IEP Team. A few commenters stated that the timeframe from referral to IEP development could be as long as 120 calendar days (30 days from referral to consent; 60 days from consent to the eligibility determination; and 30 days from the eligibility determination to development of the IEP), and recommended that this timeframe be 60 days.

One commenter recommended that public agencies provide consent forms to parents promptly after a referral for evaluation has been made so that the child's evaluation is not delayed. A few commenters asked how promptly an LEA must seek parental consent following a referral for evaluation, and whether an LEA can wait until September to obtain consent if a referral is made in June or July.

Discussion: We cannot change the timeframe for an initial evaluation specified in section 614(a)(1)(C) of the Act. Section 614(a)(1)(C) of the Act requires that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or within the timeframe established by the State. Section 300.323(c) is a longstanding requirement that a meeting be held to develop the child's IEP within 30 days of determining that a child needs special education and related services. We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances.

However, it has been the Department's longstanding policy that evaluations be conducted within a reasonable period of time following the agency's receipt of parental consent, if the public agency agrees that an initial evaluation is needed to determine whether a child is a child with a disability. Likewise, the Department believes that eligibility decisions should be made within a reasonable period of time following the completion of an evaluation.

The child find requirements in Sec. 300.111 and section 612(a)(3)(A) of the Act require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, 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.

If it is determined through the monitoring efforts of the Department or a State that there is a pattern or practice within a particular State or LEA of not conducting evaluations and making eligibility determinations in a timely manner, this could raise questions as to whether the State or LEA is in compliance with the Act.

With regard to the total timeframe from referral to IEP development, this will vary based on a number of factors, including the timing of parental consent following referral for an evaluation and whether a State establishes its own timeframe to conduct an initial evaluation. Given such factors, we do not believe it is feasible to further regulate on this timeframe.

Changes: None.

4. **Comment:** Numerous commenters recommended that an initial evaluation be conducted in an expedited timeframe for children who are homeless or in the custody of a child welfare agency. The commenters stated that public agencies should take into consideration the date on which the child was first referred for evaluation by any public agency.

Discussion: Congress recognized the unique problems homeless children face and included several new provisions in the Act to ensure that homeless children and youth with disabilities have access to the same services and supports as all other children with disabilities. The Department recognizes that the high mobility rates of some homeless children with disabilities (as well as other children, including some children who are in the custody of a State child welfare agency) pose unique challenges when a child is referred for an evaluation, but moves to another district or State before an evaluation can be initiated or completed. In such cases, the Department believes it is important that the evaluations be completed as expeditiously as possible, taking into consideration the date on which the child was first referred for evaluation in any LEA. However, the high mobility rate of these children and their potential range of evaluation needs means that any specific expedited timeframe could be both too long to ensure that all children are evaluated before they move, and too short to be reasonable in all circumstances. There is nothing, however, in Part B of the Act or these regulations that would

prohibit a State from establishing its own policies to address the needs of homeless children, including adopting a timeframe for initial evaluations that is less than 60 days.

5. ***Changes:*** None.