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## Technical Assistance Paper

### Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services

#### Summary:

This technical assistance paper (TAP) revises and replaces existing TAP, DPS: 2011-04; General Education Intervention Procedures, Child Find and the Initial Provision of Exceptional Student Education Services to Eligible Students. This document describes processes related to evaluation, determination of eligibility, reevaluation and the provision of exceptional education services to eligible students. It is based on the requirements of Rule 6A-6.0331, Florida Administrative Code (F.A.C.), General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.

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#### Status:

- New technical assistance paper
- ✓ Revises and replaces existing TAP, DPS: 2011-04; General Education Intervention Procedures, Child Find and the Initial Provision of Exceptional Student Education Services to Eligible Students

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## **Background**

During 2014, the State Board of Education (SBE) adopted revisions to Rule 6A-6.0331, Florida Administrative Code (F.A.C.). The revisions were made in order to:

- Implement statutory requirements that were enacted during the 2013 legislative session. Those changes included new requirements found in section 1003.5715, Florida Statutes (F.S.), Parental consent; individual education plan. Based on those changes, consent from a parent or legal guardian is required prior to placement of a student in an Exceptional Student Education (ESE) center school and instruction in access points and subsequent assessment on the Florida Alternate Assessment.
- Revise Form 31318, Parental Consent-Form Instruction in the State Standards Access Points Curriculum and Florida Alternate Assessment Administration, consistent with statutory changes made during the 2014 legislative session.
- Update language relating to data-based problem solving within a multi-tiered system of supports (MTSS) and the criteria and timelines for school-based problem solving teams with regard to when consent for evaluation must be requested.
- Revise timelines related to the evaluation process for students with disabilities.
- Establish a timeline for completion of an evaluation when a student is suspected of being gifted.

The rule may be found in the appendix and at <https://www.flrules.org/gateway/ruleNo.asp?id=6A-6.0331>.

### **A. Consent for Evaluation**

#### **A-1. What does “consent” mean in reference to a parent or legal guardian providing consent under the Individuals with Disabilities Education Act (IDEA) and Rule 6A-6.0331, Florida Administrative Code (F.A.C.)?**

The parent, legal guardian or school district may initiate a request for an initial evaluation (Rule 6A-6.0331(3), F.A.C.). Regardless of who initiates the request, the school district is responsible for providing the parent or legal guardian with written notice of the evaluation procedures the district is proposing to conduct (Rule 6A-6.0331(4)(a), F.A.C.) so that the parent or legal guardian can provide informed consent.

In accordance with section 300.9 of Title 34, Code of Federal Regulation (CFR) and Rule 6A-6.03411(1)(g), F.A.C., consent means that:

- The parent or legal guardian has been given all information relevant to the evaluation for which consent is sought, in his or her native language or through another mode of communication.

- The parent or legal guardian understands and agrees in writing to the evaluation for which his or her consent is sought.
- The parent or legal guardian understands that granting consent is voluntary on the part of the parent or legal guardian and may be revoked at any time.
- If a parent or legal guardian 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).

A “generic” evaluation consent form does not provide the parent or legal guardian with sufficient data to provide informed consent. The consent should identify the broad evaluation categories or areas of assessment but NOT the specific evaluation instruments as this should be left to the discretion of the evaluation specialist.

Identifying the suspected areas of disability as part of the evaluation planning process is congruent with the IDEA as the team cannot propose a “full and individual” evaluation that assesses all areas related to the suspected disability without identifying the suspected areas of disability.

**A-2. When must informed written consent be obtained and what timeline applies?**

In accordance with Rule 6A-6.0331(3)(a), F.A.C., the school-based team **must** seek consent from the parent or legal guardian to conduct an evaluation whenever the district suspects that a student in kindergarten through Grade 12 (K-12) or a child age three to kindergarten-entry age is a student with a disability and needs special education and related services. Circumstances that would indicate a student may be a student with a disability who needs special education and related services include, but are not limited, to the following:

- (1) When the K-12 student’s response to intervention data indicates that intensive interventions are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources;
- (2) When the K-12 student’s response to interventions implemented indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions;
- (3) When a child age three to kindergarten-entry age receives a developmental screening through the school district or through the Florida Diagnostic and Learning Resources System (FDLRS) and, based on the results of the screening, the school suspects that the child may have a disability and is in need of special education and related services;
- (4) When a parent or legal guardian initiates a request for an initial evaluation and there is documentation or evidence that the K-12 student or child age three to kindergarten-entry age who is enrolled in a school district-operated preschool

program may be a student with a disability and may need special education and related services.

Within 30 calendar days of a determination that one of the circumstances above exists, the school district must request consent from the parent or legal guardian to evaluate the student unless the parent or legal guardian and the school agree otherwise in writing.

**A-3. If, through the Florida Diagnostic and Learning Resources System (FDLRS) child-find process, the results of a developmental screening indicate that the child may have a disability and may be in need of special education services, which entity (the school district or FDLRS) is responsible for obtaining written consent from the parent or legal guardian for the evaluation?**

Procedures for coordinating screening and obtaining consent must be made at the local level through the collaboration between the school district and the FDLRS staff. The district is the entity responsible for conducting a “full and individual” evaluation and providing the parent or legal guardian with written notice of the evaluation procedures it proposes to conduct. As stated in rule, the 30-day timeline to request consent from the parent or legal guardian begins when the screening results indicate that a disability is suspected, and the child may be in need of special education and related services.

It is critical that procedures established are clear so that by the 30th calendar day, the parent or legal guardian has been given the opportunity to provide consent, or the district has provided notice of refusal. The ESE Policies and Procedures (SP&P) document describes procedures in place when it is determined through the FDLRS screening procedures that a child may have a disability and may need special education and related services. This information may be found at <http://beess.fcim.org/sppDistrictDocSearch.aspx>.

**A-4. What procedures must be completed prior to the initial evaluation of a prekindergarten child below the mandatory school age requirement?**

Rule 6A-6.0331(2), F.A.C., establishes the following requirements for this population:

- Existing social, psychological and medical data must be reviewed, with a referral for health screening if indicated; and
- Vision and hearing screening must be conducted for the purpose of ruling out sensory deficits.

**A-5. When a screening is conducted in accordance with Rule 6A-6.0331(2), F.A.C., and the child does not “pass” a vision and hearing screening, can the school district postpone requesting consent from the parent or legal guardian for an evaluation?**

No. If the child is suspected of having a disability, the school district’s obligation remains to request consent from the parent or legal guardian for an evaluation within 30 calendar days or, if the parent or legal guardian agrees, establish an alternate timeline. For example, a child with an established condition associated with a developmental

disability or a child with a medically complex condition may have difficulty responding to hearing and vision screenings either because of an acute medical problem (e.g., otitis media) or because of the child's significant cognitive disability. In such a circumstance, the district should take the following actions:

- Select evaluation instruments that will most accurately reflect the child's abilities;
- Incorporate additional sensory evaluations in the evaluation process (e.g., include an audiological assessment as part of the evaluation); and
- Encourage the family to return to the child's primary health care provider to address any acute illness that may be impacting the outcome of sensory screenings.

School districts have the responsibility of ensuring that all students who are suspected of having a disability and are in need of special education and related services are identified, located and evaluated and that the evaluation process is at no cost to the parent or legal guardian. (Rule 6A-6.0331, F.A.C., and 34 CFR §300.111)

**A-6. If a parent or legal guardian requests an evaluation for their child who is enrolled in a private school, does the 30-calendar-day timeline to obtain consent apply?**

The district must respond within a timeline comparable to 30 calendar days. The Office of Special Education Programs released a guidance document in April of 2011, entitled "Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools." The following response was provided, in part, to the question, "What are the LEA's responsibilities for identifying children with disabilities placed by their parents in private schools?"

Under 34 CFR §300.131, the LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 CFR §300.13, and secondary schools, as defined in 34 CFR §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public school in the LEA.

**A-7. Is written consent required to administer assessments or collect data used to inform general education interventions?**

No. 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 consent from the parent or legal guardian. Rule 6A-6.0331(1), F.A.C. states:

It is the local school district's responsibility to develop and implement a multi-tiered system of support which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment. In implementing a data-based problem solving process designed to develop, implement and evaluate a coordinated continuum of evidence-based instruction and intervention practices, a school district may carry out problem solving activities that include the provision of educational and behavioral evaluations, services and supports, including evidence-based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional technology.

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 or legal guardian **is not required** (34 CFR §300.302; Rule 6A-6.0331(1)(d), F.A.C.). Consent is not required for a problem-solving team to conduct a diagnostic or functional assessment, including a functional behavioral assessment, that informs instructional or intervention decisions in an MTSS.

However, Rule 6A-6.0331(1)(a), F.A.C., requires that the parent or legal guardian be afforded opportunities for involvement in the process to address their child's need for academic interventions. Therefore, the parent or legal guardian should be informed and aware of the nature and purpose of activities conducted through the problem-solving process.

If assessments or screenings are administered to help the problem-solving 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.

**A-8. Is informed written consent required to conduct vision and hearing screenings?**

Written consent is not required when vision and hearing screenings are conducted as part of general education interventions. Rule 6A-6.0331(1)(d), F.A.C., states:

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 or legal guardian requests an evaluation prior to the completion of general education interventions, or the problem-solving team seeks an immediate evaluation in accordance with Rule 6A-6.0331(3)(d)3., 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 the parent or legal guardian when obtaining consent for an evaluation.

**A-9. Can a parent or legal guardian provide informed written consent for some parts of an evaluation but not others?**

No. The parent or legal guardian consents to the proposed evaluation in its entirety and NOT to specific areas of assessment or evaluation procedures. If a parent or legal guardian requests specific types of assessment that are unnecessary, the team should document why the requested action is not being taken on the consent form, specifically in the section of the form where the team identifies the “description of other options that the individualized educational plan (IEP) team considered and the reasons why those options were rejected.” (Rule 6A-6.0331(1)(c)6., F.A.C.)

A formal written notice of refusal is unnecessary when the district evaluation does not include assessments requested by a parent or legal guardian if the district has considered the request and addressed why the requested action is not being taken on the consent form. In this case, the district is not refusing to conduct an evaluation but fulfilling their responsibility to conduct a “full and individual” evaluation that complies with IDEA and SBE requirements.

**A-10. Are there circumstances when a school district would be determining eligibility without having obtained consent from the parent or legal guardian for an evaluation?**

There are limited circumstances when the review of existing data would be sufficient, and consent from the parent or legal guardian for the evaluation would not be needed. Examples include 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; and
- A student for whom comprehensive evaluation data are available as a result of treatment received in a rehabilitation center.

**A-11. If the parent or legal guardian 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 school 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 student who has been home schooled or attended a private school, the district **may not** use mediation or due process procedures to obtain consent from the parent or legal guardian. The district does not violate its child find or evaluation obligations if it declines to pursue the evaluation. (34 CFR §300.300; Rule 6A-6.0331(4)(f), F.A.C.)

**B. Referral and Evaluation**

**B-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; and
- The student is not enrolled in public school (i.e., the student is enrolled in a private school or in a home education program).

**Additionally, in some circumstances**, the general education intervention requirements related to involvement by the parent or legal guardian, observations and evidence-based interventions **may not be required** if the team of qualified professionals and the parent or legal guardian determine that the nature or severity of the student’s area of concern makes the procedures inappropriate to address the immediate needs of the student. Such a decision may be made for a student who demonstrates a speech disorder, a severe cognitive, physical or sensory disorder or severe social or behavioral deficits that require immediate intensive intervention to prevent harm to the student or others.

**B-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 child 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 an early education program, information regarding the child’s performance 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. However, for some disabilities (i.e., specific learning disabilities and emotional/behavioral disability), a process based on the student’s response to scientific,

research-based intervention is a critical component of the evaluation that informs eligibility and applies to prekindergarten-age children as well. Refer to Rules 6A-6.03016 and 6A-6.03018, F.A.C., for specific evaluation and eligibility requirements.

**B-3. What is the school district’s obligation when a parent or legal guardian requests an evaluation while the school-based team is implementing general education interventions?**

If a parent or legal guardian requests that an evaluation be conducted during implementation of general education interventions, the district must, within 30 calendar days (unless the parent or legal guardian and the district agree to another timeline in writing), either obtain consent (and complete the evaluation within the 60-day timeline) or provide the parent or legal guardian with a written notice explaining why the district is refusing to conduct the evaluation. The notice must meet the requirements of Rule 6A-6.03311(1), F.A.C. (Rule 6A-6.0331(3)(c) and (f), F.A.C.; 34 CFR §§300.301(b) and 300.309(c)(2)). The district cannot delay an evaluation because general education interventions have not been completed.

As a component of a comprehensive evaluation, the provision of evidence-based interventions and collection of response to intervention data continues as a part of the evaluation. 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 for data-based problem solving, including review of existing data, will comprise the comprehensive evaluation.

**B-4. Can the school district require that a private school or the parent or legal guardian of a child who is receiving home education provide information regarding the student’s response to instruction or interventions in the student’s current setting, prior to accepting the parent’s or legal guardian’s request for evaluation?**

No. The school 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.). The Office of Special Education Programs guidance document entitled “Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools” states that “It would be inconsistent with the IDEA evaluation provisions in 34 CFR §§300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process...”

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

In accordance with Rule 6A-6.0331(3), F.A.C., the school district is required to conduct a “full and individual” evaluation. Neither IDEA nor SBE 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 ESE needs, whether or not they are commonly linked to the suspected disability.

In accordance with Rule 6A-6.0331(5), F.A.C., when conducting a “full and individual” evaluation 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 or legal guardian, to determine whether the student is eligible for ESE and to inform 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 “full and individual” evaluation. For a student suspected of having a disability, a “full and individual” evaluation includes a review of 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 or legal guardian input; and local, state and district assessments), as well as any additional assessments that the group of qualified professionals and the parent or legal guardian deem necessary to identify the special education needs of the student and determine whether the student has a disability. A group of qualified professionals and the parent or legal guardian determines the type of additional information needed on a student-by-student basis, taking into consideration the requirements of applicable rules related to eligibility.

**B-6. How does the school district collect data when evaluating students enrolled in private schools or home education programs?**

Once a parent or legal guardian requests an evaluation and consent is received, the district should collaborate with the parents or legal guardian 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 has a disability and needs special education and related services. School districts include in their ESE 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, which can be used to inform the team engaged in data-based problem solving. As with any evaluation, the team must complete the evaluation within the established timeline and determine, based on the available data and the criteria established in the relevant SBE rules, whether the student has a disability and needs special education and related services.

Because of the unique nature of implementing an MTSS using data-based problem solving, districts must make reasonable efforts to communicate and work with the home education parents or legal guardian and private school staff to obtain information regarding the interventions implemented and the students’ responses to those interventions. In the event that the parent, legal guardian or private school 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 would determine eligibility with the available data.

**B-7. Which personnel are qualified to conduct evaluations?**

The publishers' administration manuals and the bureau's web-based Evaluation Resource, found at [http://sss.usf.edu/resources/topic/ese/ESE\\_Eval/Eval\\_instruments.html](http://sss.usf.edu/resources/topic/ese/ESE_Eval/Eval_instruments.html), provide guidance on the qualifications required for individuals conducting evaluations. These qualifications vary depending on the evaluation procedure 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. (Rule 6A-6.0331(3)(e), 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 and interpret tests of intellectual functioning.
- Standardized assessment of adaptive behavior must include input from the parent or legal guardian 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)(e), F.A.C.)

**B-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 (Rule 6A-6.0331(5)(g), F.A.C.). If the team suspects that the student has a learning disability in math, but there is 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., the targeted interventions and evaluation would address the area of suspected disability. (34 CFR §300.304(b)(4); Rule 6A-6.0331(5)(f), F.A.C.)

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

In accordance with Rule 6.0331(3)(g), F.A.C., beginning on July 1, 2015, the school district must ensure that initial evaluations of students and preschool-age children age 3

through kindergarten-entry age suspected of having a disability are completed within 60 calendar days after the school district's receipt of consent from the parent or legal guardian for evaluation. For the purposes of this rule, the following calendar days shall not be counted toward the 60-calendar-day requirement:

- All school holidays and Thanksgiving, winter and spring breaks as adopted by the district school board as required by Rule 6A-10.019, F.A.C.;
- The summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students in accordance with the calendar adopted by the district school board as required by Rule 6A-10.019, F.A.C. However, the school district is not prohibited from conducting evaluations during the summer vacation period; and
- In the circumstance when a student is absent for more than eight school days in the 60-calendar-day period, the student's absences (i.e., those absences beyond the first eight school-day absences) shall not be counted toward the 60-calendar-day requirement.

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

- The parent or legal guardian 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 by the previous school district, as long as the current school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent or legal guardian agrees to a specific timeline for completion; or
- For a student suspected of having a specific learning disability, the student's parent or legal guardian and a group of qualified professionals agree in writing to extend the timeline. (Rule 6A-6.03018(3)(b), F.A.C.)

The determination of whether a student is "in attendance" (including a student who leaves before the end of the school day) must be made consistent with school board policies implementing Rule 6A-1.044, F.A.C., which requires the reporting of students' attendance.

**B-10. If the school board's calendar for a specific holiday is stated as a Monday through Friday, do the days of the weekend immediately preceding and following the 5-day school holiday count toward the 60-calendar-day timeline?**

Yes. The weekends immediately preceding and following a 5-day school holiday count toward the 60-calendar-day timeline.

**B-11. Are teacher planning days considered “holidays”?**

No. For the purpose of the rule, such days are not considered “holidays.”

**B-12. When a student has been absent for more than eight school days in a 60-day period, will those absences beyond eight school days count toward the 60-calendar-day timeline?**

No. Absences in excess of eight school days will not be counted toward the 60-calendar-day timeline.

**B-13. Which timeline applies to the evaluation of students for eligibility for gifted education?**

Rule 6A-6.0331(3)(i), F.A.C., requires that evaluations of students suspected of being gifted must be completed within a reasonable period of time as specified in the school districts’ SP&P documents, but no more than 90 school days that the student is in attendance after the school district receives consent from the parent or legal guardian for the evaluation.

**B-14. Does the 60-day timeline apply to students who transfer from out-of-state for whom the school district has decided that evaluation is necessary to determine eligibility in Florida?**

No. In accordance with Rule 6A-6.0334(2)(a), F.A.C., if the district decides that an evaluation is necessary to determine whether the student is eligible for exceptional student education, this is considered an initial evaluation, and the student must meet the initial eligibility criteria under one or more of the SBE rules establishing evaluation and eligibility criteria. However, out-of-state transfer students are not reported in the 60-day timeline data submitted annually to the Bureau of Exceptional Education and Student Services.

The school 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 educational plan (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. 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. (34 CFR §300.323(f)(1))

It is important to note that Rule 6A-6.03024(2), F.A.C., states that, pursuant to the provisions of Part III, Ch. 468 or Ch. 486, F.S., occupational or physical therapy assessments shall be conducted by the related service provider prior to the provision of occupational or physical therapy. Per the respective Practice Acts, the therapist must be licensed in Florida. Note also that if physical therapy will be provided beyond 21 days, the physical therapist must also have a prescription for physical therapy treatment or the plan of treatment reviewed and signed by a health care practitioner licensed in Florida per the Physical Therapy Practice Act. Please refer to question and response D-5 in the “Technical Assistance Paper Provision of Occupational or Physical Therapy as a

Related Service” at <http://info.fldoe.org/docushare/dsweb/Get/Document-6924/dps-2013-119.pdf>.

**B-15. 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 2015-2016 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 and 6A-6.03020, 6A-6.03022, 6.03027, 6A-6.03030 and 6A-6.03031, F.A.C., are completed for the purpose of determining a student’s initial eligibility for exceptional student education.” 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, 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 FDOE website at <http://www.fldoe.org/accountability/data-sys/database-manuals-updates/2015-16-student-info-system/index.shtml>.

**B-16. 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**. (34 CFR §300.124; Rule 6A-6.03028(3)(e))

**C. Eligibility**

**C-1. Which 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 SBE rules, accessible online at <http://www.fldoe.org/academics/exceptional-student-edu/ese-eligibility>. 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:
  1. Phonemic awareness

2. Phonics
  3. Vocabulary development
  4. Reading fluency
  5. Reading comprehension strategies;
- Lack of appropriate instruction in math; and
  - Limited English proficiency.

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

**C-2. Who is qualified to interpret the results of individually administered diagnostic assessments?**

Professional standards and test manuals distinguish between professionals who are qualified to administer and score tests under supervision, and professionals who are qualified to interpret and report test results. Evaluators qualified to interpret and report test results for eligibility purposes:

- Have completed a graduate-level program (with training in educational, psychological, or clinical evaluation and assessment);
- Had or are receiving supervised clinical experience as part of their training; and
- Are certified or licensed in a profession that includes educational evaluation and interpretation as part of its formal training.

Individuals who do not meet the above criteria are not qualified to interpret test results.

**C-3. If a student is eligible for exceptional student education (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 to provide services on the individualized educational plan?**

The “Analysis of Comments and Changes” section of the federal regulations at 71 Fed. Reg. 46737, states:

The ACT [IDEA] does not require children to be identified with a particular disability category for purposes of the delivery of special education and related services. ... since a child’s entitlement under the Act is to FAPE and not to a particular disability label.

For example, eligibility as a student with an emotional or behavioral disability is not required for a student to receive counseling as a related service or to implement a behavior intervention plan.

The primary purposes of a reevaluation are to determine whether the student continues to be a student with a disability and to identify the student's special education needs. However, if the IEP team believes that the current disability category (e.g., speech impaired, other health impaired) does not reflect the primary exceptionality, a reevaluation for the purpose of determining eligibility under a different category that more accurately reflects the primary disability (e.g., intellectual disability, specific learning disability) would be appropriate.

**C-4. Does the requirement to engage in a data-based problem-solving process end during the evaluation and after a student is determined eligible as a student with a disability?**

Data-based problem solving does not end when the student is referred for an evaluation or determined to be eligible for ESE services. Instead, the student's progress and data reflecting his or her response to the intervention and instruction will continue to be monitored to support data-based decision making regarding the interventions, instructional strategies or services provided to the student.

**D. Consent for Services**

**D-1. If the school district has obtained consent from the parent or legal guardian for an evaluation and determined that the student has a disability, can special education services be provided prior to receiving consent from the parent or legal guardian for the provision of services?**

No. A school district may not provide ESE services until they receive consent from the parent or legal guardian for special education and related services. In addition, if the parent or legal guardian 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))

**D-2. Can a parent or legal guardian limit consent to certain types of ESE services?**

There are circumstances when a parent or legal guardian may refuse consent to some specific types of ESE services in accordance with the provisions of s. 1003.5715, F.S., Parental consent; individual education plan, and Rule 6A-6.0331(10), F.A.C.

A school district may not proceed with the actions noted below without written informed consent of the parent or legal guardian unless the school district documents reasonable efforts to obtain the parent's or legal guardian's consent and the student's parent or legal guardian has failed to respond, or the school district obtains approval through a due process hearing in accordance with Rule 6A-6.0331(9), F.A.C. To meet the reasonable efforts requirements to obtain consent from the parent or legal guardian, the school district must document its attempts to obtain consent from the parent or legal guardian using procedures such as those used to ensure participation by the parent or legal guardian in meetings as described in Rule 6A-6.03028(3)(b)7., F.A.C. Those actions include:

- Administration of an alternate assessment in accordance with s. 1008.22, F.S., and provision of instruction in the state standards access points curriculum; and
- Placement of the student in an ESE center as defined in Rule 6A-1.099828(2)(b), F.A.C., except for a change in placement as described in s. 1003.57(1)(h), F.S.

In these circumstances, districts are required to use state-approved forms entitled Parental Consent Form-Instruction in State Standards Access Points Curriculum and Florida Alternate Assessment Administration (Form Number 313181) or Parental Consent Form-Student Placement in an Exceptional Education Center (Form Number 313182). These forms are available on the bureau's website at <http://www.fldoe.org/academics/exceptional-student-edu/beess-resources/parental-consent-form-prior-written-no.stml>.

If the parent or legal guardian provides a written request for action as indicated on one of the consent forms referenced above, within 10 school days, the district must either develop and implement a new placement or instruction and assessment procedures in accordance with a new IEP or must request a due process hearing in accordance with Rule 6A-6.03311(9), F.A.C. During the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student must remain in the student's current educational assignment while awaiting the decision of the due process hearing or court proceeding, unless the parent or legal guardian and the district school board agree otherwise.

In other circumstances, a parent or legal guardian may not limit consent to certain types of services; for example, if a student's IEP team determined that in order to provide FAPE to the student, both speech therapy and specialized instruction in reading were required. The parent or legal guardian may not provide consent for the speech therapy services and refuse consent for specialized instruction in reading. The "Analysis of Comments and Changes" section of the federal regulations related to consent at 71 Fed. Reg. 46634 states:

We do not view the consent provisions of the Act as creating the right of parents [or legal guardian] to consent to each specific special education and related service that their child receives. Instead, we believe that parents [or legal guardian] 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.

**D-3. Once a parent or legal guardian has provided consent for a student to receive ESE services, can the parent or legal guardian revoke that consent?**

Yes. In accordance with 34 CFR §300.300(b)(4), the parent or legal guardian 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 when the parent or legal guardian revokes consent:

- The parent's or legal guardian's request for revocation must be in writing.
- The district must provide the parent or legal guardian 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 or legal guardian'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 or legal guardian 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 of results of state standardized assessments as a student with a disability or for standard diploma options that are available to students with disabilities in accordance with Rule 6A-1.09963, F.A.C.

**D-4. Does consent from the parent or legal guardian for services, for a student with a disability or a student who is gifted, 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 students who are gifted; 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 for a student who is gifted, and consent for evaluation or services for a student who is gifted does not apply to evaluation or services for a student with a disability.

If the parent or legal guardian of a student who is both gifted and a student with 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.

## **E.     Reevaluation**

### **E-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 or legal guardian 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; and
- If the parent or legal guardian or the student's teacher requests a reevaluation.

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

### **E-2.   What are the minimum requirements for conducting a reevaluation?**

As part of any reevaluation, the IEP team, including the parent or legal guardian, 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 or legal guardian. Based on 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; and

- 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 SBE 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 or legal guardian 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 or legal guardian of that decision and the reasons for it, and that the parent or legal guardian has a right to request an assessment. The school district is not required to conduct additional assessments unless requested to do so by the student’s parents. (34 CFR §300.305(d); Rule 6A-6.0331(8)(e), F.A.C.)

**E-3. Is informed written consent from the parent or legal guardian 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 consent from the parent or legal guardian prior to conducting a reevaluation;
- May use the consent override provisions of mediation or due process if the parent or legal guardian refuses to provide consent for reevaluation, but is not required to do so; and
- May conduct the reevaluation without consent of the parent or legal guardian if the district can demonstrate that it made reasonable efforts to obtain consent and the parent or legal guardian 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 or legal guardian 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.)

**E-4. What is the role of data-based problem solving in the reevaluation process?**

Because all students’ needs are addressed within one integrated MTSS, progress-monitoring, intervention fidelity and response to instruction and 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 student's response to intervention 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-referenced 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.

**E-5. Is a reevaluation required prior to determining that a student is no longer in need of special education?**

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 student's parent or legal guardian revokes consent for services.

A student is no longer eligible for special education 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-6.0331(7), (8), F.A.C.)

Determination that a student is no longer eligible for special education is considered a change in identification, placement and FAPE for which prior written notice must be provided.

**E-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 is not required prior to initiating reevaluation. Although evidence-based interventions are not a precondition for initiating a reevaluation, data on a student's response to intervention informs the type and level of support that is needed on the IEP, and it is best practice to include as part of the reevaluation if this data has not been collected as part of ongoing progress monitoring. The eligibility criteria that applies for a student with a specific learning disability, emotional behavioral disability or language impairment all require data on the student's response to intensive, evidence-based interventions, and the data must be integrated into the reevaluation. (Rule 6A-6.0331(1), F.A.C.)

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

Based on the 2015-2016 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; and
- “Completion” of the previous reevaluation is defined as:
  - If formal assessment or additional data collection was required (i.e., if the district obtained consent from the parent or legal guardian to collect additional data or the parent or legal guardian failed to respond to the request for consent to reevaluate the student), 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/accountability/data-sys/database-manuals-updates/2015-16-student-info-system/index.shtml>.

**E-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 [or legal guardian] 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.)

## **Appendix: Rule 6A-6-6.0331**

### **6A-6.0331 General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.**

The state's goal is to provide full educational opportunity and a free appropriate public education (FAPE) to all students with disabilities ages three (3) through twenty-one (21) and to students who are gifted in grades kindergarten through 12. School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. They must ensure that all students with disabilities or who are gifted and who are in need of exceptional student education (ESE) as defined in paragraph 6A-6.03411(1)(n), F.A.C., are identified, located, and evaluated, and FAPE is made available to them if it is determined that the student meets the eligibility criteria specified in Rules 6A-6.03011, 6A-6.03012, 6A-6.030121, 6A-6.03013, 6A-6.03014, 6A-6.030151, 6A-6.030152, 6A-6.030153, 6A-6.03016, 6A-6.03018, 6A-6.03019, 6A-6.03020, 6A-6.03022, 6A-6.03023, paragraph 6A-6.03026(1)(b) and Rule 6A-6.03027, F.A.C. ESE includes specially designed instruction as defined in paragraph 6A-6.03411(1)(jj), F.A.C.; special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.; and related services as defined in paragraph 6A-6.03411(1)(dd), F.A.C. These requirements apply to all students, including those who are homeless or are wards of the state or who attend private schools, regardless of the severity of their disability. Additionally, school districts may elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Steps Program. The procedures and criteria for general education interventions, identification, evaluation, and determination of eligibility of students with disabilities and gifted students by school districts shall be set forth in the school district's ESE Policies and Procedures document consistent with the following requirements.

(1) General education intervention procedures for kindergarten through grade twelve (12) students suspected of having a disability who are enrolled in public schools. It is the local school district's responsibility to develop and implement a multi-tiered system of support which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment. In implementing a data-based problem solving process designed to develop, implement and evaluate a coordinated continuum of evidence-based instruction and intervention practices, a school district may carry out problem solving activities that include the provision of educational and behavioral evaluations, services, and supports, including evidence-based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional technology. The general education intervention requirements set forth in paragraphs (a) through (e) of this subsection are not required of students suspected of being gifted or who are being considered for eligibility in accordance with Rule 6A-6.03020, F.A.C., for special education and related services for students who are homebound or hospitalized. The general education interventions requirements set forth in paragraphs (a), (b) and (e) of this subsection may not be required for students suspected of having a disability if a team that comprises qualified professionals and the parent determines that these general

education interventions are not appropriate for a student who demonstrates a speech disorder or severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intensive intervention to prevent harm to the student or others.

(a) Parent involvement in general education intervention procedures. Opportunities for parents to be involved in a data-based problem solving process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent regarding the data used to identify the problem and monitor student progress, the student's response to instruction and interventions, modification of the interventions, and anticipated future action to address the student's learning and/or behavioral needs. Documentation of parental involvement and communication must be maintained.

(b) Observations of the student must be conducted in the educational environment and, as appropriate, other settings to document the student's learning or behavioral areas of concern. At least one (1) observation must include an observation of the student's performance in the general classroom.

(c) Review of existing data, including anecdotal, social, psychological, medical, and achievement (including classroom, district and state assessments) shall be conducted. Attendance data shall be reviewed and used as one indicator of a student's access to instruction.

(d) 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, and additional screenings or assessments to assist in determining interventions may be conducted, as appropriate. 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.

(e) Evidence-based interventions addressing the identified areas of concern must be implemented in the general education environment. The interventions selected for implementation should be developed by a team through a data-based problem solving process that uses student performance data to identify and analyze the area(s) of concern, select and implement interventions, and monitor the effectiveness of the interventions. Interventions shall be implemented as designed for a period of time sufficient to determine effectiveness, and with a level of intensity that matches the student's needs. Pre-intervention and ongoing progress monitoring measures of academic and/or behavioral areas of concern must be collected and communicated to the parents in an understandable format, which may include, but is not limited to, graphic representation.

(f) Nothing in this section should be construed to either limit or create a right to FAPE under Rules 6A-6.03011-.0361, F.A.C., or to delay appropriate evaluation of a student suspected of having a disability.

(g) A school district may not use more than fifteen (15) percent of the amount it receives under Part B of the IDEA for any fiscal year to develop and implement a coordinated continuum of evidence-based general education interventions for students in kindergarten through grade twelve (12) who are not currently identified as needing special education and related services but who need additional support to succeed in the general education environment. Funds made available to carry out this paragraph may be used to carry out general education intervention procedures aligned with activities funded

by and carried out under the Elementary and Secondary Education Act (ESEA), if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this paragraph. For IDEA Part B funds used in this way, the school district must annually report to the Florida Department of Education on the number of students served under this paragraph who received general education interventions and the number of students who received such services and subsequently receive special education and related services under Part B of the IDEA during the preceding two (2) year period.

(2) Procedures prior to initial evaluation for prekindergarten children. 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. The following requirements apply to this population:

(a) Existing social, psychological, and medical data shall be reviewed, with referral for a health screening when the need is indicated; and,

(b) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits. Additional screenings to assist in determining interventions may be conducted as appropriate.

(3) Initial evaluation. Each school district must conduct a full and individual initial evaluation before the initial provision of ESE. Either a parent of a kindergarten through grade 12 student or child age three (3) to kindergarten entry age, or a school district may initiate a request for initial evaluation to determine if the student is a student with a disability. Either a parent of a kindergarten through grade 12 student or a school district may initiate a request for initial evaluation to determine if a student is gifted.

(a) The school district must seek consent from the parent or guardian to conduct an evaluation whenever the district suspects that a kindergarten through grade 12 student, or a child age three (3) to kindergarten entry age, is a student with a disability and needs special education and related services. Circumstances which would indicate that a student may be a student with a disability who needs special education and related services include, but are not limited to, the following:

1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or

2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or

3. When a child age three (3) to kindergarten entry age receives a developmental screening through the school district or the Florida Diagnostic and Learning Resource Center and based on the results of the screening it is suspected that the child may be a child with a disability in need of special education and related services; or

4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.

(b) Within thirty (30) days of a determination that a circumstance described in subparagraphs (3)(a)1., (3)(a) 2. or (3)(a)3., of this rule exists for a student in grades kindergarten through grade 12 or a child age three (3) to kindergarten entry age, the school district must request consent from the parent to conduct an evaluation, unless the parent and the school agree otherwise in writing.

(c) As described in subparagraph (3)(a)4. of this rule, if a parent requests that the school conduct an evaluation to determine whether their child is a child with a disability in need of special education and related services, the school district must within thirty (30) days, unless the parent and the school agree otherwise in writing:

1. Obtain consent for the evaluation; or
2. Provide the parent with written notice in accordance with Rule 6A-6.03311, F.A.C., explaining its refusal to conduct the evaluation.

(d) Prior to a school district request for initial evaluation of a student in grades K through 12 suspected of having a disability, school personnel must make one (1) of the following determinations and include appropriate documentation in the student's educational record to the effect that:

1. The general education intervention procedures have been implemented as required under this rule and the data indicate that the student may be a student with a disability who needs special education and related services;
2. The evaluation was initiated at parent request and the activities described in subsection (1) of this rule will be completed concurrently with the evaluation but prior to the determination of the student's eligibility for special education and related services; or
3. The nature or severity of the student's areas of concern make the general education intervention procedures inappropriate in addressing the immediate needs of the student.

(e) The school district shall be responsible for conducting all initial evaluations necessary to determine if the student is eligible for ESE and to determine the educational needs of the student. Such evaluations must be conducted by examiners, including physicians, school psychologists, psychologists, speech-language pathologists, teachers, audiologists, and social workers who are qualified in the professional's field as evidenced by a valid license or certificate to practice such a profession in Florida. In circumstances where the student's medical care is provided by a physician licensed in another state, at the discretion of the school district administrator for exceptional student education, 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. Educational evaluators not otherwise covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, F.A.C.

1. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, F.A.C., or licensed under Chapter 490, F.S.

2. Standardized assessment of adaptive behavior shall include parental input regarding their student's adaptive behavior.

(f) For a signed consent for evaluation received by a school district on or before June 30, 2015, the school district shall ensure that initial evaluations of students suspected of having a disability are completed within sixty (60) school days (cumulative) as defined in

paragraph 6A-6.03411(1)(h), F.A.C., that the student is in attendance after the school district's receipt of parental consent for the evaluation. For prekindergarten children, initial evaluations must be completed within sixty (60) school days after the school district's receipt of parental consent for evaluation.

(g) Beginning July 1, 2015, the school district shall ensure that initial evaluations of students and preschool age children age three (3) through kindergarten entry age suspected of having a disability are completed within sixty (60) calendar days after the school district's receipt of parent consent for evaluation. For the purposes of this rule, the following calendar days shall not be counted toward the sixty (60) calendar day requirement:

1. All school holidays and Thanksgiving, winter and spring breaks as adopted by the district school board as required by Rule 6A-10.019, F.A.C.;

2. The summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students in accordance with the calendar adopted by the district school board as required by Rule 6A-10.019, F.A.C. However, the school district is not prohibited from conducting evaluations during the summer vacation period; and,

3. In the circumstance when a student is absent for more than eight (8) school days in the sixty (60) calendar day period, the student's absences shall not be counted toward the sixty (60) calendar day requirement.

(h) The sixty (60)-day timeframe for evaluation does not apply to a school district if:

1. The parent of the student repeatedly fails or refuses to produce the student for the evaluation; or

2. A student enrolls in a school served by the school district after the timeframe has begun, and prior to a determination by the student's previous school district as to whether the student is a student with a disability. This exception applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed. Assessments of students with disabilities who transfer from one school district to another school district in the same school year must be coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

- (i) The school district shall ensure that students suspected of being gifted are evaluated within a reasonable period of time as specified in the district's ESE Policies and Procedures Document as defined in subsection 6A-6.03411(2), F.A.C., but no more than ninety (90) school days that the student is in attendance after the school district's receipt of parental consent for the evaluation.

- (4) Parental consent for initial evaluation.

- (a) The school district must provide the parent written notice that describes any evaluation procedures the school district proposes to conduct. In addition, the school district proposing to conduct an initial evaluation to determine if a student is a student with a disability and needs special education and related services or is gifted and needs ESE must obtain informed consent from the parent of the student before conducting the evaluation.

- (b) Parental consent for initial evaluation must not be construed as consent for initial provision of ESE.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability or is gifted.

(d) In the event that the parent fails to respond to the district's request to obtain informed written consent, the district must maintain documentation of attempts made to obtain consent.

(e) For initial evaluations only, if the child is a ward of the State and is not residing with the student's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

1. Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student;
2. The rights of the parents of the student have been terminated in accordance with Chapter 39, Part X, F.S.; or
3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for initial evaluation has been given by an individual appointed by the judge to represent the student.

(f) If the parent of a student suspected of having a disability who is enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue initial evaluation of the student by using the mediation or due process procedures contained in Rule 6A-6.03311, F.A.C. The school district does not violate its child find obligations if it declines to pursue the evaluation.

(g) A school district may not use a parent's refusal to consent to initial evaluation to deny the parent or the student any other service, benefit, or activity of the school district, except as provided by this rule.

(5) Evaluation procedures.

(a) In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a data-based problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;
2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,
3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

(6) Determination of eligibility for exceptional students.

(a) A group of qualified professionals determines whether the student is an exceptional student in accordance with this rule and the educational needs of the student. The parents of a student being considered for eligibility as a student with a disability shall be invited and encouraged to participate as equal members of the group. The school district must provide a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent.

(b) In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:

1. Draw upon data and information collected as part of a data-based problem solving process from a variety of sources, such as aptitude and achievement tests, the student's response to instruction and interventions implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior;

2. Ensure that information obtained from all of these sources is documented and analyzed by the team as part of the problem solving process; and,

3. Determine eligibility in accordance with the criteria and procedures specified in these rules.

(c) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with Rule 6A-6.03028, F.A.C. For children ages three (3) through five (5) years, an

individual family support plan (IFSP) may be developed in lieu of an IEP in accordance with Rule 6A-6.03029, F.A.C.

(d) A student may not be determined eligible as a student with a disability if the determinant factor is:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction, including explicit and systematic instruction in (a) phonemic awareness; (b) phonics; (c) vocabulary development; (d) reading fluency, including oral reading skills; and (e) reading comprehension strategies;

2. Lack of appropriate instruction in math; or

3. Limited English proficiency; and,

4. The student does not otherwise meet the eligibility criteria specified in Rules 6A-6.03011-.0361, F.A.C.

(e) A student may not be denied eligibility as a student who is gifted if the determinant factor is limited English proficiency.

(f) For students identified as gifted, an EP in accordance with Rule 6A-6.030191, F.A.C., shall be developed.

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.

(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:

(a) Review existing evaluation data on the student, including:

1. Evaluations and information provided by the student's parents;

2. Current classroom-based, local, or State assessments and classroom-based observations; and,

3. Observations by teachers and related services providers.

(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:

1. Whether the student is a student with a disability or, in case of a reevaluation of the student, whether the student continues to have a disability;

2. The educational needs of the student;
  3. The present levels of academic achievement and related developmental needs of the student;
  4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and,
  5. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.
- (c) The group conducting this review may do so without a meeting.
- (d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.
- (e) If the determination under this section is that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the school district shall notify the student's parents of:
1. That determination and the reasons for the determination; and,
  2. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs. The school district is not required to conduct the assessment unless requested to do so by the student's parents.
- (f) 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 the student's twenty-second (22nd) birthday. For a student whose eligibility terminates under these circumstances, a school district must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.
- (g) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.
- (h) If a parent of a student who is home schooled or placed in private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override provisions of mediation or due process and the school district is not required to consider the student eligible for services under Rules 6A-6.03011-.0361, F.A.C.
- (i) To meet the reasonable efforts requirements to obtain parental consent, the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C.
- (9) Parental Consent for the Initial Provision of Services.
- (a) A school district responsible for making FAPE available to an exceptional student must obtain informed consent from the parent of the student before the initial provision of ESE to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of ESE to the student.

(c) If the parent of a student fails to respond or refuses to consent to the initial provision of ESE, the school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses consent to the initial provision of ESE, or the parent fails to respond to a request to provide consent for the initial provision of ESE, the school district will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the ESE for which the school district requests consent. In addition, the school district is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for the ESE for which the school district requests such consent.

(e) If, at any time subsequent to the initial provision of ESE, the parent of a student revokes consent in writing for the continued provision of ESE, the school district may not continue to provide ESE to the student, but must provide prior written notice before ceasing the provision of ESE. The school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

(f) If a parent of a student revokes consent in writing for the continued provision of ESE, the school district:

1. Will not be considered to be in violation of the requirement to make FAPE available to the student for its failure to provide the student with further ESE; and,
2. Is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for further provision of ESE.

(g) If a parent of a student with a disability revokes consent in writing for their child's receipt of ESE after the initial provision of ESE to the student, the school district is not required to amend the student's education records to remove any references to the student's receipt of ESE because of the revocation of consent.

(10) Parental Consent for Specific Actions.

(a) A school district may not proceed with the following actions included in a student's IEP without written informed consent of the parent unless the school district documents reasonable efforts to obtain the parent's consent and the student's parent has failed to respond, or the school district obtains approval through a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. To meet the reasonable efforts requirements to obtain parental consent the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C.

Those actions requiring parental consent include:

1. Administration of an alternate assessment in accordance with Section 1008.22, F.S., and provision of instruction in the state standards access points curriculum; and,
2. Except for a change in placement as described in Section 1003.57(1)(h), F.S., placement of the student in an exceptional student education center as defined in paragraph 6A-1.099828(2)(b), F.A.C.

(b) The district shall obtain written parental consent for the actions described above on the Parental Consent Form – Instruction in the State Standards Access Points

Curriculum and Florida Alternate Assessment Administration, Form 313181, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-04779>) (effective December 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, and Parental Consent Form – Student Placement in an Exceptional Education Center, Form 313182, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03384>) (effective March 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, adopted by the Department of Education and incorporated by reference and available at <http://www.fldoe.org/ese/> or may be obtained from the Department of Education, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Room 614, Tallahassee, FL 32399. Both forms were translated into Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.

(c) At any time an IEP team meeting is to be convened for the purpose of reviewing or changing a student's IEP as it relates to any of the actions described above, the school district must provide written notice of the meeting to the parent at least ten (10) days before the meeting. The notice must indicate the purpose, time, and location of the meeting and who, by title or position, will attend the meeting. The meeting may be convened prior to the tenth (10th) day, if the parent consents upon receipt of the written notice described above.

(d) Within ten (10) school days of a parent indicating in writing on a consent form described in paragraph (b) of this subsection that they do not consent to an action described in paragraph (a) of this subsection, the district must either develop and implement a new placement or instruction and assessment procedures in accordance with a new IEP or must request a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. During the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student must remain in the student's current educational assignment while awaiting the decision of the due process hearing or court proceeding, unless the parent and the district school board agree otherwise.

Rulemaking Authority 1001.02(1), (2)(n), 1003.4282, 1003.57, 1003.571, 1003.5715 FS. Law Implemented 1003.01(3)(a), (b), 1003.4282, 1003.57, 1003.571, 1003.5715 FS. History New 6-17-74, Amended 12-5-74, 7-1-77, 3-28-78, 7-12-78, 8-31-78, 11-29-78, 10-7-81, 7-13-83, 6-2-85, Formerly 6A 6.331, Amended 7-13-93, 1-2-95, 9-20-04, 12-22-08, 12-15-09, 3-25-14, 12-23-14.