

CHILD FIND, EVALUATION AND ELIGIBILITY

GAIL CHERAMIE, PH.D. & CYNTHIA BUECHLER, JD
NELI DISABILITY CONDITION SERIES
2024

PURPOSE

This is the initial presentation for the NELI Disability Condition Series.

The purpose of the series is to review important concepts, laws, evaluation procedures, and legal cases regarding the identification, evaluation and educational programming for students with disabilities.

The following disability conditions were selected to be part of this series:

- Autism (AU)
- Emotional Disturbance (ED)
- Intellectual Disability (ID)
- Other Health Impaired (OHI) with an emphasis on OHI due to ADHD
- Specific Learning Disability (SLD) including Dyslexia
- Low Incidence Disabilities: Deaf or Hard or Hearing (DHH), Orthopedic Impairment (OI), Traumatic Brain Injury (TBI), and Visual Impairment (VI)

SERIES OUTLINE

Each presentation on a disability condition addresses the following topics:

- Statistics/Prevalence
- Definition/Criteria for the condition
- Assessment/Evaluation of the condition
- Common challenges in identification and evaluation
- Case examples
- Litigation issues and implications

Each presentation is designed to be approximately 2 hours, and CEUs are obtainable for the whole series or for individual presentations. We hope you will join us for the whole series.

The series is meant to be informative and part of ongoing professional development training within school districts and university programs.

TOPICS FOR THIS PRESENTATION

Current data and trends on percentages of students identified in Texas

Child Find and Referral

Evaluation Requirements

Considerations in determining the appropriateness of the FIE

Condition versus Eligibility in Special Education

Re-Evaluation Components – The REED

Legal issues and litigation

PEIMS Data 2016-2023

Primary Disability (selected disability categories) All Texas Public School Districts Including Charter Schools							
	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
AU	12.35% 58,945	13.00% 64,783	13.53% 71,951	13.7% 80,557	13.95% 84,431	14.63% 92,912	15.43% 108,464
ED	5.74% 27,401	5.82% 29,029	5.97% 31,789	6.16% 36,197	6.19% 37,461	6.0% 38,122	5.68% 39,925
SLD	32.9% 157,229	31.66% 157,752	30.78% 163,688	31.2% 183,452	31.57% 191,045	32.23% 204,684	33.66% 236,564
ID	10.45% 49,887	10.64% 53,037	10.7% 56,886	10.36% 60,896	10.18% 61,611	10.08% 64,028	9.77% 68,685
OHI	13.85% 66,125	14.12% 70,360	14.35% 76,291	14.33% 84,263	14.15% 85,644	13.82% 87,775	12.88% 90,543
SI	20.0% 95,498	20.15% 100,412	20.25% 107,668	19.94% 117,272	19.81% 119,876	19.32% 122,669	18.75% 131,774
Total	477,281	498,320	531,712	587,987	605,843	635,097	702,784
% of total pop.	8.9%	9.23%	9.8%	10.7%	11.26%	11.70%	12.7%

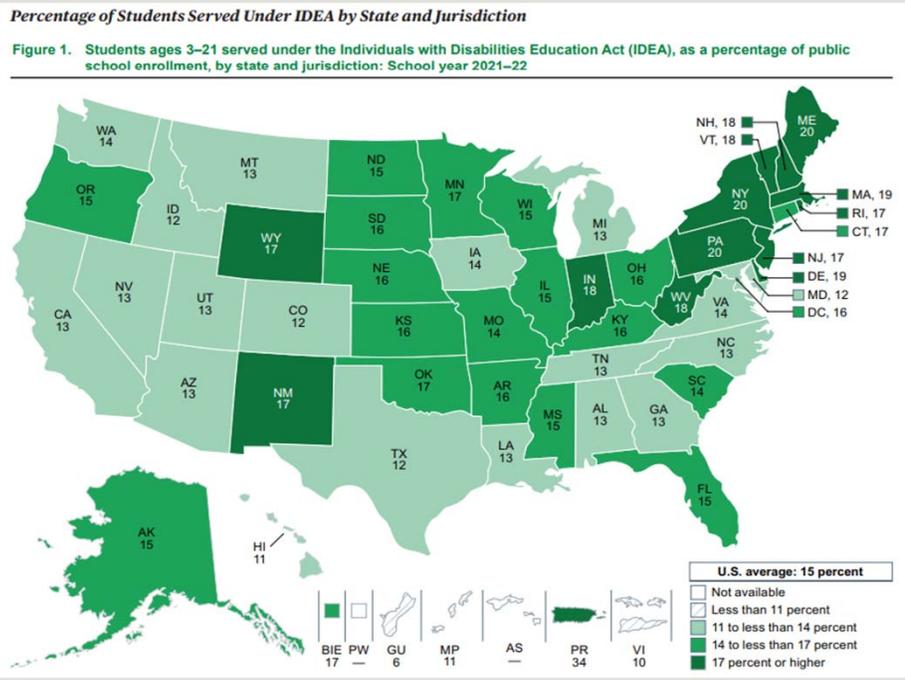
Trends in Texas

Increase in total percentage of students in special education over the 7-year period from 8.9% to 12.7%

For the past 3 years (2020-21, 2021-22, 2022-23), there has been an increase in the numbers of students identified:

	2021 - 2023	Change		2021 - 2023	Change
AU	84,431 – 108,464	+24,033	ID	61,611 – 68,685	+7,574
ED	37,461 – 39,925	+2,464	OHI	85,644 – 90,543	+4,899
SLD	191,045 – 236,564	+45,519	SI	119,876 – 131,774	+11,898
Overall:			605,843 – 702,784		+96,941

National Center for Education Statistics. (2023). Students With Disabilities. *Condition of Education*. U.S. Department of Education, Institute of Education Sciences. Retrieved [4/25/2024] from <https://nces.ed.gov/ipeds/data/indicators/cog>



CHILD FIND

34 Code of Federal Regulations § 300.111 Child find.

(a) *General.*

(1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; ...

ADDITIONAL CHILD FIND REQUIREMENTS IN TEXAS

HB 3928 (2023)

TEA: FAQs: Dyslexia Evaluation, Identification and Instruction (Update Nov. 15, 2023)

Based on the FAQ document, additional requirements include:

- Provision of a form to parents – Overview of Special Education for Parents
- Requesting an FIIE for students in DAEP placements
- Review of students in 504 that may need FIIE

Child Find and the Initial Evaluation Process

Updated
11/15/23

1. How does HB 3928 impact an LEA's Child Find process?

Distribution of a form on rights under IDEA that may be additional to those under Section 504 of the Rehabilitation Act of 1973. If a student is suspected of having dyslexia and may be a child with a disability, including when data supports a suspicion after the reading diagnostic assessments under TEC §28.006 or screening under TEC §38.003, LEAs must distribute to parents a form, developed by TEA, explaining the rights under IDEA that may be additional to those under Section 504. The Notice of Procedural Safeguards (NPS) meets the federally required notice of IDEA rights and is part of the process of seeking informed parental consent for evaluation, but the state requirement resulting from this bill is a specific form summarizing the rights that might be additional to those offered under Section 504. The Overview of Special Education for Parents form is available in English and in [multiple languages](#).

Based on feedback from the field, the form was revised and reposted on August 24, 2023. The following adjustments have been made to the form:

- Moved the statement acknowledging receipt of the document with the parent's signature to a separate page to avoid having to photocopy the last page to give back to a parent. This change will assist the LEA in retaining the parent's acknowledgement that they received the document without risking the parent losing any content described on the form.
- Added a space to input the student's name and student ID number.

TEA does not expect LEAs to take any retroactive action if they have already distributed the form between August 16 and August 24, the date on which the form was adjusted.

In regard to the form, LEA responsibilities include the following when an initial special education evaluation has been requested by a parent, or the LEA has referred the student for an initial evaluation:

- When dyslexia is suspected, the LEA must distribute the form when the LEA issues to parents the prior written notice of its proposal to conduct an evaluation, a copy of the NPS, and the opportunity to consent to the evaluation [19 TAC §89.1011(b)(1)], or when the LEA issues to parents the prior written notice of its refusal to conduct an evaluation and a copy of the NPS [19 TAC §89.1011(b)(2)];
- TEA expects LEAs to incorporate the distribution of this form in the same circumstances as above to every parent, regardless of the disability that is suspected.
- Parents need to be asked to acknowledge receipt of the form by signing and dating the last page. Each LEA will need to retain evidence of the parent's signature or documentation that the parent refused to provide a signature.

ADDITIONAL CHILD FIND REQUIREMENTS IN TX

Bill Requirement Not Exclusive to Dyslexia (Disciplinary Placements)

24. Why do school districts have to provide information on how to request FIIEs when students are assigned to disciplinary alternative education placements (DAEPs) or when returning from DAEPs?

Students who experience exclusionary discipline may have unidentified disabilities that impact their learning. Accordingly, the bill amended TEC §37.006 and §37.023 to require **that each school district provide information to a student's parent regarding the process for requesting an FIIE when the student is placed in a DAEP and as part of the student's personalized transition plan when returning to campus from a DAEP.** TEA suggests that school districts use language from the required [student handbook statements](#) regarding students who are experiencing learning difficulties when providing this information. Since the requirement refers specifically to initial evaluations, the requirement would not apply to students who are already served by special education. Also note, that as defined at LEA above, this answer specifically references school districts as these statutory sections do not apply to open enrollment charter schools.

ADDITIONAL CHILD FIND REQUIREMENTS

based dyslexia program through Section 504. **Section 504 committees must begin the process of discussing a student's continued need for an evidence-based dyslexia program and submitting referrals for full individual and initial evaluations (FIIEs).** Absent any directives prescribed by the SBOE through its upcoming rule and Handbook revisions, **TEA anticipates that each LEA should hold a Section 504 meeting as soon as possible but no later than by the end of the 2024-2025 school year to determine whether the student continues to require an evidence-based dyslexia program. If so, the LEA must refer the student for an FIIE.** In these cases, the student should continue to receive instruction through an evidence-based dyslexia program while awaiting parental consent for the FIIE, its completion, and the subsequent eligibility determination. LEAs should prepare for eligibility determinations to be made so that each eligible student could begin services under an IEP as soon as possible but no later than the beginning of the 2025-2026 school year.

Note that many of these students may have recently had an FIIE as part of the identification of dyslexia (a requirement since the 2021 update to the Handbook), and the ARD committee may have determined the student was not eligible to receive special education services. In these cases, an LEA must still operate as if a new initial evaluation is taking place, which means asking parents to provide informed consent for evaluation and adhering to 34 C.F.R. §300.301 and 19 TAC §89.1011. However, during the review of existing evaluation data (REED) process, the MDT, which includes input and data from the student's parents, might determine that an updated student observation and collection of recent informal student data would be the only items necessary to include along with the recent evaluation report in order to determine eligibility and educational needs. If the parent of a student receiving this type of instruction under a Section 504 accommodation plan refuses to consent to an FIIE, the LEA has the option of using due process and/or mediation to seek consent to evaluate.

PWN, NPS and CHILD FIND

Prior Written Notice (PWN): The LEA must inform the child's parents in writing if it proposes to evaluate the child for possible special education eligibility and services. The PWN must include, among other things, a statement of parent rights, whom they should contact at the LEA for information, and the steps the district proposes or refuses to take.

Notice of Procedural Safeguards (NPS): Contains a full explanation of parental rights as guaranteed under the IDEA.

Child Find does not require schools to agree to conduct an FIIE for every child. If a school does not agree with a request to conduct an FIIE, it must provide PWN and explain why it refuses to evaluate.

Texas State Regulations 19 TAC §89.1011: FIIE

Added statement here

Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. ~~Prior to referral~~, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services. ~~after~~ If the student continues to experience difficulty in the general classroom ~~after~~ the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

Changed after to with

Added phrase here

19 TAC §89.1011 Referral for FIIE

Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services. A student is not required to be provided with interventions for any specific length of time prior to a referral being made or a full individual and initial evaluation being conducted. If the student continues to experience difficulty in the general classroom with the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. A referral for a full individual and initial evaluation may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

REFERRAL ISSUES

When do you refer? This means when do you suspect the student has a disability and may be in need of special education.

TEA Network 1 Documents:

Student Data Review Guide

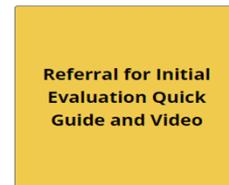
(21-page document)

Student Data Review Guide:

Summary of Responses (1-page document)

Special Education Referral Resources:

Click on a below to see resources.



The FIIE

Is typically done when a substantial amount of data (i.e., cumulative data across multiple sources) or a significant factor indicate the possible presence of a disability to the degree that the referral committee suspects that the student not only has a disability but may require special education and related services.

Is typically not exploratory. There should be reason to suspect an IDEA disability condition that is significant enough to warrant an FIIE.

Although the data lead to the suspicion that triggers the referral, the FIIE is not limited in scope to only the suspected condition. We must evaluate in all areas of suspected disability, and the suspicion of different conditions can be generated during the FIIE process.

Evaluation Procedures

(a) Notice. The public agency must provide **notice** to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a **variety of assessment tools and strategies** to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; **and**

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

Evaluation Procedures

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Sec. 300.304

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as **not to be discriminatory** on a racial or cultural basis;

(ii) Are provided and administered in the **child's native language or other mode of communication** and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the **assessments or measures are valid and reliable**;

(iv) Are **administered by trained and knowledgeable personnel**; and

(v) Are **administered in accordance with any instructions provided by the producer of the assessments**.

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

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

(4) The child **is assessed** in all areas related to the suspected disability, including, if appropriate, **health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities**;

(5) Assessments of children with disabilities **who transfer from one public agency to another public agency in the same school year are coordinated** with those children's prior and subsequent schools, as necessary and as **expeditiously as possible**, consistent with §300.301(d)(2) and (e), **to ensure prompt completion of full evaluations**.

(6) In evaluating each child with a disability under §§300.304 through 300.306, **the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs**, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that **provide relevant information that directly assists persons in determining the educational needs** of the child are provided.

The FIE



The FIE is designed to accomplish two major purposes:

- determine the presence of a disability condition
- determine what needs arise from that condition in order to make recommendations for educational programming

To achieve these purposes the FIE:

- identifies the strengths and weaknesses of the student,
- describes the student's present levels of functioning across multiple domains, and
- generates recommendations for educational programming

As such, the FIE must be **appropriate**.

“Appropriateness” of the FIE

Purpose of the study was to determine which criteria are used for judging the appropriateness of a district's evaluation.

Reference:

Etscheidt, S. (2003). *Ascertaining the adequacy, scope and utility of district evaluations*. Council for Exceptional Children, 69, 2, 227-247.



3 Essential Components

ADEQUACY

- Technical adequacy
- Compliance with IDEA evaluation requirements

SCOPE

- Comprehensiveness
- Evaluation in all areas of suspected disability

UTILITY

- Sufficient information to enable the team to prepare an IEP that addresses the student's specific needs
- Impact of disability on educational performance, development of goals and objectives, accommodations, modifications

CONDITION VS. ELIGIBILITY

FIE determines condition. ARD committee determines eligibility.

The FIE needs to:

- (a) be explicit about the condition,
- (b) address the degree to which symptoms prevent the student from making age- and grade-expected progress in academic, behavioral and social areas, and
- (c) address what services the student requires to make progress.

ARD then decides how those needs and services will be provided and if special education is needed

ADVERSE IMPACT VS. NEED FOR SPED

5th Circuit in A.D. v. Alvin ISD

Adversely affects his educational performance versus adversely impacts his ability to benefit from regular education

Adversely affects is subpart of 1st prong – used to establish disability – adversely affects does not mean eligibility

2nd prong – by reason of the disability condition, the student needs special education

If both prongs are not met, the student is not a child with a disability under IDEA

REED

300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

- (i)
 - (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
- (ii) The present levels of academic achievement and related developmental needs of the child;
- (iii)
 - (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

NASP Position Statement Reevaluation Purpose 1

Accountability

- Effectiveness of the Individualized Education Program (IEP) should be analyzed. This includes the BIP.

Reevaluations should include:

- Review of progress by examining data reflecting past and present levels of performance



NASP Position Statement Reevaluation Purpose 2

Planning

- Determine whether modifications to special education services are needed for the child to meet the annual goals and participate, as appropriate, in the general curriculum.

Reevaluations should include:

- Analysis of behavior, current academic skills, and other skills as compared with regular education peers. Future needs must be addressed, especially at transition points in the child's educational program.



NASP Position Statement

Reevaluation Purpose 3

Qualification

- Assumption is that the initial identification of an educational disability and qualification for special education services are valid processes.

However, factors that affect this assumption could include:

- Initial eligibility determination at a very young age; limited academic and social experiences; new diagnoses; specific developmental delays; medical conditions

Reevaluation provides an opportunity to reconsider the *presence* and *nature* of the disability



Purpose of the REED

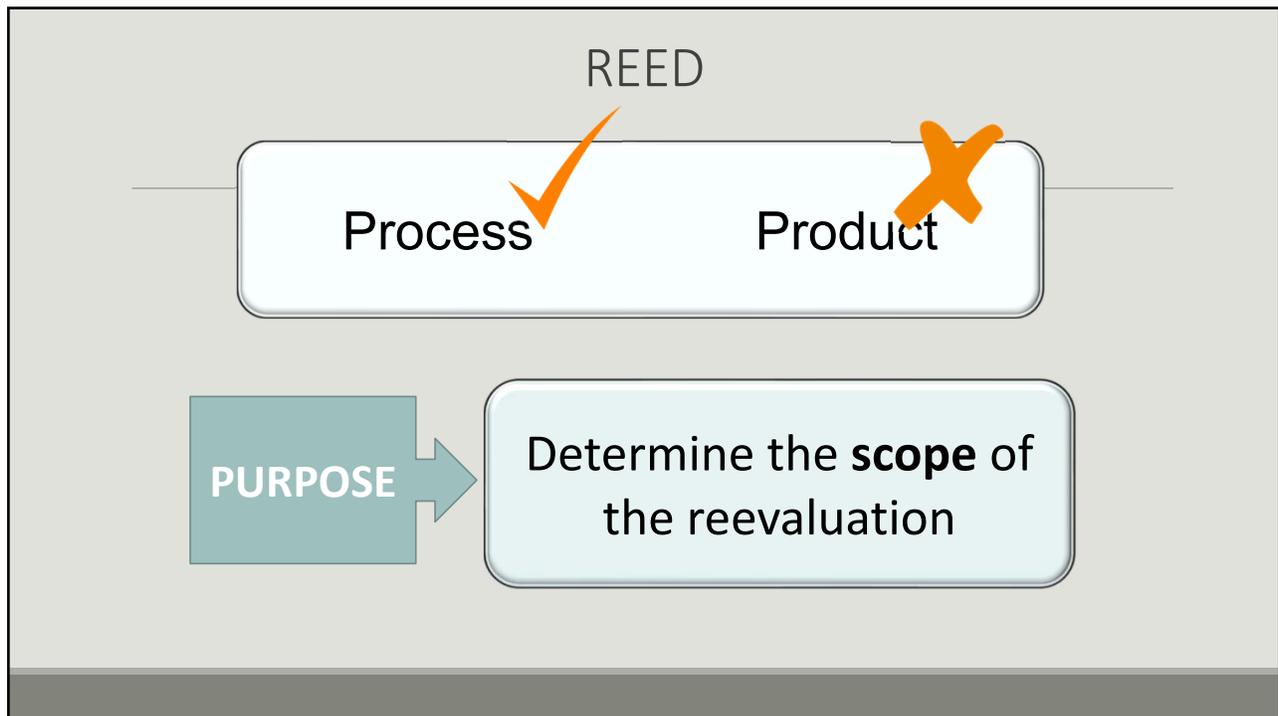
To collect, analyze and synthesize data

To decide if additional data are needed to address 4 questions/issues:

1. Does the student continue to have a **disability**?
2. Does the student **need** special education and related services?
3. What are the student's **present levels** of academic achievement and related developmental needs?
4. Are any **additions or modifications** to the special education and related services needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum?

REED – THE 4 QUESTIONS

CLASSIFICATION & ELIGIBILITY	EDUCATIONAL PROGRAMMING
Disability condition and educational needs	Present levels of academic achievement and related developmental needs
Whether child needs special education/ continues to need special education	Whether any additions or modifications to the special education and related services are needed to meet IEP goals and participate as appropriate in general education curriculum



REED: Results

3 Outcomes

Additional data needed in all areas of FIE

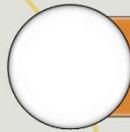
Certain sections of the FIE need additional data

Existing data sufficient for FIE – no formal evaluation is needed

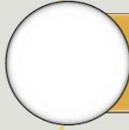
The 3 Possible Outcomes

Additional Data Needed in All FIE Areas	Additional Data Needed in Some but not all FIE Areas	No additional data needed in any FIE area
1 st Reevaluation	Disability condition not in question; Stability in some areas	No question about condition
Maybe 2 nd Reevaluation depending on age at 1 st reevaluation	Transition	No question about need for special education
	Related Services	
	Adaptive Skills	
Any question about disability (e.g., category, presence)	Update on present levels of achievement and developmental needs	Data sufficient for current performance levels
Any question about continued need for special education	Escalation in behavior; New behaviors emerge	Data sufficient for programming
Any major changes in performance (academic or behavior)	Lack of progress in certain areas; Needs for additions or modifications to the program	

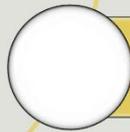
NELI REED FOLDER DESIGNED TO...



Provide a step-by-step approach to conducting the REED



Facilitate data collection



Provide important points in the process for data analysis and decision-making

NATIONAL EDUCATORS LAW INSTITUTE (NELI)
3660 Stoneridge Road, Suite D-101 • Austin, TX 78746 • (512) 322-9342 FAX • www.nellaw.net

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SUMMARY

The FIIE and Reevaluation are complex processes designed to not only identify students with disabilities, but ensure that they receive a free and appropriate public education and make progress within the educational system.

School-based programs and services are designed to meet the unique needs of students who have been determined eligible under special education. All of these processes, from evaluation to educational programming, require teams of individuals with various types of expertise and collaboration with parents and external service providers when appropriate.

The presentations as part of this series are meant to be an overview and provide the basic information on this process and on certain conditions, but are by no means comprehensive and cover all areas related to the process and conditions. As noted, we hope that this becomes a starting point in ongoing professional development as we strive to obtain more information on each topic.

LEGAL ISSUES AND LITIGATION

Child Find

Cynthia Buechler
Buechler & Associates

Link to Video

- <https://www.instagram.com/reel/C2DSDHnMKu1/?igsh=dm16cWRnbzQzYmtm>

1. What is “Child Find”?

IDEA and its implementing regulations require that all schools have policies and procedures in place to ensure that all children with disabilities within the state who are in need of special education and related services are identified, located, and evaluated. This obligation is referred to as “child find,” and includes children with disabilities who are:

- Homeless;
- Wards of the state;
- Attending private schools;
- Highly-mobile; and/or
- Suspected of being a child with a disability and in need of special education, even if they are advancing from grade to grade.

2. The parent sends a request that her child be tested for special education testing to the principal. What is the school required to do?

If a parent submits a written request for an initial evaluation to the director of special education services or an administrator, the school must, by the 15th school day following the date of receipt of the request, provide the parent either:

- 1) prior written notice of its proposal to conduct an evaluation, a copy of the Notice of Procedural Safeguards, and the opportunity to give written consent for the evaluation; or
- 2) prior written notice of its refusal to evaluate, including an explanation of why the school refuses to conduct an initial evaluation and the information that was used as the basis for the decision, as well as a copy of the Notice of Procedural Safeguards.

3. How long can a student stay in RTI?

RTI is designed to be a short-term intervention to assist those students that have some gaps in learning. It is recommended that RTI Teams set a reasonable length of time that intervention plans will be in effect (e.g., 6 to 8 instructional weeks). However, teams should have the discretion to set longer or shorter intervention timespans based on the facts of the specific student's circumstances.

4. When a student is in RTI, what must be provided to the parent?

When a child begins receiving assistance through the RTI process, schools must provide the child's parents with written notice containing the following information.

1. A reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used;
2. Information collected regarding any interventions in the base tier of a multi-tiered system of supports that has previously been used with the child;
3. An estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;
4. The estimated time frames within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent; and
5. Information about the parent's right to request, among other things, a special education evaluation at any time.

5. Does a student need to receive interventions in RTI before he can be referred to special education?

No. A school cannot reject a referral for an initial special education evaluation on the basis that a child has not participated in a RTI.

6. Does a student need to first be placed in Section 504 before being referred for special education?

No. As with RTI, there is no requirement that a student be initially served in Section 504 before being referred for special education.

7. A student has exhibited several behaviors. Should this student be referred for a special education evaluation?

Behavior can also be addressed in RTI. However, if the educators suspect that the child has a disability and is in need of specially designed instruction, the student needs to be referred to special education.

8. A parent requests that their child who has just started kindergarten be evaluated for a Specific Learning Disability, specifically dyslexia. What are the school's obligations?

The school must respond within 15 school days whether the school will or will not evaluate the child. If there is no basis to suspect that the student has a disability and is in need of special education services, then the school can send a Prior Written Notice and Procedural Safeguards to the parent. With these documents, send a letter to the parent indicating that the student has not had the educational opportunity to gain skills and the school will continue to monitor progress under RTI.

9. A parent enrolls her child and does not indicate that the child is receiving special education services. Within the first month, the student has several infractions for aggression and at the DAEP conference, the parent indicates that the student was in special education. What can the school do?

The school should immediately try to obtain the special education records of the student. Once the school became aware of the disability, the school can still hold the MDR and answer the relevant questions:

1. Was the conduct in question caused by or directly related to the child's disability?
2. Was the conduct a result of the school's failure to implement the IEP Plan, including the Behavior Intervention Plan (BIP)?

10. A student assaults another student. It is recommended that the student be placed in the DAEP for 30 days. The parent makes a referral for special education. Can the student be placed at the DAEP?

Yes. Since the disciplinary infraction occurred before the referral, the student can be placed at the DAEP. The school is obligated to expedite the evaluation.

11. Goober was referred for a special education evaluation. While the evaluation is in process, Goober hits a teacher and tells her that he hopes she dies a long and painful death. Can the student be placed in the DAEP?

Since the misbehavior occurred after the referral, the ARD committee must answer the questions of the MDR. If the ARD committee determines that the behavior is a manifestation, then the student can receive consequences, but cannot be removed to a disciplinary placement unless the ARD committee determines that maintaining the student in his current placement poses a substantial risk of harm to himself or others. A threat assessment needs to be completed prior to the MDR.

12. Kanye takes a pencil and stabs another student when the other student does not want to play with him. Kanye qualifies for services as SLD in the area of reading comprehension. At the MDR, the parent brings a letter from his physician that says Kanye also qualifies as a student with ADHD and anxiety. What should the ARD committee do?

With the new information, the ARD committee needs to request to conduct a psychological evaluation. The ARD committee also needs to determine if the student did qualify as ED, would the behavior be related.

13. Is a school required to evaluate students for special education services if that student attends a private school in the school's boundaries?

Under the IDEA, school districts have a "child find" obligation and must identify and evaluate all students who are reasonably suspected of having a disability regardless of whether they are enrolled in a public or private school. This duty extends to students attending private schools located within a school district's boundaries even if those students do not reside within the district. Once the district is on notice of facts likely to indicate a disability and the need for special education, it must identify, locate, and evaluate the private school student within a reasonable time.

14. If a parent brings a physician's statement that indicates that the student has ADHD and provides that the student has limited alertness that adversely affects a child's educational performance, does the student automatically qualify for Special Education services?

OSEP has stated that a doctor's statement alone does not establish the basis for an ADD/ADHD student's OHI eligibility. A multidisciplinary team must determine that the student needs special education and related services due to the impairment.

15. If the student is making about average grades and State Assessment scores, but has several disciplinary referrals, would the student qualify as special education services?

Educational need encompasses more than academics. If the student's behavior is adversely affecting him within the school environment, then the student may qualify for special education services if the student meets one of the eligibility criteria.

16. If the OHI form filled out by the physician states that the acute health problem is depression and anxiety, would the student qualify for special education services as OHI?

Depression and anxiety are not listed under IDEA as acute or chronic health problems. Nevertheless, if a physician indicates that the student has depression or anxiety, the district needs to explore conducting a psychological evaluation for emotional disturbance.

17. The physician has filled out the OHI form and indicated that the acute health problem is drug use. Does the student qualify for special education services as OHI?

Drug use is not a basis for OHI. The district should connect the parent with resources to address drug use.

18. Can a psychologist fill out an OHI form?

The OHI form must be completed by a licensed physician, a physician assistant, or an advanced practice registered nurse.

19. Can a medical professional licensed outside of the US sign the OHI form?

No.

20. If the student with ADHD is fine on medication, but is a holy terror when off medication, is that a basis to determine that the student does not qualify for special education services?

Medication cannot be considered a mitigating factor.

21. Where is the line for determining services under Section 504 for ADHD versus special education services for ADHD under Section 504?

The distinction between Section 504 and IDEA is whether the child's ADHD rises to the level that the student needs specially designed instruction in order to receive an educational benefit. If the student only needs accommodations, the student will qualify for Section 504.

22. A parent is adamant that she only wants her child identified as autistic and does not want the ID label. What should the ARD/IEP committee do?

The ID label is sometimes difficult for a parent to accept. However, it is important to have a full picture of the areas that a student qualifies to assist in the family accessing other outside resources. If the student qualifies under another eligibility, the ARD committee can defer adding the label until the next ARD/IEP meeting as long as the deliberations clearly show that the results of the evaluation show that the student qualifies as ID.

23. The parent revokes consent for special education for their child that qualifies for services as ID and speech impaired. What should the school do?

The parent has the right to revoke consent for special education services even when the student is ID. The school should have a 504 meeting and determine a program under Section 504. Remember, the parent needs to consent to Section 504 placement the same as a parent needs to consent for special education placement.

24. A student transfers into your district from another school. The parent brings an evaluation from that district but blacks out all cognitive scores and states that her child only qualifies as autistic. The diagnostician has attempted to obtain the school records from the previous school, but there has been no response. What should the school do?

In that instance, the school needs to conduct its own testing. When the parent is not willing to provide all of the information from the other school and obtaining records has been difficult, current assessment is needed to determine eligibility as well as educational programming.

25. Bart's mother emailed the principal to request special education testing in October. The principal turned it over to the diagnostician who shortly thereafter went on maternity leave. Subsequently, the diagnostician resigned to stay home with her baby and the testing was never completed. In September of the following year, Bart has a disciplinary referral, and the principal wants to send him to the DAEP. Can the student be removed?

Since the school failed to evaluate the student, the DAEP placement should be taken off the table unless there is a genuine safety concern. Testing should be immediately started and expedited. If the student qualifies, the student may be owed compensatory services.

26. Bobbie Jo transfers from another district. She has a 504 plan that indicates that her disability is autism. What should the school do?

If a student has Autism, it is important to see what services the student needs. If the student needs specially designed instruction, then a special education referral should be made.

27. A student was evaluated for special education. The student only qualified for OT. Would that student be eligible for special education?

IDEA defines children with disabilities as those children who:

- Have been properly evaluated and determined as having an intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; and
- Require special education and related services as a result of the disability.

27. Continued

A child who has one of the above-mentioned disabilities is not a child with a disability under IDEA if:

- the child does not require special education and related services due to the disability, or
- the child requires a related service only.