

Questions and Answers from Live Web Cast on the Standard Operating Procedures Manual: The Referral, Evaluation and Placement of School-Age Students with Disabilities

The SOPM is located on the Department of Education's website at:

<http://schools.nyc.gov/Academics/SpecialEducation/EducatorResources/default.htm>

Hard copies will be sent to schools and appropriate administrative offices during the month of December. Forms, including translated copies, are available in the Appendix of the document, and can be downloaded from the DOE intranet site in English and other than English language. The link for the site is:
<http://www.nycboe.net/AdminOrg/Offices/TeachingLearning/SE/SOPM/default.aspx>

Definitions

Q. How are "days" defined?

A. "Day" means calendar day unless otherwise indicated as "school day" or "business day."

Q. There were many questions regarding "Type II" and "Type III" requests.

A. We are not using these terms anymore. For information regarding who needs to be at what type of IEP Meeting, please refer to the SOPM pages 63-69.

Initial Request for Evaluation

Q. Can the principal have a designee who receives the request for initial evaluation from the teachers and acts on them?

A. The principal may assign a staff member in a supervisory position to assist in reviewing the requests for referral but the principal must make the final decision.

Q. If we receive no response from the parent on a referral for an initial evaluation, can we proceed?

A. No.' You need written parental consent to initially evaluate a student. If you do not hear back from a parent, or if you do hear back and the parent refuses to provide consent, the principal may make a request for an impartial hearing to obtain consent. In this case, it is only after an impartial hearing officer rules that evaluations may be conducted that the school may proceed with the initial evaluation process.

Q. What about consent by phone after a follow up phone call?

A. No, consent must be written.

Q. Can I make a referral even if the parent refuses?

A. If you are the principal, you may make an initial referral for evaluation. The parent may refuse to consent and the steps identified in response to question 2 in this section must be followed.

Mandated IEP Team Member Excusal

Q. The questions we received suggest that there may be some confusion about who is a mandated IEP Team member. For information regarding who is a required member, please refer to the SOPM pages 63-69.

A. We want to stress that the excusal provision is an exception to the rule that certain members must attend IEP Meetings. A school may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance. Schools should carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP Team meeting, whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion.

Q. Can I use this excusal process to excuse the parent member?

A. No. There is a separate process for excusing the parent member. The parent member excusal form is in the Appendix of the SOPM.

Q. Can I use this to excuse the general education teacher on an initial case?

A. Mandated IEP Team member excusal may ~be used for initial referrals.

Q. If a related service provider cannot be at the meeting, does a form need to be filled out to excuse that provider?

A. Only mandated members need to be excused. If the related service is the only recommended special education service for the student, the related service provider is the special education teacher/provider, and is a mandated member. A determination about whether that member is excused is an individualized decision based on the needs of the student that will be discussed at the meeting. If the student is recommended for other special education services then the related service provider is not a mandated member and is not mandated to attend and therefore a member excusal form does not need to be completed. However, the provider still needs to give the IEP Team a progress report prior

to the meeting. For information regarding who is a mandated member, please see the SOPM page 63.

Q. Does the IEP teacher have to attend every meeting? If not, does it require parent consent?

A. No the IEP teacher does not have to attend all IEP Meetings. For initial referrals, a special education teacher in the school is a mandated member and is required to attend. This may be the IEP teacher or the principal may assign another special education teacher to attend the meeting. For Annual Reviews and reevaluations, the student's special education teacher must attend.

Q. Does a related service provider have to stay for the whole meeting or can they leave to return to their responsibilities?

A. IEP Team members must attend the meeting to provide input into their area of curriculum or expertise and to answer relevant questions as presented. Since that may be difficult to anticipate, we suggest that members remain at the meeting.

Q. Are phone conferences with parents still OK?

A. Parents may participate in an IEP Meeting by phone. But consent to any request must not be taken over the phone. Parent signature is always required for any action requiring consent or agreement.

Q. Can general education teachers be excused for self contained students?

A. It depends. You need to determine first if the general education teacher is a mandated member. The general education teacher is mandated only if the student is or will be participating in general education. Next you need to make an individualized decision about whether the meeting may continue without that member. Third, you must request and then receive written parental consent to excuse the general education teacher if the teacher is a mandated member of the IEP Team.

Timelines

Here are the mandated timelines:

The mandated timeframe for completing all necessary assessments and convening an IEP Meeting is 60 calendar days from the receipt of parental consent to evaluate the student for an initial referral, or from the date of referral for reevaluations.

Following the development of a student's IEP and a recommendation for special education services, a site for the student to attend and receive special education services must be arranged. This is accomplished by sending the parent the Final Notice of Recommendation (FNR), indicating the school the student will attend and any special

education services he will receive. The FNR must be sent within 60 school days from receipt of initial consent to evaluate, or within 60 school days from receipt of referral for reevaluations.

Q. Is there still a 30 day deadline for evaluations to take place?

A. No. The only timelines that are in effect for evaluations are outlined above.

Long Term Absence (LTA)

Q. If a child refuses to attend Special Education Teacher Support Services (SETTS), can we proceed with the LTA proceedings?

A. No, SETSS is not a related service, and is not part of the LTA process. The student's refusal to attend the service should be discussed at his/her IEP Meeting.

Amending an IEP After an Annual Review

Q. If an IEP is amended, does the date of the next annual review change?

A. No, the IEP is still in effect with amendments and the next annual review date remains the same. We will be providing users with a new CAP Code to use to make the change.

Q. We need specific instructions regarding how to amend an IEP.

A. See SOPM pages 71-72.

Q. Can we get some examples of things that can be an amendment?

A. As a general rule, any change that would necessitate the development of a new IEP is not part of this process. Any change in special education services/programs that requires a school psychologist at the meeting or requires the convening of a full committee (see chart in SOPM on Page 68) would require the drafting of a new IEP and therefore cannot be done as an amendment.

Q. What if a related service provider wants to make a minor change to an IEP (i.e., group size), but the primary service provider is not ready to do the review so early in the year. We have this in our school and it causes 2 IEP meetings in one year.

A. You could choose to request consent from the parent to amend group size on the IEP without an IEP Meeting. You may also have an IEP meeting with the parent and amend the IEP.

Q. When amending an IEP for related services by increasing or terminating a mandate, does a new IEP have to be generated or can a new page 9 of the IEP be attached to the existing IEP?

A. A form found in the Appendix of the SOPM must be filled out and consented to by the parent. It is attached to the IEP and the IEP may also be amended directly. The parent must also receive a copy of any changes. Please see the SOPM pages 71-72.

Reevaluation

Q. So to clarify, a teacher cannot request an evaluation?

A. A teacher may not make an initial referral. He/she may make a request for initial referral, instead. A teacher may request a reevaluation.

Q. Is it true that in the course of a three year reevaluation testing is still required?

A. A reevaluation, whether it is requested or a mandated three-year reevaluation, is a review by the IEP Team of the student's existing evaluation information. This includes evaluations and information provided by the parents of the student, current classroom based assessments, local or State assessments, classroom-based observations, and observations and progress reports by teachers and related services providers. The group may conduct its review without a meeting. On the basis of this review, the IEP Team must identify what additional assessments (i.e., new testing, observation) if any, are needed to determine:

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

Q. Are the schools encouraged to ask parents to waive the mandated three year reevaluation?

A. A school must not routinely seek to waive the mandated three year reevaluation. As such, a waiver must be based on the individual student's needs and in each instance requires written parental agreement. The school psychologist, in consultation with the student's primary or designated teacher, must determine whether the mandated reevaluation is not necessary and request parental consent in writing.

Q. If the parent waives the mandated three year reevaluation; do we conduct an annual instead?

A. You may, if it is due.

Q.If the parent does not want the mandated three year reevaluation, how do we proceed with generating an IEP?

A. You wouldn't need to develop an IEP as part of the reevaluation if the parent has consented in writing and you agree. You still need to conduct an annual review though when it becomes due.

**Please note that if the mandated three-year reevaluation is waived, we will be providing updated codes in CAP to indicate that it has waived. The dates of the next mandated three year reevaluation will not change.

Q. If a parent does not respond to the request for consent to not conduct a mandated three-year review, are we obligated to test the student?

A. We are never obligated to test the student -please see an explanation of testing above. If the IEP Team has determined that a mandated three year reevaluation is not necessary but the parent does not respond to your request for a waiver, the mandated three year reevaluation must take place.

Section 408

Q. When it is stated that IEPs must be kept in a location that is "not accessible," does this mean that they must also be locked? I have heard conflicting information on this'

A. It means not accessible by students or staff members who are not responsible for implementing the IEP , which does not necessarily mean it must be in a locked location.

Independent Evaluations

Q. Suppose a parent would like a neuropsychological to be performed privately at Department of Education expense?

A. Please review the procedures outlined on pages 59-60. The parent has a right to request an independent evaluation at public expense if the parent disagrees with an evaluation conducted by the school. The school may ask for the parent's reason why he or she objects to the public evaluation, and then, in consultation with the ISC, must either authorize an independent evaluation at public expense or request an impartial hearing to defend the public evaluation.

If the parent is requesting an evaluation that was not conducted by the DOE and you do not agree that it is necessary, then you need to inform the parent in writing of the reason you are not conducting the evaluation. If you agree that it is necessary and there is no DOE staff member to conduct the evaluation, you should inform the ISC who will arrange for the evaluation through contracted agencies or the assessment authorization process.

Consent and Parent

Q. If a student lives in a group home, who is authorized to sign?

A. For questions regarding who may assume the role of the parent, please refer to Section 3. Additionally, the Office of Special Education Initiatives is releasing a self-paced module which will be available online regarding assuming the role of the parent, and assignment of a surrogate parent.

Q..If the parent's rights have been terminated and the foster agency is in charge of the child can the agency sign or who is the signing party?

A. The Agency may never sign, but if the parent's rights have been terminated, the foster parent may assume the role of the parent and provide consent. Again, see Section 3 for additional information regarding who may assume the role of the parent.

Q If the parent does not give consent for an initial referral can we take him/her to an impartial hearing? Who takes the parent to an impartial?

A. Yes. If the parent does not give consent for an initial request to evaluate, the principal may request an impartial hearing. This may be done in consultation with the ISC.

Impartial Hearings

Q. When can a parent request an Impartial Hearing?

A. (1) A parent may make a request with respect to the identification, evaluation, classification, program recommendation, or placement of their child at any time.

(2) If a child is receiving special education services and a new recommendation is made that the parent does not agree with, what is the recourse for the school?

The school psychologist, in consultation with the Principal or designee must:

- Identify with specificity the program and/or service(s) the parent is refusing.
- Take immediate steps to resolve the parent's concerns. For example, if necessary, schedule a Full Committee IEP Meeting and if consensus is reached, send a new Final Notice of Recommendation reflecting any agreed upon

changes. Additionally, the school must work with the Office of Student Enrollment to identify appropriate placement based on any changes.

- If the parent still disagrees with the service(s), the school must inform the parent of his/her right to request an impartial hearing

Random Questions

Q. Can you please clarify "No ISP on pages 90 and 91". If a monolingual speech teacher will provide service to a bilingual student until a bilingual provider is available what paperwork needs to be completed.

A. The change needs to be made on the IEP.

Q. What if a parent requests that another team, not the child's IEP team, test the child?

A. Once the Department has completed any new testing that the Department has determined as necessary, the Department is not obligated to provide the parent with a new team to complete new testing.

Q. Can we rate the social worker and the psychologist assigned to the school at the end of the year? If so, how?

A. The Annual Performance Review for these personnel is the responsibility of the principal, in consultation with the Supervisor of School Psychologists.