



## Special Education Services

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Date: November 2, 2010

To: Directors of Special Education

From: Colleen Riley, Elena Lincoln, Mark Ward

Re: Can the State Exception for an Evaluation Extension of Time with Parent Consent also be applied to the requirement to complete an IEP by third birthday timeline?

The requirement to evaluate children within 60 school days of a school's receipt of parent consent are specified in state regulations, at K.A.R. 91-40-8(f) and 34 CFR 300.301(c)(1). State regulation K.A.R. 91-40-8(f) also includes an exception for instances in which the school has obtained written parent consent to an extension of time. The state was authorized to make this exception to the timeline for completing evaluations in the federal regulations at 34 C.F.R. 300.301(c)(1)(ii). The requirement for children referred by Part C prior to age 3 who are found eligible for Part B to have an IEP developed and implemented by their third birthday is specified in K.A.R. 91-40-2(b) and 34 CFR 300.124(b). There has been some discussion regarding whether the exception that allows an extension of time for completion of an evaluation with parent consent can also be applied to the requirement for children referred by Part C prior to age 3 who are found eligible for Part B to have an IEP developed and implemented by their third birthday.

In the past, this agency has supported the position to the state exception allowing an extension of time for evaluations applied to both the 60 school day timeline and the timeline for children referred from Part C. However, in a recent question and answer document regarding Indicator 12, Part C to Part B Transition, the Office of Special Education Programs (OSEP) stated that state exceptions to evaluation timelines are not applicable to the federal timeline for evaluating, developing and implementing an IEP for children transitioning from Part C to Part B – "The LEA cannot use a State exception to the State timeline to extend the development and implementation of the IEP past the child's third birthday".

The regulations which require that evaluations be completed within 60 school days and that children referred by Part C prior to age 3 be evaluated, and if found eligible for Part B, have an IEP developed and implemented by their third birthday are separate requirements involving only children under the age of three years, and these regulations do not include an exception for when a school has obtained written parent consent to an extension of time. Moreover, federal regulations do not authorize states to make exceptions to this timeline. Accordingly, the exception in K.A.R. 91-40-8(f) allowing more time for completion of an evaluation when a school has obtained written parent consent for an extension of time applies only to the 60 school day timeline for completion of evaluations. The exception allowing an extension of time with parent consent does not apply to the requirement to complete an IEP by third birthday timeline in K.A.R. 91-40-2(b) and 34 CFR 300.124(b).

The State Performance Plan Annual Performance Review measures the state's and district's compliance with the requirement to evaluate children within 60 school days of a school's receipt of parent consent in Indicator 11, Child Find. The state exception which allows for written parent consent to an extension of time to an evaluation is counted as an exception to the 60 school day timeframe when measuring and reporting compliance for Indicator 11.

The State Performance Plan Annual Performance Review also measures the state's and district's compliance with the requirement for children referred by Part C prior to age 3, who are found eligible for Part B to have an IEP developed and implemented by their third birthday in Indicator 12, Part C to Part B Transition. In future State Performance Plan Annual Performance Reviews the state exception which allows for written parent consent to an extension of time to an evaluation will not be counted as an exception to the requirement for children referred by Part C prior to age 3, who are found eligible for Part B, to have an IEP developed and implemented by their third birthday when measuring and reporting compliance for Indicator 12.