



**Question:** How do you go about determining a student is no longer eligible for special education.

**Answer:**

A district suspects a child may no longer be a child with a disability who needs special education and related services. 34 C.F.R. § 300.305(e)(1), indicates that before making this determination the district “must evaluate [the] child in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.”

We then turn to § 300.305(a), that reminds us that “as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must . . . [r]eview existing evaluation data on the child . . .” and goes on to remind us what all that review of existing evaluation data must include. § 300.300(d)(1)(i) states that, “Parental consent is not required before . . . [r]eviewing existing data as part of . . . a reevaluation . . . .” Based on this, district staff could review existing data without parent consent, but note that this review of existing data must be by the IEP Team, which includes the parents. 34 C.F.R. § 300.305(b) indicates this review of existing data may occur without a meeting.

After district staff review existing data, the district must carry on with following the requirements of § 300.305(a)(2), “[o]n 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;

...

- (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.

There are a couple of important things to note about this requirement. The first one is that the district must now seek input from the child's parents to identify what additional data are needed to determine the items listed in (i) through (iv). As noted above, this input can be sought outside of an IEP Team meeting.

The second thing to note about this requirement, is that the district must identify what additional data, if any, are needed to determine the items in (i) through (iv). These things must be accomplished even if the district suspects a child may no longer be a child with a disability who needs special education and related services.

As the district is contemplating what additional data it might need to conduct the reevaluation, this is a good time to consider the requirements of § 300.304(b), and (c) on the required components of reevaluation and § 300.306(c) on the required procedures for determining eligibility and educational need to ensure all of these items are met. Begin with the end in mind and ensure all of these components can be documented. This is always important, but especially important if the district plans to only look at existing data. The district must be sure that all evaluation elements are met and fully documented. The following is not a list of all the requirements, however, these are the relevant ones that are continuously missed as critical components:

§ 300.304(b)(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)





§ 300.304(c)(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.

§ 300.304(c)(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.

§ 300.306(c): In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

If the child is currently identified with a specific learning disability, then the district should use §§ 300.307–.311 to ensure its contemplated reevaluation, as stated in the Prior Written Notice will meet the requirements of these regulations.

Once the district, with parent input, has determined what additional data, if any, are needed to determine the items in 34 C.F.R. § 300.305(a)(2)(i)–(iv), then the district must provide the parent with Prior Written Notice of the proposed reevaluation, as required by 34 C.F.R. § 300.304(a). We then turn to 34 C.F.R. 300.305(d)(1). “If the IEP Team (which must include the parent) and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the [district] must notify the child's parents of’—





- (i) That determination and the reasons for the determination; and
- (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

An important reminder is that the IEP Team must include the parent and the word notify. Notify refers to the Prior Written Notice that is mentioned in the first sentence of this section.

Once the reevaluation, as stated in the Prior Written Notice is complete, the IEP Team must meet and fulfill the requirements of 34 C.F.R. § 300.306. If this IEP Team meeting results in the IEP Team determining that the child is no longer a child with a disability under special education law or in changes to the child's IEP, this must be documented in a Prior Written Notice. If this decision occurred after the IEP Team could not come to consensus because the parent disagreed and the LEA representative ultimately made the decision, this Prior Written Notice could also inform the parent of their right to request mediation or file a due process hearing.

As you can see, the road to determining that a child is no longer a child with a disability under special education law is long, requires lots of parent input, and careful documentation in line with the requirements for a reevaluation. It is absolutely possible, a district will just want to take care to be diligent to ensure it is documenting how it met legal requirements.

