

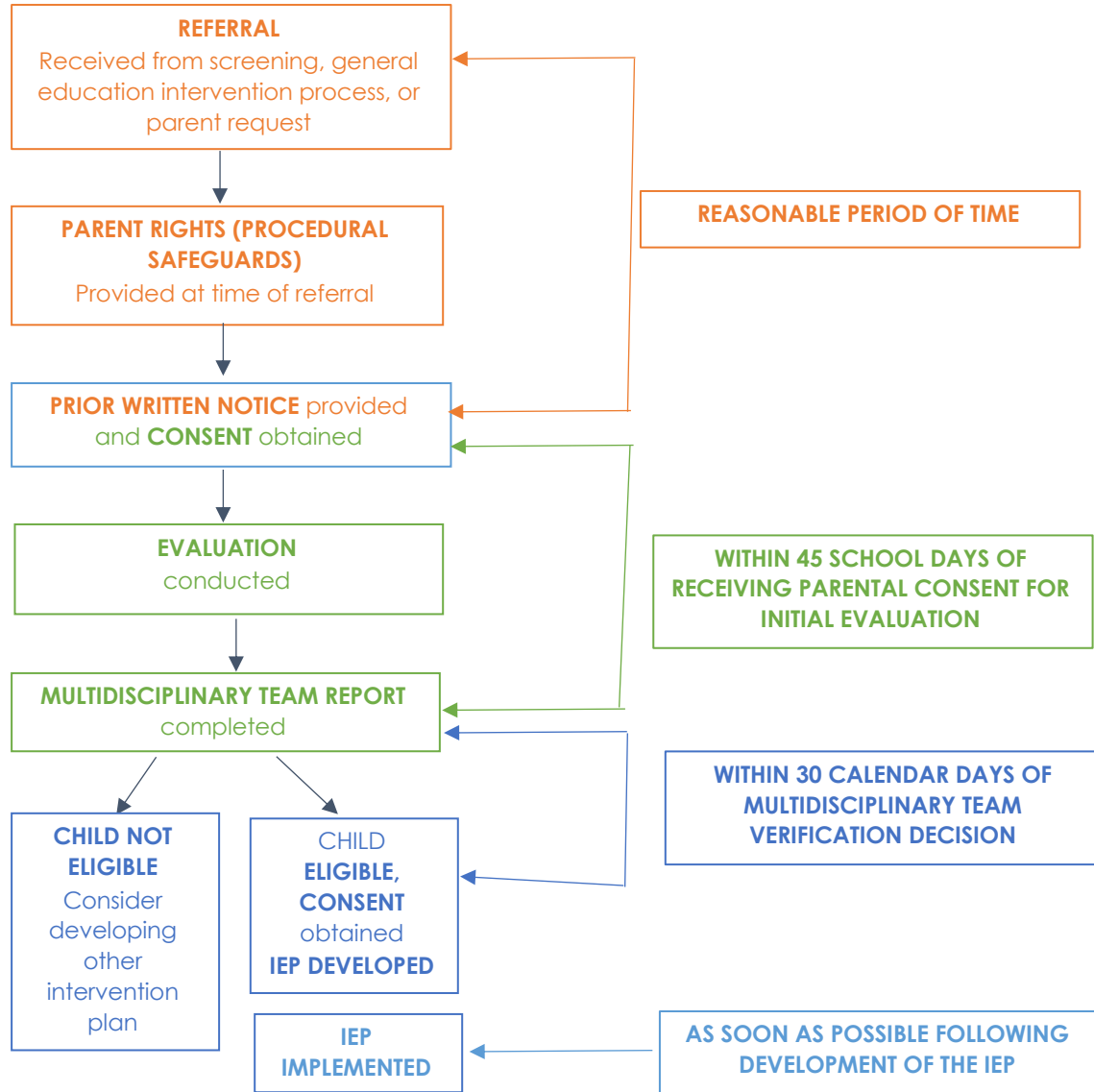


Question: What are the procedural steps and relevant timelines in the initial evaluation process?

Answer:

INITIAL EVALUATION PROCEDURAL STEPS

RELEVANT TIMELINES





A. REFERRAL

The initial evaluation process begins with a referral made whenever it is suspected that a child may be a child with a disability. Referrals for initial evaluation may come from a variety of sources. These include:

- Early Childhood Screening
- Early Intervention Services Provider
- General Education Intervention Team (if using an individual problem-solving team) or Grade/Content Area Collaborative Team (if using a Multi-Tier System of Supports (MTSS) process)
- Parents
- Self-referral by adult student

Upon referral for an initial evaluation, regardless of the source, the first action the school district or approved cooperative must take is to provide the parents, or the adult student, a copy of the Parent Rights Notice (procedural safeguards) available to them (92 Neb. Admin. Code § 51-009.06A1; 34 C.F.R. § 300.504(a)(1)). (See Parent Rights for Special Education (Age 3–21), Part B Procedural Safeguards, in multiple languages at [https://www.education.ne.gov/sped/parent-information/.](https://www.education.ne.gov/sped/parent-information/))

B. PARENT RIGHTS (PROCEDURAL SAFEGUARDS)

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (92 Neb. Admin. Code § 51-009.05A; 34 C.F.R. § 300.304(a)). In addition, there are standard components of content the notice must contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

- 1) A description of the action proposed or refused by the school district or approved cooperative;
- 2) An explanation of why the school district or approved cooperative proposes or refuses to take the action;
- 3) A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;





- 4) A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;
- 5) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained; and
- 6) Sources for parents to contact to obtain assistance in understanding their procedural safeguards;

(See Prior Written Notice Guidance Document at <https://cdn.education.ne.gov/wp-content/uploads/2017/11/PWN-Guidance-Combined-Final-2017.pdf>)

C. PRIOR WRITTEN NOTICE and CONSENT

The school district or approved cooperative must obtain informed consent from the parent of the child before conducting the evaluation (92 Neb. Admin. Code § 51-009.08A1; 34 C.F.R. § 300.300(a)). In determining that informed consent is obtained, the following must be ensured (92 Neb. Admin. Code § 51-003.09; 34 C.F.R. § 300.9):

- a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- d. If a parent 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).

Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

D. RELEVANT TIMELINE FOR REFERRAL, PARENT RIGHTS (PROCEDURAL SAFEGUARDS), AND SENDING PRIOR WRITTEN NOTICE and REQUEST FOR CONSENT

Rule 51 requires a district or approved cooperative to make referral for an initial evaluation, provide parent rights (procedural safeguards) to parents, and send a prior written notice proposing an initial evaluation and requesting parent consent to evaluate or refusing an initial evaluation "within a reasonable period of time." In





[previous guidance](#), NDE has indicated that a district “should include in its procedures the number of days which the district considers reasonable (NDE’s guidance would be that the district consider 10 school days as reasonable). However, whether that number of days is reasonable must be based on individual circumstances and may be shortened or lengthened as necessary.”

E. TIMELINE FOR CONDUCTING THE INITIAL EVALUATION

Nebraska has established a 45 school-day timeline to conduct an initial evaluation, consistent with federal regulations (92 Neb. Admin. Code § 51.009.04A1; 34 C.F.R. § 300.301(c)(1)). Rule 51 indicates that the timeline for conducting the initial evaluation starts upon the district or approved cooperative’s receipt of written parental consent to conduct the evaluation, and ends with the completion of the multidisciplinary team report if the child is not found eligible for special education services. 92 Neb. Admin. Code § 51.009.04A1

In 2019, the NDE, Office of Special Education issued [a guidance memo](#) clarifying confusion around initial evaluation timelines and calculating these timelines in accordance with The Individuals with Disability Education Act (IDEA). As a reminder, pursuant to 92 NAC 51-009.04, Nebraska has established a timeline for completion of the initial multidisciplinary evaluation for children ages 3-21 within 45 school days of receipt of parental consent. State-established timeframes generally also incorporates the exceptions in 34 CFR § 300.301(d). There is no exception in 34 CFR § 300.301(d) that would permit the applicable initial evaluation timeline to be suspended because of a school break (i.e. summer break, holiday break, etc.). Based on clarification from OSEP, 92 NAC 51 - 009.04 (45 school days) cannot supersede the 60 calendar days regardless of school breaks (i.e. summer vacation, holiday breaks, ect.).

A district or approved cooperative may not require a mandatory time period for the implementation of interventions before a child can be referred for a special education evaluation. A district or approved cooperative must evaluate a child who is suspected of having a disability, and it is inconsistent with federal law to use a general education intervention (GEI) system in a manner which delays evaluations of children who are suspected of having a disability. Whether the system is called a student assistance team (SAT), GEI, MTSS, or Response to Intervention (RtI), it cannot be used in a manner which results in delaying evaluation of children who are suspected of having a disability. There are numerous court decisions stating that requiring a student to go through one of these systems, or to stay in one of these systems, for a specified time, before being





referred for a special education evaluation is inconsistent with law. The [U.S. Department of Education's Office of Special Education Programs released a memorandum](#) on January 21, 2011, which expresses the same opinion. If school district personnel suspect a child has a disability and needs special education services, the school district has a legal duty to refer the child for an evaluation even if the child has not been involved in one of these systems or has only just begun to be involved in one of these systems.

F. PARENT RIGHTS IF THE SCHOOL DISTRICT REFUSES TO EVALUATE OR, AFTER EVALUATION, CONCLUDES THE CHILD IS INELIGIBLE

If the school district refuses to evaluate a child, the school district or approved cooperative is required to give the parents a Prior Written Notice telling the parents that the child will not be evaluated and telling the parents why that decision was made. This notice also tells parents that certain procedural safeguards are available to the parents, including a right to initiate a due process hearing.

After an initial evaluation is completed, if the parents disagree with the school district's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school district, if it meets the school district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child.

Finally, even if the child is not eligible for special education services under the Individuals with Disabilities Education Act (IDEA), the child may be protected by other laws: Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

