



Question: Should districts follow Rule 51 or IDEA when it comes to the initial evaluation timelines?

Answer: The NDE, Office of Special Education, based on a clarification letter from OSEP issued the following guidance in 2019, around **initial evaluation timelines** and calculating these timelines including school breaks:

Evaluation Timelines - School Breaks

Under 34 CFR § 300.301(c)(1), the initial evaluation must be conducted within 60 days after receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.

Pursuant to 34 CFR § 300.301(d), the timeframe does not apply if: (1) the parent of a child repeatedly fails or refuses to produce the child for evaluation; or (2) a child enrolls in a school of another public agency after the relevant timeframe in 34 CFR § 300.301(c)(1) has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR § 300.8.

In the regulations, a day is a calendar day unless otherwise indicated as a business day or school day. 34 CFR § 300.11. As contemplated in the regulation, a State is permitted to establish a timeframe that is different from the 60-day timeframe.

Based on the above regulations, Nebraska has established a 45 day timeline for completion of the initial multidisciplinary evaluation. Thus, school districts in Nebraska are required to complete the initial 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), as described above. 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 the above clarification from OSEP, 92 NAC 51 - 009.04 (45 school days) can not supersede the 60 calendar days regardless of school breaks (i.e. summer vacation, holiday breaks, ect.).

We recognize that this is in contradiction to previous guidance, however, based on the clarification from OSEP, dated 12/2/19, The Nebraska Department of Education – Office of Special Education began enforcing the guidance and updates this information in an annual policy memo until the updating of 92 NAC 51 can be completed to be in compliance with the federal regulations.

For annual publication of this guidance memo, please [visit this link](#). If you have further questions, please contact Amy Rhone, Administrator and State Director at amy.rhone@nebraska.gov.

