



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 24 2009

Tara Moffett  
Girvin & Ferlazzo, P.C.  
20 Corporate Woods Blvd.  
Albany, New York 12211

Dear Ms. Moffett:

This is in response to your electronic mail (email) correspondence to Dr. Deborah Morrow of my staff on June 4, 2009 in which you pose the following question: When neither a free appropriate public education (FAPE) nor ongoing eligibility for services is at issue, what, if any, obligation does a District, through the Individuals with Disabilities Education Act (IDEA or Part B), have to conduct additional testing to satisfy the eligibility criteria established by the College Board or other testing programs to secure testing accommodations on the SAT/ACT? When you spoke with Dr. Morrow on the telephone, you clarified that this question is being asked in the context of children who have been identified under Part B of the IDEA as children with disabilities and have a current individualized education program (IEP).

Under 34 CFR §300.303(a), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR §§300.304 through 300.311: (1) if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) if the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 CFR §300.303(b). When a parent requests a reevaluation, he or she does not have to provide a reason for requesting a reevaluation. Analysis of Comments and Changes to the Part B regulations, 71 Fed. Reg. 46540, 46640 (Aug. 14, 2006).

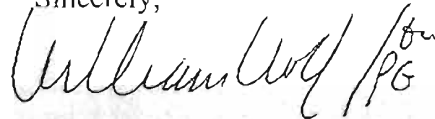
However, when conducting a reevaluation, the IEP Team and other professionals review existing evaluation data and, based on that review and input from the parents, determine what additional data, if any, are necessary in order to determine: (1) whether a child continues to have a disability, (2) the educational needs of the child, (3) the present levels of academic achievement and related developmental needs of the child, (4) whether the child continues to need special education and related services, and (5) 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. 34 CFR §300.305(a)(1) and (2). Thus, a reevaluation may not necessarily include additional testing. If the IEP Team and other qualified professionals determine that no additional data are needed, the public agency must notify the parents of that determination, the reasons for the determination, and the parent's right 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. 34 CFR §300.305(d)(1). While the parents have a right 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, that assessment may not necessarily meet the requirements of the College Board or other testing organization, particularly if there is no disagreement as to whether the child is a child with a disability or a dispute regarding the child's educational needs. See the discussion in the Analysis of Comments and Changes to the Part B regulations, 71 Fed. Reg. 46540, 46644 (Aug. 14, 2006) (In response to a comment requesting clarification regarding whether schools must provide updated evaluations for college testing and admissions purposes and other comments related to testing for postsecondary education or employment, the Department stated "We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act."). Accordingly, there is no requirement under Part B of the IDEA that a public agency conduct a reevaluation of a child with a disability or additional testing solely to satisfy the eligibility criteria established by the College Board or other testing programs. However, there is nothing in the IDEA that prevents a student from submitting to the College Board or other testing organization the results of testing done as part of a reevaluation. Moreover, there is nothing in the IDEA that bars a District from conducting testing to satisfy the eligibility criteria established by the College Board or other testing programs, but such testing generally would not be covered by Part B of the IDEA and would have to be paid for out of an alternate funding source.

Based on section 607(e) of IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at [Deborah.Morrow@ed.gov](mailto:Deborah.Morrow@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. Guard" with a stylized flourish at the end.

Patricia J. Guard  
Acting Director  
Office of Special Education  
Programs

cc: Rebecca Cort