

MEMORANDUM

To: Special Education Directors and Supervisors
Charter School Chief Executive Officers

From: Martha Toomey, Director,
Exceptional Children and Early Childhood Group

Date: March 10, 2009

Re: 2009 Evaluation Summary Report

Introduction of the 2009 Evaluation Summary Report

As you know, evaluations and eligibility decisions must comply with federal and state law requirements. Each time a school district determines a child's eligibility for special education and related services, the school district must provide an evaluation report *and* documentation of the eligibility decision to the child's parents.¹ This requirement exists for initial evaluations, reevaluations, and dismissals. For all disability categories, the report must document the district's evaluation and discussion of the eligibility decision. (*See*, 14 DE Admin Code § 925.6.1). The evaluation report must also contain specific provisions for children suspected of having a learning disability. (*See*, 14 DE Admin Code § 925.11.0).

The DOE recognizes the challenges districts face in navigating and understanding the regulatory provisions related to eligibility. In addition, the introduction of response to intervention procedures has raised new questions concerning how to document the eligibility determination for the learning disability and educable mental disability categories. The DOE is committed to providing technical assistance in this area.

The DOE is offering the revised 2009 *Evaluation Summary Report* ("ESR") for use in documenting evaluations and eligibility decisions. Use of the ESR, along with a proper application of the regulations, should assist districts in meeting the requirement to document eligibility decisions. It is in similar format to the prior version used throughout the State, and was modified to reflect changes in the regulations.

Note too the ESR *does not* recite all of the required evaluation procedures and eligibility criteria found in the regulations. The ESR serves only as a suggested outline – it is each district's responsibility to complete the ESR in a manner consistent with the regulations. When using the ESR, districts should carefully review each case and be mindful of the regulatory requirements to fully document evaluations and eligibility decisions. Depending on each case, districts may need to attach documents and include detailed explanations to the ESR in order to comply with the regulations.

¹ Any reference to "school district" is meant to include other Delaware education agencies responsible for serving children with disabilities, such as charter schools.

Suggestions for Completion of the 2009 Evaluation Summary Report

The remainder of this memo contains a few suggestions for completing the ESR and an explanation of the provisions that are required by state and federal regulations.

SECTION A of the ESR: REVIEW OF INFORMATION

When conducting an evaluation, school districts are required to 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 whether the child is a child with a disability as defined by the IDEA and state regulations, and 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. (See, 14 DE Admin Code § 925.4.2).

When interpreting data for purpose of determining whether a child is a child with a disability in need of special education and related services, districts are required to draw upon information from a variety of sources, including, as appropriate, information acquired from response to intervention processes, parent input, teacher data, aptitude and achievement tests, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information from all of these sources is documented and carefully considered. (See, 14 DE Admin Code § 925.6.3).

With these requirements in mind, **Section A** of the ESR should document the data and information sources reviewed and considered by the district. **Section A** should be completed for all disability categories, including the learning disability category.

The information boxes in **Section A (1), (2), (3), and (4)** generally align with the information sources mentioned in federal and state regulations. Keep in mind the information considered for each child may vary from case to case, and districts are responsible for documenting all the information sources.

Some Notes Regarding Response to Intervention Procedures:

- **Section A(2)** of the ESR prompts the district to consider information acquired from the child's response to scientific, research-based intervention ("RTI"). Whether or not this information is available will depend on the child and to what extent the school district is implementing RTI.
- State regulations require the district to *review and consider* any information acquired from the child's response to intervention as part of any child's *evaluation*. (See, 14 DE Admin Code § 925.4.2 and 6.3.1).

- State regulations also *require* districts to use RTI standards and procedures as part of the process to determine eligibility for elementary school children in: (1) the LD category in reading, and (2) the EMD category. (*See*, 14 DE Admin Code §§ 925.6.11.2 and 6.12.3).
- Keep in mind too districts are also *permitted* to use the RTI standards and procedures as part of the process to determine eligibility in the LD and EMD categories for all other students. The DOE will eventually require the implementation of RTI standards and procedures for all students in the State in reading and math. The timeline and schedule for doing so shall be determined by DOE. (*See*, 14 DE Admin Code § 925.611.3).

SECTION B of the ESR: LEARNING DISABILITY

Federal and state regulations require school districts to include particular statements when documenting eligibility decisions for children suspected of having a learning disability. (*See*, 14 DE Admin Code § 925.11.0). These additional requirements provide important checks to prevent misidentification and ensure that children who actually have a specific learning disability are identified. (*See, Analysis of Comments and Changes*, OSERS, 71 Fed. Reg., 46660 (August 14, 2006)).

Section B of the ESR generally aligns with regulatory provisions as follows:

Section B(1): The district is required to describe the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning. (*See*, 14 DE Admin Code § 925.11.1.3).

Section B(2): The district must describe the educationally relevant medical findings, if any. (*See*, 14 DE Admin Code § 925.11.1.4).

Section B(3): In August 2006, the U.S. Department of Education adopted regulations requiring districts to document certain information on the evaluation summary report pertaining to RTI. (*See*, 34 C.F.R. § 300.311(a)(7). The district is required to identify whether the child participated in a process that assesses the child’s response to scientific, research-based intervention. If yes, the district must include on the ESR a statement of the following:

- **The instructional strategies used and the student centered data collected;**
- **Strategies for increasing the child’s rate of learning;**
- **The parent’s right to request an evaluation; and**

- **Documentation that the child’s parents were notified about the DOE’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided.**

To notify parents of the DOE’s policies, districts may consider referring to

- DOE’s regulations outlining RTI standards and procedures at 14 DE Admin Code §§ 925.6.11 through 6.12 and §§ 925 7.0 through 12.0; and
- DOE’s pamphlet titled “Response to Intervention: What Parents Need to Know to Help Their Child in School” dated September 15, 2008.

Section B(4): The district must document whether the child has a learning disability by indicating in what area(s). (*See*, 14 DE Admin Code § 925.11.1.1).

Section B(5): If the district determines the child has a specific learning disability in **Section B(4)**, the district must document the basis for the decision. (*See*, 14 DE Admin Code § 925.11.1.2). State regulations require the district to find:

Lack of Achievement under 5(i)

and, either

Insufficient Progress under 5(ii); or
Pattern of Strengths and Weaknesses under 5(iii)

(*See*, 14 DE Admin Code § 925.9.0).

Section B(6): The district is required to rule out other, specific conditions before determining a child eligible under the learning disability category, and the eligibility decision must include a statement of such determination. (*See*, 14 DE Admin Code §§ 925.9.1.4 and 11.3).

SECTION C of the ESR: ELIGIBILITY DETERMINATION

Section C of the ESR should document the district’s decision and discussion regarding the child’s eligibility for special education and related services. The district must document the appropriate disability category based on the eligibility criteria specified in state regulations. (*See*, 14 DE Admin Code §§ 925.6.6 to 6.18). The thirteen disability categories recognized in the State are listed in **Section C** of the ESR. Districts

are encouraged to review and discuss the specific eligibility criteria with parents during the decision-making process.

Keep in mind the district may not determine a child eligible for special education if the determinant factor is: (1) lack of appropriate instruction in reading, including the essential components of reading instruction as described in Section 1208(e) of the ESEA; (2) lack of appropriate instruction in math; or (3) limited English proficiency. (See, 14 DE Admin Code § 925.6.2). **Section C** of the ESR includes this statement as a reminder to the district.

Federal and state regulations require a statement of assurance by the school district it has drawn upon information from a variety of sources and information from all such sources is documented and was carefully considered. (See, 14 DE Admin Code § 925.11.1.2). **Section C** includes a statement of assurance. Districts are encouraged, however, to review and openly discuss the statement with parents during the decision process. Districts should revise and expand upon the statement as needed to comply with regulations.

Finally, state regulations require the ESR to document the team's discussion of the eligibility determination. (See, 14 DE Admin Code § 925.6.1). **Section C** contains a box for a description of the team's discussion. The district may add additional pages or statements as needed. For example, meeting minutes may also describe the team's discussion, and could be attached to the ESR, in some cases. Districts may also explain how the team decided the child does or does not meet the relevant eligibility criteria.

SECTION D of the ESR: SIGNATURES AND CERTIFICATION

Section D should document the attendance of the team members. Federal and state regulations also require each team member to certify in writing whether the report reflects the member's conclusion. If it does not, the team member must submit a separate statement presenting the team member's separate conclusions. (See, 14 DE Admin Code § 925.11.5).

Conclusion

We hope this memo will assist your staff with evaluations and eligibility decisions. It is likely you will have questions, and this will certainly be a topic of discussion at our county meetings. Feel free to forward questions or comments to me at mtoomey@doe.k12.de.us or Jennifer Kline at jkline@doe.k12.de.us.