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MEMORANDUM

TO: Superintendents, Special Education Administrators, and Principals
FROM: Chris Case, Director Student Support Services Division
SUBJECT: Special Education Evaluation Guidelines
DATE: April 24, 2019

The Vermont Agency of Education (AOE) has reviewed recent submissions for special education compliance monitoring. Based on the review of data, the special education monitoring team would like to clarify requirements on issues observed relevant to initial and triennial evaluations.

Evaluation Delays: There is a need for clarification regarding what constitutes an acceptable delay in completion of special education evaluations.

- **Initial Evaluations:** Rule 2362.2.1(d) states that “a notice of delay shall only be used for exceptional circumstances related to the student and/or family, which shall be documented.” Documentation of this delay is provided by the use of Form 4. Please note that miscalculation of dates, snow days, school/family vacations, or lack of staffing is not an acceptable reason for delaying an initial evaluation. An example of an acceptable use of Form 4 could be medical, emergency, or student unavailable for testing. Please remember that use of Form 4 requires an expected and reasonable date of completion.
- **VTmtss Considerations:** A referral for a special education evaluation or completion of an in-process evaluation is not delayed when a school’s VTmtss framework is implemented as intended. The VTmtss framework is effective in supporting students before, during, and after evaluation. A parent is allowed to request an evaluation at any time. Federal law, State special education rules, and Act 173 specifically state that individual evaluations cannot be delayed when educational support strategies are used. 34 CFR §300.301(b)
- **School Breaks:** Current federal and state law require initial evaluations to be completed within 60 calendar days of when written consent was received by the school district. School break, including summer vacation, cannot be used as an acceptable reason under Vermont’s delay in evaluation rule (State Board Rule 2362.2.1(c)) for not completing initial special education evaluations within the prescribed 60 calendar day timeline, unless the school can document that the student was not made available for the evaluation over the summer vacation months.

Comprehensive Evaluation Requirements: Questions have also surfaced regarding what must be considered in an evaluation plan and what must be documented for adverse effect.

- **Evaluation Plan:** When planning a comprehensive evaluation, Evaluation and Planning Team (EPT) members, including parents, should be provided with a list of possible basic skill areas to use. Team members should then consider all relevant data in each of the basic skill areas of concern at the planning meeting, thus determining which basic skill areas will be assessed as part of the evaluation. Interventions continue to be provided and progress monitoring data continue to be collected during the evaluation process.

- **Adverse Effect:** Documenting adverse effect minimally requires the review of at least one basic skill, and adverse effect must be determined by the use of three different measures of academic or functional performance in that one basic skill area. Documentation provided in section II of the evaluation plan confirms that the data demonstrates an adverse effect on the student's educational performance such that they are performing significantly and consistently below same grade peers in academic and/or functional skills. In addition, EPTs must also recognize their responsibility to conduct a comprehensive evaluation of all the basic skill areas of concern identified in the Evaluation Plan as part of their assessment of the student's achievement. Documentation of these additional basic skill areas must be part of the EPT's final report (Form 2), either within the Adverse Effect or the Needs section. It would not be considered a comprehensive evaluation if the EPT documented a student's eligibility in only one basic skill area if there were other areas identified in the plan as being of concern. Therefore, all questions raised and data collected by the EPT must be addressed in the evaluation report.

Triennial Evaluation Requirements: Triennial evaluations regulations (V.S.A. 2363.2.3 and 34 CFR §300.303) provide specific requirements for EPT teams and conducting re-evaluations. If a parent and the LEA agree that the triennial evaluation will not be conducted, you are required to document this on Form 8. For Early Childhood Special Education (students age three up to their sixth birthday), full evaluations are not conducted until the student's triennial evaluation from original date of eligibility.

- **Record Reviews:** The EPT may conduct a record review without a meeting for the purposes of continued eligibility. However, if a parent requests that the EPT review data through a formal meeting, then a formal meeting with required notices shall be held. A Form 8 cannot be used for initial evaluations. A formal meeting shall be required whenever the initial eligibility of the child will be determined. When a satisfactory agreement on such time or place cannot be reached, the LEA shall use other, mutually agreed upon methods, to ensure parent participation, including individual or conference telephone calls, or video conferencing.

Early Childhood Special Education (ECSE) to Kindergarten Transition

Current guidance on transitioning for ECSE students moving into kindergarten can be found on the [Early Childhood Special Education](#) website.

Evaluation Related Forms: The following documents can be used to record decisions made by the EPT regarding evaluations:

- Form 2 – Evaluation Plan and Report
- Form 3 – Notice of Special Education Evaluation (all evaluations including record review)
- Form 3(a) – Consent for a Special Education Evaluation/Re-evaluation (new testing)
- Form 4 – Notice of Evaluation Delay (initial only)
- Form 6B – [IDEA Part C to B Transition](#) (determination of eligibility for ECSE services at age 3)
- Form 7/7a – Notice of LEA Refusal/Prior Written Notice of LEA Decision
- Form 8 – Written Agreement between Parents and District (no re-evaluation conducted)
- Form 9 – Completion of an evaluation of a transfer student (delays for initial out-of-state transfer or triennial evaluation)

If you have any questions, please contact your AOE regional representative or send an email to AOE.SpecialEd@vermont.gov.