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## Technical Assistance Paper General Education Intervention Procedures

### Summary:

This technical assistance paper (TAP) revises and replaces existing TAP, DPS: 2011-04; General Education Intervention Procedures, Child Find and the Initial Provision of Exceptional Student Education Services to Eligible Students. This document describes the problem-solving and response to intervention within a multi-tiered system of supports framework to address the varying academic and behavioral needs of students. It is based on the requirements of Rule 6A-6.0331, Florida Administrative Code, General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.

**Contact:** Dr. David Wheeler  
School Psychology Consultant  
850-245-0475  
[david.wheeler@fldoe.org](mailto:david.wheeler@fldoe.org)

### Status:

- New technical assistance paper
- ✓ Revises and replaces existing TAP, DPS: 2011-04; General Education Intervention Procedures, Child Find and the Initial Provision of Exceptional Student Education Services to Eligible Students

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## **A. Background and Terminology**

### **A-1. What was the purpose of revisions to State Board of Education (SBE) Rule 6A-6.0331, Florida Administrative Code (F.A.C.), General Education Intervention Procedures, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services?**

During 2014, the SBE adopted revisions to Rule 6A-6.0331, F.A.C. The revisions were made in order to:

- Implement statutory requirements that were enacted during the 2013 Legislative Session. Those changes included new requirements found in section 1003.5715, Florida Statutes (F.S.), Parental consent; individual education plan. Based on those changes, consent from a parent or legal guardian is required prior to placement of a student in an Exceptional Student Education (ESE) center school and instruction in access points and subsequent assessment on the Florida Alternate Assessment.
- Revise Form 31318, Parental Consent-Form Instruction in the State Standards Access Points Curriculum and Florida Alternate Assessment Administration.
- Update language relating to data-based problem solving within a multi-tiered system of supports (MTSS) and the criteria and timelines for school-based problem-solving teams with regard to when consent for evaluation must be requested.
- Revise timelines related to the evaluation process for students with disabilities.
- Establish a timeline for completion of an evaluation when a student is suspected of being gifted.

The rule may be found in the appendix and at <https://www.flrules.org/gateway/ruleNo.asp?id=6A-6.0331>.

### **A-2. What is meant by “evidence-based” instruction and intervention as referenced in Rule 6A-6.0331(1), F.A.C.?**

Evidence-based instruction and intervention are practices for which there is research or data-based evidence that the practice is effective in improving outcomes. The instructional methods and interventions that are selected for implementation with students should be informed by research, reflecting the emphasis in the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA) that scientifically-based instruction and research-based decision making are the cornerstone of effective educational practice. However, in addition to being validated by research, there should also be evidence that the instruction and intervention strategies are effective with students of a similar demographic group to that of the student receiving the intervention and for whom the instructional conditions are similar, and that the instruction and intervention result in measurable student growth.

### **A-3. What is a Multi-Tiered System of Supports (MTSS)?**

MTSS is an evidence-based framework to ensure successful educational outcomes for ALL students by using a data-based problem-solving process to provide and evaluate the effectiveness of multiple tiers of integrated academic, behavioral and social-emotional instruction and intervention supports matched to student need in alignment with educational standards. Although often used interchangeably, in Florida MTSS replaces “the response to intervention (RtI) framework” for data-based problem solving. Within an MTSS, student RtI data are used to monitor the effectiveness of interventions (i.e., Step 4 of the problem solving process—progress monitoring).

### **A-4. What is data-based problem solving?**

Data-based problem solving is an ongoing, systematic process of analyzing and evaluating information to guide educational decisions and actions. The problem-solving approach contributes to effective student outcomes by accurately identifying the problem, analyzing relevant data to understand why the problem is occurring, designing and implementing interventions, and measuring the effectiveness of the interventions that are implemented. School-based teams engage in problem solving to inform instructional decisions and develop intervention supports.

Data-based problem solving involves the following steps:

- Define the problem and establish a goal by determining the discrepancy between what is expected and what is occurring. Ask, “What’s the problem?”
- Analyze the problem to determine why the discrepancy is occurring.
- Ask, “Why is there a discrepancy between the current level of performance and the desired level of performance?”
- Develop an intervention plan to achieve the goal, describe how student progress will be monitored and identify how integrity of implementation will be ensured. Ask, “What are we going to do about it?”
- Monitor student response to the intervention in order to evaluate the effectiveness of the intervention. Ask, “Is it working?” If not, how will the intervention plan be adjusted to better support the student’s progress?

Additional information and resources, including the “Multi-tiered System of Supports (MTSS) Guidance and Guiding Tools for Instructional Problem Solving,” are available at <http://www.florida-rti.org/>.

## **B. General Education Intervention Procedures**

### **B-1. Who should participate on a school-based team engaged in data-based problem solving?**

The composition of any team engaged in data-based problem solving will vary based on the student and the nature of the presenting concerns. It is important that the membership reflects expertise and skills matched to the student's needs for effective problem solving and intervention design and implementation.

A problem-solving team should include personnel knowledgeable about the student; the grade-level academic and behavioral expectations; the academic and behavioral interventions; the problem-solving process, including data collection and analysis; screening, progress monitoring and diagnostic assessment procedures; the graphing/interpretation of student response to intervention; and data-based problem solving and multi-tiered supports. The core membership of a data-based, problem-solving team should include the parent or legal guardian of the student; a school administrator, such as the principal or assistant principal; and, depending on the specific area of concern, school or district staff, such as general and special education teachers, reading, math and behavior specialists, and school-based student services personnel.

### **B-2. Must a school district involve the parent or legal guardian in the development and implementation of general education interventions?**

Yes. Rule 6A-6.0331(1)(a), F.A.C., requires that the parent or legal guardian be afforded opportunities to be involved in a data-based problem-solving process to address the student's areas of concern. Additionally, the school district must maintain documentation of parental involvement and communication of the student's response to intervention.

Involvement by the parent or legal guardian increases the effectiveness of both academic and behavioral interventions. Assistance and input should be solicited from a student's parent or legal guardian as soon as difficulties are evident. Communicating with the parent or legal guardian on a regular basis facilitates collaboration between home and school. Providing the parent or legal guardian with student data enables them to better understand why particular interventions are needed; when, how and by whom they are being implemented; and how their child is responding to those interventions.

To facilitate involvement by the parent or legal guardian, the rule requires discussion with the parent or legal guardian regarding the data used to identify the problem and monitor student progress, the student's response to instruction and interventions, modification of the interventions, and any anticipated future action to address the student's learning or behavioral areas of need.

**B-3. What is the role of MTSS and data-based problem solving in the general education procedures required under Rule 6A-6.0331, F.A.C.?**

To ensure that a continuum of academic and behavioral supports are available to all students based on systematic problem solving, the general education intervention requirements found in Rule 6A-6.0331(1)(e), F.A.C., reflect an MTSS informed by data-based decision making. School-based teams develop, implement and monitor evidence-based interventions using student performance data and a systematic problem-solving process.

**B-4. Who is responsible for implementing the general education interventions?**

Only teachers, educational specialists, or other professional staff members with training and expertise in the specific intervention procedures should provide intensive, individualized interventions (i.e., Tier 3). The school staff members responsible for implementing interventions will depend on the nature of the intervention and the level of support that the student needs. Teachers, paraprofessionals and other support staff may deliver interventions for which they have adequate training and experience. **As a general rule, the qualifications and training of implementers should match the level of student need.**

**B-5. What is meant by the requirement in Rule 6A-6.0331(1)(e), F.A.C., that general education interventions “...be implemented as designed for a period of time sufficient to determine effectiveness?”**

Instructional strategies and interventions must be delivered for a “sufficient period of time” (i.e., of sufficient duration to allow the team to gather adequate data to determine effectiveness). The determination of what is a sufficient period of time cannot be arbitrarily established and applied across situations, but must be decided individually based on a number of factors, including discrepancy in the student’s level of performance and rate of progress in comparison with peers, intensity of the intervention, duration of implementation in a standard intervention protocol, and rate of progress that can realistically be expected.

Interventions can vary in dosage and intensity across multiple dimensions, including length of intervention sessions (e.g., 5 minutes, 60 minutes), frequency (e.g., twice per day, once per week, every 30 minutes) and duration (e.g., three weeks, one grading period). In addition, some interventions are more intense in focus and delivery (e.g., specialized instruction in targeted skills delivered one-on-one or to a small group of students versus additional instructional time in the core curriculum delivered to a class of students).

Interventions matched to the individual needs of the student implemented with fidelity and appropriate intensity for a sufficient period of time are critical to an effective MTSS.

**B-6. How is fidelity of implementation evaluated and documented?**

Delivery of instruction or an intervention in the way in which it was designed is referred to as “fidelity” or “integrity of implementation.” Implementing an intervention with fidelity includes both adherence to the intervention’s core content components and competent execution using accomplished clinical and teaching practices. Within an MTSS, fidelity is important at both the school level (implementation of the problem-solving process) and the teacher level (implementation of instruction and progress monitoring). It is important to note that the purpose of measuring fidelity is not to evaluate the individual implementing the intervention, but rather to increase the likelihood of a positive student response. The data-based problem solving team should consider and include in the implementation plan the support needed for the intervention to be implemented with fidelity.

Although there is no established or required method for evaluating and documenting intervention fidelity or integrity, it should be verified through multiple approaches that may include direct observations, self-reports, student work, etc. Any member of the problem-solving team may complete observations to support the individual implementing the intervention. In addition to observations, permanent products and completed checklists may assist in evaluating and documenting both treatment fidelity and the integrity of the problem-solving process. When developing intervention plans, teams should include a schedule of actions to take to verify fidelity and provide support to the individual(s) designated to implement the intervention.

**B-7. What should be done if it is determined that an intervention is not being implemented with fidelity?**

The data-based problem-solving process relies upon a team’s ability to make informed decisions based on the effectiveness of a given intervention. If a student’s response is questionable or poor, the problem-solving team must evaluate the effectiveness of the intervention. If the intervention was not implemented as intended, or if an intervention has not been implemented with fidelity, the problem-solving team should identify the barriers to implementation and modify the intervention and support to increase fidelity. Supports for fidelity, such as training or coaching, should be included in the intervention plan, provided early in the process and monitored on an ongoing basis.

For example, assume that a reading curriculum is designed to be implemented in groups of no more than five students, in 30-40 minute sessions, five days per week. If a student is exposed to that curriculum, implemented as designed, for a reasonable period of time and limited or no progress is made, the problem-solving team may reliably determine that this intervention is not effective for this student. In contrast, if the group is made up of 10-12 students with instruction provided only three days per week, and the student does not make progress, the problem-solving team has no way of knowing whether the curriculum is effective. It was not implemented with fidelity, and as a result, the data on which decisions are based will not be valid or reliable. In the latter case, the team must make appropriate adjustments to the scheduling and assignment of students to the reading group or identify an alternative intervention that targets the area of concern and can be implemented with fidelity.

**B-8. Is there a specific amount of time during which the district should implement general education interventions prior to requesting consent from the parent or legal guardian for evaluation or determining a student’s eligibility for ESE services?**

No. In response to a request that the regulations implementing IDEA include definitions of “appropriate period of time” and “adequate progress,” the U.S. Department of Education, Office of Special Education Programs, responded that:

Instructional models vary in terms of the length of time required for the intervention to have the intended effect on a child's progress. It would not be appropriate for the Department to establish timelines or the other requirements proposed by the commenters in Federal regulations, because doing so would make it difficult for LEAs to implement models specific to their local school districts. These decisions are best left to State and local professionals who have knowledge of the instructional methods used in their schools. (71 Federal Register [Fed. Reg.] 46658)

It is not appropriate to establish or require minimum or maximum time limits for interventions to be implemented. The length of time necessary for a student to respond to an intervention will vary as a function of the age or grade of the student, the targeted skill area and the complexity of the targeted skill. If the measure is sensitive to changes in growth and there are enough data points to establish a reliable slope or trend line, response to a specific intervention can be determined in a relatively short period of time. Other interventions or measures may require a longer period.

Ultimately, response to intervention will determine the length of time that a student or group of students should be exposed to interventions.

However, while there is not a specified time for the implementation of general education interventions before requesting consent for an evaluation, it is important to note the revisions made by the SBE during 2014. In accordance with Rule 6A-6.0331(3)(a), F.A.C., once a school-based team makes a determination that either the intensive interventions are effective but require a level of intensity and resources beyond that available through general education resources, **OR** the student is not making adequate progress given effective core instruction and intensive, individualized interventions, the school-based team has 30 calendar days to request consent from the parent or legal guardian to conduct an evaluation.

**B-9. Who is responsible for determining whether an intervention has an adequate level of intensity? How is this done?**

The problem-solving team determines the level of intervention intensity required based on the student’s response data. There is no established criterion or formula for identifying the appropriate level of intensity for an intervention. The team must review the relevant data and determine, on a case-by-case basis, the extent to which the intensity of an intervention is appropriate and effective. The team is responsible for ensuring that the intervention is clearly defined and linked to the identified concern or skill deficit, that the individual implementing the intervention is appropriately trained

and supported, and that the intervention is being delivered as designed. If the intervention is not being delivered as designed, more support should be provided to the staff involved. If the intervention does not result in sufficient improvement, the intervention should be revised, modified or intensified.

**B-10. When communicating the student’s response to instruction or intervention to the parent or legal guardian in accordance with Rule 6A-6.0331(1)(e), F.A.C., what are some examples of an “understandable format?”**

Data-based decision making requires that the problem-solving team analyze quantitative data reflecting learning rate and level of performance to evaluate student response to a given intervention. Because graphical representation is the most effective method for presenting and interpreting response to intervention data, this is considered a best practice in data-based problem solving. Rule 6A-6.0331(1)(e), F.A.C., requires that response to intervention data be reported to the parent or legal guardian in an understandable format which includes, but is not limited to, graphic representation. Through its visual impact, a graphic representation quickly and clearly conveys the degree to which the student has responded to an intervention by answering the question “Is the slope going up, going down, or remaining flat?” Graphical representations clearly illustrate the student’s performance and lead to more effective data-based decisions rather than subjective analysis of student progress.

For some types of qualitative data, a narrative report may supplement graphic representation of the student’s response to intervention or instruction. Both graphic and narrative representations must be data-based and include the evidence of the student’s response, as well as comparison of the student’s performance to relevant benchmarks or expected performance and to peers receiving similar interventions.

**B-11. How often should data be collected and over what period of time?**

Data collection should match the nature and severity of the problem and the intensity of the instruction and intervention. Students receiving supplemental (Tier 2) interventions may be monitored biweekly or even monthly. In contrast, students receiving intensive, individualized interventions (Tier 3) will be monitored more frequently (e.g., weekly) until sufficient data points are gathered to obtain a reliable slope.

**B-12. How should the student’s response to intervention and instruction be communicated to the parent or legal guardian?**

In accordance with Rule 6A-6.0331(1)(a), F.A.C., documentation of a student’s response to instruction and interventions should be communicated to the parent or legal guardian in an understandable format that includes, but is not limited to, graphic representation. This communication may occur through parent or legal guardian participation in problem-solving team meetings, parent or legal guardian–teacher conferences, telephone calls, e-mail messages, notes sent home or some other mode of communication.

School staff are encouraged to review the ESE Policies and Procedures documents for

their school district, including the section that identifies general education intervention procedures for the district. This information may be found at <http://beess.fcim.org/sppDistrictDocSearch.aspx>.

**B-13. Are general education interventions continued for students who demonstrate need for supplemental (Tier 2) or intensive (Tier 3) interventions but do not qualify for special education services?**

Yes. Approximately 15-20 percent of students will need additional support to make adequate progress. The majority of these students will not be identified as eligible for services as a student with a disability, and problem-solving teams will continue to focus on solutions for these students through general education resources.

**B-14. Can school districts use the Individuals with Disabilities Education Act, Part B funds (coordinated early intervening services [CEIS]) to provide general education interventions to students who have not yet been evaluated and found eligible for special education?**

In general, IDEA funds may be expended only for the provision of special education and related services for students with disabilities who have been determined eligible for services under IDEA. They can also be used for evaluative and diagnostic services for students who are eligible for, or suspected of being eligible for, services under IDEA, but who have not yet been determined to have a disability. When implementing an MTSS, districts should consider how ESE teachers and related services providers are funded, particularly those positions fully funded through IDEA. ESE teachers and related services providers should obtain approval from their supervisor prior to involvement in the district- and school-based problem-solving teams to ensure there is no conflict with the funding source for their position in the educational setting. Rule 6A-6.0331(1)(g), F.A.C., allows school districts to use up to 15 percent of their Part B funds to develop and implement CEIS for students in kindergarten through Grade 12 (with a particular emphasis on students in kindergarten through Grade 3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. CEIS funds must not be used for prekindergarten children or students who have already been found eligible for ESE services.

CEIS funds may be used for professional development for teachers and other school staff related to scientifically based academic and behavioral instruction. In addition, CEIS funds may be used to provide educational and behavioral evaluations, services and supports, including scientifically based literacy instruction. CEIS funds may be used to carry out coordinated early intervening services, aligned with activities funded by ESEA, as long as the CEIS funds are used to supplement, but not supplant, funds

made available under ESEA. (Section 300.226 of Title 34, Code of Federal Regulations (CFR))

In addition to funds allocated to CEIS, 34 CFR §300.208(a) address the issue of incidental benefit to nondisabled students by stating that IDEA Part B funds can be used

... for the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

**B-15. What are the reporting requirements for districts that use CEIS funds for MTSS?**

Districts are required to track and count students who received CEIS funding through IDEA, Part B. These data must be reported in Survey 5 for each student through the FDOE automated student information system using the appropriate fund source data element for the school year in which CEIS was implemented. Refer to the Database Manual corresponding with the school year for which data are reported using the following link: <http://www.fldoe.org/eias/dataweb/default.asp>.

**B-16. Can an ESE teacher or service provider implement a Tier 3 intervention for a student who has not been found eligible for ESE services?**

When a problem-solving team determines that a struggling student needs a specific intervention, the team should also develop an implementation plan that identifies who will implement it, how it will be implemented and when and where it will be implemented. Interventions are provided in the general education environment through the use of supports available through general education resources. However, if an intervention requires specialized training or knowledge, an ESE teacher or service provider may support or implement the intervention in the general education setting.

Prior to implementing interventions, an ESE teacher or service provider should ensure there is no conflict with the funding source for providing interventions in the general education environment. Regardless of the funding source for their position, ESE teachers or service providers may interact with teachers at the school level through professional development, school wide in-services or classroom-level training to provide support for those providing interventions.

Section 1003.57(1)(c), F.S., states that a student “may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated and found eligible as an exceptional student in the manner prescribed by rules of the SBE.” In addition, 34 CFR §300.300(b) states that the school district “must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.”

## **Appendix: Rule 6A-6-6.0331**

### **6A-6.0331 General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.**

The state's goal is to provide full educational opportunity and a free appropriate public education (FAPE) to all students with disabilities ages three (3) through twenty-one (21) and to students who are gifted in grades kindergarten through 12. School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. They must ensure that all students with disabilities or who are gifted and who are in need of exceptional student education (ESE) as defined in paragraph 6A-6.03411(1)(n), F.A.C., are identified, located, and evaluated, and FAPE is made available to them if it is determined that the student meets the eligibility criteria specified in Rules 6A-6.03011, 6A-6.03012, 6A-6.030121, 6A-6.03013, 6A-6.03014, 6A-6.030151, 6A-6.030152, 6A-6.030153, 6A-6.03016, 6A-6.03018, 6A-6.03019, 6A-6.03020, 6A-6.03022, 6A-6.03023, paragraph 6A-6.03026(1)(b) and Rule 6A-6.03027, F.A.C. ESE includes specially designed instruction as defined in paragraph 6A-6.03411(1)(jj), F.A.C.; special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.; and related services as defined in paragraph 6A-6.03411(1)(dd), F.A.C. These requirements apply to all students, including those who are homeless or are wards of the state or who attend private schools, regardless of the severity of their disability. Additionally, school districts may elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Steps Program. The procedures and criteria for general education interventions, identification, evaluation, and determination of eligibility of students with disabilities and gifted students by school districts shall be set forth in the school district's ESE Policies and Procedures document consistent with the following requirements.

(1) General education intervention procedures for kindergarten through grade twelve (12) students suspected of having a disability who are enrolled in public schools. It is the local school district's responsibility to develop and implement a multi-tiered system of support which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment. In implementing a data-based problem solving process designed to develop, implement and evaluate a coordinated continuum of evidence-based instruction and intervention practices, a school district may carry out problem solving activities that include the provision of educational and behavioral evaluations, services, and supports, including evidence-based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional technology. The general education intervention requirements set forth in paragraphs (a) through (e) of this subsection are not required of students suspected of being gifted or who are being considered for eligibility in accordance with Rule 6A-6.03020, F.A.C., for special education and related services for students who are homebound or hospitalized. The general education interventions requirements set forth in paragraphs (a), (b) and (e) of this subsection may not be required for students suspected of having a disability if a team that comprises qualified professionals and the parent determines that these general

education interventions are not appropriate for a student who demonstrates a speech disorder or severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intensive intervention to prevent harm to the student or others.

(a) Parent involvement in general education intervention procedures. Opportunities for parents to be involved in a data-based problem solving process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent regarding the data used to identify the problem and monitor student progress, the student's response to instruction and interventions, modification of the interventions, and anticipated future action to address the student's learning and/or behavioral needs. Documentation of parental involvement and communication must be maintained.

(b) Observations of the student must be conducted in the educational environment and, as appropriate, other settings to document the student's learning or behavioral areas of concern. At least one (1) observation must include an observation of the student's performance in the general classroom.

(c) Review of existing data, including anecdotal, social, psychological, medical, and achievement (including classroom, district and state assessments) shall be conducted. Attendance data shall be reviewed and used as one indicator of a student's access to instruction.

(d) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress, and additional screenings or assessments to assist in determining interventions may be conducted, as appropriate. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(e) Evidence-based interventions addressing the identified areas of concern must be implemented in the general education environment. The interventions selected for implementation should be developed by a team through a data-based problem solving process that uses student performance data to identify and analyze the area(s) of concern, select and implement interventions, and monitor the effectiveness of the interventions. Interventions shall be implemented as designed for a period of time sufficient to determine effectiveness, and with a level of intensity that matches the student's needs. Pre-intervention and ongoing progress monitoring measures of academic and/or behavioral areas of concern must be collected and communicated to the parents in an understandable format, which may include, but is not limited to, graphic representation.

(f) Nothing in this section should be construed to either limit or create a right to FAPE under Rules 6A-6.03011-.0361, F.A.C., or to delay appropriate evaluation of a student suspected of having a disability.

(g) A school district may not use more than fifteen (15) percent of the amount it receives under Part B of the IDEA for any fiscal year to develop and implement a coordinated continuum of evidence-based general education interventions for students in kindergarten through grade twelve (12) who are not currently identified as needing special education and related services but who need additional support to succeed in the general education environment. Funds made available to carry out this paragraph may be used to carry out general education intervention procedures aligned with activities funded

by and carried out under the Elementary and Secondary Education Act (ESEA), if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this paragraph. For IDEA Part B funds used in this way, the school district must annually report to the Florida Department of Education on the number of students served under this paragraph who received general education interventions and the number of students who received such services and subsequently receive special education and related services under Part B of the IDEA during the preceding two (2) year period.

(2) Procedures prior to initial evaluation for prekindergarten children. For children who are below mandatory school attendance age and who are not yet enrolled in kindergarten, the activities specified in subsection (1) of this rule are not required. The following requirements apply to this population:

(a) Existing social, psychological, and medical data shall be reviewed, with referral for a health screening when the need is indicated; and,

(b) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits. Additional screenings to assist in determining interventions may be conducted as appropriate.

(3) Initial evaluation. Each school district must conduct a full and individual initial evaluation before the initial provision of ESE. Either a parent of a kindergarten through grade 12 student or child age three (3) to kindergarten entry age, or a school district may initiate a request for initial evaluation to determine if the student is a student with a disability. Either a parent of a kindergarten through grade 12 student or a school district may initiate a request for initial evaluation to determine if a student is gifted.

(a) The school district must seek consent from the parent or guardian to conduct an evaluation whenever the district suspects that a kindergarten through grade 12 student, or a child age three (3) to kindergarten entry age, is a student with a disability and needs special education and related services. Circumstances which would indicate that a student may be a student with a disability who needs special education and related services include, but are not limited to, the following:

1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or

2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or

3. When a child age three (3) to kindergarten entry age receives a developmental screening through the school district or the Florida Diagnostic and Learning Resource Center and based on the results of the screening it is suspected that the child may be a child with a disability in need of special education and related services; or

4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.

(b) Within thirty (30) days of a determination that a circumstance described in subparagraphs (3)(a)1., (3)(a) 2. or (3)(a)3., of this rule exists for a student in grades kindergarten through grade 12 or a child age three (3) to kindergarten entry age, the school district must request consent from the parent to conduct an evaluation, unless the parent and the school agree otherwise in writing.

(c) As described in subparagraph (3)(a)4. of this rule, if a parent requests that the school conduct an evaluation to determine whether their child is a child with a disability in need of special education and related services, the school district must within thirty (30) days, unless the parent and the school agree otherwise in writing:

1. Obtain consent for the evaluation; or
2. Provide the parent with written notice in accordance with Rule 6A-6.03311, F.A.C., explaining its refusal to conduct the evaluation.

(d) Prior to a school district request for initial evaluation of a student in grades K through 12 suspected of having a disability, school personnel must make one (1) of the following determinations and include appropriate documentation in the student's educational record to the effect that:

1. The general education intervention procedures have been implemented as required under this rule and the data indicate that the student may be a student with a disability who needs special education and related services;
2. The evaluation was initiated at parent request and the activities described in subsection (1) of this rule will be completed concurrently with the evaluation but prior to the determination of the student's eligibility for special education and related services; or
3. The nature or severity of the student's areas of concern makes the general education intervention procedures inappropriate in addressing the immediate needs of the student.

(e) The school district shall be responsible for conducting all initial evaluations necessary to determine if the student is eligible for ESE and to determine the educational needs of the student. Such evaluations must be conducted by examiners, including physicians, school psychologists, psychologists, speech-language pathologists, teachers, audiologists, and social workers who are qualified in the professional's field as evidenced by a valid license or certificate to practice such a profession in Florida. In circumstances where the student's medical care is provided by a physician licensed in another state, at the discretion of the school district administrator for exceptional student education, a report of a physician licensed in another state may be accepted for the purpose of evaluation and consideration of eligibility as a student with a disability. Educational evaluators not otherwise covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, F.A.C.

1. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, F.A.C., or licensed under Chapter 490, F.S.

2. Standardized assessment of adaptive behavior shall include parental input regarding their student's adaptive behavior.

(f) For a signed consent for evaluation received by a school district on or before June 30, 2015, the school district shall ensure that initial evaluations of students suspected of having a disability are completed within sixty (60) school days (cumulative) as defined in

paragraph 6A-6.03411(1)(h), F.A.C., that the student is in attendance after the school district's receipt of parental consent for the evaluation. For prekindergarten children, initial evaluations must be completed within sixty (60) school days after the school district's receipt of parental consent for evaluation.

(g) Beginning July 1, 2015, the school district shall ensure that initial evaluations of students and preschool age children age three (3) through kindergarten entry age suspected of having a disability are completed within sixty (60) calendar days after the school district's receipt of parent consent for evaluation. For the purposes of this rule, the following calendar days shall not be counted toward the sixty (60) calendar day requirement:

1. All school holidays and Thanksgiving, winter and spring breaks as adopted by the district school board as required by Rule 6A-10.019, F.A.C.;

2. The summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students in accordance with the calendar adopted by the district school board as required by Rule 6A-10.019, F.A.C. However, the school district is not prohibited from conducting evaluations during the summer vacation period; and,

3. In the circumstance when a student is absent for more than eight (8) school days in the sixty (60) calendar day period, the student's absences shall not be counted toward the sixty (60) calendar day requirement.

(h) The sixty (60)-day timeframe for evaluation does not apply to a school district if:

1. The parent of the student repeatedly fails or refuses to produce the student for the evaluation; or

2. A student enrolls in a school served by the school district after the timeframe has begun, and prior to a determination by the student's previous school district as to whether the student is a student with a disability. This exception applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed. Assessments of students with disabilities who transfer from one school district to another school district in the same school year must be coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

- (i) The school district shall ensure that students suspected of being gifted are evaluated within a reasonable period of time as specified in the district's ESE Policies and Procedures Document as defined in subsection 6A-6.03411(2), F.A.C., but no more than ninety (90) school days that the student is in attendance after the school district's receipt of parental consent for the evaluation.

- (4) Parental consent for initial evaluation.

- (a) The school district must provide the parent written notice that describes any evaluation procedures the school district proposes to conduct. In addition, the school district proposing to conduct an initial evaluation to determine if a student is a student with a disability and needs special education and related services or is gifted and needs ESE must obtain informed consent from the parent of the student before conducting the evaluation.

- (b) Parental consent for initial evaluation must not be construed as consent for initial provision of ESE.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability or is gifted.

(d) In the event that the parent fails to respond to the district's request to obtain informed written consent, the district must maintain documentation of attempts made to obtain consent.

(e) For initial evaluations only, if the child is a ward of the State and is not residing with the student's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

1. Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student;

2. The rights of the parents of the student have been terminated in accordance with Chapter 39, Part X, F.S.; or

3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for initial evaluation has been given by an individual appointed by the judge to represent the student.

(f) If the parent of a student suspected of having a disability who is enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue initial evaluation of the student by using the mediation or due process procedures contained in Rule 6A-6.03311, F.A.C. The school district does not violate its child find obligations if it declines to pursue the evaluation.

(g) A school district may not use a parent's refusal to consent to initial evaluation to deny the parent or the student any other service, benefit, or activity of the school district, except as provided by this rule.

(5) Evaluation procedures.

(a) In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a data-based problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;

2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,

3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

(6) Determination of eligibility for exceptional students.

(a) A group of qualified professionals determines whether the student is an exceptional student in accordance with this rule and the educational needs of the student. The parents of a student being considered for eligibility as a student with a disability shall be invited and encouraged to participate as equal members of the group. The school district must provide a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent.

(b) In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:

1. Draw upon data and information collected as part of a data-based problem solving process from a variety of sources, such as aptitude and achievement tests, the student's response to instruction and interventions implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior;

2. Ensure that information obtained from all of these sources is documented and analyzed by the team as part of the problem solving process; and,

3. Determine eligibility in accordance with the criteria and procedures specified in these rules.

(c) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with Rule 6A-6.03028, F.A.C. For children ages three (3) through five (5) years, an

individual family support plan (IFSP) may be developed in lieu of an IEP in accordance with Rule 6A-6.03029, F.A.C.

(d) A student may not be determined eligible as a student with a disability if the determinant factor is:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction, including explicit and systematic instruction in (a) phonemic awareness; (b) phonics; (c) vocabulary development; (d) reading fluency, including oral reading skills; and (e) reading comprehension strategies;
2. Lack of appropriate instruction in math; or
3. Limited English proficiency; and,
4. The student does not otherwise meet the eligibility criteria specified in Rules 6A-6.03011-.0361, F.A.C.

(e) A student may not be denied eligibility as a student who is gifted if the determinant factor is limited English proficiency.

(f) For students identified as gifted, an EP in accordance with Rule 6A-6.030191, F.A.C., shall be developed.

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.

(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:

- (a) Review existing evaluation data on the student, including:
  1. Evaluations and information provided by the student's parents;
  2. Current classroom-based, local, or State assessments and classroom-based observations; and,
  3. Observations by teachers and related services providers.

(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:

1. Whether the student is a student with a disability or, in case of a reevaluation of the student, whether the student continues to have a disability;

2. The educational needs of the student;
  3. The present levels of academic achievement and related developmental needs of the student;
  4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student 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 student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.
- (c) The group conducting this review may do so without a meeting.
- (d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.
- (e) If the determination under this section is that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the school district shall notify the student's parents of:
1. That determination and the reasons for the determination; and,
  2. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs. The school district is not required to conduct the assessment unless requested to do so by the student's parents.
- (f) Reevaluation is not required for a student before the termination of eligibility due to graduation with a standard diploma or exiting from school upon reaching the student's twenty-second (22nd) birthday. For a student whose eligibility terminates under these circumstances, a school district must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.
- (g) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.
- (h) If a parent of a student who is home schooled or placed in private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override provisions of mediation or due process and the school district is not required to consider the student eligible for services under Rules 6A-6.03011-.0361, F.A.C.
- (i) To meet the reasonable efforts requirements to obtain parental consent, the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C.
- (9) Parental Consent for the Initial Provision of Services.
- (a) A school district responsible for making FAPE available to an exceptional student must obtain informed consent from the parent of the student before the initial provision of ESE to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of ESE to the student.

(c) If the parent of a student fails to respond or refuses to consent to the initial provision of ESE, the school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses consent to the initial provision of ESE, or the parent fails to respond to a request to provide consent for the initial provision of ESE, the school district will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the ESE for which the school district requests consent. In addition, the school district is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for the ESE for which the school district requests such consent.

(e) If, at any time subsequent to the initial provision of ESE, the parent of a student revokes consent in writing for the continued provision of ESE, the school district may not continue to provide ESE to the student, but must provide prior written notice before ceasing the provision of ESE. The school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

(f) If a parent of a student revokes consent in writing for the continued provision of ESE, the school district:

1. Will not be considered to be in violation of the requirement to make FAPE available to the student for its failure to provide the student with further ESE; and,
2. Is not required to convene an IEP or EP team meeting or develop an IEP or EP for the student for further provision of ESE.

(g) If a parent of a student with a disability revokes consent in writing for their child's receipt of ESE after the initial provision of ESE to the student, the school district is not required to amend the student's education records to remove any references to the student's receipt of ESE because of the revocation of consent.

(10) Parental Consent for Specific Actions.

(a) A school district may not proceed with the following actions included in a student's IEP without written informed consent of the parent unless the school district documents reasonable efforts to obtain the parent's consent and the student's parent has failed to respond, or the school district obtains approval through a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. To meet the reasonable efforts requirements to obtain parental consent the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings as described in subparagraph 6A-6.03028(3)(b)7., F.A.C.

Those actions requiring parental consent include:

1. Administration of an alternate assessment in accordance with Section 1008.22, F.S., and provision of instruction in the state standards access points curriculum; and,
2. Except for a change in placement as described in Section 1003.57(1)(h), F.S., placement of the student in an exceptional student education center as defined in paragraph 6A-1.099828(2)(b), F.A.C.

(b) The district shall obtain written parental consent for the actions described above on the Parental Consent Form – Instruction in the State Standards Access Points

Curriculum and Florida Alternate Assessment Administration, Form 313181, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-04779>) (effective December 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, and Parental Consent Form – Student Placement in an Exceptional Education Center, Form 313182, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03384>) (effective March 2014) English, Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, adopted by the Department of Education and incorporated by reference and available at <http://www.fldoe.org/ese/> or may be obtained from the Department of Education, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Room 614, Tallahassee, FL 32399. Both forms were translated into Arabic, Chinese, French, Haitian Creole, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.

(c) At any time an IEP team meeting is to be convened for the purpose of reviewing or changing a student's IEP as it relates to any of the actions described above, the school district must provide written notice of the meeting to the parent at least ten (10) days before the meeting. The notice must indicate the purpose, time, and location of the meeting and who, by title or position, will attend the meeting. The meeting may be convened prior to the tenth (10th) day, if the parent consents upon receipt of the written notice described above.

(d) Within ten (10) school days of a parent indicating in writing on a consent form described in paragraph (b) of this subsection that they do not consent to an action described in paragraph (a) of this subsection, the district must either develop and implement a new placement or instruction and assessment procedures in accordance with a new IEP or must request a due process hearing in accordance with subsection 6A-6.03311(9), F.A.C. During the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student must remain in the student's current educational assignment while awaiting the decision of the due process hearing or court proceeding, unless the parent and the district school board agree otherwise.

Rulemaking Authority 1001.02(1), (2)(n), 1003.4282, 1003.57, 1003.571, 1003.5715 FS. Law Implemented 1003.01(3)(a), (b), 1003.4282, 1003.57, 1003.571, 1003.5715 FS. History New 6-17-74, Amended 12-5-74, 7-1-77, 3-28-78, 7-12-78, 8-31-78, 11-29-78, 10-7-81, 7-13-83, 6-2-85, Formerly 6A 6.331, Amended 7-13-93, 1-2-95, 9-20-04, 12-22-08, 12-15-09, 3-25-14, 12-23-14.