

Is that Really True?

Common Special Education Misconceptions and Pitfalls

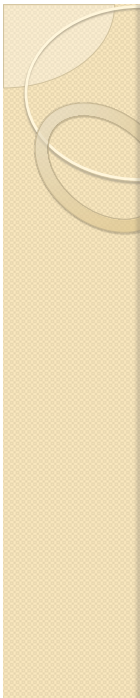
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- **Effectiveness of behavior interventions is most dependent on the quality of the selected interventions**

In fact, fairly common and simple interventions, such as redirection, planned ignoring, positive reinforcement, first do this then preferred activity can be effective.

The most important parameter appears to be the degree of consistency of staff implementation.

Survey of residential facilities and public schools by Psychologist Stewart Pisecco—why are these facilities' behavioral interventions so effective when they use similar interventions?

- **Effectiveness of behavior interventions is most dependent on the quality of the selected interventions**

Partially consistent implementation = partially effective results.

Thus, in many cases, IEP teams make changes to the interventions when a BIP is not working when they should be focusing on consistency of staff implementation.

After BIPs are developed, a meeting with instructional staff should be held to review the plan and stress consistency of implementation across settings, teachers, and aides.

- **Certain psychological conditions, such as Conduct Disorder or Oppositional Defiant Disorder, cannot qualify a student as emotionally disabled (ED)**

If we look at the IDEA regulation, the only condition excluded is “social maladjustment.” 34 C.F.R. §300.8(b)(4).

It says ED is “a condition” adversely affecting education that is present to a “marked degree” and “over a long period of time” that exhibits either:

Inability to learn not explained otherwise

Inability to build or maintain satisfactory relations with others

Inappropriate behaviors or feelings in normal circumstances

Pervasive mood of unhappiness or depression

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- **Certain psychological conditions, such as Conduct Disorder or Oppositional Defiant Disorder, cannot qualify a student as emotionally disabled (ED)**

Thus, if the evaluation concludes that a student has any psychological condition that meets the regulation's criteria, then the student can qualify as ED.

There really is no support for the persistent myth that certain psychological conditions cannot support ED eligibility.

Evaluators and teams looking at ED should be guided by the criteria in the regulation, not misconceptions from outside that framework.

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- **Certain psychological conditions, such as Conduct Disorder or Oppositional Defiant Disorder, cannot qualify a student as emotionally disabled (ED)**

The regulations states, that even if a student is in fact socially maladjusted, if they also have another condition that meets ED eligibility, then they would qualify under IDEA.

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- **IEP team only has to consider Assistive Technology (AT) needs if a team member indicates the possible need for AT**

Not true. The IDEA regulations state that the need for assistive technology devices and services must be considered with *each* IEP. 34 C.F.R. §300.324(a)(2)(v).

Thus, the IEP team must consider the issue at least annually. See *Dear Colleague Letter on the Provision of Assistive Technology Devices and Services for Children with Disabilities under the Individuals with Disabilities Education Act*, at Myth 1 (OSERS 2024)

This is often an overlooked “box” in IEP software programs, or it is marked “no” without real discussion.

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- **IEP team only has to consider Assistive Technology (AT) needs if a team member indicates the possible need for AT**

But, this does not necessarily mean that an AT evaluation must take place.

The fact that the student at times uses a device does not trigger the need for an AT evaluation.

But, the guidance does state that “an AT evaluation may be needed for a child when it comes to determining an appropriate AT device that the child would need to use throughout the school day....”

- **IEP team only has to consider Assistive Technology (AT) needs if a team member indicates the possible need for AT**

Unhelpfully, neither IDEA nor its regulations include any information on how AT evaluations should be conducted, other than indicating they should consist of “a functional evaluation of the child in the child’s customary environment.” See 34 C.F.R. §300.6(a).

A team-based approach to AT evaluations is a best practice.

Dr. Joy Zabala’s SETT Framework (student, environment, tasks, tools) goes back to 1995 and is widely recognized.

- **IEP team only has to consider Assistive Technology (AT) needs if a team member indicates the possible need for AT**

ATDs can be a key component of IEPs for students with severe autism who may need augmentative alternative communication (AAC) strategies and devices.

Also for students with mobility issues, hearing impairments, ID, SLDs, really a wide range of students.

Remember, AT is not only about devices, it can include software, staff training, parent training, training of the student on a device, and incorporating the AT into the IEP goals.

- **ESY services are only necessary for students with the most profound disabilities**

Although students with profound disabilities may need ESY, any student showing substantial regression after summers or other breaks should be considered for ESY.

A failure to provide appropriate ESY can lead to a denial of FAPE, as students can lose their prior year's gains over a summer.

Your case of ***Johnson v. Independent Sch. Dist. No. 4 of Bixby*, 17 IDELR 170 (10th Cir. 1990)** establishes a multi-factor analysis for determining if a child needs ESY.

That case indicated regression and recoupment are important considerations.

- **ESY services are only necessary for students with the most profound disabilities**

Court's list of possible factors:

- Degree of impairment
- Degree of regression
- Recoupment time
- Parent's ability to provide education at home
- Child's rate of progress
- Behavior and physical problems
- Availability of alternate resources
- Ability to interact with nondisabled peers
- Areas that need continuous attention
- Vocational needs
- ESY services should be logically related to the disability

- **ESY services are only necessary for students with the most profound disabilities**

What if the parents indicate they do not want ESY during the summer? Is it OK for the IEP team to simply indicate the parents don't want ESY?

No. The team should make an offer of what it thinks are the needed ESY services, put them on the IEP, and let the parents know they are available should they change their mind.

Why? The team is responsible for offering the services it believes are necessary, not just what the parents are willing to take.

- **Students cannot qualify as learning disabled until they have received several years of academic instruction**

To the contrary, students with some SLDs, such as dyslexia, can greatly benefit from early evaluation and intervention.

Reading science indicates that effective and intensive reading intervention at early ages can actually "reroute" neural pathways in the brain that are "mis-wired" in children with dyslexia.

Thus, experts such as Dr. Dawn Flanagan of St. Johns University have found that identifying reading disabilities in K or 1st grade can lead to best outcomes for students.

- **Students cannot qualify as learning disabled until they have received several years of academic instruction**

Moreover, courts are increasingly focusing on dyslexia as a SLD under IDEA that must be addressed with proper instructional services.

Reading science indicates that students with dyslexia need explicit, intensive, multisensory, and systematic phonics-based programs (Standard Protocol Dyslexia Instruction (SPDI)) to improve in reading.

Really an area that schools need to be examining more closely....

- **RtI/MTSS interventions are required to be implemented for a reasonable time prior to referral for IDEA evaluation**

Nothing in IDEA indicates that Response to Intervention (RtI)/Multi-Tiered System of Supports (MTSS) interventions *must* be attempted prior to evaluation.

These programs are an option for schools, together with parents, to decide to provide in situations where the student is having academic problems but disability is not necessarily suspected.

But a persistent myth has developed that these interventions are mandatory prior to referral for special education evaluation, despite all guidance to the contrary...

- ***Memo to State Directors of Special Education, 56 IDELR 50 (OSEP 2011)***

“It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, **LEAs may be using RTI strategies to delay or deny a timely initial evaluation for children suspected of having a disability.**”

States and LEAs have an obligation to ensure that child-find and evaluations are not delayed or denied “because of implementation of an RTI strategy.”

- ***Memo to State Directors of Special Education, 56 IDELR 50 (OSEP 2011)***

OSEP “supports” State and LEA implementation of RTI strategies, but to ensure early identification and timely provision of effective assistance.

“It would be inconsistent with the evaluation procedures [of the IDEA regulations] for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework”

Note—Does this statement apply to parent referrals or any referral?... Probably both.

- **Letter to Ferrara, 60 IDELR 46 (OSEP 2012)**

“The implementation of an RTI process is not a reason to fail to respond to a parent’s request for an initial evaluation.”

Note—Thus, LEAs can’t wait until completion of Rtl tiers before responding to a parent request for an initial evaluation. What about with staff referrals?...

Note—See *Artichoker v. Todd Co. Sch. Dist.*, 60 IDELR 58 (D.S.D. 2016) for an example of a school improperly responding to parent request for eval with Rtl services instead.

- **”Safe Zone” for Rtl/MTSS Implementation**

1. Student is having problems that are academic in nature, and
2. There are no reasons to necessarily suspect the student has a disability.

In these situations, schools can and should use their Rtl/MTSS programs and closely monitor the students’ responses to the interventions.

Schools must ensure students do not linger in these programs if they are not improving within weeks—IDEA referral should be considered in those cases.

- **OCR ADHD Resource Guide, 68 IDELR 52 (OCR 2016)—§504 Child-Find**

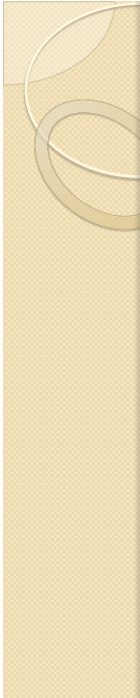
The Office for Civil Rights (OCR) made clear that OSEP's guidance with respect to special education also applied to §504.

States that while early interventions can be “very effective and beneficial,” if there is suspicion of disability, it would be a violation of Section 504 to delay the evaluation in order to first implement interventions

- **OCR ADHD Resource Guide, 68 IDELR 52 (OCR 2016)**

OCR states that districts tend to “run afoul” of their §504 child-find obligations when they:

1. “rigidly insist on first implementing interventions before conducting an evaluation”, or
2. “categorically require that data from an intervention strategy be collected and incorporated as a necessary element of an evaluation.”



See OCR decisions on point: *Polk Co. (FL) Pub. Schs.*, 56 IDELR 179 (OCR 2010)(School required Rtl for struggling ADHD student); *Cherokee (TX) ISD*, 59 IDELR 18 (OCR 2012)(school provided Rtl after parent requested eval); *Indian River County (FL) Sch. Dist.*, 111 LRP 70055 (OCR 2011)(4-mos. Rtl for Tourette's); *Bristol-Warren (RI) Regional Sch. Dist.*, 56 IDELR 303 (OCR 2010)(Rtl for student with anxiety and ADHD); *Harrison (CO) Sch. Dist. Two*, 57 IDELR 295 (OCR 2011)(long Rtl for ADHD student with multiple suspensions); *Forest Hills (OH) Local Sch. Dist.* 111 LRP 70117 (OCR 2011)(“diabetes Rtl” required prior to eval!).

- **Students with mental health conditions who have the ability to do grade-level academic work but have problems attending school cannot qualify under IDEA**

A dangerous misconception....Tied to the notion that as long as a school makes FAPE available, it has discharged its obligations to the student under IDEA.

But what if part of the mental health problems present obstacles to a student's attendance, such as anxiety or depression?

A case of note helps illustrate the misconception at work...

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- **Students with mental health conditions who have the ability to do grade-level academic work but have problems attending school cannot qualify under IDEA**

Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

High-schooler had depression and anxiety (and a number of other diagnoses over time), with an apparent capacity to comprehend and master class work, but with recurring attendance problems since elementary school.

In middle school, the student expressed she was afraid to go to school, stopped attending altogether, and was disenrolled.



Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

She began 9th grade, but attendance quickly became irregular, and she was admitted (again) to a day treatment program, and later, to an in-patient program in Wisconsin.

At the beginning of 10th grade, the school placed her on a §504 plan (extra time, shortened work, check-ins with teachers, breaks from class, pass to counselor's office, fidget device), but she was again disenrolled due to mounting absences.

Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

She re-enrolled 11th grade, school agreed to evaluate for sp ed.

While District evaluation was pending, student was offered a self-paced online learning environment. She attended only three days.

IEP team ultimately concluded student did not meet eligibility criteria under IDEA because her conditions did not adversely impact her educational performance, and because her impairments did not manifest in the classroom setting.

Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

With quick analysis, Court found that the student was both SED and OHI, as “her several diagnoses...appear to have directly impacted her attendance at school.”

”No one disputes that the Student excelled on standardized tests; neither can anyone dispute that her absenteeism inhibited her progress in the regular curriculum.”

Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

On appeal, the 8th Circuit agreed that the student wasn't missing school as a result of bad choices, "but rather as a consequence of her compromised mental health, a situation to which the IDEA applies."

It also noted that "[t]his Student may not present the paradigmatic case of a special education student," but the District failed to offer her a FAPE.

Independent Sch. Dist. No 283 v. E.M.D.H., 74 IDELR 19 (D.Minn. 2019), aff'd 76 IDELR 203 (8th Cir. 2020)

Note the misconception at work here—if the student is bright and able to perform when in the classroom, then the mental health conditions are not adversely impacting education, even if she is failing and cannot finish school years...

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- **Only a doctor's note indicating Other Health Impairment (OHI) eligibility is required for purposes of an IDEA evaluation for a child with a health condition.**

As in all situations, an IDEA evaluation involves a comprehensive multi-disciplinary evaluation.

A doctor's diagnosis of a health condition and completion of an OHI eligibility form is one source of data, but IDEA evaluations require multiple sources of data. See 34 C.F.R. §300.304.

That regulation in fact prohibits the use of any single source of data determining IDEA eligibility. 34 C.F.R. §300.304(b)(2).

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- **Only a doctor's note indicating Other Health Impairment (OHI) eligibility is required for purposes of an IDEA evaluation for a child with a health condition.**

Educational evaluation is necessary to understand the student's educational needs, present level of performance, and areas where the health impairment impacts participation in general curriculum, among others.

What if the child has a health condition, such as diabetes, and needs health services but not necessarily special education instruction? Then §504 referral and a §504 plan should be considered.

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- **As long as a student with a SLD in reading is able to turn in assignments and pass their classes, they are receiving a FAPE**

Superficially, that “looks” like the child is receiving a FAPE.

But what if a school overdoes accommodations and AT in the classroom and overlooks what is really taking place?...

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

In 7th grade, a student with SLDs was tested by the District and found to have dyslexia.

When he reached high school, his sp ed teacher emailed administrators to tell them “this kid can’t read” (or even spell his own name).

His IEP focused on reading fluency, and it allowed him to use “whatever technology tools he could find” to do his assignments, including AI, text-to-speech software, and speech-to-text software.

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

In 11th grade, his parents obtained private dyslexia services that used a dyslexia program, and the student began to improve in basic reading mechanics, such as decoding and encoding.

The school refused to implement the private dyslexia program, although the student had never met his reading fluency goals.

A hearing officer ruled that the student was able to learn to read, as indicated by his progress on his private dyslexia program, and found his IEP denied the student a FAPE.

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

A federal district court agreed, and upheld the award of 888 hrs of dyslexia instruction.

The Court also found that before the student could improve in fluency, he had to progress in basic reading skills first, which the IEP did not address with services.

The District argued that the fact that the student was able to pass his classes and graduate with a 3.0 GPA demonstrated he received a FAPE.

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

The 6th Circuit Court disagreed, finding that “William’s workarounds in reading simply did the work for him.”

“He relied on a host of accommodations that masked his inability to read....The point of a FAPE under IDEA is not simply to complete assignments.”

Although a student is not guaranteed any particular outcome, such as learning how to read, this student was “capable of learning to read,” but his IEP was not designed to help him accomplish that, and as such denied a FAPE.

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

Note—Beware of situations where a student, with many accommodations and “workarounds” is able to complete assignments and tests, and “looks” to be progressing.

But, if the underlying reading competencies at issue are not being worked on directly and show improvement, can we really say the student is receiving a FAPE?....

Yes, students should receive accommodations to assist them in regular classes, but specialized dyslexia services must also be provided to improve basic reading skills.

William A. v. Clarksville-Montgomery County Sch. Sys., 125 LRP 3627 (6th Cir. 2025)

Note—A Tennessee law, moreover, required dyslexia services for students identified as having dyslexia.

How can a child improve in fluency without a dyslexia program to first establish basic reading skills, such as decoding?

The parents wanted the dyslexia program the private tutor was using—how should the District have responded?



But, FAPE for dyslexia is not ideal or maximum progress—

Q.G. v. Brandywine Sch. Dist., 125 LRP 4908 (D.Del. 2025)(although services not “ideal,” goals, accommodations, supports, a reading program (4x/wk 40-min sessions), and a co-teach classroom provided FAPE, despite parents’ objections about the reading method used).

M.S. v. Scotch Plains Fanwood Reg’l Bd. of Educ., 124 LRP 15618 (D.N.J. 2024)(student with dyslexia who improved each year in decoding and performed above proficiency in 6th grade received a FAPE, despite independent expert’s opinion that he would have made even greater progress with a more intensive program).



If a student is merely turning in assignments and passing classes with AT, software, AI, but not improving in actual academic competencies, they are not really receiving a FAPE.

Even if a student is passing, if their underlying academic competencies are not improving, the IEP team has an obligation to meet to determine what steps should be taken.

We should agree that just passing classes without really improving in reading is not a FAPE for a student with a reading disability.

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- **Staff meetings prior to IEP meetings to discuss a student's educational program are a form of impermissible predetermination that violates IDEA**

Not if staff are merely developing options and alternatives, collecting data, and generally preparing for IEP meetings.

If school staff unilaterally pre-decide a child's IEP or placement prior to actual IEP meetings that include the parent and then ignore or prevent parental input, this is a procedural violation of the IDEA that infringes a parent's right to meaningfully participate in the IEP process and constitutes a denial of FAPE. See, e.g., *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004).

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- **Staff meetings prior to IEP meetings to discuss a student's educational program are a form of impermissible predetermination that violates IDEA**

An IDEA regulation specifically envisions staff discussions and meetings to prepare for IEP meetings.

The regulation addresses a parent's right to participate in IEP meetings but indicates that "a meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting." 34 C.F.R. §300.501(b)(3).

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- **Staff meetings prior to IEP meetings to discuss a student's educational program are a form of impermissible predetermination that violates IDEA**

Thus, for example, in *John S. v. New York City Dept. of Educ.*, 69 IDELR 153 (S.D.N.Y. 2017), school staff had circulated a draft IEP prior to the IEP meeting on a 6-year-old with Autism, but the court refused to find that the practice amounted to predetermination. "Although the IEP was drafted before the meeting, the Parents concede that they were provided that draft and the final IEP reflects comments and concerns expressed by R.S. at the CSE meeting." The evidence showed, moreover, that the team considered various placement alternatives.

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- **Staff meetings prior to IEP meetings to discuss a student's educational program are a form of impermissible predetermination that violates IDEA**

Schools who create draft IEP documents for IEP team review should mark those documents clearly as "DRAFT ONLY."

Ultimately, staff have to come to the IEP meeting with an open mind to considering parental input and preferences.

Consideration of parental input should be documented in IEP team reports.

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- **Staff meetings prior to IEP meetings to discuss a student's educational program are a form of impermissible predetermination that violates IDEA**

Of course, considering parental input and preferences does not mean the IEP team will follow them—all proposals are subject to "the marketplace of ideas" where the pros and cons are carefully weighed.

But the minds of school staff cannot be set into stone before the IEP meeting where the parent provides their input.

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- **If a campus has imposed a total of 10 days of cumulative suspensions, the clock restarts on the count of removal days allowed under IDEA**

No. There is no “clock” or “restarting” of the count of short-term removals in a school year.

Schools have a total of 10 short-term removal days available to impose without IDEA issues. 34 C.F.R. §300.530(b)(1).

After that total is reached, any additional removals (1) require services to be provided and (2) may constitute a “pattern of removals” that equates to a long-term removal. 34 C.F.R. §§300.530(b)(2); 300.536.

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- **If a campus has imposed a total of 10 days of cumulative suspensions, the clock restarts on the count of removal days allowed under IDEA**

Rather, campuses should work proactively if suspensions take place, such as by holding an IEP team meeting at the 4th or 5th cumulative suspension day.

At that meeting, IEP team should consider a functional behavioral assessment (FBA), a preliminary behavior intervention plan (BIP), and develop a more permanent BIP after it reviews the FBA results.

For their part, with IDEA students, campuses should apply the shortest suspensions possible.

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- **If a campus has imposed a total of 10 days of cumulative suspensions, the clock restarts on the count of removal days allowed under IDEA**

Also, consider use of in-school suspension (ISS) with:

1. All classwork delivered to ISS,
2. Sufficient individualized assistance to provide student opportunity to complete work,
3. Continue all related services, and
4. Do not segregate in a “sp ed ISS,” just use regular ed ISS.

If this criteria is met, the ISS days do not “count” like suspension to home. See 2022 OSEP Discipline Guidance.

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- **Manifestation Determination Reviews (MDRs) are primarily about whether a student knows right from wrong**

Students with emotional or behavioral disorders may know right from wrong but be unable to control their behavior due to their disability.

The operative questions:

Is the behavior caused by, or directly and substantially related to, the disability? Or,

Is the behavior a direct result of a failure to implement the IEP?

- **Manifestation Determination Reviews (MDRs) are primarily about whether a student knows right from wrong**

The “right from wrong” question will mislead IEP teams making the MDR determination.

Rather, examine any patterns of student behavior—if the behavior is different than usually exhibited behavior, that is a valid factor indicating the behavior is not related.

Of course, the reverse is also true—if the behavior fits in with a long-term pattern of behavior, then it is likely related to disability.

- **If a student brings drugs to school, they can automatically be removed to an alternative setting, but not for more than 45 school days**

Close, but not quite.

If a student brings drugs to school, this is a “special circumstances” offense under IDEA. 34 C.F.R. §300.530(g)(2).

Even if the behavior is related to disability, the school may impose up to a 45-school-day removal to an interim alternative setting.

But, if the behavior is properly found to not be related to disability in an MDR, the removal could be longer.

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- **If a student's eligibility is clearly established in prior evaluations, a 3-year reevaluation is not necessary**

What is the purpose of a reevaluation? The regulation states that a reevaluation determines:

1. If the child continues to qualify under IDEA, and
2. The student's educational needs (as they naturally change over time). 34 C.F.R. §300.305(a)(2)(i)(A).

In reviewing existing educational data, IEP teams tend to overly focus on the first and not enough on the second.

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- **If a student's eligibility is clearly established in prior evaluations, a 3-year reevaluation is not necessary**

The regulation reminds us that "additions and modifications to the special education and related services" may be needed as the student's needs change over time.

This is a key aspect of why reevaluations are required—to examine a student's changing educational needs and make the necessary modifications to the IEPs with new data.

Although the regulation allows IEP teams to "skip" reevaluations, teams should think twice about it.

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- **If a student's eligibility is clearly established in prior evaluations, a 3-year reevaluation is not necessary**

Remember that in reviewing existing evaluation data, the team may decide a part of the original evaluation should be re-performed.

For students with SLDs, if you think you have an accurate view of the child's cognitive ability, you can skip IQ tests, but you may want to re-administer achievement testing (ideally the same test) to compare the resulting standard scores (SSs) to those of 3 years prior.

SSs that remain the same or slightly lower are indicative of good progress—a solid indicator of FAPE.

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- **If a student's eligibility is clearly established in prior evaluations, a 3-year reevaluation is not necessary**

This is because the tests are normed on a nondisabled student population—thus, if the student “keeps his place in the pack,” he is making progress on par with nondisabled students (more than really required under IDEA in most cases).

The key is understanding that reevaluations are about understanding how a student's needs are changing over time and how to respond appropriately.