

Chapter 14 Changes to Evaluation Timelines, Behavior Plans and FBAs

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Special education services and programs in public schools are regulated and implemented under the authority of the Individuals with Disabilities Education Act (“IDEA”). IDEA was reauthorized effective July 1, 2005. The revised federal regulations of the reauthorized IDEA were promulgated on August 14, 2006. Sometime thereafter, a committee of the State Board of Education (“Board”) in Pennsylvania revised Chapter 14 to align it with the reauthorized IDEA. Pennsylvania’s revisions to Chapter 14 took effect July 1, 2008.

Revised Chapter 14 added a new requirement that multidisciplinary evaluations and reevaluations be completed within sixty *calendar* days from the date the parents provide written consent for the evaluation. Previously, Pennsylvania was aligned with a minority of states that had allowed sixty *school* days for the completion of multidisciplinary evaluations and reevaluations. Also, summer breaks were not included in the calculation of days for completion of the evaluation, and, under revised Chapter 14, they still do not count. However, for purposes of calculating the evaluation timeline, revised Chapter 14 will count lengthy holiday breaks, days lost to parent-teacher conferences, inclement weather and in-service days, even though children are generally not in school on those days.

In revising the portion of Chapter 14 having to do with behavior support, the Board added provisions that go well beyond what is required by the IDEA. For example, the IDEA requires that the “specially designed instruction” component of a student’s IEP (which arguably could include behavior interventions and techniques), be based on “peer-reviewed research to the extent practicable.” In Pennsylvania, however, the Board now requires that behavior support programs include “research based practices and techniques” to “enhance...opportunity for learning and self-fulfillment.” It may be splitting hairs to attempt to distinguish the meaning of “peer-reviewed research” from “research based practices and techniques,” but, more importantly, the Board’s revisions to Chapter 14 do not permit a school district to fall below the “research-based” standard because a particular practice or technique may not be practicable under the circumstances.

The Board went even further in ratcheting up the Chapter 14 behavior support requirements in Pennsylvania to require a functional behavior assessment (“FBA”) prior to developing a behavior plan. In public schools, a FBA usually consists of a team-based assessment and inquiry process through which the team defines target behaviors and determines the antecedent conditions and consequences in order to arrive at the hypothesized function(s) of the behavior. Then, the team would use this information to design an individualized behavior support plan for the child. Under the IDEA, a FBA is required when the behaviors in question result in disciplinary exclusion from school and are determined to be a manifestation of the child’s disability. Under revised Chapter 14, however, a FBA is also required as a prerequisite to all individualized behavior support plans. Further, a positive behavior support plan must be developed by the IEP team for eligible children “who require specific intervention to address behavior that interferes with learning.” The annotated IEP forms promulgated by PaTTAN reinforce the point that a FBA and a positive behavior support plan are required whenever the IEP team determines that the “special consideration” of behavior impeding learning of self, or others, applies to the child in question.

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