



Memo

To: Special Education Directors and Supervisors

From: The NDE – Office of Special Education

Date: 12/3/2019

Re: Clarification on guidance for 92 NAC 51 – 009.04 and IDEA 60 Day Timeline for School Age Children

The NDE, Office of Special Education, based on a recent clarification letter from OSEP is issuing the following clarification around **initial evaluation timelines** and calculating these timelines including school breaks:

Evaluation Timelines - School Breaks

Under 34 CFR § 300.301(c)(1), the initial evaluation must be conducted within 60 days after receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, ***within that timeframe***. Pursuant to 34 CFR § 300.301(d), the timeframe does not apply if: (1) the parent of a child repeatedly fails or refuses to produce the child for evaluation; or (2) a child enrolls in a school of another public agency after the relevant timeframe in 34 CFR § 300.301(c)(1) has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR § 300.8. In the regulations, a day is a calendar day unless otherwise indicated as a business day or school day. 34 CFR § 300.11.

Per 92 NAC 51-009.04, Nebraska has established a timeline for completion of the ***initial*** multidisciplinary evaluation for children ages 3-21 within 45 school days of receipt of parental consent.

State-established timeframes generally also incorporates the exceptions in 34 CFR § 300.301(d), as described above. There is no exception in 34 CFR § 300.301(d) that

would permit the applicable initial evaluation timeline to be suspended because of a school break (i.e. summer break, holiday break, etc.). **Based on the above clarification from OSEP, 92 NAC 51 - 009.04 (45 school days) can not supersede the 60 calendar days regardless of school breaks (i.e. summer vacation, holiday breaks, ect.).**

We recognize that this is in contradiction to previous guidance, however, based on the clarification from OSEP, dated 12/2/19, the Nebraska Department of Education – Office of Special Education will be enforcing the current policy clarification and will be updating 92 NAC 51 to be in compliance with the federal regulations.

Attached you will find the rescinded guidance around the 60 day timeline from 8/28/19 for your reference in this matter. If you have further questions, please contact Amy Rhone, Assistant Director at amy.rhone@nebraska.gov.