

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter E. Special Education

Part 130. Procedural Requirements and Program Standards

Subpart 4. Referral

6 CAR § 130-401. Referral generally.

(a) If a child is suspected of having a disability that adversely affects educational performance and who by reason thereof needs special education and related services, a referral may be made at any time to the local educational agency by:

- (1) The child's teacher;
- (2) Other educational personnel;
- (3) The child's parent or parents;
- (4) The child; or
- (5) Other individuals with relevant knowledge of the child.

(b)(1) A referral is to be made in writing through the completion of the required Referral Form and provided to the principal or designee of the school in which the child is enrolled.

(2) Where the referral originates from a parent, an individual not associated with the school, or other agency personnel, an employee of the local educational agency where the child is enrolled must complete the Referral Form and forward it to the principal or designee of the school.

(c) Informal data collection conducted pursuant to 6 CAR § 130-402 must be completed prior to any referral conference.

(d) Where appropriate, a child's parent or parents must be informed of the referral and shall be offered an explanation of its purpose.

6 CAR § 130-402. Content of referral.

Along with the information provided in the Referral Form, any information that may assist in determining whether or not a child is a child with a disability should be submitted, including, but not limited to:

- (1) The results of hearing and vision screening;
- (2) Home or classroom behavior checklists;
- (3) Existing medical, social, or educational data;
- (4) Examples of the child's academic work; and
- (5) Screening inventories.

6 CAR § 130-403. Notice of referral conference.

(a) Within seven (7) calendar days of the date the local educational agency receives the written referral, the local educational agency must schedule a referral conference at a time and place agreed upon by the parent or parents and provide the parent or parents with written notification of the referral and referral conference consistent with the notice requirements established in 6 CAR § 130-904.

(b) In addition to meeting the requirements of 6 CAR § 130-904, notice of a referral conference must:

- (1) Be provided to the parent or parents early enough to ensure that they will have an opportunity to attend; and
- (2) Include the time and location of the conference and who will be in attendance.

(c) The agency may provide initial notice to the parent or parents through the use of:

- (1) Registered mail;
- (2) Certified mail; or
- (3) First class mail.

(d)(1) If the parents do not respond to the initial written notice within seven (7) calendar days of its dissemination, a subsequent notice must be issued to the parents by any communication means necessary, specifying that the referral conference will be held seven (7) calendar days from the date of dissemination of the subsequent notice,

but in no case more than twenty-one (21) calendar days from receipt of the written referral.

(2) If the parents do not respond to the subsequent notice, the referral conference may be conducted without the parent in attendance.

(3) If no parent can be identified or located after reasonable efforts by the agency or if the child is a ward of the state or an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11434a(6), then a surrogate parent must be assigned to the child pursuant to 6 CAR § 130-1501 et seq.

(e) The public agency shall maintain written documentation of its efforts to ensure that the requirements of 6 CAR § 130-401 et seq., have been met.

6 CAR § 130-404. Referral conference.

(a) If a child is referred to the local educational agency pursuant to 6 CAR § 130-401, a referral conference must be held for the purpose of:

- (1) Reviewing all existing information related to the child; and
- (2) Determining the actions to be taken.

(b)(1) The referral conference must be attended by at least three (3) persons, including:

- (A) The principal or a designee; and
- (B) One (1) teacher directly involved in the education of the child.

(2) The conference may also be attended by the child, if appropriate, and by other individuals at the discretion of the parents or agency.

(c)(1) Decisions made at the referral conference must be recorded on the required Referral Conference Decision Form and signed by the principal or a designee.

(2) The Referral Conference Decision Form shall also include the names of the participants of the conference.

(d) Options for referral conference outcomes include:

(1) A decision to conduct a comprehensive evaluation of the child consistent with the eligibility criteria set out in 6 CAR § 130-601 et seq.;

(2) A decision to conduct a specialized evaluation of the child consistent with the eligibility criteria set out in 6 CAR § 130-601 et seq.; or

(3) A decision not to conduct an evaluation of the child.

(e)(1) Subsequent to the conclusion of the referral conference, the local educational agency must provide the parent written notice of the decision reached at the referral conference, consistent with 6 CAR § 130-904.

(2) If the parent was not present at the referral conference, notice must be given to the parent within seven (7) calendar days after the referral conference by:

(A) Registered mail;

(B) Certified mail; or

(C) First class mail.

(f) If the local educational agency has reason to believe that the parent may require assistance in understanding the decision reached at the referral conference, a representative of the local educational agency must contact the parent by telephone or initiate a home visit to explain the decision.

6 CAR § 130-405. Temporary placement during evaluation.

(a) If a referral conference results in a decision to evaluate a child, and existing data and educational observations establish the need for immediate intervention or differential diagnostic data gathering, the local educational agency, with the parent's written consent, may initiate a temporary placement for the child to provide special education and related services.

(b) The temporary placement of a child is limited to sixty (60) calendar days, during which time the evaluation must be completed.

(c) If a determination is made to initiate a temporary placement for a child:

(1) The reason or reasons for such placement must be stated on the Referral Conference Decision Form; and

(2) An interim individualized educational program must be developed and implemented for the period of time the student is in the temporary placement, not to exceed sixty (60) calendar days.

6 CAR § 130-406. Consent to evaluate.

(a)(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 C.F.R. § 300.8 must, after providing notice consistent with 34 C.F.R. §§ 300.503 and 300.504, obtain informed consent, consistent with 34 C.F.R. § 300.1, from the parent of the child before conducting the evaluation.

(2) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(b) For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; 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 an initial evaluation has been given by an individual appointed by the judge to represent the child.

(c)(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under subsection (a) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 34 C.F.R. § 300.501 et seq. (including the mediation procedures under 34 C.F.R. § 300.506 or the due process procedures under 34 C.F.R.

§§ 300.507 – 300.516), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under 34 C.F.R. §§ 300.111 and 300.301 – 300.311 if it declines to pursue the evaluation.

(d) Public agency personnel must also:

(1) Provide the parent with a copy of Information for Parents Regarding Consent; and

(2) Ensure that the parent understands the information it contains.