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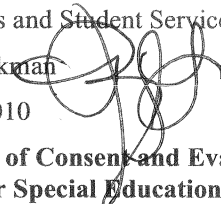
SUSAN STORY

Dr. Eric J. Smith
Commissioner of Education



MEMORANDUM

TO: ESE Directors and Student Services Directors

FROM: Bambi J. Lockman 

DATE: August 12, 2010

SUBJECT: **Clarification of Consent and Evaluation Requirements When Determining Eligibility for Special Education**

The integration of a problem-solving and response to instruction/intervention (PS-RtI) framework in the revised State Board of Education (SBE) rules has promoted new ways of thinking about addressing the needs of all students. Because SBE Rule 6A-6.0331(1), Florida Administrative Code (F.A.C.), permits districts to conduct academic and behavioral evaluations when planning interventions in the general education setting, there has been some confusion as to when parental consent is required and how to determine completion of the evaluation procedures when students are referred for an evaluation to determine eligibility for special education.

The following questions and answers are intended to address concerns regarding consent and evaluation, and to clarify previously provided technical assistance:

What is an evaluation to determine eligibility for special education and related services?

Many parents and professionals use the term “evaluation” to mean a test, or battery of tests, that are scheduled and administered on a given date. While an evaluation may include specific assessment instruments, in the context of Individual with Disabilities Education Act (IDEA) and corresponding SBE rules, an evaluation refers to all of the procedures used to determine whether a student is a student with a disability and the nature and extent of the student’s special education and related service needs (Rule 6A-6.03411(1)(I), F.A.C.). An evaluation consists of all relevant assessment tools and strategies used to collect functional, developmental, and academic information about a student in order to determine specialized instructional need and if a student is eligible as a student with a disability. Therefore, an evaluation includes existing data on the student collected prior to obtaining parental consent for evaluation (e.g., classroom performance; observations; interviews; screening, progress monitoring, and diagnostic assessments; and district and state assessments) and any additional assessment procedures conducted subsequent to receipt of parental consent.

BAMBI J. LOCKMAN

Chief

Bureau of Exceptional Education and Student Services

What constitutes the need to obtain consent?

Parental consent for an evaluation is required before the district conducts an initial evaluation to determine whether a student is eligible for special education and related services. Within an on-going, problem-solving process, there may come a time when the student's response to intervention leads the team to suspect that the student might need special education and related services. The team must promptly obtain parental consent prior to conducting an initial evaluation to determine eligibility for special education:

1. When the student's response to interventions indicates that intensive interventions are effective but require a high level of intensity and resources to sustain growth* or performance (this is empirically established by fading the intervention and measuring student response), or
2. When the student's response to interventions indicates that the student does not make adequate growth* given effective core instruction and intensive, individualized, evidence-based interventions, or
3. When a parent initiates a request for an initial evaluation. If, upon review of the parent's request, the district determines the evaluation is not appropriate, then the parent must be provided with written notice of its refusal to conduct the evaluation.

Details of this process are illustrated in Attachment A (*Consent and Evaluation Flow Chart*) and Attachment B (*Consent for Evaluation within the Problem-Solving/Response to Intervention/Instruction Framework*).

Consent is required whenever the district proposes to conduct assessment procedures for the purpose of determining eligibility for special education and related services, therefore once the team suspects a disability, consent is required for any subsequent assessment procedures, including the collection of additional progress monitoring data.

** Growth is measured relative to state-approved, grade-level benchmarks/standards or relative to behavioral expectations.*

Is consent required to conduct evaluations or assessment procedures that inform general education interventions?

Parental consent is not required if the sole purpose of obtaining assessment data is to inform instruction or intervention in general education (Rule 6A-6.0331(1), F.A.C.). It is the purpose for which the assessment data are used, not the nature of the assessment procedures that drives consent. If assessment and data collection procedures are conducted for the purpose of determining eligibility, then consent is required (Rule 6A-6.0331(4), F.A.C.).

How does the team determine what an evaluation should include?

As part of an initial evaluation, the team, including the parent, must review existing data on the student and, based on the review and input from the parents, identify what additional data are needed to determine eligibility and the nature and extent of special education need. In determining what additional data are needed, the team must ensure that the evaluation identifies all of the student's special education and related services needs as well as establishes the presence of a disability. The evaluation must be individualized and comprehensive, requiring that the team address the unique circumstances of each student as well as the characteristics of the suspected disability.

The district is required to provide written notice of its proposal to evaluate the student. The notice must include a description of any evaluation procedures the district proposes to conduct, including both the administration of formal assessment instruments and the ongoing collection of progress monitoring data,

if such data will be used to determine eligibility. It is important that the team clarify what constitutes an “evaluation” when obtaining written consent from a parent.

How is the evaluation completion date determined?

The district must complete the evaluation within 60 school days that the student is in attendance after receiving parental consent, unless extended in writing by mutual agreement between the parents and the team (this extension only applies to specific learning disabilities per Rule 6A-6.03018(3)(b), F.A.C.). The evaluation is complete after the last evaluation procedure is conducted or when the team determines there is sufficient information to determine eligibility for special education. For pre-school and non-public school students, the district has 60 school days to complete the evaluation. Once the evaluation is completed, the district must determine eligibility within a reasonable time frame.

Could an evaluation to determine eligibility be completed without written parental consent?

Yes. The U.S. Department of Education, Office of Special Education Programs (OSEP), has provided policy guidance stating that parental consent for an evaluation is not required if the team of qualified professionals determines that existing data are sufficient to establish disability and educational need without conducting further evaluation procedures (Letter to Copenhagen, October 19, 2007). OSEP’s guidance reflects the U.S. Department of Education’s belief that a review of existing data would be sufficient to determine disability and need in limited circumstances. Examples of when consent to evaluate would not be required include: children transitioning from Part C Early Steps to Part B services, when the assessment data provided by Early Steps are sufficiently comprehensive to make an eligibility decision; or, students have received comprehensive medical and educational evaluations as part of treatment provided in a rehabilitation center.

If a team concludes that existing data are sufficient to determine both the presence of a disability and the educational needs of the student, the parent must be given the opportunity to request further assessment even if the public agency determines that no additional assessment data are needed. As welcomed participants engaged in problem-solving and educational planning, parents should always be aware and informed of proposed actions. *The 60-day timeline does not apply if the evaluation is based on review of existing data and parent consent is not obtained.* In these situations, the eligibility determination must occur promptly.

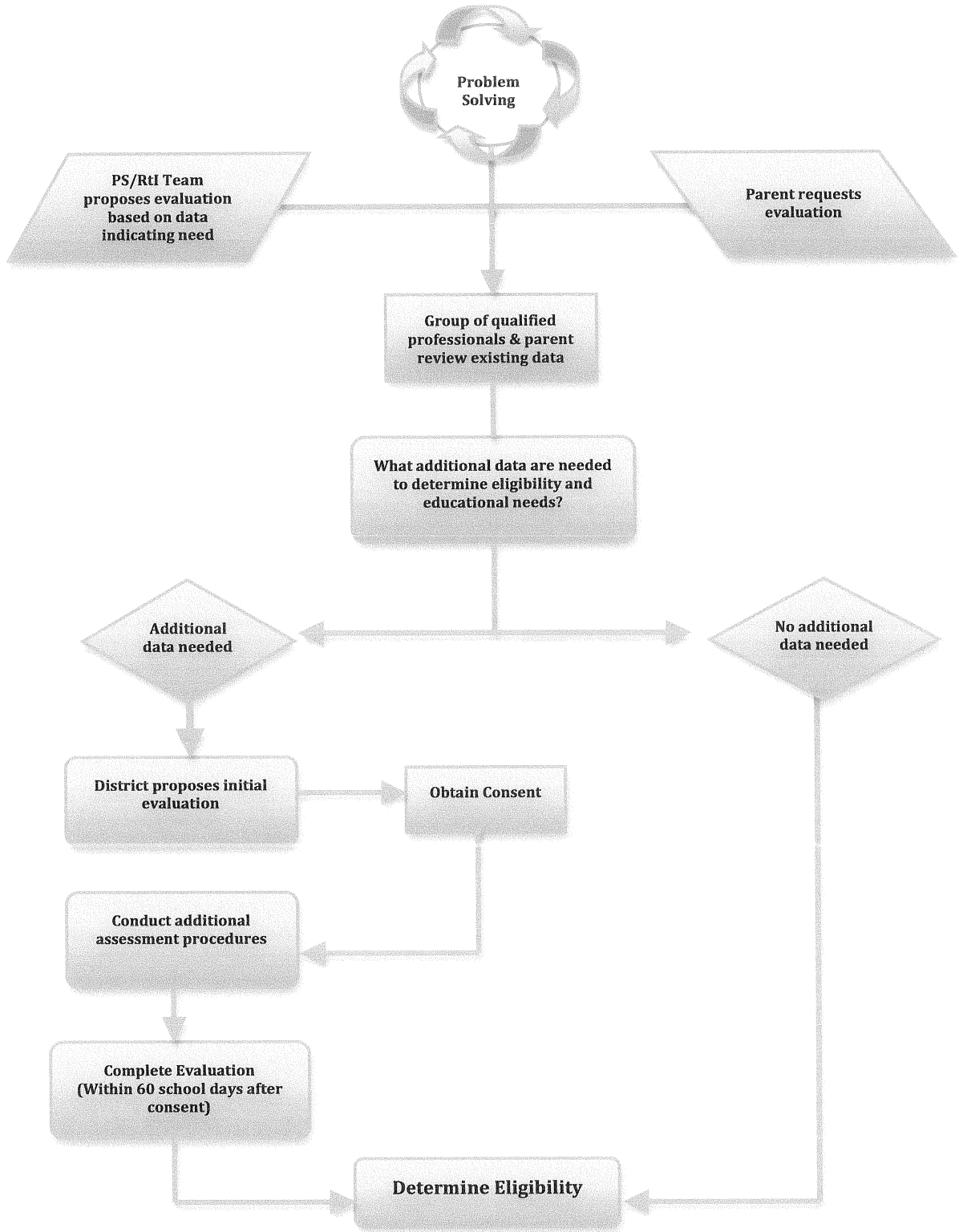
If you have questions, please contact Kim Komisar at Kim.Komisar@fldoe.org or by telephone at (850) 245-0968.

BJL/dw

cc: Dr. Frances Haithcock
Mary Jane Tappen

Attachments

Consent and Evaluation Flow Chart



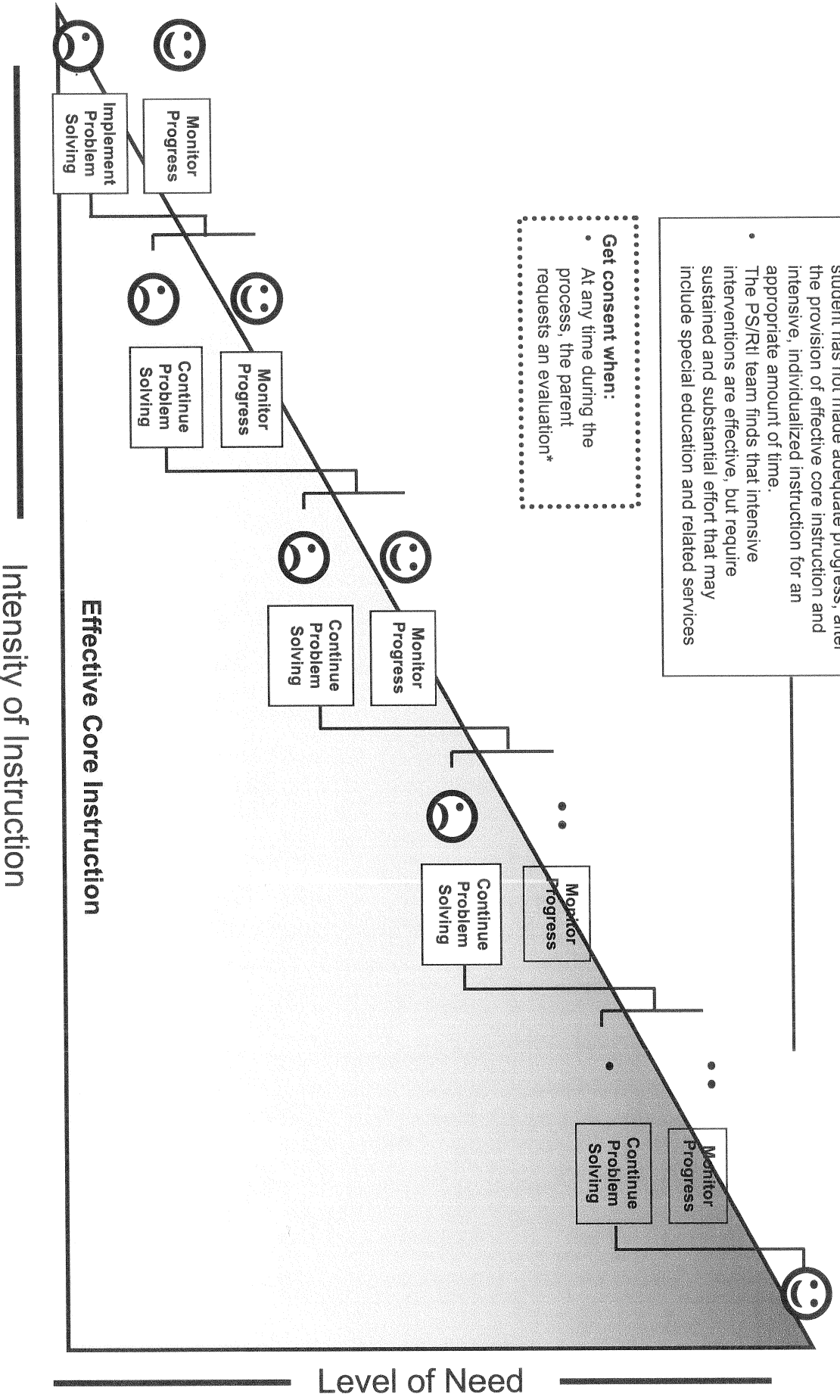
Consent for Evaluation within the Problem-Solving/Response to Intervention/Instruction Framework

Get consent when:

- The PS/RtI team has data that indicate that the student has not made adequate progress, after the provision of effective core instruction and intensive, individualized instruction for an appropriate amount of time.
- The PS/RtI team finds that intensive interventions are effective, but require sustained and substantial effort that may include special education and related services

Get consent when:

- At any time during the process, the parent requests an evaluation*



* The district must either conduct the evaluation or provide the parent with written notice of refusal that includes: (1) a statement of what is being refused and the reason for the refusal; (2) the data sources upon which the refusal is based; (3) other options considered and why they were rejected; (4) any other factors relevant to the refusal; and (5) a statement that the parents have rights under the procedural safeguards, the means by which the parent can get a copy of them, and sources to contact for assistance in understanding them.