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## THE EVALUATION PERMISSION PROCESS UNDER PENNSYLVANIA'S NEW CHAPTER 14

With the arrival of the changes to Pennsylvania Chapter 14, which took effect on July 1, 2008, Local Educational Agencies ("LEAs") in the Commonwealth faced several changes. One of the more onerous and potentially confusing changes to the regulations involves the request and consent processes for multidisciplinary evaluations. This article is intended as a brief explanation of those changes, along with our suggestions regarding how LEAs should operate in order to maximize efficiency.

Section 14.123(c) of the State Regulations states that "Parents may request an evaluation at *any time*, and that request shall be in writing...If a request is made orally to *any professional employee or administrator* of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents *within 10-calendar days* of the oral request (emphasis added). 22 Pa. Code Ch. 14. There are two very important lessons to be learned from this new language.

First, parents may orally request an evaluation from *any professional employee*. Thus, parents are not limited to administrators, special education teachers, or the child's current regular education teacher(s), but also may request an evaluation from anyone employed by the LEA in a professional capacity. Second, there are no time, place, and manner limits upon such requests. Theoretically, a parent may approach an LEA employee in his or her neighborhood during the LEA's winter break with an oral request for an evaluation. Under the new regulations, the LEA must not only issue a permission to evaluate form upon that request, but must do so within 10 days, *regardless of whether the LEA is closed for a holiday*. Although we assume, at this juncture, that such an absurd result would not be countenanced by the Courts, to date we have no rulings to limit the plain language of the regulations.

In response to these regulations, the Pennsylvania Department of Education issued forms that LEAs may use. Among these are two forms governing the evaluation permission process: the "Permission to Evaluate Request" form ("PTER") and the "Permission to Evaluate Consent" form ("PTEC"). Upon the parents' oral request, the LEA must issue a blank PTER form to the parents within 10 calendar days. At that point, the onus is on the parents to complete and return the form. Once this form is completed and returned to the LEA, it must then do one of two things: it may fill out and issue a PTEC form, or it may issue a "Notice of Recommended Education Placement/ Prior Written Notice" ("NOREP/PWN") denying the parents' request, along with a procedural safeguards notice. If the LEA issues a PTEC form, it has *60 calendar days*<sup>1</sup> to complete the evaluation from the date that that form is received from the parents.

If presented with a *written* request for an evaluation or reevaluation, do not issue the PTRE, as the parents' written request stands in place of that form. Move immediately to the PTEC/NOREP decision within a reasonable time. The law does not define what a "reasonable time" is, but reasonableness is usually determined by the circumstances of a particular case. Optimally, the PTEC or NOREP would issue within the 10 calendar days applicable to responses to oral requests, but that expectation might not be realistic in many cases. A team could reasonably require time to review existing data to inform its decision whether an evaluation is needed and, if so, exactly what types of testing and assessments should be included. We believe that up to 15 calendar days would pass muster as "reasonable" in many, maybe even most, instances.

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Logistically, this new process may appear to be burdensome to LEAs, as it seemingly directs all professional employees to constantly be in possession of blank PTER forms. However, we recommend that in each building a “point person,” specifically a guidance counselor or building administrator, be appointed who will be responsible for the distribution of PTER forms. Upon any oral request for an evaluation, the LEA employee who received the oral request should immediately inform this point person of the request. At that time, the point person should expeditiously send the PTER form to the parents.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

1. We note that the 60 calendar days do not accumulate during the LEA's summer holiday.