Module 10

Initial Evaluation and Reevaluation

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We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Background and Discussion

Evaluation is an essential part of the special education process for children with disabilities. Children are initially evaluated to see whether or not they have a disability and whether, because of that disability, they need special education and related services designed to address their unique needs. Information gathered during the evaluation helps to identify the child's educational needs and guides decision making about the kind of educational program appropriate for the child.

For children who are receiving special education and related services, evaluation also is necessary to monitor how well they are achieving the annual goals developed for them in their individualized education programs (IEP). The IDEA is specific about its requirements for evaluating children. This background section focuses on the requirements that IDEA establishes for the *process* of evaluation: parent consent, review of existing evaluation data, and how the law defines "child with a disability." The latter is central to special education and is a critical element for all audiences to know.

There are three modules under the umbrella topic of **Evaluating Children for Disability**, as follows:

- *Introduction to Evaluation* presents IDEA 2004's requirements to ensure that evaluations of children are technically sound, nondiscriminatory, and effective in gathering the information needed to determine if the child has a disability and the nature and extent of the special education and related services that the child needs;
- *Initial Evaluation/Reevaluation* examines IDEA's definition of "child with a disability" and the evaluation process that IDEA requires to determine if a child is a "child with a disability." Also examined in this module are: parent consent, review of existing evaluation data, and requirements for gathering additional data, if needed.
- *Identification of Children with Specific Learning Disabilities* focuses exclusively on IDEA's process for determining if a child has a learning disability, including that States must permit scientific research-based response to intervention (RtI) practices to be used in evaluation.

All of these modules are intended for general audiences. The background materials (what you're reading right now) and *Resources for Trainers* include substantial additional information that trainers can use to adapt training sessions to specific audience needs and the amount of time available for training.

You are currently reading the background section and discussion for *Initial Evaluation and Reevaluation*, the second module in the **Evaluating Children for Disability** series.

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.

You'll note the "*New in IDEA*" icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.

References for This Module

Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Proposed Rule, 70 Fed. Reg. 35782) (June 21, 2005)

S. Rep. No. 105-17. (1997). (ERIC Document Reproduction Service No. ED 419 315, available online at: http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/25/70/95.pdf)

S. Rep. No. 108-185. (2003). Available online at: www.nichcy.org/reauth/SenateReportonIDEA.pdf

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/reauth/PL108-446.pdf
- http://idea.ed.gov

Final Part B Regulations:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- http://idea.ed.gov

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means "Section.") These references can be used to locate the precise sections in the federal regulations that address the issue being discussed. In most instances, we've also provided the verbatim text of the IDEA regulations so that you don't have to go looking for them.

The final Part B regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It's not unusual to see references to specific sections of IDEA's regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You'll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. at 46738

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/reauth/IDEA2004regulations.pdf

Slide 1 Introductory Slide

How to Operate the Slide:

- No clicks necessary. Slide self-presents.

CLICK to advance to next slide.

Use Slide 1 to orient your audience to what this training will be about: What IDEA requires with respect to initial evaluations and reevaluations.

One of Three Modules

There are actually three separate modules in this training curriculum addressing evaluation. It's a huge topic! In fact, evaluation is treated as **Theme C** in *Building the Legacy*. That's why it's a good idea to make the audience aware that what they're going to learn today is only part of what there is to know about evaluation.

Theme C, Among Other Themes

Just as the module exists within a series of modules addressing evaluation issues, Theme C exists within a curriculum of multiple themes. Those themes represent critical components and organizing elements within IDEA. You may wish to make participants aware that there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped. A list of themes in this training curriculum is provided in the box below. If participants want to learn more on their own, they're welcome to visit NICHCY's Web site and download any and all modules they wish.

Themes in
Building the Legacy

Theme A
Welcome to IDEA

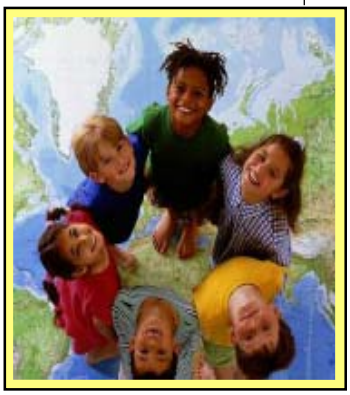
Theme B
IDEA
and General Education

Theme C
Evaluating Children
for Disability

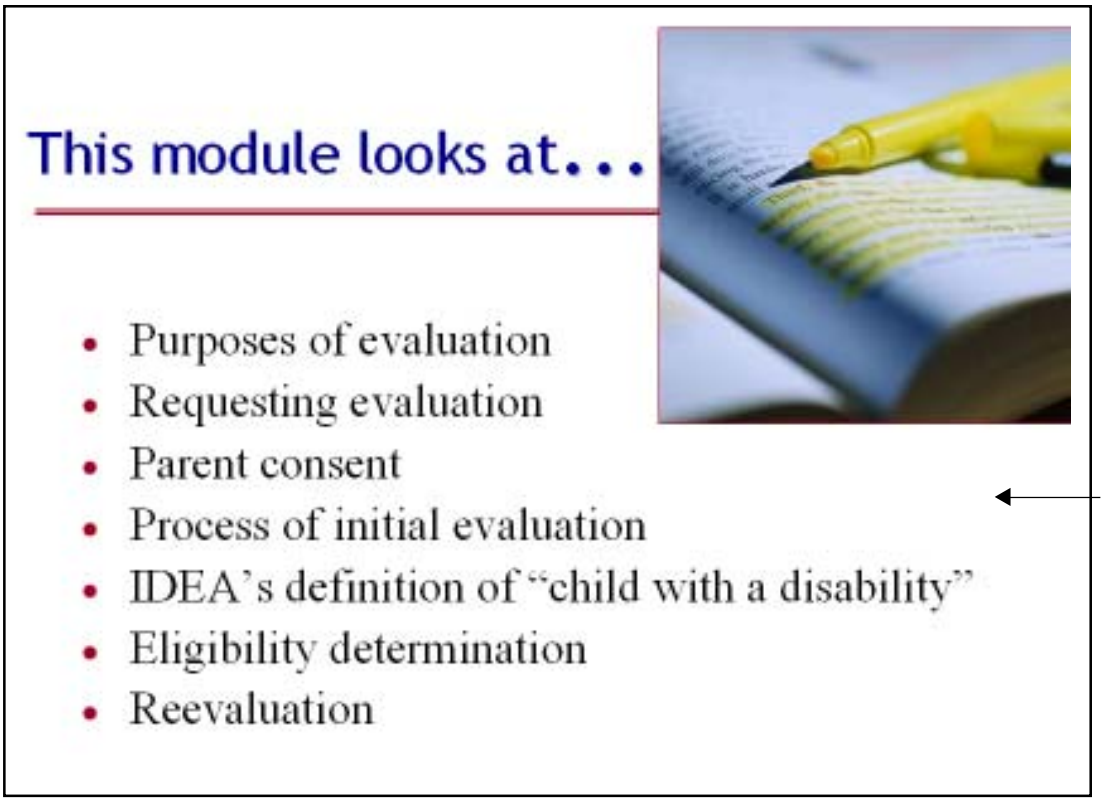
Theme D
Individualized Education
Programs (IEPs)

Theme E
Procedural Safeguards

Available online at:
www.nichcy.org/training/contents.asp



Slide 2 Agenda



Slide loads with this view. No clicks are necessary except to advance the slide.

CLICK to advance to next slide.

Slide 2 is an advance organizer for the audience as to what content they're going to hear and discuss in this module.

The slide loads the agenda for the module. Take a quick look at the session's agenda that lays out, in broad strokes, the topics to be covered.

To activate prior knowledge of participants, you might ask for one audience contribution about each item on the agenda. For example, what's one "purpose" of evaluation? What does the audience already know about parent consent? How does IDEA define "child with a disability" and why is this so critical?

Slide 3 Purposes of Initial Evaluation

View 1

Slide loads with this view, including Bullet 1. →

Purposes of Initial Evaluation

- To see if the child is a "child with a disability," as defined by IDEA

Click 1

Click 1: → Bullet 2 appears. Picture changes.

Purposes of Initial Evaluation

- To see if the child is a "child with a disability," as defined by IDEA
- To gather information that will help determine child's educational needs

(continued on next page)

Click 2

Purposes of Initial Evaluation

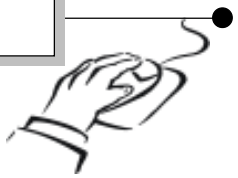
- To see if the child is a "child with a disability," as defined by IDEA
- To gather information that will help determine child's educational needs
- To guide decision making about appropriate educational program for the child

Click 2: → Bullet 3 appears. Picture changes.

CLICK AGAIN to advance to next slide.

Slide 3: Background and Discussion

2 Clicks



Slide 3 highlights three purposes of initial evaluation.

These purposes are clearly articulated—and re-articulated—within IDEA's regulations.[1] Take a moment and have your audience actually look at one or more of IDEA's provisions describing these three central purposes of evaluation. Using sometimes similar, sometimes different words, the regulations make a point of reiterating the types of information that an evaluation is expected to yield and how that information contributes to understanding the child's needs, so that an appropriate educational program can be designed.

For example, "Procedures for initial evaluation" [see **Handout C-2**, at §300.301(c)(2)] states that the initial evaluation:

> (2) Must consist of procedures—
>
> (i) To determine if the child is a child with a disability under §300.8; and

[1] Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (to be codified at 34 C.F.R. pt.300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- http://idea.ed.gov

(ii) To determine the educational needs of the child.

Another example: Refer the audience to page 2 of **Handout C-2**. At §300.304(b)(1), IDEA and the final regulations require the public agency to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. The stated purpose is to gather information "that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities)..."

Still another example, this one from §300.304(c)(6) and (7) (on page 3 of **Handout C-2**). Here, the public agency must ensure that:

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Clearly, IDEA requires a full and comprehensive evaluation of children suspected of having a disability. The purpose of that evaluation goes beyond identifying the disability in order to determine a child's eligibility for special education and related services—although that is certainly one of the purposes of evaluation.

Note to Trainers

All references for this module are provided on page 10-3 of the module.

Slide 4

Requesting an Initial Evaluation

View 1

Requesting an Initial Evaluation

- A parent or a public agency can ask for an initial evaluation of a child.

Slide loads with this view, including Bullet 1.

Click 1

Requesting an Initial Evaluation

- A parent or a public agency can ask for an initial evaluation of a child.
- Public agency must obtain parent consent before conducting the initial evaluation of the child.

Click 1: Bullet 2 appears.

CLICK AGAIN to advance to next slide.

1 Click

Slide 4 addresses the topic of "Requesting an Initial Evaluation" and makes clear that either the parent or the public agency may do so under IDEA 2004's provisions and in the regulations at §300.301(b), as shown on **Handout C-2**, whic

> (b) *Request for initial evaluation.* Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

This provision is new in IDEA 2004, although it does not represent a significant change in the evaluation process. The intention of this provision is to make clear that parents, or the public agency, may initiate a request for evaluation. The Senate Committee Report on S. 1248 (the Senate version of IDEA) summarizes the intent behind this addition:

> While current IDEA law already allows parents to request evaluations, the committee wants to ensure that parents are aware of this right. [S. Rep. No. 108-185 at 24 (2003)]

What if the public agency refuses to evaluate the child?

A parent may request that the public agency evaluate the child to determine if the child is a "child with a disability." The public agency may refuse to do so if it "does not suspect that the child has a disability" (71 Fed. Reg. at 46636). In keeping with IDEA's provisions governing such a refusal, the public agency must provide written notice to the parents [consistent with §300.503(b)], "which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal by requesting a due process hearing" (*Id.*). Due process hearings are discussed in the module *Options for Dispute Resolution*.

Prior written notice—what the public agency must provide parents to inform them of the agency's refusal to evaluate the child—is discussed on the next slide. Please note that there are additional circumstances that also require the public agency to send parents prior written notice. These are discussed in greater detail in Modules 17-19 under *Procedural Safeguards*.

Discussing the Slide

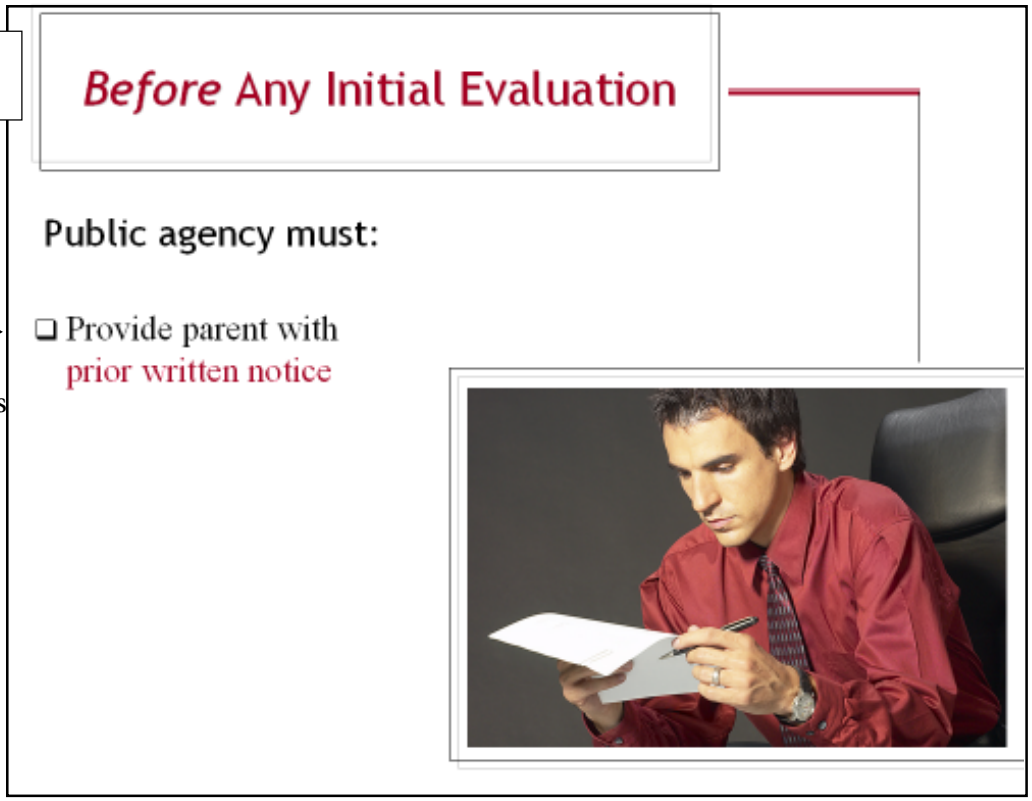
Three specific points should be highlighted in going over this slide:

- Both parents and the public agency have the right to initiate a request for initial evaluation of a child.
- This new provision was added to ensure that parents are aware of their right to initiate a request for evaluation.
- The provision's lead-in phrase "Consistent with the consent requirements in §300.300" is intended to underscore that a public agency may only conduct an evaluation of a child subject to the informed consent requirements at §300.300. [Assistance to the States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Proposed Rule, 70 Fed. Reg. at 35782, 35699 (June 21, 2005)]

This latter point—the reference to the consent provisions of IDEA—is important to reinforce. Informed written parental consent is required before a public agency may conduct an initial evaluation of a child. This point also provides trainers with an effective segue into the upcoming slide, where parent notification and parent consent are discussed as critical elements in IDEA.

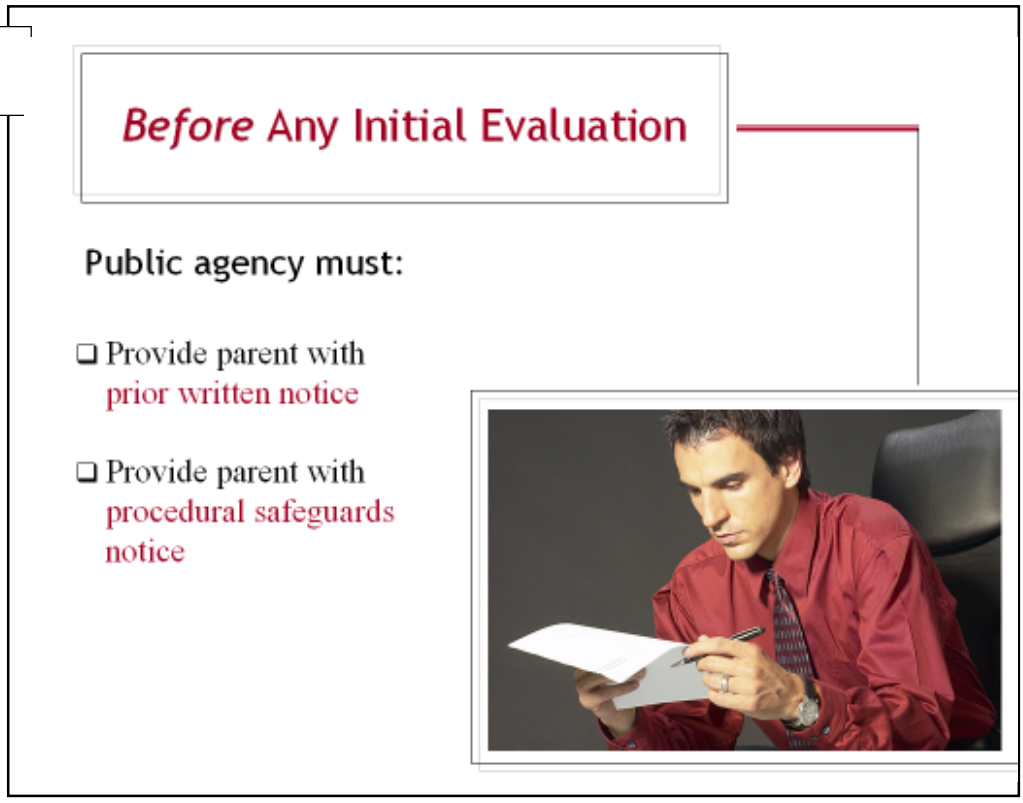
Slide 5 Before Any Initial Evaluation

View 1



Slide loads with this view. Bullet 1 (prior written notice) is already listed.

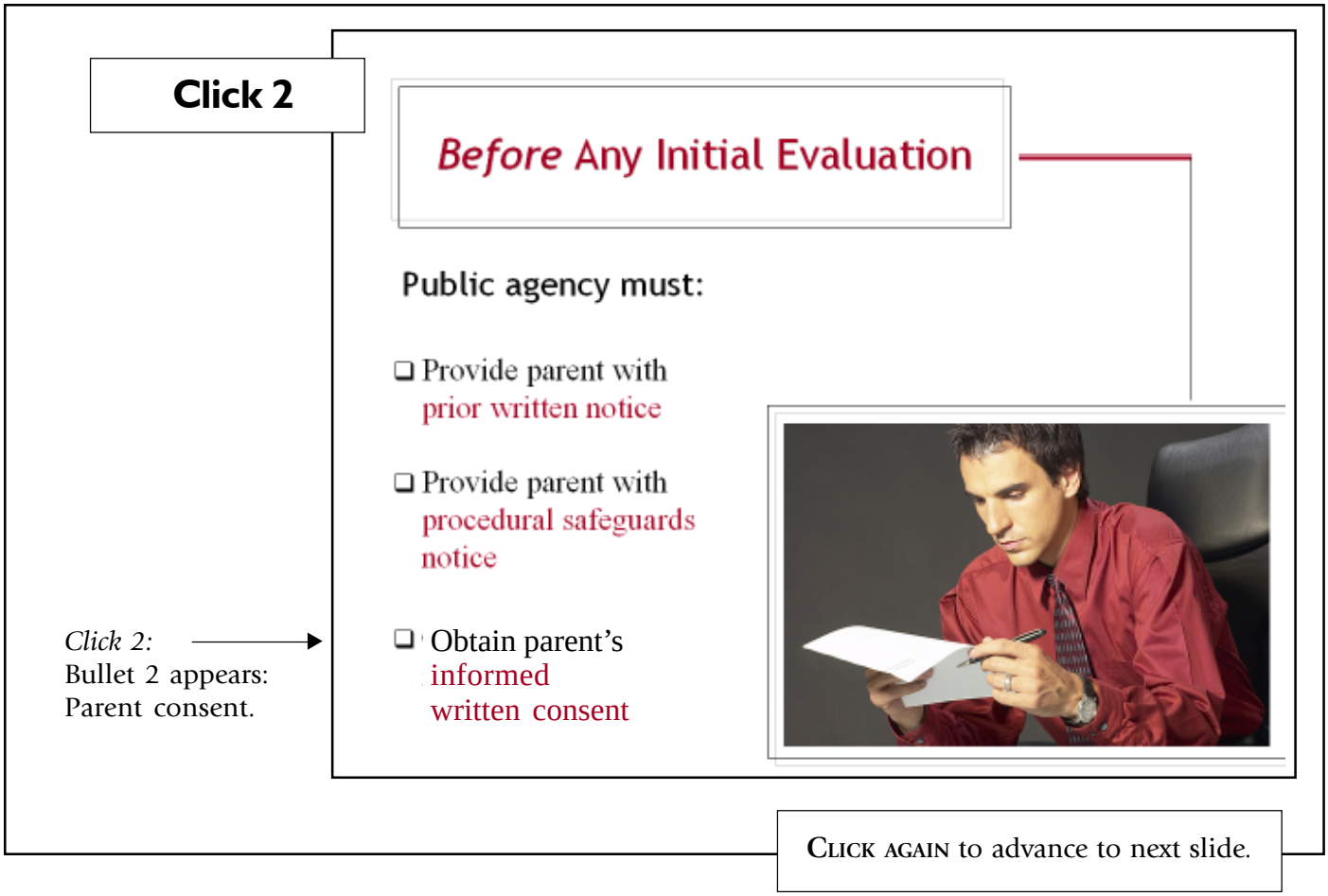
Click 1



Click 1: Bullet 2 appears: Procedural safeguards notice.

(continued on next page)

Click 2



Slide 5: Background and Discussion

2 Clicks

Slide 5 delves into the three actions the public agency must take before conducting any initial evaluation of a child.

These actions are very important; depending on the time you have available for training and the needs of your audience, you may either state these as solid requirements of law and move on, or examine parent notification (both the prior written notice and the procedural safeguards notice) and parent consent in more detail. Be aware that both prior written notice and the procedural safeguards notice are discussed in full as part of the module *Introduction to Procedural Safeguards*. Some of the background text accompanying that module is reproduced here, for convenience, but if you intend to take up either of these subjects in any detail, you may want to read that background material completely rather than rely on what's presented here, which has been streamlined to focus on how either of these two notices might look when they are provided regarding initial evaluation.

What is Prior Written Notice?

Prior Written Notice refers to the public agency's obligation to inform parents a reasonable time before it proposes to take specific actions, or refuses to take specific actions—in this case, initiate an initial evaluation of the child.

According to the regulations at §300.503(a) (provided in this training package in the module *Introduction to Procedural Safeguards*, as **Handout E-2**), the public agency must provide parents with prior written notice whenever it:

> (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
>
> (2) Refuses to initiate or change the identification, evaluation, or educational

placement of the child or the provision of FAPE to the child. [§300.503(a)]

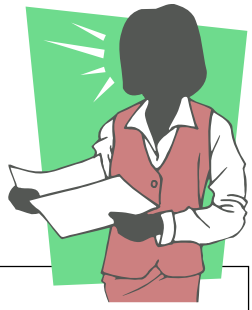
Within the context of this module, the prior written notice that the public agency provides to parents must describe its proposed action—in this case, to conduct an initial evaluation of a child or its refusal to do so. IDEA requires that this description be comprehensive, as can be seen in its provisions detailing the "content of the prior written notice" in the box. It is not sufficient for the agency to tell parents that it would like to evaluate their child or that it refuses to evaluate their child. The agency must also:

- explain why it wants to conduct the evaluation (or why it refuses);
- describe each evaluation procedure, assessment, record, or report used as a basis for proposing the evaluation (or refusing to conduct the evaluation);
- let parents know that they have protection under IDEA's procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which parents can obtain a description of those safeguards;
- where parents can go to obtain help in understanding IDEA's provisions;
- what other options the agency considered and why those were rejected; and
- a description of any other factors that are relevant to the agency's proposal (or refusal) to evaluate the child. [§300.503(b)]

The purpose behind this thorough explanation is to ensure that parents are fully informed, understand what is being proposed (or refused), and understand what an evaluation of their child will involve (or why the public agency is refusing to conduct an evaluation of the child).

What is the Procedural Safeguards Notice?

The *Procedural Safeguards Notice* refers to the comprehensive written explanation that public agencies must provide parents on specific occasions to, among other things, fully inform them of IDEA's procedural safeguards. "Upon initial referral or parent request for evaluation" are two occasions that trigger the provision of the procedural safeguards notice [§300.504(a)(1), see **Handout E-4** in the module *Introduction to Procedural Safeguards*].



Provisions in IDEA 2004 and the Final Regulations: Content of the Prior Written Notice

(b) *Content of notice*. The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

§300.503(b)

Making These Notices Understandable

IDEA requires more of public agencies than simply providing parents with the two aforementioned notices. Agencies must also ensure that parents can understand the notices, which must involve, as necessary:

- providing notice to parents in their native language or other mode of communication used by the parent, unless it is clearly not feasible to do so; and
- writing the notice in language that is understandable to the general public. [§300.503(c)(1)]

What if the parents' language is not a written one? IDEA 2004 and the final regulations include the following requirements in such cases:

> (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—
>
> (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
>
> (ii) That the parent understands the content of the notice; and
>
> (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met. [§300.503(c)(2)]

Parental Consent

Consent within IDEA has a very specific meaning that rises out of, and is closely tied to, its provisions regarding prior written notice. Consent, in IDEA, means *informed written* consent. The comprehensive description of a proposed or refused action, as contained in the prior written notice, is intended to inform parents fully about a specific issue. Only by building that foundation of understanding can *informed* consent be given. As the Department states:

> The definition of *consent* in §300.9 includes the requirement that a parent be fully informed of all information relevant to the activity for which consent is sought. The definition also requires that a parent agree in writing to carrying out the activity for which the parent's consent is sought. (71 Fed. Reg. at 46629)

Therefore, as the slide indicates, before a public agency may initiate the evaluation of a child, it must obtain a parent's informed written consent for that evaluation. The following provision makes that very clear:

> The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation. [§300.300(a)(1)(i)]

Reasonable Efforts to Obtain Consent

The final regulations implementing IDEA 2004 add a provision that "[p]ublic agencies must make reasonable efforts to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability" [§300.300(a)(1)(iii), see **Handout C-1**]. To illuminate what is meant by "reasonable efforts," another new provision has been added to the final regulations at §300.300(d)(5) and reads, in part:

> . . .the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

What *are* the procedures in §300.322(d)? They're the same as those required when the public agency seeks parental consent for initial evaluation—namely, detailed records of phone calls made or attempted, any correspondence sent to parents and responses received, and visits made to the parent's home or place of employment and the results of those visits.

What if the Public Agency Cannot Obtain Parental Consent?

There are two circumstances under which a public agency would not be able to obtain a parent's consent for an initial evaluation. For each, IDEA contains explicit provisions to guide public agencies in executing their duties and ensure that the rights of parents regarding consent are not violated. These circumstances are:

- The parent explicitly refuses to provide consent.
- The parent fails to respond to a request to provide consent.

Both of these circumstances are examined on Slide 7. Background discussion of IDEA's provisions governing these situations is provided with that upcoming slide. For the moment, on this slide, you might pose the question—*what happens if the public agency cannot obtain parental consent?*—but indicate that the answer lies ahead on a separate slide. Postpone the discussion until you reach Slide 7.

Notable Exception: Consent for "Wards of the State"

The foregoing discussion of IDEA's parent consent provisions has focused on how they apply to most children and their families. But IDEA makes an exception that must be noted here and shared with your audience as fits their needs and professional duties. Are any participants involved with, or do they

New in IDEA!

need to know about, matters concerning children who are "wards of the State?" If so, then you will want to make sure you share the following information.

IDEA 2004 creates an exception to the parental consent requirements for initial evaluation when a child is a ward of the State and not residing with his or her parent. This exception applies if:

- the public agency has made reasonable efforts to obtain the parent's consent but is unable to discover the parent's whereabouts;
- the rights of the parent of the child have been terminated under State law; or
- the rights of the parent to make educational decisions have been subrogated by a judge under State law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child. [§300.300(a)(2)]

Only in these circumstances may the public agency "proceed with the child's initial evaluation without first obtaining the requisite parental consent" (71 Fed. Reg. at 46630).

> Therefore, when one or more of the circumstances in §300.300(a)(2) is met and a surrogate has not yet been appointed, the public agency need not postpone the child's evaluation to await the appointment of a surrogate. This is appropriate because in situations involving requests for initial evaluations, in most cases a surrogate parent has not yet been appointed, and delaying an initial evaluation until after a surrogate is appointed and has given consent may not be in the best interests of the child. (*Id.*)

The Department contrasts this situation (initial evaluation of a ward of the State) with IDEA's provisions regarding reevaluation of a ward of the State, where this exception to parental consent does *not* apply. "We do not think it is appropriate to apply the provisions in §300.300(a)(2) to reevaluation situations," the Department states, because "a surrogate parent should already have been appointed under §300.519" (*Id.*).

It's important to remember that the public agency must make reasonable efforts to obtain informed consent from a parent for an initial evaluation of their child, as discussed earlier. "This requirement applies to all children," the Department emphasizes, "including children who are wards of the State" (71 Fed. Reg. at 46631).

More is said in the Analysis of Comments and Changes that may be pertinent to some par-

ticipants, especially State and local administrators responsible for obtaining parental consent for initial evaluations. We've provided this additional discussion in the *Resources for Trainers* section of this module, as **Resource C-1**, which may be shared with participants, as appropriate. Most will not need it, but the few who do may find the analysis informative.

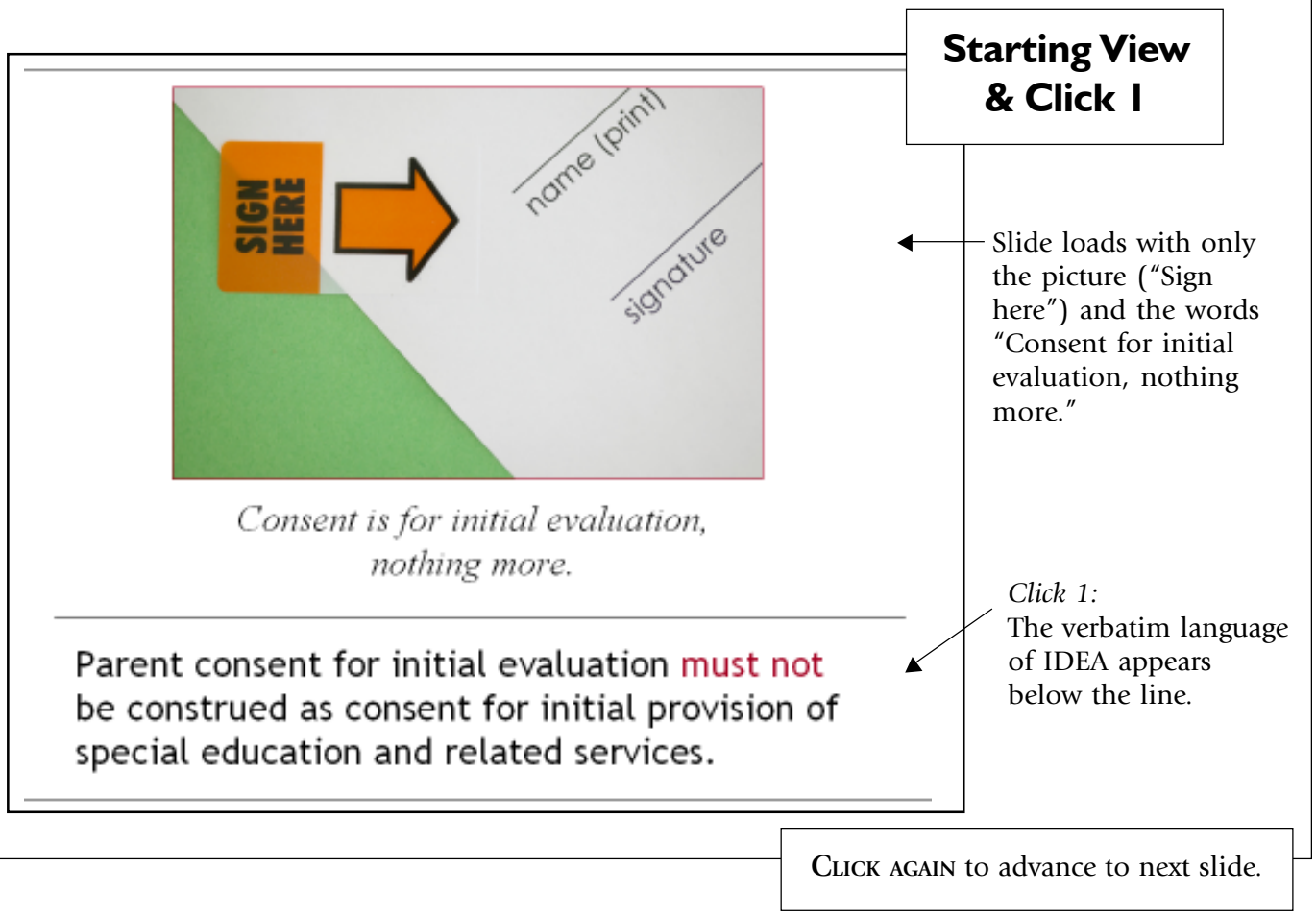
Discussing the Slide

The slide states three essential actions a public agency must take before it conducts an initial evaluation of a child. The design of the slide allows you to enlarge upon any or all of these three actions to fit your audience's needs.

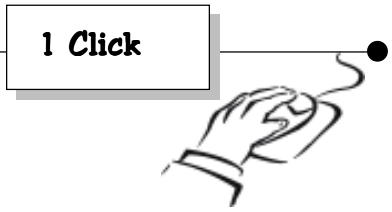
What's new in IDEA 2004 may be especially important to highlight if participants are already well versed in IDEA's evaluation requirements as they've existed in the past.

—Space for Notes—

Slide 6 More on Parent Consent *(Slide 1 of 2)*



Slide 6: Background and Discussion

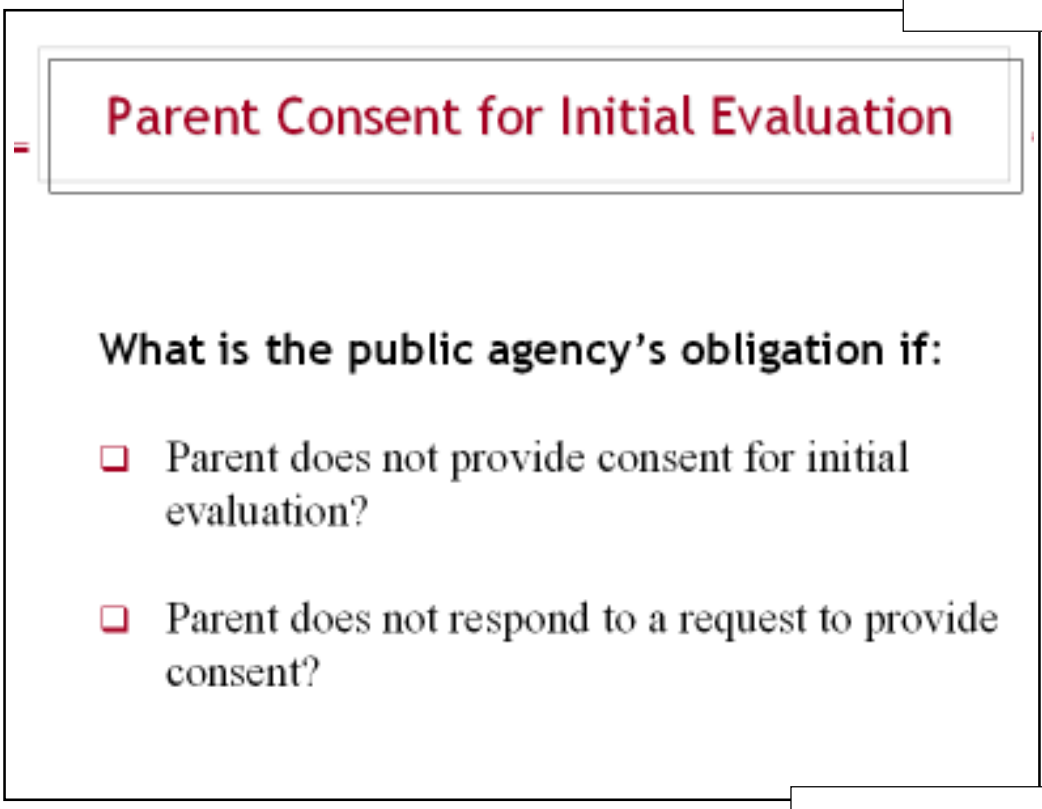


Slide 6 states, in IDEA's explicit terms, that a parent's consent for the initial evaluation is strictly limited to that and that alone—consent for initial evaluation. Nothing more.

The verbatim language of IDEA, which appears below the line in the slide, can be found at §300.300(a)(1)(ii).

Slide 7 More on Parent Consent *(Slide 2 of 2)*

View I



Slide loads fully. No clicks are needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 7 addresses a topic deferred from Slide 5—namely, what happens if the public agency cannot obtain parent consent.

When the Public Agency Cannot Obtain Parental Consent

As mentioned in the background discussion for Slide 5, there are two circumstances under which a public agency would not be able to obtain a parent's consent for an initial evaluation. These circumstances are:

- The parent explicitly refuses to provide consent.
- The parent fails to respond to a request to provide consent.

In both cases, the lack of parental consent triggers a choice for the public agency, as the relevant regulations in the box on the next page indicate. The agency may choose: (a) *not* to pursue the initial evaluation of the child, or (b) to *pursue* that evaluation, using the mechanisms that IDEA's procedural safeguards in Subpart E provide, to the extent that doing so would not violate the State's law regarding parental consent.

If the public agency declines to pursue the evaluation—option 1—it is not considered to be in violation of its obligations under §300.111 and §§300.301 through 300.311.

This last provision is a new element in the final regulations implementing IDEA 2004. Prior law and regulations merely said that the public agency *may* continue to pursue the evaluation using specific due process procedures [34 CFR §300.505(b) (1999)]. The final regulations implementing IDEA 2004 not only explicitly state that the agency is *not* required to pursue the evaluation (understood implicitly in prior law and regulations) but also that to *not* pursue the evaluation will *not* be considered a violation of the agency's obligation to conduct such evaluations when appropriate or to "locate, identify, and evaluate children suspected of being children with a disability" (71 Fed. Reg. at 46632).

New in IDEA!

Provisions in IDEA 2004 and the Final Regulations at §300.300(a)(3)

(3)(i) 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 paragraph (a)(1) 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 subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

Intersection with IDEA's Disciplinary Provisions

Some participants in your audience may immediately think, "But what about children who later become subject to disciplinary actions? *Wouldn't this be considered 'basis of knowledge' under IDEA's disciplinary provisions?*"[2]

The answer is: No. IDEA 2004 and final regulations explicitly add a provision to that effect, at §300.534(c), as follows:

> (c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—
>
> (1) The parent of the child—
>
> (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
>
> (ii) Has refused services under this part... [§300.534(c)]

Additional Points

The Department's discussion in the Analysis of Comments and Changes includes three other points worth noting here. Any or all may be shared with your audience, as appropriate to their needs and the training situation.

What does "fails to respond" mean? IDEA and the final regulations at §300.300(a)(3) refer to a parent who "fails to respond" to a request to provide consent. Asked by a commenter to clarify the meaning of that term, the Department responds:

> The meaning of "fails to respond," in this context, is generally understood to mean that, in spite of a public agency's efforts to obtain consent for an initial evaluation, the parent has not indicated whether the parent

---

[2] What is basis of knowledge?

If you're not sure what "basis of knowledge" is or need a refresher, we would refer you to the module on Discipline Procedures to learn more.

Summarized briefly here, "Basis of Knowledge" is a factor to be determined when a student who has not been determined to be eligible for special education and related services violates a code of student conduct and becomes subject to disciplinary action.

That student may assert any of IDEA's protections if the public agency had "knowledge" that the student was a "child with a disability" before the violation of the conduct code occurred [§300.534(a)].

As these two provisions of IDEA intersect, a public agency would *not* be deemed to have such knowledge—and the student could not assert IDEA's protections on the basis that it did have such knowledge—if a public agency chose *not* to pursue the initial evaluation of a student when the parent has either refused consent for the evaluation or failed to respond to the agency's request for consent.

consents or refuses consent to the evaluation. (71 Fed. Reg. at 46632)

Department's position on overriding parent lack of consent. IDEA 2004 and the final regulations give public agencies the right to pursue an initial evaluation of a child whose parent has refused consent or failed to respond to the agency's request for such consent, given conditions specified at §300.300(a)(3). But the public agency is not *required* to pursue the evaluation. This latter provision is "[c]onsistent with the Department's position that public agencies should use their consent override procedures only in rare circumstances" and that "State and local educational agency authorities are in the best position to determine whether, in a particular case, an initial evaluation should be pursued" (*Id.*).

Can IDEA's consent override procedures be applied to children who are home schooled or placed in private school by their parents at their own expense? The answer is: No. The final regulations implementing IDEA 2004 clarify that consent override procedures apply only to situations where a child is "enrolled in public school or seeking to be enrolled in public school" [§300.300(a)(3)(i)] and the parent refuses consent for initial evaluation or fails to respond to the public agency's request for such consent. When a child is being home schooled or is in a private school at the parents' expense, "consent override should not be permitted," the Department states (71 Fed. Reg. at 46635), and has added a new provision to the final regulations implementing IDEA 2004 to reflect this. That provision—§300.300(d)(4)— is presented in the box below and on page 2 of **Handout C-1**.

The Department provides an interesting discussion of this new provision in its Analysis of Comments and Changes, which we provide on the next page.

Provisions in the Regulations Implementing IDEA 2004 at §300.300(d)(4): When Consent Override for Evaluation Is Not Available

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

Department of Education's Discussion of the New Provision in the Final Regulations at §300.300(d)(4): When Consent Override for Evaluation Is Not Available

There are compelling policy reasons why the Act's consent override procedures should be limited to children who are enrolled, or who are seeking to enroll, in public school. Because the school district has an ongoing obligation to educate a public school child it suspects has a disability, it is reasonable for a school district to provide the parents with as much information as possible about their child's educational needs in order to encourage them to agree to the provision of special education services to meet those needs, even though the parent is free, ultimately, to reject those services. The school district is accountable for the educational achievement of all of its children, regardless of whether parents refuse the provision of educationally appropriate services. In addition, children who do not receive appropriate educational services may develop behavioral problems that have a negative impact on the learning environment for other children.

By contrast, once parents opt out of the public school system, States and school districts do not have the same interest in requiring parents to agree to the evaluation of their children. In such cases, it would be overly intrusive for the school district to insist on an evaluation over a parent's objection. The Act gives school districts no regulatory authority over private schools. Moreover, the Act does not require school districts to provide FAPE to children who are home schooled or enrolled in private schools by their parents.

Public agencies do have an obligation to actively seek parental consent to evaluate children attending private schools (including children who are home schooled, if a home school is considered a private school under State law) who are suspected of being children with disabilities under the Act, in order to properly identify the number of private school children with disabilities and consider those children as eligible for equitable services under §§300.132 through 300.144. However, this obligation does not extend to overriding refusal of parental consent to evaluate parentally-placed private school children.

Section 300.300(a)(3) provides that a public agency may override parental consent for an initial evaluation only for children who are enrolled in public school or seeking to be enrolled in public school, so we are not making the suggested change in §300.300(a)(3).

Changes: We have added a new paragraph (4) to §300.300(d) to clarify that consent override is not permitted for children who are home schooled or placed in private schools by their parents. (71 Fed. Reg. at 46635)

Slide 8 Key Points about Initial Evaluation

Starting View & Click 1

Key Points about Initial Evaluation

Slide loads with Bullet 1 and the picture.

- Must be conducted within 60 days of parental consent for evaluation *(or within State-established timeline).*

Click 1: Bullet 2 appears.

- Must be full and individual.

CLICK AGAIN to advance to next slide.

Slide 8: Background and Discussion

1 Click

Slide 8 moves the discussion from prerequisites for initial evaluation (parent notification and parent consent) to the actual process of initial evaluation and what the law requires. Parents' informed consent has been obtained, and it's time to evaluate the child.

This slide and the next slide intertwine review of information presented in the module *Introduction to Evaluation* with new content, so as to build on what's already been said. *Introduction to Evaluation* focused primarily on IDEA's requirements for conducting a technically sound initial evaluation, such as ensuring qualified evaluators who know how to give the tests they use and administering each test according to the instructions that came with it.

This slide emphasizes two points, one new and one already touched on in *Introduction to Evaluation*.

Timeframe for Evaluation

New in IDEA!

Congress added a specific timeframe to IDEA within which initial evaluations must be conducted. This has been addressed in the regulations as follows:

The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe...[§300.301(c)(1)]

Under prior law, public agencies were required to conduct initial evaluations within a

"reasonable period of time" after receiving parental consent [34 CFR §300.343(b) (1999)], so the specification of a 60-day timeframe in IDEA 2004 represents a significant change that should be identified as such to your audience. It's important to note, however, that *any timeframe established by the State takes precedence over the 60-day timeline required by IDEA*, as is clear in use of the word *"or"* between (i) and (ii). The Analysis of Comments and Changes that accompanies publication of the final regulations also makes this clear. Some of the questions that the Department answers on this topic are interesting and serve to illuminate implementation of this new provision. We've excerpted two questions in the box at the right.

Exceptions to the 60-Day Timeframe

As can be seen by IDEA's provision itself, there are exceptions to the new 60-day timeframe for conducting initial evaluation. Perhaps the most noticeable exception is that any timeframe established by the State will be the prevailing timeframe to be applied. That State-established timeframe can be more than 60 days or less than 60 days, as the State chooses, and it still is the required timeframe for conducting initial evaluations. Some States may not specify such a timeframe, in which case IDEA 2004's timeframe of 60 days from receipt of parent consent to completion of the evaluation will apply.

What are other exceptions to IDEA's 60-day provision? Two are stated, in §300.301 and on **Handout C-2**, and are:

- if the parent of a child repeatedly fails or refuses to produce the child for the evaluation.
- when a child enrolls in a school of another public agency after the relevant timeframe (either IDEA's or the State's) has begun, and before the child's previous public agency makes a determination as to whether the

Discussing the 60-Day Timeframe For Initial Evaluations:
Excerpts from the Analysis of Comments and Changes to the Part B Regulations

May a State establish a timeframe of more than 60 days to complete an initial evaluation?

The Department's Discussion:
Section 300.301(c), consistent with section 614(a)(1)(C)(i)(I) of the Act, requires an initial evaluation to be completed within 60 days of receiving parental consent for evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe. The Department declines to require that a State-established timeframe be less than 60 days or to place additional requirements on States with timeframes of greater than 60 days because the Act gives States the authority to establish different timeframes and imposes no restrictions on State exercise of that authority. We believe this is evidence of an intent to permit States to make reasoned determinations of the appropriate period of time in which evaluations should be conducted based on particular State circumstances. (71 Fed. Reg. at 46636-7)

May the 60-day timeframe for initial evaluation be extended by mutual agreement between the parent and the public agency?

The Department's Discussion:
Congress was clear in limiting the exceptions to the 60-day timeframe to the situations in section 614(a)(1)(C)(ii) of the Act. Therefore, we do not believe it is appropriate to include in the regulations other exceptions, such as permitting a parent and a public agency to mutually agree to extend the 60-day timeframe or to include exceptions to the timeframe, that would be in addition to those in the Act and listed in §300.301(d). However, the Act gives States considerable discretion with a State-adopted timeframe. A State could adopt a timeframe of 60 days or some other number of days, with additional exceptions. (71 Fed. Reg. at 46637)

child is a child with a disability under §300.8. [§300.301(d)] *Note the exception to this exception below!*

In the second case above, the exception only applies if the new public agency "is making sufficient progress to ensure a prompt completion of the evaluation," and the parent and the new public agency "agree to a specific time when the evaluation will be completed" [§300.301(e)]. This exception to the exception will be discussed in a moment.

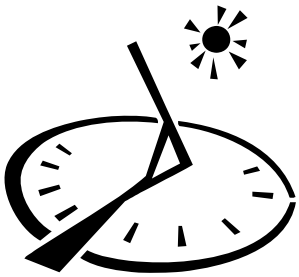
First, let's look, one at a time, at what the two main exceptions involve. Both are thoroughly discussed in the Analysis of Comments and Changes, as you'll see.

Defining "Repeatedly Fails" and "Refuses to Produce"

The Department declined to define these two phrases, used in the first exception listed above, saying, "[T]he meaning of these phrases will vary depending on the specific circumstances of each case" (71 Fed. Reg. at 46638). This variability is then illustrated with the following example:

> For example, situations in which a child is absent on the days the evaluation is scheduled because the child is ill would be treated differently than if a parent repeatedly fails to keep scheduled appointments. Similarly, situations in which a parent fails to keep scheduled appointments when a public agency repeatedly schedules the evaluation to accommodate the parent's schedule would be treated differently than situations in which a public agency makes no attempt to accommodate a parent's schedule. (*Id.*)

Documenting efforts. Does the public agency have to document its efforts to address a parent's concerns and issues about the evaluation? The Department does not believe it is necessary to clarify that an LEA must document that it has made several attempts to address a parent's concerns and issues about the evaluation. It states, "As a matter of practice, LEAs attempt to address parent's concerns and issues prior to scheduling an evaluation because repeated cancellations of appointments or repeated failures to produce the child for an evaluation are costly in terms of staff time and effort" (*Id.*). However, as noted above, the final regulations implementing IDEA 2004 at §300.300(d)(5) require a public agency to document that it has made reasonable efforts to obtain informed consent from the parent for an initial evaluation.



Timeframes for Evaluating Children Who Transfer

In its analysis, the Department points out that the second exception to IDEA's new timeframe provisions—when a child transfers to a new public agency before being determined a "child with a disability" by the prior public agency—does *not* apply when a child transfers to a new school in the *same* public agency. The exception only applies when the child has transferred to a school in a *different* (new) public agency [§300.323(e)-(f)]. The Department states:

> [I]t is important that it is understood that the 60-day or State-established timeframe does not apply when a child transfers from one school to another school in the same public agency. When a child transfers from one school to another school in the same public agency, we expect that an initial evaluation will be conducted within 60 days of receiving parental consent for the evaluation, or within the State-established timeframe. (*Id.*)

It's also important to recognize that this exception to the 60-day or State-established timeframe only applies if the new public agency "is making sufficient progress to ensure prompt completion of the evaluation" and the parent and the new public agency "agree to a specific time when the evaluation will be completed" (71 Fed. Reg. at 46638). That's the exception to the exception!

Defining "Sufficient Progress"

The Department also declines to define "sufficient progress," because "the meaning will vary depending on the specific circumstances in each case" (*Id.*).

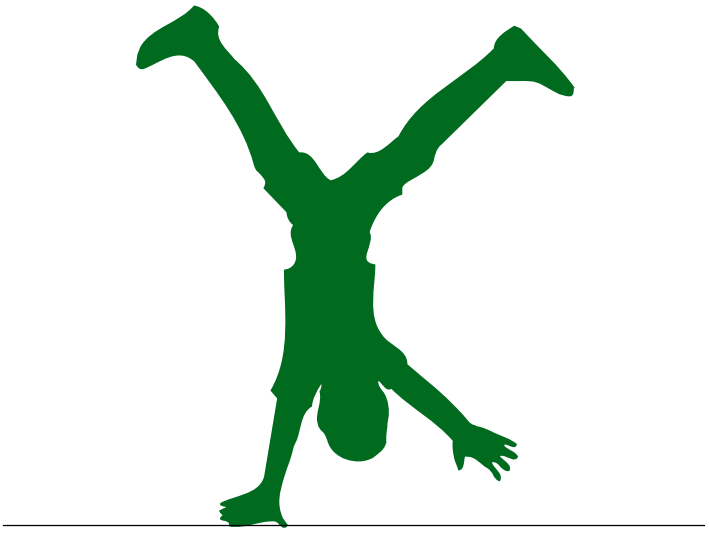
> [T]here may be legitimate reasons for not completing the evaluation within the 60-day timeframe, such as

differences in assessment instruments used in the previous and new public agencies, and the length of time between a child leaving one school and enrolling in the next school. Therefore, we believe that whether a new public agency is making sufficient progress to ensure prompt completion of an evaluation is best left to the discretion of State and local officials and parents to determine. (*Id.*)

The Department goes on to discuss the coordination that must go on between the two public agencies—the old and the new—regarding the child's records. IDEA requires the new school in which the child enrolls to take reasonable steps to promptly obtain the child's records from the prior agency. IDEA also requires that the prior agency promptly respond to a request from the new agency for the child's records. [71 Fed. Reg. at 46639, discussing §300.323(g)]

Bullet 2: "Full and Individual Evaluation"

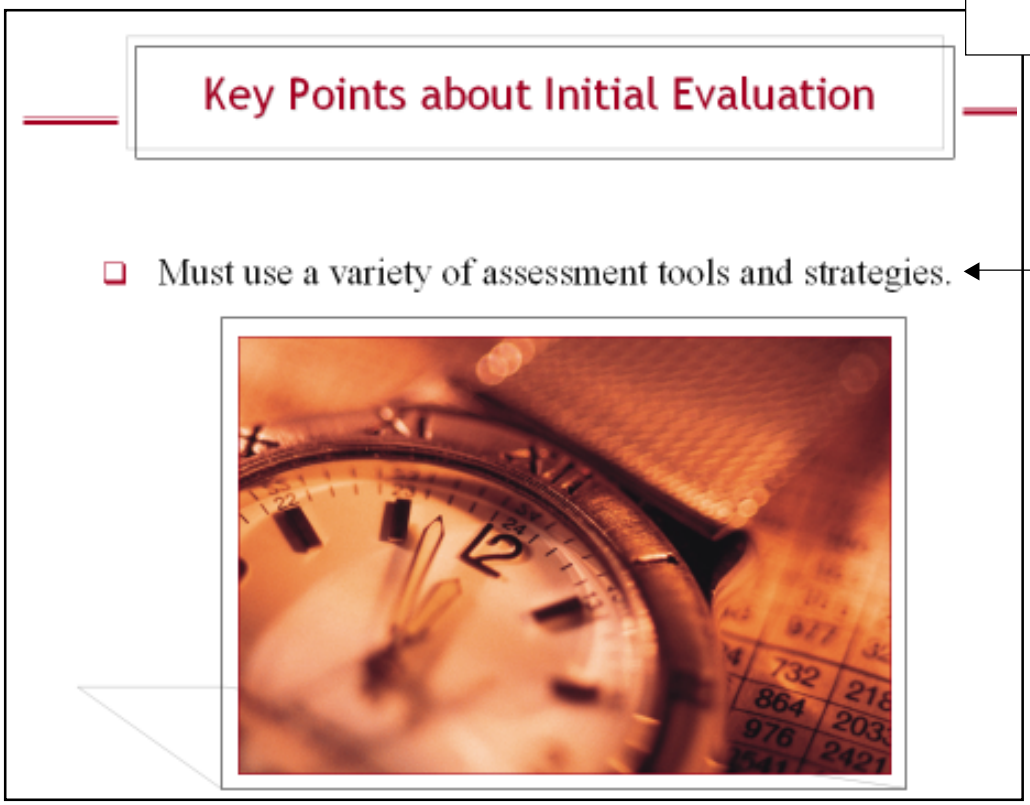
The 2nd bullet on the slide indicates that initial evaluation must be full and individual, which comes directly from the IDEA and the final regulations at §300.301(a) (as shown in the very first paragraph on **Handout C-2**). This is a longstanding provision of IDEA, as was discussed in *Introduction to Evaluation*. The point needs only to be reemphasized here.



Slide 9

More Key Points about Initial Evaluation

View 1



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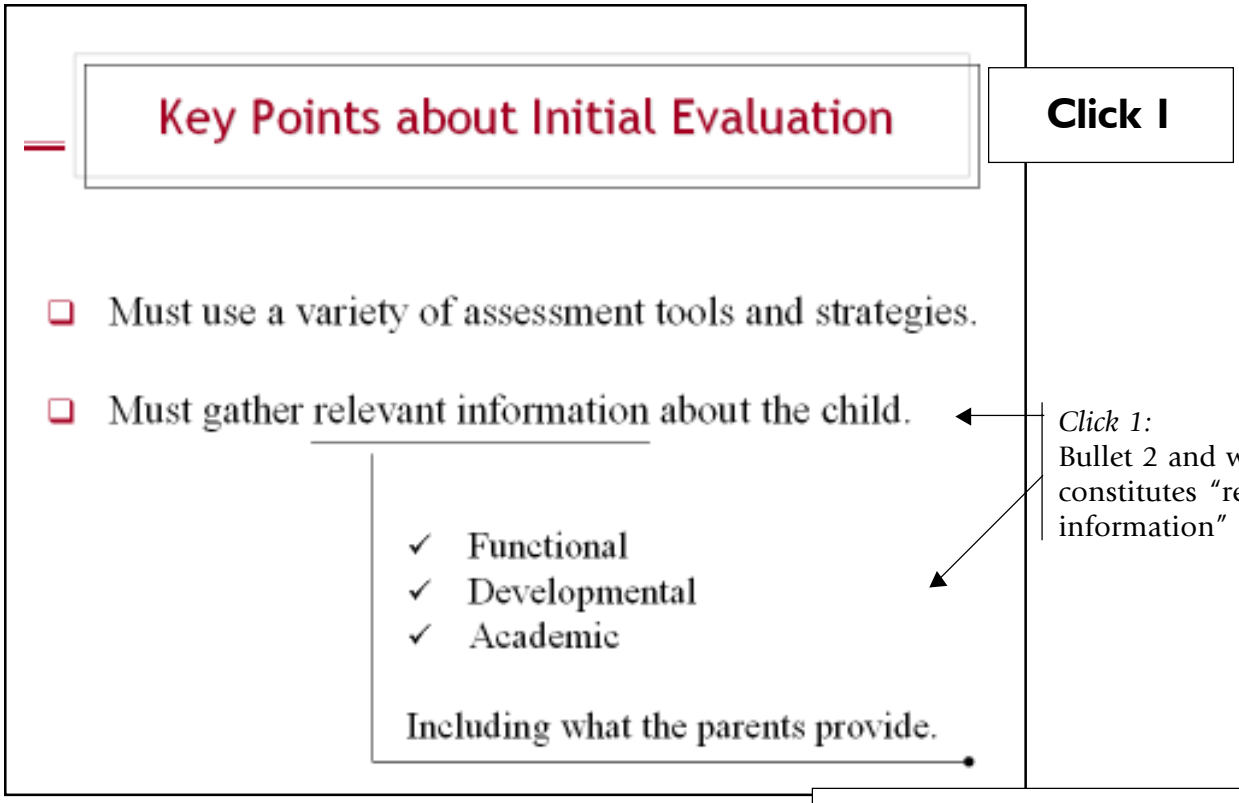
Click 1



Click 1:
Bullet 2 and what constitutes "relevant information" appear.

CLICK AGAIN to advance to next slide.

(discussion on next page)

Slide 9: Background and Discussion

1 Click

Slide 9 looks at two more bullets of "Key Points About Initial Evaluation." The points made on this slide are drawn directly from §300.304(b)(1), which states:

> (b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—
>
> (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
>
> (i) Whether the child is a child with a disability under §300.8; and
>
> (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). [§300.304(b)(1)]

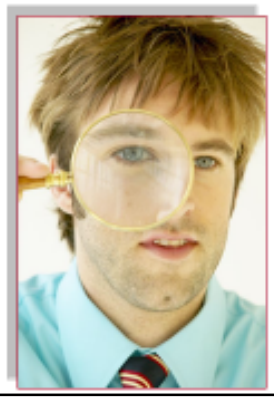
These key purposes of initial evaluation have already been addressed in the introductory module to evaluation. They are re-iterated here because they *are* so central to the reason an initial evaluation is conducted and the results that are expected to emerge from it. In an upcoming module, *Contents of the IEP*, the strong thread that runs between evaluation and development of the IEP will become very evident, but for an audience that has not yet completed that module, it may be appropriate to mention that connection now. Evaluation results are first used to determine if a child is a "child with a disability" as defined by IDEA and the final regulations at §300.8. If the child is, in fact, determined eligible for special education and related services, an individualized education program (IEP) must be developed. That IEP must detail, among other things, the child's "present levels of academic achievement and functional performance" [§300.320(a)(1)]. So the information gathered in the evaluation, to be relevant to IEP development, would need to include relevant "functional, developmental, and academic information about the child" as the slide indicates. This will include information that the parents may provide.

We recommend that you take a thorough look at the *Introduction to Evaluation* module to identify any additional information you feel would be important to repeat to this audience. This slide and the previous one offer an opportunity to review the evaluation considerations covered in the *Introduction to Evaluation* module.

View 1

Review of Existing Evaluation Data

As part of an initial evaluation (if appropriate)
IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including:



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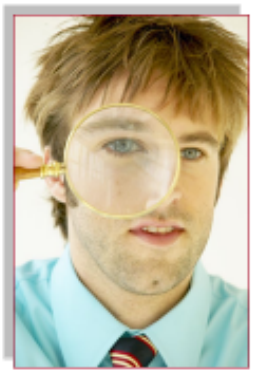
Clicks 1-2

Review of Existing Evaluation Data

As part of an initial evaluation (if appropriate)
IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including:



- Information and evaluations provided by parents
- Current assessments (classroom-based, local, or State)

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Click 1 brings Bullet 1.
Click 2 brings Bullet 2.

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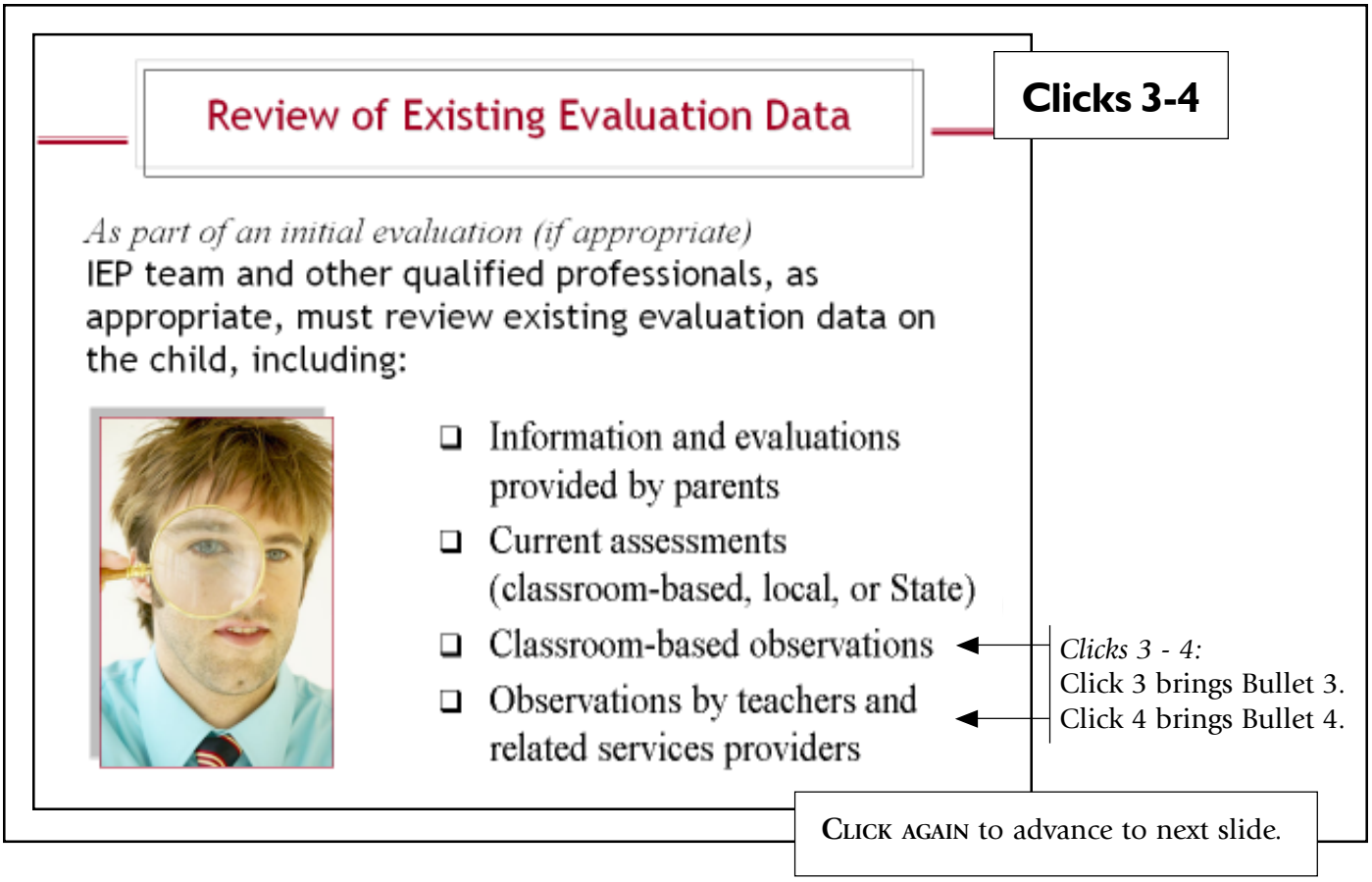


Slide 10: Background and Discussion

4 Clicks

Slide 10 begins the discussion of one step in evaluation under IDEA—review of existing evaluation data. The slide is drawn directly from the requirement in IDEA and the final regulations at §300.305(a)(1), which reads as follows:

> (a) *Review of existing evaluation data*. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
>
> (1) Review existing evaluation data on the child, including—
>
> (i) Evaluations and information provided by the parents of the child;
>
> (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
>
> (iii) Observations by teachers and related services providers...

This provision is quite similar but not precisely the same as what existed under IDEA '97. IDEA '97 stated that the evaluation must include "current classroom-based assessments and observations" [§300.533 (a)(1)(ii)(1999)]. IDEA 2004 clarifies that "current assessments" include those that are classroom-based, local, or State assessments.

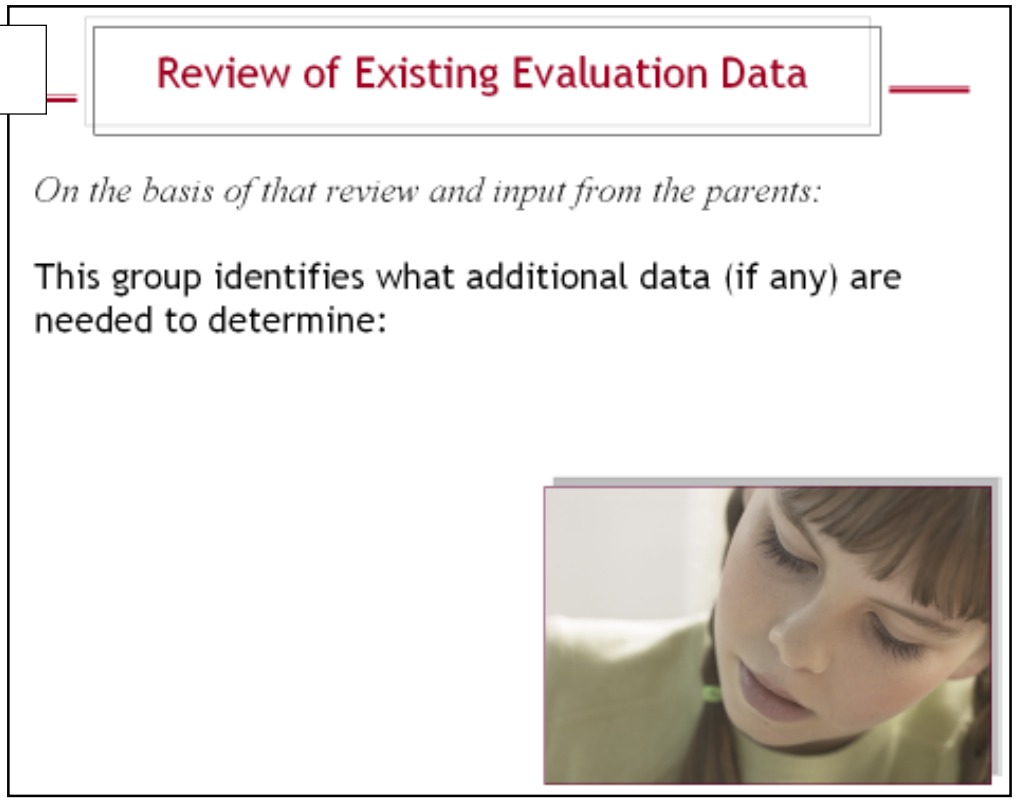
In Other Words

The IEP Team (which includes the child's parents) and other qualified professionals, as appropriate, begin the child's evaluation by looking at what is already known about the child. This requires looking at existing evaluation data on the child—for example, the child's school file, his or her recent test scores on State or district assessments, classroom work, and so on. Parents and the child's teacher may provide information to be included in this review.

What this group of individuals is looking for in this review—the questions they must answer—is the subject of the next slide.

View 1

Slide loads with this view



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Clicks 1 - 2:
Click 1 brings Bullet 1.
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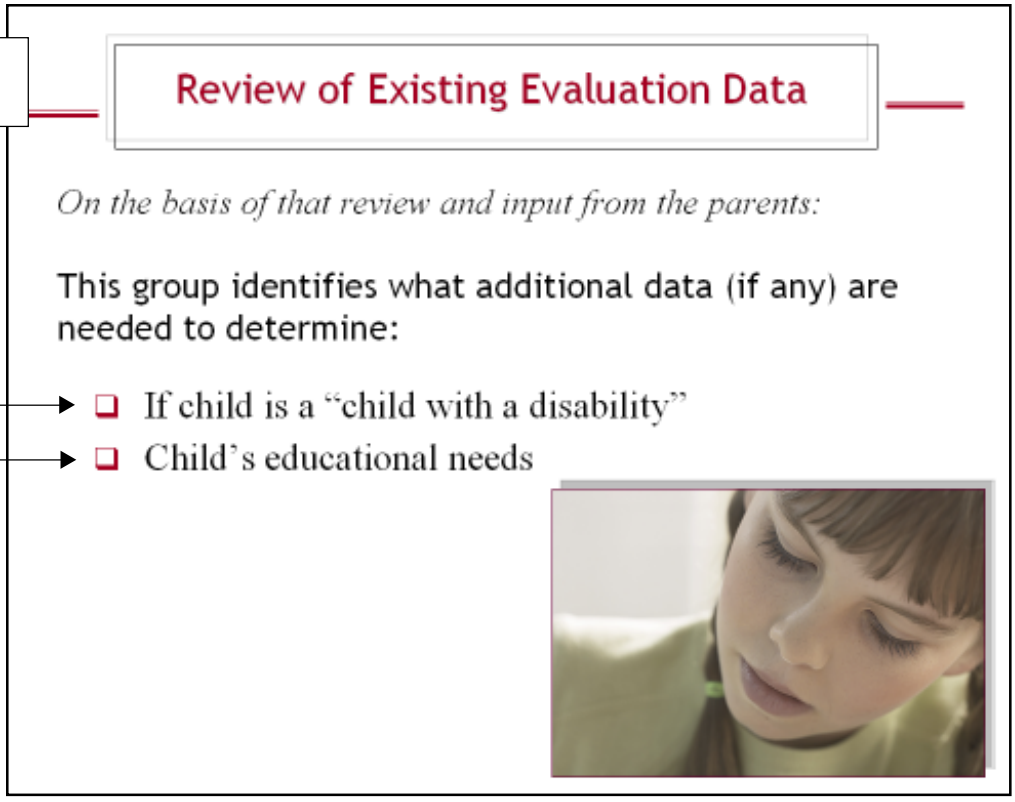

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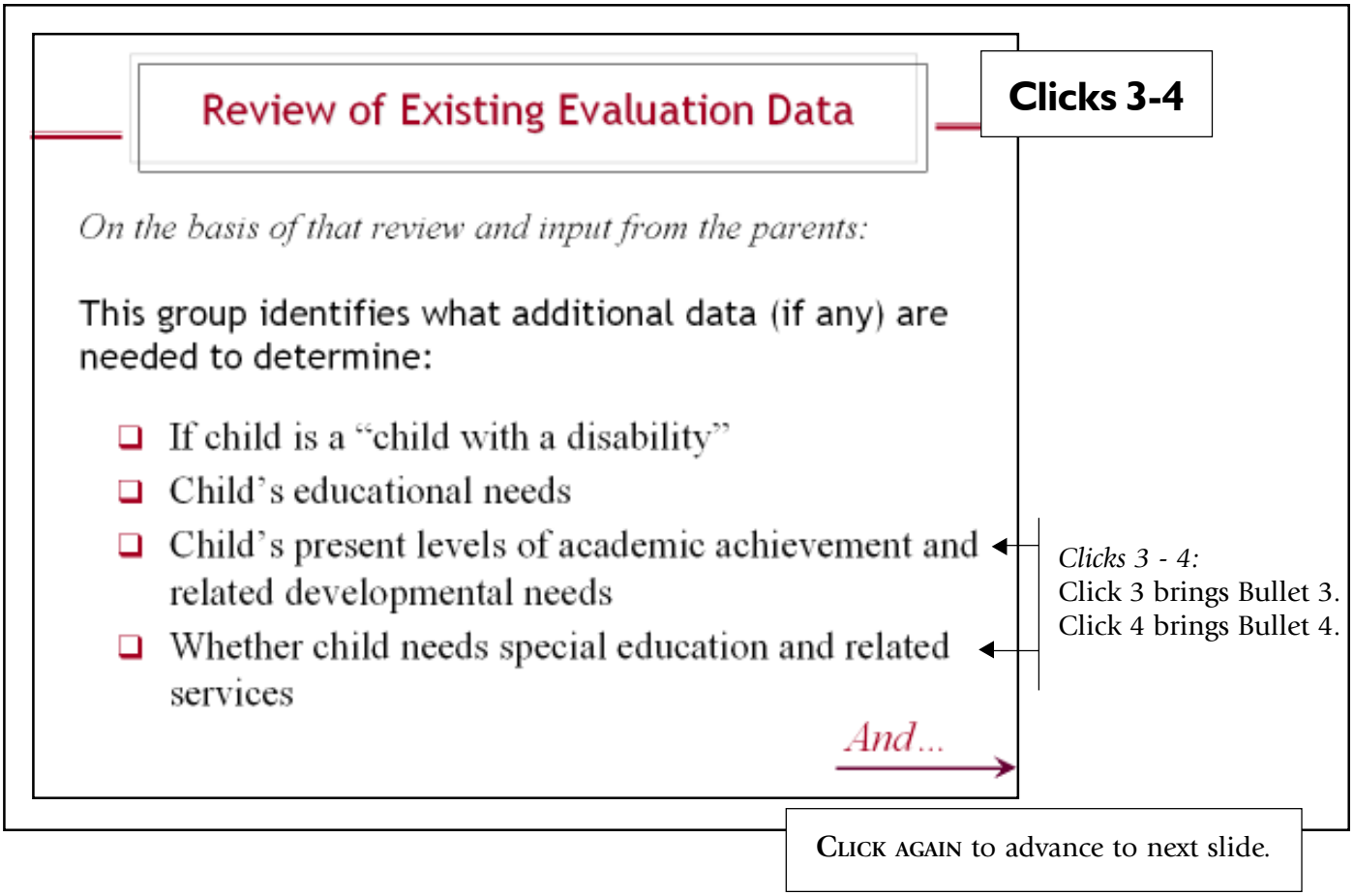
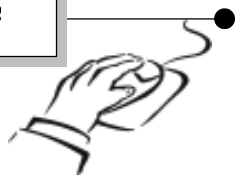


Slide 11: Background and Discussion

4 Clicks



Slide 11 takes up where Slide 10 left off in the sequence of evaluation. As the slide indicates, based on the review of existing evaluation data and input from the child's parents, the group involved in the evaluation—according to IDEA, that's the IEP Team (including the parents) and other qualified professionals—must determine what additional information is needed (if any) to make the determinations indicated on the slide.

When the last bullet loads, an arrow and the word "And" appear at the bottom right of the screen, to signal that these are not the only issues the group will need to determine. More will be outlined on the next slide.

For now, though, the four bullets listed on the slide are worth examining. They come nearly verbatim from the regulations at §300.305(a)(2), which are presented in the box on the next page (including the missing "And" item noted above). These provisions also appear on page 3 of **Handout C-2**, for your audience's reference.

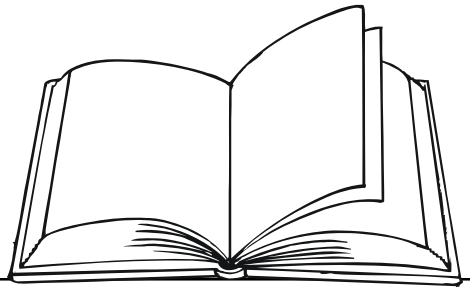
Go over each item, posing questions to your audience as needed to connect this information to other information they've discussed and to the ultimate purposes of initial evaluation. For example:

- Why is this phrase—child with a disability—in quotation marks? (To indicate that the phrase is a term possessing a specific meaning under the law. IDEA and the final regulations define "child with a disability" at §300.8.)

- *Where have we heard the term "present levels" before?* (The child's "present levels of academic achievement and functional performance" must be described in the IEP.)
- *Developmental? Heard that before, too. Where?* (Slide 9 addressed the need to collect academic, developmental, and functional information about the child.)

The first and last bullets address the need to determine a child's eligibility for special education and related services under IDEA. The middle two address the information that will be needed if the child is determined to be eligible for special education. That information will be critical in developing the child's IEP.

So will the information addressed on the next slide.



Relevant in IDEA 2004 and the Final Regulations on Review of Existing Evaluation Data

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

§300.305(a)(2)

Slide 12 Review of Existing Evaluation Data *(Slide 3 of 4)*

View 1

Review of Existing Evaluation Data

- Whether any additions or modifications to the special education and related services are needed to enable child…

- ✓ To meet annual goals in the IEP

Slide loads with this view, including Checkmark 1.

Click 1

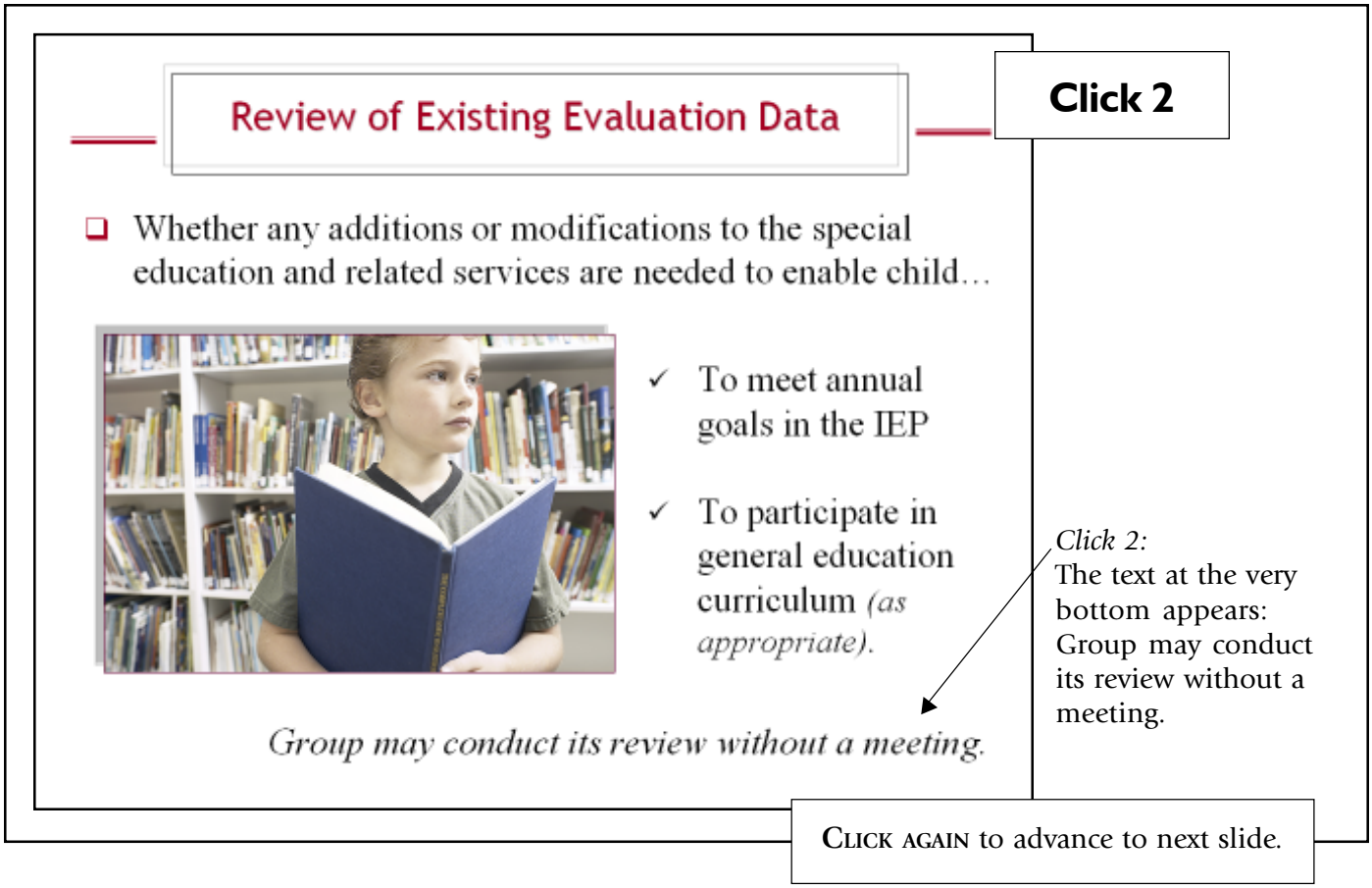
Review of Existing Evaluation Data

- Whether any additions or modifications to the special education and related services are needed to enable child…

- ✓ To meet annual goals in the IEP
- ✓ To participate in general education curriculum *(as appropriate)*.

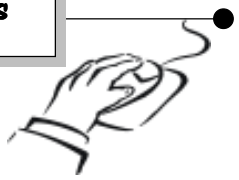
Click 1: Picture changes, Checkmark 2 appears (re: participating in general education curriculum).

(continued on next page)



Slide 12: Background and Discussion

2 Clicks



Slide 12 finishes the list begun in the last slide. In addition to the four items listed there, the group involved in the evaluation must also use the review of existing evaluation data and input from the parents to make the determinations.

The text on the slide is drawn from IDEA and the final regulations at §300.305(a)(2)(iv), shown in the box on the previous page with the other items the group needs to determine. That provision reads:

> Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

For a child who has not yet been determined to be a "child with a disability" and, by reason thereof, in need of special education and related services, it may seem a bit odd that IDEA talks about identifying "any additions or modifications to the special education and related services that are needed to enable the child to meet the measurable annual goals set out in the IEP of the child." This provision of IDEA is also intended to apply to reevaluations, where a child has been determined eligible for special education and related services. Moreover, the evaluation process is supposed to gather information needed to inform IEP development—at which time the IEP Team will consider what additions or modifications to the special education and related services are needed to enable the child to meet the goals being written in that IEP.

Thus, the group reviewing the existing evaluation data must determine if enough information exists to answer the question inherent in this item.

Conducting the Review Without Meeting

As the last item on the slide to appear indicates, the evaluation group may conduct this review of existing evaluation data without a meeting [§300.305(b)]. How is that possible, you might ask, considering the questions that must be addressed and the determinations that must be made? However, neither the statute nor the regulations require that the public agency call a meeting for the purpose of reviewing a child's existing evaluation data. While this provision of law is not new in this reauthorization, IDEA 2004 does make a point of attempting to reduce the number of required meetings overall by giving parents and the school system other options. For example:

- The regulations require public agencies to encourage, to the extent possible, the consolidation of reevaluation meetings for the child and other IEP meetings for the child [§300.32 4(a)(5)].
- IEP teams may now amend the IEP without meeting, under the specific conditions enumerated at §300.324(a)(4).
- The regulations also open the door to "other methods of ensuring parent participation" in IEP meetings and "alternative means of meeting participation" in both IEP meetings and placement meetings, such as video conference and conference calls [see §§300.328 and 300.322(c)].

The regulations do not specify what other means or methods the evaluation group might use to make the determinations they need to make, based on the review of existing evaluation data and parent input. As in many other matters, this is left up to State and local authority. Either might require a meeting be held to review these data. But the IDEA does not require this, only that the review be conducted by the group specified at §300.305(a), and that the determinations identified in these last two slides—and the ones in the next slide— are made.

Review of Existing Evaluation Data *(Slide 4 of 4)*

View 1

Review of Existing Evaluation Data

Is there enough data to provide the info needed?

- No.

Slide loads with this view, answering the question, "No."

Review of Existing Evaluation Data

Click 1

Is there enough data to provide the info needed?

- No.

Public agency must administer assessments and other measures to produce the data needed.

Click 1:
The text below "No" appears, saying what the public agency must now do.

(continued on next page)

Click 2

Review of Existing Evaluation Data

Is there enough data to provide the info needed?

- ❑ Yes.

Public agency must notify parents:

- ✓ of that determination and the reason for it;

Click 2: Now the question is answered, "Yes." Bullet 1, what the LEA has to do, appears.

Click 3

Review of Existing Evaluation Data

Is there enough data to provide the info needed?

- ❑ Yes.

Public agency must notify parents:

- ✓ of that determination and the reason for it;
- ✓ that parents have the right to request assessment of child.

Click 3: Bullet 2, another thing the LEA has to do, appears.

CLICK AGAIN to advance to next slide.

(discussion on next page)

Slide 13: Background and Discussion

3 Clicks

Slide 13 moves the evaluation group from reviewing existing data to answering the question at the top of the slide: Is there enough data to provide the info needed? Using the existing data, can the group determine:

- if the child is a "child with a disability?"
- what the child's educational needs are?
- the child's present levels of academic achievement and related developmental needs?
- whether child needs special education and related services?
- whether any additions or modifications are needed to the special education and related services to enable the child to meet the annual goals in the IEP and participate in the general education curriculum (as appropriate)?

The slide is divided into two parts: *Yes* and *No*, and what must occur next, given that answer to the questions above.

No, Not Enough Information

The slide treats the "No" answer first—meaning that the group determines that there is not enough information available to make the determinations they need to make. What must happen then? As the slide indicates, the public agency must administer assessments and other measures to produce the data needed, as stated in IDEA 2004 and the final regulations at §300.305(c):

> (c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

If this is the case, the selection and administration of those assessments and other measures would need to adhere to IDEA's evaluation procedures as specified §300.304 and examined in the *Introduction to Evaluation* module.

Before the public agency may proceed with the initial evaluation of the child, it must notify the parents (in other words, provide prior written notice), request their consent for the evaluation, provide the procedural safeguards notice, and obtain their informed consent. The evaluation may then proceed.

Yes, There's Enough Information

Next on the slide: the "Yes" scenario—meaning that the group determines there is sufficient information available to make the determinations they need. In this case and as the slide indicates, the public agency must notify parents:

- of that determination and the reason for it; and
- that parents have the right to request assessment of the child.

The public agency is not required to conduct the assessment of the child unless the parents request that it does so. The provisions in IDEA and the final regulations in this regard are provided in the box and on **Handout C-2** at §300.305(d).

Provisions in IDEA and the Final Regulations at §300.305(d): Requirements if Additional Data Are Not Needed

(d) *Requirements if additional data are not needed.* (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

§300.305(d)

Slide 14 Determining the Child's Eligibility

View 1

Determining the Child's Eligibility

A group of qualified professionals and the parent determines whether the child is a "child with a disability."

Slide loads with this view.

Determining the Child's Eligibility

Click 1

A group of qualified professionals and the parent determines whether the child is a "child with a disability."

Factors involved in making this determination:

- ✓ How IDEA defines "child with a disability"
- ✓ IDEA's special rule for eligibility determination
- ✓ A variety of information sources

Click 1: Bottom text appears completely, all bullets loaded.

CLICK AGAIN to advance to next slide.

(discussion on next page)

1 Click

Slide 14 moves to the next step in the evaluation process—determining the child's eligibility for special education and related services under IDEA.

Child with a disability appears in quotes on the slide to indicate that the term refers to "child with a disability" as defined by IDEA and the final regulations at §300.8. This will be the subject of upcoming slides, for the definition of the term in IDEA and the final regulations is critical in making a determination of the child's eligibility. First, let's look more closely at what the law has to say about the process to be used to determine eligibility.

Group Determining Eligibility

The first noteworthy element of this important step is that IDEA assigns the task of determining eligibility to "a group of qualified professionals and the parent" [§300.306(a)(1)]. It is left up to the public agency to determine what constitutes a "qualified professional."

This group may or may not be the same individuals who were involved in the review of existing evaluation data. That group was comprised of "the IEP Team and other qualified professionals, as appropriate" [§300.305(a)], so there may be overlap in the membership of these two groups. Certainly the parents are entitled to be involved in both groups and in the decisions each group makes.

Introduction to the Factors to Consider

The second noteworthy element involved in determining a child's eligibility relates to the range of factors that IDEA 2004 requires the "eligibility" group to consider as part of making that determination. The exact provisions in IDEA and the final regulations from which the slide is drawn are presented in the box on the next page. The provisions also appear on the last page of **Handout C-2**.

The next slides will look in greater detail at each of these factors. You should indicate this to your audience. Specifically, you may want to say the definition in IDEA and the final regulations of "child with a disability" will be saved, like a treat, for last in the lineup. Because of the definition's centrality in special education and the provisions of IDEA, it will receive a lengthy examination and discussion. First, however, the audience will hear about the other two factors noted on this slide.

Provisions in IDEA and the Final Regulations at §300.306(b) and (c): Factors to Consider in Eligibility Determination

(b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) *Procedures for determining eligibility and educational need.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior....

§300.306(b)-(c)

Editor's note: The ESEA's definition is provided and discussed under the next slide.

Slide 15 IDEA's Special Rule

View 1

Determining the Child's Eligibility

IDEA's Special Rule

A child must not be determined to be a "child with a disability" if the determinant factor for deciding so is...

- ✓ Lack of appropriate instruction in reading…
- ✓ Lack of appropriate instruction in math, *or*
- ✓ Limited English proficiency; *and*

- ✓ If the child does not otherwise meet the eligibility criteria at §300.8(a).

Slide loads fully. No clicks are needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 15 delves into the details of the 2nd bullet on the last slide: IDEA's special rule for eligibility determination.

Background

The "special rule for eligibility determination" was first incorporated into law under IDEA '97 and is maintained under IDEA 2004, with certain refinements and additions. The overall thrust of this special rule is to ensure that children are not found to be eligible for special education and related services because of a lack of appropriate instruction in specific key subjects or because they have a limited proficiency in English.

When originally included in IDEA '97, Congress's intention was that those who are involved in the evaluation of a child:

> ...give serious consideration at the conclusion of the evaluation process to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not previously received proper academic support" [S. Rep. No. 105-17 at 19 (1997)].[3]

Congress believed that the special rule for eligibility determination "will lead to fewer children being improperly included in special education programs where their actual difficulties stem from another cause and that this will lead schools to focus greater attention on these subjects in the early grades" (*Id.*).

[3] ERIC Document Reproduction Service No. ED 419 315. Available online at: http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/25/70/95.pdf

Special Rule under IDEA 2004

The same Congressional intent undergirds IDEA 2004's maintenance and strengthening of this provision, as is described below. The exact provision in the final regulations implementing IDEA 2004 appears on the last page of **Handout C-2**.

During the Department of Education's internal review of the proposed regulations, it realized that the special rule at §300.306(b)(1)(i) was inconsistent in its use of the word "appropriate" when describing lack of instruction in reading and math. Look at the proposed regulations below, and you'll see that *appropriate* was used only in referring to a lack of instruction in reading. The word *appropriate* was not included when referring to a lack of instruction in math.

> A child must not be determined to be a child with a disability under this part—
>
> (1) If the determinant factor for that determination is—
>
> (i) Lack of appropriate instruction in reading, . . .
>
> (ii) Lack of instruction in math; or . . . (70 Fed. Reg. at 35864)

Accordingly, this inconsistency was addressed in the final regulations by adding the word *appropriate* where it was missing, because:

> The Department believes it is equally important that a child not be determined to be a child with a disability if the determinant factor is the lack of "appropriate" instruction in math. (71 Fed. Reg. at 46646)

The special rule at §300.306(b)(1) now states:

> A child must not be determined to be a child with a disability under this part—
>
> (1) If the determinant factor for that determination is—
>
> (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); and
>
> (ii) Lack of appropriate instruction in math...

If you're wondering what ESEA's definition of "essential components of reading instruction" is, the Department includes it in the Analysis of Comments and Changes (71 Fed. Reg. at 46646). We've reproduced it in the box below.

Determining "Lack of Appropriate Instruction"

The determination of whether a child has received "appropriate instruction" is, in the words of the Department, "appropriately left to State and local officials" (*Id.*).

ESEA's Definition of Essential Components of Reading Instruction

from section 1208(3) of the ESEA

Essential Components of Reading Instruction—The term "essential components of reading instruction" means explicit and systematic instruction in—

(A) Phonemic awareness;

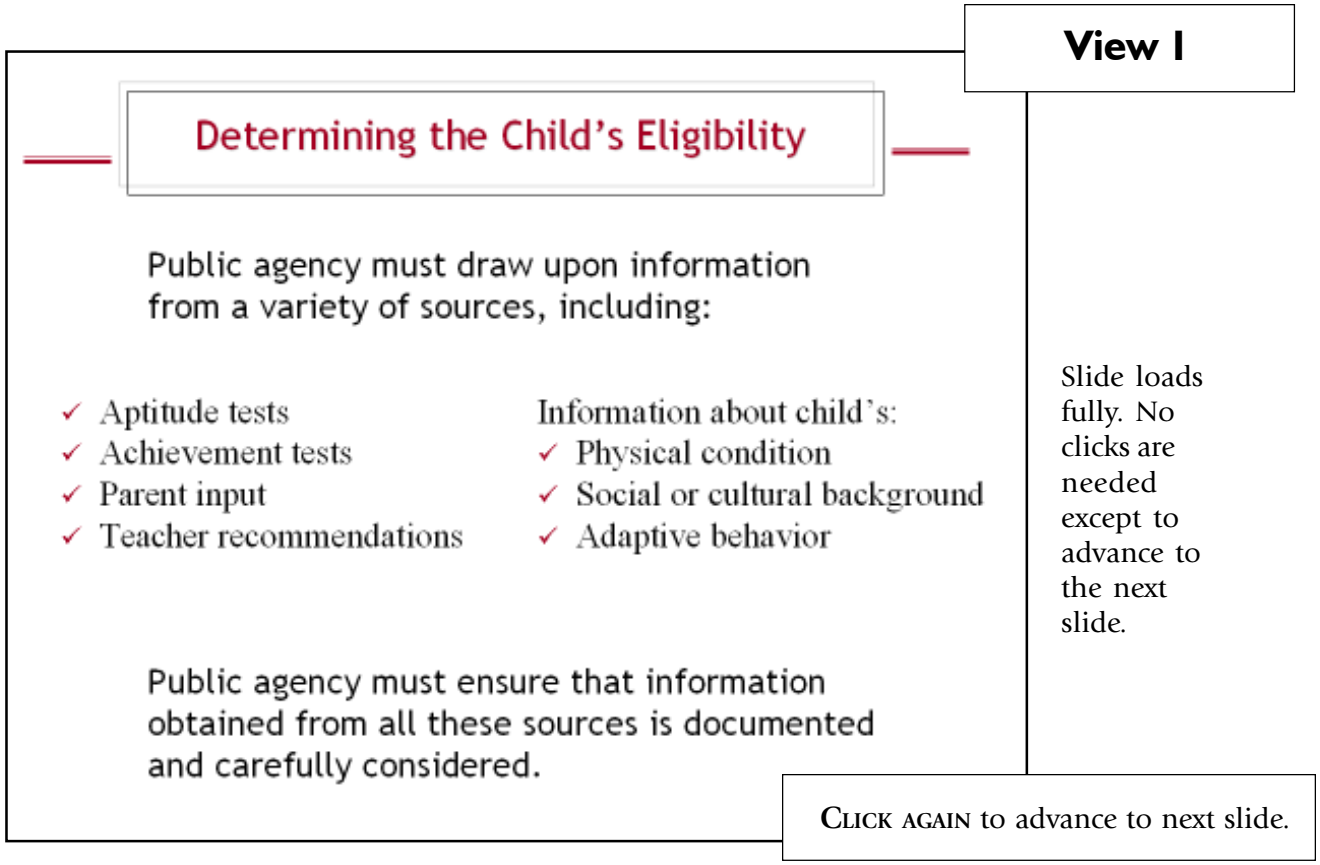
(B) Phonics;

(C) Vocabulary development;

(D) Reading fluency, including oral reading skills; and

(E) Reading comprehension strategies.

Slide 16 "Variety of Sources"



Slide 16 delves into the details of the 3rd bullet on Slide 14: "A Variety of Information Sources."

What IDEA and the Final Regulations Require

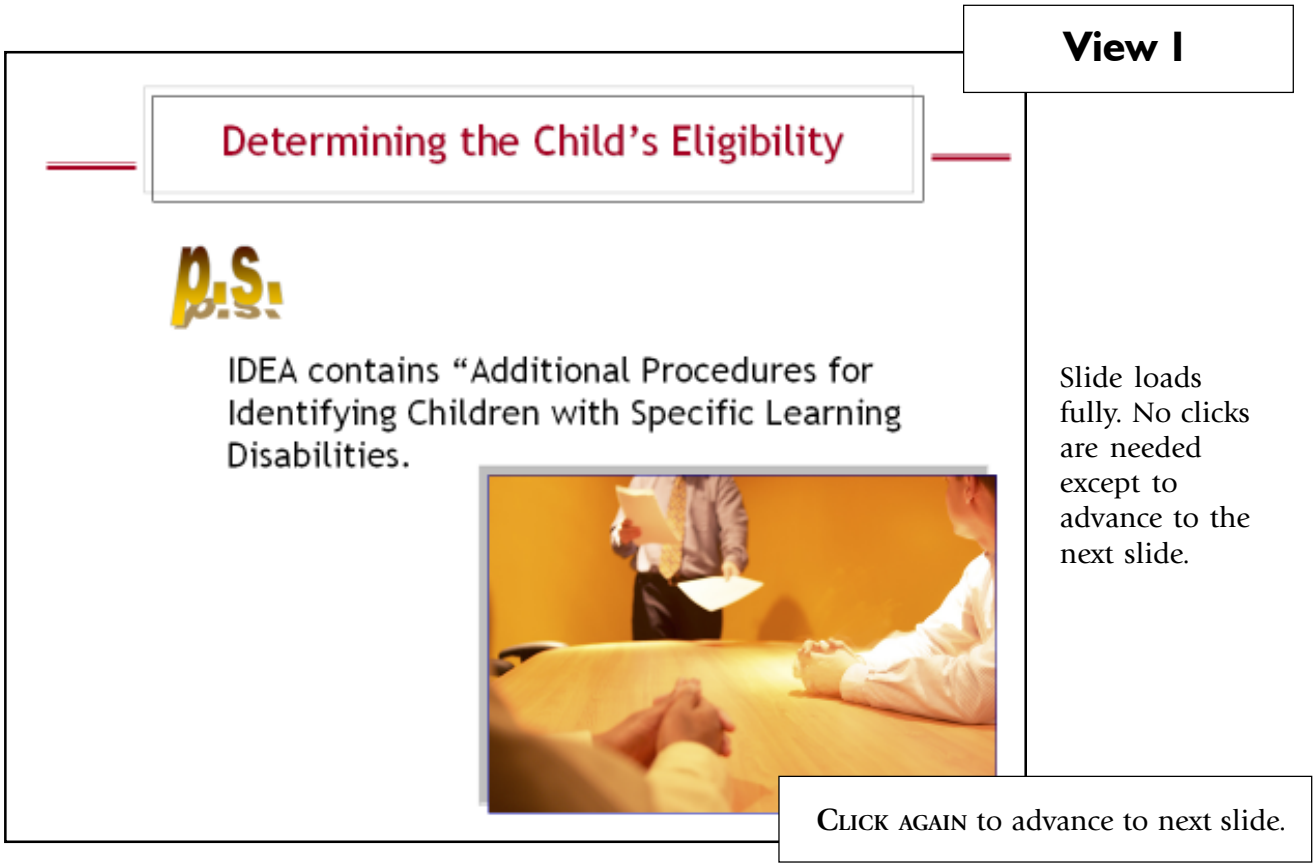
When a child's eligibility for special education and related services is being determined, the public agency must:

> (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
>
> (ii) Ensure that information obtained from all of these sources is documented and carefully considered. [§300.306(c)(1)]

"A variety of information sources" was included on Slide 14 as a factor that needs to be considered in determining the child's eligibility. Much more detail is available on the current slide to expand the discussion of what IDEA 2004 and the final regulations consider an appropriate "variety of sources." Go through the examples on this slide, referring participants to the last page of Handout **C-2**, where the exact provision [§300.306(c)] of the final regulations appears. Also point out that IDEA reinforces this by requiring the public agency to "document and carefully consider" the information from all of these sources. It's not enough to merely gather it and have it available in a folder. There must also be evidence that the information, in its variety, was considered in making the determination regarding the child's eligibility.

Slide 17 P.S. Identifying Children with Learning Disabilities

View 1



Slide loads fully. No clicks are needed except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 17 provides a "p.s." to this discussion of IDEA's requirements for evaluating children suspected of having a disability and determining whether or not they need special education and related services. It's important that the audience know that, in addition to all that's been said so far on this subject, there are yet more provisions within IDEA that may be very relevant to the evaluation process and the factors that must be considered when determining a child's eligibility—namely, provisions in IDEA and the final regulations at §§300.307-300.311, called "Additional Procedures for Identifying Children with Specific Learning Disabilities."

Now, however, is not the time to examine what those additional procedures entail or require. They are the subject of the last module in this evaluation series: *Identification of Children with Specific Learning Disabilities*.

This slide is included here to alert the audience to both the existence of additional evaluation procedures, to be applied to identifying children with learning disabilities, and the availability of a stand-alone training on the matter.

What's Next?

All right—now the moment we've all been waiting for: the definition in IDEA and the final regulations of a "child with a disability." Consider whether you wish to launch into this rather lengthy topic or give your audience a break first.

View 1

How do IDEA and the final regulations define "Child with a Disability" ???

Slide loads with this question.

"Child with a Disability"

Click 1

(a) General. (1) *Child with a disability* means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deafblindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

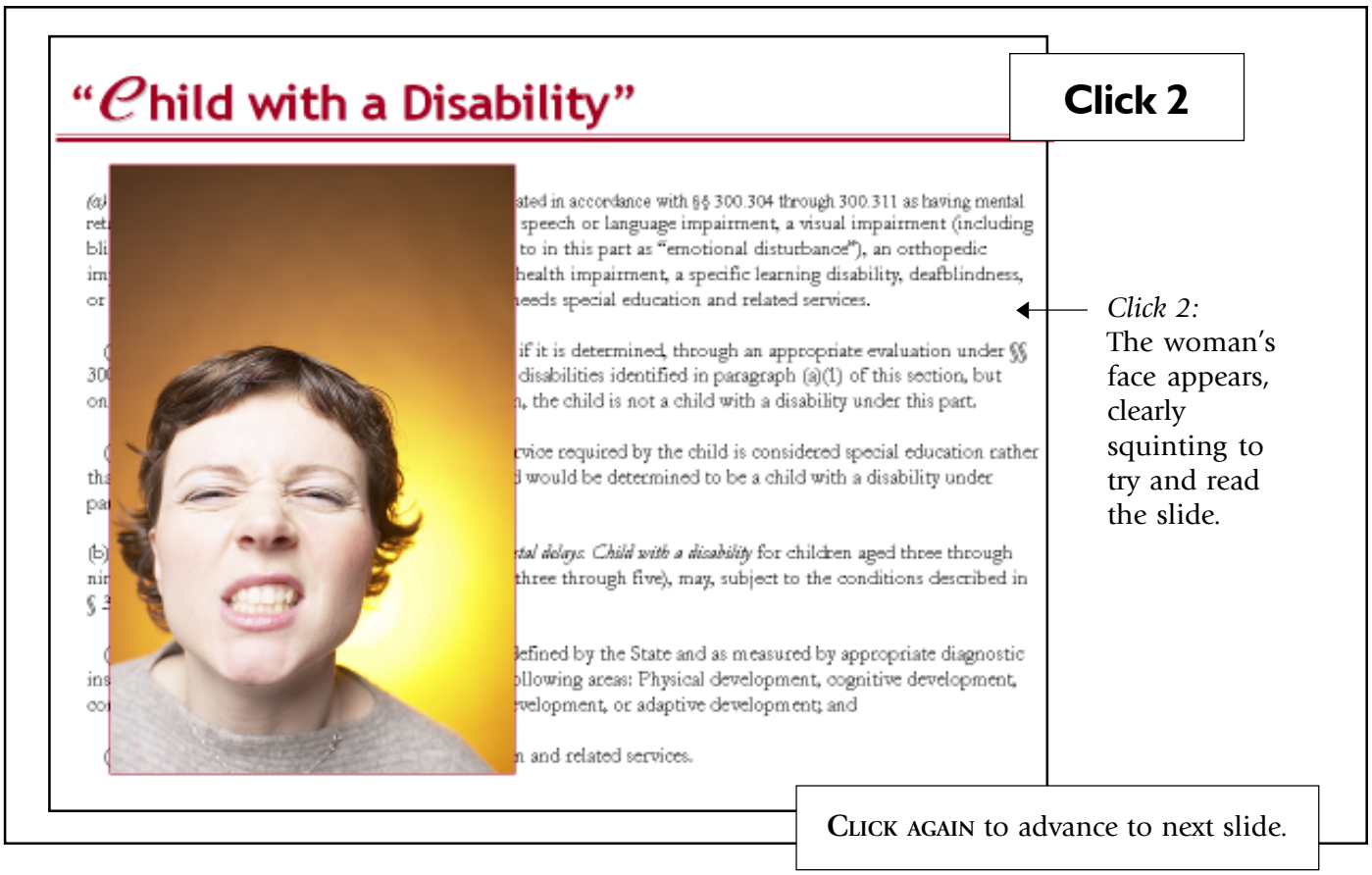
(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays. Child with a disability* for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—

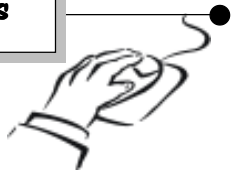
Click 1: View changes to the full definition of "child with a disability"—very small!

(continued on next page)



Slide 18: Background and Discussion

2 Clicks



Slide 18 is both the truth and a bit of a joke. It asks, "How do IDEA and the final regulations define 'child with a disability' ???" On your Click, the audience will get a gander at the full definition. To fit on the screen, the text is very tiny, which illustrates two things simultaneously:

- how detailed and involved the definition of this all-important term is, and
- the reason why you're going to break the definition down and look at it a piece at a time.

Let the audience see the crowded screen of this slide for a small bit of time, enough to absorb the absurdity of trying to read it—and then Click to bring up the woman's squinting face. Indicate that maybe it would be best if you all tackled this crucial definition a piece at a time, and Click to advance to the next slide.

Slide 19 "Child with a Disability"

Starting View & Click 1

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having...

Slide loads with just the header text and the picture of the girl.

- ✓ autism
- ✓ deaf-blindness
- ✓ deafness

Click 1:
First 3 disabilities in IDEA's definition appear.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having...

Click 2

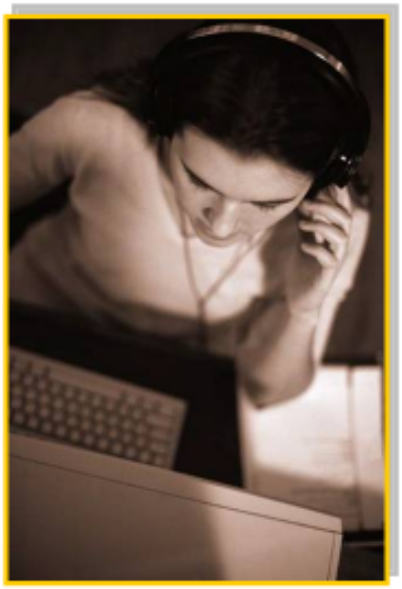
- ✓ emotional disturbance
- ✓ hearing impairment
- ✓ mental retardation

Click 2:
The next 3 disabilities appear.

(continued on next page)

Click 3

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having...



- ✓ multiple disabilities
- ✓ orthopedic impairment
- ✓ other health impairment

Click 3:
The next 3 disabilities appear.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having...

Click 4

- ✓ specific learning disability
- ✓ speech or language impairment
- ✓ traumatic brain injury, *or*
- ✓ visual impairment (including blindness)

Click 4:
The *last* 4 disabilities appear.

(continued on next page)

(1 Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having...

- ✓ autism
- ✓ deaf-blindness
- ✓ deafness
- ✓ emotional disturbance
- ✓ hearing impairment
- ✓ mental retardation
- ✓ multiple disabilities
- ✓ orthopedic impairment
- ✓ other health impairment
- ✓ specific learning disability
- ✓ speech or language impairment
- ✓ traumatic brain injury, *or*
- ✓ visual impairment (including blindness)

...and who, by reason thereof, needs special education and related services.

Click 5

Click 5:
Full list appears, with the text below the line emphasizing "by reason thereof..."

CLICK AGAIN to advance to next slide.

Slide 19: Background and Discussion

5 Clicks

Slide 19 (presented across 5 separate boxes on the last 2 pages and finishing above) moves through the 13 disabilities listed in IDEA 2004 and the final regulations, giving trainers the opportunity to present these disability categories in the level of detail they deem appropriate for the needs of their audience. It's important for the audience to know these 13 categories, for they are part of the core definition of "child with a disability," a term with enormous implications under IDEA—including but certainly not limited to whether or not a child is determined to be eligible for special education and related services. State and local educational agencies have multiple and serious obligations toward every child that is determined eligible for these services as a "child with a disability."

The slide presents these disability categories:

- autism
- deaf-blindness
- deafness
- emotional disturbance
- hearing impairment
- mental retardation
- multiple disabilities
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury *or*
- visual impairment (including blindness).

What's the Same, What's New, What's Different?

Same. The broad "titles" of the 13 disability categories remain the same as in IDEA '97.

New or different. Different, however, are some of the finer points within the categories and way that IDEA 2004 and the final regulations define the disabilities themselves. There are new aspects, including deletions.

Handout C-3 presents IDEA 2004's complete definition of "child with a disability" at §300.8. Refer participants to this handout for their later reading if you're skimming over these categories. If you're taking a deeper look, consider highlighting the points below about what's new or different in IDEA's disability definitions. (Postpone discussing the meaning of "by reason thereof," which will be discussed on the next slide.)

- In *orthopedic impairment:* These regulations maintain "a congenital anomaly" as one type of orthopedic impairment included in the definition but remove the examples given in the prior regulation("e.g., clubfoot, absence of some member, etc." at 34 CFR §300.7 (c)(8)(1999)). These examples of congenital anomalies were deleted because they "are outdated and unnecessary to understand the meaning of orthopedic impairment" (71 Fed. Reg. at 46550).

- To the definition of *other health impairment*, an addition: Tourette syndrome is now included as an example of "chronic or acute health problems" [§300.8(c)(9)(i)].

New in IDEA!

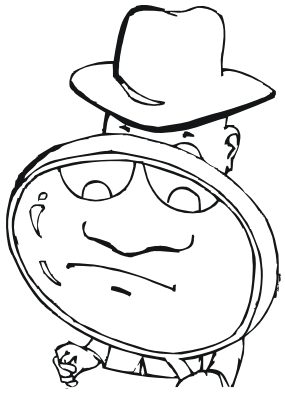
Elaborating on the addition of Tourette syndrome to the list of examples of other health impairments, the Department explains:

> Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition. Therefore, including Tourette syndrome in the definition of other health impairment may help correct the misperception of Tourette syndrome as a behavioral or conduct disorder and prevent the misdiagnosis of their needs. (*Id.*)

As part of this discussion, the Department also explains why other examples of "other health impairment" were not added to the regulations—specifically fetal alcohol syndrome (FAS), bipolar disorders, dysphagia, and other organic neurological disorders. The reason? "...because these conditions are commonly understood to be health impairments" (*Id.*). So, one can conclude that, while these last conditions are not explicitly mentioned in the regulations, they are conditions nonetheless considered to be other health impairments. As the Department observes:

> The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment. (*Id.*)

Note that the Department uses the phase "could make them eligible"—*could*, not *does*. Other aspects are considered in determining eligibility for special education and related services, not solely the existence of the disability or condition. First, the determination of eligibility is made by a "team of qualified professionals and the parent of the child, consistent with §300.306(a)(1)" and this group "must base their decision on careful consideration of information from a variety of sources, consistent with §300.306(c)" (*Id.*).



Other Areas of Interest

With the above exceptions and several small wording changes for the sake of grammar and clarity, the regulations describing and defining the 13 disability categories remain unchanged in IDEA 2004 and the final regulations. Nonetheless, there are numerous interesting points raised and discussed in the Department's Analysis of Comments and Changes that we list here, should you care to share any with your audience.

Disability category or student need? The Department reminds us that "[s]pecial education and related services are based on the identified needs of the child and not on the disability category in which the child is classified" (71 Fed. Reg. at 46549).

What does "adversely affects educational performance" mean? May school district personnel interpret the phrase "adversely affects a child's educational

performance" to mean that a child must be failing in school to receive special education and related services? No, according to the Department. In fact, "we have clarified in §300.101(c) that a child does not have to fail or be retained in a course or grade in order to be considered for special education and related services" (*Id.*). And what does §300.101(c) say? Take a look in the box at the right, where the provision is presented, along with the lead-in paragraph, for context. This is one among many provisions related to FAPE.

Terminology: Mental retardation or intellectual disability? Those in your audience who are involved with children or adults who have intellectual disabilities may have opinions about the continued use of the term "mental retardation." Certainly, there is a noticeable movement in the field away from using that term, as witnessed by many name changes in recent years, including the 2003 Executive Order 12994 to change the name of the President's Committee on Mental Retardation to the President's Committee for People with Intellectual Disabilities (PCPID) and the adoption of the same terminology by the U.S. Equal Employment Opportunity Commission (EEOC). The Department of Education acknowledges this recent trend but maintains the IDEA's use of the term "mental retardation," explaining as follows:

> Section 602(3)(A) of the Act refers to a ''child with mental retardation,'' not a ''child with intellectual disabilities,'' and we do not see a compelling reason to change the term. However, States are free to use a different term to refer to a child with mental retardation, as long as all children who would be eligible for special education and related services under the Federal definition of mental retardation receive FAPE. (71 Fed. Reg. at 46550)

The Department goes on to say:

> We do not believe the definition of mental retardation needs to be changed because it is defined broadly enough in §300.8(c)(6) to include a child's functional limitations in specific life areas...There is nothing in the Act or these regulations that would prevent a State from including ''functional limitations in specific life areas'' in a State's definition of mental retardation, as long as the State's definition is consistent with these regulations. (*Id.*)

Defining emotional disturbance. The Department received many comments on the definition of "emotional disturbance" in IDEA and the final regulations. In the end, the definition was maintained unchanged from prior

Provisions in IDEA 2004 and the Final Regulations at §300.101(c)

§300.101 Free appropriate public education (FAPE).

(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) ...

(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

law. The Department's remarks are interesting in that they provide a mini-review of how this term and its definition have been scrutinized in the past. The Department's remarks are provided in the box at the right.

Multiple disabilities? But it's not in the Act! Some in your audience may wonder why "multiple disabilities" is included in the list of disability categories in the final regulations and defined there [at §300.8(c)(7)], when it is not included in the statute's list of disability categories. The Department explains, as follows:

> The definition of multiple disabilities has been in the regulations since 1977 and does not expand eligibility beyond what is provided for in the Act. The definition helps ensure that children with more than one disability are not counted more than once for the annual report of children served because States do not have to decide among two or more disability categories in which to count a child with multiple disabilities. (71 Fed. Reg. at 46550)

Department of Education Remarks on the Definition in IDEA and the Final Regulations of "Emotional Disturbance"

"Historically, it has been very difficult for the field to come to consensus on the definition of *emotional disturbance,* which has remained unchanged since 1977. On February 10, 1993, the Department published a ''Notice of Inquiry'' in the **Federal Register** (58 FR 7938) soliciting comments on the existing definition of *serious emotional disturbance*. The comments received in response to the notice of inquiry expressed a wide range of opinions and no consensus on the definition was reached. Given the lack of consensus and the fact that Congress did not make any changes that required changing the definition, the Department recommended that the definition of *emotional disturbance* remain unchanged. We reviewed the Act and the comments received in response to the NPRM and have come to the same conclusion. Therefore, we decline to make any changes to the definition of *emotional disturbance."*

Analysis of Comments and Changes, 71 Fed. Reg. at 46550

Concluding the Discussion

As noted earlier in the discussion, having a disability does not necessarily mean that a child meets IDEA's definition of "child with a disability." There are numerous factors involved in reaching that determination, including how IDEA and the final regulations define each individual disability term. However, one very crucial factor merits a close look on its own. "By reason thereof..." is a part of the definition in IDEA and the final regulations of a "child with a disability" and is the subject of the next slide.

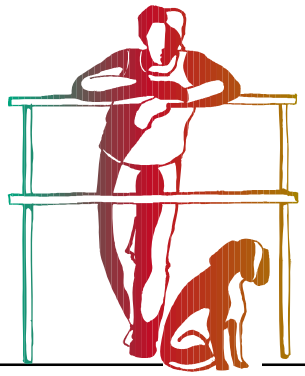
Slide 20 By Reason Thereof

Slide loads completely. No clicks necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 20 sets the phrase *"Who, by reason thereof..."* apart from the rest of IDEA's definition of a "child with a disability" because "Who, by reason thereof…" is often forgotten but is actually a critical part of that definition. The phrase adds another level to what it means for a child with disabilities to be eligible for special education and related services under IDEA 2004.

As previously stated, having a disability does not necessarily qualify a child for special education services under IDEA. Many children have disabilities but do not need special education. IDEA's definition of "child with a disability" explicitly acknowledges this fact—by including the phrase "who, by reason thereof" and by containing the provisions we've provided in the box at the right. If you look at those provisions, you'll see they relate to a



From Definition in IDEA and the Final Regulations of "Child with a Disability"

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

§300.8(a)(2)

child who has one of the disabilities identified within IDEA but who only needs a related service, not special education. That child would not be considered a "child with a disability" under Part B—unless under State standards the related service required by the child is considered special education, not a related service. This provision recognizes that, although IDEA may list a service as a related service, a State may classify the very same service as special education.

It is very important to discuss with the audience that not all children with a disability will be eligible under IDEA. That is one reason this training curriculum frequently puts the term in quote marks—"child with a disability"—which is intended to remind everyone that the term has a specific meaning within this law.

You may want to point out that a child who has a disability but who is not eligible under IDEA, may be eligible for the protections afforded by other laws—such as Section 504 of the Rehabilitation Act of 1973, as amended. It's not uncommon for a child to have a 504 plan at school to address disability-related educational needs, instead of an IEP.

It's obviously beyond the scope of this training curriculum to go into the protections offered by other laws, but more information is available about them at NICHCY's Web site (www.nichcy.org) or by calling NICHCY (1.800.695.0285), should you or any participants want to pursue this topic.

—Space for Notes—

Slide 21

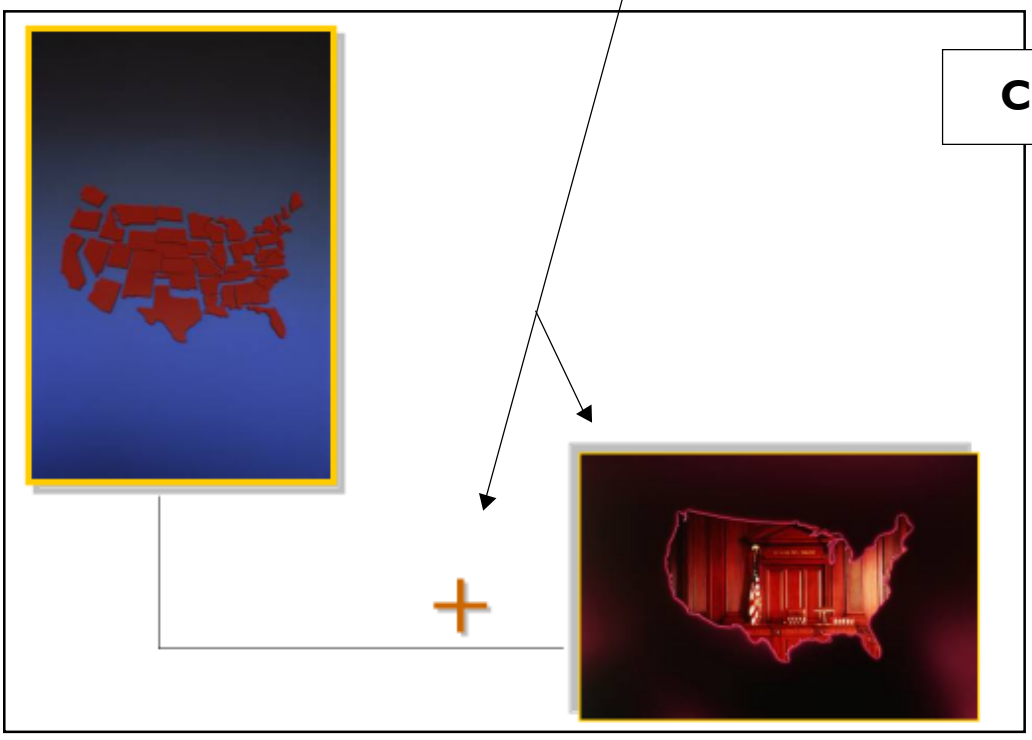
"Child with a Disability"

View 1

Slide loads with this view, representing "State definitions of disability."

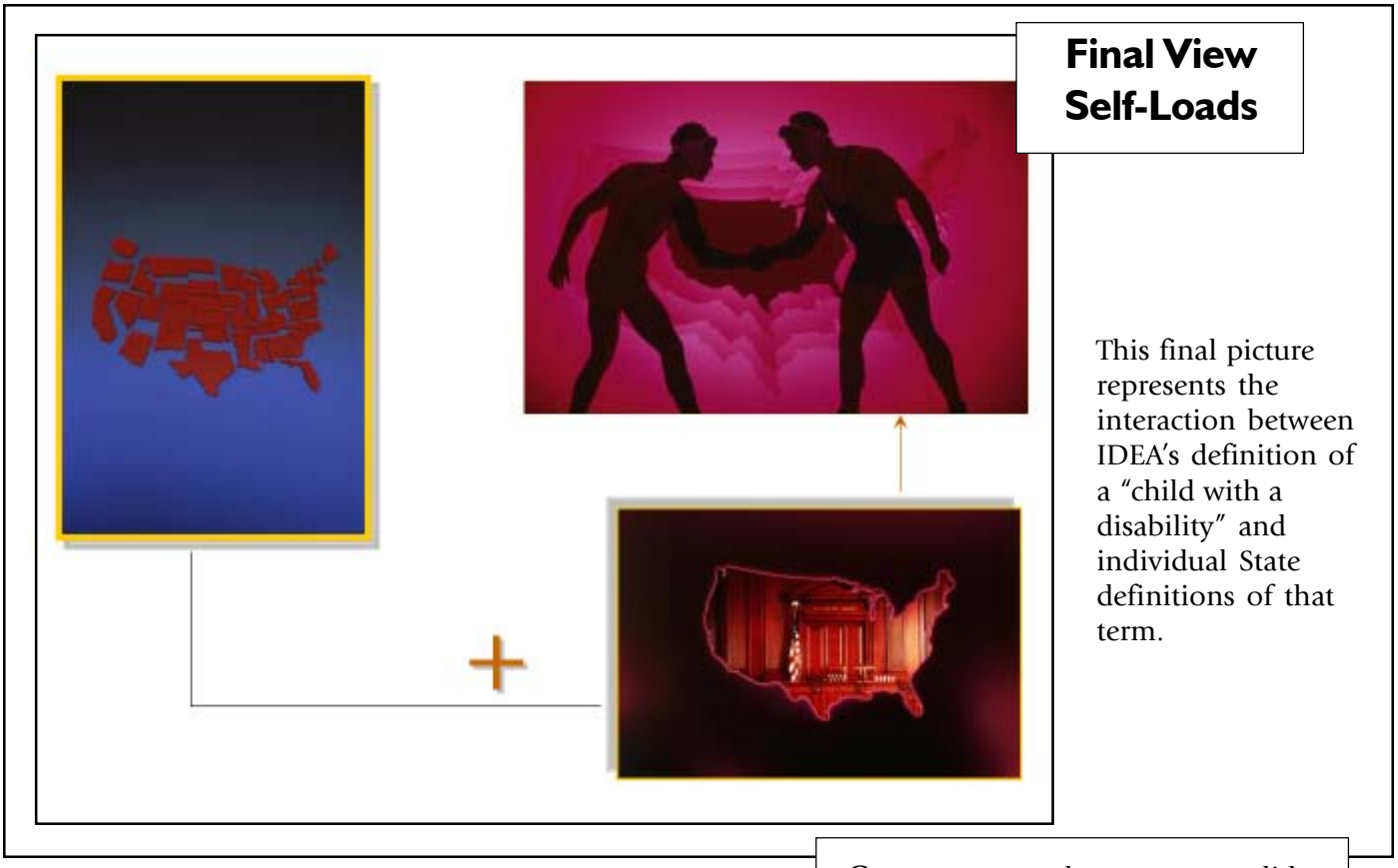
Click 1:
Arrow, "plus" sign, and 2nd picture appear, representing "State definition + Federal definition = "

No click is necessary; last picture loads itself, as shown on next page.



Click 1

(continued on next page)



Slide 21: Background and Discussion

1 Click

Slide 21 adds to this examination of what it means to meet the definition of "a child with a disability" by looking at the interaction of the federal definition contained within IDEA with individual State definitions. States can further define the disability areas and frequently do, establishing policies of their own that define each of these disabilities in their own terms, provided that all children with disabilities who are in need of special education and related services who have impairments listed in the definition in IDEA and the final regulations of "child with a disability" receive appropriate instruction and services. *Specific learning disability* is an excellent example. States differ in how they define this term; in one State a child may be considered to have a specific learning disability, while in another State the child will not.

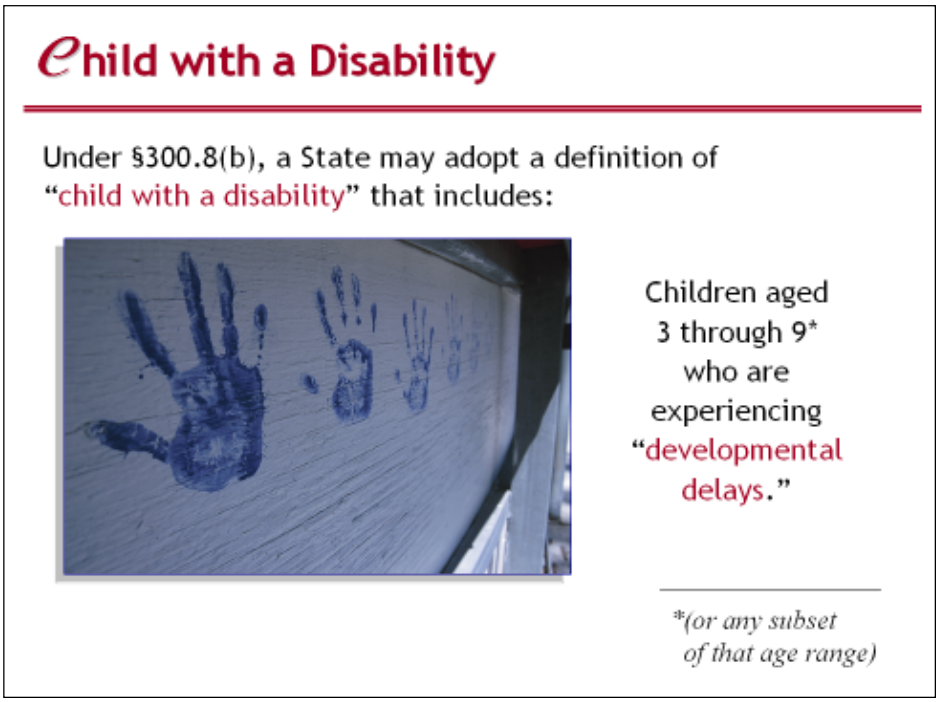
Discussing the Slide

The slide has no text, only the opening graphic of the United States shown as all the separate States. This allows trainers to introduce the additional element of State-specific definitions of IDEA's disability categories.

One CLICK will unravel the rest of the story: a line will appear, then a "plus" sign (+), and then the graphic of the United States as a whole, with the legal-looking backdrop. This graphic is intended to indicate the federal definition of "child with a disability" available under IDEA. The plus sign (+) joins the two—State and federal definition—to yield the top graphic, which is a friendly, "in agreement" handshake with the United States yet again in backdrop.

Summarized, the slide is meant to show that, while the term "child with a disability" is defined within IDEA and the final regulations, the term also has an operational definition at the State level. In the end, what the term really means, and whether or not a group of people decides that a child qualifies as a "child with a disability" under IDEA, is a matter of how the federal definition interacts with State definitions and policies.

Slide 22 Developmental Delay *(Slide 1 of 2)*



Slide loads completely. No clicks necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 22 introduces another aspect of the term "child with a disability"—how it can be applied to children who have a developmental delay. The term "developmental delay" can only be applied to children aged 3 through 9 under Part B of the IDEA. (Under Part C of the IDEA, this term is used for children aged birth to three.) As you can see on this slide, under the conditions specified at §300.111(b), a State may apply the term "child with a disability" to a child aged 3 through 9, or to a subset of that age range, who:

- experiences developmental delays, and
- by reason thereof needs special education and related services.

There's that phrase again—*by reason thereof*. It means the same thing here as just discussed.

In the past, the term "developmental delay" was used to describe children from ages 3 through 5. With IDEA '97, the age range was expanded to ages 3 through 9, and this age range is maintained under IDEA 2004. Subject to the conditions at §300.111(b), this provision allows States to find a child with developmental delays (aged 3 through 9, or any subset of age ranges within) to be an eligible "child with a disability" and to provide that child with special education and related services without having to classify the child under a specific disability category. This provision of law is intended to address the often difficult process of determining the precise nature of a child's disability in the early years of his or her development.

It's useful that the final regulations at §300.8(b) have been revised to clarify the provisions established in IDEA '97, which many people found confusing. The final regulations remove the phrase "at the discretion of the State and LEA" used in 34 CFR §300.7(b)(1999) and replace it with "in accordance with the conditions in §300.111(b)." Those conditions are presented on the next page.

As §300.111(b) indicates, and as the Department of Education summarizes:

> Section 300.8(b) states that the use of the developmental delay category for a child with a disability aged three through nine, or any subset of that age range, must be made in accordance with §300.111(b). Section

300.111(b) gives States the option of adopting a definition of developmental delay, but does not require an LEA to adopt and use the term. However, if an LEA uses the category of developmental delay, the LEA must conform to both the State's definition of the term and the age range that has been adopted by the State. If a State does not adopt the category of developmental delay, an LEA may not use that category as the basis for establishing a child's eligibility for special education and related services. (71 Fed. Reg. at 46549)

There's still more to IDEA's "developmental delay" provisions that may be important for your audience to know. These are examined on the next slide.

Provisions in IDEA and the Final Regulations at §300.111(b)

(b) *Use of term developmental delay.* The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of *developmental delay* under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (*e.g.*, ages three through five).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in §300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

View 1

Developmental Delay?

Defined by the State.

Slide loads with only "Developmental Delay?" at the top. Then "Defined by the state" and the picture appear.

Click 1

Developmental Delay?

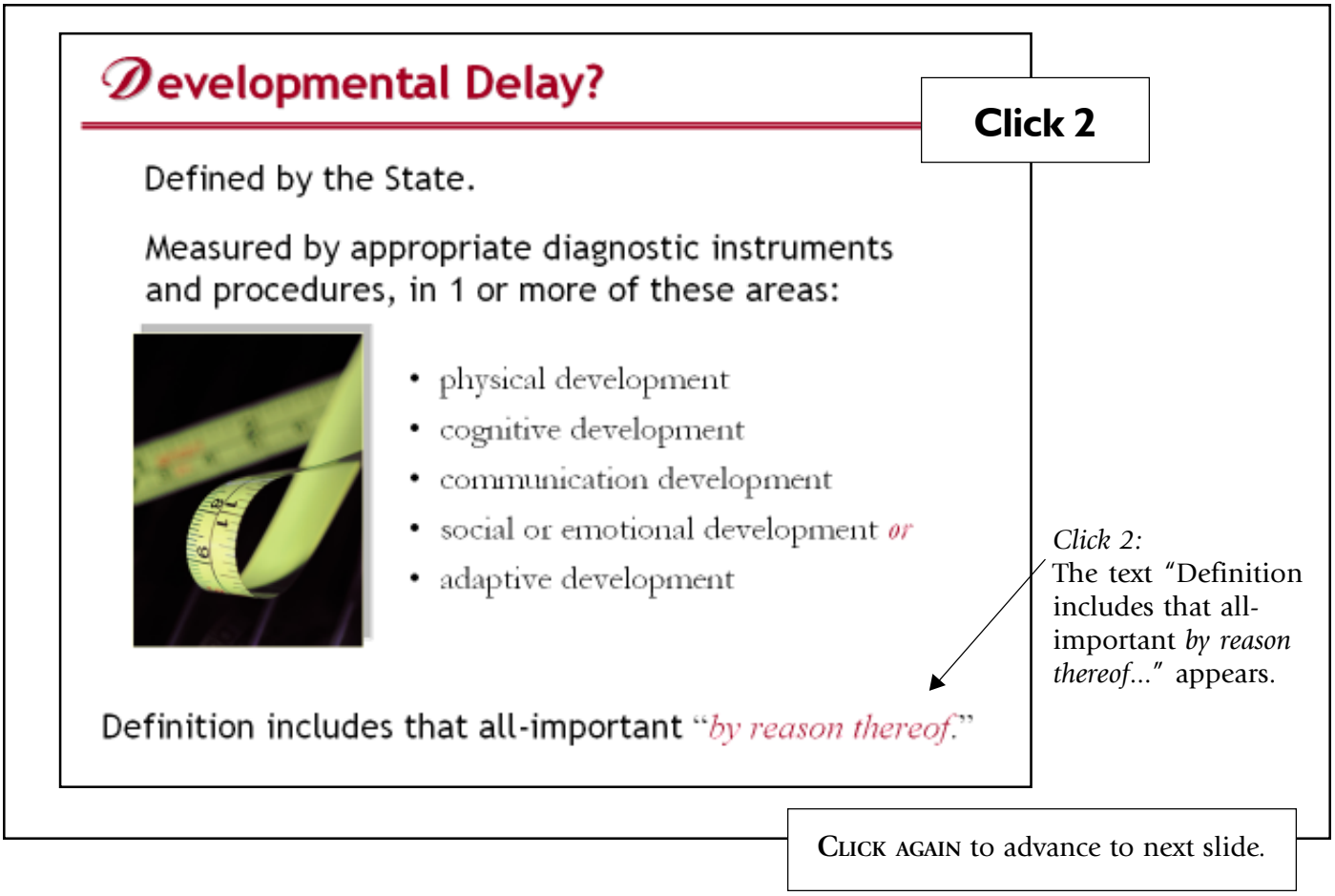
Defined by the State.

Measured by appropriate diagnostic instruments and procedures, in 1 or more of these areas:

- physical development
- cognitive development
- communication development
- social or emotional development *or*
- adaptive development

Click 1: "Measured by appropriate diagnostic instruments..." appears, with a new picture, and Bullets 1-5 (as a group).

(continued on next page)



Slide 23: Background and Discussion

2 Clicks

Slide 23 concludes the discussion of using "developmental delay" within the definition of "child with a disability." This slide corresponds directly to the provisions at §300.8(b)(1) and (2), which indicate that, for children ages 3 through 9, or any subset of that age range, the term "child with a disability" can include a child:

> (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
>
> (2) Who, by reason thereof, needs special education and related services.

These provisions are unchanged from prior law, so you may have participants who are already familiar with the information on this slide. For those who are not, however...

Defined by the State

Again we see that State policies have much to contribute to whether or not a child is considered to be a "child with a disability" under IDEA. This alone is a very good reason to know what your State policies are in this regard.

A State is not required to adopt this term or define it. If it does define the term, then it is the State (not an LEA) that determines whether the term applies to children ages 3 through 9, or to a subset of that age range (e.g., ages 3 through 5), as §300.111(b) makes clear. The LEA must conform with both how the State defines the term and the age range(s) to which it applies the term. If the State chooses not to adopt the term, then the LEA may not separately and independently do so. However, the converse is not true. The State may adopt the

term, but the LEA does not have to adopt it and cannot be compelled by the State to do so.

As Measured By...

The meaning of the middle part of the slide is clear and unsurprising, given IDEA's requirement that evaluation of children be technically sound and utilize instruments and methods that are appropriate to the purpose of the evaluation. Comprehensiveness of evaluation is required as well, just as with any child suspected of having a disability involved in initial evaluation and, ultimately, subject to a determination of eligibility. The areas of development mentioned are broad but extensive:

- physical development
- cognitive development
- communication development
- social or emotional development or
- adaptive development.

By Reason Thereof

The slide specifically notes that the phrase *"by reason thereof..."* is also included as part of IDEA's requirements regarding "developmental delay." Used here, it has the same meaning as previously discussed.

—Space for Notes—

Slide 24 Determining the Child's Eligibility

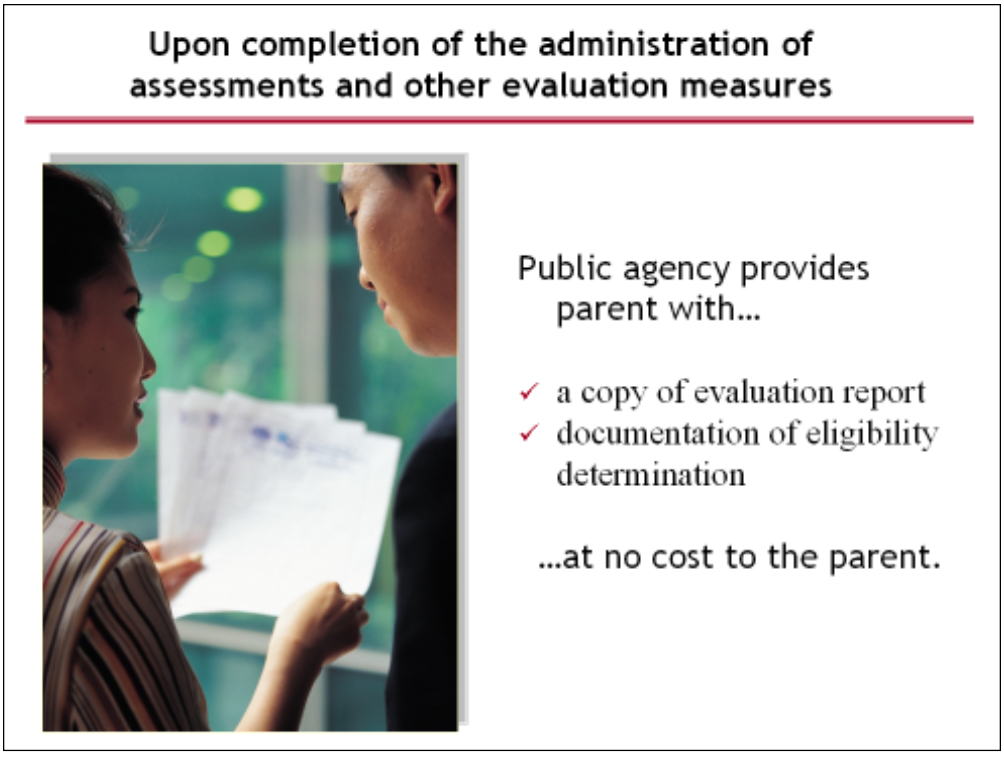
Slide loads completely. No clicks necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 24 draws the threads back together of the many slides you've gone through, from the review of existing evaluation data through the definition in IDEA and the final regulations of a "child with a disability." With Slide 24, we can now return to that very big and original purpose of the evaluation and the questions that the group determining eligibility must now answer: Is this child a "child with a disability" under IDEA and the final regulations? Is he or she eligible for special education and related services?

Use the slide to re-focus attention on determination of eligibility as a way of seguing to the next slide, which lists what IDEA requires after the completion of the administration of assessments and other evaluation measures.

Slide 25 After Child's Eligibility is Determined



Slide loads completely. No clicks necessary except to advance to the next slide.

CLICK to advance to next slide.

With Slide 25, the administration of assessments and other evaluation measures has been completed. Regardless of what that determination is—*yes*, the child is eligible, or *no*, the child isn't—the public agency must provide the parent with these two items:

- a copy of the evaluation report, and
- the documentation of determination of the child's eligibility.

Both of these must be provided at no cost to the parent. This "no-cost" stipulation is a new provision in the final regulations. The relevant regulation is presented in the box at the right and on the last page of **Handout C-2**.

Additional Observations

The following two observations are excerpted from the Analysis of Comments and Changes that accompanied publication of the final regulations.

§300.306 Determination of eligibility.

(a) *General.* Upon completion of the administration of assessments and other evaluation measures—

(1)...

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

- The Act does not establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to the parents and we do not believe that a specific timeline should be included in the regulations because this is a matter that is best left to State and local discretion. It is, however, important to ensure that parents have the information they need to participate meaningfully in IEP Team meetings.... (71 Fed. Reg. at 46645)

- [I]t would not be appropriate for a public agency to provide documentation of the determination of eligibility prior to discussing a child's eligibility for special education and related services with the parent. Section 300.306(a)(1) and section 614(b)(4)(A) of the Act require that a group of qualified professionals and the parent determine whether the child is a child with a disability. Therefore, providing documentation of the eligibility determination to a parent prior to a discussion with the parent regarding the child's eligibility would indicate that the public agency made its determination without including the parent and possibly, qualified professionals, in the decision. (*Id.*)

—Space for Notes—

Slide 26 Reevaluations

Starting View & Click 1

Slide loads with the intro phrase "May occur not more than once a year—" and the picture.

Click 1:
Text appears below, to note the exception to the above statement.

Click 2

Click 2:
The "*Must* occur" text appears, including the exception in italics.

CLICK AGAIN to advance to next slide.

(discussion on next page)

Slide 26: Background and Discussion

2 Clicks

Slide 26 addresses the topic of reevaluation, the last subject in this module. The purpose of reevaluation is to find out:

- if the child continues to be a "child with a disability," as defined by IDEA and the final regulations, and
- the child's educational needs.

There's a lot that can be said about reevaluation, as most of the provisions just described regarding initial evaluation apply to the reevaluation process. The similarities will be explicitly identified in the next slide, giving you an opportunity to review with the audience the information that's been presented so far in this module.

To introduce the topic, however, it is appropriate to start with when IDEA requires a child to be reevaluated, as summarized on the slide. Each of the two instances comes with a caveat, the text on the slide in italics. Specifically, under IDEA:

- Reevaluations are not to occur more than once a year—unless the parent and the public agency agree otherwise.
- Reevaluations must occur at least once every three years—unless the parent and public agency agree that a reevaluation is unnecessary.

These provisions come directly from IDEA and the final regulations at §300.303(b), as shown in the box at the right and on **Handout C-2**.

The limitations the law places on reevaluations are intended to reduce the burden on the public agency and the child of repeated and often costly evaluations. As the Senate Committee Report on S. 1248 states: "The Committee believes that requiring costly and time-consuming reevaluations when both parents and local educational agencies deem them to be unnecessary is counterproductive" [S. Rep. No. 108-185 at 24 (2003)]. However, the law also provides flexibility to parents and public agencies alike, so that if they agree either that a reevaluation is warranted or, conversely, that it is not necessary, the need for a reevaluation can be addressed in a responsive and child-focused manner.

As you can also see in the box below, and on **Handout C-2**, IDEA provides that a reevaluation must be conducted:

- If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

§300.303 Reevaluations.

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

Children grow and change, and the public agency has an affirmative obligation to monitor their educational and developmental progress. As progress is noted, or as the child's needs change, the public agency may ask to re-evaluate the child to ensure that his or her educational program reflects current educational or related services needs. Teachers are also in a good position to observe a child's development and progress, and may request a reevaluation to determine if the existing program of special education and related services continues to appropriately address the child's needs. The same is true of the parent.

New Aspects in IDEA

New in IDEA!

The above provisions of IDEA bring some changes to what the law specified for reevaluations, as summarized on **Handout C-4**, OSEP's topical brief, *Changes in Initial Evaluation and Reevaluation*. These changes include:

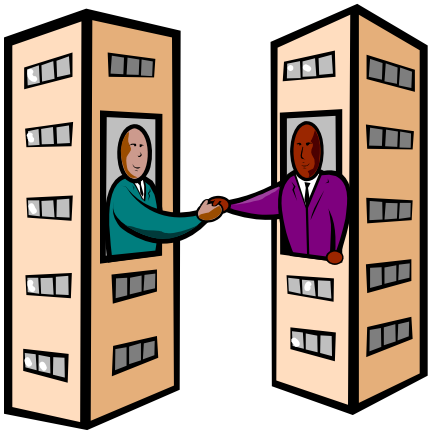
- limiting reevaluations to no more than once a year (unless the parent and public agency agree otherwise);
- the option that a reevaluation does not have to occur at least once every three years if the parent and public agency agree that a reevaluation is unnecessary; and
- the greater specification [at §300.303(a)(1)] as to when a reevaluation would be warranted.

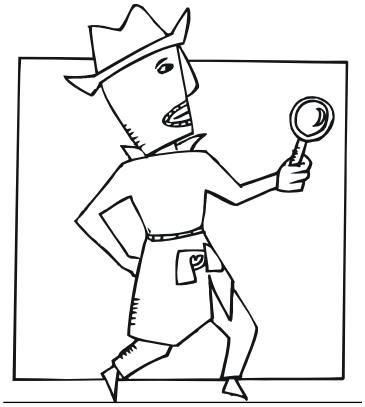
"Agreement" and "Consent"

The discussion in the Analysis of Comments and Changes also includes a point we feel is important to highlight here—and that is the difference between parent agreement and parent consent. This difference has been discussed elsewhere in this training package, but each time it comes up, it is worth noting because there is a difference that is often overlooked.

An *agreement* between a parent and a public agency—as is required for either not conducting a three-year reevaluation or for conducting more than one reevaluation of a child in a year—is not the same thing as *parent consent* as defined in §300.9. The Department summarizes the implications of the term "agreement" as it is used in IDEA's reevaluation provisions:

> Rather, an agreement refers to an understanding between a parent and the public agency and does not need to meet the requirements for parental consent in §300.9. (71 Fed. Reg. at 46641)





Additional Points of Interest

The Department discusses the new aspects of reevaluation and how they might play out in reality. We've summarized several relevant points below.

Do parents have to give a reason for requesting a reevaluation of their child? No. As the Department notes:

> Section 300.303(b)...states that a reevaluation may occur if the child's parent or teacher requests a reevaluation. There is no requirement that a reason for the reevaluation be given and we agree that a reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation. (71 Fed. Reg. at 46640)

If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, *may the public agency refuse to conduct the reevaluation of the child?* Yes. As in so many other areas when parents and public agencies disagree, the IDEA provides a process to be followed and options for resolving disputes. In this case:

> [T]he public agency must provide the parents with written notice of the agency's refusal to conduct a reevaluation, consistent with §300.503...that explains, among other things, why the agency refuses to conduct the reevaluation and the parent's right to contest the agency's decision through mediation or a due process hearing. (*Id.*)

May the parent disagree with (and refuse) the public agency's request to reevaluate the child? Yes. As the Department discusses:

> In situations where a public agency believes a reevaluation is necessary, but the parent disagrees and refuses consent for a reevaluation, new §300.300(c)(1)(ii) is clear that the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in §300.300(a)(3). (*Id.*)

Is an Independent Educational Evaluation (IEE) considered a reevaluation? No, it is not. As the Department states:

> An IEE would be considered as a potential source of additional information that the public agency and parent could consider in determining whether the educational or related services needs of the child warrant a reevaluation, but it would not be considered a reevaluation. (71 Fed. Reg. at 46641)

If parents and the public agency agree that a three-year reevaluation is unnecessary, does the agency have to again offer to reevaluate the child next year? No. Of this situation, the Department points out:

> [I]f parents who have waived a three year reevaluation later decide to request an evaluation, they can do so. (*Id.*)

However, this point is also worth noting, with respect to agency responsibility:

> Also, public agencies have a continuing responsibility to request parental consent for a reevaluation if they determine that the child's educational or related services needs warrant a reevaluation. (*Id.*)

And this last point is similarly important:

> It is not necessary to add language clarifying that waiving three-year reevaluations must not be a routine agency policy or practice because the regulations are clear that this is a decision that is made individually for each child by the parent of the child and the public agency. (*Id.*)

Slide 27 What Reevaluation Shares With Initial Evaluation

Starting View & Clicks 1-5

What reevaluation shares with initial evaluation:

- ✓ Its purposes
- ✓ Prior written notice
- ✓ Procedural safeguards notice*
- ✓ Review of existing evaluation data
- ✓ Parent consent

*Upon parent request for an evaluation

Slide loads with the header "What reevaluation shares with initial evaluation"

Click 1—Click 5: Bullets 1-5 appear, one per CLICK.

Clicks 6-10

What reevaluation shares with initial evaluation:

- ✓ Its purposes
- ✓ Prior written notice
- ✓ Procedural safeguards notice*
- ✓ Review of existing evaluation data
- ✓ Parent consent
- ✓ Gathering additional data, if needed
- ✓ Parent involvement in evaluation group
- ✓ Parent involvement in eligibility determination
- ✓ Factors involved in determining eligibility
- ✓ Reporting to parents

*Upon parent request for an evaluation

Click 6—Click 10: Bullets 6-10 appear, one per CLICK.

CLICK AGAIN to advance to next slide.

(discussion on next page)

Slide 27: Background and Discussion

10 Clicks

Slide 27 delves into what reevaluation shares with initial evaluation in terms of its requirements. This provides a good opportunity to review what's been said so far as a way of both solidifying the audience's knowledge about initial evaluation and having them apply this to reevaluation. We discuss here the various elements on the slide, and would suggest that you go through those points, asking participants to summarize what IDEA requires with respect to each and what that means for the process of reevaluation. Correct any erroneous information they might offer and fill in important aspects they don't mention. The summary below is provided to help you guide this discussion and emphasize accuracy. Refer back to earlier slides and discussion sections as necessary.

Purposes

The purposes of initial evaluation were discussed on Slide 3. They are:

- To see if the child is a "child with a disability," as defined by IDEA and the final regulations;
- To gather information that will help determine child's educational needs; and
- To guide decision making about appropriate educational program for the child.

These are also the basic purposes of reevaluation, where the group involved in the evaluation needs to determine:

- "whether the child continues to have such a disability, and the educational needs of the child" [§300.305(a)(2)(i)(B)];
- "[t]he present levels of academic achievement and related developmental needs of the child [§300.305(a)(2)(ii)];
- "whether the child continues to need special education and related services" [§300.305(a)(2) (iii)(B)]; and
- "[w]hether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum" [§300.305(a)(2)(iv)].

Prior Written Notice

As was discussed on Slide 5 with respect to initial evaluation, prior to a reevaluation of a child, the public agency must provide parents with prior written notice that describes its proposed action—in this case, to conduct a reevaluation of a child. All that was said about prior written notice on Slide 5 (and, in more detail, in the module *Introduction to Procedural Safeguards*) applies here—the comprehensiveness of the notice and use of the parent's native language or other mode of communication (as necessary and feasible), for example.

Procedural Safeguards Notice

Also as discussed on Slide 5 with respect to initial referral or parent request for an evaluation, the public agency must provide parents with the procedural safeguards notice. This is a comprehensive written explanation that public agencies must provide to parents to fully inform them of IDEA's procedural safeguards. "Upon initial referral or parent request for evaluation" are two occasions that trigger the provision of the procedural safeguards notice [§300.504(a)(1)].

Review of Existing Evaluation Data

Reevaluation also requires that the "IEP Team and other qualified professionals, as appropriate" review existing evaluation data to determine if enough information already exists to make the determinations they need to make about the child's status as a "child with a disability" and the child's educational needs, or if more data need to be collected. This is readily

apparent in the following provision at §300.305(a):

> (a) *Review of existing evaluation data*. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
>
> (1) Review existing evaluation data on the child, including—

The "including" above has the same meaning as described under Slide 10 where initial evaluation was discussed.

The "decision path" outlined on Slide 13 is also the same for reevaluation. If the group decides that enough data exist to make the determinations they need to make—in other words, that no additional data are needed—then the public agency must notify parents:

- of that determination and the reason for it; and
- that parents have the right to request an assessment of the child.

The agency is not required to conduct the assessment of the child unless the parents request that it does so. [§300.305(d)(2)]

Conversely, if the group determines that more data is necessary—the "yes" path on Slide 13—the public agency must administer such assessments and other evaluation measures as may be needed to produce the data [§300.305(c)].

And, as noted on Slide 12 for initial evaluation, the group may conduct its review of existing evaluation data without a meeting [§300.305(b)].

Parent Consent

Parent consent (see discussion under Slide 5) is also required before a public agency may conduct a reevaluation of a child. The school system may conduct the reevaluation without the parent's informed written consent if it can demonstrate that it has made reasonable efforts to obtain parental consent and the parent has failed to respond. Then the same conditions and considerations apply as described under Slide 7 regarding initial evaluation (e.g., the agency must document its attempts to obtain parent consent, if a parent refuses to provide consent, the agency may, but is not required to, pursue the evaluation through IDEA's due process procedures). This includes the public agency's right to not pursue the reevaluation, if it so chooses, and to not be held in violation of IDEA's evaluation requirements.

As noted on the last slide, however, *consent* is different from the *agreement* that a parent and public agency might reach to not conduct a three-year reevaluation because they believe it unnecessary. Reaching such an agreement does not require parent consent. By the very agreement to not conduct a reevaluation, the need for prior written notice, the procedural safeguards notice, and parent consent are eliminated.

Parent Involvement in Evaluation Group

The same level of parent involvement described under initial evaluation applies in reevaluation. This includes being part of the group that is responsible for the review of existing evaluation data and the opportunity to provide input regarding the child.

Parent Involvement in Eligibility Determination

Not surprisingly, parents have the same right to be a part of any group that makes the eligibility determination as to their child's continued eligibility for special education and related services as a "child with a disability."

Factors Involved in Determining Eligibility

The factors involved in determining a child's continuing eligibility under IDEA following reevaluation are the same as required following initial evaluation. These include the factors listed on Slide 14.

Reporting to Parents

As discussed on Slide 25, public agencies have an obligation to provide parents a copy of the evaluation report and documentation of the results of the eligibility determination at no cost to the parent. The same requirements exist for reevaluation as for initial evaluation. Regardless of what that determination is—yes, the child is eligible, or no, the child isn't—the public agency must provide the parent with these two items:

- a copy of the evaluation report, and
- the documentation of determination of the child's eligibility.

Both of these must be provided at no cost to the parent. [§300.306(a)(2)]

—Space for Notes—

Slide 28 Other Evaluation Provisions

View 1

Other Evaluation Provisions

Evaluation is required before determining a child is no longer a "child with a disability" except—

Slide loads with this view.

Other Evaluation Provisions

Click 1

Evaluation is required before determining a child is no longer a "child with a disability" except—

...when the child's eligibility under Part B ends because:

- ✓ The child graduates from secondary school with a regular diploma; or
- ✓ The child exceeds age eligibility for FAPE under State law.

Click 1: Exception to evaluation before a change in eligibility appears.

CLICK AGAIN to advance to next slide.

(discussion on next page)

1 Click

Slide 28 discusses new provisions of IDEA that will be significant for public agencies, children, and parents alike. Appearing at §300.305(e), in the box below and on page 4 of **Handout C-2**, these provisions detail two exceptions to IDEA's requirement that an evaluation must be conducted before a public agency may determine that the child is no longer "a child with a disability." Such a determination would bring about a change in the child's eligibility for special education and related services and, thus, is important for both the public agency and the child.

IDEA now permits the public agency to *not* conduct a reevaluation before terminating a student's eligibility under IDEA when:

- the student graduates from secondary school with a regular diploma, or
- when the student exceeds the age eligibility for FAPE under State law.

What the Public Agency Must Do

The public agency must provide prior written notice regarding the termination of such children's eligibility, because it is proposing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. [§300.503(a)] The law also expressly requires prior written notice when a student graduates from high school with a regular diploma, as follows:

> (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503. [§300.102(a)(3)(iii)]

This slide does not focus on another obligation of public agencies in these two circumstances (because the next slide *does* focus on it): The public agency must provide the child with a summary of his or her academic achievement and functional performance. This summary must include recommendations on how to assist the child in meeting the child's postsecondary goals.

More will be said about this in the next slide, so you may not want to mention this obligation yet.

New Provisions in IDEA and the Final Regulations: Exceptions to Reevaluation Before a Change in Eligibility

(e) *Evaluations before change in eligibility.*

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

§300.305(e)

Senate Committee Remarks

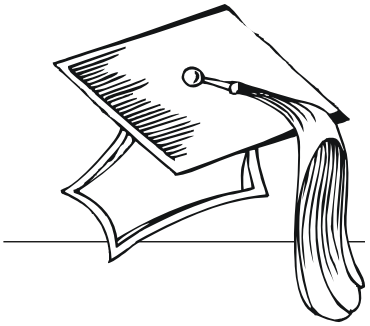
The Senate Committee Report on S. 1248 included an explanation of why these new provisions were included in the reauthorized law. The Committee states:

> *Exit evaluations*
> The committee has heard that local educational agencies feel compelled by current statutory language to conduct a reevaluation of a child with a disability when he or she either graduates from secondary school or ages out of IDEA eligibility. Both parents and schools have complained that a reevaluation seems unnecessary, time-consuming, and costly. The committee agrees. Therefore, the committee has included language in section 614(c)(5)(B), based upon existing Federal education regulations (34 C.F.R. 300.534(c)(2)), stating that a student does not need to be reevaluated before leaving secondary school. [S. Rep. No. 108-185 at 27 (2003)]

Department of Education Analysis

The Department of Education elaborates on the dimensions of a public agency's obligations to reevaluate students who meet the exceptions noted here.

> While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations. (71 Fed. Reg. at 46644)



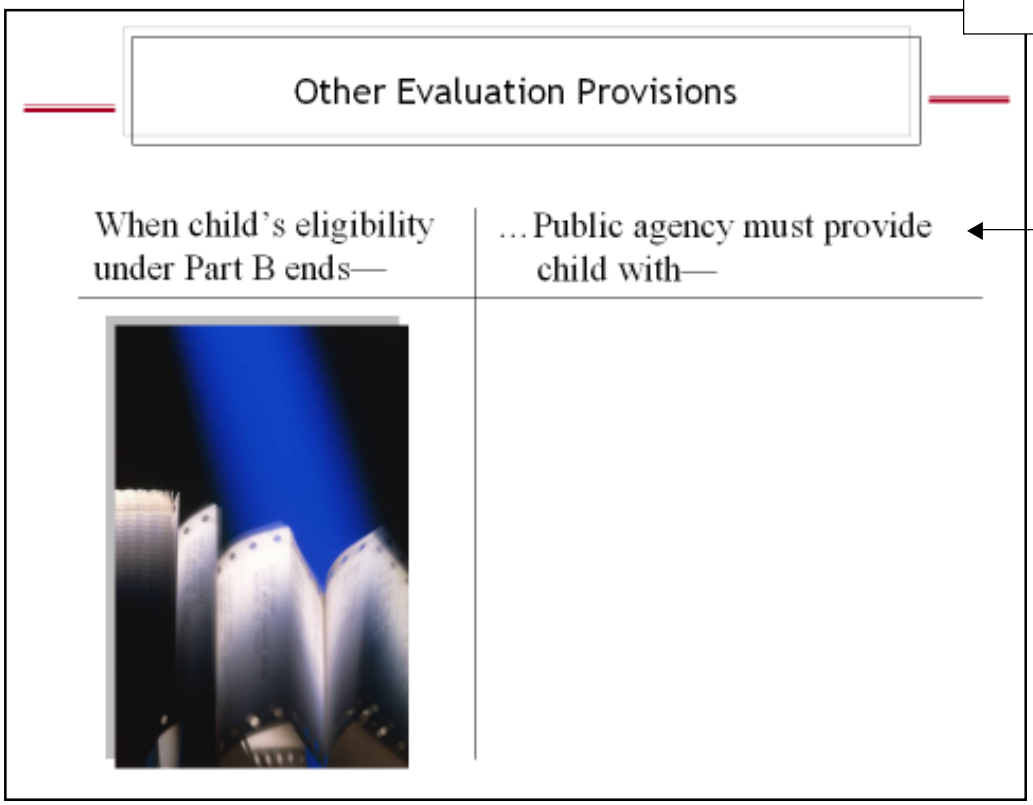
What is Considered a Regular Diploma?

Also relevant to these new provisions is how the final regulations implementing IDEA 2004 define "regular diploma." As stated in §300.102(a)(3)(iv):

> [T]he term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

Slide 29 Other Evaluation Provisions

View 1



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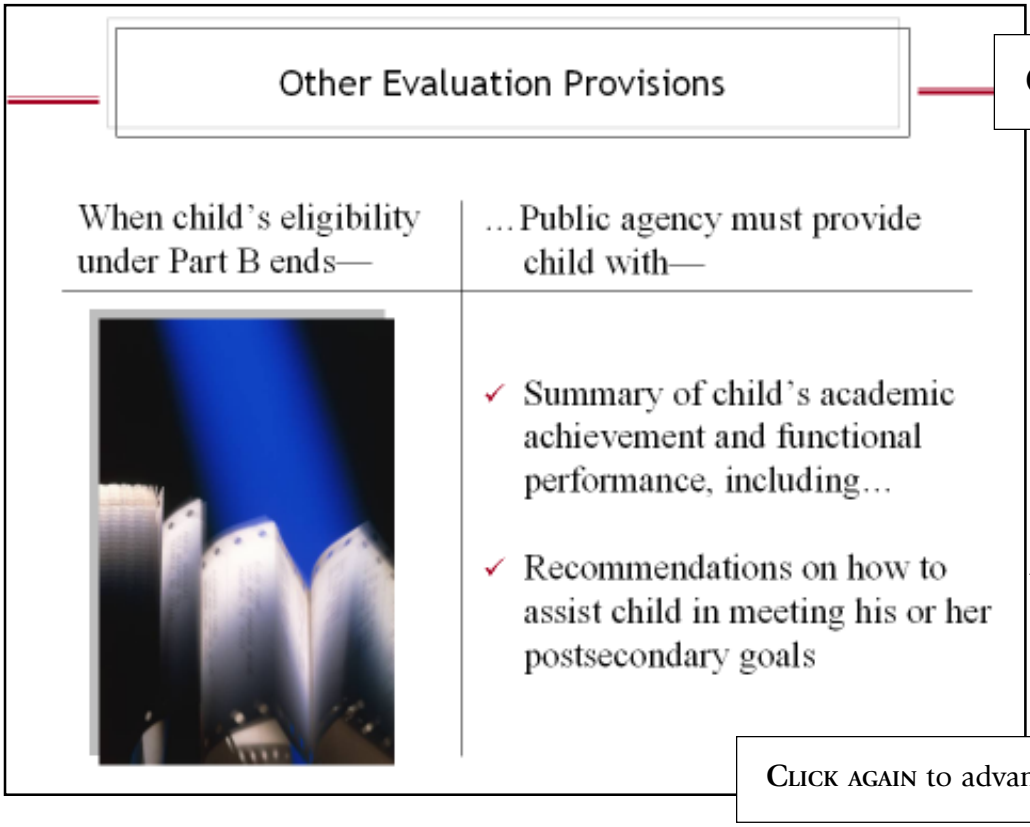
Clicks 1-2



Click 1: Bullet 1 appears.

Click 2: Bullet 2 appears.

CLICK AGAIN to advance to next slide.

Slide 29: Background and Discussion

2 Clicks

Slide 29 continues discussion of the exceptions to reevaluation identified in the last slide—this time focusing upon what the public agency must do for a child whose eligibility terminates under those circumstances. As stated at §300.305(e)(3):

> ...a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Go over the slide and this requirement with your audience.

More Senate Committee Remarks

The Senate Committee Report on S. 1248 also commented on this new provision saying:

New in IDEA!

> The bill also requires local educational agencies to provide a summary of the child's performance. The committee intends for this summary to provide specific, meaningful, and understandable information to the student, the student's family, and any agency, including postsecondary schools, which may provide services to the student upon transition. The committee does not intend that the contents of this summary be subject to any determination of whether a free appropriate public education has been provided. Further, the committee does not expect local educational agencies to conduct any new assessments or evaluations in providing the summary; rather, it should be based upon information the school has already gathered on the child. [S. Rep. No. 108-185 at 27-28 (2003)]

What Might the Summary Contain?

As to the content of this summary, the law specifies only what you see in the provision at the left. Urged by commenters to specify the summary's contents in greater detail, the Department declined, saying:

> The Act does not otherwise specify the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that State and local officials should have the flexibility to determine the appropriate content in a child's summary, based on the child's individual needs and postsecondary goals. (71 Fed. Reg. at 46645)

Slide 30 Round-Up!

Slide loads completely. No clicks necessary except to END the slide show.

CLICK to END the slide show.

Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Depending on how much time you have available for this training session, you can have participants work in small groups to make a quick list of what information they've gleaned from this session, what's different in IDEA 2004, what's the same, or what aspects of initial evaluation or reevaluation are most pertinent to them. Emphasize the local or personal application of the information presented here.