



Division of Special Education/Early Intervention Services
**The 90-Day Written Referral to Evaluation
Timeline**

**Technical
Assistance
Bulletin
1**

December 1999

1. When does the 90-day evaluation timeline begin?

Since July 1, 1999, Code of Maryland Regulation (COMAR) 13A.05.01.04 requires a student with a suspected disability, who may need special education, to be promptly referred in writing to an individualized education program (IEP) team. The IEP team must complete an evaluation and determine if the student is eligible to receive special education and related services within 90-days of receiving a written referral. [COMAR 13A.05.01.06A]

To clarify the regulatory requirement and foster consistent interpretation, Maryland State Department of Education (MSDE) considers that the timeline begins when the public agency receives the written referral. The Individuals with Disabilities Education Act (IDEA) and federal and State regulations require each public agency to have procedures and practices to assure the provision of a free and appropriate public education (FAPE) to students with disabilities eligible for services under Part B of IDEA. [20 USC §§1400; 1412; 34 CFR §§300.1-.2; .7; .121; 125; .220; Education Article §8-401; COMAR 13A.05.01.01-.02; 13A.05.02.01-.02] These procedures and practices describe the actions the public agency will take from the time the referral is received, through a determination of the student's need for special education and related services as a student with a disability. [20 U.S.C. 1413(a); 34 C.F.R. 300.530; COMAR 13A.05.02.13C]

The procedures and practices should describe the actions to occur during the 90-day timeline, including recording the date it receives a written referral. For instance, when the written referral originates within the student's school of attendance, a school intervention team or a classroom teacher usually makes the referral after general education interventions have been attempted. In these cases, the 90-day timeline begins when designated school personnel receive the written referral. After receipt, in accordance with public agency procedures and practices, school personnel who received the referral should promptly forward it to the appropriate IEP team.

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When a written referral originates outside of the public agency the situation is different. Under these circumstances, the public agency may receive a written referral from anyone, including a parent, physician, another public agency, nonpublic agency, psychiatrist, or service provider. The timeline begins when public agency personnel (i.e., reception or clerical staff to administrators), at the school office or central office, receive the written referral that a student is suspected of being disabled and in need of special education services. Again, public agency personnel who receive the referral should promptly forward it to the appropriate IEP team.

In both referral situations, a "date stamp" or notation in a logbook should clearly show the date the 90-day timeline began. Absent either of these, MSDE considers the time period to have begun on the date noted on the written referral.

2. Why does the Maryland regulation state that the timeline begins when the IEP team receives the referral?

Each public agency shall ensure a full and individual evaluation is conducted for each student being considered for special education and related services under Part B of IDEA, to ensure the provision of a free appropriate public education (FAPE). [34 CFR §§300.7; .320; .121; COMAR 13A.05.01.01; .03B(2); .03B(22); .03B(68)]

The 90-day timeline begins when "a student with a suspected disability who may need special education shall be referred, in writing, to an IEP team." [COMAR 13A.05.01.04A; .06A] Beginning the timeline when the written referral is received and recorded ensures the process begins promptly, is consistent with past practice and does not represent a change in MSDE policy. MSDE has always encouraged public agencies to avoid delay and begin the identification, assessment, and evaluation processes, as needed, as soon as possible after receiving a written referral.

3. Does the public agency need written procedures to manage the evaluation process during the 90-day timeline?

Each public agency is required to have procedures and practices in place detailing the identification, assessment and evaluation processes that meet the standards required by the IDEA and federal and State regulations. The public agency also must describe the actions to be implemented and the steps to be taken to accomplish each action. MSDE is responsible to ensure that each public agency implement written procedures that comply with federal and State laws and regulations. [20 U.S.C. 1413(a); 34 C.F.R. 300.220; 34 C.F.R. 300.530; COMAR 13A.05.02.13C].

4. Does the written referral have to be in a specific format?

The MSDE does not mandate a particular format for the written referral. At a minimum, MSDE assumes a public agency would want to know the following information: the name of the student suspected of having a disability; the suspected disability; the name, address, and telephone number of the person making the referral; the date of the referral; and the date the referral is received by the public agency. The IDEA, federal, and State regulations do not mandate format or content of a referral.

A public agency may receive the written referral, by mail or in person, at the student's school of attendance or at its central office. If a public agency accepts FAX and e-mail to conduct its business, the written referral can be received in this manner, triggering the initiation of the 90-day timeline on the date the referral is received by the public agency.

5. What does a public agency need to accomplish within 90-days of receiving a written referral?

Within 90-days of receiving the written referral, the public agency must complete the following activities:

- ✓ An IEP team meeting is scheduled with at least 10-day written notice to the student's parent. [Education Article §8-405(a); 34 CFR §300.345; COMAR 13A.05.01.0B(1)(a); and .07C(2)]
- ✓ The IEP team meets to:
 - Review existing assessment data, assessment and other information from the student's parent, instructional interventions and strategies that have been tried, current classroom-based assessments, and observations by teachers and related service providers.
 - Determine if assessments are needed to get additional data in any of the following areas: academic performance, communication, general intelligence, health, hearing, motor abilities, social, emotional, and behavioral status, and vision.[34 CFR §§300.532; .533(a); COMAR 13A.05.01.04; .04B(2); .05B(1)]
- ✓ If the IEP team requests additional assessments, it must get informed parental consent to conduct them. [34 CFR §300.505] If the IEP team agrees it has sufficient information and does not need additional assessments, the evaluation can be completed. [34 CFR §§300.532; .533(d); COMAR 13A.05.01.04B(3); .06A]
- ✓ If the IEP team determines additional data is needed, assessments are conducted and completed. [34 CFR §§300.532; .533(c); COMAR 13A.05.01.04B(2)]
- ✓ If the student is suspected of having a Specific Learning Disability (SLD), at least one member of the IEP team, other than the student's regular education teacher, shall observe the student's

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Academic performance in the regular classroom setting. If a student suspected of an SLD is less than school age or not in school, an IEP team member shall observe the student in an environment appropriate for a student of that age. [34 CFR §300.542; COMAR 13A.05.01.05B(4)]

- ✓ An assessment report of each assessment procedure administered to a student is written, dated, and signed by the examiner who conducted the assessment and available to the IEP team at the evaluation meeting. Each report describes:
 - The student's performance in each area of suspected disability.
 - Relevant information regarding functional, cognitive, developmental, behavioral, and physical information.
 - Instructional implications for the student's participation in the general curriculum, or for a preschool student, participation in appropriate activities. [34 CFR §300.532; COMAR 13A.05.01.05]
- ✓ The IEP team meets and an evaluation is conducted, carefully considering and documenting information from a variety of sources. The IEP team documents its decision in a written evaluation report. The evaluation report includes:
 - Information provided by the parent.
 - Results of assessment procedures used as a basis for determination.
 - A statement as to whether the assessment procedures were valid for the purpose intended and valid for the student.
 - Whether the student is a student with a disability.
 - The parents must be given a copy of the evaluation report. [34 C.F.R. §§300.531-535; COMAR 13A.05.01.04 - .06]

6. Does the 90-day timeline begin while a general education school team (i.e., SST, CST, or EMT) discusses a student's needs and implements general education instructional interventions?

No. General education interventions used to support a student's instructional needs do not trigger the 90-day timeline. Not all students who have educational difficulties are suspected of having a disability, and the student's school should be encouraged to attempt various general education interventions before referring a student to an IEP team. It is usually helpful for the student's school to communicate with parents in the development of general education interventions.

During the course of the general education interventions, the student may be monitored and data collected relating to the instructional interventions and strategies attempted, results of current classroom-based assessment, and observations by teachers and related service providers, as determined appropriate. The data will be useful if a referral is made and an evaluation is necessary.

7. Is the 90-day timeline calendar days or school days?

Day means, "calendar day unless otherwise noted as a school day or business day." [34 CFR §300.9(a); COMAR 13A.05.01.03B(14)].

The 90-day timeline is noted in calendar days. Thus, the timeline includes weekdays, weekends, school closures, vacations, and holidays. Neither the IDEA nor COMAR limits the evaluation process to only the days when schools are open for instruction. Thus, any time a public agency receives a written referral identifying a student as being suspected of having a disability, and who may need special education, it is imperative that the referral be promptly directed to an IEP team to begin the evaluation process.

[34 CFR §§300.126; .530-.531; COMAR 13A.05.01.04-.06].

8. What if a parent refuses to give the public agency informed consent for assessment procedures?

If the IEP team determines that additional data is needed and assessments are to be conducted, the IEP team must provide the parent with written notice of the proposed activities and obtain informed consent. [COMAR 13A.05.01.12-.13]. If the parent refuses to provide informed consent, the public agency may pursue assessment through mediation or due process to protect the student's rights under the IDEA. [20 USC §1415(e) and (f); 34 CFR §300.505(b); COMAR 13A.05.01.13C(2)]

9. What are the consequences if the public agency misses the 90-day timeline?

MSDE is responsible for ensuring that the federal regulations and State regulations enacting the IDEA '97 are followed by public agencies in Maryland. [20 U.S.C. §1412(a); 34 CFR §300.220; COMAR 13A.05.02.13C] MSDE accomplishes this task through its general oversight responsibilities of public agencies, each public agency's Local Application for Federal Funds, including the submission and approval of local standards, *State Monitoring for Continuous Improvement and Results*, direct technical assistance to public agencies, and the State complaint process. Through these methods, MSDE works collaboratively with each public agency to help it comply with the regulatory requirements. If MSDE determines that the public agency has not complied with the requirements, it can require the public agency to implement improvement strategies to correct the identified issues. [20 USC §1412; 34 CFR §§300.125; .141-. 142; .180-. 250; .660-. 662; Education Article §§8-401; 8-404; COMAR 13A.05.02.04A-B; .07; .10; .13]

For more information, call 410-767-0244
