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TO: AEA Directors of Special Education
LEA Superintendents
AEA Parent Educator Connection
FR: Thomas A. Mayes
DA: October 9, 2008
RE: Time Periods for Reevaluations Under the IDEA

The Department is aware of several persons who have asserted that the IDEA and implementing state and federal regulations require a reevaluation (in addition to initial evaluations) to be completed within sixty days of obtaining parental consent. The Department has reviewed that assertion, as well as the law cited in its support. For the reasons stated below and as a matter of state policy clarification, the Department concludes the assertion has no support in the IDEA or implementing regulations.

The starting point for this discussion is the text of the statute and regulations. *University of Iowa v. Dunbar*, 590 N.W.2d 510 (Iowa 1999). By the clear and unambiguous language of the IDEA [20 U.S.C. § 1414(a)(1)(C)] and implementing regulations [34 C.F.R. § 300.301(c)(1)(i); Iowa Admin. Code r. 281—41.301(3)“a”], the sixty calendar day time period applies only initial evaluations. The laws concerning reevaluation contains no such time period [20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; Iowa Admin. Code r. 281—41.303].

The statutory language is unambiguous and interpretation of it is not necessary or proper. Even if the statute were not clear, any attempt to graft a sixty day time period onto the provisions for reevaluation is fundamentally inconsistent with basic rules of statutory construction. This assertion would (a) eliminate a key term from the law governing initial evaluations [*Freytag v. Commissioner*, 501 U.S. 868 (1991)], while (b) adding a term to the statute that Congress and the United States Department of Education omitted [*Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122 (1989)].

The Department is aware that the persons who assert a sixty-day time period have relied on selected portions of 34 C.F.R. § 300.310(c), which provides that evaluations or reevaluations to determine the existence of specific learning disabilities “must adhere to the timeframes described in §§ 300.301 and 300.303.” That language does not add support to this assertion. This assertion adds nothing to the text of the regulation on reevaluations, which provides a timeframe: reevaluations must occur “at least once every three years” and “not more than once a year,” unless agreed otherwise. There being a specific timeframe in section 300.303, it is absolutely impermissible, under the guise of “applying” section 300.310(c), to add an additional time period. Rather than compelling a conclusion that a sixty-day timeframe applies to reevaluations, section 300.310(c) actually reinforces the opposite conclusion: both initial evaluations and reevaluations must occur within their respective timeframes.

Thank you for your attention to this policy clarification. For further information, please contact the Department.