

Richard F. Daines, M.D.  
*Commissioner*

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Dear Colleague:

Questions have recently been raised regarding the use of prescriptive recommendations and/or external evaluations obtained by parents, from professionals who are not qualified personnel under the Early Intervention Program (EIP), who are not approved by the New York State Department of Health (Department) or who are not under contract with a municipality. This letter provides guidance on the appropriate use of external evaluations related to: (1) determining a child's eligibility for the EIP; and, (2) parent requests for a modification to an existing Individualized Family Services Plan (IFSP).

1. Use of External Evaluations in Determining Eligibility for the EIP.

New York State Public Health Law (PHL) §2544 (2) allows a parent to select an evaluator from the list of approved evaluators to perform the evaluation of the child. Regulations at 10 NYCRR §69-4.5(b)(1) clarify that a contract with the municipality is necessary for a provider to be reimbursed for evaluations and to be included on the list of approved evaluators. Only evaluators approved by the Department as qualified personnel to conduct evaluations under the EIP and who are also under contract with the municipality may conduct multidisciplinary evaluations to determine children's eligibility for the EIP. Even if an "external evaluation" is performed on a child by a licensed professional, such as a physician or psychologist, who is not approved by the Department as qualified personnel under the EIP, or who is not under contract with the municipality, a multidisciplinary evaluation that is performed by an approved evaluator under contract with the municipality is still required to determine eligibility for the EIP. The evaluator may, with parental consent, review, verify and use the findings from such an "external evaluation", provided that it adheres to existing regulations for other evaluations [10 NYCRR §69-4.8(a)(5)]:

1. the procedures used were performed in a manner consistent with Federal and State laws and regulations that relate to the multidisciplinary evaluation; and
2. such findings are used to augment and not replace the multidisciplinary evaluation to determine eligibility; and
3. no indications are present that suggest the need to repeat such procedures; and,
4. where feasible, consultation with the professional(s) who performed such procedures is sought.

Pursuant to Federal and State laws and regulations, a child's eligibility for the EIP must be determined by an evaluator based upon a multidisciplinary evaluation of the child conducted under the EIP. "Evaluator" is defined in PHL §2541(10) as a team of two or more professionals approved pursuant to §2551 to conduct screenings and evaluations. The multidisciplinary evaluation team must include two or more qualified personnel from different disciplines who are trained to utilize appropriate methods and procedures, have sufficient expertise in child development, *and at least one of whom shall be a specialist in the area of the child's suspected delay or disability* [10 NYCRR §69-4.8(a)(3)]. For example, children referred with a possible autism spectrum disorder should have an evaluation team that includes a specialist such as a physician or psychologist.

Proper choice of multidisciplinary team members and use of findings from an external evaluation can facilitate the timeliness of the evaluation process, by reducing the amount of time needed to complete the evaluation, and by reducing the number of involved professionals and the number of evaluations that must be completed. Use of such findings from an external evaluation will also ensure that children do not have to undergo duplicative or unnecessary evaluation procedures.

A multidisciplinary evaluation shall include, with parental consent, a review of pertinent records related to the child's current health status and medical history [10 NYCRR §69-4.8(a)(4)(ii)]. The evaluator, in the course of performing the child's multidisciplinary evaluation, may have findings that conflict with a diagnosis made by an "external evaluator" such as a physician or psychologist. This may be more likely to occur when a child has been referred with a condition that is identified on the basis of behavioral and developmental assessments and, therefore, may be more difficult to diagnose in young children. If the evaluator has reason to believe, based on the child's multidisciplinary evaluation, that further testing and assessment is necessary, the evaluator should ensure that a supplemental evaluation is conducted by a qualified professional, with appropriate licensure and qualifications to confirm the diagnosis, who is under contract with a municipality. For example, if a child has been referred with a diagnosis of autism spectrum disorder rendered by a physician or psychologist, but the findings from the multidisciplinary evaluation conflict with this diagnosis, the child should be referred to an approved and contracted provider who is a licensed physician or psychologist specializing in child development. This evaluation conducted by one of these professionals can be reimbursed as a supplemental evaluation. This is necessary not only to confirm the child's eligibility for the EIP, but to ensure that the multidisciplinary evaluation results accurately describe the child's developmental status and can appropriately inform the IFSP team in making decisions related to the interventions needed to enhance the child's development.

In summary, evaluation results from an "external evaluation" cannot serve as the sole basis for the child's eligibility or for the sole assessment of one of the five developmental domains. Although the evaluator may use findings from an "external evaluation", the findings do not replace the multidisciplinary evaluation or the requirement that the evaluator determine the child's eligibility for the EIP. If a parent disagrees with the determination of the evaluator, the parent must be advised of their due process rights in accordance with PHL §2549(1).

## 2. Parent Requests for Modification of an Existing IFSP.

PHL §2544(11) provides that where a request has been made to review an IFSP at a more frequent interval than six months as required in PHL §2545(7), for the purposes of increasing the frequency or duration of an approved service in the IFSP, including service coordination, the Early Intervention Official (EIO) may require an additional evaluation or partial evaluation at public expense by an approved evaluator other than the current provider of service, with parent consent. In addition, regulations at 10 NYCRR §69-4.8(a)(12)(i) and (ii) state that certain evaluation and assessment procedures may be performed or repeated, and costs reimbursed as a supplemental evaluation pursuant to 10 NYCRR §69-4.30(c)(2)(ii), if deemed necessary and appropriate by the EIO, in conjunction with the annual review of the IFSP or more frequently when there is an observable change in the child's developmental status that indicates the need for modification of the IFSP or change in eligibility status.

If a parent has obtained an "external evaluation" and recommendations and/or prescriptions, and, based on such evaluation, requests an increase in services at a more frequent interval than the six month review of the IFSP, or a modification of the IFSP at any time, the EIO may request a supplemental evaluation of the child by an approved EIP provider under contract with the municipality to determine whether it is appropriate to modify the IFSP based on the developmental needs of the child. If the parent does not consent to a supplemental evaluation, the EIO may decide that there is insufficient documentation of the need to increase EIP services or modify the IFSP as requested by the parent. The EIO is not obligated to authorize an amendment to the IFSP requested by a parent solely on the basis of a prescription or recommendation obtained by an external evaluator. In these instances, the EIO should document his/her request for a supplemental evaluation, and the parent's refusal of the same. In addition, the EIO should ensure that the existing IFSP is appropriate to meet the developmental needs of the child. If the parent does not consent to an independent supplemental evaluation, the EIO should review available information to assess the child's progress and developmental status, such as session notes contained within a child's record and consulting with current service providers, to determine whether any modification to the IFSP may be needed.

I hope this information is helpful. Should you have any questions, please contact the Bureau of Early Intervention at (518) 473-7016.

Sincerely,



Bradley Hutton, M.P.H.  
Director, Bureau of Early Intervention

bcc: EI Unit Managers  
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