

Special Education Eligibility Decisions

Using Information Gathered during Problem Solving

There are multiple state board rules that require school districts to use a problem solving process. They include:

- *General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services* (Rule 6A-6.0331, Florida Administrative Code, [F.A.C.])
- *Exceptional Education Eligibility for Students with Specific Learning Disabilities* (Rule 6A-6.03018, F.A.C.)
- *Exceptional Education Eligibility for Students with Language Impairments and Qualifications and Responsibilities for the Speech-Language Pathologists Providing Language Services* (Rule 6A-6.030121, F.A.C.)
- *Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities* (Rule 6A-6.03016, F.A.C.)

School districts in Florida are required to use a problem solving process that determines how a student responds to scientific, research-based **interventions** when determining whether that student is, or continues to be, eligible for special education. The primary catalyst for these changes came from the 2004 reauthorization of the federal **Individuals with Disabilities Education Act** and the corresponding regulations issued in 2006. Specifically, 34 Code of Federal Regulations (CFR) 300.307 allows a state education agency to adopt criteria to identify students in the category of specific learning disabilities (SLD) using a process that determines how a student responds to scientific, research-based interventions and requires school districts to use the established criteria.

Using information on how a student responds to evidence based **instruction** and intervention when determining whether a student is eligible for special education services represents a significant shift in practices used to identify students with disabilities. The focus shifts away from identifying and diagnosing characteristics that are internal **to** the student and moves to identifying effective instruction and intervention **for** the student. The central question is: “What about the interaction of the curriculum, instruction, learner, and **learning environment** should be altered so that the student will learn?” not: “What about the student is causing the performance discrepancy?” This redefines the target as the determination of those conditions that enable learning, rather than identifying disabling conditions. When using a student’s response to intervention as a basis for special education eligibility decisions, teams ask the following questions:

- What is the discrepancy between the **student’s level of performance** and the **peer** group and/or standard?
- What is the student’s educational progress as measured by rate of improvement?
- What are the instructional needs of the student?

There are many advantages to using **data** collected within a multi-tiered system to support eligibility decisions over more traditional models of disability identification, including the following:

- Student needs are addressed proactively. The monitoring of student progress is early and frequent, which allows for scientifically based instruction and intervention to be delivered as soon as possible.
- The delivery of scientific, research-based instruction and intervention reduces the number of students who require resources through special education due to a mismatch between the instruction, curriculum, environmental conditions, and the student's needs.
- Staff members spend their time focusing on finding what works for students and the conditions under which they are most successful instead of attempting to identify problems that are internal to the student and presumed to be stable across environments and across time.
- Eligibility determinations are based more emphatically on educational need. Those with the greatest need are given the most support.
- Problem solving within the multi-tiered system of supports continues when students receive special education **supports**, and the school team continues to work to provide instruction and interventions that result in the greatest progress for the student. The team continues to make regular and ongoing **instructional decisions** based on data, including when special education resources may no longer be necessary.

Consent and Evaluation Requirements when Determining Eligibility

The integration of a PS-RtI **framework** in State Board of Education (SBE) rules has promoted new ways of thinking about addressing the needs of all students. Because Rule 6A-6.0331(1), Florida Administrative Code (F.A.C.), *General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services*, permits districts to conduct academic and behavioral evaluations when planning **interventions** in the general education setting, districts must clarify when parental consent is required and how to determine completion of the **evaluation** procedures when students are referred for an **evaluation** to determine eligibility for special education.

The following questions and answers are intended to clarify requirements regarding consent and evaluation:

What is an evaluation to determine eligibility for special education and related services?

Many parents and professionals use the term “evaluation” to mean a test, or battery of tests, that are scheduled and administered on a given date. Although an evaluation may include specific **assessment** instruments, in the context of the **Individuals with Disabilities Education Act** and corresponding Florida State Board of Education rules, an evaluation refers to all of the procedures used to determine whether a student is a student with a disability and the nature and extent of the student's special education and related service needs (Rule 6A-6.03411(1)(l), F.A.C.). An evaluation consists of all **relevant** assessment tools and strategies used to collect functional, developmental, and academic information about a student in order to determine specialized **instructional** need. Therefore, an evaluation includes existing **data** collected prior to obtaining parental consent for an evaluation (e.g., classroom performance; **observations**; interviews; screening, progress monitoring, diagnostic assessments; and district and state assessments; private assessments; and parental input) and any additional assessment procedures conducted subsequent to receipt of parental consent.

What constitutes the need to obtain consent per child find?

Parental consent is required whenever the district proposes to conduct assessment procedures for the purpose of determining eligibility for special education and related services. Within an ongoing problem-solving process, the school team monitors student response to intervention and initiates an evaluation if the data suggest that the student needs special education and related services. Circumstances that trigger the district's Child Find obligations include the following situations:

- The school-based team determines that a K-12 student's response to intervention indicates that intensive interventions are effective but require a high level of intensity and resources to sustain growth or performance (empirically established by fading the intervention) beyond that which is accessible through general education resources.
- The school-based team determines that a K-12 student's response to interventions indicates that the student does not make adequate growth* given effective core instruction and intensive, individualized, evidence based interventions.
- The results of a developmental screening for a child age three to kindergarten entry age indicate that the child may be a child with a disability who needs special education and related services.
- A parent requests an evaluation and there is documentation or evidence that the student may be a student with a disability and need special education and related services. If, upon review of the parent's request, the district determines the evaluation is not appropriate, then the parent must be provided with written notice of its refusal to conduct the evaluation.

When a school-based team suspects that a student may be a student with a disability, consent is required for any subsequent evaluation procedures, including the collection of additional progress monitoring data. The district has 30 days to request consent to conduct an evaluation whenever any of the circumstances identified above is present, unless the district and parent agree to a different time frame or in the case of a parent-initiated request.

Is consent required to conduct evaluations or assessment procedures that inform general education interventions?

Parental consent is not required if the sole purpose of obtaining assessment data is to inform instruction or intervention as part of problem solving embedded in general education intervention procedures (Rule 6A-6.0331(1), F.A.C.). The purpose for collecting assessment data, not the assessment procedures, determine when consent is required. Whenever assessment and data collection procedures are conducted for the purpose of determining eligibility, then consent is required (Rule 6A-6.0331(4), F.A.C.).

How does the team determine what an evaluation should include?

The team, including the parent, must review existing data on the student and, based on the review and input from the parents, identify what additional data are needed to determine eligibility. In determining what additional data are needed, the team must ensure that the evaluation identifies all of the student's special education and related service needs as well as

* *Growth is measured relative to state-approved, grade-level benchmarks/standards or relative to behavioral expectations.*

establish the presence of a disability. The evaluation must be full and individual, and comprehensive enough to identify all of the special education needs, requiring that the team address the unique circumstances of each student as well as the characteristics of the suspected disability.

The district is required to provide written notice of its proposal to evaluate the student. Prior written notice must include a description the action proposed (or refused) by the district and an explanation of why the district proposes (or refuses) the action (Rule 6A-6.03311(1)(c), F.A.C.). In the case of an evaluation, the notice should include a description of the evaluation procedures the district proposes to conduct and the rationale for conducting the procedures.

How is the evaluation completion date determined?

The “evaluation completion date” is defined in the Florida’s Database Manual (<http://www.fldoe.org/accountability/data-sys/database-manuals-updates>) as “the date all applicable initial evaluation procedures prescribed in Rules 6A-6.03011 through 6A-6.03019, 6A-6.03020 through 6.03027, and 6A-6.03030, F.A.C., are completed for the purpose of determining a student’s eligibility for each special education program.” For most students, this will be the date of the last standardized norm-referenced assessment, observation, progress monitoring data collection, or other evaluation procedure. However, if the team determines that existing data were sufficient to establish disability and educational need without conducting further evaluation procedures the evaluation completion date is the date that decision was made (for more see the technical assistance for Rule 6A-6.0331, [F.A.C.] at <http://info.fldoe.org/docushare/dsweb/Get/Document-6017/dps-2011-04.pdf>).

After receiving parental consent on the district consent form, the district must complete the evaluation within 60 days; summer vacation, school holidays, and absences beyond eight (8) days are excluded from the 60-day requirement. For specific learning disabilities only, the 60-day evaluation timeline may be extended by mutual agreement between the parent and the team (Rule 6A-6.03018(3)(b), F.A.C. — <https://www.flrules.org/gateway/ruleNo.asp?id=6A-6.03018>).

Consent for Evaluation within the Problem Solving & Response to Instruction/Intervention Framework

Each district and school is responsible for implementing a multi-tiered system of supports to address the needs of ALL learners, including students with disabilities, **English language learners**, and students from impoverished backgrounds. A multi-tiered system begins with the provision of effective core **instruction** and leverages additional resources and **supports** that address barriers to learning and maximize success with state grade-level **standards**. An effective multi-tiered system of supports integrates core instruction, supplemental and intensive interventions, and specially designed instruction using a data-based problem solving process that matches the intensity of support to student needs.

District-Initiated Evaluation

Provide Effective Core Instruction

Schools provide a coordinated continuum of evidenced-based support that begins with effective core instruction for all students. Universal screenings and Early Warning Systems monitor the effectiveness of core instructional practices and identify students needing additional support. In a

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functional multi-tiered system, data-based problem-solving teams use student data to identify the scope, focus, and target of support. For students with the most intense needs, supplemental and intensive interventions may need to occur simultaneously rather than sequentially.

Implement & Monitor Evidence-Based Interventions (EBI)

Develop and implement evidence based supplemental interventions for small groups (Tier 2) and intensive individual interventions (Tier 3) for students needing additional support to succeed in the general education environment. The evidence based interventions (developed by a data-based **problem solving team**) are matched in intensity to student need and integrated/aligned with core curriculum and behavioral expectations. School-based teams monitor student response to intervention and use data from diagnostic assessments to guide intervention development.

Monitor Evidence-Based Interventions (EBI) - Systematic Review of Data (Child Find)

Use data to systemically address district's child find obligation. Group and individual response to intervention data are reviewed periodically and used to determine when to modify/intensify intervention supports. The systematic review of student response to intervention data informs school-based teams when there is reason to suspect that the student may be a student with a disability, and is the most efficient means of meeting the district's child find obligation. The Child Find obligation is triggered when: 1) the student does not make adequate growth given effective core instruction and intensive, individualized evidence based interventions, or 2) the intensive interventions are effective but require an intensity of resources and support that are typically associated with specially designed instruction. The date the school-based team reviews the data and determines that (1) or (2) are present starts the 30-day timeline for requesting parent consent.

Request Consent & Evaluate

The district must request parental consent for an **evaluation** within 30 days of reviewing student response to intervention data that indicates there is reason to suspect that the student may be a student with a disability. Prior to obtaining consent, a group of qualified professionals and the parent review existing data and determine what, if any, additional data are needed. Based on this review and other information, the district proposes an initial evaluation with enough specificity so that the parent understands what they are consenting to.

The district must complete the proposed evaluation within 60 school days. The evaluation must be individual and sufficiently comprehensive to identify all of the student's special education and related service needs. If no additional assessment data is needed, an eligibility staffing can be scheduled or held.

Determine Eligibility

A group of qualified professionals and the parent considers the evaluation data and information from a variety of sources and determines whether the student meets eligibility criteria as a student with a disability AND needs special education. A student may not be determined eligible if the determinant factor is: 1) lack of appropriate instruction in the essential components of reading, 2) lack of instruction in math, 3) limited English proficiency, or 4) does not meet the eligibility criteria specified in State Board rules.

Provide SDI in MTSS

If the student is eligible, the specially designed instruction needed for success in the core curriculum is provided within the context of a multi-tiered system of supports. Eligibility should never result in a decrease in support nor limit access to the general education supports/interventions available to all students. If a student is determined to be not eligible, interventions and supports with general education resources should continue.

Parent-Initiated Evaluation

Parent Requests an Evaluation

When a parent requests an evaluation, the district has 30 days to respond by either: 1) proposing an evaluation and requesting consent, or 2) providing parent with a written notice of refusal to conduct the evaluation.

Obtain Consent

If district agrees to conduct the evaluation, it must request parental consent within 30 days unless the parent and school agree otherwise in writing. Prior to obtaining consent, a group of qualified professionals and the parent review existing data and determine what additional data are needed. Based on the review of data and other information, the district proposes an initial evaluation.

Conduct Evaluation & Implement Evidence-Based Interventions (EBI)

The district must complete the proposed evaluation within 60 days. If there is insufficient data on student response to intensive, individualized interventions, the provision of tiered support and progress monitoring are conducted concurrently with the evaluation. When a parent initiates the evaluation, it may be necessary to implement Tier 2 and Tier 3 simultaneously.

Determine Eligibility

A group of qualified professionals and the parent considers data and information from a variety of sources and determines whether the student meets eligibility criteria as a student with a disability AND needs special education. A student may not be determined eligible if the determinant factor is: 1) lack of appropriate instruction in the essential components of reading, 2) lack of instruction in math, 3) limited English proficiency, or 4) does not meet the eligibility criteria specified in State Board rules.

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Independent Evaluations

As part of an **evaluation** to determine whether a student has a disability and to identify the educational needs of the student, a group of professionals determining eligibility must review existing evaluation **data**, including evaluations and other information parents provide. Independent educational evaluations (IEEs) must meet the district's criteria for conducting an evaluation, including qualifications of the examiner (Rule 6A-6.03311(6), Florida Administrative

Code). If the IEE meets the district’s criteria (including qualifications of the examiner) for conducting an evaluation, the results must be considered in decisions with respect to the provision of a free and appropriate public education (FAPE) to the student. However, the district is not obligated to accept the recommendations of the IEE. The authority to determine the presence of a disability and educational need is placed with the team, which consists of a group of qualified professionals and the parent(s).

It is likely that districts will need to supplement the results of independent educational evaluations obtained by a parent, especially if student response to intervention is an eligibility criterion. The criteria for determining eligibility should be clearly explained to parents and communicated with independent educational evaluators so that independent evaluations can provide **assessment** data **relevant** to determining disability and educational need. If a parent presents an independent evaluation that does not meet the district’s eligibility criteria, then the following should be explained to the parent: (1) the specific eligibility criterion needed and (2) the reason why the independent evaluation does not provide the information needed to determine eligibility.

Connecting Evaluation to Student Achievement

The primary purpose of **assessment** is to gather information that leads to improved academic and/or behavioral outcomes for students. Evaluations conducted in educational settings may include many procedures, both formal and informal, that provide information **relevant** for educational programming and that support the development of effective **interventions**. Educationally relevant evaluations include the assessment of **instruction**, curriculum, and **learning environment**, as well as the assessment of student performance and other student-related variables.

The U.S. Department of Education (USDOE) supports models that focus on assessments that are related to instruction and promote intervention for identified children in the “Analysis of Comments and Changes” section of the Federal Regulations implementing the Individuals with Disabilities Education Act (IDEA) (71 Federal Register [Fed. Reg.] 46647, p. 109) (<https://www.gpo.gov/fdsys/pkg/FR-2006-08-14/pdf/06-6656.pdf#page=109>). The increased emphasis on using information on how a student responds to scientifically based instruction and intervention to support eligibility decisions is coupled with a decreased emphasis on the use of standardized, norm-referenced assessments of cognitive ability and cognitive processing. IDEA makes it clear that the determination of a severe discrepancy between IQ and achievement is not necessary in order to identify a student as having a specific learning disability (SLD).

Additionally, none of the federal regulations addressing special education **evaluation** requirements, including the additional procedures for SLD identification, specify that a particular type of assessment (e.g., assessment of psychological or cognitive processing) must be conducted. Of particular relevance is the USDOE’s response in the “Analysis of Comments and Changes” section of the federal regulations:

“The Department does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD. Further, in many cases, these assessments have not been used to make appropriate intervention decisions.”

71 Fed. Reg. 46651.

When using student response to instruction/intervention **data** to determine whether a student is eligible for special education services as a student with a disability, a variety of sources of information is needed. Routinely collected screening, progress monitoring, and diagnostic/prescriptive assessment data can provide the information necessary for determining a student’s performance discrepancy from the **peer** group and grade-level **standards**. It can also be used to establish a pattern of educational progress over time and identify the educational circumstances under which the student performs best to inform instructional planning.

Eligibility Decisions in Specific Areas: SLD and LI

Making an eligibility decision for a specific special education category, such as specific learning disabilities (SLD) and language impairments (LI), occurs within the context of the problem solving process and subsequent to obtaining consent to evaluate and conduct the comprehensive **evaluation** procedures. When engaging in eligibility decision making, consider the context and order of events as they occur as an ongoing process for the primary purpose of improving the effect of **instruction** for the student, rather than for the purpose of deciding on a categorical placement. If teams maintain focus on the ultimate purpose of increasing the student’s **level of performance** and **rate of progress**, then making an eligibility decision will not impact the ongoing problem solving and monitoring of the students’ response. Instead of interrupting the process or changing the focus of problem solving, the eligibility decision becomes an event for the purpose of matching available resources to provide for students’ instructional needs, thereby improving student outcomes.

The purpose of the Decision-Making Tool for SLD and LI Eligibility is to assist school-based teams in analyzing and evaluating existing **data** to make eligibility decisions. In accordance with Rule 6A-6.03018, Florida Administrative Code (F.A.C.), *Exceptional Education Eligibility for Students with Specific Learning Disabilities*, and Rule 6A-6.030121, F.A.C., *Exceptional Education Eligibility for Students with Language Impairments and Qualifications and Responsibilities for the Speech-Language Pathologists Providing Language Services*, this tool may be used after consent to evaluate has been obtained and the team determines that all of the necessary assessment data have been gathered.

The purpose of the Decision-Making Tool for SLD and LI Eligibility (http://florida-rti.org/gtips/docs/Decision_Making_Tool_SLD_&_LI_Elig.pdf) is **not** solely to document procedural requirements for compliance, rather, it is a tool to guide the team’s analysis. As a secondary purpose, it provides a vehicle for the required documentation. The *Exceptional Student Education (ESE) Compliance Self-Assessment: Processes and Procedures Manual* can be accessed for guidance about documenting compliance components at <http://www.fldoe.org/academics/exceptional-student-edu/monitoring>.

Required: Written Summary of the Group’s Analysis

State Board of Education rules require that, for a student suspected of having a specific learning disability or language impairment, the documentation of the determination of eligibility must include a written summary of the group’s analysis of the **data**. The written summary must incorporate the elements listed in Rule 6A-6.03018 and Rule 6A-6.030121, Florida Administrative Code:

- The basis for making the determination.
- **Observations** establishing the relationship between behavior and academic functioning.
- Educationally relevant medical findings.
- Data confirming the existence of a specific learning disability or language impairment, including performance discrepancy, **rate of progress**, and educational need.
- The group’s determination of the effect of other factors, and evidence that one or more of the factors is not the primary cause of the student’s **difficulty** (resources that can be used to make this determination are found on the next page).
- RtI information documenting the intervention plan, **student centered data** collected, the level of response of instruction/intervention, parent involvement, and the required signatures.

The written summary must reflect the professional opinion of the group responsible for determining eligibility. There is no requirement for any additional formal reports, such as separate **evaluation** reports, but districts may develop procedures for documenting and reporting response to intervention data and the rationale for the eligibility decision. The expectation is that the rationale and/or justification for the team’s decision be clear from the evidence provided and the summary of the team’s analysis of that evidence. There is no requirement specifying the author of the report, as all team members contribute and share responsibility for the analysis.

The elements of the example coversheets for the collection of information summarizing the group’s analysis have been integrated into the Decision-Making Tool for SLD and LI Eligibility (http://florida-rti.org/gtips/docs/Decision_Making_Tool_SLD_&_LI_Elig.pdf). In addition, the required summary of the group’s analysis can be represented by the tool. The first three sections (A–C) of the tool reflect the team’s decision making process. Section D of the tool is a culmination of the team’s process as represented in the preliminary sections (A–C) and includes the requirements for documentation in the written summary of the group’s analysis.

Exclusionary Factors

Documentation of Factors that Affect Level of Performance and Rate of Progress

Visual, Motor, or Hearing Disability — Sensory screenings; medical records; **observation**

Intellectual Disability — Classroom performance; academic skills; language development; adaptive functioning; tests of intellectual functioning

Emotional/Behavioral Disability — Classroom observation; student records; discipline history, emotional/behavioral screenings; behavior rating scales

Cultural Factors — Level of **performance & rate of progress** compared to students from same ethnicity

Environmental or Economic Factors — Level of Performance & Rate of Progress compared to students from similar economic background (free/reduced lunch); situational factors that are student specific; performance of siblings

Limited English Proficiency — English **language proficiency** (oral language, vocabulary, verbal ability); Level of Performance & Rate of Progress compared to **English language learners** with similar exposure to language and instruction

Irregular Pattern of Attendance — Attendance records; number of schools attended; tardies; discipline records (in- and out-of-school suspensions); migrant status & pattern of attendance; % of instructional time lost

Classroom Behavior — Classroom observations; Academic Engaged Time (AET); Office Discipline Referrals (ODR)

Gender — Level of Performance & Rate of Progress compared to students from same gender subgroup; familial or socio-cultural factors that are student specific

Age — Level of Performance & Rate of Progress compared to same-age peers; situational factors that are student specific; birthdate

Ongoing Problem Solving

Eligibility for special education services is not the finish line for problem solving. It is important to note that the four-step problem solving process is systematically applied before, during, and **after** the determination of eligibility. Students identified as eligible for special education services are receiving specially designed **instructional** and/or behavioral **supports** and, as a result, require frequent progress monitoring to ensure the effectiveness of those supports.



In order to make informed **instructional decisions** that are critical for continued success, the four-step process of problem identification, problem analysis, intervention design/implementation, and response to instruction/intervention must be used routinely. The Decision-Making Tool for SLD and LI Eligibility (http://florida-rti.org/gtips/docs/Decision_Making_Tool_SLD_&_LI_Elig.pdf) prompts teams using the tool to plan next steps in the problem solving process, regardless of eligibility status.

Reevaluation Decisions

At least once every three years the district must reevaluate a student with a disability. A reevaluation may occur more often if a parent or a teacher requests it, but may not occur more than once per year unless the parent and the district agree. As the construct of “**evaluation**” has evolved from the administration of a battery of standardized **assessments** to the review and analysis of **data** collected through the PS-RtI process in conjunction with formal assessment data as needed, teams have struggled with reevaluation for students identified as having a Specific Learning Disability (SLD), Emotional/Behavioral Disability (E/BD), or Language Impairment (LI), asking “What does reevaluation look like within the PS-RtI framework?”

Beginning with the 1997 reauthorization of the **Individuals with Disabilities Education Act**, districts have not been required to conduct, for reevaluation, the same comprehensive evaluation required for an initial evaluation and eligibility decision. Instead, as part of any reevaluation, the members of the student’s **individual education plan (IEP)** team, including the parent, review existing evaluation data, including information provided by the parent; current classroom-based, local, and state assessments; ongoing progress monitoring; and **observations**. Because schools are increasingly operating within a data-based, decision making **culture**, a wealth of data about students’ needs are available to the IEP team at any point in time. On the basis of that review, the team identifies what additional data, if any, are required in order to determine the following:

1. Whether the student continues to be a student with a disability and the educational needs of the student.
2. The present levels of academic achievement and functional performance of the student.
3. Whether the student continues to need special education and related services.
4. Whether any additions or modifications to the student’s special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and participate, as appropriate, in the general education curriculum.

With the exception of sensory impairments that require specific formal assessments as part of reevaluation (i.e., deaf or hard-of-hearing, dual-sensory impairment, visual impairment), the IEP team determines what information is needed to answer the questions above and the best way to obtain it. Students continue to benefit from implementation of a multi-tiered system until effective **interventions** have been identified and growth can be maintained. This includes both general education students and students who have been determined eligible for special education services. Data collected by the team or by individual special education or general education teachers to measure the student’s progress toward the annual goals may also inform the reevaluation process, including the decision regarding continuing eligibility and determining the educational needs of the student.

If the IEP team determines that no additional data are needed, the parents must be notified in writing of that decision and the reasons for it and be informed that they have the right to request assessments. If the IEP team determines that additional data are needed, the district must request written, informed consent from the parent to conduct assessments. If the parent does not respond, the district may proceed with the reevaluation but must retain documentation of the attempts to communicate with the parent to obtain consent (e.g., detailed logs of telephone calls or home visits, copies of written notices).