

Independent Educational Evaluations - Basics All Districts Need to Know

What exactly is an independent educational evaluation?

An independent educational evaluation (“IEE”) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 CFR § 300.502 (a)(3)(i)

Are parents always entitled to an IEE?

Yes and no. Yes, parents are always entitled to an IEE; however, they are not always entitled to an IEE *at public expense* (i.e., paid for by the school district or LEA). 34 CFR § 300.502 (a)(1) and (b)(1)-(5)

What do we do if a parent indicates that they would like information on obtaining an IEE, but have not yet asked the school district to pay for it?

The IDEIA regulations state that the school district must upon request provide a parent with information about 1) where an IEE may be obtained, and 2) the school district criteria applicable to IEEs. School district “criteria” refers to the criteria under which an evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, as such must be the same as utilized by the school district (to the extent such is consistent with the parents’ right to an IEE). 34 CFR § 300.502 (a)(2) and (e)(1)

Well, if the district has provided the parent with a list of evaluators that the district believes meets its criteria to perform independent evaluations, can the district at least make a parent choose one from that list?

Nope. The information regarding independent evaluators that districts provide to parents is largely intended to assist a parent obtain an IEE when they might not otherwise have an evaluator in mind, not to limit their choices.

Since the scenario of parents not asking us to pay for their IEE is pretty rare, what should our steps be when a parent wants an IEE at public expense?

Well, aside from following all of the above, when a parent requests an IEE at public expense the school district is basically then limited to only two choices: “without unnecessary delay” either 1) request a due process hearing to show that its own evaluation is appropriate, or 2) provide the IEE at public expense. 34 CFR § 300.502 (b)(2)(i)(ii)

That's it for our options? Can't we just issue a NOREP telling them to pound sand, or at least make them be the ones to take us to hearing if they want to fight about it?

Unfortunately, unlike most requests that a parent may make to a district under the IDEIA - where the district can simply say "no" and put the ball back in the parent's court as to whether they want to request a hearing, when a school district denies a request for an IEE at public expense, the district must either request a due process hearing, or pay for the IEE.

Fine, then at least tell me how long the district has to decide - what does "without unnecessary delay" mean?

Hard to say – the IDEIA doesn't define the term, though the regulations do say that the public agency is permitted to at least ask the parent's reason for rejecting the school's evaluation. However, the IDEIA is also clear that parents cannot be required to provide an explanation, and reiterates that the district's inquiry cannot unreasonably delay the decision to either request a hearing or pay for the IEE. 34 CFR § 300.502 (b)(4) As such, it is very important for school districts to respond within a reasonable time to any request for an IEE at public expense, as a failure to do so (i.e., failure to request a timely hearing), may be interpreted by a hearing officer as a tacit agreement to pay for the parents' IEE.

Is there any difference between a parent seeking payment for an IEE prior to the IEE taking place versus requesting reimbursement for an IEE that has already been obtained?

From a procedural standpoint, it really doesn't matter whether parents are prospectively asking us to pay for an IEE, or whether they are asking the district to reimburse them for an IEE that they already obtained – the district's choice to fight or pay remains the same. Nevertheless, each scenario has its pros and cons. For example, sometimes it is easier to decide whether it makes more sense to fight an IEE reimbursement request if the IEE has already been completed, as the district likely gets to see what it is up against ahead of time relative to its own evaluation. Other times - especially if the district either questions the appropriateness of its own evaluation, or if the cost of the IEE is far less than going to hearing - it is more advantageous if the parent is seeking funds for an IEE that has yet to occur, as the district may be able to suggest an independent evaluator that it trusts, or at least provide input into the IEE, which the district obviously could not if the IEE was already completed.

With respect to a parent seeking an IEE at public expense, can the IEE parameters be negotiated rather than limited only to requesting a hearing or paying for the IEE? If so, are there any guidelines to possibly compromising with a parent on the request?

As opposed to jumping to a hearing that neither party may want, a district and parent can certainly negotiate IEE parameters. Aside from always insisting on getting an unredacted copy of any IEE before paying anything, some guidelines include: 1) as mentioned above, where the IEE has not yet occurred, trying to guide the parent to an independent evaluator that the district trusts; 2) possibly capping the cost of the IEE, or agreeing to split the costs in some way with the parent; and 3) allowing the district to provide input to the independent evaluator so that a more balanced IEE results, as opposed to a one-sided report. Of course if the parties are unable to agree to a compromise reasonably quickly, the district must move forward with either requesting a hearing, or simply paying for the IEE.

Does a parent have to disagree with the district's evaluation as a prerequisite to reimbursement for an IEE at public expense?

Until recently, despite the answer of “yes” appearing to be fairly straightforward under the federal regulations, the answer was cloudier in Pennsylvania, as courts and administrative level fact finders were inconsistent in analyzing how parents' agreement or disagreement with a school's evaluation affected IEE reimbursement claims. However, in March, 2007, the Third Circuit Court of Appeals at least made it clear that if a parent expressly *agrees* with a district's evaluation, they should not be entitled to reimbursement for an IEE. Unfortunately, the Court did not go so far as to rule that express *disagreement* was always necessary to seek reimbursement for an IEE. See, Lauren W. et al v. John A. Deflaminis, et al, (3d. Cir. 2007)

Does a district have to consider the results of all IEEs?

Yes. Irrespective of whether an IEE was obtained at public expense or whether the IEE was at private expense and shared with the district, the district must consider those results with respect to providing FAPE to the student. 34 CFR § 300.502 (c)(1) Remember, however, a school district's obligation is only to “consider” the results of any IEE - there are no requirements as to how much weight the district gives those results, or that the district incorporate any of those results into the child's educational program. This is true even if the IEE was at public expense.

If the district gets an IEE from a parent, whether it is at public expense or not, should we incorporate it into a re-evaluation report?

Not typically. As stated above, a district is only required to consider an IEE. There is no other requirement, including no requirement to incorporate an IEE into a re-evaluation report. Technically, there is nothing preventing a district from treating an IEE as a re-evaluation; however, the district may very well be stuck with the results of that IEE, especially if it did no other assessment of its own. Usually it is better to either not re-open the district's re-valuation and consider the IEE on its own, or limit the inclusion of the IEE in the re-evaluation report to summaries, making it clear that the IEE information that is included was provided by the parent / outside evaluator simply for team consideration.

What prevents a parent from just requesting multiple IEEs? Even if the district wins, won't the cost of multiple hearings be overwhelming?

Certainly the cost of going to hearing is a factor to consider whenever a district is deciding between requesting a hearing to defend its own evaluation or paying for an IEE. However, the IDEIA regulations state that a parent is only entitled to one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Obviously, the parent is free to obtain as many IEEs at their own expense as they wish. 34 CFR § 300.502 (b)(5)

Clients who have questions regarding this article, or any education law matter, should feel free to contact us at 215-345-9111.