

## **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. 34 CFR §300.502 (a)(1) However, parents are not always entitled to an IEE *at public expense* (i.e., paid for by the school district or LEA). 34 CFR § 300.502 (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 IDEA 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).

### **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 make a parent choose one of the evaluators from that list?**

No. The information regarding independent evaluators that districts provide to parents is only intended to assist a parent obtain an IEE when they might not otherwise have an evaluator in mind, not to limit their choice of an evaluator.

### **What should the district’s steps be when a parent requests an IEE at public expense?**

When a parent requests an IEE at public expense the school district is limited to two choices “without unnecessary delay” the district must 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).

**May a district issue a NOREP refusing a parent request for an IEE at public expense or in the alternative, put the parent in the position to request a hearing for an IEE at public expense?**

No. When a school district denies a parental request for an IEE at public expense, the district must either request a due process hearing or pay for the IEE.

**How long does the district have to decide whether to agree to fund an IEE at public expense? What does “without unnecessary delay” mean?**

There is no established time frame. The IDEA doesn't define the term. The regulations state that the public agency is permitted to ask the parent what their reason is for rejecting the school's evaluation. However, the IDEA is also clear that parents are not required to provide an explanation, and reiterates that the district's inquiry cannot unreasonably delay the decision to either request a hearing or agree to fund the IEE. 34 CFR § 300.502 (b)(4) Since there is not a set period, it is very important for districts to promptly respond to any request for an IEE at public expense, as a failure to do so (i.e., failure to request a timely hearing) could 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 being obtained versus requesting reimbursement for an IEE that has already been completed?**

From a procedural standpoint it really doesn't matter whether parents request prospective payment for an IEE or whether they request reimbursement for an IEE they have already obtained – the district's choice to either request a hearing or agree to pay for the IEE remains the same. Each scenario has its pros and cons. For example, sometimes it may make sense to fight an IEE reimbursement request if the IEE has already been completed, as the district may have the opportunity to view the IEE relative to its own evaluation. Other times, particularly if the district questions the appropriateness of its own evaluation or if the IEE would cost the district far less than going to hearing, it very well may be advantageous if the parent is seeking funds for an IEE that has yet to occur, as the district may suggest an independent evaluator that it trusts or provide input into the IEE, which the district would not be able to do if the IEE had already been completed.

**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 compromise with a parent on the IEE request?**

As opposed to jumping to a hearing that neither party may want a district and parent can certainly negotiate IEE parameters. Some guidelines include: 1) insist on an unredacted copy of the IEE prior to payment; 2) suggest an independent evaluator that the district trusts; 3) cap the cost of the IEE or agree to split the cost in some way; and 4) include district input for a balanced IEE. If the parties are unable to agree on a compromise quickly, the district must move forward and either request a hearing or simply agree to fund 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 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 extend the rule to include that express *disagreement* is 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. Regardless of who funds the IEE, the district or the parent, if the IEE is 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 is no requirement about how much weight the district must give the IEE or that the district must incorporate any of the IEE recommendations into the child’s educational program. This is true even if the IEE was at public expense.

**If the district receives an IEE from a parent, whether at public or parent expense, must we incorporate it into a re-evaluation report?**

No. As previously stated, 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. There is nothing to prevent a district from treating an IEE as a re-evaluation. However, if the district accepts the IEE as its re-evaluation, the district may very well be responsible to implement the recommendations of that IEE, especially if the district did not conduct its own evaluation. Typically it is better to independently consider the IEE 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 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.