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“IEEs and Outside Reports: What’s the Difference and How to Respond”

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I. Introduction

A. Defining terms.

1. Independent Education Evaluations (“IEE”).

- a. For purposes of this outline, Independent Education Evaluations (“IEE”) are those evaluations that are being provided at “public expense.” Public expense “means that the [district] either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent...”. O.A.C. 3301-51-05(G)(1)(c)(ii).
- b. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the child’s education. O.A.C. 3301-51-05(G)(1)(c)(i).
- c. A parent has the right to an IEE “if the parent disagrees with an evaluation obtained by the school district of residence...”. O.A.C. 3301-51-05(G)(2)(a).

2. Outside Report.

- a. For purposes of this outline, an Outside Report is an evaluation that is provided by a person who is not employed by the district responsible for the child's education.
- b. A parent can obtain a private evaluation at any time.

B. How long does a district have to respond to an IEE?

- 1. Ohio law requires the decision to be made "without unnecessary delay."
- 2. Guidance permits districts "a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an IEE." Letter to Anonymous, 56 IDELR 175 (OSEP 2010).
- 3. Where a parent's own hesitation causes delay, then schools are unlikely to be found in violation of this requirement. Volusia Cnty. Sch. Dist., 114 LRP 47025 (SEA FL Mar. 24, 2014) (parent's hesitation in choosing an appropriate evaluator caused delay).

II. Common Reasons Parents Request IEEs (or Seek Outside Reports)

- A. Disagreement with evaluation results.
- B. Mistrust.
- C. Sense of control.
- D. Autism Scholarship eligibility.
- E. A desire for a specific assessment to be administered.
- F. Preparing for a Due Process Complaint.

III. School District Criteria For Paying For An IEE

- A. If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.

- B. Several criteria have been found to be appropriate:
1. Reasonable cost criteria, including a cost cap. Seth B. v. Orleans Parish Sch. Bd., 67 IDELR 2 (5th Cir. 2016) (enforcing a \$3,000 cap absent any unique circumstances justifying waiver of the criterion).
 2. Geographic restriction. Utah Schs. for the Deaf and the Blind, 113 LRP 31076 (SEA UT July 31, 2013) (upholding district’s refusal to pay out-of-state travel costs where parents failed to show unique circumstances justified violating the district’s location criteria).
 3. Requirement to provide a report in advance of a meeting. Letter to Anonymous (111 LRP 68370) (2011) (“We believe it would be reasonable for a public agency to establish criteria, including a requirement that it receive the entire evaluation report and not just the scaled scores by a certain time, to give the public agency the opportunity to review the report prior to scheduling an IEP Team meeting to discuss that evaluation”)
- C. In Letter to Petska, 35 IDELR 191 (OSEP 2001), OSEP has advised that several criteria are inappropriate:
1. A requirement that IEE examiners have “recent and extensive experience in public schools”;
 2. Policies stating that it is within the school’s sole judgment to determine whether unique circumstances exist to exceed cost limits; and
 3. Policies providing that districts would not be responsible for travel-related costs.
- D. When enforcing IEE criteria, districts must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet the district’s criteria. Cincinnati Pub. Schs., 115 LRP 27909 (SEA OH May 15, 2015) (finding the district’s geographic and cost criteria reasonable but finding the breadth of the required evaluations and difficulty in assessing the particular student called for waiver of those criteria).
1. Possible unique circumstances could include “complex medical, educational, and/or psychological needs” A.A. by Abarca v. Goleta Unified Sch. Dist. 117 LRP 6332 (C.D. Cal 2017).
 2. A private evaluator’s preexisting relationship with the parent is not a unique circumstance. A.A. by Abarca v. Goleta Unified Sch. Dist. 117 LRP 6332 (C.D. Cal 2017).

- E. Basic (but necessary) questions.
 - 1. Does your district have criteria?
 - 2. If so, are the criteria current?
 - 3. Should the criteria be in policy or procedure?

IV. Responding To An IEE Request

- A. *Step 1:* Ask the parent why an IEE is being requested (Too many districts skip this step.).
 - 1. The district may ask for the parent's reason why the parent objects to the public evaluation.
 - 2. The district may not require the parent to provide an explanation before granting the request.
- B. *Step 2:* Provide parents with required information regarding the IEE process.
 - 1. Information about where an IEE may be obtained; and
 - 2. The district's criteria that the parent must meet for the district to pay for the IEE.
- C. *Step 3:* Decide whether to grant the IEE.
 - 1. Option 1: Agree to the IEE. O.A.C. 3301-51-05(G)(2)(ii)
 - 2. Option 2: Deny the request by filing a due process complaint to show that the evaluation obtained by the parent did not meet district criteria. O.A.C. 3301-51-05(G)(2)(ii).
 - 3. Option 3: Deny the request by filing a due process complaint to show that the district's evaluation is appropriate. O.A.C. 3301-51-05(G)(2)(i).
 - a. The inquiry of whether an evaluation is "appropriate" under IDEA "focuses primarily on procedural compliance, rather than delving into the substance of the evaluation itself." North St. Francois County R-1 School District, Missouri State Educational Agency, 59 IDELR 170, 20-24 (Mo. SEA 2012).

- b. Courts have upheld “technically sound” evaluations even though a parent disagrees with the conclusions and recommendations:

After careful consideration, the court concludes that [the School Psychologist’s] 2014 evaluation met the requirements of IDEA. [The School Psychologist] used a variety of technically sound tools and strategies to gather information regarding [the student]'s speech and language disabilities that she is qualified to administer. Based on the information she gathered, and based on her education, training and experience, [the School Psychologist] reached certain conclusions and made recommendations. although [the student]'s father disagrees with the conclusions and recommendations made, [the District] has met its burden to prove that the evaluation conducted by [the School Psychologist] met the requirements of the law such that Petitioner should not be obligated to fund an Independent Educational Evaluation.

Fulton County Sch. Dist., 115 LRP 51672 Georgia 2015).

- c. For a list of evaluation requirements, see O.A.C. 3301-51-06(E).
- d. Common reasons why districts deny requests.

D. Can the district agree to conduct a re-evaluation or take other action instead of granting an IEE?

- 1. “Case law also permits a local educational agency to briefly attempt to resolve a dispute over a parental request for an independent assessment. If the parties are unable to reach an agreement, then the local educational agency must, without unnecessary delay, fund or file.” Pacific Charter Institute and valley View Charter Prep 121 LRP 8091 (California 2021).
- 2. The IDEA requires the district to respond to a request for an IEE by either funding that IEE or filing for due process. The district cannot avoid choosing between those options by re-evaluating the student. Fullerton Sch. Dist., 58 IDELR 177 (SEA CA 2012) (finding that offering to re-evaluate the student and denying the parents’ IEE request was not a response compliant with the IDEA).
- 3. If a parent rescinds her IEE request, the recession should be confirmed in writing. Pacific Charter Institute and valley View Charter Prep 121 LRP 8091 (California 2021) (“The law does not provide that an acceptable response to an independent assessment request is a vague, unconfirmed, telephonic oral "agreement" [to rescind the request] to which none of the parties actually agreed.”).

V. Considering An IEE

- A. If the parent obtains an IEE at public expense, the school district must consider the results of the evaluation in any decision made with respect to the provision of FAPE to the child. O.A.C. 3301-51-05(G)(3)(a).
- B. “Consider” means:
1. Review the IEE; and
 2. Discuss its results and any disagreement with the results in all placement and programming decisions relating to the provision of FAPE for the child.
- C. “Consider” does not mean “incorporate.” The district has no obligation to implement the evaluation’s recommendations wholesale or even accept the results of the evaluation or its recommendations.
- D. Best practices for “considering” an IEE.
1. Reach out to the evaluator to ask follow-up questions or obtain clarifications about the information contained in the IEE.
 2. If appropriate, invite the evaluator to the IEP meeting.
 - a. Request that the IEE report be provided several school days in advance of the meeting.
 - b. Prepare questions for the evaluator.
 3. Convene the IEP team to consider the IEE.
 4. Fully document the team’s consideration of the recommendations in the IEE, including parent participation in that discussion in a PR-01.
 5. If appropriate, convene the team to meet again to modify the student’s IEP based on the recommendations in the IEE.
- E. An Ohio hearing officer’s analysis of what “considering” looks like in practice:
- “Further, the argument Petitioner makes that not all of the IEEs recommendations were incorporated into Student's programming, and thus is a denial of FAPE, is not supported by the law on this matter. [the District] thoroughly considered the IEEs, and [...], was anticipating considering the IEEs and IEP changes again. Many suggestions made in the IEE reports were already incorporated into the IEP

and Student's educational programming. Some had been tried previously and had not been effective. The IEE reporters may not have been aware of this background. There is no requirement in the law that all recommendations made in an IEE be incorporated into an IEP.”

SE-3786-2019.

VI. Considering An Outside Report

- A. When Outside Reports are provided to the district, it is imperative that they be provided to the proper administrator or IEP team member.
- B. Lost & Found.
 - 1. Student take-home folders.
 - 2. E-mail accounts of administrators (principals, assistant principals).
 - 3. Teacher e-mails or messaging apps.
 - 4. Social media accounts.
 - 5. Enrollment packets.
 - 6. Reports are given to aides at pickup /drop-off.
- C. Considering an Outside Report.
 - 1. If a private evaluation is shared, it “[m]ust be considered by the [district], if it meets district criteria, in any decision made with respect to the provision of [FAPE] to the child.”
 - 2. IDEA suggests that a district may disregard an Outside Report if the private report does not meet the district’s evaluation criteria. However, we do not recommend this approach. An Outside Report should be considered, but the district should evaluate the quality of the report.
 - 3. Common issues with Outside Reports.
 - a. The full report is a one-page letter.
 - b. There is no definitive diagnosis.

Example: The student “has many of the characteristics of ADHD.”

- c. What assessments were used and were they appropriate?
- d. Assessments do not support the Outside Report's conclusion.
- e. The evaluator is not qualified to make a particular recommendation.

Example: A student's medical doctor submits a note recommending a particular assessment and an "IEP evaluation".

- 4. When in doubt, ask the private evaluator additional questions.
- 5. Convene the IEP team to consider the private evaluation.
- 6. Fully document the team's consideration of the recommendations in the private report, including parent participation in a PR-01.
- 7. If appropriate, convene the team to meet again to modify the student's IEP based on the recommendations in the Outside Report.

VII. Next-Level Questions

- A. Is a parent required to provide any notice before obtaining an IEE?

No. However, a district is not required to pay for an IEE that does not meet the district's criteria, unless unique circumstances apply that would justify waiver of the criteria.

- B. The parent has requested reimbursement for an IEE before the district's own evaluation is complete. Is the district required to reimburse the parent?

No. When a parent requests reimbursement for an IEE before the completion of the district's evaluation, the district may deny the request for reimbursement without filing for a due process hearing. Wilton Bd. of Edn., 119 LRP 33239 (SEA CT June 24, 2019); Letter to Zirkel, 52 IDELR 77 (OSEP 2008).

- C. Can a parent request an IEE when she has refused to provide consent when the district offered to assess the child?

No. Ogden School District, 119 LRP 29164 Utah 2019) ("If the local educational agency is not afforded the opportunity to conduct evaluations in-house with which a parent must disagree, parents could demand IEEs in a plethora of domains unchecked and at public expense.")

- D. Is a Functional Behavioral Assessment (“FBA”) an “evaluation” for purposes of a parent’s right to an IEE?

Generally, yes. D.S. v. Trumbull Bd. of Edn., 73 IDELR 228 (D. Conn. 2019) Letter to Christiansen, 48 IDELR 161 (OSEP 2007).

- E. Can parents “fill in the gaps” of a district’s evaluation by requesting an IEE in an area (or areas) the district did not assess?

Yes, but with several caveats:

1. Letter to Baus, 65 IDELR 81 (OSEP 2015).

When a district conducts an evaluation, and the parent disagrees with the evaluation because the child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs.

2. Letter to Carroll, 68 IDELR 279 (OSEP 2016).

If the district’s evaluation fails to assess the child in a particular area in which the parents have not expressed concern previously, the parents still have the right to seek an IEE if they disagree with the evaluation conducted by the district.

- F. Does a parent have a right to obtain an IEE when she disagrees with the district’s evaluation finding the student ineligible for special education and related services under IDEA?

Yes, “[b]ecause the definition of evaluation includes eligibility determinations under IDEA, we believe an IEE can be obtained after an initial evaluation regardless of whether the child was found eligible as a child with a disability, if the parent disagrees with the initial evaluation obtained by the public agency, subject to certain conditions.” Letter to Zirkel 119 LRP 18141 (May 2, 2019).

- G. How many IEEs is a parent entitled to receive?

“A parent is entitled to only one independent educational evaluation at public expense each time the educational agency conducts an evaluation with which the parent disagrees.” O.A.C. 3301-51-05(G)(2)(e).

H. After the IEE, is a district required to fund services provided by the evaluator?

No. If parents want to use the IEE evaluator to serve as an expert or to provide additional services, those services are not provided at district expense. Souderton Area School District, 111 LRP 64076 (2011).

VIII. Conclusion

- A. Review your district's IEE criteria.
- B. Develop a procedure to consider approving IEEs.
- C. Meet with teams to discuss how to consider and critique an IEE.
- D. Ensure Outside Reports are reaching the appropriate personnel and are being considered in a timely manner.