

FREQUENTLY ASKED QUESTIONS

INDEPENDENT EDUCATIONAL EVALUATION (IEE)

Sec. 300.502

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(i) Independent educational evaluation 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; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to Sec. Sec. 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational evaluation 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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Q. What is an Independent Educational Evaluation (IEE)?

A. Under the Individuals with Disabilities Education Act (IDEA), parents have the right to obtain an independent educational evaluation (IEE) for their child if they do not agree with the evaluation the Local Education Agency (LEA) has completed.

Q. What is the purpose of an IEE?

A. The IEE is an evaluation conducted by a qualified examiner who is not employed by the school district or other public agency responsible for the education of the student in question. Because a student's educational program and placement are premised upon the results of his evaluation, the right to obtain an IEE is essential for parents who suspect that the LEA's evaluation has not discerned the true nature of the student's disabilities and resulting needs.

Q. Do parents have a right to obtain an IEE at public expense?

A. A parent has the right to an IEE at public expense, if the parent disagrees with an evaluation obtained by the LEA, subject to the conditions in 34 CFR 300.502 (b)(2)-(4).

Q. What must the LEA do if a parent requests an IEE?

A. Without unnecessary delay, the LEA must respond in one of two ways:

1. Ensure that an IEE is provided at public expense, unless the LEA demonstrates in a hearing pursuant to 34 CFR 300.507 to 34 CFR 300.513 that the evaluation obtained by the parent did not meet agency criteria.
2. File a due process complaint to request a hearing to show that its evaluation is appropriate.

NOTE: *If the LEA files a due process complaint notice to request a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.*

Q. How soon must a LEA respond to a parent's request for an IEE?

A. Under the IDEA it does not state a specific time limit within which a LEA must respond. However, a LEA may not "**unreasonably delay**" either agreeing to fund the IEE or requesting a due process hearing to show that its own evaluation was appropriate. Whether a delay is unreasonable will turn on the facts of the case.

Q: May a parent request an IEE when the parent disagrees with data developed during the Response to Intervention (RTI) process?

A: No. The IEE process is available only when a special education evaluation has been completed. If the evaluation or assessment is not a special education evaluation or assessment, the IEE process is not available at public expense. See *Letter to Zirkel, 52 IDELR 77*.

Q: May a parent request an IEE at public expense when the LEA use RTI data as part of a special education evaluation?

A: Yes

Q: May a parent request an IEE at public expense when a LEA concludes they will not do a special education evaluation because they do not suspect a child has a disability?

A: No. A decision that a LEA does not suspect a child has a disability is not an evaluation. If a parent disagrees with the decision that the parent's child is not suspected of having a disability, the parent may use the IDEA's procedural safeguards. See *Letter to Zirkel, 52 IDELR 77*.

Q: May a parent request an IEE at public expense if the parent disagrees with the results of a functional behavioral assessment (FBA)?

A: Yes, if the FBA is an “evaluation” under the IDEA. See *Letter to Sarzynski*, 49 IDELR 228 (OSEP 2007).

Q: May a parent demand that an IEE be used in lieu of the LEA’s evaluation?

A: No

Q: May a parent have a second IEE if they disagree with the IEE obtained at public expense?

A: No. See *Letter to Thorne*, 16 IDELR 606 (OSEP 1990).

Q: What information must the LEA provide to parents upon request for an IEE?

A: The LEA must provide the parent options for where an IEE can be done and the LEA’s set criteria for IEEs.

Q: What are the set criteria?

A: Set criteria applicable to IEEs, include location of possible IEEs and the qualifications of the IEE examiner.

Q: What criteria are not permissible?

A: OSEP disapproves of criteria that required independent evaluators from being free from any association with private schools or advocacy groups or that required independent evaluators to have “recent and extensive experience in the public schools.” See *Letter to Petska*, 35 IDELR 191 (OSEP 2001).

Other examples of inappropriate criteria are: restrictions on use of age or grade level scores in IEE reports, see *Letter to LoDolce*, 50 IDELR 2007; restrictions on evaluators who have testified on behalf of parents at due process hearings, see *Letter to Petska*, 35 IDELR 191; and licensure requirements for independent evaluators that are higher or different than those for public agency evaluators, see 34 C.F.R. § 300.502(e)(1).

Q: Who selects the independent evaluator?

A: The parent.

Q: May the LEA require parents to select from a list of preferred evaluators?

A: Yes. See *Letter to Anonymous*, 56 IDELR 175 (OSEP 2010). If a LEA maintains such a list, it must allow parents to show circumstances that justify using an evaluator not on the LEA list. If it disagrees with the parent’s requested evaluator, it must file a due process complaint to demonstrate the proposed evaluation would not meet LEA criteria and no exception is required.

Q: May a LEA have a list with only one independent evaluator being available to the parent?

A: No.

Q: May a LEA require a parent to prepay for the IEE and then reimburse the parent?

A: A LEA may permissibly have, as part of its IEE criteria, a requirement that IEEs be funded on a reimbursement basis, unless the application of that criterion would deprive the parent of a right to an IEE. See *Letter to Heldman*, 20 IDELR 621 (OSEP 1993).

Q: May a LEA have a cost limit for IEEs?

A: Yes, a LEA may impose reasonable cost limits for IEEs, but it must allow the parent the opportunity to justify conducting an evaluation that exceeds the LEA's cost limit. See *Letter to Thorne, 16 IDELR 606*. If the parents and LEA disagree on the cost of the IEE, the LEA must file a due process complaint and demonstrate the parent's IEE did not meet the LEA's criteria and no exception is required. See *Letter to Petska, 35 IDELR 191*. If the IEE exceeds the LEA's cost limit without justification, the LEA must pay for the IEE up to the cost limit. See *Letter to Thorne, 16 IDELR 606*.

Q: May a LEA have geographic restrictions for IEEs?

A: Yes, a LEA may impose reasonable geographic limits on independent evaluators, but must allow parents the opportunity to justify obtaining an IEE from outside the geographic area. See *Letter to Anonymous, 56 IDELR 175*.

Q: Must a LEA reimburse a parent's travel costs in obtaining a publicly funded IEE?

A: Yes. See *Letter to Heldman, 20 IDELR 621* (travel expenses, including meals and lodging). This is because IEEs at public expense must be at no cost to the parent, even if the parent could otherwise afford the expense, see *Letter to Heldman, 20 IDELR 621*.

Q. How many times can a parent request an IEE?

A. A parent is entitled to only **one** IEE at public expense **each time the LEA conducts an evaluation** with which the parent disagrees.

Because the right to an IEE at public expense is conditioned on a parent's disagreement with an evaluation conducted by the LEA, parents may forfeit their right to an IEE by failing to give consent for a LEA assessment.

Know, too, that a parent's imposition of restrictions on a LEA evaluation may be viewed as a denial of consent. See *G.J. v. Muscogee County Sch. Dist., 58 IDELR 61 (11th Cir. 2012)*.

Q. Can the LEA ask parents why they want an IEE?

A. A LEA may ask for the parent's reason for objecting to the public evaluation. However, the LEA may not require the parent to provide an explanation.

Q. Must a LEA convene an IEP meeting to review the results of an IEE?

A. Yes. If the IEE relates to decisions about programming, then the IEP team must reconvene to review the results.

Q: May a LEA establish a policy requiring a parent to submit IEE reports to the LEA in advance of an IEP meeting to discuss the IEE?

A: Yes. In *Letter to Anonymous, 58 IDELR 19 (OSEP 2011)*, the United States Department of Education concluded a local policy requiring parents to provide IEEs results ten days before an IEP meeting was consistent with the IDEA.

Q. What actions must the IEP team take to meet requirement to consider the IEE?

A. If parents initiate an IEE that meets the LEA's criteria, the results of that evaluation must be considered by the LEA in any decision made with respect to the provision of FAPE to the student.