

INDEPENDENT EDUCATIONAL EVALUATIONS



Checklist

The parents of a student with a disability have the right under the IDEA to obtain at their own expense an independent educational evaluation or “IEE” of their child. (34 CFR 300.502(a)(1) & (b)(3).) An IEE is an assessment conducted by a qualified examiner not employed by the public agency responsible for the student’s education. (34 CFR 300.502(a)(3)(i).) **Under certain conditions**, parents are entitled to obtain an IEE at public expense (i.e., paid for by a school district). 34 C.F.R. § 300.502(b)(1).

Utilize the following checklist to determine whether a parent’s request for a publicly funded IEE must be granted.

Responding to Request for Publicly Funded IEE:

Required Preconditions:

- The District proposed to assess the student for special education purposes and provided an assessment plan;
- Parent provided written consent for the proposed District assessment;
- The District conducted its assessment;
- Parent disagreed with the assessment (e.g., procedures, protocol, areas addressed, results); and,
- Parent made a timely request for an IEE (typically within 2 years of the District assessment’s completion).

All required preconditions MET. District **must** without unnecessary delay do ONE of the following:

- Provide the IEE at public expense; or
- Request a due process hearing to prove the District’s assessment was appropriate and parent is therefore not entitled to an IEE at public expense.

All required preconditions MET and parent obtained an IEE for which public funding is requested. District **must** without unnecessary delay do ONE of the following:

- Reimburse parent at public expense the cost of the IEE; or
- Request a due process hearing to prove the IEE obtained unreasonably failed to meet District criteria for IEEs (e.g. maximum cost of assessment, geographic location of assessor, or assessor qualifications).

All required preconditions NOT MET. District **must** within a reasonable time do ALL of the following:

- Send Prior Written Notice of the District’s refusal to fund an IEE, outlining the required preconditions and explaining which ones were not met and why; **and**
- Inform Parent of right to obtain an IEE at his or her own expense; **and**
- Send copy of District IEE Criteria/Policies and Procedural Safeguards.

***Always provide timely Prior Written Notice (“PWN”) and a copy of the District’s IEE Criteria/Policies and Procedural Safeguards after an IEE request, irrespective of whether the request is granted or denied. Document good faith efforts to resolve an IEE dispute, including discussions, negotiations, and IEE arrangements.**

Best Practices

Receiving a Request for a Publicly Funded IEE

- > The District may ask a parent why an assessment is being objected to, but the parent need not give a reason, and the District **cannot** insist on a response, or delay taking action, because of a lack of response. (34 CFR 300.502(b)(4).)
- > A parent does not have to give prior written notice before obtaining an IEE and requesting reimbursement.
- > A parent is entitled to only one IEE at public expense per each District evaluation put into issue. (34 CFR 300.502(b)(5); see *Olentangy Local Sch. Dist.*, 115 LRP 9484 (SEA OH 2/06/15) (District properly refused to conduct additional assessments of student who was deemed ineligible for special education after district funded IEE).)

Meeting the Preconditions

- > If a parent requests a publicly funded IEE after the District proposes its own assessment but before the parent has consented or it has been conducted, resend the assessment plan for parent consent *and* send a PWN denying the request based on the required preconditions having not been met.
- > A parent's imposition of restrictions on a District assessment may be viewed as a denial of consent (i.e., District may deny a request for an IEE because required preconditions have not been met). (*Muscogee County Sch. Dist.*, 58 IDELR 61 (11th Cir. 2012); see also *Department of Educ., State of Hawaii*, 63 IDELR 209 (SEA HI 2013).)
- > If a parent requests an IEE to assess an area of suspected need that the District has not yet assessed, send a plan for District assessment, as well as a PWN denying the request based on required preconditions having not been met. But, a parent may receive a publicly funded IEE in the same field of suspected need assessed by the District if a particular area within that field was not appropriately included in the District's assessment. (*Letter to Baus*, 65 IDELR 81 (OSEP 02/23/15); *Torrance Unified Sch. Dist.*, 116 LRP 20201 (SEA CA 2016).)

Taking the Required Action

- > **Timely agree to an IEE request, or file for hearing; do not wait to see if the student files for due process.** (*Los Angeles Unified Sch. Dist.*, 48 IDELR 293 (SEA CA 2007); *Letter to Parker*, 41 IDELR 155 (OSERS 2004).)
- > As a general guideline, file for due process hearing **within 30 days** of receiving a request for a publicly funded IEE; file **within 15 days** of determining an IEE already conducted does not meet District criteria. That said, "*unnecessary delay*" is a fact specific inquiry. Therefore, faster action may be required, or circumstances may justify taking longer to respond (e.g., school vacation; unavailability of staff for assessment review, clarification needed from parent, etc.)
 - **2-month delay reasonable where district sent parents PWN stating its disagreement within 10 days of IEE request.** (*Santa Monica-Malibu Unified Sch. Dist.*, 62 IDELR 279 (SEA CA 2013).)
 - **3-month delay deemed unreasonable.** (*Pajaro Valley USD v. J.S.*, (N.D. Cal. 12/15/06) 47 IDELR 244.)

Conducting an IEE

- > If funding an IEE, the District must act to ensure timely completion. (*Student v. Dixon USD*, OAH 2013090674.)
- > The District may not impose conditions on publicly funded IEEs that it does not require for its own evaluations (e.g., independent evaluators must have same opportunity as District for classroom observations). (34 CFR 300.502(e)(2); *L.M. v. Capistrano Unified Sch. Dist.*, 50 IDELR 181 (9th Cir. 2008), *cert. denied*, 109 LRP 62533, 130 S. Ct. 90 (2009).)
- > If parent elects IEE evaluator not on District's list, conduct the IEE or file for hearing to prove the preferred assessor is inappropriate. (*Letter to Parker*, 41 IDELR 155 (OSERS 2004).) But, keep in mind, a refusal to waive certain IEE criteria in light of extraordinary circumstances may violate the IDEA. (*Dover City Schs.*, 57 IDELR 208 (SEA OH 2011).)

DISCLAIMER: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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