

# Independent Educational Evaluations Checklist

The IDEA provides that under certain conditions the parent of a child with a disability is entitled to obtain an independent education evaluation (“IEE”) at public expense. 34 C.F.R. § 300.502(b)(1). An 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 C.F.R. § 300.502(a)(3)(i).)

## Responding to IEE Requests

- Conditions:**
- Parent consented to District assessment;
  - Parent disagreed with an assessment already conducted by the District (i.e. this means your District, not just any district assessment.);
  - Assessment with which Parent disagreed was completed within the past two years; and
  - Parent did not previously request IEE at District expense on the basis of the same evaluation
- If all conditions NOT MET, District must within a reasonable time:**
- Send Prior Written Notice refusing IEE, outlining why conditions were not met; **and**
  - Inform Parent s/he may obtain an IEE at own expense; **and**
  - Send copy of District IEE Criteria/Policies and Procedural Safeguards.
- If all conditions MET, District must without unnecessary delay:**
- Request a due process hearing to prove its evaluation(s) is appropriate and that an IEE at public expense is not warranted; OR**
  - Agree to provide the IEE at public expense; OR**
  - Demonstrate in a due process hearing that the IEE sought/obtained did not meet District criteria** (i.e. maximum cost of assessment, geographic location of assessor, or qualified assessor.)
    - District must allow Parent an opportunity to demonstrate unique circumstances justifying selection of an evaluator not meeting District criteria.
  - Send Prior Written Notice, copy of District IEE Criteria/Policies and Procedural Safeguards.

## **District Options for Clarifying Reasons for Disagreement**

- District may ask Parent why s/he objects to District evaluation;
- District may **not** require parent to provide an explanation and may **not** unnecessarily delay response to IEE request on this basis. 34 CFR 300.502(b)(4).
- Parent is free to give no reason at all beyond disagreement.

## **IEE at Parent Expense**

- Parent always has the right to obtain an independent educational evaluation of their child at their own expense to be considered by the IEP team. 34 CFR 300.502(a)(1).

## Independent Educational Evaluations – Best Practices

- Provide copy of District IEE Criteria/Policies and Procedural Safeguards after every IEE request.
- Provide timely Prior Written Notice after every IEE request.
- Parent is not entitled to reimbursement for an IEE obtained prior to District completing its own assessment. *C.S. v. Riverside USD* (9th Cir. 2009), unpublished, 52 IDELR 122.
  - Though Parent may request IEE in area not assessed to “fill the gap in the district’s evaluation.” *Letter to Baus*, (OSEP 02/23/15), 65 IDELR 81.
- Parent is not entitled to IEE if did not first consent to assessment by the District.
  - If Parent requests IEE and District has not yet offered to assess student, send an assessment plan with PWN.
  - If Parent requests IEE after District sends an assessment plan, without first consenting to assessment, refuse IEE and resend assessment plan with PWN.
- Take steps to ensure the completion of the IEE in a reasonable amount of time if District agrees to fund it. *Student v. Dixon USD*, OAH 2013090674.
- File for due process hearing, if possible, within 30 days of request for IEE or within 15 days of determining IEE does not meet District criteria, but remember the determination of **unnecessary delay is a fact specific inquiry**.
  - Circumstances may justify a longer for response, such as school vacation(s), staff not available to review the District’s assessment and make an IEE determination, District needs additional information to clarify the specific assessments with which Parent disagrees.
  - Document good faith efforts to resolve an IEE dispute, including discussions, negotiations, and arrangement for an IEE.
  - **2 month delay deemed reasonable.** *J.P v. Ripon USD*, (N.D. Cal. 04/14/09) 52 IDELR 152.
  - **3 month delay deemed unreasonable.** *Pajaro Valley USD v. J.S.*, (N.D. Cal. 12/15/06) 47 IDELR 244.
  - **4 month delay unreasonable.** *Fremont USD v. Student*, OAH Case 200904033.
- **District must timely agree to IEE or file for hearing; it cannot wait to defend its assessment if Student files for hearing.** *Student v. LAUSD*, OAH Case No. 2011020188.
- If Parent elects an IEE evaluator not on the District’s list of evaluators and District refuses to reimburse Parent, file for hearing to prove Parent’s IEE did not meet District criteria. *Letter to Parker*, 41 IDELR 155 (OSERS 2004).

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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