

# CLIENT NEWS BRIEF

## OSEP Opines that Parents may Request Publicly-Funded IEEs for Areas Not Covered by District's Assessment

On February 23, 2015, the Office of Special Education Programs (OSEP) issued a letter indicating that a parent may request a publicly funded independent educational evaluation (IEE) to assess an area that was not covered by the school district's evaluation. Under 34 C.F.R. section 300.502, parents may request a publicly funded IEE if they disagree with a district's assessment of their student. In general, if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either (1) initiate a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense unless the agency can demonstrate at a hearing that the evaluation obtained by the parent did not meet agency criteria. According to OSEP's new letter, when a student has been assessed by a school district, if a parent disagrees with that evaluation because the assessment did not include a *particular area of assessment*, the parent may request an IEE in order to assess the child in that area to determine whether the child has a disability and the nature and extent of services needed.

OSEP's position appears to be contrary to prior analysis in California. The Office of Administrative Hearings (OAH), the agency tasked with hearing disputes of this type, has consistently interpreted state and federal law as not requiring a publicly funded IEE prior to a district's completion of an assessment, including where the area of assessment that parents are requesting has not yet been assessed. OSEP's letter is not legally binding, so it remains to be seen whether this letter will have any effect on OAH's analysis, including requests for independent assessment in more specific areas, such as neuropsychology or central auditory processing, for example.

Note that the situation addressed by OSEP's letter may be distinguished from a situation where a school district has not yet assessed a student. In such cases, OAH has expressly stated that a parent may not request an IEE and OSEP's new informal guidance does not address this situation. Nonetheless, the OSEP letter serves as a good reminder that districts should be sure to include all areas of suspected disability at the outset in offering assessment. It also emphasizes the importance of conducting comprehensive assessments in order to address any areas related to a child's suspected disabilities. Additionally, districts should pay close attention to parental input when planning a student's assessments. It appears that, should OSEP's letter be strictly interpreted, if a comprehensive district assessment is not performed, a district may forego its right to assess in the parent's requested area, leaving a parent-initiated IEE as the only word on the subject.

If you have any questions regarding a parent or student's IEE rights or assessment questions in general, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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