



IEEs at *Your* Expense: What to Consider and How to Respond

by

David B. Hodgins

Thompson & Horton LLP

Phoenix Tower, 3200 Southwest Freeway, Suite 200

Houston, Texas 77027

(713) 554-6745

dhodgins@thompsonhorton.com

General Overview

- An independent educational evaluation (IEE), also referred to as a private evaluation, provides parents with the opportunity to obtain their own evaluation of their child when, among other things, they suspect that the district's evaluation has not discerned the true nature of a student's disabilities and resulting needs.
- Parental entitlement to an IEE is a right guaranteed by the procedural safeguard section of the Individuals with Disabilities Education Act ("IDEA"). The details regarding IEEs are found in the IDEA regulations at 34 C.F.R. § 300.502.
- Pursuant to the IDEA regulations, the parents of a child with a disability have the right to obtain an IEE of the child, subject to certain conditions. 34 C.F.R. § 300.502(a)(1).

Definitions

Independent Educational Evaluation: “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.” 34 C.F.R. § 300.502(a)(3).

Public Expense: 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. 34 C.F.R. § 300.502(a)(3)(ii).

A Parent’s Right to Request an IEE

- A parent has the right to request an IEE if the parent disagrees with an evaluation obtained by the public agency, subject to certain conditions. *Id.* § 300.502(b)(1).
- In order to trigger the parent’s right, the district must have first conducted and completed an evaluation with which the parent disagrees. Therefore, if the district has not performed its own evaluation, a parental request for an IEE is premature.

G.J. v. Muscogee County Sch. Dist., 58 IDELR 61, 668 F.3d 1258 (11th Cir. 2012) – Parents who refused to consent to school district's proposed triennial reevaluation of student's special education services under IDEA had no right to a publicly funded IEE since district had not obtained a reevaluation with which parents disagreed.

Krista P. v. Manhattan Sch. Dist., 255 F. Supp. 2d 873, 889 (N.D. Ill. 2003) – Parents requested an IEE after the district denied their request for a case study evaluation (CSE). The court found the parents did not have a right to an IEE at public expense because the district's refusal to conduct a CSE did not amount to an evaluation. The parents' request for an IEE was not prompted by their dissatisfaction with a specific CSE, but instead came after the district denied their request for a CSE.

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

Seattle Sch. Dist., 52 IDELR 30 (SEA WA 2008) – The district funded an IEE in response to the child's most recent evaluation; therefore, the parent was not entitled to another IEE until the district conducted a new assessment.

When Must a Parent Request an IEE?

The regulations do not address how long a parent has to request an IEE at public expense. A few cases have addressed this issue and found that a parent may forfeit the right to an IEE by waiting too long to request one from the district.

Atlanta Pub. Schs., 51 IDELR 29 (SEA Ga. 2008) – Where the student's last evaluation occurred more than three years before the request for an IEE, the IDEA's 2-year statute of limitations barred her claim seeking an IEE at public expense. To the extent the student disagrees with an evaluation conducted in 2005 and seeks an IEE in 2008 based on that disagreement, the request is untimely, as it was not made within a reasonable period of time after the district conducted its evaluation and is beyond the 2-year statute of limitations.

School District's Duties Subsequent to an IEE Request

Pursuant to the regulations, each school district must provide the following two things after a request for an IEE:

(1) information about where an IEE may be obtained

and

(2) the school district's criteria applicable to an IEE. 34 C.F.R. § 300.502(a)(2).

- A school district may ask for the parent's reason(s) why he/she objects to the public evaluation; however, the school district may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to defend the public evaluation. *Id.* § 300.502(b)(4).
- *Practical Note:* an IEE request should trigger a review of any potential concerns with the District's current evaluation or educational programming for the student. If multiple requests for IEEs occur from different parents, examine any potential patterns that might raise concerns.

Criteria of a Publicly Funded IEE

- 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. *Id.* § 300.502(e)(1).
- Except for these criteria, a public agency may not impose conditions or timelines related to obtaining an IEE at public expense. *Id.* § 300.502(e)(2).

Geographic Criteria

A district may establish criteria that restrict the location of the evaluation, as long as the restrictions are reasonable and parents are given the opportunity to demonstrate unique circumstances justifying their need to exceed the limitations.

Dover City Schools, 57 IDELR 208 (SEA Ohio 2011) – The district was ordered to take remedial action because of the geographical restrictions imposed on the IEE. The district imposed a 30-mile radius restriction on IEEs; however, three of the five evaluators provided on the district's list practiced outside the 30-mile radius.

Cost Criteria

- A district may establish a reasonable maximum dollar amount it will pay / reimburse for an IEE, as long as the parents are given an opportunity to demonstrate extenuating circumstances that would warrant reimbursement or funding in excess of the maximum.
- The maximum established cannot simply be an average of the fees customarily charged in the area by professionals who are qualified to conduct the specific test. Rather, the maximum must be established so that it allows parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees. *Letter to Thorne, 16 IDELR 606 (OSEP 1990)*.

Dover City Schools, 57 IDELR 208 (SEA Ohio 2011) – Remedial action order because the district imposed a \$1,000 cost restriction on IEEs; however, some of the evaluators provided on the district's list charged more than the allotted amount.

Tolar Indep. Sch. Dist., 22 IDELR 174 (SEA Tex. 1994) – The district allowed for a maximum \$1,000 for an IEE even though the prevailing rate in the area was only \$500. The district denied the parent's request for an IEE at the rate of \$4,800. The district's refusal was upheld because the district had established a reasonable cost limitation, and the parent had failed to provide any evidence of a unique circumstance justifying a waiver.

Qualifications of Evaluators

A district may require that independent evaluators meet certain qualifications, as long as the qualifications are the same as those imposed on evaluations conducted by or on behalf of the school district. In other words, the school district cannot impose more rigorous requirements for publicly funded IEEs. See C.F.R. 300.502(e)(1).

School Admin. Dist. #74, 21 IDELR 1021 (SEA ME 1994) – Parents are not entitled to public funding of an IEE performed by an out-of-state practitioner when a state has a requirement for in-state licensure for publicly contracted evaluations, absent extraordinary circumstances.

Humble Sch. Dist., 55 IDELR 150 (SEA Tex. 2010) – Upholding school district's refusal to fund parent's IEE because the evaluator did not meet the district's requirement that he be a licensed school psychologist or educational diagnostician to conduct evaluations on SLD eligibility. The school district did not limit the parent's selection to the lists provided, but did properly require the parent's selection meet its criteria. Furthermore, the parent failed to establish any unique circumstances other than her skepticism of professionals with public school experience. Such skepticism, without more, did not justify her selection.

Preferred List of Qualified Evaluators

- Listing the names and addresses of evaluators who meet the minimum qualifications can be an effective way for school districts to inform parents of where and how they might obtain an IEE.
- A district may provide parents with a list of qualified evaluators pursuant to its right to require an evaluation that matches its own criteria, so long as the list is responsive to the child's needs and the list is exhaustive. *Letter to Anonymous*, 56 IDELR 175 (OSEP 2010).
- If a district fails to list all qualified evaluators within a given geographic area, the parents may choose qualified evaluators who are not listed. *Letter to Young*, 39 IDELR 98 (OSEP 2002).

Classroom Observations by Independent Evaluators

- If a district includes or permits in-class observation as part of a publicly funded evaluation, it must afford the same opportunity for observation for a person performing a privately funded IEE. *Letter to Wessels, 16 IDELR 735* (OSEP 1990).
- A classroom observation by an independent evaluator may be necessary where parents invoke their right to an IEE and the evaluation requires observing the student in the educational environment. *Letter to Mamas, 42 IDELR 10* (OSEP 2004).

School District's Response to IEE Request

If a parent requests an IEE, the school district must legally respond in one of two ways:

- (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or
- (2) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. 34 C.F.R. § 300.503(b)(2).

“Unreasonable Delay”

- o The school district must choose one of these options “without unnecessary delay.” 34 C.F.R. § 300.503(b)(2). Therefore, there is no specific time limit during which a district must exercise one of its choices.
- o What constitutes an “unnecessary delay” depends heavily on the facts and circumstances involved. While the phrase “without unnecessary delay” is not defined, “it permits 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).

Delay Found Reasonable

C.W. v. Capistrano Unified Sch. Dist., 112 LRP 39913 (C.D. Cal. 2012) – The district did not unreasonably delay in taking forty-one (41) days to request a due process hearing. Because the parent did not challenge any specific component of the district’s evaluation report but rather told the IEP team the report was “stupid,” the district had to review the entire report. “Such a detailed review obviously takes time and money . . . [The parent] could have reduced this time and money by identifying her specific objections to the disputed report.”

J.P. Ripon Unified Sch. Dist., 52 IDELR 125, 2009 WL 1034993 (E.D. Cal. 2009) – The district filed its due process request more than two (2) months after the request for an IEE. However, during that time, the parties were communicating regarding the request and did not come to an impasse on the issue until less than three weeks before the school district's filing. Therefore, the district's request was timely.

L.S. & C.S. v. Abington Sch. Dist., 48 IDELR 244 (E.D. Pa. 2007) – The district's 10-week delay in denying request for publicly funded IEE was reasonable in light of the district's efforts to meet with the parents and resolve the issue.

Delay Found Unreasonable

Pajaro Valley Unified Sch. Dist. v. J.S., 47 IDELR 12, 2006 WL 3734289 (N.D. Cal. 2006) – The school district did not file its due process complaint until approximately 11 weeks after the request. At the hearing, the school district offered no explanation for the delay or why the delay was necessary. The court found the school's unexplained and unnecessary delay waived its right to contest the student's request for an IEE at public expense.

Bd. of Educ. of the Monticello Central Sch. Dist., 37 IDELR 143 (SEA N.Y. 2002) – The district's 20-month delay in requesting a due process hearing was found unreasonable. The district argued it acted reasonably because it filed once it realized the parents insisted on the evaluation. However, the SRO determined the district was "well aware" of the parents' request but waited until it was presented with a bill before initiating the hearing.

Advancing Funds for Payment of an IEE

Since the manner of funding IEEs, either as reimbursement or advance funding, is not addressed in Part B of the regulations, it is within the discretion of the district whether to advance funds to a parent. Nonetheless, if the denial of advance funding effectively denies the right to an IEE, a parent is entitled to relief. *Edna Indep. Sch. Dist.*, 21 IDELR 419 (SEA TX 1994). However, if the need for the IEE itself is disputed, IDEA does not require public funding of IEEs based on the parent's inability to privately fund one.

Out-of-Pocket Cost

When an out-of-district IEE is publicly funded, the parents' related travel, meal and lodging expenses must be funded as well, even if the parents are financially able to bear these costs, subject to reasonableness for costs incurred. *Letter to Heldman, 20 IDELR 621 (OSEP 1993)*. The district maintains the right to a due process hearing to challenge the parents' overall entitlement to funding for the IEE based upon location, qualification of the evaluator, or reasonable cost criteria.

Consideration of an IEE

Pursuant to 34 C.F.R. § 300.502(c), if the parent obtains an IEE 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.

What does “Consider” Mean?

Garvey Sch. Dist., 110 LRP 44204 (SEA CA. 2010) – The agency found that the duty to consider the IEE is fairly narrow. It does not obligate a district to accept the evaluator's advice, or even to discuss the evaluation report at the IEP meeting. In this case, the parent failed to show that the team did not consider the IEE. Furthermore, the speech language therapist attending the meeting testified that she developed new speech goals aimed at improving the student's ability to engage in conversation with peers and teachers, and that she did so based on the independent evaluator's specific recommendations. Furthermore, the team facilitator testified that all of the reports submitted and presented by the evaluator were considered by the team.

- The district should document its consideration of an IEE at the IEP team meeting, including how the report was made available to MDT/IEP team members and the forum in which the report was reviewed and discussed by the MDT. To the extent the district disagrees with the IEE, it should document the reasons why the findings and recommendations of the IEE are not accepted. *T.S. ex rel. S.S. v. Board of Educ. of the Town of Ridgefield*, 20 IDELR 889 (2d Cir. 1993).
- The district's obligation to consider the IEE does not translate into a corresponding obligation to accept the IEE or its recommendations. *See, e.g., Garvey Sch. Dist.*, 110 LRP 44204 (SEA Ca. 2010). A district has no obligation to substitute a privately obtained IEE for an evaluation of its own. *Quitman Sch. Dist.*, 111 LRP 18235 (SEA Miss. 2011).

Due Process Hearing

- Any party can present the results of an IEE (either publicly or privately funded) at a hearing on a due process complaint regarding the child. 34 C.F.R. § 300.502(c)(2).
- A hearing officer in a due process hearing can order an IEE, and the cost of such evaluation must be a public expense. *Id.* § 300.502(d).
- If the school district can show through a due process hearing that its evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. *Id.* § 300.502(b)(3).

David's Top 10 Tips

1. REQUIRE THAT ALL IEE REQUESTS BE IN WRITING.
2. "CONSIDER" ALL IEE REQUESTS AND EVALUATE AREAS OF POTENTIAL CONCERN.
3. DETERMINE IF AN IEE REQUEST IS APPROPRIATE (PREMATURE? MULTIPLE REQUESTS IN ONE YEAR, ETC.).
4. ESTABLISH GOOD WRITTEN IEE CRITERIA AND PROVIDE TO PARENT WHEN IEE REQUESTED.
 - GEOGRAPHICAL
 - COST
 - EVALUATOR QUALIFICATION
 - ALLOW PARENT TO DEMONSTRATE UNIQUE CIRCUMSTANCES TO JUSTIFY DEVIATING FROM IEE CRITERIA

5. PRODUCE AND PROVIDE A LIST OF QUALIFIED EVALUATORS AND RELATED LOCATIONS.
6. CAREFULLY EVALUATE WHETHER TO GRANT THE IEE REQUEST OR FILE A DUE PROCESS HEARING AND DEFEND THE DISTRICT'S EVALUATION
7. RESPOND TO ALL IEE REQUESTS WITHOUT "UNNECESSARY OR UNREASONABLE DELAY."
8. DOCUMENT AND PROVIDE PRIOR WRITTEN NOTICE (NOTICE OF REFUSAL) IF THE IEE REQUEST IS DENIED.
9. FULLY CONSIDER ANY COMPLETED IEE OR OTHER OUTSIDE EVALUATION IN AN IEP TEAM MEETING, BUT DO NOT ADOPT WHOLESALE.
10. WHEN IN DOUBT, CONSULT YOUR LEGAL COUNSEL!!

Thank you!

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