

Prescription Pad Diagnoses and Other IEE Issues

by

Jose L. Martín, Attorney at Law
RICHARDS LINDSAY & MARTIN, L.L.P.
13091 Pond Springs Road, Suite 300
Austin, Texas 78729
jose@rlmedlaw.com

Copyright © 2008 RICHARDS LINDSAY & MARTÍN, L.L.P.

The Current Independent Educational Evaluation (IEE) Regulation, with Commentary

34 C.F.R. §300.502 Independent educational evaluation.

(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.**

This provision establishes the basic parent right to request IEEs, subject to the other requirements of this regulation.

- (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.**

District must provide information to parents on where to obtain an IEE, generally in the form of a list of qualified evaluators that otherwise meet district criteria. “This can be an effective way for agencies to inform parents of how and where they may obtain an IEE.” *Letter to Parker*, 41 IDELR 155 (OSEP 2004). The parent, however, is not obligated to choose only from the district’s list, and may select another evaluator not on the list that otherwise meets criteria. OSEP has stated that in large school systems, districts may have difficulty establishing a list that contains every qualified evaluator in the area that meets criteria. “Therefore, when enforcing IEE criteria, the district must allow parents the opportunity to select an evaluator who is not on the list but who meets the criteria set by the public agency.” *Id.*

OSEP has also issued letters indicating that parents must be provided an opportunity to demonstrate that unique circumstances justify selection of an independent evaluator who does not meet

district IEE criteria. *Letter to Young*, 39 IDELR 98 (OSEP 2003); see also 71 Fed. Reg. 46,689-690. This appears to be a rare issue, as no reported cases exist on the issue in recent times.

(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.

This provision sets forth the meaning of “independent.” An independent evaluator must not be employed by the district, although the district must pay for the evaluation or otherwise ensure it is provided at no cost to the parents.

(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.

This important provision establishes that parents have a right to request an IEE if they disagree with an existing district evaluation. Thus, districts have a right to conduct an evaluation first. Then, if parents disagree with that evaluation, they may request an IEE.

Thus, in *Mountain View Sch. Dist.*, 4 ECLPR 667 (SEA Pennsylvania 2005), a review panel overturned a hearing decision awarding reimbursement for an IEE conducted before the parents consented to a school evaluation. Since the IEE was not premised on a disagreement with an existing school evaluation, it could not be publicly funded. See also, *College Elementary Sch. Dist.*, 43 IDELR 103 (SEA California 2005)(\$5,000 IEEs not based on disagreement with school evaluations, since school had not yet completed its own).

But, a parent does not necessarily need to put the school on notice of its disagreement and intent to seek IEE prior to doing so in order to get reimbursement. In *Letter to Thorne*, 16 IDELR 606 (OSEP 1990), OSEP stated that while it may be reasonable for schools to require prior notice before seeking a publicly-funded IEE, schools may not deny funding solely on that basis, if the IEE otherwise

meets criteria and is based on disagreement with a school evaluation. See also, *Warren G. v. Cumberland County Sch. Dist.*, 31 IDELR 27 (3rd Cir. 1999)(parents' failure to express disagreement prior to obtaining IEE does not foreclose reimbursement).

(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.

This provision sets up the possible courses of action available to schools when they receive a request for an IEE premised on a disagreement with an existing district evaluation. Districts can deny the IEE only if they file a request for a hearing, without unnecessary delay, to prove that their evaluation is appropriate. Otherwise, they must grant the IEE and ensure it is provided without unnecessary delay. In light of the cost of due process hearings, most districts in most circumstances grant requests for IEEs. The exception tends to be in situations where the parents have filed for a hearing and the case is proceeding to litigation. In those situations, districts may deny the IEE request and file a counterclaim asserting the appropriateness of their evaluations, as another litigation issue.

Examples of successful denial of IEE—A recent example of a case where the District decided to prove the appropriateness of its own evaluations is *Lawrence Township Bd. of Educ.*, 107 LRP 54072 (SEA New Jersey 2007). There, the parents disagreed with the District evaluations' conclusion that the student was ED, since they believed he should have been diagnosed with Autism. After they requested a series of IEEs, the District filed for a hearing, where it proved that its evaluations met the requirements of the federal regulations. The hearing officer noted that while the parents disagreed with the District evaluators' conclusions, he could find no fault with the evaluations themselves. For other examples, see *DeMerchant v. Springfield Sch. Dist.*, 48 IDELR 181 (D.Vt. 2007); *In re: Student with a Disability*, 47 IDELR 313 (SEA Connecticut 2007)(school evaluation focusing on absences as primary reason for school difficulties found appropriate); *Oregon City Sch. Dist.*, 42 IDELR 155 (SEA Oregon 2004)(District's evaluation of student with Fetal Alcohol Syndrome appropriate, conducted by staff with experience with condition).

Examples of unsuccessful denial—Hearing officers are serious about the need for districts to request hearings without unnecessary delay if they decide to deny IEE requests. In *Los Angeles Unified Sch. Dist.*, 48 IDELR 293 (SEA California 2007), the hearing officer found that a delay of 74 days in requesting a hearing after denying an IEE was unnecessary and unreasonable. It waited until the parents were forced to file a hearing request to assert the appropriateness of its evaluations. For more examples, see *Greenwich Bd. of Educ.*, 46 IDELR 267 (SEA Connecticut 2006)(speech assessment focusing only on articulation not appropriate); *Anaheim City Sch. Dist.*, 42 IDELR 227 (SEA California 2004)(OT evaluation failed to address sensory processing issues for student with self-injurious behaviors).

Another delay scenario—In another case of delay in requesting due process, however, a federal court found that there was no violation of IDEA, since the school was trying to resolve the evaluation dispute amicably with the parents. *L.S. v. Abington Sch. Dist.*, 48 IDELR 244 (E.D.Pa. 2007). Although there was a 10-week delay in seeking due process, the school met with the parent, believed the matter was resolved, and only learned of the parent's request for IEE reimbursement in a later IEP team meeting. Moreover, the parents cancelled a meeting and refused to actively participate in another. In addition, the parents did not allege that the school's procedural violation, if any, impacted the student's right to a FAPE. Finally, the school's evaluation, although less detailed than the parents would have liked, was amply sufficient for the IEP team to develop an IEP. The court thus denied reimbursement for the IEE.

- (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.**

Of course, if the district prevails in its claim that its evaluation was appropriate, the parents may still obtain a private evaluation, but at their 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.**

This provision clarifies that although schools may ask parents why they disagree with the district evaluations, they can neither require

an explanation, not unnecessarily delay making a decision on the request.

- (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.**

Although parents can request an IEE every time the district completes an evaluation of its own, they cannot obtain public funding for more than one IEE per district evaluation with which they disagree.

See, e.g., *Kirkpatrick v. Lenoir Co. Bd. of Educ.*, 30 IDELR 512 (E.D.N.C. 1999)(parent not entitled to payment for series of IEEs since they had already obtained reimbursement for one).

- (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.**

Whether an IEE is funded by the district or the parents, the results must be considered by the district in its educational decision-making, if the IEE meets district criteria. Moreover, an IEE may be presented as evidence in an IDEA hearing.

That a parent-provided private evaluation must be considered, however, does not mean that it trumps other school-based data and evaluations. As a recent example of this point, in *Riverside Unified Sch. Dist.*, 49 IDELR 83 (SEA California 2007), a hearing officer upheld the dismissal from special education of a boy with some unusual behaviors although a private evaluation indicated serious deficits. School-based data indicated the student progressed well and was virtually indistinguishable from his peers.

What does “consider” mean?—OSEP has written that to consider an IEE means that it is reviewed by the IEP team, discussed, and, to the extent that it is not adopted, the team explains the basis for disagreement. *Letter to Anonymous*, 23 IDELR 563 (OSEP 1995). See also, *T.S. v. Bd. of Educ. of the Town of Ridgefield*, 20 IDELR 889 (2nd Cir. 1993)(“consider” means only to reflect on or think about with some degree of care). For an example of an

IEP team's failure to consider an IEE, see *Bd. of Educ. of the Nyack Union Free Sch. Dist.*, 42 IDELR 78 (SEA New York 2004)(IEP inappropriate in part due to failure to consider IEE—reimbursement for private placement granted).

- (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.**

If a hearing officer orders an independent evaluation as part of a hearing decision, the district must pay for the IEE. In other words, hearing officers may not order an independent evaluation and require the parents to pay for it.

- (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.**

Districts may establish qualifications criteria that call for evaluators to comply with licensure and credentials requirements, as long as the requirements do not go as far as to effectively prevent the parents from obtaining an IEE. On this point, USDOE stated that “[c]onsistent with applicable agency criteria, it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same types of evaluations for the agency.” 71 Fed. Reg. 46,689.

Parents don't set qualifications requirements—A parent was unsuccessful in showing that a school vision evaluator was unqualified because she did not hold a doctorate in optometry. *Tustin Unified Sch. Dist.*, 49 IDELR 145 (SEA California 2007). The hearing officer found that the District's vision specialist was sufficiently qualified and properly administered all tests. In addition, she had spent 10 years teaching students with visual impairments, attended several college courses in optometry, trained directly with optometrists, and had conducted hundreds of vision assessments. Thus, the hearing officer denied reimbursement for the parents' IEE.

- (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.

Districts can and should develop and maintain written criteria for IEEs. Those criteria can address the required qualifications of evaluators and limitations on the geographic area where the IEE is to take place. But, the criteria must be the same that the district uses for its own evaluations. Moreover, district criteria cannot be so restrictive as to constructively prevent a parent from obtaining an IEE. Finally, a district cannot impose conditions or timelines related to IEEs in addition to those in its IEE criteria.

In addition, districts are entitled to set reasonable cost limitations on IEEs. The commentary to the 2006 regulation states that “[i]t is the Department's longstanding position that public agencies should not be required to bear the cost of unreasonably expensive IEEs.” 71 Fed.Reg. 46,689. To avoid unreasonable charges for IEEs, the school district may establish maximum allowable charges for specific tests. *Letter to Anonymous*, OSEP (October 9, 2002). That OSEP letter also stated that if an IEE exceeds cost limitations, the school cannot simply pay up the maximum amount—it must request a hearing to demonstrate that unique circumstances justifying departure from the cost criteria were not present. Schools are well-advised, therefore, to discuss cost limitations with parents and include them in written IEE criteria.

Districts should avoid excessive restrictions in their IEE criteria, particularly if irrelevant to evaluators' ability to conduct proper evaluations. OSEP determined, for example, that a district rule prohibiting independent evaluators from associating with private schools or advocacy groups was not legitimately related to their ability to conduct IEEs. *Letter to Petska*, 35 IDELR 191 (OSEP 2001). Likewise, OSEP found that a requirement that evaluators must have “recent and extensive experience in the public schools” was too narrow.

Miscellaneous IEE Questions

Can a school district prevent or severely limit an independent evaluator's observation of the child at school? A California court ruled that a 20-minute limit on an evaluator's at-school observation was inappropriate and contrary to IDEA. *L.M. v. Capistrano Unified Sch. Dist.*, 48 IDELR 189 (C.D.Calif. 2007). It held that the limitation infringed on the parents' opportunity to participate equally in the educational decision-making process, which led to reimbursement for a private placement. A better practice might have been for the school to set reasonable limits on observations, designed to minimize disruption in the classroom while also allowing the evaluator the necessary observational data. See also, *Benjamin G. v. Special Education Hearings Office*, 44 IDELR 7

(Cal.Ct.App. 2005)(parent's expert entitled to observe proposed placement prior to hearing).

But are there any limits to observations at school? The right to independent observations may not be unlimited, and may have to be balanced against valid school concerns. In a Nevada case, a hearing officer found that the district was in its right to cease approval of observations by a parent representative after it concluded the observations were no longer necessary and were becoming disruptive. *In re: Student with a Disability*, 43 IDELR 214 (SEA Nevada 2005). The hearing officer first found that the reports prepared by the parent's representative did not constitute an IEE. Second, he found that the parents' right to have a representative observe the child at school was not absolute, particularly since they had already stretched over two months and the representative was attempting to give a classroom aide instructions.

Can parents reject evaluators on a district's list out-of-hand? A Texas Hearing Officer ruled that parents acted unreasonably when they sought out their own evaluator without first considering the district's listed evaluators. *Alexander v. San Antonio ISD*, 39 IDELR 60 (SEA Texas 2002). Ultimately, the parents selected an insurance-approved evaluator with little or no experience in educational or other assessment of children with autism. As a result, the evaluator failed to obtain or incorporate information about the student's present classroom performance and in-school functioning.

What if an IEE is not educationally useful to the IEP team? The USDOE takes the position that it is appropriate for district IEE criteria to require that IEEs address the educational findings and decisions that the IEP team must make. In its commentary accompanying the 2006 regulations, USDOE wrote the following:

Sec. 300.304(b)(1) provides that an evaluation conducted by a public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under Sec. 300.8, and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child to participate in appropriate activities). These requirements also apply to an IEE conducted by an independent evaluator, since these requirements will be a part of the agency's criteria. 71 Fed. Reg. 46,690.

This point can be important when it comes time to consider an IEE provided by the parent. The USDOE emphasizes that the requirement to consider privately-obtained evaluations, "does not mean that the public agency is compelled to consider the parent-initiated evaluation at private expense in its decision regarding the provision of FAPE, if it does not meet agency criteria." *Id.* Thus, the USDOE takes the position that schools are required to consider IEEs only if they contain the educationally relevant information required by the

agency criteria for its own evaluations.

Practical guidance—Schools may want to revise their IEE criteria to address the issue presented above. The criteria should outline the requirements for IEEs to produce information relevant to the educational findings and tasks presented to the IEP team. Even if a District does not take the ultimate position that it will not consider the private evaluation due to its lack of educationally relevant information, it certainly may decide to give its conclusions less weight in the decision-making process, and may document that position as part of the IEP team documentation. *See attached Sample IEE Criteria.*

How will IEEs work under RtI-based LD evaluations? The USDOE commentary to the 2006 regulations states that “[i]f a parent disagrees with the results of a completed evaluation that includes a review of the results of a child’s response to intervention process, the parent has a right to an IEE at public expense, subject to the conditions in Sec. 300.502(b)(2) through (b)(4). The parent, however, would not have the right to obtain an IEE at public expense before the public agency completes its evaluation simply because the parent disagrees with the public agency’s decision to use data from a child’s response to intervention as part of its evaluation to determine if the child is a child with a disability and the educational needs of the child.” 71 Fed. Reg. 46,689.

In other words, parents may request IEEs if they disagree with a district’s RtI-based evaluation, but cannot request an IEE at school expense before the district conducts its RtI evaluation simply because they have a basic disagreement with RtI-based evaluations. Of course, the more difficult, and perhaps likely, scenario is that parents will disagree with an LD evaluation that determines the child is not IDEA-eligible and obtain an IEE that determines the child is eligible using an LD formulation different than that used by the school evaluation team. For example, let us say that the district evaluation uses an RtI process, while the IEE uses only assessments. Can a school refuse to consider an LD IEE that does not use its chosen method for LD evaluations? Does such an evaluation meet district criteria? Inevitably, hearing officers and courts will be presented with these questions as LD eligibility disputes make their way to hearing.

Should independent evaluators review existing evaluations as part of the IEE? USDOE says yes. “Since the review of existing evaluation data and input from the child’s parents are part of the public agency’s evaluation, they would also be appropriate elements in an IEE.” 71 Fed. Reg. 46,690.

Can a parent whose child was determined ineligible nevertheless request reimbursement for an IEE? Not unless they prevail in the separate claim that the school failed to identify the student, said review panel. *East Penn Sch. Dist.*, 48 IDELR 57 (SEA Pennsylvania 2007). When the panel found that, even if the student had an auditory processing deficit or some other hearing impairment, she performed so far above the norm that the school would have had no reason to suspect IDEA eligibility, it denied reimbursement for the IEE.

Can a parent recover wages lost in having an IEE conducted? A Hearing Officer found that such relief would constitute money damages and rejected the claim. *Nicholas R. v. Houston ISD*, 36 IDELR 168 (SEA Texas 2002).

Is the opinion of a child's treating physician entitled to any special presumptive favor in IDEA cases? In the case of *Christopher M. v. Corpus Christi ISD*, 17 IDELR 990, 983 F.2d 1285 (5th Cir. 1991), the Fifth Circuit declined "to create a presumption in favor of treating physicians." Noting that "school personnel often have greater contact with a handicapped child than does a treating physician," it rejected the physician's opinion that a multiply-disabled student with limited stamina was capable of a full-day program. School staff showed honest concern that the student lacked the physical stamina to withstand a full school day, as evidenced by their daily observations and high number of absences. See also, *A.E. v. Westport Bd. of Educ.*, 46 IDELR 277 (D.Conn. 2006)(although parents' experts more familiar with student, school's experts were more familiar with the educational program in question).

A Modern Private Diagnosis Scenario

How will privately-obtained diagnoses mesh with modern attempts to provide a variety of interventions in regular education before a sp. ed. referral is considered? Will they be viewed as legitimate attempts at intervention or de facto acknowledgement that there is a disability and need for services? The recent case of *Alvin ISD v. A.D.*, 48 IDELR 240 (5th Cir. 2007) addresses these questions in the context of a boy with private diagnoses of ADHD, and hints at the potential confusion to come in failure-to-identify caselaw.

After a full evaluation, an ARDC found a 9th-grade student him ineligible for special education in light of his passing grades, good achievement scores, and passing statewide assessment scores. The parents the obtained diagnoses of ADHD from two physicians that treated the student and recommended special education eligibility. The IEP team reconvened to consider the diagnoses and again concluded that the student did not qualify under IDEA. The parents disagreed and requested an IEE. The District denied the request and sought a hearing to prove the appropriateness of its own evaluation. At the hearing, evidence indicated that the student had behavior problems since the 7th grade. In the 8th grade, he suffered the death of his baby brother, began to abuse alcohol, and developed problems with his stepfather. The District's Student Success Team met with the student and developed an "Academic and Behavior Contract." The behavior problems culminated in a theft of property and robbery of a school-sponsored concession stand, for which the student was recommended for alternative disciplinary placement. Through this time, however, he continued to pass his classes, and teachers testified that he was well-liked by teachers and peers and was making age-appropriate social progress.

The Hearing Officer ruled that the student should have been made eligible under IDEA, in light of his behavior problems and the fact that the school was

essentially providing him a “special” program already, in the form of the “Academic and Behavior Contract.” She held, moreover, that the IEP team improperly rejected the private doctors’ recommendations. The school appealed the decision to federal court, which overturned the decision, finding that although the student was disabled, he was not in need of special education services. The parents appealed the court’s decision.

The Fifth Circuit upheld the lower court findings, holding that although the student’s ADHD may adversely affect his performance, he nevertheless was not in need of special education. It noted that the district court considered a variety of sources, including test scores, teacher recommendations, classroom grades, social progress, and parent input, among others. It did not fault the lower court from placing more weight on the input of school staff than that of private doctors, who made their recommendations based on “faulty information culled from isolated visits, select documents provided by A.D.’s mother, and statements from A.D.’s mother about what she believed was happening in school.” The court also agreed with the District that the student’s behavior problems were derived from his family problems and alcohol issues, rather than his ADHD.

Questions for private evaluations or recommendations submitted to the IEP team

- Does the evaluation report contain an indication that the evaluator’s perspective is one of maximum benefit or maximum potential? If so, the evaluator’s recommendations are likely to exceed the IDEA standard for services.
- Are the sources of data sparse? Few tests? Brief tests? No input sought from school staff? No input from persons other than parents? No effort to request previous evaluations?
- Is the evaluator properly qualified?
- Are the findings well-supported by data or fairly conclusory?
- Does the report go into purely educational decision-making not within the evaluator’s expertise?
- Is the evaluator willing to answer some questions about the assessment?
- Rather than an evaluation, did the parent submit a recommendation by an expert that did not evaluate the child?
- In the case of prescription pad recommendations or diagnoses, will the parent consent to the physician providing additional clarification or information to the school staff? May staff submit questions in writing? Does the physician have a long-term relationship with the child?

**SAMPLE LOCAL CRITERIA FOR INDEPENDENT
EDUCATIONAL EVALUATIONS (IEEs) UNDER THE IDEA**

by Jose L. Martín, Attorney at Law

COPYRIGHT 2008 © RICHARDS LINDSAY & MARTÍN, L.L.P.

**LOCAL CRITERIA FOR INDEPENDENT EDUCATIONAL
EVALUATIONS CONDUCTED AT DISTRICT EXPENSE**

1. Parents of children eligible for services under the Individuals with Disabilities Education Act (IDEA, at 20 U.S.C.A. §1401, et seq.) are entitled to an Independent Educational Evaluation (IEE) of their child if the parent disagrees with an evaluation obtained or conducted by the District. 34 C.F.R. §300.502.
2. An IEE is defined as an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question. 34 C.F.R. §300.502(a)(3)(i).
3. Parents may obtain an IEE at the expense of the school district (public expense) or at their own expense. As stated above, the right to request an IEE at public expense is dependent upon a parent's disagreement with an existing evaluation performed by the District. If the District has not performed its own evaluation in a particular area of disability, the parent does not have a right to an IEE with respect to that area until after the District performs an assessment in that disability area. Only one IEE may be funded for each evaluation obtained by the District. In addition, parents may be asked to explain what areas of the District's assessment they disagree with, but the parents are not required to answer specifically as a pre-condition to District funding of the IEE.
4. If the District wishes to deny a request for a District-funded IEE that otherwise meets District criteria, it must initiate a special education due process hearing within a reasonable time to show that the evaluation objected to by the parent is appropriate and meets the standards of the IDEA. If the final decision of the proceeding is that the district evaluation is appropriate, the parents still have a right to an IEE, but not at district expense. 34 C.F.R. §300.502(b)(2)(i) & (b)(3).
5. An IEE, whether funded by the parents or the District, must be considered by the IEP team in any decision made with respect to the provision of a free appropriate public education to the child, and may be presented as evidence at a special education due process hearing regarding that child. 34 C.F.R. §300.502(c)(1). The fact that an IEP team reviews and considers an IEE, however, does not automatically render the District liable for the costs of such evaluation.

6. If a special education hearing officer requests an IEE as part of a hearing, the evaluation must be funded by the school district. 34 C.F.R. §300.502(d).
7. A reasonable time after the request for a district-funded IEE is received, and to assist the parents in obtaining an IEE, the District will provide the parents with a list of professionals qualified to perform the IEE, and who otherwise meet District criteria. Parents, however, do not have to choose any of the listed professionals. If they choose to have the IEE performed by a professional outside the district-approved list, the criteria specified below in paragraph 8 will apply. In such cases, parents may want to inquire with the District special education department to ensure that the evaluator chosen by the parent meets District criteria. The District will undertake arrangements for the IEE, such as contracting with the evaluator, verifying compliance with criteria, and performing payment.
8. When an IEE is funded by the District, the criteria under which the evaluation is obtained must be the same as the criteria that the District uses when it initiates an evaluation itself. 34 C.F.R. §300.502(e). The following criteria shall be applied to parent-requested IEEs performed at District expense:
 - a. The District limits the travel distance to obtain an IEE to the general local geographic area (not more than ___ miles from the District) where the District obtains its evaluations;

(OR)

The district limits the travel distance to obtain an IEE to the general local geographic area within which the District obtains its evaluations (no further than _____ or _____ {list specific cities});
 - b. The district will only pay a reasonably comparable rate for IEEs, although the IEE can be more costly than a comparable District evaluation (but not more than ___% above the average cost of comparable District-initiated evaluations);
 - c. The qualifications of the evaluators chosen to perform IEEs must comport with the qualifications required of evaluators chosen by the District for District-initiated evaluations, in accordance with applicable Federal regulations, state laws, and state regulations.
 - d. The District requires that IEEs use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child has a disability under the IDEA, and the content of the child's IEP, including information related to enabling the child to be

involved in and progress in the general education curriculum (or for a preschool child to participate in appropriate activities).

- e. Since the District reviews existing evaluation data as part of its evaluation process, independent evaluators will also be expected to review existing evaluation data as part of the IEE. The District will thus request parental consent to provide such evaluation data to the independent evaluator as part of the IEE process.
9. If a parent obtains an IEE that does not comply with the above criteria, the district may refuse to reimburse the parent for the costs of the IEE. This result may be avoided if the parent contacts the district prior to obtaining an IEE, and allows the district to undertake the necessary arrangements to perform the IEE in accordance with these criteria.
10. The District will fund an IEE that does not comply with the criteria set forth above only if the parent demonstrates that extraordinary or unique circumstances are present to warrant a departure from District criteria. The District shall make a decision in such situations on a case-by-case basis, in light of the child's existing evaluation data and other relevant information.
11. If approved, payment for the evaluation will be made directly to the independent evaluator, who must agree to provide an original typed report directly to the District, with a copy provided to the parents. The District is not required to request parental consent for the independent evaluator to provide the evaluation report directly to the District. Assessment protocols must be made available for District review, if requested, and the report must contain original signatures, as well as the titles of all assessment personnel involved in the evaluation. The report must also comply with applicable requirements of state and Federal regulations with respect to evaluations (the District will provide assistance with these matters, as necessary). An agreement by an independent evaluator to perform an IEE obligates the evaluator to comply with these requirements, which shall be communicated to the evaluator prior to the IEE appointment date.
12. District funding of an IEE may also include reasonable related costs (such as transportation costs at the District rate), upon approval of the District. If necessary, the District may provide funds for these expenses prior to the IEE appointment(s), or the District can reimburse these expenses after the appointment(s).
13. A District agreement to waive a portion of the above requirements or criteria in any particular case should not be interpreted to mean that the District would not impose that requirement or criterion in other or subsequent cases.

14. If parents have a question regarding the above criteria, or otherwise need assistance in obtaining an IEE, they may contact the following staffperson:
_____ at _____.