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## INDEPENDENT EDUCATIONAL EVALUATIONS: THE BASICS ALL SCHOOL DISTRICTS NEED TO KNOW

### What exactly is an independent educational evaluation?

There really are two types of independent educational evaluations, which unfortunately are both commonly referred to by the same acronym, IEE. As used here, “IEE” will refer to both types unless specified otherwise.

There is an “independent educational evaluation at public expense,” which may be the type most commonly thought-of: the one the school district pays-for. This one will be referred to as an “IEE at public expense.”

The other is an “independent educational evaluation,” which may better be called a private evaluation as it is arranged by and paid by parents (or at least not by the school district), and will be referred to a “private IEE.”

In either case, an IEE is 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).

### Are parents always entitled to an IEE?

Yes and no. Yes, parents are always entitled to a private IEE. 34 C.F.R. § 300.502(a)(1). No, parents are not always entitled to an IEE at public expense. 34 C.F.R. § 300.502 (b)(1)-(5). Parents can request an IEE at public expense, and the school district can allow the request or deny the request and go to a hearing to defend its decision.

### What do we do if a parent wants information on obtaining an IEE, but have not yet asked the school district to pay for it?

The school district must, upon request, provide a parent with information about 1) where an IEE may be obtained; and 2) the school district criteria applicable to IEEs. School district “criteria” refers to the conditions under which an evaluation is obtained, including the location of the evaluation and the qualifications of the examiner. The IEE criteria must be the same that the school district applies to its own evaluations, to the extent such is consistent with the parents’ right to an IEE. 34 C.F.R. § 300.502 (a)(2) and (e)(1).

The district must provide a list of evaluators to the parent; can the district make a parent choose from that list?

No. The information regarding independent evaluators that school districts provide to parents is only intended to assist the parent with obtaining an IEE when they might not otherwise have an evaluator in mind. The list is not to limit parental choice of an evaluator.

### What steps should the district take when a parent requests an IEE at public expense?

When a parent requests an IEE at public expense, the school district is limited to two choices. The school district must, “without unnecessary delay,” either: 1) deny the request and seek a due process hearing to show that its own evaluation is appropriate; or 2) allow the request to provide an IEE at public expense. 34 C.F.R. § 300.502 (b)(2)(i)(ii).

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**May a district issue a NOREP refusing a parent request for an IEE at public expense or otherwise make the parent request a hearing for an IEE at public expense?**

No. When a school district denies a parental request for an IEE at public expense, the district must either request a due process hearing or pay for the IEE.

**How long does the district have to decide whether to agree to an IEE at public expense?**

There is no established time frame. The federal regulations say only that the school district needs to decide “without unnecessary delay,” a phrase that the regulations do not define. The regulations state that the public agency is permitted to ask the parent what their reason is for rejecting the school’s evaluation. However, the IDEA is also clear that parents are not required to provide an explanation, and reiterates that the school district’s inquiry cannot unreasonably delay the decision. 34 C.F.R. § 300.502(b)(4). Since there is no set period, it is very important for school districts to promptly respond to any request for an IEE at public expense, as a failure to do so could be interpreted by a hearing officer as a tacit agreement to pay for the parents’ IEE. But each circumstance is case-specific. See *L.S. v. Abington Sch. Dist.*, Civ. A. 06-5172, 2007 WL 2851268 (E.D. Pa. Sept. 28, 2007) (discussing cases; finding six week delay not unreasonable on the specific facts presented). Ten days to two weeks is probably a safe (but still uncertain) window.

**Is there any difference between a parent seeking preapproval for an IEE at public expense versus requesting reimbursement for a completed private IEE?**

Yes. If parents never ask the school district for an IEE at public expense and then want to be reimbursed for a private IEE, the school district is not forced into the regulatory position of allowing or denying an IEE at public expense. Rather, the regulations say the school district need only consider the private IEE. 34 C.F.R. § 300.502 (c). You may agree to reimburse some or all of the costs, but procedurally you do not need to seek a hearing.

**Can the IEE terms and conditions be negotiated instead of going to a hearing and just paying? If so, are there any guidelines?**

As opposed to jumping to a hearing that neither party may want, a school district and parent can certainly negotiate IEE parameters. Some guidelines include: 1) insist on an unredacted copy of the IEE report prior to payment; 2) suggest an independent evaluator that the school district trusts; 3) cap the cost of the IEE or agree to split the cost in some way; and 4) include school district input for a balanced IEE report. If the parties are unable to agree on a compromise quickly, the school district must move forward and either request a hearing or simply agree to fund the IEE.

**Does a parent have to disagree with the district’s evaluation as a prerequisite to reimbursement for an IEE at public expense?**

The U.S. Court of Appeals for the Third Circuit made clear that if a parent expressly agrees with a school district’s evaluation, the parent is not entitled to reimbursement for an IEE. *Lauren W. ex. rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 275 (3rd Cir. 2007). Unfortunately, the court did not extend the rule to require express disagreement, when the court observed that reimbursement can be had even in the face of parental silence prior to obtaining a private IEE.

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## Does a district have to consider the results of all IEEs?

Yes. If the IEE is shared with the school district, it must “consider” the IEE with respect to providing FAPE to the student. 34 C.F.R. § 300.502(c)(1). But a school district’s only obligation is to “consider” the results of an IEE. There is no requirement about how much weight a school district must give the IEE or that the school district must incorporate any of the IEE recommendations into the child’s educational program. This is true even if the IEE was at public expense.

## If the district receives an IEE from a parent, whether at public or parent expense, must we incorporate it into a re-evaluation report?

No. As previously stated, a school district is only required to consider an IEE. There is no other requirement, including no requirement to incorporate an IEE into a re-evaluation report. There is nothing to prevent a district from treating an IEE as a re-evaluation. However, if the school district accepts the IEE as its re-evaluation, the school district may very well be responsible to implement the recommendations of that IEE, especially if the school district did not conduct its own evaluation. Typically, it is better to independently consider the IEE or limit the inclusion of the IEE in the re-evaluation report to summaries, making it clear that the IEE information that is included was provided by the parent/outside evaluator simply for team consideration.

## What prevents a parent from requesting multiple IEEs? Even if the district wins, won’t the cost of multiple hearings be overwhelming?

Certainly the cost of going to hearing is a factor to consider whenever a school district decides between requesting a hearing to defend its own evaluation or paying for an IEE. However, the regulations state that a parent is only entitled to one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Obviously, the parent is free to obtain as many IEEs at their own expense as they wish. 34 C.F.R. § 300.502(b)(5).

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.