

Independent Evaluations for Special Education ED21_01-19-12

What Is an Independent Educational Evaluation (IEE) and Why Is Evaluation Important?

Special education laws require every public school to provide and consider current, appropriate evaluation of the educational needs of children with disabilities or suspected disabilities. Evaluations must be conducted by persons with specialized knowledge and training in areas related to the child's disability. An evaluation produces findings and recommendations about the child's educational needs. The school must use evaluation results in planning IEP services and placement to meet the child's needs.

Many disagreements between parents and school staff concerning IEP services and placement involve, at some stage, the interpretation of evaluation findings and recommendations. When disagreements occur, the Independent Educational Evaluation (IEE) is one option lawmakers make available to parents, to help answer questions about appropriate special education services and placement. This handout is intended to assist parents in responding to disagreements with school staff about evaluation findings and recommendations concerning appropriate services and placement.

A parent's first step when a disagreement develops is to look at the existing evaluations of the child that the school has performed or used in planning IEP services and placement. A parent's first job is to request and obtain from the school a clear and complete explanation of the evaluations and recommendations that the school has been using to propose IEP services and placement.

Special education laws give parents the right to have a full explanation of the school's evaluation findings and recommendations, in language that parents can understand. Parents who have doubts about the school's proposed IEP services and placement must find out what evaluations the school is using, and what the school believes those evaluations say about the child's disability and needs. Understanding the school's evaluations may, in some cases, convince parents that the school's proposed services are on the right track. However, parents who still have doubts may assert IEE procedures to obtain a "second opinion." Lawmakers did not use the words "second opinion," but that is the basic purpose of the IEE.

What Must I Do to Obtain an IEE?

Any parent who obtains a full explanation of the school's evaluation findings and recommendations, and still disagrees with the school's justification for their proposed IEP services and placement, may request an IEE - limited to one IEE per year in any area of concern to the parent. The school must provide the IEE at no cost to the parent.

Lawmakers created a fairly simple process for parents to obtain an IEE. The parent may request an IEE merely by stating disagreement with the school's evaluation. The parent also may request an IEE by specifically asking for one. A parent's IEE request can be made during an ARD meeting, by ensuring that the parent's request is documented in the notes of ARD discussions. A request also can be made directly to a responsible school official. The recommended procedure is for the parent to make the IEE request in writing to the school principal or to the special education representative responsible for the child's campus.

It is not necessary for parents to use special or technical words, in making an IEE request. And the law does not require parents to say specifically what kind of independent evaluation is desired. Public schools, not parents, must have the expertise required to identify a child's disability and educational needs.

Schools are, however, permitted to ask the parent about the reason for requesting an IEE. And if the school does make such a request, the parent who feels confident in their understanding of the child's needs, and understands why the school's evaluation results seem incorrect, may choose to tell school staff their reasons for requesting an IEE.

However, the decision whether to communicate this information to the school is up to the parent; a parent who believes the school's evaluation to be wrong, but is not sure why, has the choice to state their disagreement in the most general terms. That is, the parent may simply ask for a comprehensive independent re-evaluation.

What Happens Next and How Is the IEE Done?

The school may respond to a parent's IEE request by deciding to provide the IEE at no cost to the parent, and should do so with reasonable promptness. In that case, the school typically will give the parent a list of qualified evaluators known to the school, who have expertise for the kind of IEE that the parent wants. The school also must inform the parent of the school's evaluation criteria and evaluator qualifications, in case the parent wishes to choose an evaluator who is not on the school's recommended list but who otherwise meets the school's requirements.

Having received the school's list of recommended evaluators, parents should use their available resources to investigate evaluators named on the school's list. Before choosing an evaluator, parents should feel confident that an independent evaluator not only is qualified professionally to assess the child's areas of disability and educational need, but also is impartial and fair.

If none of the school's recommended evaluators appear satisfactory to the parent, the parent may choose another evaluator who is not on the school's recommended list, so long as that evaluator has at least the same qualifications, if not more, than the school requires of its own evaluators.

Schools try to impose cost and travel limitations when parents prefer an evaluator who is not on the school's list of recommended evaluators. Parents are not required to accept at face value the school's stated limits. However, the laws that apply in such situations can be complex. Parents who cannot locate a qualified acceptable evaluator who fits the school's cost or travel limitations should seek assistance from an experienced special education advocate or attorney to ensure that the child receives an appropriate IEE.

Once the parent identifies an acceptable independent evaluator, the evaluator ordinarily will talk with the parent and with school staff, and will choose what procedures to use in performing the evaluation. When the independent evaluation is completed, the school is required to consider results and recommendations in developing a proposal for the child's IEP services and placement. Incidentally, this requirement, for considering independent evaluation recommendations, applies both for IEEs that the school provides at public expense, and for evaluations that the parent may have obtained at the parent's expense.

If the school agrees to provide an IEE at public expense, parents should insist on obtaining assurance from the school that the evaluator will be paid, as part of the IEE expense, for attending at least one ARD meeting for the child, and presenting the evaluator's findings and recommendations.

When Might I Need Help from a Lawyer or Advocate for an IEE?

Two situations come up when parents make IEE requests that ought to alert parents of the need to obtain assistance from a skilled special education advocate or attorney.

In one such situation, the school provides the IEE and considers the IEE evaluator's findings, but rejects the services or placement recommendations from the independent evaluator that the parent believes are necessary for the child. If the school cannot explain reasons for doing so that make sense, both to the independent evaluator and to the parent, the parent should obtain advice about using additional procedural safeguards to obtain appropriate services and placement.

In another situation that comes up less frequently, the school refuses the parent's request for an IEE and just ignores the parent's request. Parents should understand that schools do not have the option to ignore a parent's IEE request. The school must decide promptly following the request - within a matter of days - either to start the process of obtaining the IEE, or else to request an impartial due process hearing to convince an impartial hearing officer from the state agency that the school's evaluation is correct about proposed services or placement recommendations where the parent disagreed. When the school requests a hearing, or seems to be trying to ignore an IEE request, parents are strongly recommended to obtain assistance of an advocate or attorney.

In dealing with such situations, the law gives parents several options. These include the right to submit a complaint for state-agency investigation of the school district; to request mediation by a state-appointed independent and impartial mediator; and to request a due process hearing with an impartial hearing officer who hears evidence about the child's needs and makes the final decision on questions where the parent and school cannot agree. For deciding which of these options may produce the best results, and for using any of the options, the assistance of an advocate or attorney is strongly recommended.

Obtaining an IEE involves legal rights and limitations you should try to understand, when asserting your right to an IEE.

According to federal special education law, the IEE must be conducted by a qualified examiner who is not an employee of the school responsible for educating your child. The IEE gives you the opportunity to obtain a "second opinion" about any need that may affect your child's ability to succeed in school. Besides needs in areas like reading, math, and learning ability, IEEs can be used to evaluate your child's needs in physical education, sensory and motor skills, memory and thinking ability, assistive technology devices that may help your child, and related service areas such as counseling, speech therapy, physical and occupational therapy, and even support for inclusion. In short, you may request an IEE for virtually any purpose that may affect your child's education.

If you think the school is not using current and accurate information in planning your child's education, you may request an IEE in any area that concerns you. You may make your request in an ARD meeting or in writing to your school's special education representative. Typically schools will agree to provide independent evaluations because obtaining an independent second opinion is an efficient way of resolving disagreements.

What Is the Value of an IEE?

One goal of Congress in passing the 1997 Amendments to the IDEA was to strengthen the role of parents in the educational decision-making process. An IEE provides parents added authority at the IEP meeting. One court held:

"[T]he failure to receive and consider parental information, including evaluations they may obtain, directly denies parents the pivotal role they should enjoy in the development of their child's placement. This role includes not only providing evaluations or other information, but discussing such information. Consideration of such outside information also ensures that a program is individualized and provides a check on the judgments being made by school officials regarding the child." *Community Consolidated Sch. Dist. No. 180*, 27 IDELR 1004, 1005-06.

Federal regulations require that parents and school personnel act as equal participants in the development of a child's IEP and that the parents' participation in the IEP process must be meaningful. In many cases, independent evaluations provide support for the parents' opinions and requests. When a school district refuses to consider an independent evaluation, it not only denies equal and meaningful input from the parents, but it also prevents important information from the evaluation from being considered by the IEP team that develops the IEP.

Parents are not the only ones to find IEEs valuable. Sometimes, school districts request IEEs when they lack the personnel or expertise to conduct a particular type of evaluation. In other instances, a school district may seek an IEE to assuage parental concerns about the fairness or accuracy of an evaluation.

What Is Required of School Districts?

The federal regulations direct school districts to inform parents of their right to obtain an IEE, 34 C.F.R. §300.502(a), where they may obtain an IEE, *id.*, and conditions for obtaining an IEE at public expense. 34 C.F.R. §300.502(b).

Several sections of the federal regulations direct local school systems to ensure that such information provided by parents is properly considered. See 34 C.F.R. §§300.343(c)(2)(iii), 300.503(c), 300.533(a)(1)(i). The federal regulations even envision instances where the independent evaluation may be given greater weight than the school system's evaluation. 34 C.F.R. §300.502(b).

Consideration of parentally obtained evaluations by the IEP team is not discretionary, it is mandatory. 34 C.F.R. 300.503(c) ("If the parent obtains an independent educational evaluation at private expense, the results of the evaluation (1) **Must be considered** by the public agency in any decision made with respect to the provision of a [free appropriate public education] to the child."). (Emphasis added).

When a parent presents an independent evaluation to the school district, the IEP team is **required** to consider the evaluation. This does not mean that the school district must accept the findings or recommendations in the IEE. It does mean that the IEP team must review and discuss the evaluation. In this regard, the requirements placed on school districts are fairly minimal.

Who Is Financially Responsible for an IEE?

Generally, parents are responsible for the costs of an IEE. However, in some circumstances the school district may be financially responsible.

If the school district does not have the personnel or resources to conduct an evaluation that an IEP team has identified is needed, the school district must obtain a private evaluation at its own expense. Or, if the school district determines that an IEE is needed or should be conducted for any reason, in most situations, the school district has to pay for the evaluation.

When Parents and School Staff Disagree

When parents and the school district disagree about the need for an independent educational evaluation (IEE), there are certain conditions in which a school district may be forced to pay for the evaluation. If the parents present an evaluation that the school district previously refused to conduct, the school district may be required to reimburse the parents for the costs of this evaluation - if it is determined that the evaluation provided information which impacted the child's education, services or placement.

Additionally, if the parents disagree with a school district evaluation and request an IEE at public expense, the school district must obtain the IEE and pay for it unless the school district requests a due process hearing and the hearing officer rules that the IEE is not needed. 34 C.F.R. 300.503.

In other words, the school district cannot simply refuse the parents' request for an independent evaluation. The district must consent to the IEE at public expense, or request a due process hearing and prove to a

hearing officer that the school evaluation was sufficient. Finally, if a hearing officer orders an IEE during the course of a due process hearing, it will be conducted at public expense. *Id.*

Conclusion

Independent educational evaluations can be a valuable tool for parents and school staff when used to determine a child's educational needs. The burden placed on school systems to consider a parentally obtained IEE is not severe. But, failure to give due consideration to a parentally obtained IEE can result in an invalid IEP.

One way that parents can act as equal participants in educational decision-making for their child is to obtain additional information from an IEE. School districts that welcome a parentally obtained IEE, rather than viewing it with suspicion or hostility, will benefit from the additional information the IEE provides. When parents and school personnel work together, this is always in the child's best interest.

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