

IDEA fundamentals: Independent educational evaluations

An independent educational evaluation provides parents with the opportunity to obtain their own evaluation of their child if they do not agree with the evaluation obtained by a district. It is a procedural safeguard guaranteed by the IDEA.

In addition to knowing that parents have a right to obtain an independent educational evaluation, members of your IEP teams should also understand their duty to consider IEEs.

Share with staff the following guidelines.

What is the purpose of an IEE?

An IEE is 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. Because a student's educational program and placement are premised upon the results of his evaluation, the right to obtain an IEE is essential for parents who suspect that the district's evaluation has not discerned the true nature of the student's disabilities and resulting needs.

Do parents have a right to obtain an IEE at public expense?

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in 34 CFR 300.502 (b)(2)-(4).

If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either:

- File a due process complaint to request a hearing to show that its evaluation is appropriate.
- Ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR 300.507 to 34 CFR 300.513 that the evaluation obtained by the parent did not meet agency criteria.

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 IEE, but not at public expense.

A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. OSEP has indicated that a district has no obligation to provide an IEE at public expense just because a parent objects to its use of an RTI process. *Letter to Zirkel*, 52 IDELR 77 (OSEP 2008). Instead, the parent must wait until the district has completed an evaluation of the student.

Because the right to an IEE at public expense is conditioned on a parent's disagreement with an evaluation conducted by the district, parents may forfeit their right to an IEE by failing to give consent for a district assessment.

Know, too, that a parent's imposition of restrictions on a district evaluation may be viewed as a denial of consent. *G.J. v. Muscogee County Sch. Dist.*, 58 IDELR 61 (11th Cir. 2012).

Can districts ask why parents want an IEE?

If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public evaluation. However, the public agency may not require the parent to provide an explanation.

How soon must a district respond to an IEE request?

There is no specific time limit within which a district must respond to a parent's request for an IEE. However, a district may not "unreasonably delay" either agreeing to fund the IEE or requesting a due process hearing to show that its own evaluation was appropriate. Whether a delay is unreasonable will turn on the facts of the case.

Must a school district convene an IEP meeting to review the results of an IEE?

Yes. If the IEE relates to decisions about programming, then the IEP team must reconvene to review the results.

What actions must the IEP team take to meet the requirement to consider the IEE?

If parents initiate an IEE that meets agency criteria, the results of that evaluation must be considered by the district in any decision made with respect to the provision of FAPE to the student.

Although state law might specify who precisely is required to consider the IEE, the IDEA does not. But it is clear that when the IEE concerns programming, rather than identification or placement, the IEP team is the appropriate body for review.

In addition, while it is clear that a school district's obligation to consider the IEE does not translate into an obligation to adopt it or accept its recommendations, it is not so clear what the process of consideration entails.

In *Letter to Anonymous*, 23 IDELR 563 (OSEP 1995), OSEP states that the IEP team must review the IEE, discuss its results, and, to the extent it is not adopted, discuss the basis for any disagreement.

Must the team document its consideration of the IEE at the IEP meeting?

No, there is no requirement in the IDEA that anything other than the information specified in IEP content requirements be included in the IEP. Further, there is no requirement for production of minutes or other documentation of the proceedings of the IEP meeting over and above the IEP document itself.

Still, a district would be wise to document its consideration of an IEE in some manner, including:

1. How the report was made available to IEP team members.
2. The forum in which the report was reviewed and discussed by the team members.
3. To the extent the school district disagrees with the IEE, the reasons why its findings and recommendations were not accepted.