

Learning Outcomes



- At the end of this session participants will:
- Identify at least 3 issues pertaining to IEEs based upon current federal law.
- Identify their own state regulations on IEEs from presenter handouts.
- Identify at least 3 OSEP policy letters which have bearing on parental and district rights with regard to IEEs.
- Identify at least 2 federal cases in which school districts prevail and two federal cases in which parents prevail based upon presenter handouts.
- Participants will identify at least three factors that should be considered by professionals who conduct or consider independent rehabilitation evaluations.

INDEPENDENT EDUCATIONAL EVALUATIONS



What exactly is an Independent educational evaluation ?

An Indy?



Close, but no cigar!

A BRIEF HISTORICAL PERSPECTIVE



Not that kind of history, P.L. 94-142 history!



P.L. 94-142: The All Children's Handicapped Education Act (1975)

PROCEDURAL SAFEGUARDS

P.L. 105-17 IDEA - 1997

§300.502 Independent educational evaluation.

Districts can inquire about the nature of the parent's disagreement but cannot unreasonably delay if the parents do not provide information about the nature with the disagreement with the district's evaluation.

IDEA 2004 IEE REGs: *Public Law 108-446- 300.502*

- (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.
- (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.

300.502 - IEEs

- (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.

300.502 - IEEs

- (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.

300.502 - IEEs

(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.

300.502 - IEEs

- (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.

300.502 - IEEs

- (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.

300.502 - IEEs

- (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.
- (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.
- (Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

300.502

- (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.

What makes an **independent** evaluation, **independent**?

Now that's a revolutionary question!



Why do parents request an independent educational evaluation?



- A belief that the child has an undiagnosed disability.
- A belief that the child does not have a disability.
- A belief that the school's evaluation was inadequate (lacks thoroughness)

Why do parents request an independent educational evaluation?

- Disagreement about the specific nature of the disability (other health impaired v. emotional disturbance)
- Disagreement about the type of services offered inclusion v. self-contained
- Disagreement about the qualifications of the school's evaluators (experience with evaluating a particular disability such as Asperger's Syndrome)

Why do parents request an independent educational evaluation?

- Disagreement about a child's present level of performance
- Disagreement about a child's goals
- Disagreement about the relative progress accomplished
- Disagreement about whether a child should continue to receive special education services
- Sometimes, because there is a **lack of communication** between school personnel and parents

Why do parents request an independent educational evaluation?

- Parents just need someone to go to bat for them!



States Requiring A Written Request for an IEE Prior to IDEA - 97



Alabama, Indiana, Maine, Michigan,
New Jersey, Oregon, Rhode Island
Tennessee, and Vermont.

United States Department of Education Policy Letters



US Department of Education Policy Letters: a brief history



From Texas and beyond



DOE Policy Letters to Texas



- Letter to Gray 10-05-88
- Letter to Kirby 05-04-89
- Letter to Fields 09-15-89
- Letter to Wilson 10-17-89
- Letter to Bartlett 12-20-89
- Letter to Thorne 02-05-90
- Letter to Rambo 06-22-90
- Letter to Gramm 10-25-90

Office of Special Education Programs (OSEP)

Letter to Wessels, 03-09-90 (NY)



A Parent's Right to Obtain not Simply Request An IEE –OSEP and OSERS

Letter to:	Timeframe
Mitchell	06-22-90
Kerry	06-17-91
Imber	08-18-92

There is no Federal requirement that a parent notify a school district that the parent will be requesting an IEE at public expense. While it is reasonable for a public agency to require that it be notified prior to a parent's obtaining an IEE at public expense, a public agency may not fail to pay for an IEE if a parent does not notify the public agency that an IEE is being sought (Mitchell, ibid).

Office of Special Education Programs (OSEP)

The Issue of Timeliness for an IEE



- Letter to Smith (06-28-90)
- Letter to Anonymous (06-17-91)
- Letter to Saperstone (1993)
- Letters to Anonymous (1994-1995)

Office of Special Education Programs (OSEP)

- Letter to Anonymous (12-13-93) Dr. Hehir noted that a school district may restrict an IEE within its state's geographic borders, however a parent must be given an opportunity to argue for an out of state IEE due to unique circumstances.

Office of Special Education Programs (OSEP)

Letter to Katzerman (1998)

In a more recent letter OSEP noted that the results of an IEE may be furnished to a school district without parental consent, *"Since the results ...are to be considered when designing the appropriate program for a student". (letter to Katzerman, 28 IDELR, 310).*

Letter to Scheinz, 2000

- This letter re-affirms a parents fundamental right under IDEA-97 to obtain an IEE when the parent disagrees with the LEA's evaluation (under 34 CFR 300.502)
- When the district includes a functional behavioral assessment (FBA) as a part of it's evaluation of a student, then the parent also has the right to an independent FBA

Letter to Petska, September 10, 2001

- OSEP determined that a Wisconsin LEA requirement that an examiners "have recent and extensive experience in the public schools" was viewed by OSEP as "too narrow and unrelated to their ability to conduct an educational evaluation" (September 16, 2001)
- OSEP also determined that the Wisconsin LEA further unnecessarily limited otherwise qualified evaluators who were not certified by the Department of Public Instruction. Some evaluators might be licensed by other agencies (clinical psychologists). However, if a district requires certain licensures of it's own personnel, it may also require independent evaluators to hold (or be eligible) for the same qualifications

Letter to Petska, 2001

- The Wisconsin LEA was also advised that it was inappropriate to exclude otherwise qualified examiners because they were associated with private schools, advocacy organizations or professional organizations.
- OSEP also noted that LEA's could not exclude evaluators simply because they have testified in cases against school districts.
- Districts cannot be the sole determiners of what is an excessive cost for an IEE. If the district disputes the cost, it must, without unreasonable delay, initiate a due process hearing to demonstrate the parent's evaluation did not meet the district's policies on cost.

Letter to Anonymous, October 9, 2002

- Re Massachusetts Rate Setting Policies

OSEP noted that where a parent of a child with autism and complex medical issues was unable to identify an independent evaluator who would accept the state rate, the SD could not deny reimbursement "based solely on financial cost of the IEE

Letter to Young, March 20, 2003

- SD must, upon request, provide parents with a list of qualified evaluators," but the list must exhaust the availability of qualified people within the geographic area."
- Unique circumstances may obviate district limitations of the geographic area.

Letter to Young, March 20, 2003

- Districts may establish qualifications for those who conduct IEEs; however, states and SDs are “prohibited from imposing other conditions or timelines related to obtaining an IEE at public expense (34 CFR 300.502(e)(2))
- SD must, upon request, provide parents with a list of qualified evaluators, but the list must exhaust all evaluators within the geographic area.

Letter to Parker, 2004

- Districts can offer a list of individuals or agencies who conduct IEEs, but cannot restrict qualified evaluators who are not included on the District’s list as long as the independent evaluator meets the criteria set by the public agency

Letter to LoDolce 2007

- School Districts may not restrict their own evaluators from using age or grade level scores in evaluation reports.
- School Districts may not restrict an independent evaluator from using age or grade level scores.
- School Districts may, under some circumstances restrict those who conduct IEEs from including recommendations.

Massachusetts House Bill 391: 2007

HOUSE No. 391

By Ms. Balser of Newton, petition of Ruth B. Balser and others to ensure that parents can participate fully and effectively with school personnel in the development of educational programs for their child. Education.

The Commonwealth of Massachusetts

PETITION OF:

Ruth B. Balser	Geraldine Cordon
Alice K. Wolf	Frank J. Santist
William N. Brownberger	Steven A. Tolman
Cory Atkins	Patricia D. Jolin
Barbara A. L'Italien	Key Khan
Tom Semicandro	Richard J. Ross

In the Year Two Thousand and Seven.

AN ACT TO PROVIDE ACCESS TO INFORMATION FOR PARENTS' EVALUATORS.

Amended section 3 of G.L. c. 71B, effective January 8, 2009

- The observation law uses the terms "parent-designated independent evaluators and educational consultants" to identify persons whom the parent designates to observe the child and the child's program on the parent's behalf. We interpret the term "independent evaluators" to refer to those individuals who conduct independent evaluations as provided under federal and state special education laws. See, 30 C.F.R. §300.502; 603 C.M.R. §28.04(5). We read the term "educational consultants" to refer to individuals who advise parents on the child's needs and program options and, typically, review the child's educational records. In most cases, independent evaluators and educational consultants will have an education or related professional background and educational evaluation experience.!

Amended section 3 of G.L. c. 71B, effective January 8, 2009

- However, apart from the language governing independent evaluators in footnote 1, special education law does not set forth credentials or licensing requirements that parent designees must meet. We caution districts against setting such requirements or requesting resumes of designees. ! Such policies could be considered an unlawful condition or restriction on the right of parents and their chosen designees to access the child's program for the purpose of evaluation. !

Technical Assistance Advisory SPED 2009-2:

Observation of Education Programs by Parents and Their Designees for Evaluation Purposes

To: Superintendents, Principals, Administrators of Special Education, and Other Interested Parties

From: Marsha Mittnacht, State Director of Special Education

Letter to Zirkel 12-11-08 - OSEP

- When a district utilizes a Response to Intervention procedure (RTI) for determining Learning Disabilities, a parent is precluded from obtaining an IEE at the public expense if that school district's evaluation has not been completed. The school district must have an opportunity to conduct its own evaluation prior to the parent's request for an IEE.

Letter to Anonymous 01-04-10

- OSEP informed a concerned individual that several prerequisites a California educational agency attached to publicly funded IEEs were unlawful.
- California required that parents notify the SD in writing and that a failure to do so would result in the denial of a publically funded IEE.
- This requirement was viewed by OSEP as inappropriate since there is no federal requirement that a parent provide written notice to a SD.

Letter to Anonymous 08-13-10

- Although a publicly funded IEE must satisfy a district's own criteria for evaluations, that's not the end of the story, according to OSEP. A district must afford parents an opportunity to demonstrate that under the circumstances, an evaluator who does not meet agency criteria, such as those pertaining to geographical location or qualifications, is required in order to obtain an appropriate evaluation.
- OSEP acknowledged that nothing in the IDEA prevents a district from maintaining lists of "preferred evaluators." LRP review.

Letter to Anonymous 08-13-10

- If the persons on the list are capable of appropriately evaluating the child and the list exhausts the availability of qualified people in the geographic area specified, then the district can restrict parents to that list, pursuant to its right under 34 CFR 300.502(e)(1) to require an evaluation that matches its own criteria. However, parents must be permitted to show that unique circumstances justify looking elsewhere.

Letter to Anonymous 01-19-11

- In response to the question at hand, OSEP stated that, "We believe it would be reasonable for a public agency to establish criteria, including a requirement that it receive the entire evaluation report and not just the scaled scores by a certain time, to give the public agency the opportunity to review the report prior to scheduling an IEP Team meeting to discuss that evaluation," OSEP Director Melody Musgrove wrote. Still, the district would need to provide the criteria to parents in advance or otherwise make it available publicly so that those seeking an IEE are fully informed. OSEP advised the writer to contact the Maryland ED to determine whether its timelines were consistent with state standards."

Memorandum to McDonald, March 28, 2012

- "Based on review of the New Jersey regulation, OSEP's assessment is that N.J.A.C 6A:14-2.5(c)(1) limits the parents' rights to an IEE by giving the public agency an opportunity to conduct an assessment in an area not covered by the initial evaluation or reevaluation before the parents are granted the IEE. In order to receive its Federal Fiscal Year (FFY) 2012 Part B grant award, the State will need to provide specific written assurance to OSEP that the State will: (1) Revise New Jersey regulation N.J.A.C 6A:14-2.5(c)(1) to eliminate the provision that, "If a parent seeks an independent evaluation in an area not assessed as part of the initial evaluation or a reevaluation, the school district shall first have the opportunity to conduct the requested evaluation." (2) Ensure compliance in the interim throughout the FY 2012 grant period with the specific requirements of 34 CFR§300.502;

Memorandum to McDonald, March 28, 2012

- and (3) Send a memorandum to all Local Education Agencies (LEAs) to inform them of the changes to the Local Education Agencies to inform them of the changes to the regulation and the need to comply with the requirements in 34 CFR§300.502.”
- This USDOE Memorandum is particularly significant because New Jersey’s regulations limited a parent’s right to an unfettered IEE. Clearly, one of the reasons that a parent would seek to have an IEE is to have a thorough evaluation, especially when a school district did not elect to evaluate an area that the parent believes may identify an undisclosed area of disability.

OSERS Letter to Baus, February 23, 2015

- On February 23, 2015 The Office of Special Education and Rehabilitative Services (OSERS) of the Department of Education (DOE) issued the policy letter Baus. Ms. Baus asked whether a parent had a right to request could an Independent Educational Evaluation (IEE) in an area that was not previously assessed by a school district evaluation.
- The issue raised by OSERS Letter to Baus addresses a very important issue, namely whether the parent can include skills not addressed by the SDs evaluation within an IEE. OSERS is certainly noting that the parent has the right to address this issue through a Due Process Hearing if the parent is not satisfied with a District’s response.

OSERS Letter to Baus, February 23, 2015

- What is especially significant is that OSERS makes no reference to the DOE’s Memorandum to McDonald regarding Independent Educational Evaluations (IEEs), March 28, 2012.
- regulation and the need to comply with the requirements in 34 CFR§300.502.”
- The Letter to Baus is of particular concern because the USDOE has a history of insuring that local and state agencies do not issue policies which violate §300.502 (e) (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.” Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

OSERS Letter to Savit January 19, 2016

- A public agency may establish qualifications that require an IEE examiner to hold or be eligible to hold a particular license when a public agency requires state licensure of its own staff conducting the same types of evaluations. However, under 300.0502(c)(2), the agency is prohibited from imposing other conditions or timelines related to obtaining an IEE at public expense.

OSEES Letter to Carroll October 22, 2016

- IDEA affords a parent the right to an IEE at the public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting a parent's request to an IEE. The LEA may not conduct additional assessments that was not part of the district's assessment before granting the parent an IEE or initiating a due process hearing to demonstrate that its evaluation was appropriate.

OSERS Letter to Anonymous June 28, 2018

Prior to graduation, when a school district determines that a child is no longer eligible for special education services, the district must evaluate that child. However, a parent's request for an IEE, alone does not require that a district continue to provide special education services.

OSEP Letter to Anonymous, August 2018

- SEP indicated to an anonymous writer that any constraints a district places on an evaluator's ability to observe the child in his learning environment must be consistent with the parent's right to an IEE. The writer asked whether a district may limit the amount of time an independent evaluator is allotted to observe the child in the child's educational setting when the evaluator is paid by the parent and not by the public agency. OSEP noted that independent evaluators sometimes may need to access a child's classroom if the evaluation requires observing the child there

And After Some of These Letters Were Issued... There were Fireworks



Recent Changes in Some State Regulations on IEEs

- Many states now comply with the language in current federal regulations on IEEs. A few states exceed the federal requirements for IEEs including Rhode Island and New Jersey.
- However, some states include incomplete, inaccurate or misleading regulations on IEEs which creates a climate of confusion, distress, distrust and animosity

IEEs and Response to Intervention (RTI)

- IDEA 2004 no longer requires that states or school districts perform a “severe discrepancy” analysis. From October 1977 until 2004, an analysis of discrepancy between a child’s potential (as measured by tests of intelligence) and achievement was mandated

IEEs and Response to Intervention (RTI)

- When independent educational evaluators conducted an LD evaluation, a “severe discrepancy” was conducted, routinely.
- However, states and school districts are now expected to analyze a child’s response to a series of interventions prior to conducting more formal special education evaluations.

IEEs and Response to Intervention (RTI)

- School Departments are expected to have Response to Intervention Teams that can assist a general education teacher in identifying effective strategies to enable a child to succeed academically, socially and behaviorally
- However, RTI places a burden on school personnel to meet, to gather data and to intervene based upon the data.

IEEs and Response to Intervention (RTI)

- The US Department of Education has stated that an independent educational evaluation can consist of a review of the school district's data relative to response to intervention.
- However, if the person or agency is conducting an IEE, relies *only* on a district's data, the relative degree of independence of that evaluation is questionable.

2018 State by State Analysis of IEE Regulations

A checklist: Does the state regulation include:

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.

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.

2018 State by State Review of IEE Regs

- 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.
- *Agency criteria.* 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 uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.

2018 State by State Review of IEE Regs

- Except for the criteria described in paragraph (e) (l) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

2018 State by State Review of IEE Regs

- ✓ Right to an IEE (to obtain) not simply request
- ✓ If the parent disagrees with SD evaluation
- ✓ Inquire about the parent's issues but require such an explanation or unreasonably delay
- ✓ Same criteria as agency location and qualifications
- ✓ No imposition of additional conditions or timelines beyond what is included in federal regs

Sample State Analysis: Alaska

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 must ensure that the criteria applicable for independent educational evaluations are set forth in paragraph (e) of this section.

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 (d) of this section.

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.

Except for the criteria described in paragraph (e)(l) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Agency criteria. 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 IEE.

State by State Checklist		
Item	State	Different Criteria
<ul style="list-style-type: none"> 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. 		
<ul style="list-style-type: none"> 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. 		

Item	State	Different Criteria
<ul style="list-style-type: none"> 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. 		

<ul style="list-style-type: none"> Agency criteria. 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 IEE. 		
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Due Process Hearings Under IDEA 2004

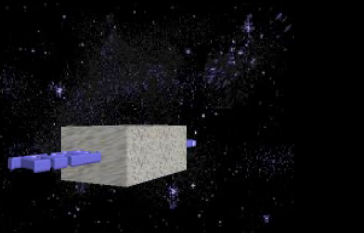
300.516 Civil Action

Either party has the right to initiate Civil Action in a State Court of competent jurisdiction or in district (federal) court within 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review officer or a State's explicit time limitation for initiating civil action

Either party can appeal a decision of a district court to the appropriate appellate court (Circuit Court)

Decisions of the appellate court may be appealed to the Supremes

Supreme Court Decisions on IEEs



US SUPREME COURT CASE LAW on IEEs



You might have a good case on IEEs but NOT through the Supreme Court! 🗣️

Schaffer v. Weast 2005

Schaffer vs. Weast, US, 2005

Justice O'Connor described the parental rights and safeguards that serve to counterbalance the "natural advantage" of school districts: School districts have a "natural advantage" in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them ... As noted above, parents have the right to review all records that the school possesses in relation to their child ... They also have the right to an "independent educational evaluation of the[ir] child." *Ibid*. The regulations clarify this entitlement by providing that 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." ... IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition. (Decision pages 10-11)

Some Recent Case Law Regarding IEEs

Jefferson County, West VA, 2016

When a school district failed to take any action to avoid its responsibility regarding an IEE, the district was obligated to pay \$4,000 for payment of the independent educational evaluation.

E.P. by Jill P. and Anthony P. v. Howard County Public Schools, U.S. Court of APPEALS, 4TH Circuit,

- Neither a Maryland district's failure to administer certain subtests when evaluating a 12-year-old boy with ADHD nor its use of a "pattern of strengths and weaknesses" model when testing the student for a specific learning disability entitled the parents to an IEE at public expense. The 4th Circuit affirmed the District Court's ruling at 70 IDELR 176 that the district's evaluation of the student was appropriate. In its August 2017 decision, the District Court noted that the parents could not simply challenge the evaluators' conclusions; they would only be entitled to an IEE at public expense if they could show the evaluators' methodologies were flawed. The District Court determined that the parents failed to meet that standard.

Recent Case Law re IEEs:

- Neither a Maryland district's failure to administer certain subtests when evaluating a 12-year-old boy with ADHD nor its use of a "pattern of strengths and weaknesses" model when testing the student for a specific learning disability entitled the parents to an IEE at public expense. The 4th Circuit affirmed the District Court's ruling at 70 IDELR 176 that the district's evaluation of the student was appropriate. In its August 2017 decision, the District Court noted that the parents could not simply challenge the evaluators' conclusions; they would only be entitled to an IEE at public expense if they could show the evaluators' methodologies were flawed.

Some Recent Case Law Regarding IEEs

- Sea NEW York 2013
- When a parent waits too long to request an IEE, the parent may forfeit its right to an IEE at the public expense.

Some Recent Case Law Regarding IEEs

- SEA California 2012
- A district cannot respond to an parent's request for an IEE by proposing to conduct additional school-based evaluations

Some Recent Case Law Regarding IEEs

- Seth B. v. Orleans Parish School Board 5th Circuit, 2016
- If the Court finds that parents have deviated from district requirements in a trivial manner, it can still award funds for an IEE to the parents.

Some Recent Case Law Regarding IEEs

- SEA California, Bellflower United School District, 2015

When a school district fails to provide a parent with criteria for evaluation regarding an IEE and when the district subsequently delays granting a parent the right to an IEE, the district was required to fund the IEE.

Some Recent Case Law Regarding IEEs

- Dallas Independent School District v. Woody, N. D. Texas, 2016, 5th Circuit, 2017

Graduation does not end as school's district's need to review an IEE. In this case, a 12th grade student with schizophrenia graduated from a special education private school months prior to the parent receiving the results of her child's IEE did not excuse the district from its failure to review the IEE.

Recent IEE Case Law: BG by JAG v. Board of Ed. Chicago, 2018

Neither a school psychologist's failure to explain certain scores on one assessment nor her failure to consider the results of a behavioral rating scale invalidated an Illinois district's reevaluation of a bilingual seventh-grader with SLD and ED. Deferring to an independent hearing officer's determination that the flaws were harmless, the 7th Circuit held the parent was not entitled to a publicly funded IEE. A parent is only entitled to an IEE at public expense if an IHO finds the district's assessment failed to comply with the IDEA requirements for evaluations. Those requirements include using qualified personnel to administer assessment, administering assessments in a manner that does not discriminate on a racial or cultural basis, and assessing the student in all suspected areas of disability. The three-judge panel observed that many of the alleged errors identified by the parent were not errors at all.

APPELLATE CASES: DISTRICT PREVAILS

Burilovich v. Board of Education of the Lincoln Consolidated Schools 208 F.3d 560; 2000 U.S. App. LEXIS 6163; 2000 FED App. 0119P (6th Cir. 2000)

Parents failed to prove that a district's placement was inappropriate. While the district was obligated to review the IEE, there was no obligation to accept or follow some or even any of the recommendations.

APPELLATE CASES: DISTRICT PREVAILS

T.S. ex rel. S.S. v. Board of Educ. of the Town of Ridgefield, 20 IDELR 889 (2nd Circuit, 1993)

Publicly-funded IEE "recommended that the [student] remain at the private facility...The circuit court rejected the parent's argument that the district failed to give adequate consideration to the IEE and found that the board's review of the report satisfied the student's rights under the IDEA."

**US Court of Appeals, 7th Circuit March 8,
2001 Edie F. and Michael F v. River Falls
School District, Western WI**

The Court did not agree that the parents were entitled to an IEE and attorney's fees at public expense because the parents did not prove that they disagreed, "significantly" with the district evaluation.

**Controversial District Court
Matter: U.S. District Court:
Northern Ohio, January 2007**

- The Court ruled that that parent reimbursement for the cost of an IEE was not required because the parent failed to initiate a hearing to demonstrate that the district's evaluation was inappropriate.

- In an unpublished decision of the Sixth Circuit Court, the parents were unsuccessful in overturning the Hearing Officer's decision.

**APPELATE CASES:
SHARED DECISIONS**

*Dell ex rel. Dell v. Township High Sch.
Dist. 113, 21 IDELR 563, 1994*

The hearing officer concluded that the district had acted in bad faith. The district failed to conduct it's own evaluation and had not considered the parent's IEE. The district was required to pay for the IEE, but the cost was reduced. (7th Circuit)

APPELATE CASES: SHARED DECISIONS

Warren G. by Tom G. v. Cumberland Sch. Dist. 31 IDELR
27, 1999 (3rd Circuit)

“the parent’s failure to express disagreement with the district’s evaluations prior to obtaining their own IEEs did not foreclose their right to reimbursement for them. The Circuit Court agreed with the District Court that the panel was wrong to use an equitable balancing analysis. Parents have an unqualified right under the IDEA’s implementing regulations to reimbursement for an IEE unless the district’s evaluation is found to be appropriate. The inappropriateness of the district’s evaluation was demonstrated by the fact that the parents’ evaluator identified the students’ specific disability areas.”

APPELLATE DECISIONS: THE PARENTS PREVAIL

Hudson v. Wilson EHLR 559:139, 4th Circuit
(1987)

CFR 300.503(b) does not require parent desiring an IEE to notify school of disagreement with school evaluation or give the district opportunity to demonstrate that its own evaluation is appropriate. Plain thrust of the regulation is to deny reimbursement when following an IEE, school is able to show (through a hearing) that its evaluation is correct.

APPELLATE DECISIONS: THE PARENTS PREVAIL

*Board of Educ. of Murphysboro Community
Unit Sch. Dist. No. 186 v. Illinois State Bd. Of
Educ.*, 21 IDELR 1046 (7th Circuit, 1994)

USDC: unilateral placement by parents was appropriate;
ordered reimbursement for 2 IEEs

USCA: “The parents were properly reimbursed for one IEE, but the determination as to reimbursement for a second IEE was remanded, as the district court’s basis for that order was unclear.”

APPELLATE DECISIONS: THE PARENTS PREVAIL

Seattle Sch. Dist. No. 1 v. B.S.
24 IDELR 68 (9th Circuit, 1996)

“The circuit court concluded the district’s evaluation was inappropriate in that the evaluation team did not include anyone who was familiar with the student’s disorders, and failed to consider the recommendations of several of the student’s doctors [re: placement]... Since the parent did not concur with the district’s evaluation and the district did not demonstrate that its evaluation was appropriate, the court concluded the parent was entitled to reimbursement for the IEE she had arranged.”

APPELLATE DECISIONS: THE PARENTS PREVAIL

Kirkpatrick v. Lenoir County Board of Education
216 F.3d 380; 2000 U.S. App. LEXIS 14218; 47
Fed. R. Serv. 3d (Callaghan) 269 (4th Cir. 2000)

The parent requested special education eligibility, reimbursement for 3 IEEs and for private school tuition.

ALJ: SPED eligible, but no IEE reimbursement nor tuition.

SRO: SPED eligible and reimbursement for IEE (specific \$ amount which was less than amount requested) but not for tuition reimbursement

USDC: IEE not an issue at this level
USCA: IEE not an issue at this level

Recent District Court Cases in Which Parents Prevailed

- US District: Connecticut, A.S. v. Norwalk Board of Education, February 13, 2002
- The Court ruled that a district should have considered additional services in a regular classroom prior to recommending services in a “segregated setting.”
- Because the SD’s evaluations were determined to be inappropriate, the parents were entitled to reimbursement for the cost of the IEE.

Recent District Court Cases in Which Parents Prevailed

- US District Court: central California, Sam M. v. Capistrano Unified School District, March 13, 2007
- The Court determined that a California SD. "Made a costly mistake when it gave an independent evaluator only 20 minutes to observe a proposed placement for a 3 year old boy with autism
- The issue of a "level playing field." with an equal opportunity for the parent to access information.

Recent District Court Cases in Which Parents Prevailed

- *D.I., R.G., Plaintiff, v. PHILLIPSBURG BOARD OF EDUCATION, Defendant* May 19, 2011 US District Court NJ
- Parents were awarded attorney's fees for prevailing in a matter in which a hearing officer ordered the SD to pay for three of four IEEs including a neuropsychological, audiological and an FBA for a kindergarten child.

Recent District Court Cases in Which Parents Prevailed

- *M.Z., A Minor, by His Parent and Natural Guardian, D.Z., et al. v. Bethlehem Area School District*, U.S. District Court, Eastern District of Pennsylvania, July 8, 2011
- The Court found that the Hearing Officer erred when he/she ordered the SD to conduct further evaluations that it initially omitted during its re-evaluation of a student. The District Court ordered the SD to fund an IEE to address aspects of the re-evaluation that were not addressed.

Recent District Court Cases in Which Parents Prevailed

- *BOARD OF EDUCATION OF THE COUNTY OF NICHOLAS, H.A., a minor; MONICA A., parent of H.A., 4th Circuit Court of Appeals, 09-09-11*
- *A SD refused to utilize the services of two psychologists selected by parents to conduct a IEE resulted in a West Virginia District loss of an Appellate case. The Court determined that the District violated the parent's right to select a qualified evaluator to conduct the IEE.*

Case law on Autism and IEEs: Some Examples

L.M., a minor, by and through his Guardians ad litem, SAM M. and MARIETTE M.; SAM M. On his own behalf; and MARIETTE M. on her own behalf, Plaintiffs, v. CAPISTRANO UNIFIED SCHOOL DISTRICT, Defendant
U.S. District Court, Central District of California
March 13, 2007

A California district made a costly mistake when it gave an independent evaluator only 20 minutes to observe a proposed placement for a 3-year-old boy with autism. Concluding that the district deprived the child's parents of the opportunity to participate in the IEP process, the District Court determined that the parents were entitled to recover the full cost of all private services they obtained after the child's third birthday. (LRP)

RECENT CASES ON IEEs: the DISTRICT PREVAILS

- *G.J., L.J., and E.J., Individually and on Behalf of G.J., Appellants, v. MUSCOGEE COUNTY SCHOOL DISTRICT, Appellee* , U.S. Court of Appeals, Eleventh Circuit 01-31-12
- *When a parent failed to agree to a SD re-evaluation of an elementary student with autism, the parent violated the SD's right to evaluate under IDEA. The Appellate Court agreed with the District Court that first heard the case. The Court determined that the parent was not entitled to reimbursement for the IEE.*

CASE LAW PERTAINING TO CHILDREN AND ADOLESCENTS with APRAXIA OF SPEECH

- *Bethel Board of Education* , Connecticut State Educational Agency, October 28, 2010
- A young child with autism, apraxia of speech and other disabilities was denied an IEE at public expense by the BBOE. The SD attempted to find a mutually agreeable evaluator.
- The Hearing Officer determined that the parents had the right to determine the person(s) who conducted the IEE.
- This matter involved several other issues.
- PARENTS PREVAILED

US District Court, Central District of California: Los Angeles School District v. D.L. 03-10-09 – Parent Prevails on ED Matter

- 108 LRP 17846
- The Court ruled that the SD was required to pay for an IEE because the child evidenced substantial behavioral challenges and the SD failed to conduct it 's own evaluation

Sundberg v. Governing Board of Riverside Unified School District and Desert Sands Unified School District U.S. Court of Appeals, Ninth Circuit 04-06-09 – unpublished decision District Prevails

- Because the parents failed to give the SD the opportunity to make a formal offer of placement, the Court ruled that the parents were not entitled to reimbursement; furthermore, because the SDs evaluation was appropriate, the Court denied payment for an IEE.

Transition Services

IDEA defines transition services as a coordinated set of activities for a child with a disability that:

- Are designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child re the movement from school to post-school activities such as post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation

Transition Services

- Based upon the child's needs and strengths, preferences and interests
- Includes instruction, related services, community experiences, development of employment, daily living skills and a provision of a functional vocational evaluation

Transition Case Law: Some Examples

- In a 6th Circuit matter, viz. Gibson v. Forest Hills School District Board of Education, S.D. Ohio the District's prolonged failure to conduct a formal transition assessment prevented it from identifying the student's preferences and interests. Thus, the District could not draft postsecondary transition goals or determine the services the student required to meet those goals.

Do parents have a right to an Independent Educational Evaluation (IEE) when they disagree with a school's transition assessment?

- When asked in the Commentary to the IDEA regulations to clarify “whether ‘transition assessments’ are formal evaluations or competency assessments” the U.S. Department of Education declined to make such a distinction, stating, “the specific transition assessments used to determine appropriate measurable postsecondary goals will depend on the individual needs of the child, and are, therefore, best left to States and districts to determine on an individual basis.”

More on Transition IEEs

- Thus, the purpose of the transition assessment becomes critical in determining whether parents are entitled to an IEE when they disagree with a transition assessment. If the purpose of the transition assessment is to determine the presence or absence of a disability or to evaluate the nature or extent of a student's need for special education and related services, the parent would be entitled to an IEE if they disagreed with the results of that evaluation.

Transition IEEs continued

- If, on the other hand, a transition assessment is administered to inform the present levels of academic and functional performance and/or to develop measurable postsecondary goals in the IEP (and does not result in an evaluation), the parent would not be entitled to an IEE.
- Posted in Independent Education Evaluation (IEE) |
- Published: June 23rd, 2016 Arizona Department of Education

Transition Case Law

- Dracut School Committee v. BSEA
Massachusetts, 2010
- Students with more severe disabilities may require transition plans that emphasize the development of functional or independent living skills

Transition Case Law

Department of Education, State of Hawaii,
2014

A parent failed to show that a Hawaii School District denied FAPE to a student with anxiety disorders by developing an inadequate transition plan. The plan addressed job training, community resources, employment and daily living skills

Transition Case Law

Colorado district created and implemented an adequate postsecondary transition plan for an academically successful student with a SLD who was headed for college. The plan provided appropriate postsecondary goals and services to facilitate the student's objective of attending a four-year college, and the district consistently implemented the plan, a state review officer determined.

The SRO noted that a transition plan must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, as well as the services needed to assist the student in reaching those goals. 34 CFR 300.320(b).

San Juan Bd. Of Education, Colorado SEA 09-23-10

Parents Rights in Special Education: The readability of Procedural Safeguards, Fitzgerald, J.L. & Watkins, M.W. Exceptional Children, Summer 2006.

- Although Fitzgerald and Watkins evaluated the readability level of procedural safeguard, not just the right to an IEEs from all fifty states, their findings are relevant.
- The authors utilized the New Dale-Chall and Flesch formulae to assess readability.
- The authors found that only 4-8% of documents were at the recommended reading level. They also determined that 20-50% of the documents were at a college readability level, or higher.
- The authors note that a fifth to sixth grade level is appropriate, though some have argued that a seventh through ninth grade level is acceptable.

TABLE 1. Results of a Flesch-Kincaid Readability Analysis on Federal and Some State IEEs (Imber, 2001)

REGULATORY AGENCY	NUMBER OF WORDS INCLUDED ON IEEs	NUMBER OF SENTENCES	FLESCH-KINCAID READABILITY	EASE OF READING	PASSIVE SENTENCES
FEDERAL REGULATIONS	521	17	12	14	23%
CONNECTICUT REGS	369	12	12	22	33%
MAINE REGS	338	9	12	1	44%
MASSACHUSETTS REGS	874	31	12	20	12%
NEW HAMPSHIRE REGS	521	17	12	28	11%
NEW YORK REGS	316	13	12	43	23%
RHODE ISLAND REGS	520	17	9	45	11%
TENNESSEE PARENTAL RIGHTS	221	10	12	37	40%
	435	14	12	31	64%
TEXAS PARENTAL RIGHTS	228	10	11	55	10%
VERMONT REGS	523	17	12	24	23%

Parental Rights to an Independent Educational Evaluation

⇒ A parent has a right to obtain an independent evaluation at the public expense if the parent disagrees with an evaluation obtained by the public agency... CFR 300.502.

• ⇒ While a district may request prior notification, there is no Federal requirement that a parent provide such notification. Parental failure to notify a district of the intent to obtain an IEE may not serve as a basis for denial of payment for an IEE (Kirby, 1989; Mitchell, 1990; Kerry, 1991; Imber, 1992).

• ⇒ While a district may request that a parent specify areas of disagreement with its own evaluation, a public agency may not deny reimbursement for an IEE when a parent has not specified the basis of disagreement with the LEA's evaluation (Fields, 1989; Thorne, 1990; Kerry, 1991).

⇒ When a parent elects to obtain an IEE at private or public expense, the results and recommendations of the IEE must be considered by a district in regard to eligibility issues, IEP development, and placement.

⇒ A parent can request information from the district about where an IEE may be obtained. Districts may provide parents with a list of qualified evaluators so long as the list is responsive to the child's needs and the list is exhaustive (Fields, 1989; Thorne, 1990; Rambo, 1990; Imber, 1992). When a district fails to list all qualified evaluators within a given geographic area, the parent may choose qualified evaluators who are not listed (Imber, 1992).

⇒ Districts cannot delay a parent's request for an IEE, nor can districts require parents to allow them time to conduct additional evaluations as a precondition to an IEE at the public expense (Gray, 1988; Imber, 1992).

⇒ When a district normally utilizes classroom observations during the course of its own evaluation process, or when regulations require classroom observations (e.g. learning disability evaluations), an independent evaluator is also afforded an opportunity to conduct classroom observations (Wessels, 1990).

⇒ Parents have the right to a timely response when they request an IEE at the public expense. Districts may not unreasonably delay in responding to such a request, nor may districts unreasonably delay the initiation of a due process hearing to demonstrate the appropriateness of its evaluation (CFR 300.502).

District Rights Regarding Independent Educational Evaluations

⇒ A district has the right to insure that independent evaluators are minimally as qualified as its own evaluators. Thus, if a district only employs Master's level Special Educators to conduct educational evaluations, it could refuse to pay for an IEE, when the evaluator had completed only a bachelor's degree in special education.

⇒ The district has the right to establish reasonable time limits when an IEE may be obtained at the public expense. Thus, should a parent wish to obtain an IEE at public expense more than two years after the district had completed its own evaluation, the district might argue successfully that undue time had elapsed. Special circumstances might mitigate that argument (Thorne 1990).

⇒ A district can establish policies for reasonable cost requirements based upon maximum allowable charges for specific tests; however, the determination of fees cannot merely be a simple averaging of usually charged in the area by professionals who are qualified to perform the testing. Nor, can the determination of cost be used to eliminate certain evaluators. Policies on fees can be used to limit unreasonably excessive costs (Kirby, 1989).

⇒ A district can limit reimbursement for a complete IEE for each of its own evaluations [Hudson v. Wilson, 828 F. 2nd 1059, 1065 (4th Cir. 1987)]. Thus, if a district conducts a three-year reevaluation, the parents may obtain one complete independent evaluation at the public expense given that the evaluator(s) is qualified. While parents can obtain several independent evaluations; normally, the district is responsible for one complete reimbursement. The parent may have more than one evaluator conduct the IEE.

⇒ The district can elect to initiate a voluntary mediation process to negotiate payment for an IEE. The district can initiate a hearing to demonstrate that its own evaluation is appropriate. If the decision of the hearing officer is that the district's evaluation is appropriate, the parents are still entitled to an IEE, but not at public expense (Gramm, 1990); CFR 300.502 (b).

⇒ The district normally may have grounds to refuse to pay for an IEE if the parent does not express a disagreement with the district's evaluation. A district may ask the parent to clarify its objection to the district's evaluation; however, the district cannot compel a response or delay due to a parent's failure to explain an objection to the district's evaluation. (CFR 300.502).

A Quick Reference Guide for Parents about IEEs

- Normally, a parent should permit a school district to conduct its special education evaluation prior to seeking an IEE (exceptions will be noted)
- If and when a parent disagrees with the LEAs evaluation, including its conclusions and recommendations if provided, then it is appropriate to exercise your right to obtain an IEE at public expense.

A Quick Reference Guide for Parents about IEEs

- It is essential that when a parent make a request for an IEE that such a request is in writing, preferably with a copy to the child's pediatrician.
- It is also essential that the parent expresses disagreement with the LEAs evaluation. However, the parent does NOT need to explain the reasons in detail.
- The parent can simply state that he/she disagrees with the scope or depth of the evaluation.

A Quick Reference Guide for Parents about IEEs

- The parent should have already determined what types of IEEs re needed (e.g. educational, psychological, speech and language, occupational of physical therapy evaluation, functional behavioral assessment, etc. and should include such information in their written communication with the special education coordinator within their child's school.
- It is the parent's right to select the person(s) who will conduct the IEE as long as the evaluator(s) is at least as qualified as the LEAs evaluators.

A Quick Reference Guide for Parents about IEEs

- If an LEA states that it has policies on IEEs, by all means obtain a copy of those policies. You may need to review the policies with a well informed advocate or an attorney who specializes in special education law.

A Quick Reference Guide for Parents about IEEs

- Some states have specific requirements in special education regs for a timeline within which an LEA must agree to pay for the evaluation or initiate a due process hearing to demonstrate that its own evaluation was appropriate. In MA, the time period is within five *school* days. In RI, the time period is within 15 *calendar* days. The federal regs are silent about timelines.
- Parents need to have a plan B given the possibility that some LEAs will initiate a due process hearing. Parents need to be prepared to retain an attorney or at least an advocate to work with them should a due process hearing be necessary.

A Quick Reference Guide for Parents about IEEs

- Parents should discuss the legal ramifications of the IEE with an evaluator *prior* to utilizing the services of the evaluator. More specifically, be assured that the evaluator(s) is qualified to conduct the evaluation, is well experienced and well trained.
- The parent should explore whether the evaluator is willing to attend a school evaluation meeting to present his/her report. Furthermore, the parent should ascertain whether the evaluator is willing and able to testify should a due process hearing be necessary.

A Quick Reference Guide for Parents about IEEs

- Many unique circumstances may arise regarding IEEs. It may be especially helpful to have a consultant with a high degree of expertise about IEEs and other special education regulations, even if that person does not actually perform an IEE for your child.
- Some states may have specific language included in IEE regs that will affect choice and process. For example, Massachusetts has rate setting policies which may be overridden only when unique circumstances apply. Become aware of your state's policies or consult with someone with special knowledge before seeking an IEE.

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