



Webinar Materials

"Independent Educational Evaluations (IEEs): What Special Education Advocates Need to Know"

Wednesday, August 20, 2008 ♦ 2:00–3:30 PM ET



presented by

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The Advocate Academy is a project of



*A not-for-profit organization dedicated to services and projects
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Independent Educational Evaluations (IEEs):
What Special Education Advocates Need to Know
August 20, 2008 2:00 – 3:30 P.M.

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

PROCEDURAL SAFEGUARDS

A parent has the right to an independent educational evaluation at the public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Reg, 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the public expense. (34 CFR. Part 300.503 (b))



Whenever an independent evaluation is at the 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 which the public agency uses when it initiates an evaluation." (34 CFR 300.503 (e).

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?

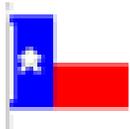
- Disagreement about a child's present level of performance
- Disagreement about a child's goals
- Disagreement about the relative progress accomplished
- Disagreement about whether a child should continue to receive special education services
- Sometimes, because there is a ***lack of communication***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

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



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

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)

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 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

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, December 21, 2007

This policy letter advises public agencies (SDs) that it must permit its own evaluators and those who conduct IEEs the opportunity to include age and grade level scores within evaluation reports. However, the letter notes that if the public agency restricts its own evaluators from including recommendations, the agency may also restrict independent educational evaluators from including recommendations if the evaluation is at the public expense. If the public agency does not restrict its own evaluators from including recommendations, the agency may not restrict those who conduct IEEs from including recommendations.

It should be noted that there is nothing in the federal regulations that preclude independent evaluators from offering recommendations.

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 of the disagreement with the district's evaluation.

Rhode Island Regulations on Independent Educational Evaluations

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.

(2) Each LEA shall 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.

(3) For the purposes of this part—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question; and (ii) Public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(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 LEA.

(2) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, and not later than 15 calendar days from receipt of a request, either—(i) Initiate a due process hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.

(3) If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the LEA, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(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 LEA 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 LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Italics added)

Significant Changes in the RI Regs on IEEs – 2000 & 2008

- There is no longer a mandate that parents make a written request for an IEE.
- There is no language in the new RI regs that parents must request an IEE in advance of obtaining one.
- Districts can inquire about the nature of the parents disagreement with the team's evaluation; however, a response cannot be compelled.
- Districts may 'not unreasonably delay' a parent's request for an IEE because the parent has not explained concerns about the district's evaluation.

Information about the new Mass regs on IEEs has been broken apart to ease the burden of reviewing them all at once

Massachusetts New Regs on IEEs

Independent education evaluations. Upon receipt of evaluation results, if the parent **disagrees** with an initial evaluation or re-evaluation completed by the school district, then the parent may request an independent educational evaluation.

(a) All independent educational evaluations shall be conducted by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates. Unique circumstances of the child may justify an individual assessment rate that is higher than that normally allowed.

(b) The parent may obtain an independent educational evaluation at private expense at any time.

(c) Public funding of independent evaluations- when the parent requests public funding for an independent evaluation, the district shall abide by the following provisions for a sliding fee scale:

(i) If the student is eligible for free or reduced cost lunch or is in the custody of a state agency with an Educational Surrogate Parent appointed in accordance with federal law, then the school district shall provide, at full public expense, an independent educational evaluation that is equivalent to the types of assessments done by the school district. No additional documentation of family financial status is required from the parent.

(ii) If the family financial status is not known, the district shall offer the parent information about the sliding fee scale and the opportunity to provide family income information to determine if the family may be eligible for public funding of all or part of the costs of an independent educational evaluation. Provision of financial information by the family is completely voluntary on the part of the family. The lack of financial information provided by the family will disqualify the family from such additional public funding of all or part of the costs of an independent educational evaluation under 603 CMR 28.04(5)(c) but shall not limit the rights of parents to request public funding under 603 CMR 28.04(5)(d).

(iii) If the family agrees to provide financial information, such information shall include anticipated annual income of the family, including all sources of income and verifying documents. Financial information shall be reviewed by the district, shall be kept confidential during review by the district, shall not be copied or maintained in any form at the district except to note that information was provided and reviewed and met or did not meet sliding fee scale standards. Financial documents shall be promptly returned to the parent(s) upon the district's determination of financial income status.

(iv) The district shall consider family size and family income information in relation to Federal Poverty Guidelines and shall contribute public funds to the costs of the independent educational evaluation according to the following standards:

aa. If the family income is equal to or less than 400% of the federal poverty guidelines, the district shall pay 100% of the costs of an independent educational evaluation.

bb. If the family income is between 400% and 500% of the federal poverty guidelines, the district shall pay 75% of the costs of an independent educational evaluation.

cc. If the family income is between 500% and 600% of the federal poverty guidelines, the district shall pay 50% of the costs of an independent educational evaluation.

dd. If the family income is over 600% of the federal poverty guidelines, the district shall have no obligation to cost-share with the parent.

(v) When the parent seeks and receives public funding for an independent educational evaluation under these provisions, the parent may request independent assessments in one, more than one, or all of the areas assessed by the school district.

(vi) The right of this publicly funded independent educational evaluation under 603 CMR 28.04(5)(c) continues for sixteen (16) months from the date of the evaluation with which the parent disagrees.

(d) If the parent is requesting an evaluation in an area not assessed by the school district, the student does not meet eligibility standards, or the family chooses not to provide financial documentation to the district establishing family income level, the school district shall respond in accordance with the requirements of federal law. The district shall either agree to pay for the independent educational evaluation or, within five school days, proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. If the Bureau of Special Education Appeals finds that the school district's evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent educational evaluation requested by the parent.

(e) Whenever possible, the independent educational evaluation shall be completed and a written report sent no later than thirty (30) days after the date the parent requests the independent educational evaluation. If publicly funded, the report shall be sent to the parents and to the school district. The independent evaluator shall be requested to provide a report that summarizes, in writing, procedures, assessments, results, and diagnostic impressions as well as educationally relevant recommendations for meeting identified needs of the student. The independent evaluator may recommend appropriate types of placements but shall not recommend specific placements.

(f) Within ten (10) school days from the time the school district receives the report of the independent educational evaluation, the Team shall reconvene and consider the independent educational evaluation and whether a new or amended IEP is appropriate.

The New Mass IEE Regs

- The State has set specific rates for IEEs
- The rates may be exceeded under 'unique circumstances
- A sliding fee has been established based upon proof of income and the federal poverty guidelines
- Given public support the parent is entitled to an IEE that is equivalent to the types of assessments done by the school district
- The parent's right to an IEE is limited to a period of 16 months after the district had completed it's evaluation. Note that the date for review of district's the evaluation may delay the parent's decision to seek an IEE

The New Mass IEE Regs

- When it is possible, the IEE should be completed within 30 (calendar) days after the requests an IEE
- The evaluator will complete a written report. The report may include a recommendation for a specific *type* of placement but not a specific placement, *per se*.
- The report will summarize procedures, assessments, results and diagnostic impressions as well as relevant recommendations for meeting the student's needs

Administrative Advisory SPED 2004-1: Independent Educational Evaluations Mass Department of Education

On October 23, 2003 the Massachusetts State Director of Special Education issued an advisory to clarify the district responsibilities under federal and state law re IEEs.

Although Mass State Regulations limit parents to obtaining An IEE at public expense after 16 months from when the SD Completed its evaluation, federal policy provides no such limit.

Administrative Advisory SPED 2004-1:
Independent Educational Evaluations
Mass Department of Education

- The State Director suggested in her advisory that if more than 16 months passes between the time that the SD has conducted its evaluation and the time that a parents requests an IEE, that the SD seek consent for SD personnel to evaluate prior to the initiation of an IEE
- If a parent requests that SD grant an IEE to evaluate in areas not evaluated by that SD, then district personnel should determine first whether such additional evaluation is needed. If so, the then SD should offer to conduct its own further evaluation

Administrative Advisory SPED 2004-1:
Independent Educational Evaluations
Mass Department of Education

- The State Advisory appears to be inconsistent with the OSEP Policy letter Gray, 1988) and several additional policy letters that follow.
- Thus, once the parent requests an IEE, the SD can either agree to pay or initiate a due process hearing to determine that its own evaluation was appropriate.

Recent Changes in Some State
Regulations on IEEs

- Connecticut – (revised in 2005) follows federal regs except that there is an omission about SD’s not engaging in “unnecessary delay”
- Maine (August 2007) – consistent with federal, though in ME, evaluators are normally required to be certified in Maine

Recent Changes in Some State Regulations on IEEs

- Massachusetts (2007) The Mass regs appear to be consistent with regs that were adopted previously. No changes appear to have been made. A unique protection for children is that SD's have 5 school days to respond to a parent's request for an IEE either by agreeing to pay for the IEE or initiating a due process hearing to demonstrate that its evaluation is appropriate
- New Hampshire (July, 2002) These regs appear consistent with the federal regs.

Recent Changes in Some State Regulations on IEEs

- New York (2007) consistent with federal regs
- New Jersey (2006) Follows federal regs with some unusual exceptions. SD's must respond to a parent's request for an IEE at public expense within 20 calendar days. When an independent educational evaluator must be permitted an opportunity to observe the student in the classroom whether the evaluation is at private or public expense

Recent Changes in Some State Regulations on IEEs

- Rhode Island (January 2008) RI regs are consistent with its January 14, 2000 regulations). It maintains a 15 calendar day response time.
- Vermont (2007) The Vermont regs appear to be consistent with federal regs

Recent Changes in Some State Regulations on IEEs

- Texas based upon a review of recent Texas regulations and consultation with the TEA, Texas does not include regulations pertaining to IEEs. However, in November 2006, the TEA did issue a set of procedural safeguards for parents of students with disabilities
- The information contained within this document appear to be consistent with the federal regs on IEEs.

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)

- There may be contractual issues brought forward by teacher unions as to whether RTI places an undue burden on school personnel that goes above and beyond previously agreed upon language relative to existing responsibilities.

IEEs and Response to Intervention (RTI)

- School districts have a "natural advantage" to collect data routinely in order to assess the degree to which a student is progressing
- Independent educational evaluators will have an increased burden to assess the degree to which a child is progressing with the curriculum. Formal assessment instruments may be insufficient, in and of themselves as a basis to draw conclusions about student progress.

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.

Massachusetts House Bill 391: 2007

HOUSE No. 391

By Ms. Balsler of Newton, petition of Ruth B. Balsler 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. Balsler	Geraldine Crodon
Alice K. Wolf	Frank J. Smazek
William M. Brewsberger	Steven A. Tolman
Cory Atkins	Patricia D. Jekbia
Barbara A. L'Hallien	Kay Khan
Tom Santandrea	Richard J. Ross

—
In the Year Two Thousand and Seven.

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

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 3 of chapter 71B of the General Laws, as appearing in the
2 2004 Official Edition, is hereby amended by inserting at the end of
3 paragraph four the following paragraph:—
4 To insure that parents can participate fully and effectively with
5 school personnel in the consideration and development of appropriate
6 educational programs for their child, a school committee shall,
7 upon request by parents, provide timely access to parents and/or
8 parent-designated independent evaluators and educational consultants
9 for observations of a child's current program and/or of any
10 program proposed for the child, including both academic and non-
11 academic aspects of any such program. Parents and/or their

12 designees shall be afforded access of sufficient duration and extent
13 to enable them to evaluate the child's performance in a current
14 program and/or the ability of a proposed program to enable the child
15 to make effective progress. School committees shall impose no

16 conditions or restrictions on such observations that are not necessary
17 to ensure the safety of children in a program or the integrity of the
18 program while under observation.

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[r] 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)

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."

APPELLATE CASES: DISTRICT PREVAILS

Andress v. Cleveland Indep. School Dist. 64 F.3d 176, 1995 U.S. App. LEXIS 24373

When a district was precluded from conducting its own evaluation, the district was not obligated to pay for an IEE (5th Circuit)

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.

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 the 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.

● **The case is being appealed by counsel for the parents to the Sixth Circuit Court.**

**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**

***Norton v. Orinda Union Sch. Dist.*
29 IDELR 1068, 1999**

A district was found to have made a proper determination of eligibility; however, the district was obligated to pay for two IEEs (9th 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)

he parent requested special education eligibility, reimbursement for 3 IEEs and for private school

uition.

LJ: SPED eligible, but no IEE reimbursement nor

uition.

PO: SPED eligible and reimbursement for IEE

Recent District Court Cases in Which Districts Prevailed

- District Court: Northern District of Illinois, *Krista P v. Manhattan School District and the Illinois Board of Education*, April 3, 2003
- The Court ruled that the parents' request for an IEE, "was not prompted by their dissatisfaction with a specific evaluation, but instead was made after the district denied their evaluation request."

Recent District Court Cases in Which Parents Prevailed

- US District Court: Michigan Court of Appeals, Plaintiff Appellant v. Michigan Department of Education, May 5, 2005
- The Court determined that the SD was responsible for a private school with an IEE or request a due process hearing. The issue pertained to physical therapy of a child who was in remission from a brain tumor.

Recent District Court Cases in Which Districts Prevailed

- US District: District of Columbia, IDEA Public Charter School v. DC, June 21, 2005
- Parents have right to seek and obtain an IEE at public expense. However, federal regulations do not afford charter schools those same rights.

Recent District Court Cases in Which Districts Prevailed

- US District: Southern District of West Virginia, Robert Kirby v. Cabell County Board of Education and William Smith, Superintendent, September 19, 2006
- The Court did not award the parent fees for an IEE, "because it was conducted before the IHO determined whether the district's evaluation was appropriate."

Recent District Court Cases in Which Districts Prevailed

- US District: New Jersey M.S. and D.D. v. Mullica Township Board , April 12, 2007
- The Court did not award the parent of a kindergarten child payment for an IEE because the parent failed to allow the SD to conduct its own re evaluation first.

Recent District Court Cases in Which Districts Prevailed

- US District: District of Eastern Pennsylvania, L.S. and C.S. v. Abington School District, Independent, September 30, 2007
- Although the SD took 10 weeks to notify the parents of a high school student with SLD that it was requesting the parents request for an IEE at public expense, the Court ruled that the SD attempted to resolve the matter amicably.
- This decision is inconsistent with federal law that requires that SDs respond to such requests without unnecessary delay.

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 of Northern Illinois, John M. V. Board of Education of Evanston Community Consolidated, School District 65 and Dr. Hardy R. Murphy, Superintendent, June 18, 2002
- The Court awarded parents for their OT and PT evaluations as well as attorney's fees, since they were the prevailing party.
- The parents had disagreed with SD evaluations. The SD offered to do additional evaluations, but the parents rejected that offer.

Recent District Court Cases in Which Parents Prevailed

- US District, Northern California, Pajaro Valley Unified School District v. J.S. et. Al., December 15, 2006
- The parents of a 7th grader, due, in large measure, to a SD's decision to wait three months prior to filing for a due process hearing (i.e. "without unnecessary delay."
- The Court also concurred with the Magistrate opinion that the fees would have been awarded because of the SD's failure to evaluate in all areas of the child's suspected disabilities

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

- US District Court: Central California, Los Angeles Unified School District, v. D.L., March 10, 2008
- The Court ruled that although the parent of a kindergarten child did not have “a statutory right to an IEE” the district was required to pay for the private evaluation.
- The Court concluded that the SD had failed to evaluate the child, the parent could not meet IDEA’s requirement, “that she dispute the district’s assessment. However, the Court noted that the child was frequently disciplined” and evidenced a myriad of behavioral issues, that the district should have evaluated the child.

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%

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.

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.

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⇒ 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).

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⇒ 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).

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c. Steve C. Imber, Ph.D. June 30, 2008
