



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 20, 2003

Mr. David Young
Volunteer Educational Advocate
2008 Erving Ridge Loop
Cabot, Arkansas 72023

Dear Mr. Young:

This letter is in response to a series of e-mails that you have sent to the Office of Special Education Programs (OSEP) regarding the Individuals with Disabilities Education Act (IDEA). We apologize for the delay in responding to you.

In your e-mails, you ask this Office to clarify the requirements relating to district practices of not paying for an independent educational evaluation (IEE) unless the examiner is specified on a list provided by the local educational agency (LEA). In particular, you ask whether the policy of limiting the choices of qualified IEE examiners to approved lists of the LEAs is inconsistent with a parent's right to an IEE.

As you know, the Part B regulations provide that each agency shall provide to parents, upon request for an IEE, information about where an independent educational evaluation may be obtained, and the applicable agency criteria for an IEE. 34 CFR § 300.502(a)(2) and (e)(1). The regulations further specify that the parent has a right to an IEE at public expense if the parent disagrees with the agency's evaluation. 34 CFR § 300.502(b)(1). If the parent requests an IEE at public expense, the public agency, without unnecessary delay, must either initiate a hearing under section 300.507 to demonstrate that its evaluation was appropriate or pay for the IEE unless it can prove in a hearing that the evaluation obtained by the parent did not meet agency criteria. 34 CFR § 300.502(b)(2).

In addition, the agency must set criteria under which an IEE can be obtained at public expense, including the location of the evaluation and the qualifications of the examiner, which 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. 34 CFR §300.502(e)(1). For example, 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 the same licensure for its own staff conducting the same types of evaluations. Significantly, the agency is prohibited from imposing other conditions or timelines related to obtaining an IEE at public expense. 34 CFR §300.502(e)(2). In short, the IEE must meet the same criteria as the evaluation performed by examiners of the public agency, unless those criteria would result in the denial of an IEE to a parent. For example, children suspected of a disability may require evaluations performed by clinical psychologists who would not meet the standards of the State educational agency (SEA) requiring school psychologists to be licensed by the SEA because psychologists in private practice are not licensed by the SEA.

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Turning to your specific question about the public agency's use of a list, as noted above, the agency should have criteria for the minimum qualifications of the persons who conduct evaluations, and listing the names and addresses of evaluators who meet the minimum qualifications can be an effective way for agencies to inform parents of where and how they might obtain an IEE. Thus, there is nothing in IDEA that would prohibit a public agency from publishing a list of examiners that meet the agency criteria as set out in 34 CFR §300.502(e)(2), and the qualifications of examiners per 34 CFR §300.532 (g)-(j).

Further, this Office believes it is not inconsistent with IDEA for the district to maintain, and require parents to use, a list of qualified examiners that meet the same 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. Specifically, if the child's needs can be appropriately evaluated by the persons on the list *and* the list exhausts the availability of qualified people within the geographic area specified, then an agency can restrict parents to selecting from among those persons on the list. If such a list is maintained and parents are required to use it, the LEA must include in its policy that parents have the opportunity to demonstrate that unique circumstances justify selection of an IEE examiner who does not meet the agency's qualification criteria and do not appear on the agency's list of examiners.

We hope this letter answers your questions concerning IEE policies. If you would like further assistance on this matter, please contact Dr. JoLeta Reynolds of OSEP at (202) 205-5507, and press #3.

Sincerely,

A handwritten signature in black ink that reads "Stephanie S. Lee". The signature is written in a cursive, flowing style.

Stephanie S. Lee
Director
Office of Special Education Programs