



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 13,2010

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This is in response to your May 14, 2010 letter to me asking several questions related primarily to the criteria used when a parent requests an independent educational evaluation (IEE) pursuant to 34 CFR §300.502.

Under 34 CFR §300.502(a), the parents of a child with a disability have the right under Part B of the Individuals with Disabilities Education Act (IDEA) to obtain an IEE of the child, subject to 34 CFR §300.502(b) through (e). Additionally, each public agency must provide to parents, upon request for an IEE, information about where an IEE may be obtained, and the agency criteria applicable for IEEs as set forth in 34 CFR §300.502(e). Furthermore, under 34 CFR §300.502(e), if an IEE 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. Except for the criteria identified immediately above, a public agency may not impose conditions or timelines related to obtaining an IEE at public expense.

In your letter, you ask, "Can Districts impose a requirement, like holding a valid teacher's certificate, on an independent evaluator when the requirement is not necessarily germane to one's ability to assess the student?" As stated above, a public agency, including a local educational agency (LEA), or school district, 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. However, 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 having a particular disability may require evaluations performed by clinical psychologists who would not meet the qualifications the State educational agency (SEA) requires for school psychologists to be licensed by the SEA.

Your letter also asks, "Are School Districts allowed to distinguish between types of psychologist/evaluators and impose differing criteria for clinical psychologists than that of school psychologists when the clinical psychologist is licensed by the state and meets all professionally-accepted standards for performing [an] evaluation? Does the Doctoral-level clinical psychologist meet and/or exceed the qualifications of the Master's-level school psychologist for the purpose of administering an evaluation? If a person with a Master's degree in school psychology administers the initial assessment for the school, then shouldn't the school accept a licensed, clinical psychologist with four to six more years of formal training in psychology to administer an IEE?"

The Department does not review a State's or LEA's personnel qualifications, including qualification criteria for evaluators involved in identifying children with disabilities to receive special education and related services. The Department believes that States are in the best position to determine appropriate professional requirements for personnel necessary to comply with the IDEA in their States. There is nothing in the IDEA that requires an SEA to determine qualifications of related services personnel, including psychologists who perform educational evaluations of children, based on nationally recognized standards or current professional standards. Professional organizations may establish personnel standards for related services personnel that differ from the qualifications established by a State for those personnel, but section 612(a)(14) of the Act clarifies that the State is responsible for establishing and maintaining personnel qualifications to ensure that related services personnel have the knowledge and skills to serve children with disabilities under the IDEA and are appropriately and adequately prepared and trained. As noted above, 34 CFR §300.502(e) provides that in order for an IEE to be 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. Except for these criteria, 34 CFR §300.502(e)(2) provides that a public agency may not impose conditions or timelines related to obtaining an IEE at public expense. In discussing a comment regarding State licensure for evaluators who conduct IEEs, in the Analysis of Comments and Changes section of the Part B regulations, we responded that, "consistent with applicable agency criteria, it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same types of evaluations for the agency. In contrast, it would be inconsistent with a parent's right to an IEE for a public agency to require all evaluators to be licensed, if only individuals employed by a public agency may obtain a license." 71 FR 46689 (August 14, 2006).

You also raised the issue of school districts maintaining lists of "preferred evaluators." IDEA permits a district to maintain, and require parents to use, a list of all qualified examiners in the area 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 does not appear on the agency's list of examiners. Allowing parents this opportunity recognizes that, in some instances, the only person qualified to conduct the type of evaluation needed by the child may be an evaluator who does not meet agency criteria. In such situations, the public agency must ensure that the parent still has the right to the IEE at public expense and is informed about where the evaluation(s) may be obtained.

Next you state your concerns with school districts that neither file for due process nor pay to have an IEE conducted. In this context, you ask. "Can a School District representative make the unilateral decision, outside the purview of a PPT [Planning and Placement Team] meeting, to file for due process to defend the school's evaluation when the members of the PPT agreed to the IEE at a PPT meeting? Can a District file for due process over an IEE after the PPT agreed to the IEE, citing undue delay when the District delayed the process? What constitutes undue delay? Would more than a month be considered undue delay? Is the principle of undue delay designed to protect the interests of the parent or the interests of the school? If a District unduly delays the process through various tactics after it agreed to fund the IEE, at what point do the parents have the right to insist that the District pay for the IEE? Is there a means to do this without filing for due process?"

The regulation at issue in your questions is 34 CFR §300.502(b)(2), which states that "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 §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria." In response to your questions, first, the IDEA does not specify that an individualized education program (IEP) Team decide on whether an IEE should be conducted. The decisions about whether a school district will accept or challenge an IEE are left, by the IDEA regulations, to the district itself. The term "unnecessary delay" used in 34 CFR §300.502(b)(2) is not defined in the regulations. It permits however, a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an IEE. Ultimately, though, if the parent believes that the school district is no longer proceeding in good faith, such that the right to an IEE at public expense is being compromised, but the school district has not filed a due process complaint, he or she has several options. One would be to proceed with the IEE that he or she believes to be appropriate and then to seek compensation from the school district for the IEE the parent had obtained. If the school district refused to pay and did not file for due process (either to show that the school district's evaluation was appropriate, or that the evaluation obtained by the parents did not meet agency criteria), the parent could seek to compel the school district to provide the IEE at public expense (i.e., pay for the IEE the parent had obtained) through any of the dispute resolution mechanisms allowed by the IDEA, including mediation (34 CFR §300.506), the filing of a State complaint (34 CFR §§300.151-300.153) or by filing a due process complaint (34 CFR §300.507). Alternatively, the parent could, without proceeding to have the IEE conducted,

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challenge the school district's failure to provide an IEE at public expense through any of these mechanisms.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope this information is helpful to you. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by e-mail at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny,
Acting Director
Office of Special Education Programs

cc: XXXXXXXXXX XXXXXXXX