



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

October 9, 2002

This is in response to your letter of June 10, 2002 seeking guidance regarding the allowable rates for independent educational evaluations (IEE) as set by the Massachusetts Department of Education (MASSDE). Specifically, you state in your letter that your daughter has been diagnosed with autism with extensive and complicated medical, psychological, and educational needs. You have been unable to obtain an IEE because you cannot find a qualified examiner that will conduct the evaluation at the rate set by MASSDE.

The Individuals with Disabilities Education Act (Part B) affords a parent the right to a publicly-funded IEE if the parent disagrees with an evaluation obtained by the public agency. 34 CFR §300.502(b)(1). If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under §300.607 that the evaluation obtained by the parent did not meet agency criteria. 34 CFR §300.502(b)(2). Under 34 CFR §300.502(e)(1), the criteria under which the publicly-funded IEE 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. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an IEE at public expense.

The denial of an IEE based solely on financial cost would be inconsistent with 34 CFR §300.502. To avoid unreasonable charges for IEEs, the school district may establish maximum allowable charges for specific tests. When enforcing reasonable cost containment criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria. If an IEE that falls outside the district's criteria is justified by the child's unique circumstances, that IEE must be publicly-funded. If the total cost of the IEE exceeds the maximum allowable costs and the school district believes that there is no justification for the excess cost, the school district cannot in its sole judgment determine that it will pay only the maximum allowable cost and no further. The public agency must, without unnecessary delay, initiate a hearing to demonstrate that the evaluation obtained by the parent did not

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meet the agency's cost criteria and that unique circumstances of the child do not justify an IEE at a rate that is higher than normally allowed. See the February 2, 1995 Letter to Anonymous and the September 10, 2001 Letter to Petska, enclosed and MASSDE regulations at 603 CMR 28-04(5) and Administrative Advisory SPED 2001-3.

I hope that this information is helpful. If this Office can be of further assistance, please contact Dr. Ken Kienas of my staff at (202) 205-9057.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie S. Lee".

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosures

cc: Marcia Mittnacht, MASSDE