



NJOSE Guidance Memo  
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**State of New Jersey**  
DEPARTMENT OF EDUCATION  
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October 1, 2013

**TO:** Chief School Administrators  
Directors of Special Education  
Administrators of a State Facility  
Administrators of a Charter School  
Administrators of an Approved Private School for the Disabled  
Administrators of a College-Operated Program  
Statewide Special Education Advisory Council  
Agencies or Organizations Concerned with Special Education

**FROM:** Peggy McDonald, Director  
Office of Special Education Programs

**SUBJECT:** Frequently Asked Questions - Independent Educational Evaluations

I am writing to provide clarification with respect to the state regulations regarding Independent Educational Evaluations (IEEs). As stated in the memorandum from this office dated May 14, 2012, the current regulations contained in N.J.A.C. 6A:14-2.5(c)1 are inconsistent with the IEE provisions in 34 CFR §300.502. Specifically, 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 an IEE. As a result, the state has been asked to provide an assurance to USDE OSEP that the regulation will be revised to eliminate this provision, and in the interim period, to assure that all districts comply with the requirements in 34 CFR §300.502.

To date, the state regulations have not yet been amended to reflect the information set forth above. Thus, this memorandum is a reminder that the districts may no longer limit the parents' right to an IEE by first conducting an assessment in an area not already assessed by the initial evaluation or reevaluation before the parents' request is granted. Rather, when a parental request for an independent evaluation is received, a district must provide the evaluation at no cost to the parent, unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing. (N.J.A.C. 6A:14-2.5(c)2.) In an effort to provide further guidance, the OSEP has developed the attached FAQ regarding the provision of IEEs.

I trust this information is helpful. Should you have any questions or require additional information, please contact Kathy Ehling at 609-292-7602.

PM/JW/KE

c: Members, State Board of Education  
Commissioner Christopher D. Cerf  
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Kathy Ehling  
Executive Director for Regional Achievement Center  
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**New Jersey Office of Special Education Programs  
Independent Education Evaluations (IEE)  
Frequently Asked Questions  
September 2013**

**1. What is meant by the term "independent education evaluations?"**

The federal regulations define independent educational evaluations (IEEs) as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 CFR §300.502(a)(3)(i).

**2. What students should be considered for IEEs?**

Under the Individuals with Disabilities Education Act (IDEA), a child with a disability has the right to an IEE if the child's parents disagree with an evaluation conducted by the local education agency (LEA). 34 CFR §300.502(a)(1).

**3. Who pays for an IEE?**

The LEA pays for IEEs. 34 CFR §300.502(a)(3)(ii).

**4. What triggers a parent's right to obtain an IEE for the child at the LEA's expense?**

A parent's right to obtain an IEE at the LEA's expense is triggered if the parent disagrees with an evaluation initiated by the LEA. *Letter to Parker*, 41 IDELR 155 (OSERS 2004); 34 CFR §300.502(b)(1).

**5. What standard should be used when making a determination about who is eligible to conduct an IEE?**

The IDEA does not establish a standard for determining who can conduct an IEE. However, the law does allow for each LEA to set criteria for determining whether an IEE can be obtained at the LEA's expense.

**6. What are examples of criteria for the provision of an IEE that the LEA can establish?**

Examples of criteria that the LEA may establish include qualifications of the examiner and reasonable cost containment. However, when establishing criteria, it is important to remember that the criteria the LEA establishes, including the qualifications of the evaluator, must be the same as the criteria the LEA uses when it conducts an evaluation. For example, the LEA may establish a qualification that requires an examiner "to either hold or to be eligible to hold a particular license" when the LEA requires the same licensure for its own staff who conduct the same evaluations. *Letter to Petska*, 35 IDELR 191 (OSERS 2001).

**7. What restrictions are placed on the LEA's criteria for IEEs?**

Restrictions on criteria include the following: (1) the criteria "must meet the requirements in 34 CFR §300.502;" (2) the criteria must be consistently applied to the IEEs initiated by the LEA and to any other IEE that is funded by the LEA; (3) besides the criteria that the LEA uses in initiating an IEE, the LEA "may not impose other conditions or timelines related to obtaining an IEE" at the LEA's expense. *Letter to Rambo*, 16 IDELR 1078 (OSEP 1990); 34 CFR §300.502 (e)(1)-(2).

**8. Who chooses the evaluator for an IEE?**

IDEA permits the LEA to publish a list of names and addresses of qualified evaluators that meet the LEA's criteria in choosing an evaluator. *Letter to Rambo*, 16 IDELR 1078 (OSEP 1990).

**9. Can the LEA require parents to choose an evaluator from its list of qualified evaluators?**

IDEA permits the LEA to require parents to select an evaluator from its list in order for the IEE to be funded by the LEA if (1) "a child's needs can be appropriately evaluated" by an evaluator on the list *and* (2) all qualified examiners in the geographic location are included on the list. However, if the LEA's list does not exhaust the evaluators who are "minimally qualified to evaluate the unique needs of every child in the district," the parent can choose an evaluator who is not on the LEA's list, so long as the evaluator meets the LEA's criteria. *Letter to Parker*, 41 IDELR 155 (OSERS 2004); *Letter to Anonymous*, 56 IDELR 175 (OSEP 2010); *Letter to Thorne*, 16 IDELR 606 (OSEP 1990); *Letter to Rambo*, 16 IDELR 1078 (OSEP 1990).

**10. What if a parent selects an evaluator who is not on the LEA's list and who does not meet the LEA's criteria?**

If a parent selects an evaluator who is not on the LEA's list and does not meet the LEA's criteria, the LEA must allow the parents the opportunity to demonstrate that unique circumstances justify the selection of this evaluator. *Letter to Anonymous*, 56 IDELR 175 (OSEP 2010).

**11. What if the LEA does not believe that there are unique circumstances to justify the selection of an evaluator who is not on the LEA's list and who does not meet the LEA's criteria?**

If the LEA does not believe that unique circumstances justify the selection of an evaluator, the LEA may file for due process to deny the parent's request. *Letter to Parker*, 41 IDELR 155 (OSERS 2004).

**12. What if a parent does not agree with the LEA's decision that a particular evaluator is not qualified?**

If a parent chooses an evaluator who is not on the LEA's list and the LEA decides that the evaluator is not qualified to do the evaluation, the parent may challenge the LEA's decision by filing for due process. *Letter to Rambo*, 16 IDELR 1078 (OSEP 1990).

**13. How many IEEs at the LEA's expense may a parent seek?**

If a parent disagrees with the LEA's evaluation, the parent is entitled to only one IEE at the LEA's expense. 34 CFR §300.502(b)(5). Note that an IEE may contain more than one assessment.

**14. Who pays for an IEE if the evaluator chosen by the parent is not on the LEA's list and the evaluator does not meet the LEA's criteria?**

The LEA must allow the parents the opportunity to demonstrate that unique circumstances justify the selection of this evaluator. If the evaluator chosen by the parent is justified by the child's unique circumstances, the LEA must fund the IEE. However, if the LEA "believes the evaluator does not meet agency criteria or there is no justification for selecting an evaluator that does not meet agency criteria, the district may file for due process rather than pay for the IEE." *Letter to Anonymous*, 56 IDELR 175 (OSEP 2010); *Letter to Parker*, 41 IDELR 155 (OSERS 2004).

**15. What happens if the total cost for an IEE exceeds the district's reasonable cost criteria?**

The LEA may establish maximum allowable charges that it allows for an IEE to ensure that the cost of an IEE is reasonable. The maximum fee "cannot simply be an average of the fees customarily charged in the area," but rather, "must be established so that it allows parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees." If an evaluator selected by the parent exceeds the LEA's maximum allowable charges, the LEA must give the parent an opportunity to demonstrate that unique circumstances justify going above the LEA's fee criteria. If the parent does demonstrate unique circumstances, the LEA must fund the IEE. If "there is no justification for the excess cost, the cost of the IEE must be" funded by the LEA "to the extent of the [LEA]'s maximum allowable charge." Additionally, if the requested IEE exceeds the district's maximum allowable costs and the district does not support the justification for the excess cost, "the [LEA] must, without unnecessary delay, initiate a [due process] hearing to demonstrate that the evaluation obtained by the parent did not meet the agency's cost criteria." *Letter to Petska*, 35 IDELR 191 (OSERS 2001); *Letter to Anonymous*, 11 IDELR 673 (OSEP 1995); *Letter to Thorne*, 16 IDELR 606 (OSEP 1990).

**16. What if an agency does not adopt reasonable cost criteria?**

If the LEA does not adopt reasonable cost criteria, the "parents are free to obtain the services of any qualified evaluator." If the LEA "believes the fees charged [for the IEE] were unreasonable, it has two options: (1) pay the fees charged to the parents, or (2) file for a due process hearing in which the [LEA] would challenge the right of parents to be reimbursed for the particular fee and would have to show that the fee was 'unreasonably expensive.'" *Letter to Thorne*, 16 IDELR 606 (OSEP 1990).

**17. Does the parent have to notify the district of his/her disagreement with the district's evaluation before obtaining an IEE at the LEA's expense?**

There is no federal requirement that a parent must notify the LEA of his/her disagreement with the LEA's IEE before the parent obtains an IEE at the LEA's expense. However, it is reasonable for the LEA to require a parent to notify the LEA of his/her disagreement with the district's evaluation prior to the parent obtaining an IEE at the LEA's expense. If a parent does not notify the district that he/she is obtaining an IEE because he/she disagrees with the LEA's evaluation, the LEA still has to pay for the IEE. *Letter to Thorne*, 16 IDELR 606 (OSEP 1990).

**18. Does a district have to pay for the travel costs or other related costs incurred by the parents in connection with their arrangement of or their attendance of an IEE?**

If a child needs to be evaluated out-of-district for an IEE, the LEA "may be required to pay for the expenses incurred by the parent for travel or other related costs." If the LEA believes that these expenses are unreasonable, the LEA can file for due process. *Letter to Petska*, 35 IDELR 191 (OSERS 2001).