

Information **UPDATE**

Wisconsin Department of Public Instruction/John T. Benson, State Superintendent/125 S. Webster St./P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Juanita S. Pawlisch, Ph.D., Assistant Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Independent Educational Evaluations (IEEs)

Both state and federal laws give parents of children with disabilities rights relating to independent educational evaluations. Over the years, the Department of Public Instruction has received many questions about requirements relating to independent educational evaluations for children with disabilities. This bulletin addresses some of the more frequently asked questions.

1. *What is an independent educational evaluation?*

An independent educational evaluation or “IEE” is an evaluation conducted by a qualified examiner who is not an employee of the child’s local educational agency. A parent-initiated IEE may be either at the expense of the child’s parents or at public expense (at no cost to the parents). A due process hearing officer may order an IEE. An IEE ordered by a due process hearing officer must be at public expense.

2. *When parents initiate an IEE, who selects the examiner?*

When the parents of a child with a disability initiate an IEE, the parents have the right to select the examiner. Upon receiving a request for an IEE, a local educational agency must inform parents about where to obtain an IEE. Listing the names and addresses of examiners who meet local educational agency criteria is one way to inform parents. Also the agency must inform the parents of the agency’s IEE criteria. The agency should present the information in a manner that is easily understandable. The department strongly recommends that parents contact their child’s local educational agency to learn about the agency’s IEE criteria before obtaining an IEE.

3. *When are the parents of a child with a disability entitled to an IEE at no cost to them?*

The parents of a child with a disability are entitled to an IEE at no cost to them when they disagree with the agency’s evaluation of their child. “Evaluation” means procedures used to determine whether the child has a disability and the nature and the extent of the special education and related services the child needs.

4. *Are parents entitled to a publicly funded IEE before the local educational agency completes its evaluation of the child?*

No. Parents have the right to obtain public funding for an IEE only after the local educational agency completes its evaluation. The law does not require a local educational agency to reimburse parents for the cost of an evaluation that the parents obtained before the agency completed its evaluation, even if the agency subsequently adopts the results of the evaluation obtained by the parent.

5. *Are parents entitled to more than one publicly funded IEE for each local educational agency assessment performed by a local educational agency examiner?*

No. Parents are entitled to only one publicly funded IEE for each assessment performed by a LEA examiner with which they disagree. However, the right to an IEE at public expense is available to parents each time the local educational agency conducts an evaluation.

6. *May a local educational agency require parents to notify the agency prior to obtaining an IEE?*

A local educational agency may have a policy requiring parents to notify the agency of their intent to obtain a publicly funded IEE. However, the agency may not deny parents a publicly funded IEE because they failed to provide the agency with such notice. If the parents request an IEE, the agency may ask for the parents' reason for objecting to the agency's evaluation. However, the local educational agency may not unreasonably delay a publicly funded IEE because the parents have not informed the agency of their reason for objecting to the agency's evaluation.

7. *How should a local educational agency respond when it receives a request for an IEE from a parent who disagrees with the local educational agency's evaluation?*

The local educational agency must respond to the request in a reasonable amount of time and in a manner that does not interfere with the child's right to a free appropriate public education. The local educational agency must either provide the IEE at public expense or request a due process hearing to show that its evaluation is appropriate. If the final decision in the due process proceedings is that the agency's evaluation is appropriate, the parent still has a right to an IEE, but not at public expense.

8. *If parents present a local education agency with the results of an IEE and request payment, how should the district respond?*

The local educational agency must respond to such a request without unnecessary delay. The local educational agency must either pay for the IEE or request a due process hearing to show that its evaluation is appropriate or that the IEE does not meet local educational agency criteria.

9. *What criteria may a local educational agency establish for IEEs that are provided at public expense?*

An IEE at public expense must meet the criteria the agency uses when it conducts its own evaluation. Upon request for an IEE, the agency must inform parents about the agency's IEE criteria. These criteria include the qualifications of the examiner and the location of the evaluation. The agency may not require parents to meet a criterion that effectively denies them their right to an IEE. When enforcing its criteria, the agency must allow parents the opportunity to show that unique circumstances justify a publicly funded IEE that does not meet all of the agency's criteria. If the parents demonstrate that unique circumstances justify payment for an IEE that does not meet all agency criteria, then the agency must ensure the IEE is publicly funded.

10. *May a local educational agency establish policies to ensure that an IEE is obtained at a reasonable cost?*

The agency may establish maximum allowable costs for IEEs. However, the agency must set the maximums so that they permit parents to choose from among the qualified examiners in the area and only eliminate unreasonable fees. An agency must permit parents to show that unique circumstances justify an IEE that exceeds the district's maximum allowable cost. If unique circumstances justify an IEE that exceeds the maximum allowable cost, the agency must ensure that the IEE is publicly funded. If the total cost for an IEE exceeds the local educational agency's cost criteria and there is no justification for the excess cost, the cost of the IEE must be publicly funded up to the agency's maximum allowable cost.

11. *If a local educational agency has not established maximum allowable costs for IEEs may it refuse to pay the full cost of an IEE that it considers too expensive?*

If the agency has not established a maximum allowable cost, the parents may use any qualified examiner. The agency must pay the fee, or, if the agency believes the fee is unreasonable, challenge the parents' request in a due process hearing. In the hearing the agency must show that the IEE is unreasonably expensive.

12. *May a local educational agency deny parents a publicly funded IEE because the examiner is not on the agency's list of examiners?*

No. Parents may select an examiner who is not on the agency's list. However, parents should ensure that the IEE meets the local educational agency's criteria if they want a publicly funded IEE. These criteria include the qualifications of the examiner and the location of the evaluation.

13. *May a local educational agency restrict an IEE to examiners within a particular geographic area?*

The agency may restrict publicly funded IEEs to examiners within a particular geographic area if there are a sufficient number of evaluators to conduct the required evaluations within the area. The agency must give parents an opportunity to show that unique circumstances justify the selection of an examiner who does not meet its location criteria. If the parents show that unique circumstances warrant a publicly funded IEE outside the area, the IEE obtained outside the area must be publicly funded. This funding would include the expenses of the parents for travel, meals, and lodging if an overnight trip were necessary.

14. *Must the local educational agency give the examiner conducting the IEE an opportunity to observe the child in class?*

If the local educational agency examiner observed the child as part of his or her assessment, or if the local educational agency's procedures permit in-class observation, then the independent examiner has a right to observe the child in class. If the purpose of the IEE is to address a learning disability, an observation is a required evaluation component, and the agency must permit the observation.

15. *Must a local educational agency pay for an IEE related to assistive technology needs?*

Parents have the right to an IEE each time the local educational agency conducts an evaluation of the child. If the agency assesses the child's assistive technology needs, and the parents disagree with this assessment, the parents are entitled to an IEE at public expense. If the agency failed to assess the child's assistive technology needs, the parents also have a right to an IEE at public expense if they believe the child has assistive technology needs.

16. *When the local educational agency receives the results of an IEE, what must it do?*

The law does not require the local educational agency to carry out the IEE recommendations. However, the agency must consider the results of an IEE that meets agency criteria in any eligibility, program planning, and placement decisions about providing a free appropriate public education to the child. At a minimum, the local educational agency should ensure that an IEP team reviews the IEE and discusses the results. After the IEP team considers the IEE, the agency must send the parents a notice, in accordance with § 115.792(1)(b) and (2), Wis. Stats, regarding the team's decisions concerning the identification, evaluation, educational placement, or the provision of free appropriate public education to the child. If the parents disagree with such a decision, they may request mediation or a due process hearing to resolve the dispute. The parents may present the IEE as evidence at the due process hearing.

Section 115.782(2)(b)1., Wis. Stats., requires that as part of an initial evaluation and as part of a reevaluation of a child, the IEP team review existing data on the child, including evaluations and information provided by the child's parents. Therefore, if parents give a local educational agency an IEE obtained before the agency conducts its own evaluation, the agency should consider the IEE and decide whether it needs to repeat the assessments conducted for the IEE.

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