

Evaluation

INDEPENDENT EDUCATIONAL EVALUATION

August 30, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2020 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.



CONTENTS

INDEPENDENT EDUCATIONAL EVALUATION..... 1

 What is Required 1

 Additional Procedures..... 2

 Notification.....2

 When the IEE is Granted2

 When the IEE is Denied2

 Criteria for IEE3

 Contracting with and Payment to the IEE Evaluator5

 Reimbursement for Parent-Obtained IEE5

 Consideration of the IEE5

 Evidence of Implementation 11

 Resources..... 11

CITATIONS 12

INDEPENDENT EDUCATIONAL EVALUATION

What is Required

A parent of a student with a disability has the right to an independent educational evaluation (“IEE”) of the student at public expense if the parent disagrees with an evaluation obtained by the District. An IEE is an evaluation conducted by a qualified examiner who is not employed by the District. An evaluation is at public expense when the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with the provisions of the IDEA. See [USE OF IDEA PART B FORMULA AMOUNTS IN GENERAL].

A parent is limited to only one IEE at public expense each time the District conducts an evaluation with which the parent disagrees.

If a parent requests an IEE the District must, without unnecessary delay either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense, unless the District demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the District’s criteria. District Special Education Personnel may ask for the reason the parent objects to the District’s evaluation; however, the District may not require the parent to provide an explanation. The District may not unreasonably delay either granting the IEE request or filing a due process complaint to request a due process hearing to defend the District’s evaluation.

When the parent requests an IEE, the District Special Education Personnel must provide information about where an IEE may be obtained and the District’s criteria for an IEE. The District’s criteria for an IEE must be the same criteria the District uses when it initiates an evaluation, including the location of the evaluation and the qualifications of the examiner(s).

If the District decides to request a due process hearing instead of agreeing to pay for an IEE and the hearing officer finds that the District’s evaluation is appropriate, the parent still has a right to an IEE, but not at public expense. The parent would have to pay for the IEE. If in a due process hearing, the hearing officer orders an IEE, the District must pay for the evaluation.

The results of an IEE that meets the District’s criteria must be considered by the ARD Committee in any decision made regarding the provision of FAPE to the student and may be presented by any party as evidence at a hearing on a due process complaint regarding the student.

Additional Procedures

Notification

If a parent requests an IEE, the Campus Special Education Personnel must document the date the request was received and immediately send the request to the District Special Education Director or designee. Campus Special Education Personnel may ask for the parent's reason why the parent objects to the public evaluation but may not require the parent to provide an explanation.

As soon as possible after the parent requests an IEE, Campus Special Education Personnel will provide the parent with the IEE request form, if it has not already been completed, along with the District's IEE criteria. The Special Education Director or designee will determine if the parent has the right to an IEE by determining whether the District has already conducted its evaluation. If the District has not already conducted an evaluation, the parent will be notified by the Special Education Director or designee that the parent is not entitled to an IEE. The Special Education Director or designee will also determine if the request is timely. IEE requests made more than one year after the District's evaluation was completed and reviewed with the parent are considered untimely. The Special Education Director or designee will notify the parent of any untimely request.

When the IEE is Granted

If the Special Education Director or designee determines that the request for an IEE will be granted, the Special Education Director or designee will inform the parent in writing that the request has been granted and provide the parent with the following information: the District's list of qualified examiners in the area(s) of the IEE, an authorization to release information, a document containing the District's IEE criteria, including the requirements that qualified personnel complete the IEE, if it has not already been provided. The Special Education Director or designee will also provide the parent with a Prior Written Notice regarding its decision to grant the IEE as well as a copy of the *Notice of Procedural Safeguards*. See [PRIOR WRITTEN NOTICE].

The District will permit the IEE evaluator to observe the student in the classroom setting, as allowed during an evaluation conducted by the District. The District can, however, impose reasonable constraints concerning when and how the observation(s) will take place.

When the IEE is Denied

If the Special Education Director or designee determines that the request for an IEE will be denied because the District will defend its evaluation, the Special Education Director or designee will inform the parent in writing of the decision and provide the parent with the following information: a copy of the District's IEE procedures if it has not already been



provided, a Prior Written Notice detailing the District's denial, a copy of the *Notice of Procedural Safeguards*, and notification that the District has filed or will file a due process complaint requesting a due process hearing to defend the District's evaluation. See [PRIOR WRITTEN NOTICE].

If the Special Education Director or designee determines that the request for the IEE should be denied because the parent is not entitled to an IEE, the Special Education Director will notify the parent by providing the parent with a Prior Written Notice as soon as possible of the decision not to grant the IEE and reason for the denial, and an explanation that the District will not be requesting an IEE because the parent is not an entitled to an IEE. See [PRIOR WRITTEN NOTICE]. The parent will also be provided a copy of the *Notice of Procedural Safeguards*. The reasons included in the notice to the parent may include one or more of the following:

- the request for the IEE is untimely;
- there is no District evaluation with which the parent disagrees;
- the parent has refused to provide consent so the District could conduct an evaluation;
- the parent has requested an IEE for an area in which the District has not yet evaluated;
- the District has not yet completed the evaluation; or
- an IEE has previously been completed.

If the reason the District is denying the request for an IEE relates to not having completed an evaluation, the District will review the parent's request for an evaluation in accordance with the evaluation procedures. See [EVALUATION PROCEDURES].

Criteria for IEE

The Special Education Director or designee will draft and periodically review procedures and criteria for IEEs. Such information will be available to all District campuses. In addition, the Special Education Department will train Campus Special Education Personnel regarding responding to IEE requests from parents.

Qualifications of the Evaluator

The District requires that each person who performs an IEE have the same qualifications of the person(s) the District would have used had the District conducted the evaluation itself. As part of the IEE criteria, the Special Education Department may create a list of evaluators in the area that meet the appropriate qualifications for the specific IEE area. If the District denies an IEE on the basis that the provider selected by the parent is not qualified, the Special Education Director or designee will provide the parent with Prior Written Notice and give the parent the opportunity to show exceptional circumstances why the request should be granted despite deviation from the qualification criteria. See [PRIOR WRITTEN NOTICE].

Location

The District's IEE procedures will include information about limitations on the geographic area from where the parent must choose an evaluator. If the District denies an IEE on the basis that the provider selected by the parent is outside the geographic area set out in the procedures, the Special Education Director or designee will provide the parent with Prior Written Notice and an opportunity to show exceptional circumstances why the request should be granted, despite deviation from the location criteria. The District may choose to grant the IEE even if the parent does not meet the location criteria and does not provide extenuating circumstances for deviation from the criteria, but inform the parent in writing that the District will not reimburse the parent for the cost of travel to and from the evaluator.

Cost

The District will include in its IEE procedures the cost limitation for each type of evaluation (e.g., a psycho-educational, a psychological, occupational therapy evaluation, etc.). The District's cost cap will not prevent the parent from obtaining an IEE. If the District denies an IEE on the basis that the provider selected by the parent exceeds the cost criteria, the Special Education Director or designee will provide the parent with Prior Written Notice and provide the parent with the opportunity to show exceptional circumstances why the request should be granted despite deviation from the cost criteria.

Additional Criteria for IEE

The District's IEE procedures will include some or all of the following:

- information about releases to share confidential information between the District and the IEE evaluator, with the parent's consent,
- information about the evaluator's access to the student's records and/or school staff
- information about the evaluator's access to the school setting to conduct observations of the student or to obtain information from the school staff,
- information about any requirements for assessment instruments,
- information about the required contents of the IEE report,
- information about discontinuing the IEE, if necessary,
- information regarding how the IEE evaluator will be paid by the District,
- the expectation regarding the type of report and when the report from the IEE evaluator will be provided,
- whether the IEE evaluator is expected to participate in the ARD meeting at which the report will be reviewed and, if so, whether that cost is included in the cost of the IEE,
- and reimbursement for the IEE evaluator to travel or other expenses, if required.



Contracting with and Payment to the IEE Evaluator

Once the parent has chosen an independent evaluator, the parent should contact the Special Education Director or designee who will negotiate the terms of the arrangement with the independent evaluator prior to the evaluation. The District will enter into a contract with the independent evaluator to conduct the evaluation in accordance with the District's IEE procedures.

The District will compensate the independent educational evaluator for services satisfactorily rendered pursuant to the contract and upon the independent evaluator's submission of the original signed report, all test protocols used during evaluation (whether the protocol data was included in the final report or not), results of all testing data, and an itemized invoice. Invoices must reflect all costs incurred in sufficient detail and include the outstanding balance due for the completion of the IEE.

The IEE Evaluator shall submit to the District any documentation necessary to substantiate the full and satisfactory performance of the services of which payment is requested. The independent evaluator must submit all required documentation for payment, including any required conflict of interest form and vendor background screening form, and set up an account through the District's Procurement Department before payment will be processed.

The independent evaluator's invoice will need to be submitted to the Special Education Director or designee along with the written Educational Evaluation report as well as all test protocols used during the evaluation, and the results of all testing data. The District will not pay for assessments and/or services the independent evaluator provides after the IEE's completion. The District will not pay for assessments outside the agreed upon parameters of the IEE. The IEE will be completed at no cost to the parent.

Reimbursement for Parent-Obtained IEE

If a parent requests that the District reimburse the parent for an IEE already obtained by the parent, the District will do so if the IEE meets the District's criteria or if the parent demonstrates exceptional circumstances to justify deviation from the criteria. The District will require the parent to meet the District's procedures/process on reimbursement and submit all necessary proof of payment.

The District may deny reimbursement if the evaluation does not meet state or federal requirements regarding the particular evaluation. The District may also deny reimbursement of a parent-obtained IEE, even if it meets the District's criteria, if the District proves at a due process hearing that its evaluation was appropriate.

Consideration of the IEE

The ARD Committee will consider an IEE in any decision made with respect to the



provisions of FAPE. The complete and final IEE report must be provided to the Campus Special Education Personnel within a reasonable time prior to the ARD Committee meeting so that there is sufficient time for the appropriately-qualified District or Campus Assessment Personnel to review the report prior to the ARD Committee meeting. If a parent or IEE evaluator sends the completed IEE to the campus, the Campus Special Education Personnel should document on the report the date of receipt and immediately forward the report to appropriate Assessment Personnel for review. If the IEE report is provided to the District for the first time at an ARD Committee meeting, the ARD Committee may table the meeting and reconvene at a later time so that appropriately-qualified District or Campus Assessment Personnel can have adequate time to review the report and provide feedback to the ARD Committee. The ARD Committee is not mandated to accept the IEE evaluation findings, implement the IEE recommendations, or modify the student's IEP based on the IEE, unless it is necessary to provide the student with a FAPE.

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

PROCEDURES:

INDEPENDENT EDUCATIONAL EVALUATION (Individual Educational Evaluation (IEE))

34 CFR § 300.502

"Independent Educational Evaluation" ("IEE") means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the child's education.

RIGHT TO AN INDEPENDENT EVALUATION

A parent may seek an Independent Educational Evaluation ("IEE") at public expense if the parent disagrees with an evaluation obtained by the District. However, the District may initiate a special education hearing to show that its evaluation is appropriate. This can occur before an IEE is conducted or after the parent has obtained an IEE and is asking for reimbursement. If the final decision



of the hearing officer is that the evaluation was appropriate, the parent still has the right to an independent evaluation, but not at public expense.

NUMBER OF IEEs

A parent is entitled to only one IEE at public expense each time the District conducts an evaluation. This would include the three-year re-evaluation or re-evaluations conducted more frequently. “Public expense” means that the District pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

CRITERIA UNDER WHICH EVALUATION MUST BE OBTAINED

When an IEE is conducted 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 the District uses when it conducts an evaluation, to the extent those criteria are consistent with the parents’ right to an IEE.

CONDITION OF PAYMENT

The District will not pay for an IEE if the examiner, the evaluation, and/or the written report, do not meet District criteria and Texas Education Agency criteria for the specific disability evaluated.

REASONABLE COST CRITERIA

The District will pay a fee for an IEE that allows a parent to choose from among the qualified professionals in the area.

The District will not pay unreasonably excessive fees. An unreasonably excessive fee is one that is 25% or more above the prevailing fees in the area (as established in the Medicaid/ Medicare Service Provider Manual) for the specific test being considered.



When service providers have a sliding scale fee based on parent income, the District will pay the amount charged to the parent.

In the event that a parent pursues an IEE independently, an original billing form must be submitted to the District prior to payment. Before reimbursement or direct payment is authorized, criteria must be met and written report received by the District.

Upon receipt of a request for payment of an unreasonably excessive fee or payment for an IEE which was not agreed upon by the District prior to the evaluation, the District may request a hearing to challenge the right of parents to be reimbursed.

LOCATION OF THE EXAMINER

The examiner must be located within 50 miles of the District. This will permit the examiner to be accessible to the District if needed for further consultation.

CONDITIONS FOR WAIVER OF COST/LOCATION CRITERIA

If a parent feels that an IEE that falls outside the District's cost and location criteria is justified by the child's unique circumstances underlying the request, the District will consider such a request.

CERTIFICATIONS AND LICENSES

Each IEE examiner must provide copies of his or her license(s) or certificates(s) prior to the completion of the IEE.

CONFLICT OF INTEREST

The examiner must complete a conflict of interest form provided by the District. Payment will not be made until the district has received the conflict of interest form indicating whether the examiner has a personal monetary interest in any service or program recommended by the examiner.

STEPS FOR MAKING A REQUEST FOR AN IEE

It is preferred that the parent or guardian make the request in writing to the Director of Special Education and Coordinator of Assessment. A request in writing is not required as a pre-condition of payment for an IEE but is preferred in order to minimize any confusion or misinterpretation regarding the nature of the request. If the parent disagrees with the district Full and Individual Evaluation during the ARD meeting, notify the Director of Special Education and Coordinator of Assessment. They will complete the Parent Procedure letter and mail it to the parent. The letter requests the parent send all written requests to the Director of Special Education and Coordinator of Assessment. While a parent is not required to do so as a precondition for payment for an IEE, it would be helpful to the ARD Committee if the parent would explain the areas of disagreement with the district's evaluation and list assessment questions to be addressed by the IEE.

The District will make the determination if the request for the IEE will be approved, or if not, the District must file a Due Process Hearing to defend the District's FIE.

SELECTION OF EXAMINER

The District will provide the parent with a list of qualified independent evaluators already located by the District. Parents are free to ask the District to consider an evaluator not on the list to perform the IEE. If the parents select an examiner who is not on the District's list of qualified examiners, they should submit the name and vitae of the examiner in advance of conducting the IEE in order that the District may notify the parents whether the examiner is qualified to perform the IEE. If the parent fails to submit the name and credentials of the examiner prior to conducting the IEE, they risk non-payment if the examiner does not meet the District's criteria.

PARENT-INITIATED IEEs

The District will not consider a parent request for payment of a parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of



the evaluation. A reasonable time is defined as 90 calendar days.

The request will be presented to the ARD Committee for action.

EVALUATION

The evaluation must be conducted in accordance with all applicable state and federal laws.

TEACHER REPORTS

The examiner must consider data obtained from the student's teacher through consultation with the teacher or teacher reports.

WRITTEN REPORTS/CONTENT

There shall be a written assessment report that addresses, at a minimum, the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the category of disability for which the student is being assessed. The report shall include the type and severity of the impairment and the functional implications for the education process. The report must provide the ARD committee with sufficient information to determine whether the student is disabled and in need of special education services or not.

TIMELINE

While there is no official timeline for an IEE to be conducted, the completed written report by the qualified examiner will be provided to the District. Upon completion of the IEE, the District will conduct the staffing and ARD within 30 school days.

FORM OF REPORT

In preparing a report, the examiner shall follow the format for assessment and determination of eligibility used by the District. Forms are available upon request.

SIGNATURES ON REPORT



All persons participating in the examination of the student must sign the report.

CONSIDERATION OF PARENT-INITIATED IEEs

If the parent obtains an IEE at public expense or shares with the District an evaluation obtained at private expense, the District must consider the results of the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The District's obligation to consider an IEE does not require the District to accept the IEE or its recommendations. Moreover, consideration by the ARD Committee of an IEE obtained at private expense does not make the District liable for payment of the IEE.

Evidence of Implementation

- ARD/IEP
- District FIE
- IEE Completed by Outside Provider
- IEE Request Form
- Prior Written Notice
- IEE Criteria
- IEE List of Providers
- IEE Agreement/Contract with IEE Evaluator
- ARD Committee Review, Deliberations or Minutes of IEE
- Documentation for the state in TSDS, PEIMS, and SPP

Resources

[The Legal Framework for the Child-Centered Special Education Process: Independent Educational Evaluation - Region 18](#)

[Independent Educational Evaluations - Region 4](#)

[Independent Educational Evaluation Archives - U.S. Department of Education](#)

[OSEP Letter to Anonymous \(Jan. 4, 2010\) - U.S. Department of Education](#)

[OSEP Letter to Zirkel \(Dec. 11, 2008\) - U.S. Department of Education](#)

[OSEP Letter to Baus \(Feb. 23, 2015\) - U.S. Department of Education](#)



[OSEP Letter to Christiansen \(Feb. 9, 2007\) - U.S. Department of Education](#)

[OSEP Letter to Anonymous \(Aug. 13, 2010\) - U.S. Department of Education](#)

[OSEP Letter to LaDolce \(Dec. 21, 2007\) - U.S. Department of Education](#)

[OSEP Letter to Inzelbuch \(Aug. 1, 2013\) - U.S. Department of Education](#)

CITATIONS

Board Policy EHBAA; Board Policy EHBAE; 34 CFR 300.502(a)-(e), 300.507, 300.511, 300.514