

# Independent Education Evaluations in Minnesota

A Fact Sheet from the Minnesota Disability Law Center

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## **INTRODUCTION**

This fact sheet reviews the basic legal parameters of independent educational evaluations (IEEs) and discusses the experience of Minnesota school districts and parents with IEEs in complaints and hearings. IEEs are defined and explained in the federal regulations to IDEA.<sup>1</sup> IDEA 2004 (or IDEIA) and the proposed federal regulations do not significantly change IEE provisions.

In general, the basic idea behind IEEs is to give parents the opportunity to have an adequate evaluation conducted by someone outside the district if the parents do not agree with the district's evaluation or simply want to have a second perspective on their child's needs. Parents of students in private schools have the right to an IEE if the parents disagree with the special education eligibility evaluation conducted by the public school.<sup>2</sup>

## **Legal Requirements**

There are a number of legal requirements for IEEs. First, districts must inform parents of their right to an IEE in their notice of procedural safeguards.<sup>3</sup> Districts may use the sample notice created by MDE.<sup>4</sup> Second, IEEs can only be conducted by a "qualified examiner" who is not employed by the district.<sup>5</sup> This means that this person could conceivably be from an agency or organization, a university, in private practice, or, from a different district.

Third, districts must have information on hand about where an IEE may be obtained and what criteria the IEEs must fulfill, for when parents request this information. The criteria (which includes location and examiner qualifications, e.g.) must be the same criteria the district uses in its own evaluations, to the extent the qualifications allow parents to obtain an IEE.<sup>6</sup> The district's IEE information may contain "reasonable cost criteria."<sup>7</sup> The failure to have criteria can result in a violation and an order to reimbursement the parents for the IEE they obtained.<sup>8</sup>

### Criteria

Importantly, if the district attempts to limit the scope of an IEE by authorizing only certain tests, and if the scope does not allow a comprehensive and comparable to the district's own evaluation process, the district can be found in violation.<sup>9</sup>

Further, the federal Office for Special Education Programs (OSEP) has stated that while districts may provide specific names in addition to the criteria for IEEs, parents are not bound to selecting a name from the district's list. Instead, if the choice of the parents meets the district criteria, the district must pay for the IEE.<sup>10</sup> Moreover, OSEP has noted that the district must allow the parents an opportunity to show that an IEE can be at district expense even if the examiner does not meet district criteria if "unique circumstances" exist.

### IEE Payment

The law allows the IEE to be at district expense if the parent disagrees with the district's evaluation.<sup>11</sup> Districts may choose to pay for the IEE directly or reimburse the parents (or ensure the parent's insurance maximums are not negatively affected).<sup>12</sup>

Further, if a hearing officer as a part of a hearing requests an IEE, it must be completed at district expense. MDE complaint decisions have also ordered IEEs at district expense as part of their decisions, generally in response to poorly conducted district evaluations or as a way for the parties to move ahead with educational programming.<sup>13</sup>

### IEE Requests and District Responsibility

If an IEE request is made, the district must either seek a due process hearing to demonstrate the adequacy of its own evaluation or grant the parent's request. Districts may also inquire about the reasons for parental disagreement over the district's evaluation, but the IEE (or hearing request) cannot be delayed or denied if the parents do not respond to the inquiry. A failure to defend the IEE in a hearing or grant the parent's request is a violation<sup>14</sup> and can result in corrective action. It should be noted that if a district adopts or relies on an evaluation from a different district in the case of transfer students, the prior district's evaluation becomes the current district's evaluation, and, if the parents challenge it, the district must choose to defend it or grant the IEE request.<sup>15</sup>

### Timelines

Federal law does not contain a specific timeline for providing IEE criteria to parents. Instead, a "reasonableness" standard is used.<sup>16</sup> MDE has interpreted this reasonableness standard on a case-by-case basis and has determined in one instance that a delay of five weeks in providing criteria was unreasonable and that the criteria must be "readily available."<sup>17</sup> But, where the IEE was delayed by the IEE examiner and the district attempted to facilitate the IEE process, there was no violation found.<sup>18</sup>

### District Experience

Districts generally agree to parent IEE requests because 1. additional information from an IEE may contribute to planning, 2. an IEE may confirm the district's evaluation, and 3. the cost associated with defending the district's evaluation in a hearing is quite high. In

the rare event the district chooses to defend its IEE at hearing, parents still have the right to an IEE, but only at parent, or private, expense.

#### Consideration of Different Types of IEEs

If a parent obtains an IEE at private expense, the district must consider it if it meets district criteria.<sup>19</sup> The duty is consideration, not acceptance, of the IEE.<sup>20</sup> The consideration standard can be met if a district can show in meeting minutes or other documentation or evidence that it examined the IEE and considered its contents. The district may also want to document its consideration and its acceptance or rejection in a formal written notice to the parents.<sup>21</sup> Also, there may be some timelines for consideration. A complaint decision from MDE found a violation where the district did not consider a private IEE until several months after it was provided to the district.<sup>22</sup>

If a district refuses to adopt the IEE in part or whole, the district must provide notice of its explanation of refusal to the parents.<sup>23</sup> Additionally, a privately funded IEE may be presented at a due process hearing.<sup>24</sup>

#### SUMMARY

This chapter reviewed the basic legal parameters of independent educational evaluations (IEEs) and discusses the experience of Minnesota school districts and parents with IEEs in complaints and hearings.

Some main trouble-spots have been: 1. district failure to either agree to an IEE request or defend it at a hearings; 2. ensuring the IEE arranged by the district is sufficiently comprehensive; 3. appropriate and timely consideration of IEEs; and 4. documentation of IEE consideration.

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<sup>1</sup> 34 CFR §300.502

<sup>2</sup> 34 CFR §300.502 (a)(1)

<sup>3</sup> 34 CFR §300.504 (c)(1)

<sup>4</sup> <http://education.state.mn.us/mde/static/002144.pdf>

<sup>5</sup> 34 CFR §300.502 (a)(3)(i)

<sup>6</sup> 34 CFR §300.502 (e)

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<sup>7</sup> Letter to Parker, OSEP Policy Letter, 2/20/04, available at:

<http://www.ed.gov/policy/speced/guid/idea/letters/2004-1/parker022004iee1q2004.pdf>

<sup>8</sup> Minnesota Department of Education Complaint Decision 1351

<sup>9</sup> Minnesota Department of Education Complaint Decision 1767

<sup>10</sup> Letter to Parker, OSEP, 2/20/04

<sup>11</sup> 34 CFR §300.502 (b)

<sup>12</sup> Minnesota Department of Education Complaint Decision 1848

<sup>13</sup> Minnesota Department of Education Complaint Decisions 1661, 1677, 1678, 1711, 1730, 1876, 1909, 2040, 2175

<sup>14</sup> Minnesota Department of Education Complaint Decision 1965

<sup>15</sup> Minnesota Department of Education Hearing Decision 637

<sup>16</sup> Minnesota Department of Education Complaint Decisions 1697, 1723

<sup>17</sup> Minnesota Department of Education Complaint Decision 1723

<sup>18</sup> Minnesota Department of Education Complaint Decision 1697

<sup>19</sup> 34 CFR §300.502 (c)

<sup>20</sup> Minnesota Department of Education Hearing Decision 497

<sup>21</sup> 34 CFR §300.503

<sup>22</sup> Minnesota Department of Education Complaint Decision 2188

<sup>23</sup> 34 CFR §300.503

<sup>24</sup> 34 CFR §300.502 (c)