

How To Obtain AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE

- *Are you dissatisfied with your child's most recent special education assessment?*
- *Is the School District denying your child special education eligibility or a necessary service or support based on the recommendations of a poorly-done assessment?*
- *Have you asked for an independent assessment of your child and been ignored by the School District or just flat out told "No!"?*

If you answered yes to any of these questions, then you need to know more about your right to an Independent Educational Evaluation at public expense!!!

The Law

Federal Special Education Regulations say that, subject to certain conditions:

"A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency"¹

Federal Special Education Regulations also say that if a parent requests an independent educational evaluation (IEE) at public expense, the School 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 independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.²***

¹ 34 C.F.R. § 300.502(b)(1).

² Id. at (b)(2).

This means that if you ask for an IEE at public expense, the School District only has two choices: 1) take the steps necessary to ensure that you get an IEE at no cost to you, or 2) file for due process and try to prove to an administrative law judge that their own assessment is appropriate. This is one of the most favorable provisions for parents in all of special education law because going to hearing might be as or more expensive for a School Districts than simply agreeing to pay for the IEE. **The School District cannot legally simply ignore you or just tell you “no.”**

How It's Done

Here are the steps you need to take to get your child an Independent Educational Evaluation (IEE) at public expense:

1. Submit a Written Request for an Independent Educational Evaluation at Public Expense

The first thing you should do is write a letter to the IEP team point person or a school administrator stating that you disagree with the School District's assessment and are requesting an IEE at public expense. Although the School District may ask you to explain why you believe its assessment is inappropriate, you do not have to give any reasons for your disagreement to the School District. Also, the District may not use your refusal to explain your disagreement as an excuse for delaying their response to your request.³

As with every request you make of a School District, it should be in writing and you should keep a copy of the request letter for yourself. Another good idea is to send a carbon copy of the letter to the District's department of special education in addition to the school-site personnel addressed in the letter. Even though the law does not say that the request for an IEE must be in writing, having written evidence that a request was made is important because a School District is not required to reimburse you for an IEE if you did not first provide the District with notice that you disagreed with its assessment and requested an IEE at public expense. Having a copy of a written request letter is the best way to prove that you complied with these procedures if there is a dispute later.

2. Wait for a Response

³ Id. at (b)(4).

Before doing anything, you should wait a reasonable time period after submitting your request to give the School District a chance to respond. Neither federal nor California special education laws specify an amount of time or number of days within which a School District must provide an IEE at public expense or file for Due Process after a request has been made. The federal and California special education laws simply say that School Districts must file for due process or ensure the IEE is provided *without unnecessary delay*. Other states that have implemented specific timelines require states to approve the IEE or file for Due Process anywhere from 5 to 30 days after receiving a parent's request.⁴ In California, one court found unnecessary delay when a school district waited 3 months after a request for an IEE at public expense before filing for due process.⁵ The Court in this case did not rule out finding a much shorter lapse of time as also constituting unnecessary delay, but neither did it offer any clues into what factors should be used in making a determination of unnecessary delay. However, it is clear from the wording of the case that once there has been unnecessary delay, the District waives its right to contest the request for an IEE at public expense regardless of the validity of its own assessment.⁶ We recommend waiting a reasonable amount of time after requesting an IEE at public expense before filing any kind of complaint. A reasonable time to wait might be 15 school days since that is the amount of time that School Districts have from the time of parental request to present an assessment plan when a District is conducting its own assessment.

3. Don't Take No for an Answer

If the District approves the IEE, then work with the District to iron out the logistics of obtaining your independent assessment. If the District files for due process, be prepared to go to hearing and explain to an administrative law judge why you think the School District's evaluation is inappropriate and why you need an IEE. You should also call Disability Rights California and obtain a copy of the chapter of our Special Education Rights and Responsibilities manual that explains due process.

⁴ For example, Maine allows school districts 30 calendar days to agree to provide the IEE or file for due process; Louisiana allows 10 school days; Michigan allows 7 calendar days; and Massachusetts allows 5 school days.

⁵ Pajaro Valley Unified Sch. Dist. v. J.S., 47 IDELR 12, 50 (N.D. Cal. 2006).

⁶ Id. (“[T]he District's unexplained and unnecessary delay in filing for a due process hearing waived its right to contest Student's request for an independent educational evaluation at public expense, and by itself warrants entry of judgment in favor of Student.”)

If after waiting a reasonable amount of time, the school has not responded to your request or has otherwise denied your request without filing for due process, you may choose to write another letter notifying the School District that they have violated your rights under Section 300.502(b) of Title 34 of the Code of Federal Regulations. In this letter you could also alert the school district that you are taking their inaction as an affirmative reply to your request and either: 1) notify the District that you will pay for an IEE at your own expense and present the bill to the School District for reimbursement, or 2) ask the School District to make arrangements for payment with the provider you have selected to conduct your IEE. You could also choose not to say anything to the school district and go directly to Step 4.

4. If All Else Fails, File a Compliance Complaint

If the School District has still not approved the IEE or filed for Due Process, you should file a Compliance Complaint with the California Department of Education (CDE). In this complaint you should allege that the School District has violated your procedural rights under 34 C.F.R. §300.502(b) and request as a remedy that the CDE order the School District to provide you with an IEE immediately. You should send along with the complaint a copy of your request for an IEE and any other document from you or the School District that could help the CDE decide in your favor. The CDE generally has 60 days to issue a decision once a complaint has been filed. Compliance Complaints can be filed by writing to:

California Department of Education
1430 "N" Street, Suite 2401
Sacramento, CA 95814-5901

For a more in depth look at Compliance Complaints, you should read Chapter 6 of PAI's Special Education Rights and Responsibilities manual.

Frequently Asked Questions

Who can I choose to conduct my child's IEE?

Regardless of whether the District agrees to provide you with an IEE or opts to file for Due Process, the School District must provide you with "information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational

evaluations.”⁷ This information should include a list of qualified assessors in your area, as well as pricing guidelines and other standards the District has adopted. While you are not obligated to use the assessors listed by the School District, going outside of their suggestions or guidelines may lead to further dispute over payment or reimbursement. To avoid this type of dispute make sure the assessor you choose meets all of the qualifications contained in the agency criteria. If the District is being unreasonable by limiting you choices to the extent that the assessment would not truly be independent, you should file a compliance complaint based on the District’s failure to ensure that the IEE is provided at public expense without unnecessary delay.

What if I don’t have enough money to pay for an IEE up front and the District insists that reimbursement is the only option available?

Special education laws and regulations do not specify the manner in which a District must work out the logistics of providing an IEE at public expense. However, if you cannot afford to pay for an IEE up front and be reimbursed for it later, then the District should make other arrangements, such as paying the private assessor directly, in order to comply with its obligation to ensure that the IEE is provided without unnecessary delay. If the District refuses to work out reasonable arrangements, you should file a compliance complaint.

If I have the money, should I just pay for the assessment myself and seek reimbursement from the School District?

As a parent, you always have the right to obtain an IEE at your own expense and have the School District consider that assessment in developing your child’s IEP.⁸ However, you should not pay for an independent assessment out of your own pocket without first requesting an IEE at public expense from the District and giving the District a chance to respond. If you’ve already obtained an independent evaluation at your own expense, School Districts are not obligated to reimburse you unless you can prove you notified the school district that you disagreed with their assessment and requested an IEE.

What type of assessment can I request as an IEE at public expense?

Since the law does not specify otherwise, you can request any type of evaluation that a school district would perform to assess special education eligibility or the educational needs of your child in a suspected area of disability. This includes not only psycho-educational assessments but also

⁷ 34 C.F.R. § 300.502(a)(2).

⁸ Id. at (a), (c)(1).

more specialized evaluations such as assistive technology assessments, speech assessments, occupational therapy assessments and functional analysis assessments. However, make sure the school district has already performed the type of assessment you are seeking because a request for an IEE at public expense must be based on a parent's disagreement with a currently existing evaluation obtained by the school district. Neither the law nor the regulations place any restrictions on how recent the evaluation must be, so theoretically you could request an IEE at public expense based on your disagreement with an evaluation that is several years old as long as it is the most recent assessment and the first time you are making such a request.

Can the School District restrict the Independent Evaluator from assessing my child on school grounds, including the classroom environment?

No. If the School District conducted the contested assessment using in-class observation, or if in-class observation would have been a permissible method for the School District evaluator to use, an equivalent opportunity must be provided to the Independent Evaluator. This includes observation in the current educational placement and setting and in any new placement and setting proposed by the School District, regardless of whether you requested the IEE before or after the filing of a due process hearing.⁹

How often can I request an IEE at public expense?

Federal regulations state that parents are "entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees."¹⁰ If you are unhappy with an IEE obtained at public expense, you will have to wait for the school district to reassess your child before you can request another IEE at public expense.

Why should I file a Compliance Complaint instead of filing for Due Process?

The Compliance Complaint process is in large part designed to ensure that School Districts comply with the procedural requirements of special education law. In a compliance complaint, the CDE investigates procedural violations and orders the District to take corrective action if any are found. This process generally requires little action from a parent once the complaint has been filed. Also, the issue will not be whether the District's assessment was appropriate, but whether they engaged in unnecessary

⁹ Cal. Ed. Code § 56329(b).

¹⁰ 34 C.F.R. § 300.502(b)(5).

delay in responding appropriately to your request for an IEE at public expense.

Due Process, on the other hand, is an administrative hearing in front of an administrative law judge. Although the timeline is slightly shorter than with Compliance Complaints, Due Process hearings can be intimidating for parents because they are trial-like and the School District is almost always represented by an attorney. Furthermore, a recent Supreme Court decision has made it harder for parents who file for due process to prevail by placing the burden of proof on the party that files for due process.¹¹ As a result, it is usually a better strategy to file a compliance complaint. However, if you are planning to file for due process on other issues as well, it may be advisable to include the violation related to the provision of an IEE at public expense as part of multiple-issue due process request.

¹¹ Schaffer v. Weast., 546 U.S. 49 (2005).