



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 22, 2016

Ms. Jennifer Carroll
Law Clerk
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
Crestview Towers
105 Decker Court, #600
Irving, Texas 75062

Dear Ms. Carroll:

This is in response to your March 11, 2016 correspondence to the Office of Special Education Programs (OSEP) requesting further clarification regarding the scope of an independent educational evaluation (IEE) under 34 CFR §300.502 of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether once a district's evaluation is complete and the parent communicates a desire for a child to be assessed in a particular area in which they have not previously expressed concern, would the district have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE.

The evaluation procedures at 34 CFR §300.304(b)(1) require that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum. Furthermore, the public agency must ensure that in evaluating each child with a disability under 34 CFR §§300.304 through 300.311, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §300.304(c)(4) and (6).

Under 34 CFR §300.502, parents of a child with a disability have a right to seek an IEE at public expense, if the parents disagree with the evaluation conducted by the public agency. This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability. Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either:

- (i) initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate; or
- (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

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The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE. Therefore, it would be inconsistent with the provisions of 34 CFR §300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate. Under 34 CFR §300.502(b)(5), a parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The Court of Appeals' decisions cited in your letter do not refute this interpretation. In the cases you cite where the court affirmed the right of a school to conduct its own scheduled reevaluation (which must occur at least once every three years, unless the parents and the public agency agree that a reevaluation is unnecessary) and denied the parent's request for an IEE, it was because the parent had not presented the child for *any* of the scheduled reevaluations and therefore the school was not allowed to conduct those reevaluations. In your hypothetical, however, the school conducted an evaluation pursuant to 34 CFR §300.502, but did not fully identify all areas needed to be evaluated. In that case, the parent has a right to ask for an IEE at public expense if the parent disagrees with the evaluation.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder

Acting Director

Office of Special Education Programs