

Dated February 20, 2004

Alice D. Parker, Ed.D.
Assistant Superintendent
California Department of Education
721 Capitol Mall
Sacramento, California 94244

Dear Dr. Parker:

This is a response to your letter to Larry Ringer, Associate Division Director, Monitoring and State Improvement Planning, requesting guidance from the Office of Special Education Programs (OSEP) regarding an independent educational evaluation (IEE) under 34 CFR §300.502 of the regulations implementing the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether it is permissible for a public agency to restrict a parent's choice of an IEE to only the evaluators on a list provided the parent by the public agency and whether the public agency has the ultimate authority to choose the evaluator.

The current IDEA regulations specify that the right of a parent to obtain an IEE is triggered if the parent disagrees with an evaluation initiated by a public agency. See §300.502(b)(1). The regulations also require that on request for an IEE, a public agency must provide the parent information about where an IEE may be obtained, and the agency criteria applicable for IEEs. 34 CFR §§300.502(a)(2) and (e)(1). The public agency must set criteria under which an IEE can be obtained at public expense, including the location of the evaluation and the qualifications of the examiner, which must be the same as the criteria the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. 34 CFR §300.502(e)(1). Other than establishing these criteria, a public agency may not impose conditions or timelines related to a parent obtaining an IEE at public expense. See §300.502(e)(2).

It is not inconsistent with IDEA for a district to publish a list of the names and addresses of evaluators that meet agency criteria, including reasonable cost criteria. This can be an effective way for agencies to inform parents of how and where they may obtain an IEE. In order to ensure the parent's right to an independent evaluation, it is the parent, not the district, who has the right to choose which evaluator on the list will conduct the IEE. We recognize that it is difficult, particularly in a big district, to establish a list that includes every qualified evaluator who meets the agency's criteria. Therefore, when enforcing IEE criteria, the district must allow parents the opportunity to select an evaluator who is not on the list but who meets the criteria set by the public agency.

In addition, when enforcing IEE criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria. In some instances, the only person qualified to conduct the type of

evaluation needed by the child may be an evaluator who does not meet agency criteria. For example, because children must be assessed in all areas related to the suspected disability, there may be situations in which some children may need evaluations by an evaluator who does not meet agency criteria. In such situations, the public agency must ensure that the parent still has the right to the IEE at public expense and is informed about where the evaluation(s) may be obtained.

Section 300.502(b)(2) of the regulations states that “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) initiate a hearing under §300.507 to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.” Therefore, if a parent elects to obtain an IEE by an evaluator not on the public agency’s list of evaluators, the public agency may initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the public agency criteria applicable for IEEs or there is no justification for selecting an evaluator that does not meet agency criteria. If the public agency chooses not to initiate a due process hearing, it must ensure that the parent is reimbursed for the evaluation.

At your request, we have reviewed the guidance provided by the California Department of Education (CDE). We recommend that CDE add to the guidance after the first sentence that (1) the parent, not the district, has the right to choose which evaluator on the list will conduct the IEE; and (2) when enforcing IEE criteria, the district must allow parents the opportunity to select a qualified evaluator that meets agency criteria even if that evaluator is not on the list of potential evaluators established by the district. In addition, the district must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria. We recommend revising the second sentence as follows: if a parent elects to obtain an IEE by an evaluator not on the public agency’s list of evaluators, and the public agency believes the evaluator does not meet agency criteria or there is no justification for selecting an evaluator that does not meet agency criteria, the district may file for due process rather than pay for the IEE.

We hope that you find this explanation helpful. If you need further assistance, please call Dale King at (202) 260-1156.

Sincerely,

/s/ Patricia J. Guard for

Stephanie Smith Lee
Director
Office of Special Education Programs