

# Evaluation

## INDEPENDENT EDUCATIONAL EVALUATION

July 7, 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 Granted .....2

        When the IEE is Denied .....2

        Criteria for IEE .....3

        Contracting with and Payment to the IEE Evaluator .....5

        Reimbursement for Parent-Obtained IEE.....5

        Consideration of the IEE .....5

    Evidence of Implementation ..... 6

    Resources..... 6

CITATIONS ..... 7

# 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 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.

### **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