



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

September 10, 2001

Dr. Stephanie J. Petska
Director of Special Education
State of Wisconsin Department of Public Instruction
P.O. Box 7841
Madison, Wisconsin 53707-7841

Dear Dr. Petska:

Thank you for your letter asking the Office of Special Education Programs (OSEP) to clarify requirements relating to the qualifications that school districts may require of individuals who conduct an Independent Educational Evaluation (IEE). More specifically, you ask whether the written policies of four separate Wisconsin school districts¹ regarding criteria for IEE examiner qualifications is consistent with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. Your inquiry was prompted by a complaint filed by the Wisconsin Coalition for Advocacy alleging that the policies violate IDEA because the criteria for IEE examiners are inconsistent with a parent's right to an IEE.

Your letter asks five specific questions with respect to the qualifications for IEE examiners based on the written policies of the four school districts. In addition, copies of each school district's written IEE policies and procedures were enclosed as attachments to your letter.

34 C.F.R. §300.502(e) states that if an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, *to the extent those criteria are consistent with the parent's right to an independent educational evaluation* [emphasis added]. Although your letter states the same criteria are used for IEE examiners that the public agency uses when it initiates an evaluation, none of the policies make it clear that the same criteria are used to select the public agency examiner. A statement to this effect in each policy is important for parents and others to understand that the same criteria are used for both public and independent examiners.

The four qualifications for IEE examiners that prohibit particular professional associations and activities are inconsistent with the parent's right to an IEE. Criteria prohibiting an IEE examiner's association with private schools, organizations that advocate the interests of parents, organizations that advocate particular instructional approaches in the area of educating children with disabilities and a history of consistently acting as an expert witness against public schools are not qualifications necessary to perform an evaluation. These qualifications are unrelated to an examiner's ability to conduct an educational evaluation and undermine the parent's ability to obtain an independent evaluation.

¹ D.C. Everest School District, Lodi School District, Middleton-Cross Plains Area School District, and the Verona Area School District.

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The qualification that IEE examiners have "recent and extensive experience in the public schools" is also inconsistent with the parent's right to an IEE. This qualification is unrelated to an examiner's ability to conduct an educational evaluation and may undermine the parent's ability to obtain an independent evaluation. In addition, this requirement is too narrow and may prohibit examiners with the expertise necessary for a full and individual evaluation under certain circumstances. A common instance where this policy may be too restrictive involves assistive technology evaluations performed by a specialist in, for example, wheelchair seating and positioning in which recent and extensive experience in the public schools is not reasonably necessary for such an evaluation.

A public agency may establish a qualification that requires an IEE examiner to either hold or be eligible to hold a particular license when a public agency requires the same licensure for its own staff who conduct evaluations. The policies of the Lodi, Middle-Cross Plains, and D.C. Everest Area School Districts² state that the prospective IEE examiner must be licensed, or eligible for licensure by the Wisconsin Department of Public Instruction in the appropriate field.

A public agency must evaluate a student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. 34 CFR §300.532(g). It may be impossible for a public agency to assess a student in all areas related to the suspected disability if the evaluator must be licensed by the State Department of Public Instruction. For example, there may be instances in which rehabilitation engineers or sensory deprivation therapists are the most appropriate individuals to conduct an evaluation with respect to a specific aspect of a disability, but they may not be licensed by any State agency because such licensure does not exist or is not required by State law at the time. An examiner qualified to assess whether a student's functional capabilities require the use of assistive technology devices and services may not be licensed by the State Department of Public Instruction. See 34 C.F.R. §300.346(a)(2)(v). As a further example, children suspected of a disability may require evaluations performed by clinical psychologists who would not meet the standards of the enclosed policies, as written, because these professionals may not receive their licensure from the State Department of Public Instruction. Therefore, the State must ensure that its State policies with respect to this matter are not inconsistent with a parent's right to an IEE and take steps to ensure that each local educational agency's IEE policies are also not inconsistent with a parent's right to an IEE.

In addition to the above issues you specifically asked about, an independent review reveals that each of the four district policies establish reasonable cost criteria that allow parents the opportunity to demonstrate other factors that justify an IEE which exceeds the maximum allowable cost. The policies further state that it is in the school district's sole judgement to determine whether the cost of an IEE is justifiable if the cost exceeds the maximum allowable costs of an IEE. This is inconsistent with the process required by 34 CFR §300.502(b)(2). If the total cost of the IEE exceeds the maximum allowable costs and the school district believes that there is no justification for the excess cost, the school district cannot in its sole judgment

² The School Districts' policies do allow for medical professionals licensed by the State of Wisconsin.

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determine that it will pay only the maximum allowable cost and no further. The public agency must, without unnecessary delay, initiate a hearing to demonstrate that the evaluation obtained by the parent did not meet the agency's cost criteria.

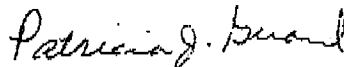
Furthermore, there is an additional problem with three of the four district policies with respect to reimbursement for travel costs or other related costs incurred by the parents. The Lodi, Middleton-Cross Plains and Verona Area district policies state that, "The district shall not be responsible for reimbursement of travel costs or other related costs incurred by the parents in connection with their arrangement of, or their attendance at the IEE." If it is necessary for a child to be evaluated at a location out-of-district, the district may be required to pay for the expenses incurred by the parent for travel or other related costs. If the public agency believes that the requested expenses are unreasonable, it must request a due process hearing on this issue. 34 CFR §300.502(b)(2). The IDEA does not address whether funding should be paid as reimbursement or as a cash advance. If the parent requests advance funding for IEE-related expenses and the public agency denies that request, the parent could request a due process hearing under 34 C.F.R. §300.506 if the parent believes that denial of advance funding would effectively deny the parent the right to a publicly-funded IEE.

In addition, two district policies (i.e., D.C. Everest Area and Lodi) establish criteria that restrict parents in terms of the geographic area where they may obtain an IEE. Both policies include that the parent may obtain an IEE that does not meet the district's criteria if unique circumstances warrant a publicly-funded IEE outside the district's criteria. Under 34 CFR §300.502(b)(2), the school district must ensure that the IEE is provided at public expense unless it demonstrates in a due process hearing that the parent's IEE did not meet the district's criteria, including criteria related to location.

Finally, the Verona Area School District must include in its policy that parents have the opportunity to demonstrate that unique circumstances justify selection of an IEE examiner who does not meet the agency's qualification criteria. 34 CFR 300.502(e)(2).

We hope this information provides you with clarification concerning IEE policies. If you would like further assistance on this matter, please contact Dr. JoLeta Reynolds or Mr. Troy Justesen of the Office of Special Education Programs at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs