

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 16-13 (July 1, 2016)

On May 6, 2016, an advocate (“Advocate”) filed a complaint on behalf of Parent with the Delaware Department of Education (“DDOE”). The complaint alleges that the Red Clay Consolidated School District (“District”) violated state and federal regulations concerning the provision of an independent educational evaluation (“IEE”) of Student at public expense. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the DDOE’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, staff correspondence and documentation provided by Parent. Interviews were conducted with Parent, Advocate, and District staff.

COMPLAINT ALLEGATIONS

The complaint alleges the District violated the Individuals with Disabilities Education Act (“IDEA”) and implementing regulations by: (1) placing a monetary limit on the cost of the IEE sought by Parent; and (2) asking the independent evaluator to provide the District with an original copy of the evaluation report at least ten (10) business days prior to any meeting in which the evaluation would be discussed.

FINDINGS OF FACT

1. Student is 7 years of age, and attends the 1st grade at Elementary School in the District.
2. In October 2015, it was determined that Student was eligible to receive accommodations under Section 504 of the Rehabilitation Act due to a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). On October 8, 2015, a meeting was held to write the 504 Plan and on October 28, 2015, a meeting was held to revise the 504 Plan. The 504 Plan was developed to address behavioral issues that impacted Student’s learning.
3. On December 22, 2015, Advocate submitted, on Parent’s behalf, a request for an IEE due to a disagreement with the Section 504 eligibility determination and to determine if the current educational setting was appropriate due to an increase in Student’s behavior infractions.
4. When Advocate requested the IEE on Parent’s behalf, Student was not identified as a student with a disability under the IDEA.

5. On January 28, 2016, Student's 504 Plan was revised. At that time, the school also obtained written consent from Parent to evaluate Student in order to determine if Student was eligible for special education and related services under the IDEA.
6. On April 4, 2016, the District's School Psychologist completed a psychological evaluation of Student.
7. A Notice of Meeting was sent to Parent on February 16, 2016 for a meeting on April 5, 2016 to review Student's educational needs and eligibility for special education and related services under the IDEA.
8. Parent contacted the Educational Diagnostician on April 4, 2016 to indicate that Parent could not attend the meeting. The meeting was rescheduled for April 12, 2016 to review Student's educational needs and eligibility for special education and related services under the IDEA.
9. On April 5, 2016, the District's Director of Special Services ("Director") sent a letter to Parent, and copied to Advocate, approving the request for an IEE with the caveat the cost of the evaluation was not to exceed \$4,500, and the examiner will provide the District with an original copy of the evaluation report at least ten (10) business days prior to any meeting to discuss the results. Notice of Procedural Safeguards, a list of qualified independent providers, and the District's procedures for IEEs were enclosed with the letter to Parent. During an interview, Director reported giving approval for an IEE because Director assumed the eligibility meeting took place on April 5, 2016.
10. On April 12, 2016, Student's eligibility meeting was held. The team concluded Student was eligible for special education and related services under the disability classification of "Other Health Impairment" as outlined in 14 DE Admin Code § 925.6.14. The Evaluation Summary Report was completed which indicated eligibility and recommendations for an IEP and Behavior Support Plan. Parent was in attendance and in agreement with the eligibility decision.
11. An IEP meeting was scheduled for April 21, 2016 and was rescheduled for April 27, 2016 because Parent was unable to meet. The Educational Diagnostician emailed Parent offering a meeting date of May 4, 2016 but Parent could not attend. On May 5, 2016, Educational Diagnostician sent an email to Parent to reschedule the IEP meeting for May 10, 2016. Parent agreed to meeting date and time.
12. On May 10, 2016, an IEP meeting was held to develop Student's IEP. Meeting minutes and the Prior Written Notice document indicate Advocate stated an outside evaluation was completed and the results should be considered in writing by the IEP team. The IEP team was unaware an outside evaluation was completed and requested a copy be sent to the District. Meeting minutes indicate another meeting would be scheduled after the IEP team obtained a copy of the outside evaluation referred to by Advocate.

13. On May 10, 2016, Advocate sent an E-mail to the Director questioning the legality of the monetary restriction placed on the IEE. The Director responded that it has not been an issue with previous IEEs and the Director offered assistance with the process if needed.
14. On May 26, 2016, the Educational Diagnostician asked Parent at school about rescheduling Student's IEP meeting and obtaining a copy of the outside evaluation referred to by Advocate. Parent indicated matters would be discussed at an upcoming mediation.
15. During the interview, Parent reported when Parent received the letter from the District, Parent did not proceed to schedule the IEE with an independent evaluator. Parent stated being unaware of the procedure to do so.
16. In an interview, Director reported that an information sheet was included with the letter the District sent to Parent titled Guidelines & Procedures for IEEs, along with a list of Evaluation Providers. The District's procedure is to send the letter and then the Secretary follows up with a phone call a few weeks later. This was not done because the complaint had been received.
17. On June 2, 2016, the Director sent an E-mail to Advocate inquiring about the status and receipt of the IEE report. No response was received.

CONCLUSIONS

The IDEA and implementing state and federal regulations set forth the requirements for IEEs. A parent of a child with a disability has the right to obtain an IEE at public expense if the parent disagrees with an evaluation completed by the school district. If a parent requests an IEE, the school district must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense. *See*, 34 CFR § 300.502(b)(1)-(2); 14 DE Admin Code § 926.2.4.

If a parent requests an IEE, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the school district may not require the parent to provide an explanation, and may not unreasonably delay either providing the IEE at public expense, or filing a due process complaint to request a hearing to defend the school district's evaluation. *See*, 34 C.F.R. 300.502(4); 14 DE Admin Code § 926.2.5.

If an IEE is obtained at public expense, the criteria under which the IEE is sought, including the location of the evaluation and the qualifications of the examiner, must be the same criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. Otherwise, the school district may not impose conditions or timelines related to obtaining an IEE at public expense. *See*, 34 C.F.R. § 300.502(e); 14 DE Admin Code §926.2.10.

If the parent obtains an IEE at public expense, the results of the IEE must be considered by the school district, if it meets the school district's criteria, in any decision made with respect to the

provision of a free appropriate public education to the child. *See*, 34 C.F.R. 300.502(c)(1); 14 DE Admin Code § 926.2.7.

In this case, Parent's request for an IEE was premature. A prerequisite for an IEE is the parent's disagreement with an evaluation completed by the school district in accordance with the IDEA. Here, Parent requested an IEE on December 22, 2015 at a time when Student was not identified as a special education student under the IDEA. The District did not complete its evaluation of Student until April 12, 2016. The record does not reflect Parent's disagreement with the District's April 12, 2016 evaluation of Student, given Parent's request for an IEE months earlier. In fact, a January 7, 2016 E-mail from Advocate suggests the IEE was requested to question the information used to qualify Student for a 504 Plan written on October 8, 2015.

Nonetheless, the District's Director of Special Services approved Parent's request for an IEE on April 5, 2016 and stated: (1) the cost of the IEE could not exceed \$4,500; and (2) the examiner would provide the District with an original copy of the evaluation report at least ten (10) business days prior to any meeting in which the results will be discussed (unless the district agrees to waive the ten day requirement). Advocate argues these are unlawful conditions imposed by the District that violate the IDEA.

Monetary Limits on the Cost of the IEE Permissible

School districts can establish limitations on the cost of IEEs, as long as the monetary limit does not prevent the parent from obtaining an independent assessment. Parents must also be given an opportunity to demonstrate exceptional circumstances to justify an IEE that does not meet the school district's criteria, including an IEE that exceeds the monetary limit. *See, Letter to Anonymous*, 56 IDELR 75 (OSEP 2010); *see also, Anonymous Letter*, October 9, 2002 (OSEP) (attached). I find no violation of the IDEA or implementing state and federal regulations related to the District placing a monetary limitation on the cost of the IEE requested by Parent.

No Unlawful Conditions Placed on the IEE by the District

As described above, state and federal regulations describe the independent nature of an IEE, and the procedural right of parents to receive an IEE under certain circumstances. Except for a description of specific criteria, a school district may not impose conditions or timelines related to obtaining IEEs at public expense. *See*, 34 C.F.R. § 300.502(e); 14 DE Admin Code § 926.2.10. In this case, the District informed Parent the independent examiner would provide the District with an original copy of the evaluation report at least ten (10) business days prior to any meeting to discuss the results. The provision does not impose specific conditions or limitations on how and when the independent evaluator must conduct the evaluation. Rather, the District is responsible for considering the IEE in any decision made with respect providing FAPE to Student, and the District must receive the IEE for review. For the reasons stated, I find no violation of the IDEA or implementing state and federal regulations related to the placing of conditions on the IEE.

CORRECTIVE ACTION

The Delaware Department of Education is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See* 14 DE Admin Code § 923.51.3.3. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the DDOE shall be taken.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

[REDACTED]

This is in response to your letter of June 10, 2002 seeking guidance regarding the allowable rates for independent educational evaluations (IEE) as set by the Massachusetts Department of Education (MASSDE). Specifically, you state in your letter that your daughter has been diagnosed with autism with extensive and complicated medical, psychological, and educational needs. You have been unable to obtain an IEE because you cannot find a qualified examiner that will conduct the evaluation at the rate set by MASSDE.

The Individuals with Disabilities Education Act (Part B) affords a parent the right to a publicly-funded IEE if the parent disagrees with an evaluation obtained by the public agency. 34 CFR §300.502(b)(1). If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under §300.607 that the evaluation obtained by the parent did not meet agency criteria. 34 CFR §300.502(b)(2). Under 34 CFR §300.502(e)(1), the criteria under which the publicly-funded IEE 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. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an IEE at public expense.

The denial of an IEE based solely on financial cost would be inconsistent with 34 CFR §300.502. To avoid unreasonable charges for IEEs, the school district may establish maximum allowable charges for specific tests. When enforcing reasonable cost containment criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria. If an IEE that falls outside the district's criteria is justified by the child's unique circumstances, that IEE must be publicly-funded. 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 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

Page 2

meet the agency's cost criteria and that unique circumstances of the child do not justify an IEE at a rate that is higher than normally allowed. See the February 2, 1995 Letter to Anonymous and the September 10, 2001 Letter to Petska, enclosed and MASSDE regulations at 603 CMR 28-04(5) and Administrative Advisory SPED 2001-3.

I hope that this information is helpful. If this Office can be of further assistance, please contact Dr. Ken Kienas of my staff at (202) 205-9057.

Sincerely,

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosures

cc: Marcia Mittnacht, MASSDE