

On May 5, 2005, Mr. XXXXXXXXXXXX and Ms. XXXXXXXXXXXXXXXXXXXX (“Parents”) filed a complaint on behalf of their son, (“Student”) against the Red Clay Consolidated School District (“District”). The complaint alleges that the District has violated state and federal laws relating to children with disabilities. Parents state that the District failed to reimburse them for an Independent Education Evaluation (“IEE”).

Investigation of the complaint has been conducted as required by *the Individuals with Disabilities Education Act* (“IDEA”) Regulations at 34 C.F.R. § 300.660 to 300.662 and according to the Department of Education’s regulations and procedures, including Sections 15.12 to 15.14 of the *Administrative Manual for Special Education Services* (“AMSES”). Specifically, the investigation included interviews with MXXXXXXXXXXXXXXXXX Parent; Ms. Lynn Meyer-Berlin, District Special Education Director; and XXXXXXXXXXXXXXXXXXXX Principal of XXXXXXXXXXXXXXXXXXXX. Documents reviewed included letters from District, an IEE Report, and *District Guidelines and Procedures for IEEs*.

Findings

1. Student is XXXXXXXXXX years old and is receiving services at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX High School. (“School”).
2. Parents requested an independent education evaluation in October, 2004.
3. School provided Parents with a list of qualified providers of independent educational evaluations (November 3, 2004) and the *District Guidelines and Procedures for Independent Educational Evaluations* (November 8, 2004).
4. Parents state in their complaint that, when they contacted the evaluators on the list provided by the School, only a few returned their calls, and of this group, none had experience with students with the intensive needs that their son has. Parents informed District of the results of their contact through a phone message.
5. *District Guidelines and Procedures for IEEs* states that, “If, after review of these providers, the parent wishes to choose an examiner not previously approved by the district, it is the parent’s responsibility to submit that individual’s name, professional and DE business license numbers, address, phone number and fee schedule to the Manager of Special Services. The Manager of Special Services will investigate further and then notify the parent whether the chosen provider meets the guidelines as a ‘qualified examiner’.”
6. Parents state District left a return message that told them anyone they selected would be acceptable to evaluate Student.
7. District states that its message to Parents explained that they could select someone as long as the person met the criteria within the *District Guidelines and Procedures for IEEs*.
8. District states that neither Parents nor the evaluator Parents selected (“Evaluator”) provided a Delaware Business License, and that Evaluator was not approved by the Manager of Special Services prior to the school visit.
9. Evaluator was chosen by Parents and an evaluation was set up with School for December 17, 2004. School Principal was aware that Evaluator was coming to the School.

10. The *District Guidelines and Procedures for IEEs* state that, “The IEE examiner will consider the student’s educational history, previous evaluation information and classroom assessments and observations provided by the district as part of an IEE.”
11. Parents forwarded educational records to Evaluator.
12. District states that the Evaluator did not review previous evaluation information and that the district did not provide Evaluator with educational records; however, School states that Evaluator billed them for a review of educational records.
13. Evaluator’s December 22, 2004 report notes that she observed Student in his classroom for approximately 2 hours.
14. In a January 13, 2005 letter to parents, School identifies several concerns regarding the evaluation of Student, including that Evaluator charged for a review of educational records (which were not supplied by School), and that the evaluation was based solely on the classroom observation. It was School’s “understanding [that] the [Evaluator] would be there to conduct an Independent Education Evaluation, not an observation.” School also requested in this letter a list of credentials, certifications, or licenses that Evaluator held, as well as a list of the formal assessment tools that Evaluator used.
15. Several more pieces of correspondence (by mail and e-mail) occurred between District and Parents during February, March and April. None resolved the concerns stated in Finding #14.
16. School and District identified additional concerns about the IEE during this investigation, including that the Evaluator is not qualified to evaluate Student because her primary background and experience is with children who are deaf; the Evaluation report was not on letterhead; and School wants to understand how Evaluator developed her recommendations.
17. To date, District has not reimbursed Parents or paid Evaluator for the evaluation.

Conclusions

District does not dispute that Parents requested an IEE. District does state, however, that the Evaluator and the IEE did not meet the *District Guidelines and Procedures for IEEs*.

Parents understood from the message left for them that they could choose any evaluator and did not need to follow the *District Guidelines* regarding the choice of an Evaluator. IDEA regulation 34 CFR §300.502(b)(2)(ii) states, “if a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay ... 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.”

School first notified Parents of concerns about both the Evaluator’s qualifications and the IEE on January 13, 2005. By May 5, 2005, when Parents filed this complaint, the issue was still not resolved.

District was required to either promptly pay for Evaluator’s evaluation or, if it believed that the evaluation did not meet agency criteria, initiate a due process hearing “without

unnecessary delay”. The District did neither for more than four months. In these circumstances, the District’s delay violates §300.502(b)(2).

Therefore, I find that District did not comply with the regulations concerning Independent Educational Evaluations in regard to this complaint.

District stated further concerns about the type of evaluation that was completed (which included no formal testing), the evaluation results, and the format of the evaluation report. While there was no violation in regards to this beyond the one stated above, District is cautioned that it does not have the authority to dictate the format of the evaluation report, or that “formal assessment” methods are used. If District feels that the IEE does not meet agency criteria, District should pursue a hearing under §300.507.

Corrective Action

Having found a denial of services, the State Department of Education, through its authority at IDEA regulation 34 CFR §300.660(b), must address (1) how to remediate the denial of services including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and (2) appropriate future provision of services for all children with disabilities.

Within 30 calendar days of the receipt of this letter, the District shall pay the cost of the IEE provided by Evaluator. Its payment should be directed to Evaluator, or if Parents have already paid Evaluator, to Parents as reimbursement.

Within 45 calendar days of the receipt of this letter, the District shall send me documentation of paid IEE fees. Additionally, District must send me documentation that shows how they advised appropriate staff in the District of the regulations concerning IEEs.