

Independent Educational Evaluations

Revision to N.J.A.C. 6A:14-2.5(c) (approved January 2015)

[A] **Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with [any assessment conducted as part of an] the initial evaluation or a reevaluation provided by a district board of education.**

A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

[1. If a parent seeks an independent evaluation in an area not assessed as part of an initial evaluation or a reevaluation, the school district shall first have the opportunity to conduct the requested evaluation.

i. The school district shall determine within ten days of receipt of the request for an independent evaluation whether or not to conduct an

evaluation pursuant to (c)1iii and iv below, and notify the parent of its determination.

- ii. If the school district determines to conduct the evaluation, it shall notify the parent in writing and complete the evaluation within 45 calendar days of the date of the parent's request.
- iii. If the school district determines not to conduct the evaluation first, it shall proceed in accordance with (c)2 below.
- iv. After receipt of the school district's evaluation, or the expiration of the 45 calendar day period in which to complete the evaluation, the parent may then request an independent evaluation if the parent disagrees with the evaluation conducted by the school district.]

[2.] 1. Such independent evaluation(s) shall be provided at no cost to the parent unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.

- i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)[3] 2 and [4] 3 below. In addition, [except as provided in (c)1 above,] the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or
- ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.

- [3.] **2.** Any independent evaluation purchased at public expense shall:
- i. Be conducted according to N.J.A.C. 6A:14-3.4; and
 - ii. Be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved under N.J.A.C. 6A:14-5, or private practitioner, who is appropriately certified and/or licensed, where a license is required.
- [4.] **3.** An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).
- [5.] **4.** Any independent evaluation submitted to the district, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.
- [6.] **5.** If a parent requests an independent evaluation, the school district may ask the parent to explain why he or she objects to the school district's evaluation. However, the school district shall not require such an explanation and the school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district's evaluation.
- [7.] **6.** For any independent evaluation, whether purchased at public or private expense, the school district shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.
- [8.] **7.** If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law

judge, and the district board of education shall pay the cost of the independent evaluation.

Comments on Proposed Amendment and Department Responses

5. **COMMENT:** The commenters expressed concern with the language proposed in N.J.A.C. 6A:14-2.5(c) concerning independent educational evaluations that limits a parent's right to an independent evaluation to circumstances where there is a disagreement with an evaluation conducted by the school district. The commenters asserted that a parent should have a right to an independent educational evaluation in circumstances where he or she requests an initial evaluation or reevaluation, but it is not conducted by the school district.

The commenters also asserted that "evaluation" and "assessment" are improperly used interchangeably in the rule. The commenters also objected to the regulatory provisions limiting parents to only one independent evaluation at public expense after each initial or reevaluation, and requiring parents to identify which assessments they are seeking as part of their request for an independent evaluation. Finally, one commenter suggested clarifying the rule to allow a parent to seek as many assessments as he or she chooses when requesting an independent evaluation, and to not limit the request only to the assessments conducted by the school district when it completed its initial or reevaluation. **(1, 2, 3, 4, 5)**

RESPONSE: The Department disagrees. In regard to the concern the Department is limiting a parent's right to an independent evaluation when the school district has not conducted an evaluation, the Federal regulations at 34 CFR § 300.502 (b)(1) state in relevant part: "[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees *with an evaluation obtained by public agency ...*" (emphasis added). The Federal regulations are clear that a parent's right to an independent evaluation is triggered by disagreement with an evaluation conducted or obtained by the school district. If a parent disagrees with a school district's decision not to conduct an initial evaluation in accordance with N.J.A.C. 6A:14-3.3(e), the parent can dispute the school district's decision through mediation and/or due process, but he or she cannot request an independent evaluation as there is no school district evaluation with which the parent is in disagreement. In the case of a reevaluation, a school district, in accordance with N.J.A.C. 6A:14-3.8(a), must conduct a reevaluation when one is requested by a parent unless less than one year has passed since the completion of the initial evaluation or the last reevaluation. If a school district decides not to conduct assessments as part of a reevaluation, in accordance with N.J.A.C. 6A:14-3.8(b)3, the parent may request, and the school district must obtain, an assessment. Therefore, the Department disagrees that the language proposed in N.J.A.C. 6A:14-2.5(c) is unclear and will not propose further changes.

In addition, the rule as proposed for amendment clearly differentiates between an evaluation and the assessments that comprise the evaluation and further clarification is not

necessary. The proposed amendment also aligns with Federal requirements, which clearly state in 34 CFR §300.502 (b)(5), “[a] parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.” As the rule as proposed for amendment simply restates the Federal regulation, the rule conforms to Federal law and no further amendments are necessary.

The Department disagrees with the commenters’ suggestion that parents should not be required to inform school districts which particular assessments they are seeking as part of their request for an independent evaluation. The Department contends it would be unduly burdensome to require school districts to respond promptly to a parental request that does not actually state what assessments are being requested. Such a requirement would be unduly burdensome and serve only to delay a parent’s ability to obtain an independent evaluation.

Finally, the Department disagrees the rule requires clarification with respect to the number of assessments a parent may seek as part of a request for an independent evaluation. The Department’s rules adhere to the provisions of the Federal regulations at 34 C.F.R. § 300.502, and no further clarification is necessary. In addition, the Department has issued, and posted on its website, guidance that further clarifies that parents are entitled to seek any assessment they choose when requesting an independent evaluation in accordance with State and Federal law, thus ensuring parents and school districts are aware of the permitted scope of a parental request for an independent evaluation.