

# Hot Topics in Special Education

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# Agenda

- Unraveling the Mysteries of IEEs
- Psychiatrically Fragile Students
- How “Put” is “Stay Put”?
- Split Homes: Who’s the “Parent”?
- Transportation Issues

# Materials Available

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Go to “Speaking Engagements”

# Independent Educational Evaluations

20 U.S.C. § 1415(b)  
“Procedural Safeguards”

(a) Types of Procedures

The procedures required by this section shall include the following:

- (1) An opportunity for the parents of a child with a disability to . . . obtain an independent educational evaluation of the child.

## 34 C.F.R. § 300.502

### (a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

**(b) Parent right to evaluation at public expense.**

**(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.**

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a [due process] hearing . . . that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation.

However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either [providing the IEE or filing for a due process hearing.]

(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.

# “Agency Criteria”

(e)(1) 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.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

# USDOE Guidance Letters

- Letter to LoDolce
- Letter to Parker
- Letter to Young
- Letter to [Redacted]
- Letter to Petska

<http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tpiece.html>

- District criteria may include list of evaluators and cost parameters consistent with standards employed by District for its own assessments
- Must allow exceptions for unique circumstances
- Must provide criteria promptly

## Former N.J.A.C. 6A:14-2.5(c)

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

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. . . . .

# NJDOE May 14, 2012 Letter

- Conflict between federal regulation and state regulation regarding districts' right to "first crack" at assessing area not covered by district's earlier evaluations
- Nothing in letter states intent to supersede earlier USDOE guidance or OAL case law re: district cost/qualification criteria generally

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 . . . .

2. 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.

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.

## *Current* N.J.A.C. 6A:14-2.5(c)

[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.

# Wall Twp. BOE v. C.M. (OAL 2007)

- Districts may not dictate the specific evaluator, but
- Districts may establish selection and cost criteria consistent with federal guidance letters, provided
- Criteria are provided to parents promptly upon request for the IEE

# Psychiatrically Fragile Students

- **Boundary line between medical services and educational services**
- **Is student “available to learn”**
- **Is out-of-district placement appropriate but for non-educational reasons**

# Mary T. v. Sch. Dist. of Phila. (3d Cir. 2009)

- Supervised LifeStyles
- No educational accreditation/no on-site school or special education teachers
- Acute Care Ward/Post-Acute Care Ward

*Test:* Whether residential placement is necessary for educational purposes, *or* was a response to medical, social or emotional problems that are segregable from the learning process. (Only placements providing special education qualify.)

- “Token Economy Program”
- One-to-One Support
- Life Skills Training
- Psychoeducational skill groups

## Court Holds:

- Services designed to make patient aware of medical condition and how to respond to it, *not* for educational purposes
- Educational and medical needs severable in this case

- **Compensatory education also rejected**
- **Student psychiatrically unstable and unable to receive education**
- **No obligation to provide FAPE while student is psychiatrically unstable**

## F.R. v. Verona BOE (3/5/19)

- Student successful through 8<sup>th</sup> grade with 504 plans to address ADD
- Starts unraveling academically and socially in 9<sup>th</sup> grade, attempts suicide
- Parents unilaterally place at Fusion Academy after release from IOP

# ALJ Denies Reimbursement:

- Unilateral placement due *primarily* to psychiatric/social/emotional factors segregable from learning process
- District proposed IEP with meaningful school-based mental health supports
- Fusion Academy offered nothing the district could not have provided

# Stay Put

## *N.J.A.C. 6A:14-2.7(u)*

Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law

....

. . . . If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings.

M.R. v. Ridley Sch. Dist.  
(3<sup>rd</sup> Cir. 2014)

- Parents make unilateral placement and file for due process
- Parents *prevail* at initial hearing level, so the OOD placement becomes “stay put”

- State hearing officer's decision *reversed* by federal trial court, and federal appeals court *upholds that ruling – parents lose!!!*
- *But*, court also holds that “stay put” remained in place until outcome of federal appeals court proceedings

# Split Homes

## N.J.A.C. 6A:22-3.1(a)(1)(i)

*General Rule:* When a student's parents or guardians are domiciled in different districts, the student is to be enrolled where he lives "the majority of the school year," *unless* there is a "court order or written agreement between the parents designating the school district of attendance." Legal custody is irrelevant.

# IDEA vs. N.J. Family Law

- Under IDEA, both parents have the right to notice of IEP meetings and opportunity to participate; *but*
- Decision-making power is determined by New Jersey family law

What if Decision-Making  
Power is Unclear?

- **Access to Student Records**
- **Access to Staff, School Functions**
- **Staff Involvement in Parental Disputes**

# Transportation Issues

- **Type of Vehicle**
- **Personnel on Vehicle (e.g., nurse, aide)**
- **Location of Bus Stop (e.g., door-to-door, curb-to-curb)**
- **Other Students on the Bus**

# Take-Aways

- Classification doesn't guarantee transportation
- Only required to serve IEP-driven needs of *student*, not parental preference/convenience/work schedules, etc.

- Districts generally retain discretion to assign bus stops, but may IEP-driven needs of students may take precedence
- Health-related services (e.g., nurse) must be included in IEP, not merely IHP, if necessary for student to access education.  
*See E.I.H. v. Fair Lawn BOE* (3d Cir. 2018)

**Thanks for Coming!**

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