We’re Not Gonna Take It
Handling IEE Requests

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Survey

• Who is in the audience?

• Current practices around IEEs...

Purpose

• Review the legal framework for Independent Educational Evaluations (IEEs)
• Explore the option of funding IEEs
• Examine the pros and cons of filing for a hearing to defend district assessments
1. **LEGAL FRAMEWORK**

**Definition**

An IEE is “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question”
Procedural Steps

First, immediately provide information:
- **Procedural Safeguards** (it’s never wrong and the parent did request an evaluation)
  
  **AND**

- **Local Policy on IEEs** (explains the agency criteria and limitations and OAH considers such action as part of informing parents of where they can get an IEE)

Parent Disagrees w/ Assessment

- **Districts MAY ask:**
  - Why parents disagree with their evaluation, however, may not require parent to explain their disagreement

- **Districts may NOT require:**
  - Parents to put their reason for disagreeing in writing
Additional IEE Info

- Parents are entitled to only one IEE per evaluation
- OAH has established a 2-year statute of limitations in California for IEE requests (Student v Torrance USD OAH 2015100570)

Options

The district must, “without unnecessary delay” do one of the following:

- Ensure that the IEE is provided at public expense unless the assessment parent obtains does not meet agency criteria (which will necessitate a hearing on this issue); or
- File for due process to show appropriateness of assessment
2. FUNDING AN IEE

Agreeing to fund an IEE

- Notify parents as soon as decision made
- Exchange information
  - Who parent wants
  - Who district is offering or making available
- Contact parent evaluator
Agreeing to Fund an IEE

- Determine if the parent requested evaluator meets local criteria
  - If so, contract with evaluator
  - If not, communicate to parent, offer alternatives

- Payment: Advance funding, direct funding or reimbursement

- Schedule IEP meeting (but cannot require examiner’s presence)

- *What could possibly go wrong???
IEE Criteria

- If IEE is at public expense, criteria must be the same as criteria used by district for its evaluations and evaluators.
- Legally, consideration is contingent upon IEE meeting agency criteria, BUT consider all IEEs as parent input.
- Parents may show “unique circumstances” to justify an IEE that does not fall within criteria.

IEE Assessor Criteria

Can’t establish stricter rules for who may conduct IEEs than those imposed on own evaluators.
- Can’t prohibit association with private schools, organizations that advocate the interests of parents or advocating particular instructional approaches.
IEE Assessor Criteria
Can’t establish stricter rules for who may conduct IEEs than those imposed on own evaluators
  • Can’t require "recent and extensive experience in the public schools"
  • May set licensing rules, provided same licensure required for district evaluators
  • Let’s discuss Neuropsychs here

IEE Location Criteria
  • Geographic area in which IEE can be obtained must be the same as that used by district for its own assessments
  • Must afford parents opportunity to demonstrate evaluator from outside area is required for an appropriate IEE
**IEE Cost**

- Can establish reasonable cost containment criteria
- Parents must have chance to justify selection of an evaluator whose fees exceed those set by the criteria
- If costs exceed criteria, initiate due process hearing

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**Considering IEEs**

- Neither federal nor state law (nor regulations) answer: What does it mean to “consider” an IEE?
- Regardless of whether district has funded the IEE or whether parents obtained IEE at own expense, district is obligated to “consider” results
Considering IEEs

- Considering an IEE is NOT the same as agreeing with or adopting the IEE in whole
- Spend time reviewing the IEE, discuss it in the IEP
- Districts are well-served to find points of agreement and recommendations to adopt if possible and document in the IEP
- Might want to consider relevant factors like examiner's qualifications or lack thereof

OAH Cases – Funding an IEE
(or at least trying to...)
Student v. Dixon Unified School (OAH 2013)

- “...the language of the regulation, ... focuses not on good faith and ongoing communications, but on promptness and accomplishment.”
- The District unreasonably delayed providing a behavioral IEE by negotiating slowly, inadequately and fruitlessly for 5 months

  Parent awarded reimbursement for private IEE

D.A. v. Fairfield-Suisun USD (E.D. Cal. 2013)

6 month delay was reasonable
- District acted diligently and reasonably in attempting to schedule the requested IEE’s.
- District’s best and good faith efforts to obtain the IEEs ..., the efforts were frustrated by Parent’s and advocate’s lack of cooperation or the lack of cooperation of their chosen assessors.

  District Prevails
Lessons Learned - Agreeing to an IEE

• Avoid lengthy delay in responding to IEE requests
• Be responsive and follow up on parent suggested assessors
  • Continually send written communication
  • If no agreement on assessor, keep offering qualified assessors

Lessons Learned - Agreeing to an IEE

• Consider the IEE
  • Find a point of agreement
  • Don’t hesitate to identify and note flaws in IEE report
Points of Practice
It’s all about the right documentation

• Do establish a system for tracking requests and attempts to follow-up
• Do keep records of all of your attempts
• Don’t generate an assessment plan

3.
FILING TO DEFEND
Declining to Fund an IEE

The alternative to providing an IEE is to file for due process to show appropriateness of the LEAs assessment

- If district successfully defends assessment, will not be required to pay for the IEE
- If district evaluation is found to be inadequate, it must fund the IEE

Considerations

- Ensure compliance with the IEE notice requirements
- Review the assessment and determine strategy:
  - Seeking a settlement in mediation
  - Prepared to defend
It’s Just the Process

- Think about establishing and maintaining relationships with the family throughout the process?

- What steps will you take to maintain or rebuild the relationship?

Filing the Complaint

Send parents
- Prior written notice advising them of decision (arguable but a conservative approach)
  - Include the components in your cover letter
- A copy of the due process request
- Procedural Safeguards

May reach out and discuss with the family to help them with the process
Considerations

Potential Benefits

• Limited Risk
  • You can always withdraw and offer the IEE
• Settle in mediation
• Gather info in mediation
• Staff feel supported
• Send a message to challenging advocates

Cautions

• Perception of aggressiveness
• Parents obtain counsel
  • The issues are broadened
  • Process becomes more aggressive/costly
• Support from the Sup’t and Board
• You might lose at hearing...
So you want to go to hearing?

Think about:
What elements do you need to prove?

Prove Compliance with IEE Procedures

- Components of Ed Codes:
  - 56320 – Assessment in general, qualified assessor, variety of instruments, etc.
  - 56327 – Required components of an assessment report
  - 56043 - Timelines
Components of IEE process:
- Acted without unnecessary delay
- Did not impose inappropriate restrictions
- Provided Procedural Safeguards and IEE Policy

Rocklin v. Student (OAH 2014)
- Defending Speech and Language assessment
  - Administered 10 assessment instruments
  - Assessor’s protocol incomplete and used inconsistent scoring symbols not in accordance with the test manufacturer’s instructions
  - Written report did not meet requirements because it relied upon flawed data
    
    Parent awarded IEE at public expense.
2017 Case Decisions

- 11 cases involved LEAs filing to defend assessments
  - 2 were consolidated with parent claims
  - 9 involved defending the district assessment as sole matter
- 6 the District prevailed entirely
- 3 split decisions
- 1 student

Successful Defense

- Alhambra: Defended 2 assessments (S/L and OT)
- Los Angeles: Defended 1 assessment (psych)
- Oakland: Defended 1 assessment (psych)
- San Leandro: Defended 5 assessments (psych, S/L, Academic, FBA, OT)
- Los Angeles: Defended 3 assessments (psych, OT and FBA)
- Orinda: Defended 1 assessment (EHRMS)
Tracy Unified v. Parent

- Psycho-educational assessment did not meet all legal requirements
- Multiple errors in administering and scoring several test instruments
- The written assessment report failed to include all required components
- Did not establish that it provided Parent a copy of the final assessment report

Riverside Unified v. Parent

District attempted to defend psycho-educational and speech assessments

Findings:
- Psycho-educational report Met all requirements! No IEE ordered
- Speech assessment
  - IEE ordered at District expense because it took 150 days to complete the evaluation
Garvey Unified v. Parent

District attempted to defend psycho-educational, speech and OT assessments

Findings:
- Psycho-educational and Speech reports met all requirements! No IEE ordered
- OT assessment
  - Did not evaluate and report on a number of skills that were a part of Student’s school day which were essential to accessing her education

Lessons Learned Filing to Defend

- Avoid lengthy delay!
- Send documents (Procedural Safeguards, IEE policy, PWN and Hearing Notice)
- Gather all documents including test protocol
Lessons Learned Filing to Defend

- Thoroughly interview witnesses, double check protocol
- If parent remains unrepresented, consider going it alone (with help in the background)
- Be ready to follow all the procedural steps quickly – there is no resolution period delay when the LEA files

Fight for the things that you care about, but do it in a way that will lead others to join you.
- Ruth Bader Ginsburg
THANK YOU!