

disABILITY LAW CENTER

OF VIRGINIA

Protection & Advocacy for Virginians with Disabilities



Independent Educational Evaluation Under IDEA *Rights Information*

Right to an Independent Educational Evaluation (IEE) Under the Individuals with Disabilities Education Act (IDEA)

I. Initial Referral and Evaluation for Special Education Services:

A parent or educator who suspects that a child has a disability of such a nature that it would interfere with their educational progress should report that belief to the appropriate school division officials, which could be the school principal or special education coordinator/director. Some factors that might make a parent or teacher believe that the student may be eligible for special education services include, but are not limited to, the following:

- the student is having significant academic difficulties;
- the student has experienced a sudden drop in grades in one or more subject areas;
- a teacher expresses concerns to the parent about the child's academic progress
- or ability to keep up with his/her peers;
- the student is having escalated behavior problems;
- the student is not able to focus or sit still;
- the student is doing well in some classes but failing others; and
- the student exhibits below peer or grade level communication, motor, social, or
- other skills.

Reporting these difficulties, whether by a teacher or a parent, is formally known as a **referral**. If the child is suspected of having a disability, the school is required to evaluate the student to determine if he or she is eligible for special education services and, if so, what those services should be. The school has 65 working days after a referral to determine initial eligibility. An Individualized Education Program (IEP) must be developed within 30 calendar days of the initial determination of eligibility and must be implemented as soon as possible thereafter.

In addition to the initial evaluation, the school division must also reevaluate the child as needed. For example, if a new area of disability is suspected, or if the IEP is not achieving the desired result, a parent can request an additional evaluation. In addition, the school division must re-determine the student's eligibility for special education services at least every three years (often called a Triennial). Triennial evaluations are conducted at no cost to the parent.

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The school division must obtain parental consent for both the initial and reevaluations. If unable to obtain consent from the parents for an initial evaluation, the school division must request a due process hearing before an Impartial Hearing Officer. The school division shall ensure the parents are informed that they have the right to go through mediation to try to resolve the issue.

II. Conducting an Appropriate Evaluation

An appropriate evaluation must assess all areas related to the suspected disability, including, if needed, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor ability.

The evaluation should be broad enough to identify all of the child's special education and related services needs, whether or not linked to any specific disability labels or categories applied to the child. Parents must be given an opportunity to participate in the decisions about what areas need to be evaluated.

Evaluations must be conducted by qualified evaluators using a variety of assessments which provide the school with the necessary information to determine if the child is eligible for special education and related services or to help determine an appropriate program or placement for the student. A qualified evaluator is a person who holds the required state certification and/or licensure for conducting the specific type of evaluation in question. A valid evaluation must:

- assess the student's educational strengths and areas of need;
- be conducted according to the standards set by the manufacturer of the
- evaluation (if using a test or instrument);
- be nondiscriminatory, with no cultural bias; and
- be valid for the purpose for which it is being utilized (i.e., a verbally-based intelligence test should not be used with a nonverbal child as such a test would measure the child's communication deficit rather than his/her cognitive abilities. A verbally based language test, however, may well be valid for use with a nonverbal child if the intent is to measure receptive language skills).

There are no specific timelines that specify when a parent must be provided the results of evaluations conducted by the school division. However, federal regulations require that parents be provided an opportunity to meaningfully participate in the evaluation process, including having input into specific areas to be assessed. It can be extremely difficult to digest complex evaluation reports. Therefore, it is advisable to request copies of the reports before any meetings are convened in which the results will be discussed. Note, however, that the school division is not required to provide you with evaluation reports or results in advance of a meeting.

II. Obtaining an Independent Educational Evaluation (IEE)

A. What is an IEE?

An IEE is defined by Virginia State Special Education Regulations as “an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question.”

An IEE is similar to a “second opinion” from a doctor. As a parent, you observe your child in a variety of settings. You may observe aspects of your child’s development that the school or its evaluators do not. It is not unheard of for a school to “miss” an area of disability. In addition, school divisions sometimes do not conduct a comprehensive assessment of all areas that could be affected by the disability. Sometimes, parents and schools simply do not agree with the findings of the evaluators. The school is not required to pay for a “third opinion.” You can only request one IEE for each evaluation done by the school.

B. How Does a Parent Request and Obtain an IEE

The request for an IEE should (but does not have to) be in writing. A sample letter is provided in Section IV. The request should identify the areas of concern as well as the specific areas which the parent would like to have independently evaluated. The school division can ask the parent why he or she wants the evaluation, but the parent is not required to provide detailed reasons. However, it is often good practice to explain why the IEE is needed in order to keep communication channels open. The school division is required to honor a parent’s reasonable requests for an IEE unless the school division requests a due process hearing to defend the results of its evaluation. If a parent requests an IEE, the school division is required to provide the parent with a list of evaluators who have been approved within the geographic area and with any other rules the school division has adopted for evaluators or conduct of evaluations. An independent evaluator cannot be an employee of the school district and is presumed to be free of bias. If a parent uses the list of evaluators provided by the school division, future disagreements over whether the evaluators were appropriately qualified will be prevented (see Section D(2)). Virginia State Regulations provide that:

“(w)henever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s) must be the same as the criteria the public agency uses when it initiates an evaluation.”

This means that parents can use evaluators not on the approved list, but may have to explain how their evaluator meets the schools criteria. If the parent is unable to demonstrate that the IEE obtained by the parent met the applicable criteria, the school division may not be required to pay for the IEE. The school can only impose the same criteria for an outside evaluator that they impose on their own evaluators.

C. Payment for and Consideration of IEEs

1. Once the school division accepts a parent’s request for an IEE, it is required to pay for the IEE and to consider the results of the evaluation, assuming it meets the criteria set forth in Virginia State Regulations stated in Section B. A school division must respond to a request for an IEE

“without undue delay.”

2. If the school division refuses a parent’s request for an IEE, it must request a due process hearing before an Impartial Hearing Officer to defend its evaluation(s). If a Hearing Officer determines that the school division’s evaluations are appropriate, the school division will not be required to pay for the IEE.
3. Parents can obtain an IEE on their own, without informing the school division, and then request subsequent reimbursement from the school division. These evaluations must be considered by the school division in making any identification, IEP, or placement decisions about the student as long as they meet the criteria in state regulations cited in Section B. However, if a parent intends to request an IEE at public expense, it may be better to initially ask the school division to pay for the IEE rather than ask for retroactive reimbursement.
4. Parents can obtain an outside evaluation at their own expense without requesting reimbursement from the school division and these evaluations must be considered by the school division in making any identification, IEP, or placement decisions about the student as long as they meet the criteria in state regulations cited in Section B.

D. Why the School Would Deny a Request for an IEE at Public Expense

Though IEEs can be expensive, hearings are generally more expensive. Therefore, reasonable requests for IEEs are not generally denied. However, school divisions are allowed to deny requests reasons such as:

- the evaluation conducted by the school unit was appropriate (an additional evaluation would provide no new useful information) or,
- the evaluator who conducted the IEE was unqualified (in the case where the parent obtained an IEE without informing the school division per Section B).

E. What if the School Division Denies a Request for an IEE?

A parent who is convinced that the school division’s evaluation is incorrect and is resulting in their child not receiving a free appropriate public education (FAPE), may wish to obtain an IEE on his or her own following a school division denial of the request for an IEE. However, as noted in Section D, doing this risks being denied reimbursement for the IEE. On the other hand, since the school division must consider the results of any properly conducted evaluation that you provide, even if it did not pay for it, obtaining the IEE may prevent delay in the student receiving the services he or she needs pending the outcome of a due process hearing regarding reimbursement. Further, if the parent obtains the IEE and is able to demonstrate at the due process hearing that the results of the IEE are appropriate and the results of the school division evaluation are not, this may improve chances for reimbursement.

F. Does the School Have to Follow the Recommendations of An IEE?

Regardless of whether the IEE is obtained at public or private expense, the school division does not have to follow the recommendations. However, as noted in Section C, the school division through its eligibility or IEP team, (depending on the issue) must consider the information provided in all evaluations before making a decision regarding identification, placement, or specific special education and related services. If the parent disagrees with these decisions, the complaint is no longer with the evaluation process, but with the proposed identification, program, placement, or provisions of FAPE. The parent can then exercise the normal due process rights afforded in these areas.

III. Sample Request for an IEE

The sample letter represents a request for an IEE based on dissatisfaction with the results of testing conducted for eligibility for special education services. Similar information should be included in requests for IEEs which relate to areas other than eligibility, such as the provision of special education and related services.

*Name of Director of Special Education
Or School Principal
Full Address*

Dear (name of Director or Principal),

My son/daughter (give full name), who is currently attending (name of school, grade, teacher) was evaluated for special education services (give month and year of this evaluation).

I am writing to inform you that I disagree with the results of the testing and evaluation, and I would like to have my child reevaluated. I am requesting an Independent Educational Evaluation (IEE) at public expense, (for the following reasons:) [Briefly and specifically, list your reason(s)].

I would like this Independent Educational Evaluation to be conducted as soon as possible. Please send me copies of the school's guidelines for IEEs and a list of the school division's approved evaluators. My daytime telephone number is (000) 000-0000.

Sincerely yours,

Your full name

Resources

Virginia Department of Education (VaDOE) (www.doe.virginia.gov)

P. O. Box 2120
Richmond, Virginia 23219-2120
1-800-292-3820 or 804-225-2020 (Voice/TTY)

The VaDOE provides information and distributes numerous helpful materials. They include: *A Parent's Guide to Special Education; Special Education and Mediation in Virginia; The Special Education Due Process Hearing (handbook for parents and school administrators); Complaint Procedures for Special Education; and Regulations Governing Special Education Programs for Children with Disabilities in Virginia.*

Parent Educational Advocacy Training Center (PEATC)

6320 Augusta Drive, Suite 1200
Springfield, Virginia 22150
1-800-869-6782 (toll-free)

PEATC, which is federally funded, provides information, referral, technical assistance, and training to families with children with disabilities and professionals. This includes information concerning community resources and referrals to service providers, including transition services for students with disabilities, which may include vocational services.

disAbility Law Center of Virginia (dLCV)

1910 Byrd Avenue, Suite 5
Richmond, Virginia 23230

Call: 800-552-3962 or 804-225-2042
Fax: 804-662-7057

Email: info@dLCV.org
Web: www.dLCV.org

dLCV publications are available in alternate format, upon request.
For information on other disability agencies visit the Virginia Disability Services website at:
www.vadsa.org

All information or service requests will be treated confidentially.
Applicants for service or employment shall be afforded equal opportunity without regard to race, color, religion, political affiliation, national origin, disability, marital status, gender, or age.

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