

## Historical Background of IEE Right

*Public Law 94-142* was passed by the United States Federal Government in 1975 and established the legal rights, protections and procedural safeguards for school age children with disabilities and their parents. With the passage of *Public Law 94-142* parents were granted the right to obtain an Independent Educational Evaluation (IEE) at school district expense if they *disagreed with the evaluation completed by the public agency*. This right has been preserved in United States federal law for more than 30 years.

*Public Law 94-142* and its subparts were later incorporated into the *Individuals with Disabilities Education Act of 1990 (IDEA)* and the right of parents to obtain an Independent Educational Evaluation (IEE) was included under 34 CFR 300.503 along with other procedural safeguards. Of special significance is part (b) of 300.503 which states the following:

*“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. However, the public agency may initiate a hearing under Regulation 300.506 of the subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to obtain an Independent Educational Evaluation but not at public expense.”*

During the mid-1980's Texas published regulations that required parents who wished to obtain an IEE to permit districts 30 days to cure defects in a local school districts' evaluation. However, the United States Office of Special Education Programs (OSEP) instructed Texas to discontinue this practice because it represented a fundamental violation of Federal law (Gray, October 5, 1998, 213: 183).

In further correspondence OSEP reiterated that parents could not be denied payment for an IEE because they failed to provide a district with prior notice of their intent to seek an independent educational evaluation (Kirby, May 4, 1989, 213: 233; Fields, September 15, 1989, 213: 259; Thorne, February 5, 1990, 16 EHLR 606).

When Congressmen Wilson and Bartlett (October 17, 1989, 16 EHLR 83; December 20, 1989, 16 EHLR 292, respectively) expressed concern about the costs involved to complete Independent Educational Evaluations (IEE's), OSEP responded in part by stating the following:

*“The Department of Education is prohibited by 20 USC 1407(b) from lessening procedurally or substantively procedural safeguards, absent an act of Congress (Gramm, October 25, 1990, 17 EHLR 216)*

Early in the 1990's Texas did not include any procedural safeguards pertaining to IEE's in its own regulations. Rather, the Individuals with Disabilities Education Act

(IDEA), which included the Federal regulations on IEE's, was merely attached to the Texas regulations.

The Appeals Court of the United States reached its conclusion in *Hudson vs. Wilson* (828 F. 2<sup>nd</sup> 1059; 1065, 4<sup>th</sup> Circuit, 1987) that Congress did not empower parents to *request* an IEE but rather to *obtain* an IEE. Therefore, Texas and other states that required parents to submit their disagreements with a district's evaluation in writing were mandating parental conduct that was not specified in the Federal regulations.

In 1991 the Texas Education Agency (TEA) issued a document entitled Special Education: Parent and Student Rights (December 1991) wherein it was implied that parents could select an independent evaluator of their choice when they assumed financial responsibility for paying the costs incurred to complete the IEE. However, if the parent wanted to obtain an IEE at public expense, than the evaluator was to be selected from the district's list of qualified professionals.

OSEP, however, stated that the parent has the right to select a qualified independent evaluator (Rambo, June 22, 1990, 16 EHLR 1078) and that districts must include a list of independent evaluators that is *exhaustive* within a given geographic area. In a follow-up policy letter, OSEP indicated that when the district's list is not exhaustive, the parents still have the right to select their own qualified independent evaluator (Imber, August 18, 1992, 19 IDELR 352).

Although Federal regulations remained unchanged, several states included modifications to the wording of the Federal guidelines and essentially changed the intent of 34 CFR 300.503(b). A review of 1992 to 1994 state regulations (Imber, 1994) revealed that Michigan, Minnesota, New Jersey, Nevada, Oregon, Rhode Island, Tennessee, Vermont and Washington all specified that parents had to submit a *written request* in order to obtain an IEE at public expense. In some cases, districts had to respond to a written request for an IEE within a specified number of calendar days. For example, in the state of Michigan school districts had to respond to a parent's request for an IEE within seven calendar days.

In November of 1991, Stephen C. Imber, Ph.D., a professor in the Department of Special Education at Rhode Island College in Providence, raised concerns about Rhode Island regulations with the United States Office of Special Education Programs (OSEP). OSEP responded to those concerns on August 18, 1992 (Imber, IDLER 352) and Rhode Island then published new regulations which added the following sentence:

*"The school district may not deny payment for an independent educational evaluation solely because the parent did not provide prior notification of his or her intent to seek an independent educational evaluation at public expense."*

While states' regulations concerning the parent's right to obtain an IEE at public expense are easy to obtain and monitor, school districts' policies concerning IEE's are not. Therefore, parents have often needed to determine the restrictiveness of their local

school district's lists of qualified independent evaluators. When districts provide a list of evaluators that is restrictive rather than exhaustive, districts should include a statement within their guidelines that asserts the parents' right to select *any qualified* independent evaluator of their choice.

## Independent Evaluations

### *Individuals with Disabilities Education Act of 1997*

#### *Section 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 shall 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.

(3) For the purposes of this part—

(i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) **Public expense** means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.301.

(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.

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

(i) Initiate a hearing under §300.507 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 hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency initiates 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 explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(c) **Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) **Requests for evaluations by hearing officers.** If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) **Agency criteria.**

(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.

(Authority: 20 U.S.C. 1415(b)(1))