

16 IDELR 1078
16 LRP 856

Letter to Rambo

Office of Special Education Programs

N/A

June 22, 1990

Related Index Numbers

390.015 Independent Educational Evaluations (IEEs)

185.020 Evaluation Personnel

Case Summary

May a school district refuse to pay for an independent educational evaluation (IEE) on the grounds that the IEE failed to meet pre-established criteria for reimbursement?

Reg. 300.503(e) requires that an independent educational evaluation (IEE) at public expense must meet the same criteria as the district's evaluation. If the district's list of minimally qualified evaluators is not exhaustive, or if the district does not routinely provide such a listing to parents who request an IEE, then parents may choose their own independent evaluator, so long as the evaluator qualifies under the district's criteria for IEEs. The district, however, must not refuse to fund an IEE which fails to meet its criteria, if the child's unique circumstances warrant such an evaluation. The district's criteria, moreover, must not be applied in a manner which essentially denies the parents' right to an IEE at public expense.

Judge / Administrative Officer

Judy A. Schrag, Ed.D., Director

Full Text

Mr. Walter Rambo

Director

Complaints and Administration

Texas Education Agency

1701 North Congress Avenue

Austin, TX 78701-1494

Text of Inquiry

On August 15, 1989, by copy of a letter to Ms. Barbara Bronzoulis, we requested guidance in

determining whether or not Humble ISD violated federal regulations which this Agency administers. Enclosed for your information is a copy of our letter to Ms. Bronzoulis. In a letter dated September 7, 1989, we again requested guidance from your office regarding this case.

We continue to await your response to our concerns. Perhaps, it would be helpful to clarify each of our questions with regard to Ms. Bronzoulis' complaint.

1. The district listed criteria which are used to determine whether an individual can be reimbursed for an independent educational evaluation.

A. The person doing the evaluation must be appropriately licensed or certified to perform the evaluation.

B. The proposed evaluator must have demonstrated a high quality of evaluation techniques and reporting as identified through:

(1) personal interview;

(2) review of previous reports; and/or

(3) recommendations from other professionals who have employed the evaluator

C. The evaluation instruments are chosen on the basis of their relevance to the educational questions to be addressed by the evaluation.

D. The evaluation instruments are appropriately normed and standardized and have acceptable reliability and validity according to professional test standards.

E. Test interpretations and conclusions stated in the report are directly and clearly supported by the data.

F. Recommendations made as result of the evaluation are educationally relevant and realistic within an educational setting.

Are these criteria acceptable under 34 CFR 300.503(e)?

2. The reasons that the district used to reject Dr. Murray as an independent educational evaluator were based on the following judgment:

We have never interviewed Dr. Murray, but our Special Services Department has reviewed previous reports, and has discussed her work with other professionals in the area who have contracted with her. It is the opinion of our Special Services Department that Dr. Murray's evaluations do not meet the criteria stated in Item 1 above.

Is this acceptable?

We appreciate any assistance that you can provide us so that we can resolve this complaint in a timely manner.

Text of Response

This is in response to your recent letter seeking guidance in determining whether the Humble

Independent School District (HISD) violated certain requirements in Part B of the Education of the Handicapped Act (EHA-B) applicable to a parent's right to an independent educational evaluation (IEE) at public expense. Specifically, you are requesting clarification of public agency criteria for publicly-funded IEEs. The issue in the complaint described in your letter concerns the criteria HISD used in disqualifying an independent evaluator selected by the parent, thereby denying public funding for the IEE.

EHA-B affords a parent the right to a publicly-funded IEE if the parent disagrees with an evaluation obtained by the public agency. A parent's right to a publicly-funded IEE is subject only to the agency's right to request a hearing under 34 CFR § 300.506 to show that its evaluation is appropriate. 34 CFR § 300.503(b). Under 34 CFR § 300.503(a)(2), each public agency is required to provide parents, on request, "information about where an independent educational evaluation may be obtained." The Texas Education Agency may wish to determine what information HISD is providing parents who request publicly-funded IEEs, including information on HISD's criteria for examiners who may conduct publicly-funded IEEs.

Section 300.503(e) provides further that "[w]hen an independent 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 which the public agency uses when it initiates an evaluation." Listing the names and addresses of evaluators who meet the minimum qualifications of the public agency, if the list includes all minimally-qualified persons in the area, can be an effective way for agencies to inform parents of how and where they might obtain an IEE. If the child's needs can be appropriately evaluated by the persons identified on the public agency's list *and* the list exhausts the availability of qualified persons within the geographic area specified, then a district can restrict parents to selecting from among those persons on the list, for a publicly-funded IEE. If the agency's list does not exhaust the number of persons minimally-qualified to evaluate the unique needs of every child in the district, parents are free to select whomever they choose, so long as the evaluator meets the agency's criteria. *See* Analysis to Final Regulation, published as Appendix A to 45 CFR Part 121a at 45 Fed. Reg. 42511 (August 23, 1977); *See also* the Department's reply to W.N. Kirby, Texas' Commissioner of Education, dated May 4, 1989. When enforcing IEE criteria, the district must allow the parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria. If an IEE that falls outside the district's criteria is justified by the child's unique circumstances, that IEE must be publicly-funded.

It should be emphasized, however, that a district's criteria on qualifications for evaluators may not be applied so that parents are essentially denied their right to an IEE. In addition, a parent may challenge a school district's decision that a particular evaluator is not qualified through the due process procedures. If a school district believes that an IEE does not meet appropriate criteria, then under 34 CFR § 300.503 (b) it can initiate a due process hearing to demonstrate that it should not be required to pay for the IEE, otherwise the district must pay for the IEE.

It should be emphasized that the criteria that the public agency uses when it initiates an evaluation must meet the requirements in 34 CFR § 300.532. Similarly, the criteria applicable to publicly-funded IEEs must meet the required evaluation procedures in 34 CFR § 300.532. It appears from your letter that HISD uses some subjective criteria in choosing evaluators. Although the use of subjective criteria is not prohibited by the EHA-B, the criteria, and their application, must be the same for evaluations initiated by the school and for publicly-funded independent evaluations. Thus, while selection of explicit criteria is left to the discretion of State and local educational authorities, those criteria must meet requirements in 34 CFR § 300.532 and be consistently applied both to public agency evaluations and to publicly-funded IEEs.

I hope that this information is helpful. If this Office can be of further assistance, please let me know.

Judy A. Schrag, Ed.D.

Director

Office of Special Education Programs

Regulations Cited

34.300.503.E

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