

# Riverside County Special Education Local Plan Area Independent Educational Evaluation Guidelines

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## Introduction

The following sections provide guidelines and/or procedures to special education staff and administrators when working with families after the LEA receives a request for an independent educational evaluation (IEE). The format of the guidebook is intentionally designed to provide an overview of the laws surrounding independent evaluations and suggestions of best practices when working with the families and the assessors. The goal of this guidebook is to assist special education staff and administrators in maintaining procedural compliance with state and federal laws.

## Law

### Education Code (“EC”) Section (§) 56329

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with § 300.502 of Title 34 of the Code of Federal Regulations (“CFR”). A parent or guardian is entitled to only one independent educational assessment at public expense each time the public education agency conducts an assessment with which the parent or guardian disagrees. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with § 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian maintains the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free appropriate public education to the child and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with § 56500) regarding the child. For those students who are incarcerated, LEAs and outside assessors must follow all guidance for visitations/observations in accordance with the Federal Prison Rape Elimination Act (PREA) of 2003.

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### *Title 34 CFR Section 300.502*

The parent(s) of a child with a disability have the right to obtain an independent educational evaluation of the child. Each public agency shall provide to parent(s), 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.

For the purposes of this part, 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 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.

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. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. 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. If a Hearing Officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

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 agency's evaluation. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the public agency, in any decision made with respect to the provision of FAPE to the child; and may be presented as evidence at a hearing regarding that child. 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. A public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (34 CFR §300.502 (a-e))

A list of qualified evaluators meeting Federal and State criteria to administer Independent Educational Assessments is available upon request from the SELPA. If you have further questions regarding Independent Educational Evaluations, you can contact the SELPA at (951) 490-0375.

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## Policy

### Definitions:

*Independent Educational Evaluation* (“IEE”) 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. 34 CFR §300.502.

*Public Expense* means the local educational agency (LEA) pays for the cost of the evaluation or ensures the evaluation is otherwise provided at no cost to the parent.

*Local Educational Agency (LEA)*, as referenced herein, incorporates school districts, county office of education, and charter schools operating as a LEA.

### When does a parent have the right to obtain an IEE?

The parent/guardian has the right to obtain an IEE at public expense when the parent disagrees with the assessment obtained by the LEA. (34 CFR §300.502(b). However, the LEA may initiate a due process hearing to show that its evaluation is appropriate 34. CFR §300.502 (b)(2)(i). If the LEA initiates a hearing and the final decision is that the LEA’s assessment is appropriate, the parent has the right to an IEE, but not at public expense. (34 CFR § 300.502 (b)(3).

The LEA is not responsible for providing or reimbursing an IEE when parents merely feel the need for additional information about their child, and which is not based on a disagreement with LEA assessment results or individualized education program (IEP) team findings. Further, when multiple IEE reports are obtained by the parents in the same assessment areas, the LEA is not required to reimburse the cost of more than one IEE in any one area assessed when the parent disagrees with an assessment previously conducted by the LEA.

In addition, an LEA is not legally obligated to fund the IEE or file for a due process hearing to defend its assessment if the parents wait more than two years after the LEA’s assessment to request an IEE. [Placentia-Yorba Linda Unified School District v. Student (OAH Case No. 2012051153)]

### Who conducts IEEs?

Upon request for an IEE, the LEA will provide information to parents regarding where an appropriate IEE may be obtained. (CFR 34 § 300.502 (a)(2). The IEE examiner must meet LEA qualifications to be at public expense. (34 CFR § 300.502(e).

### What is required for an IEE at public expense?

Federal regulations require that whenever an IEE is to be provided at LEA 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 LEA uses or would use when performing a similar evaluation. (34 CFR §300.502(e). The following criteria apply to both IEEs and assessments prepared by the LEA.

- The assessment must be completed in a public school or other appropriate setting.
- The assessment must be completed by a qualified examiner certificated and/or licensed by the state of California in the area assessed in the evaluation.
- The parent must be provided an assessment plan clearly stating it is an IEE\* and explaining the types of assessments to be conducted in language easily understood and in the primary language or other mode of communication of the parents unless clearly not feasible to do so.

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Parents shall have at least 15 calendar days after receiving the assessment plan to give or withhold consent for assessment.

- The assessment must be selected and administered in the child’s primary language or other mode of communication unless the assessment plan indicates why it is not clearly feasible to do so.
- Tests and other assessment materials shall have been validated for the specific purpose for which they are used; must be administered by trained personnel; and must be tailored to assess specific areas of educational need.
- A written report of the IEE assessment results shall be provided to the parent/guardian and LEA prior to the IEP team meeting.
- The IEE assessment results must be considered by the IEP team at the child’s IEP team meeting. (Note: The LEA will consider the results of any private assessment provided by the parents in planning the educational program of the student. Consideration of such information, however, does not make the LEA liable for IEE reimbursement, nor is it an indication that the LEA agrees with the result of that assessment.)

\* Although nothing in IDEA mandates that an IEE requires an assessment plan to be completed, it is a good rule of thumb to indicate on the assessment plan that it is for an IEE and to ensure consent by the family. This does not mean that the assessment must be completed in within 60 days but is for identifying all assessments and for consent purposes.

### **Procedures**

#### Steps to be Followed by Parents Requesting an IEE at Public Expense

1. A parent/guardian of a child with an identified or disputed disability needs to contact the LEA Special Education Director for assistance in requesting an IEE. Please advise the parent to provide this request in writing. The inclusion of the following will assist in providing an appropriate assessment:
  - a) Specific areas of disagreement or disputed in LEA evaluation; and
  - b) A list of desired assessment areas, issues, or questions with the LEA’s assessment to be addressed by the IEE.
2. Upon receipt of the request, the LEA will provide parents with a copy of the *Independent Educational Evaluation (IEE) Guidelines: A Brochure for Parents* and a list of evaluators. If a specific IEE evaluator is desired, the name must be provided so that the LEA may:
  - a) Verify the qualifications, certifications and/or license of the evaluator;
  - b) Determine that the fee rate for the IEE is within the limits specified in this document; and
  - c) Initiate and negotiate a contract with the evaluator.

NOTE: The LEA may negotiate a rate above or below those listed herein.

3. The LEA Director will provide Prior Written Notice stating whether the LEA is providing or denying the IEE Assessment. If they are providing an assessment at public expense, an Assessment Plan shall be attached. If they are denying the assessment, the LEA should file for Due Process to defend its own report.

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## Criteria for Obtaining an IEE at Public Expense

1. The IEE must be administered by the evaluator in the same type of location and /or setting as that used by the LEA in providing similar evaluations. (34 C.F.R §300.502(e).
  - a) If the LEA evaluation included classroom observations, the IEE evaluator will be given access to the classroom.
2. The IEE must be provided by an evaluator who holds equivalent certifications, licenses, or other qualifications that would be required of the LEA staff providing similar evaluations. (34 C.F.R §300.502(e)
3. The IEE evaluator must be located within a 60-mile radius of the LEA, unless prior written approval is obtained by the LEA
4. IEE evaluators must comply with all state and federal requirements. (34 C.F.R §300.502(e).
5. The IEE provider must provide the LEA with a copy of their report at least five days prior to the IEP team meeting. The report must contain all necessary assessment and eligibility sections. The report must include the evaluator's name, title, license and/or certification number, and an original signature of the evaluator that completed the IEE. Please note that ONLY the LEA will provide the family with a copy of the report.
  - a) The original assessment protocols should be attached to the IEE report.
  - b) The results of the independent evaluation will be considered in the identification, program decisions, and educational services to be provided to the student with disabilities as required by the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973.
  - c) Independent Educational Evaluations will not control the decisions in the LEA's recommendations.

## Criteria for Determination of IEE Fee

1. The LEA will pay a fee that is routine and reasonable for the IEE, similar to those performed by qualified professionals in the local area or comparable to those costs that the LEA incurs when it uses its own employees or contractors to perform a similar assessment. Routine and reasonable fee is based on an average of a random sampling of fees charged by professionals providing the service in the LEA's area.
2. An excessive fee is defined as one that is more than 25% higher than the routine and reasonable rate for an IEE within a 60-mile radius of the student's LEA of residence, unless the LEA provides prior written approval.
  - a) Parents will be allowed the opportunity to demonstrate to the LEA that unique circumstances justify IEE reimbursement that does not fall within the above criteria.
  - b) When an IEE evaluator has a sliding scale fee based on parent income, the LEA will reimburse only an amount not to exceed what the parents were charged.
3. When travel is negotiated as part of the contract, any travel costs for evaluators or parents may not exceed the LEA's established rates for travel.
4. Any expenses beyond that directly related to preparation of the evaluation (i.e., food, lodging, transportation, etc.) are not covered in the cost of the independent evaluation.

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## Steps for Parents Seeking Reimbursement For Unilaterally Obtained IEEs

1. The LEA will not consider a parent request for payment for a unilateral parent-initiated IEE unless the LEA receives a request within a reasonable time after receipt of the results of the evaluation.
2. Once approved, the parent/guardian must submit an original billing form to the LEA for reimbursement.
  - a) Before any reimbursement is made, all criteria discussed in this policy must be met and the written evaluation report received.
    - (1) The LEA will deny payment of an IEE conducted by an evaluator who does not meet the minimum qualifications as defined elsewhere in this policy.
    - (2) The LEA will deny payment for an IEE that does not meet the minimum state and federal criteria for educational identification of a disability discussed in the IEE.
3. Upon request for LEA reimbursement for a unilaterally parent-initiated IEE, the LEA may request a due process hearing to prove its own evaluation is appropriate.

## Criteria for Determining if Private Insurance can be Accessed

When insurance will cover all or part of the costs of the independent evaluation, the LEA will request that the parents voluntarily have their insurance pay the independent evaluation costs covered by their insurance. However, parents will not be asked to have insurance cover independent evaluation costs if such action would result in a financial cost to the parents not reimbursed by the LEA, including, but not limited to the following:

1. A decrease in available lifetime coverage or any other benefit under an insurance policy;
2. An increase in premiums or the discontinuance of the policy; or
3. An out-of-pocket expense such as payment of a deductible amount incurred in filing a claim.

## Negotiating Fees for Independent Evaluation

When the LEA is negotiating the fee for an independent evaluation to be conducted at public expense, the following should be included in the fees:

- Cost to conduct assessment
- Mileage
- Developing a written report
- Providing copies of the report to the parent and school
- Attending the IEP meeting

## **Criteria for Independent Educational Evaluators**

### Local Limitations for Evaluators

Evaluators must be located within 60-mile radius of the LEA of Residence. Evaluators outside of this area will be approved only on an exceptional basis if the parents can demonstrate the necessity of using personnel outside the specified area. Parents must receive prior written notice from the LEA for IEE conducted outside of the approved area. Unless an out of the area evaluation is required for the student to receive an IEE, costs beyond the evaluation (i.e., food, lodging, transportation, etc.) are not covered.

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### Minimum Qualifications for Evaluators

All assessments must be conducted in accordance with all requirements of Federal and State law including, but not limited to, observing the student in the appropriate setting (EC §56327) and conducting evaluations in accordance with EC §56320. Evaluators must meet the following credentialing criteria. All assessments, including all tests and subtests, must be conducted by persons competent to perform the assessment as determined by the LEA (EC §56322).

### Guidelines for Determining Qualifications

Disclaimer: the SELPA is not endorsing the providers or responsible for any liability. It is recommended when selecting an individual educational evaluator, you request a copy of their résumé, two references by LEAs and itemized cost for the evaluation including writing the report and attending the IEP meeting. Prior to making the final selection of an IEE, the LEA should review the résumé to ensure proper licensure and/or credential and contact the references provided. Additionally, an LEA may require that any examiner meet the LEA requirements for any school employee who works with children (i.e., TB testing, fingerprinting, background search, insurance, SAM insurance), as well as any other contract requirements enforced by the LEA.

Please note: Effective January 1, 2022, all contracting entities that have contracts with a school district, county office of education, or charter school (each an LEA), where the entity or its employees will interact with students outside of the immediate supervision and control of the student's parent or guardian or a school employee, must ensure that they have a valid criminal records summary for the contracting entity and any of its employees who may interact with students outside of the immediate supervision and control of a parent, guardian, or school employee. The contracting entity must provide any information about arrests and convictions immediately to the LEA. (Lozano Smith Client News Brief, May 24, 2022)

### MINIMUM QUALIFICATIONS FOR EVALUATORS

<b>Type of Assessment</b>	<b>Minimum Qualifications</b>
Academic Achievement	Credentialed Special Education Teacher, <b>or</b> Licensed Educational Psychologist, <b>or</b> Credentialed School Psychologist
Adaptive Behavior	Licensed Educational Psychologist, <b>or</b> Credentialed Special Education Teacher, <b>or</b> Credentialed School Psychologist <b>or</b> Licensed Clinical psychologist (LEP <b>or</b> PPSC) <b>or</b> Board Certified Behavior Analysis (BCBA)
Assistive Technology	Credentialed <b>or</b> Licensed Speech/Language Pathologist, <b>or</b> Credentialed Special Education Teacher, <b>or</b> Certified Assistive Technology Specialist <b>or</b> Registered Occupational Therapist <b>or</b> Licensed <b>or</b> Certificated Audiologist
Auditory Acuity	Licensed <b>or</b> Certificated Audiologist
Auditory Perception (CAP)	Licensed <b>or</b> Certificated Audiologist Licensed <b>or</b> Credentialed SLP
Auditory Processing	School Psychologist, <b>or</b> Credentialed <b>or</b> Licensed Speech/Language Specialist
Cognitive	Licensed Educational Psychologist, <b>or</b> Credentialed School Psychologist

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Behavioral Assessment	Licensed Educational Psychologist, <b>or</b> Credentialed Special Education Teacher, <b>or</b> Credentialed School Psychologist, <b>or</b> Board Certified Behavior Analyst (BCBA)
Health	Licensed Physician, <b>or</b> Credentialed School Nurse
Motor	Licensed Physical Therapist, <b>or</b> Licensed Occupational Therapist, <b>or</b> Credentialed Adaptive Physical Education Specialist
Neuro-psychological	Neuropsychologist <b>and</b> Licensed Educational Psychologist <b>or</b> Credentialed School Psychologist <b>+</b> education training and experience in administration and interpretation of neuro-psychological assessment instruments
Occupational Therapy	Licensed Occupational Therapist
Physical Therapy	Licensed Physical Therapist
Speech and Language	Credentialed <b>or</b> Licensed Speech/Language Pathologist
Social/Emotional	Credentialed School Psychologist, <b>or</b> Social Worker (LCSW), <b>or</b> Licensed Psychiatrist, <b>or</b> Licensed Psychologist, <b>or</b> Licensed Educational Psychologist, <b>or</b> Licensed Clinical Psychologist
Transition/Vocational	Licensed Educational Psychologist, <b>or</b> Credentialed Special Education Teacher, <b>or</b> Credentialed School Psychologist
Vision (Functional)	Credentialed Teacher of the Students with Visual Impairments
Visual Perception	Credentialed Special Education Teacher, <b>or</b> Licensed Educational Psychologist, <b>or</b> Credentialed School Psychologist, <b>or</b> Ophthalmologist, <b>or</b> Optometrist

### Conflict of Interest

The LEA should ensure there is no conflict of interest between the evaluator and service provider. After completing an independent educational evaluation, it is not recommended the independent evaluator, or their agency provides the services recommended by the IEP Team.

### **COST OF ASSESSMENT BY TYPE**

Costs above these amounts may be approved if the parent is able to demonstrate that unique circumstances justify going outside the LEA's fee parameters and parents obtain prior written approval from the LEA. These guidelines and costs are to assist you with negotiating with the assessors, on a case-by-case basis, based on the student's individual needs. LEAs are encouraged to negotiate rates for partial assessments if a complete assessment is not required.

The total costs of an independent multidisciplinary evaluation are guided by the following rate limits:

	<b>Rate Limits</b>
<b>Full Psychological Evaluation</b> (includes cognitive, academic achievement, adaptive behavioral, social emotional)	\$4000
<b>Assistive Technology/Augmentative and Alternative Communication</b>	\$1200
<b>Central Auditory Processing (CAPD)</b>	\$1000



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<b>Neuro-psychological</b> (Includes cognitive and academic)	\$5000
<b>Occupational Therapy</b> (Includes sensory and motor)	\$1500
<b>Physical Therapy</b>	\$1500
<b>Speech and Language</b>	\$1750
<b>Transitional/Vocational</b>	\$1500
<b>Behavioral Assessment (FBA-BCBA)</b>	\$2000
<b>Vision</b> (Includes acuity and processing)	\$1750

*Revised 9.3.21;8.12.22*