



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 21

Nancy J. LoDolce
Attorney At Law
1400 North Dutton Avenue Ste 21
Santa Rosa, CA 95401

Dear Ms. LoDolce:

This letter is in response to your letter dated September 28, 2007, in which you ask the following questions:

Does a school district have the right to dictate policies to independent educational evaluators that restrict the use of age and grade level scores in their reports?

Does a school district have the right to preclude independent evaluators from making recommendations pertaining to specific methodologies and/or use of materials?

Under 34 CFR §300.502(e), 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. Except for the criteria identified immediately above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation. Under 34 CFR §300.20, "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. Therefore, the examples of agency criteria included at 34 CFR §300.502(e) (location of the evaluation and the qualifications of the examiner) are not necessarily the only criteria that must be the same as the public agency's criteria.

While a public agency may establish criteria it uses when it initiates an evaluation, those criteria must be consistent with the evaluation procedures in 34 CFR §§300.304 through 300.311. The purpose of an evaluation is to determine whether the child is a child with a disability and the nature and extent of special education and related services that the child needs. See 34 CFR §300.15. Evaluation procedures at 34 CFR §300.304(b)(1) require that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general education curriculum. In some cases, depending on an individual child's needs, it may be necessary for an evaluator to conduct an assessment that

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includes age and grade level scores in order to gather relevant information about the child that may assist in determining the content of the child's IEP, including information related to enabling the child to participate in the general education curriculum. In addition, the regulations at 34 CFR §300.311(a) specify the content for the evaluation report for children suspected of having a specific learning disability. Under 34 CFR §300.311(a)(5), the report must include whether the child does not achieve adequately for the child's age or to meet State-approved grade level standards; and whether the child does not make sufficient progress to meet age or State-approved grade level standards or the child exhibits strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development. Therefore, a public agency must permit its own evaluators to use age and grade level scores in its evaluation reports. Because a public agency cannot prohibit its own evaluators from including age and grade level scores in evaluation reports, it cannot prohibit independent evaluators from doing so.

The answer to your second question is dependent upon what a public agency permits or precludes in its own evaluations. Evaluation procedures at 34 CFR §§300.304 through 300.311 do not require that an evaluator make recommendations pertaining to specific methodologies and/or use of materials. Any decisions made regarding the content of the IEP on the basis of an evaluation, including methodologies or use of materials, would be made by the IEP Team, as a result of considering the information presented, including the results of the evaluation and the unique individual needs of the child. If a public agency precludes its own evaluators from making recommendations, it may preclude an independent evaluator from making a recommendation. The converse is also true. If a public agency does not preclude its evaluators from making recommendations, it may not preclude independent evaluators from making recommendations. Under 34 CFR §300.502(c), the results of the evaluation must be considered by the public agency, if the independent educational evaluation meets agency criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope you find this information responsive to your questions. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow, of my staff, at 202-245-7456.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Mary Hudler