



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN - 7 2000

Jennifer L. Scheinz
Attorney & Counselor at Law
7 W. Sixth Ave., Suite 4Q
Power Block, Level Four
Helena, Montana 59601

Dear Ms. Scheinz:

This is in response to your letter to Patricia J. Guard, former Acting Director of the Office of Special Education Programs (OSEP), in which you were seeking a policy clarification regarding a parent's right to request an independent educational evaluation of their child under Part B of the Individuals with Disabilities Education Act (Part B). Please excuse the delay in issuing this response. Your specific question is as follows:

When an IEP team determines that it needs a specific type of evaluation (which is not a full comprehensive evaluation of either the child's eligibility or of all the child's educational needs) to develop an appropriate IEP, and the parent disagrees with the district's evaluation, does the parent have the procedural right under 34 CFR §300.502 to an independent educational evaluation of the same specific type as the evaluation conducted by the school?

Your letter also states that "[t]he functional behavioral assessment is neither the initial evaluation for eligibility or the comprehensive three year evaluation, nor is it in response to any disciplinary action by the school." The purpose of your query is to ascertain our views on whether the parent is entitled to an independent educational evaluation at public expense.

Your inquiry concerns a situation in which a parent disagrees with a functional behavioral assessment of their child that was conducted by the school district because the child's individualized education program (IEP) team determined that such an assessment was necessary to develop an appropriate IEP for the child. Under 34 CFR §300.502 of the Part B regulations, a parent of a child with a disability is entitled to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the public agency. 34 CFR §300.502(b)(1). Evaluation is defined at 34 CFR §300.500(b)(2) as "procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." We believe that the functional behavioral

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assessment described in your inquiry, while not part of the initial evaluation or part of the required triennial evaluation, was a reevaluation under Part B. Therefore, if the parents disagree with the evaluation, we believe that they are entitled to an IEE.

An initial evaluation of the child is the first completed assessment of a child to determine if he or she has a disability under IDEA, and the nature and extent of special education and related services provided. 34 CFR §§300.531 and 300.500(b)(2). Once a child has been fully evaluated the first time in a State, a decision has been rendered that a child is eligible under IDEA, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. See the Analysis of Comments and Changes published as Attachment 1 to the March 12, 1999 final regulations at 64 Fed. Reg. at 12606.

Under 34 CFR §300.536, each public agency must ensure that the IEP of each child with a disability is reviewed and a reevaluation is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. Under 34 CFR §300.533(a), as part of any reevaluation, a group that includes the individuals described in §300.344 (the IEP team), and other qualified professionals, as appropriate, must review existing evaluation data on the child. On the basis of that review, and input from the child's parents, the group must identify what additional data, if any, are needed to determine, among other things, whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum. In this instance, it appears that the IEP team determined that additional data was necessary and based on that determination, the functional behavioral assessment was conducted.

The IDEA Amendments of 1997 make provisions for public agencies to be proactive in addressing the needs of children whose disabilities have behavioral components. In the case of a child whose behavior impedes his or her learning or that of others, IDEA '97 requires that the IEP team consider, if appropriate, positive behavioral interventions, strategies, and supports to address that behavior. 34 CFR §300.346(a)(2)(i). In the situation you pose, it appears that the assessment, which was conducted for the purpose of developing an appropriate IEP for the child, meets the definition of the term "evaluation" at 34 CFR §300.500(b)(2), and that the parent is entitled to an IEE under 34 CFR §300.502(b)(1).

Once an IEE is requested, the public agency must, without unnecessary delay, either, (i) initiate a due process hearing to show that its evaluation is appropriate; or (ii) ensure that the IEE is publicly-funded, unless the agency demonstrates in a hearing that "the evaluation obtained by the parent did not meet agency criteria." 34 CFR §300.502(b)(2).

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A publicly-funded IEE must meet the criteria that the agency uses when it initiates an evaluation, including the location of the evaluation and the qualifications of the examiner, to the extent those criteria are consistent with a parent's right to an IEE. 34 CFR §300.502(e)(1).

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds of OSEP at (202) 205-5507.

Sincerely

A handwritten signature in black ink, appearing to read "Kenneth R. Warlick". The signature is written in a cursive style with a large initial "K".

Kenneth R. Warlick

Director

Office of Special Education Programs

cc: Robert Runkel
State Director
Montana Department of Public Instruction