



San Mateo  
County  
SELPA

# Special Education Local Plan Area

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## Policy and Procedures

### INDEPENDENT EDUCATIONAL EVALUATIONS

#### Legal Authority:

Individuals with Disabilities Education Act: Section 300.502 Independent Educational Evaluation. (20 U.S.C. 1415 (b)(I) and (d)(2)(A); California Education Code Section 56329.

This policy sets forth the procedures under which students with disabilities are entitled to an IEE at public expense.

#### **Definitions**

*Independent educational evaluation (IEE)* means an evaluation conducted by a qualified evaluator who is not employed by the LEA of residence.

*Public expense* means that the LEA pays for the full cost of the evaluation (in accordance with cost recommendations described herein) or ensures that the evaluation is otherwise provided at no cost to the parent.

#### **Policy and Procedures**

Parents of a student with a disability have the right to an Independent Educational Evaluation (IEE) subject to the provisions of federal and state law, at public expense if they disagree with an evaluation completed by the LEA and the LEA does not pursue its option to file a request for a due process hearing with the California Office of Administrative Hearings to establish the appropriateness of its assessment. If necessary, the LEA should request clarification regarding which evaluation(s) are in dispute. The term "evaluation" includes any individual assessment of a child that results in a report that is used by the IEP team to determine eligibility and services.

Parents must indicate in writing to the LEA or inform the LEA at an IEP meeting that they:

1. Disagree with the LEA's evaluation and
2. That they are requesting an IEE at public expense.

The LEA may ask for the parent's reason(s) for disagreeing with the LEA's evaluation, but the parent is not required to provide those reasons. The LEA may offer to conduct another evaluation of its own with parent consent. If the parent agrees to another LEA evaluation, this would not be considered an IEE and the LEA should work with the parent to appropriately document the agreement of the parent to both the new LEA evaluation and to the withdrawal of the parent IEE request pending the completion of the new LEA assessment. The LEA should ask parent to revoke their request for an IEE in writing, or ask them to sign that they agreed to the withdrawal of the request and to a new LEA assessment.

If the parent does not agree to another LEA evaluation, the LEA must respond to the parent's request by ensuring an IEE is provided at public expense in a timely manner or promptly submit a request for a due process hearing in accordance with this policy. The LEA may not unnecessarily delay either providing the IEE at public expense or initiating a due process hearing to defend the appropriateness of its evaluation. In addition, a copy of the Procedural Safeguards and Parent Rights should be provided anytime a parent requests an IEE. Parents may only request one publicly funded independent evaluation for each evaluation completed by the LEA.

### **Responding to an IEE Request**

Once the parent communicates his/her disagreement with the LEA's evaluation and requests an IEE at public expense in writing or at an IEP meeting, the following procedures will be followed:

1. The LEA's administrator responsible for special education will be notified.
2. The LEA will provide to the parents a copy of the San Mateo County SELPA policy and procedures including criteria for IEEs and a copy of procedural safeguards and parental rights, and options for an IEE at public expense (Options A,B, C and D) as follows:
  - A. A staff member from another LEA in the SELPA
  - B. A staff member from another SELPA
  - C. A nonpublic agency provider
  - D. A provider on the SELPA IEE list
3. The parents will communicate to the LEA, in writing, their preferred option; OR
4. The LEA will determine whether the LEA will initiate due process to establish the appropriateness of its evaluation or proceed with obtaining an IEE.

If the LEA determines that it will initiate a due process hearing to establish the appropriateness of its evaluation, the LEA will notify the parent of such decision in writing prior to filing a due process hearing complaint. This written notice shall include all of the elements of prior written notice as required by section 300.503(b) of Title 34 of the Code of Federal Regulations.

If the LEA agrees to provide an IEE at public expense, the LEA will work collaboratively with the parent, at parent request, to identify potential IEE evaluator(s). Alternatively, parent may provide, in writing, his or her preferred evaluator(s). LEA and parent may utilize the Agreement for Independent Educational Evaluation form and/or parent will be required to sign a release and exchange of information authorizing the LEA to communicate directly with the parent's chosen independent evaluator. Please note: An LEA Assessment Plan is NOT completed because the LEA is not conducting the assessment and is not responsible for the timelines and/or results of the IEE assessments.

The LEA may directly contract with the independent evaluator for the IEE. Alternatively, the LEA may issue payment to the independent evaluator for the costs of the IEE following its receipt of the items listed below. Or, the LEA may reimburse the parent for the costs of a procured IEE in a timely manner in accordance with the LEA's policies and procedures and in the amount no greater than the actual cost to the parent.

If the LEA initiates a due process hearing and the hearing officer issues a final decision finding that the LEA's evaluation is appropriate, the parent will still have the right to obtain an IEE, but not at the LEA's expense. If a hearing officer orders an IEE as part of a due process hearing decision, the costs of the IEE must be at LEA's expense.

If the parent obtains an IEE at private expense or through an agency other than the LEA and shares the IEE with the LEA, the results of the IEE:

1. Must be considered by the LEA, if the evaluation meets the agency criteria set forth below, in any decision made with respect to the provision of a free appropriate public education ("FAPE") to the student; and
2. May be presented as evidence at a due process hearing or other proceeding regarding the student.

### **LEA Criteria**

The criteria under which an IEE is obtained at public expense, including the location limitations for the evaluator, minimum qualifications of the evaluator, and cost containment criteria, must be consistent with the criteria set forth in this policy, and consistent with the criteria that the LEA uses when it initiates an evaluation.

If the LEA observed the student in conducting the evaluation with which the parents disagree or if its assessment procedures allow in-class observations, the independent evaluator will be provided with an equivalent opportunity to observe the student in the current educational setting, and to observe the LEA's proposed setting, if any. This opportunity shall also be provided if the parents obtain an evaluation at private expense.

The LEA shall define the nature and scope of an independent evaluator’s in-class observations consistent with the right to an equivalent opportunity to observe, but also consistent with its obligations to prevent unnecessary disruption in the class and protect the privacy interests of other students. This may include, but is not limited to, identifying the time constraints of such observation, LEA personnel who will participate in the observation and restrictions on student/teacher interactions. Please refer to SELPA Observation Policy.

**Geographical Limitations for Evaluators**

Evaluators will be located within the greater Bay Area including: San Mateo, Marin, Sonoma, Napa, San Francisco, Contra Costa, Alameda, and Santa Clara Counties. Evaluators outside of this area will be approved only on an exceptional basis, providing parents can demonstrate the necessity of using personnel outside the specified area in order to obtain an appropriate evaluation. 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.

**Minimum Qualifications for Evaluators**

Evaluators with credentials other than those listed below will not be approved unless the parent can demonstrate the appropriateness, under the specific facts of a given case, of using an evaluator meeting other qualifications. (Ed. Code 56320 (b)(3))

| <b>Type of Assessment</b>   | <b>Qualifications</b>  |
|-----------------------------|--|
| <b>Academic Achievement</b> | Credentialed Special Education Teacher<br>School Psychologist<br>Licensed Educational Psychologist<br>Licensed Clinical Psychologist                                     |
| <b>Adaptive Behavior</b>    | Credentialed Special Education Teacher<br>School Psychologist<br>Licensed Educational Psychologist<br>Licensed Clinical Psychologist                                     |
| <b>Assistive Technology</b> | Credentialed or Licensed Speech/Language Pathologist<br>Credentialed Assistive Technology Specialist<br>Credentialed Special Education Teacher with appropriate training |
| <b>Auditory Acuity</b>      | Licensed Educational Audiologist<br>Licensed or Credentialed Speech/Language Pathologist   |

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|---|---|
| <b>Behavioral</b>                         | Credentialed Special Education Teacher<br>School Psychologist<br>Licensed Educational Psychologist<br>Licensed Clinical Psychologist<br>Licensed Psychiatrist |
| <b>Cognitive</b>                          | School Psychologist<br>Licensed Educational Psychologist<br>Licensed Clinical Psychologist  |
| <b>Health (including neurological)</b>    | Licensed Physician<br>Nurse   |
| <b>Motor</b>                              | Licensed Physical Therapist<br>Registered Occupational Therapist<br>Credentialed Teacher of the Physically Impaired<br>Adaptive Physical Education Teacher    |
| <b>Occupational Therapy</b>               | Licensed Occupational Therapist   |
| <b>Speech and Language</b>                | Credentialed or Licensed Speech/Language Pathologist  |
| <b>Social/Emotional</b>                   | School Psychologist<br>Licensed Educational Psychologist<br>Licensed Clinical Psychologist<br>Licensed Psychiatrist   |
| <b>Visual Acuity/Developmental Vision</b> | Licensed Ophthalmologist<br>Optometrist   |
| <b>Functional Vision</b>                  | Credentialed Teacher of the Visually Impaired   |
| <b>Vision Perception</b>                  | Credentialed Special Education Teacher<br>School Psychologist   |
| <b>Transition</b>                         | Credentialed Special Education Teacher  |

**Cost Containment Criteria for Evaluations**

The cost of an IEE shall be comparable to those costs that the LEA incurs when it uses its own employees or contractors to perform a similar assessment. Costs include: observations, administration and scoring of tests, report writing, and attendance in person or by phone at an IEP team meeting. Reimbursement will be in an amount no greater than the actual cost to the parent and will be subject to proof of payment.

Based on the cost limitations contained in the San Mateo County SELPA LEAs and region, the cost of a psycho-educational IEE should be approximately \$3,500.00 absent extraordinary circumstances. The cost of a speech and language, occupational therapy, and/or adaptive physical education should be approximately \$1,500.00 unless there are extenuating additions such as the need to include assistive technology assessments. The cost of other types of IEEs will be considered on a case-by-case basis. Guidelines for all IEE costs are calculated by considering time required for

the assessment and the appropriate comparable LEA employee hourly rate. Costs above these amounts will not be approved unless the parent can demonstrate that such costs reflect unique circumstances justifying the selection of an evaluator whose fees fall outside these criteria. An LEA will not necessarily be required to fund the attendance of the assessor at the IEP team meeting convened to consider the IEE.

When insurance will cover all or partial costs of the IEE, the LEA will request that the parent voluntarily have their insurance pay the IEE 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 including, but not limited to the following:

- A. A decrease in available lifetime coverage or any other benefit under an insurance policy,
- B. A increase in premiums or the discontinuance of the policy or
- C. An out-of-pocket expense such as payment of a deductible amount incurred in filing a claim unless the parent is willing to have the LEA reimburse them for the amount of the deductible.

Independent evaluators must agree to release their assessment information, provide prior to the IEP meeting a written IEE assessment report, submit copies of any and all assessment protocols utilized to conduct the IEE, and provide detailed invoices including dates of assessment, observations and hourly rates, if applicable, to the LEA prior to receipt of payment for services.

All independent educational evaluators must utilize testing and assessment materials and procedures which are selected and administered so as not to be racially, culturally, or sexually discriminatory. Tests and other assessment materials must be provided and administered in the student's primary language or other mode of communication, unless there are stated reasons why this provision and administration are not clearly feasible. All assessment instruments utilized must have been validated for the specific purpose for which they are used, and be administered by trained personnel in conformity with the instructions provided by the publisher. All written reports must meet the requirements of the IDEA and California Ed. Code Section 56327.

The results of the IEE will be considered in the determination of eligibility, program decisions, and placement of the student with disabilities as required by the Individuals with Disabilities Education Act. However, the results of an IEE will not control the LEA's determinations and may not be considered if not completed by a qualified professional, as determined by the LEA.

LEAs should consider that contracting with an NPA for both assessment and services could compromise the reliability of the assessment performed. Please refer to the Master Contract for language related to use of the same contractor for assessment and direct services.

**Reference:**

*Legal Authority:*

*20 U.S.C. 1414(a) – (c) -Evaluations and re-evaluations;*

*20 U.S.C. 1415(b)(1)-Right to independent educational evaluations;*

*34 CFR 300.301 – 300.306-Re-evaluations,;*

*34 CFR 300.502-Independent Educational Evaluations;*

*Comments to 34 CFR 300.502 Independent education evaluations;*

*Education Code section 56327;*

*34 CFR 300.300 Parent Consent - Evaluation;*

*34 CFR 300.304-306 Procedures for evaluations and Determination of eligibility;*

*Education Code 56329-Independent educational assessments;*

*Education Code 56381 Reassessments.*

*Education Code 56329 Notice to parents or guardians; independent educational assessments; hearings; proposals for publicly financed nonpublic placements*

*Education Code 56506(c) Due process rights of pupil and parent*

**Approved SELPA Governing Board**

**November 3, 2009**

**Approved SELPA Governing Board**

**February 24, 2015**