

Independent Educational Evaluation Reimbursement Under the IDEA: An Update*

Perry A. Zirkel
© 2015

The purpose of this article is to provide a practical legal checklist that updates a predecessor ELIP version in WEST'S EDUCATION LAW REPORTER concerning independent educational evaluations (IEEs) at public expense.¹ For ease of differentiation, the updated parts are highlighted in yellow.

The 2004 Individuals with Disabilities Education Act (IDEA) legislation² and the 2006 IDEA regulations³ left largely unchanged the parent's conditional right to obtain an independent educational evaluation (IEE) at public expense.⁴ The specified conditions⁵ form what amounts to a flowchart-like framework akin to the multi-step test for tuition reimbursement under the IDEA.⁶ The extensive and continuing amount of hearing and review officer decisions concerning IEEs at public expense evidence not only the frequency of the issue but also the need for a careful legal analysis.⁷ The primary bases for such a legal analysis are the relevant IDEA regulations, court decisions, and policy letters issued by the U.S. Office of Special Education Programs (OSEP).

The IEE reimbursement⁸ checklist is arranged in the same sequence as the relevant regulation, starting with the successive pair of procedural steps and culminating in the respective pair of the substantive steps.⁹ For each step, the relevant questions based on the regulations are in bold italics, whereas those based on OSEP letters are in italics alone.¹⁰ The corresponding answers are in regular font. Finally, the checklist items for the two substantive steps are worded as neutral questions to avoid the unsettled issue of burden of proof.¹¹

IEE REIMBURSEMENT CHECKLIST

PROCEDURAL STEPS:

1. *Did the parent disagree with the district evaluation?*

- *via notification to the district within a reasonable period of time?*¹²

If not, in various but far from all jurisdictions and circumstances,¹³ it may be an equitable consideration but it is not an absolute prerequisite; thus, move on to the subsequent steps in this analysis.¹⁴

2. *Did the district file for a due process hearing ...*

- *at all?*

If not, this will likely end the analysis in favor of reimbursement¹⁵ unless there are multiple issues¹⁶ or special circumstances,¹⁷ including the parent's failure at step 1.¹⁸

- *without unnecessary delay?*

A delay of more than 2-3 months is likely fatal to the district's case,¹⁹ although the exact length will depend on the circumstances rather than being a bright-line test.²⁰

SUBSTANTIVE STEPS

3. *Was the district's evaluation (or reevaluation or necessary FBA)²¹ appropriate?*²²

In light of the relatively skeletal substantive criteria for district evaluations and the restricted role of the procedural standards, the court outcomes have varied widely depending on the specific facts of the case and the degree of judicial deference to district actions.²³

4. *Was the parent's IEE appropriate*²⁴ ...

- *according to district criteria that are no more and, if necessary, less restrictive than applicable to the district's evaluation?*
²⁵

- As for procedures, the district may require the parents to submit the IEE report by a date certain within any state imposed deadlines,²⁶ but authority is split as to whether the district may require advance clearance.²⁷

- As for timing, the parent's IEE:
 - (a) need not be before the district's filing²⁸;
 - (b) is not subject to a district-imposed deadline²⁹
- As for IEE location and evaluator qualifications, the district may:
 - (a) limit the parents to a comprehensive list if there is allowance for individual exceptions³⁰;
 - (b) include the criteria established by the producer of evaluation instruments³¹;
 - (c) impose a mileage limit on the IEE as long as this does not prevent the parent from getting an appropriate evaluation³²;
 - (d) restrict IEEs to evaluators within the state if there is a sufficient number of qualified evaluators within those boundaries and the parents have the opportunity for an exception based on unique circumstances³³; and
 - (e) require the IEE examiner to hold, or be eligible to hold, a particular license when the district does the same for personnel who conduct corresponding evaluation for the district unless only the district personnel may obtain said license.³⁴
 - (f) conversely, the district may not require (i) specified experience or non-affiliation,³⁵ or (ii) criteria for qualifications different from those required for the district's own evaluations.³⁶
- As for methodology, the IEE need not be the same as the district's evaluation.³⁷
- As for contents, the district may not prohibit the IEE evaluator from including age and grade level standards.³⁸
- As for costs, a district may:
 - (a) establish maximum allowable charges for specific tests if said maximum (i) allows a choice among qualified professionals, (ii) is not limited to the average fee customarily charged in that area, (iii) allows for exceptions for justified unique circumstances,³⁹ and (iv) applies as well to the district when it initiates an evaluation,⁴⁰ and
 - (b) establish "reasonable cost containment criteria applicable to [both district and parent evaluators]" but only with a provision for an exception when the parents shows unique circumstances justifying a higher fee.⁴¹

- (c) conversely, if an IEE is necessary outside the district boundaries, the district may be required—if the parent meets the “unique circumstances” exception—to pay for the expenses incurred by the parent for travel or other related costs,⁴² and the district may not require parents to submit the charges first to their health care insurer.⁴³
- (d) finally, according to limited case law authority to date, if the parents are entitled to reimbursement, it extends to the costs of the private evaluator’s presentation at the IEP meeting.⁴⁴

¹ For the two earlier versions, see Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: An Update*, 306 Ed.Law Rep. 32 (2014); Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: A Checklist*, 231 Ed.Law Rep. 21 (2008). For a corresponding detailed treatment, see Perry A. Zirkel, *Independent Educational Evaluations at District Expense under the Individuals with Disabilities Education Act*, 38 J.L. & EDUC. 223 (2009).

² 20 U.S.C. § 1415(B)(1) (2005); *see also id.* § 1415(d)(2)(A) (2012).

³ 34 C.F.R. § 300.502 (2012). The only change was to limit the parent to only one IEE at public expense each time the school district conducts an evaluation with which the parent disagreed. *Id.* § 300.502(b)(5) (2012). This change represents reinstatement of a previous limitation. *See, e.g.*, Hudson v. Wilson, 828 F.2d 1059, 41 Ed.Law Rep. 830 (4th Cir. 1987); Letter to Fields, EHLR 213:260 (OSERS 1989). In a recent decision, a federal appellate court upheld the validity of this IDEA regulation in relation to the statute's purpose. Phillip C. v. Jefferson County Bd. of Educ., 701 F.3d 691, 287 Ed.Law 50 (11th Cir. 2012).

⁴ The scope of this checklist does not extend to IEE case law concerning issues other than reimbursement. *See, e.g.*, K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 270 Ed.Law Rep. 479 (8th Cir. 2011); T.S. v. Bd. of Educ., 10 F.3d 87, 87 Ed.Law Rep. 386 (2d Cir. 1993); G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 67 Ed.Law Rep. 103 (1st Cir. 1991); S.W. v. New York City Dep't of Educ., ___ F. Supp. 3d ___ (S.D.N.Y. 2015); P.G. v. New York City Dep't of Educ., 65 IDELR ¶ 43 (S.D.N.Y. 2015); James D. v. Bd. of Educ., 642 F. Supp. 2d 804 (N.D. Ill. 2009) (concluding that district met its obligation to "consider" parent's IEE); L.M. v. Capistrano Unified Sch. Dist., 556 F.3d 900, 242 Ed.Law Rep. 23 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 90 (2009) (ruling that failure to provide equivalent opportunity for IEE observation, as required by state law, did not amount to denial of FAPE); Bd. of Educ., v. H.A., 56 IDELR ¶ 156 (S.D. W.Va. 2011), *aff'd mem.*, 445 F. App'x 660 (4th Cir. 2011) (ruling that district's insistence on its choice of psychologist to conduct IHO-ordered IEE violated parents' opportunity for meaningful participation); Staton v. Dist. of Columbia, 63 IDELR ¶ 159 (D.D.C. 2014) (ruling that, for purpose of attorneys' fees, order of IEE to determine student's eligibility was more favorable than timely settlement offer); Mangum v. Renton Sch. Dist., 57 IDELR ¶ 252 (W.D. Wash. 2011), *aff'd mem.*, 584 F. App'x 618 (9th Cir. 2014) (ruling that district opted for the reimbursement alternative and complied with the applicable IDEA and state regulations, including the requirement to consider the IEE); Northport Pub. Sch. v. Woods, 63 IDELR ¶ 134 (W.D. Mich. 2014) (denying dismissal of district's claim for attorneys' fees from parent's attorney); Meridian Joint Sch. Dist. No. 2 v. D.A., ___ F.3d ___ (9th Cir. 2015); T.B. v. Bryan Indep. Sch. Dist., 628 F.3d 240 (5th Cir. 2010); D.S. v. Neptune Twp. Bd. of Educ., 264 F. App'x 186 (3d Cir. 2008); (denying attorneys' fees where hearing officer ordered IEE at public expense but the ultimate determination was that the child was not eligible); T.J. v. Winton Woods City Sch. Dist., 60 IDELR ¶ 244 (S.D. Ohio 2013) (ruling that IEE was inadmissible to determine whether the IEP was appropriate when the IEP team had not had the opportunity to consider it); Plainville Bd. of Educ. v. R.N., 58 IDELR ¶ 257 (D. Conn. 2012) (ruling that district violated IEE consideration requirement but did not reach whether this violation did not result in a substantive denial of FAPE); Sch. Bd. of Manatee County v. L.H., 53 IDELR ¶ 149 (M.D. Fla. 2009) (upholding ALJ's order to provide equivalent opportunity for IEE observation); Letter to Savit, 64 IDELR ¶ 250 (OSEP 2014) (opining that district must provide the same opportunity for IEE observation as it does for its own personnel). It also does not include OSEP policy interpretations concerning IEEs more broadly. *See, e.g.*, Letter to Fisher, 23 IDELR 565 (OSEP 1995) (interpreting the right to an IEE to extent to assistive technology assessments). Finally, the coverage does not extend to otherwise relevant cases decided on technical adjudicative grounds. *See, e.g.*, T.P. v. Bryan Cnty.

Sch. Dist., 794 F.3d 1284, ___ Ed.Law Rep. ___ (11th Cir. 2015) (mootness based on triennial period for reevaluation); *David P. v. Lower Merion Sch. Dist.*, 29 IDELR 23 (E.D. Pa. 1998) (statute of limitations); *Hyde Park Cent. Sch. Dist. v. Peter C.*, 21 IDELR 354 (S.D.N.Y. 1994) (jurisdiction of review officer).

⁵ 34 C.F.R. § 300.502(b) (2012):

- (1) A parent has the right to an [IEE] at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the [following] conditions.
- (2) If a parent requests an [IEE] at public expense, the public agency must, without unnecessary delay, either--
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an [IEE] is provided at public expense, unless the agency demonstrates in [an impartial hearing under the IDEA] ... that the evaluation obtained by the parent did not meet agency criteria

For the additional regulatory language concerning agency criteria at the last step, see *id.* § 300.502(e) (2012):

- (1) If an [IEE] 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 [IEE].
- (2) Except for the criteria described in [the previous] paragraph ..., a public

agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

⁶ See, e.g., *id.* § 300.148(b)-(e) (2012). For an analysis of the case law, see, e.g., Thomas Mayes & Perry Zirkel, *Special Education Tuition Reimbursement Claims: An Empirical Analysis*, 22 REMEDIAL & SPECIAL EDUC. 350 (2001). For an analogous flowchart-like synthesis, see Perry A. Zirkel, *Tuition and Related Reimbursement under the IDEA: A Decisional Checklist*, 282 Ed.Law Rep. 785 (2012).

⁷ In general these administrative decisions do not have precedential value in either strict or broader sense of this doctrine. For a synthesis showing the frequency of IDELR-published hearing/review officer decisions specific to one step of the applicable test—the appropriateness of school district evaluations—and the relative neglect of these three stronger legal sources at the federal level (i.e., the regulations, court decisions, and OSEP policy letters), see Susan Etscheidt, *Ascertaining the Adequacy, Scope, and Utility of District Evaluations*, 69 EXCEPTIONAL CHILD. 227 (2003).

⁸ The term IEE reimbursement is used generically herein because most of the pertinent cases arise from a request for reimbursement, although a few are limited to the threshold right, where the IEE is yet to happen and thus its appropriateness and payment are prospective only. See, e.g., *M.Z. v. Bethlehem Area Sch. Dist.*, 521 F. App'x 74, 296 Ed.Law Rep. 92 (3d Cir. 2013) (reversed hearing officer's order for district to expand its inappropriate evaluation, instead ruling that in wake of failing to provide an appropriate evaluation the district must provide publicly funded IEE).

⁹ See *supra* note 5.

¹⁰ For the legal effect of such policy interpretations, see, e.g., *Raymond S. v. Ramirez*, 918 F. Supp. 1280, 108 Ed.Law Rep. 196 (N.D. Iowa 1996); see also Perry A. Zirkel, *Do OSEP Policy Letters Have Legal Weight?* 171 Ed.Law Rep. 391 (2003).

¹¹ The language in the regulation puts the burden on the district, but the intervening effects of the Supreme Court's decision in *Schaffer v. Weast*, 546 U.S. 49 (2005) and any opposing state law leaves this matter an open question.

¹² See, e.g., Letter to Fields, EHLR 213:260 (OSERS 1989). However, the parent's failure to provide notification does not nullify the parent's otherwise justified right to reimbursement. See, e.g., Letter to Anonymous, 55 IDELR ¶ 106 (OSEP 2010); Letter to Imber, 19 IDELR 352 (OSEP 1992); Letter to Kerry, 18 IDELR 527 (OSEP 1991); Letter to Thorne, 16 IDELR 606 (OSEP 1990). Without addressing the OSEP interpretations, courts have split on whether a notification requirement applies. Compare *Phillip C. v. Jefferson County Bd. of Educ.*, 57 IDELR ¶ 97 (N.D. Ala. 2011), *aff'd on other grounds*, 701 F.3d 691, 287 Ed.Law 50 (11th Cir. 2012), with *R.A. v. Amador Cnty. Unified Sch. Dist.*, 58 IDELR ¶ 152 (E.D. Cal. 2012); cf. *T.G. v. Midland Sch. Dist.*, 848 F. Supp. 2d 902, 282 Ed.Law Rep. 425 (C.D. Ill. 2012) (lack of notification in combination with same lack in hearing complaint was fatal). Moreover, OSEP has taken the position that a district may not require a specified period to correct the perceived deficiency. Letter to Gray, EHLR 213:183 (OSEP 1988). Finally, the threshold issue of the parent's standing to proceed in court pro se in such matters is not entirely clear. See, e.g., *Foster v. City of Chicago*, ___ F. App'x ___ (7th Cir. 2015).

¹³ Compare *P.R. v. Woodmore Local Sch. Dist.*, 49 IDELR ¶ 31 (6th Cir. 2007); *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 138 Ed.Law Rep. 91 (3d Cir. 1999); *Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. v. Illinois St. Bd. of Educ.*, 41 F.3d 1162, 96 Ed.Law Rep. 90 (7th Cir. 1994); *Hudson v. Wilson*, 828 F.2d 1059, 41 Ed.Law Rep. 830 (4th Cir. 1987); *Raymond S. v. Ramirez*, 918 F. Supp. 1280 (N.D. Iowa 1996); *Mullen v. Dist. of Columbia*, 16 EHLR 792 (D.D.C. 1990); *Hiller v. Bd. of Educ. of Brunswick Cent. Sch. Dist.*, 687 F. Supp. 735, 47 Ed.Law Rep. 91 (N.D.N.Y. 1988); cf. *I.T. v. Dep't of Educ.*, 59 IDELR ¶ 219 (D. Hawaii 2012); *Los Angeles Unified Sch. Dist. v. D.L.*, 548 F. Supp. 2d 815, 233 Ed.Law Rep. 177 (C.D. Cal. 2008), with *P.P. v. W. Chester Area Sch. Dist.*, 585 F.3d 727, 250 Ed.Law Rep. 517 (3d Cir. 2009); *E.F. v. Newport Mesa Unified Sch. Dist.*, WL 3867982 (E.D. Cal. June 23, 2015); *M.V. v. Shenendehowa Cent. Sch. Dist.*, 60 IDELR ¶ 213 (N.D.N.Y. 2013); *M.S. v. Mullica Twp. Bd. of Educ.*, 485 F. Supp. 2d 555, 220 Ed.Law Rep. 231 (D.N.J. 2007), *aff'd*, 263 F. App'x 264, 232 Ed.Law Rep. 92 (3d Cir. 2008); *R.L. v. Plainville Bd. of Educ.*, 363 F. Supp. 2d 222 (D. Conn. 2005); *D.H. v. Manheim Twp. Sch. Dist.*, 45 IDELR ¶ 38 (E.D. Pa. 2005); *Krista P. v. Manhattan Sch. Dist.*, 225 F. Supp. 2d 873 (N.D. Ill. 2003); *Penn Trafford Sch. Dist. v. C.F.*, 45 IDELR ¶ 156 (E.D. Pa. 2002); *P.T.P. v. Bd. of Educ. of County of Jefferson*, 488 S.E.2d 61 (W. Va. 1997); cf. *Jeffries v. City of Chicago Sch. Dist. No. 299*, 63 IDELR ¶ 280 (N.D. Ill. 2014) (lack of request); *K.B. v. Pearl River Union Sch. Dist.*, 58 IDELR ¶ 108 (S.D.N.Y. 2012); *Sch. Bd. of Lee County v. E.S.*, 49 IDELR ¶ 251 (M.D. Fla. 2008) (vague request); *K.R. v. Jefferson Twp. Bd. of Educ.*, 37 IDELR ¶ 92 (D.N.J. 2002); *Norris v. Massachusetts Dep't of Educ.*, 529 F. Supp. 759 (D. Mass. 1981) (state law).

¹⁴ However, if the parents request an IEE at public expense before completion of the district's evaluation, they may have equitably eliminated any entitlement to reimbursement. See, e.g., *G.J. v. Muscogee County Sch. Dist.*, 668 F.3d 1258, 277 Ed.Law Rep. 90 (11th Cir. 2012); *C.S. v. Governing Bd. of Riverside Unified Sch. Dist.*, 321 F. App'x 630 (9th Cir. 2009); *E.F. v. Newport Mesa Unified Sch. Dist.*, 65 IDELR ¶ ___ (E.D. Cal. 2015); *L.M. v. Downingtown Area Sch. Dist.*, 65 IDELR ¶ 124 (E.D. Pa. 2015); *D.K. v. Abington Sch. Dist.*, 54 IDELR ¶ 119 (E.D. Pa. 2010); *Kirby v. Cabell Cnty. Bd. of Educ.*, 46 IDELR ¶ 146 (S.D. W.Va. 2006); *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 712, 259 Ed.Law Rep. 740 (Pa. Commw. Ct. 2010); Letter to Zirkel, 52 IDELR ¶ 78 (OSEP 2008); cf. *P.P. v. W. Chester Area Sch. Dist.*, 585 F.3d 727, 250 Ed.Law Rep. 517 (3d Cir. 2009); *R.H. v. Fayette County Sch. Dist.*, 53 IDELR ¶ 86 (N.D. Ga. 2009) (prior to the initial evaluation altogether). But cf. *J.P. v. Anchorage Sch. Dist.*, 260 P.3d 285, 271 Ed.Law Rep. 1077 (Alaska 2011) (child find).

¹⁵ See, e.g., Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. v. Illinois St. Bd. of Educ., 41 F.3d 1162, 96 Ed.Law Rep. 90 (7th Cir. 1994); Evans v. Dist. No. 17 of Douglas County, 841 F.2d 824 (8th Cir. 1988); Jefferson Cnty. Bd. of Educ. v. Lolita S., 581 F. App'x 760, 310 Ed.Law Rep. 686 (11th Cir. 2014); K.B. v. Haledon Bd. of Educ., 54 IDELR ¶ 230 (D.N.J. 2010); cf. Harris v. Dist. of Columbia, 561 F. Supp. 2d 63, 235 Ed.Law Rep. 278 (D.D.C. 2008) (ruling that IEEs include parentally requested independent functional behavioral assessments and district's failure to either fund one or file for a hearing after the parent provided the requisite disagreement and request was a denial of FAPE after the child "languished" for two years). But see Phillip C. v. Jefferson County Bd. of Educ., 57 IDELR ¶ 97 (N.D. Ala. 2011), *aff'd on other grounds*, 701 F.3d 691, 287 Ed.Law 50 (11th Cir. 2012).

¹⁶ See, e.g., Dudley v. Lower Merion Sch. Dist., 58 IDELR ¶ 12 (E.D. Pa. 2011); Myles v. Montgomery County Bd. of Educ., 824 F. Supp. 1549, 84 Ed.Law Rep. 264 (M.D. Ala. 1994).

¹⁷ See, e.g., P.R. v. Woodmore Local Sch. Dist., 49 IDELR ¶ 31 (6th Cir. 2007); A.L. v. Chicago Pub. Sch. Dist. 299, 57 IDELR ¶ 276 (N.D. Ill. 2011).

¹⁸ See, e.g., R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d 222, 197 Ed.Law Rep. 181 (D. Conn. 2005).

¹⁹ Compare D.H. v. Manheim Twp. Sch. Dist., 45 IDELR ¶ 38 (E.D. Pa. 2005) (8 months); Pajaro Valley Unified Sch. Dist. v. J.S., 47 IDELR ¶ 12 (N.D. Cal. 2006) (3 months), with J.P. v. Ripon Unified Sch. Dist., 52 IDELR ¶ 125 (E.D. Cal. 2009) (3 months, but 3 weeks from impasse); L.S. v. Abington Sch. Dist., 48 IDELR ¶ 244 (E.D. Pa. 2007), *reconsideration denied*, 50 IDELR ¶ 37 (E.D. Pa. 2008) (1.5 months not fatal); Ms. H. v. Montgomery Cnty. Bd. of Educ., 56 IDELR ¶ 73 (M.D. Ala. 2011) (1.7 months but intervening justifiable events); C.W. v. Capistrano Unified Sch. Dist., 59 IDELR ¶ 163 (C.D. Cal. 2012) (41 days not fatal where parent's disagreement was vague).

²⁰ See, e.g., Letter to Anonymous, 56 IDELR ¶ 175 (OSEP 2010); Letter to Anonymous, 23 IDELR 721 (OSEP 1994); Letter to Anonymous, 21 IDELR 1185 (OSEP 1994); Letter to Saperstone, 21 IDELR 1127 (OSEP 1994); cf. Letter to Smith, 16 IDELR 1080 (OSERS 1990) (45-day deadline starts after filing and, thus, is not applicable).

²¹ See, e.g., Questions and Answers on Discipline Procedures, 52 IDELR ¶ 231 (OSERS 2009); Letter to Scheinz, 34 IDELR ¶ 34 (OSEP 2000).

²² For a synthesis of the various requirements for appropriateness of an initial evaluation and reevaluation, see, e.g., Letter to Baus, 65 IDELR ¶ 81 (OSEP 2015).

²³ Compare Meridian Joint Sch. Dist. No. 2 v. D.A., ___ F.3d ___ (9th Cir. 2015); S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344 (1st Cir. 2014); Jefferson Cnty. Bd. of Educ. v. Lolita S., 581 F. App'x 760, 310 Ed.Law Rep. 686 (11th Cir. 2014); M.Z. v. Bethlehem Area Sch. Dist., 521 F. App'x 74, 296 Ed.Law Rep. 92 (3d Cir. 2013); Warren G. v. Cumberland County Sch. Dist., 190 F.3d 80, 138 Ed.Law Rep. 91 (3d Cir. 1999); Seattle Sch. Dist. No. 1 v. B.S., 82 F.3d 1493, 109 Ed.Law Rep. 55 (9th Cir. 1994); M.S. v. Lake Elsinore Unified Sch. Dist., 66 IDELR ¶ 17 (C.D. Cal. 2015); S.F. v. McKinney Indep. Sch. Dist., 58 IDELR ¶ 157 (E.D. Tex. 2012), *adopted magistrate's report*, 59 IDELR ¶ 271 (E.D. Tex. 2012); Indep. Sch. Dist. No. 701 v. J.T., 45 IDELR ¶ 92 (D. Minn. 2006); A.S. v. Norwalk Bd. of Educ., 183 F. Supp. 2d 534, 161 Ed.Law Rep. 827 (D. Conn. 2002); Pajaro Valley Unified Sch. Dist. v. L.S., 47 IDELR ¶ 12 (N.D. Cal. 2006 (parents won), with Council Rock Sch. Dist. v. Bolick, 462 F. App'x 212, 279 Ed.Law Rep. 91 (3d Cir. 2012); C.S. v. Governing Bd. of Riverside Unified Sch. Dist., 321 F. App'x 630 (9th Cir. 2009); Holmes v. Millcreek Twp. Sch. Dist., 205 F.3d 583 (3d Cir. 2000); Stepp v. Midd-West Sch. Dist., 65 IDELR ¶ 46 (M.D. Pa. 2015); Doe v. Cape Elizabeth Sch. Dep't, 64 IDELR ¶ 272 (D. Me. 2014); H.D. Cent. Bucks Sch. Dist., 902 F. Supp. 2d 614, 291 Ed.Law Rep. 733 (E.D. Pa. 2012); M.C. v. Katonah/Lewisboro Union Free Sch. Dist., 58 IDELR ¶ 196 (S.D.N.Y. 2012); T.G. v. Midland Sch. Dist., 848 F. Supp. 2d 902, 282 Ed.Law Rep. 425 (C.D. Ill. 2012); Dudley v. Lower Merion Sch. Dist., 58 IDELR ¶ 12 (E.D. Pa.

2011); *Ms. H. v. Montgomery Cnty. Bd. of Educ.*, 56 IDELR ¶ 73 (M.D. Ala. 2011); *Ka.D. v. Solana Beach Sch. Dist.*, 54 IDELR ¶ 310 (E.D. Cal. 2010); *J.P. v. Ripon Unified Sch. Dist.*, 52 IDELR ¶ 125 (E.D. Cal. 2009); *Blake B. v. Council Rock Sch. Dist.*, 51 IDELR ¶ 100 (E.D. Pa. 2008); *L.S. v. Abington Sch. Dist.*, 48 IDELR ¶ 244 (E.D. Pa. 2007), *reconsideration denied*, 50 IDELR ¶ 37 (E.D. Pa. 2008); *DeMerchant v. Springfield Sch. Dist.*, 48 IDELR ¶ 181 (D. Vt. 2007); *Wachlarowicz v. Sch. Bd. of Indep. Sch. Dist. No. 832*, 42 IDELR ¶ 7 (D. Minn. 2004); *Judith S. v. Bd. of Educ. of Cmty. Unit Sch. Dist. No. 200*, 28 IDELR 728 (N.D. Ill. 1998); *cf. B.H. v. Joliet Sch. Dist.*, 54 IDELR ¶ 121 (N.D. Ill. 2010) (district won). For a comprehensive overview, see Perry A. Zirkel, *The Law of Evaluations under the IDEA: An Annotated Update*, 297 Ed.Law Rep. 637 (2013). For a recent OSEP interpretation, see Letter to Baus, 65 IDELR ¶ 81 (OSEP 2015) (observing that if disagreeing with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child need, whereupon the district may file hearing to show that its evaluation is appropriate without that addition).

²⁴ The results at this step have also varied, although the courts have not shown the same deference to districts as they have for the previous step. See, e.g., *Breanne C. v. S. York County Sch. Dist.*, 732 F. Supp. 2d 474, 263 Ed.Law Rep. 122 (M.D. Pa. 2010); *Indep. Sch. Dist. No. 701 v. J.T.*, 45 IDELR ¶ 92 (D. Minn. 2006); *cf. Jefferson Cnty. Bd. of Educ. v. Lolita S.*, 977 F. Supp. 2d 1091, 1127, 304 Ed.Law Rep. 280 (N.D. Ala. 2013), *aff'd*, 581 F. App'x 760, 310 Ed.Law Rep. 686 (11th Cir. 2014) (rejecting district's argument that the report was expert testimony, not an IEE). For a recent decision where a court upheld reimbursement in a "child find" case where the district delayed its evaluation and used the parents' IEE despite an ultimate determination that the child was not eligible, see *J.P. v. Anchorage Sch. Dist.*, 260 P.3d 285 (Alaska 2011).

²⁵ 34 C.F.R. § 300.502(e) ("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 [IEE]"). For a recent decision, where a court denied reimbursement because the IEE failed in several respects to conform to the same criteria applicable to the district's evaluations, see *B. v. Orleans Parish Sch. Dist.*, 64 IDELR ¶ 301 (E.D. La. 2015).

²⁶ Letter to Anonymous, 58 IDELR ¶ 19 (OSEP 2011).

²⁷ *Compare P.L. v. Charlotte-Mecklenburg Bd. of Educ.*, 55 IDELR ¶ 46 (W.D.N.C. 2010) (denying reimbursement for IEE where parents did not obtain written approval per district's handbook), *with* Letter to Bluhm, EHLR 211:206 (OSEP 1980) (opining that the district may not require advance consultation or clearance).

²⁸ *A.S. v. Norwalk Bd. of Educ.*, 183 F. Supp. 2d 534, 161 Ed.Law Rep. 827 (D. Conn. 2002); *cf. Letter to Reedy*, 16 EHLR 1364 (OSEP 1990) (after the district's evaluation).

²⁹ 34 C.F.R. 300.502(e) (2012).

³⁰ See, e.g., Letter to Anonymous, 56 IDELR ¶ 175 (OSEP 2010); Letter to Parker, 41 IDELR ¶ 155 (OSEP 2004); Letter to Young, 39 IDELR ¶ 98 (OSEP 2003).

³¹ Letter to Anonymous, 22 IDELR 636 (OSEP 1994).

³² Letter to Bluhm, EHLR 211:227 (OSEP 1980).

³³ Letter to Anonymous, 20 IDELR 1219 (OSEP 1993).

³⁴ *Id.* at 46,689 (Aug. 14, 2006); see also Letter to Anonymous, 56 IDELR ¶ 175 (OSEP 2010).

³⁵ Letter to Petska, 35 IDELR ¶ 191 (OSEP 2001) (may not prohibit affiliation with private schools and advocacy organizations or expert witnesses who consistently testified on the parents' side, and may not require recent and extensive experience in public schools).

³⁶ 34 C.F.R. § 300.502(e)(1) (2012).

³⁷ A.S. v. Norwalk Bd. of Educ., 183 F. Supp. 2d 534, 161 Ed.Law Rep. 827 (D. Conn. 2002).

³⁸ Letter to LoDolce, 50 IDELR ¶ 106 (OSEP 2008).

³⁹ See, e.g., Letter to Anonymous, 22 IDELR 637 (OSEP 1995); see also Letter to Aldine, 16 EHLR 606 (OSEP1990); Letter to Fields, EHLR 213:259 (OSERS 1989).

⁴⁰ 34 C.F.R. § 300.502(e) (2012).

⁴¹ 71 Fed. Reg. at 46,689-46,690 (Aug. 14, 2006). For a recent decision where the court upheld a locally reasonable cap with a possible exception, see M.V. v. Shenendehowa Cent. Sch. Dist., 60 IDELR ¶ 213 (N.D.N.Y. 2013).

⁴² Letter to Petska, 35 IDELR ¶ 191 (OSEP 2001); Letter to Heldman, 20 IDELR 621 (OSEP 1993).

⁴³ Letter to Thompson, 34 IDELR ¶ 8 (OSEP 2000).

⁴⁴ M.M. v. Lafayette Sch. Dist., 58 IDELR ¶ 132 (N.D. Cal. 2012); Meridian Joint Sch. Dist. No. 2 v. D.A., 62 IDELR ¶ 144 (D. Idaho 2013, *aff'd on other grounds*, ___ F.3d ___ (9th Cir. 2015)).