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INDEPENDENT EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE UNDER THE IDEA: THE LATEST UPDATE^{a1}

The purpose of this article is to provide a practical legal checklist that updates previous ELIP commentaries in West's Education Law Reporter concerning independent educational evaluations (IEEs) at public expense.¹ The generic references to “reimbursement” herein are only shorthand approximations, because in many but far from all cases the parent obtains the IEE and seeks payment for the costs retroactively.

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. Department of Education's Office of Special Education and Rehabilitation Services (OSERS) or its IDEA-specific administering unit, the 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 that are 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

24 IEE Reimbursement Checklist*Procedural Steps:¹²*****1. Did the parent disagree with the district evaluation?*¹³**

- via notification to the district within a reasonable period of time?*¹⁴**

If not, in various but far from all jurisdictions and circumstances,¹⁵ it may be an equitable consideration, but it is not an absolute prerequisite; thus, move on to the subsequent steps in this analysis.¹⁶

2. Did the district file for a due process hearing (or provide the requested IEE) ...

- *at all?*

If not, this failure will sometimes end the analysis in favor of reimbursement¹⁷ unless there are multiple issues¹⁸ or special circumstances,¹⁹ including the parent's failure at step 1.²⁰

- *without unnecessary delay?*

A delay of more than 2-3 months is likely fatal to the district's case,²¹ although the exact length will depend on the circumstances rather than being a bright-line test.²² The district may not delay to seek additional assessments.²³

Substantive Steps

3. Was the district's evaluation (or reevaluation)²⁴ appropriate?²⁵

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.²⁶

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

- *as a general matter?*²⁷

- *in "substantial compliance" with district criteria,²⁸ which are no more and, if necessary, less restrictive than applicable to the district's evaluation?*²⁹

Other Aspects

- As for the threshold consideration for IEEs at public expense (and for the consideration requirement), a school district determination of non-eligibility does not serve as a disqualifier.³⁰

- As for the maximum number at public expense, the limit is one each time the district conducts an evaluation with which the parent disagrees.³¹

- As for procedures, the district may require the parents to submit the IEE report by a date certain within any state-imposed deadlines,³² but authority is split as to whether the district may require advance clearance.³³

- As for timing, the parent's IEE:

(a) need not be completed before the district's filing;³⁴

(b) is not subject to a district-imposed deadline.³⁵

- As for IEE location and evaluator qualifications, the district may:

(a) limit the parents to a comprehensive list if there is allowance for individual exceptions;³⁶

***25** (b) include the criteria established by the producer of evaluation instruments;³⁷

(c) impose a mileage limit on the IEE as long as this does not prevent the parent from getting an appropriate evaluation;³⁸

(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 circumstances;³⁹ 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 evaluations for the district unless only the district personnel may obtain said license.⁴⁰

(f) Conversely, the district may not require (i) specified experience or non-affiliation,⁴¹ or (ii) criteria for qualifications different from those required for the district's own evaluations.⁴²

- As for methodology, the IEE need not be the same as the district's evaluation.⁴³

- As for *contents*, the district may not prohibit the IEE evaluator from including age and grade level standards.⁴⁴

- 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 entirely limited to the average fee customarily charged in that area, instead allowing for exceptions for justified unique circumstances,⁴⁵ and (iii) applies as well to the district when it initiates an evaluation,⁴⁶ 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 show unique circumstances justifying a higher fee.⁴⁷

(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,⁴⁸ and the district may not require parents to submit the charges first to their health care insurer.⁴⁹

(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 meeting⁵⁰ and is the pre-, not post-insurance amount.⁵¹

- Otherwise, a district may not impose conditions or timelines that do not apply to its own evaluations.⁵²

Footnotes

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¹ For the two earlier versions, see Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: The Next Update*, 341 Educ. L. Rep. 555 (2017); Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: An Update*, 306 Educ. L. Rep. 32 (2014); Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: A Checklist*, 231 Educ. L. 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) (2017); see also *id.* §1415(d)(2)(A) (2017).
- 3 34 C.F.R. § 300.502 (2018). 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) (2017). This change represents reinstatement of a previous limitation. *E.g.*, *Hudson v. Wilson*, 828 F.2d 1059, 41 Educ. L. 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 Cnty. Bd. of Educ.*, 701 F.3d 691, 287 Educ. L. Rep. 50 (11th Cir. 2012).
- 4 The scope of this checklist does not extend to IEE case law concerning issues other than the “at public expense” regulatory provision. *E.g.*, *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 270 Educ. L. Rep. 479 (8th Cir. 2011); *T.S. v. Bd. of Educ.*, 10 F.3d 87, 87 Educ. L. Rep. 386 (2d Cir. 1993); *G.D. v. West-more-land Sch. Dist.*, 930 F.2d 942, 67 Educ. L. Rep. 103 (1st Cir. 1991); *C.K. v. Bd. of Educ. of Sylvania City Sch. Dist.*, 78 IDELR ¶ 65 (N.D. Ohio 2021); *C.M. v. Mount Vernon City Sch. Dist.*, 76 IDELR ¶ 280 (S.D.N.Y. 2020); *K.W. v. Tuscaloosa Cnty. Sch. Sys.*, 73 IDELR ¶ 157 (N.D. Ala. 2018); *Y.N. v. Bd. of Educ. of Harrison Cent. Sch. Dist.*, 73 IDELR ¶ 73 (S.D.N.Y. 2018); *J.S. v. N.Y.C. Dep't of Educ.*, 104 F. Supp. 3d 392, 324 Educ. L. Rep. 743 (S.D.N.Y. 2015); *S.W. v. N.Y.C. Dep't of Educ.*, 92 F. Supp. 3d 143, 322 Educ. L. Rep. 154 (S.D.N.Y. 2015); *P.G. v. N.Y.C. Dep't of Educ.*, 65 IDELR ¶ 43 (S.D.N.Y. 2015); *James D. v. Bd. of Educ.*, 642 F. Supp. 2d 804, 250 Educ. L. Rep. 194 (N.D. Ill. 2009) (concluding that district met its obligation to “consider” the parent's IEE); *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); *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 resulted in a substantive denial of FAPE); *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 345 Educ. L. Rep. 666 (5th Cir. 2017); *Marc M. v. Dep't of Educ.*, 56 IDELR ¶ 9 (D. Haw. 2011) (ruling that failure to consider IEE contributed to denial of FAPE); *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 242 Educ. L. Rep. 23 (9th Cir. 2009) (ruling that failure to provide equivalent opportunity for IEE observation, as required by state law, did not amount to denial of FAPE);
- E.C. v. Fullerton Sch. Dist.*, 79 IDELR ¶ 17 (C.D. Cal. 2021); *Benjamin G. v. Special Educ. Hearing Off.*, 32 Cal. Rptr. 3d 366, 200 Educ. L. Rep. 277 (Ct. App. 2005) (ruling that failure to provide suitable opportunity for parents' expert to observe student warranted remedy); *Sch. Bd. of Manatee Cnty. v. L.H.*, 666 F. Supp. 2d 1285, 253 Educ. L. Rep. 189 (M.D. Fla. 2009) (upholding ALJ's order to provide equivalent opportunity for IEE observation); *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); *J.B. v. Tuolumne Cnty. Superintendent of Sch.*, 2020 WL 3287365 (E.D. Cal. June 18, 2020) (recommending IEE reimbursement as related services), *settlement approved*, 77 IDELR ¶ 131 (E.D. Cal. 2020); *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.*, 792 F.3d 1054, 320 Educ. L. Rep. 8 (9th Cir. 2015); *T.B. v. Bryan Indep. Sch. Dist.*, 628 F.3d 240, 263 Educ. L. Rep. 490 (5th Cir. 2010); *D.S. v. Neptune Twp. Bd. of Educ.*, 264 F. App'x 186, 232 Educ. L. Rep. 107 (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); *S.P. v. Pa. Dep't of Educ.*, 731 F. App'x 113, 356 Educ. L. Rep. 531 (3d Cir. 2018) (denying attorneys' fees where IHO ordered state education agency to pay for IEE after charter school closed); *Ogawa v. Saint Paul Pub. Sch.*, 71 IDELR ¶ 106 (D. Minn. 2018) (prehearing order for IEE qualified parents as prevailing parties for attorneys' fees); *J.D. v. Douglas Cnty. Sch. Dist.*, 75 IDELR ¶ 3 (D. Colo. 2019);
- Staton v. District 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); *E.P. v. Howard Cnty. Pub. Sch. Sys.*, 68 IDELR ¶ 249 (D. Md. 2016) (concerning whether to allow IEE as additional evidence upon judicial review); *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); *M.M. v. Lafayette Sch. Dist.*, 66 IDELR ¶ 217 (N.D. Cal. 2015) (preserving for further proceedings possible § 504 retaliation claim for district's proposing additional evaluations in response to request for IEE). It also does not include OSEP policy interpretations concerning IEEs more broadly. *E.g.*, *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, 80 IDELR ¶ 197 (OSEP 2022), at item A-13 (opining that the district of location is the responsible public agency if the parents disagreed with its evaluation); Letter to Anonymous, 72 IDELR ¶ 251 (OSEP 2018) (opining that the time limit for an outside evaluator must not conflict with the district's criteria for its own personnel's observations); 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); Letter to Anonymous, 72 IDELR ¶ 163 (OSEP 2018) (explaining that a parent's request for an IEE at public expense does not trigger stay-put unless the parents files for a due process hearing); Letter to Carroll, 68 IDELR ¶ 279 (OSEP 2016) (extending the district's IEE public-expense obligation to an additional requested area); Letter to Fisher, 23 IDELR 565 (OSEP 1995) (interpreting the right to an IEE to extent to assistive technology assessments). Similarly, it does not extend to rulings via the IDEA's state complaint resolution process.

E.g., Farmington Pub. Sch. Dist., 115 LRP 31117 (Mich. SEA 2015). Finally, the coverage does not extend to otherwise relevant cases decided on technical adjudicative grounds. *E.g.*, *T.P. v. Bryan Cnty. Sch. Dist.*, 794 F.3d 1284, 320 Educ. L. Rep. 25 (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) (2017):

(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) (2017):

(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 *E.g.*, *id.* § 300.148(b)-(e) (2017). 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 Educ. L. Rep. 785 (2012).

7 In general, these administrative decisions do not have precedential value in either a 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. *E.g.*, *M.Z. v. Bethlehem Area Sch. Dist.*, 521 F. App'x 74, 296 Educ. L. 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 (regulatory framework).

- 10 For the legal effect of such policy interpretations, *see, e.g., Raymond S. v. Ramirez*, 918 F. Supp. 1280, 108 Educ. L. Rep. 196 (N.D. Iowa 1996); *see also* Perry A. Zirkel, *The Courts' Use of OSEP Policy Interpretations in IDEA Cases*, 342 Educ. L. Rep. 671 (2017).
- 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. West*, 546 U.S. 49 (2005) and any opposing state law leaves this matter an open question. For the interrelationship with the regulatory provision for district filing, *see Collette v. District of Columbia*, 74 IDELR ¶ 251 (D.D.C. 2019); *Damarcus S. v. District of Columbia*, 190 F. Supp. 3d 35, 338 Educ. L. Rep. 823 (D.D.C. 2016).
- 12 In a case that does not fit one of the procedural steps the regulatory framework specifically but imported the overall two-step test for procedural FAPE due to the parent's requested remedy, the D.C. district court ruled that even if the school district's delay in authorizing an IEE was a procedural violation, the child was not entitled to compensatory education in the absence of resulting substantive loss to the student. *Fullmore v. District of Columbia*, 67 IDELR ¶ 144 (D.D.C. 2016).
- 13 For the meaning of evaluation or reevaluation within this context and the preemptive effect of federal regulations, *see Haddon Twp. Sch. Dist. v. N.J. Dep't of Educ.*, 67 IDELR ¶ 44 (N.J. Super. Ct. App. Div. 2016); *cf. D.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 382 Educ. L. Rep. 1 (2d Cir. 2020) (an FBA is not an evaluation in the IEE context); *F.C. v. Montgomery Cnty. Pub. Sch.*, 68 IDELR ¶ 6 (D. Md. 2016) (absence of reevaluation under federal or state law, thereby defeating parent's claim of disagreement). For a recent OSEP interpretation regarding another scope issue, *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 the child needs, whereupon the district may file for a hearing to show that its evaluation is appropriate without that addition). Finally, the meaning of disagreement is difficult for an area not included in the evaluation. *See, e.g., Thurman v. Sweetwater Indep. Sch. Dist.*, 79 IDELR ¶ 66 (N.D. Tex. 2021).
- 14 *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. *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 Cnty. 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); *cf. Hopewell Twp. Bd. of Educ. v. C.B.*, 77 IDELR ¶ 20 (D.N.J. 2020) (no time limit), 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 Educ. L. Rep. 425 (C.D. Ill. 2012) (lack of notification in combination with same lack in hearing complaint was fatal). The Second Circuit's recent statute of limitations ruling contributes to the lack of clarity as to whether, and, if so, when notification applies. *D.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 382 Educ. L. Rep. 1 (2d Cir. 2020) (interpreting the limitations period to be the applicable period for the reevaluation). 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. *E.g., Foster v. City of Chi.*, 611 F. App'x 874, 321 Educ. L. Rep. 146 (7th Cir. 2015).
- 15 Compare *P.R. v. Woodmore Local Sch. Dist.*, 49 IDELR ¶ 31 (6th Cir. 2007); *Warren G. v. Cumberland Cmty. Sch. Dist.*, 190 F.3d 80, 138 Educ. L. 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 Educ. L. Rep. 90 (7th Cir. 1994); *Hudson v. Wilson*, 828 F.2d 1059, 41 Educ. L. Rep. 830 (4th Cir. 1987); *Raymond S. v. Ramirez*, 918 F. Supp. 1280, 108 Educ. L. Rep. 196 (N.D. Iowa 1996); *Mullen v. District of Columbia*, 16 EHLR 792 (D.D.C. 1990); *Hiller v. Bd. of Educ. of Brunswick Cent. Sch. Dist.*, 687 F. Supp. 735, 47 Educ. L. Rep. 91 (N.D.N.Y. 1988); *cf. I.T. v. Dep't of Educ.*, 59 IDELR ¶ 219 (D. Haw. 2012); *L.A. Unified Sch. Dist. v. D.L.*, 548 F. Supp. 2d 815, 233 Educ. L. Rep. 177 (C.D. Cal. 2008) (not per se fatal), with *P.P. v. W. Chester Area Sch. Dist.*, 585 F.3d 727, 250 Educ. L. Rep. 517 (3d Cir. 2009); *E.F. v. Newport Mesa Unified Sch. Dist.*, 65 IDELR ¶ 265 (E.D. Cal. 2015), *aff'd mem.*, 684 F. App'x 629 (9th Cir. 2017), vacated and remanded, 138 S. Ct. 169 (2017); *Joe V. v. Wimberley Indep. Sch. Dist.*, 79 IDELR ¶ 106 (W.D. Tex. 2021); *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 Educ. L. Rep. 231 (D.N.J. 2007), *aff'd*, 263 F. App'x 264, 232 Educ. L. 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 Cnty. of Jefferson*, 488 S.E.2d 61 (W. Va. 1997) (fatal); cf. *Zachary J. v. Colonial Sch. Dist.*, 80 IDELR ¶ 153 (E.D. Pa. 2022) (seeking IEE outside the IDEA's collaborative process); *M.S. v. Hillsborough Twp. Pub. Sch.*, 793 F. App'x 91, 374 Educ. L. Rep. 443 (3d Cir. 2019) (revoking consent for reevaluation); *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.*, 70 IDELR ¶ 150 (E.D. Pa. 2017) (cumulative basis); *J.G. v. New Hope-Solebury Sch. Dist.*, 323 F. Supp. 3d 716, 358 Educ. L. Rep. 220 (E.D. Pa. 2018); *Jeffries v. City of Chi. 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 Cnty. 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. Mass. Dep't of Educ.*, 529 F. Supp. 759 (D. Mass. 1981) (state law). In a recent case, the court awarded reimbursement where the hearing officer denied it based on the incorrect finding that the parent had failed to express the requisite disagreement. *Genn v. New Haven Bd. of Educ.*, 219 F. Supp. 3d 976, 342 Educ. L. Rep. 971 (D. Conn. 2016). For the scope of the expressed disagreement, see *L.D. v. Anne Arundel Cnty. Sch. Dist.*, 75 IDELR ¶ 190 (D. Md. 2019).

- 16 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. E.g., *M.S. v. Hillsborough Twp. Pub. Sch. Dist.*, 793 F. App'x 91, 374 Educ. L. Rep. 443 (3d Cir. 2019); *G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 277 Educ. L. Rep. 90 (11th Cir. 2012); *C.S. v. Governing Bd. of Riverside Unified Sch. Dist.*, 321 F. App'x 630 (9th Cir. 2009); *Gwendolynne S. v. W. Chester Area Sch. Dist.*, 78 IDELR ¶ 125 (E.D. Pa. 2021); *Shane T. v. Carbondale Sch. Dist.*, 70 IDELR ¶ 259 (E.D. Pa. 2017); *Genn v. New Haven Bd. of Educ.*, 219 F. Supp. 3d 976, 342 Educ. L. Rep. 971 (D. Conn. 2016); *E.F. v. Newport Mesa Unified Sch. Dist.*, 65 IDELR ¶ 265 (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); *R.H. v. Fayette Cnty. Sch. Dist.*, 53 IDELR ¶ 86 (N.D. Ga. 2009); *Kirby v. Cabell Cnty. Bd. of Educ.*, 46 IDELR ¶ 156 (S.D. W.Va. 2006); *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 712, 259 Educ. L. Rep. 740 (Pa. Commw. Ct. 2010); *Letter to Zirkel*, 52 IDELR ¶ 77 (OSEP 2008); cf. *P.P. v. W. Chester Area Sch. Dist.*, 585 F.3d 727, 250 Educ. L. Rep. 517 (3d Cir. 2009); *R.H. v. Fayette Cnty. Sch. Dist.*, 53 IDELR ¶ 86 (N.D. Ga. 2009) (prior to the initial evaluation altogether); *H.D. v. Kennett Consol. Sch. Dist.*, 75 IDELR ¶ 94 (E.D. Pa. 2019) (unilateral out-of-state placement prior to completion of district's evaluation). But cf. *T.B. v. Prince George's Cnty. Bd. of Educ.*, 70 IDELR ¶ 47 (D. Md. 2016) (after repeated unheeded requests); *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 377 Educ. L. Rep. 549 (8th Cir. 2020); *J.P. v. Anchorage Sch. Dist.*, 260 P.3d 285, 271 Educ. L. Rep. 1077 (Alaska 2011) (child find).
- 17 E.g., *Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. v. Illinois St. Bd. of Educ.*, 41 F.3d 1162, 96 Educ. L. Rep. 90 (7th Cir. 1994); *Evans v. Dist. No. 17 of Douglas Cnty.*, 841 F.2d 824 (8th Cir. 1988); *Jefferson Cnty. Bd. of Educ. v. Lolita S.*, 581 F. App'x 760, 310 Educ. L. Rep. 686 (11th Cir. 2014); *MP v. Parkland Sch. Dist.*, 79 IDELR ¶ 126 (E.D. Pa. 2021); *Hopewell Twp. Bd. of Educ. v. C.B.*, 77 IDELR ¶ 20 (D.N.J. 2020); *K.B. v. Haledon Bd. of Educ.*, 54 IDELR ¶ 230 (D.N.J. 2010); cf. *Alex W. v. Poudre Sch. Dist. R-1*, 81 IDELR ¶ 133 (D. Colo. 2022) (relying on lack of acceptable reason); *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 235 Educ. L. 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 *Seth B. v. Orleans Parish Sch. Dist.*, 810 F.3d 961, 326 Educ. L. Rep. 620 (5th Cir. 2016); *Phillip C. v. Jefferson Cnty. 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).
- 18 E.g., *Dudley v. Lower Merion Sch. Dist.*, 58 IDELR ¶ 12 (E.D. Pa. 2011); *Myles v. Montgomery Cnty. Bd. of Educ.*, 824 F. Supp. 1549, 84 Educ. L. Rep. 264 (M.D. Ala. 1994).
- 19 E.g., *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 330 Educ. L. Rep. 60 (11th Cir. 2015); *P.R. v. Woodmore Local Sch. Dist.*, 49 IDELR ¶ 31 (6th Cir. 2007); *A.L. v. Chi. Pub. Sch. Dist. 299*, 57 IDELR ¶ 276 (N.D. Ill. 2011); cf. *F.C. v. Montgomery Cnty. Pub. Sch.*, 68 IDELR ¶ 6 (D. Md. 2016) (absence of reevaluation as compared with records review).
- 20 E.g., *R.L. v. Plainville Bd. of Educ.*, 363 F. Supp. 2d 222, 197 Educ. L. Rep. 181 (D. Conn. 2005).
- 21 Compare *D.H. v. Manheim Twp. Sch. Dist.*, 45 IDELR ¶ 38 (E.D. Pa. 2005) (8 months); *Hill v. District of Columbia*, 68 IDELR ¶ 133 (D.D.C. 2016); *Horne v. Potomac Preparatory P.C.S.*, 209 F. Supp. 3d 146, 341 Educ. L. Rep. 273 (D.D.C. 2016); *Pajaro Valley Unified Sch. Dist. v. J.S.*, 47 IDELR ¶ 12 (N.D. Cal. 2006) (3 months); with *L.C. v. Alta Loma Sch. Dist.*, 849 F. App'x 678 (9th Cir.

2021); *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); *cf. N.D.S. v. Acad. for Sci. & Agric. Charter Sch.*, 73 IDELR ¶ 114 (D. Minn. 2018) (two years but adverse dicta). For the analysis of violations of this requirement, including possible remedial consequences, *see, e.g., D.D. v. Garvey Sch. Dist.*, 79 IDELR ¶ 15 (C.D. Cal. 2021).

22 *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). The exception is for the occasional state law that specifically prescribes a deadline for the district's action. *E.g.*, *K.K. v. Parsippany-Troy Hills Twp.*, 79 IDELR ¶ 257 (D.N.J. 2021) (applying the 20-day deadline in New Jersey law).

23 Letter to Carroll, 68 IDELR ¶ 279 (OSEP 2016).

24 *E.g.*, Letter to Scheinz, 34 IDELR ¶ 34 (OSEP 2000). However, whether an FBA qualifies as an evaluation in this context is quite questionable. Compare *D.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 382 Educ. L. Rep. 1 (2d Cir. 2020), with Questions and Answers on Discipline Procedures, 52 IDELR ¶ 231 (OSERS 2009), at item E-5. As a result, OSERS has announced its intent to reexamine its position on the status of FBAs in relation to the IDEA provisions for evaluations. *E.g.*, Questions and Answers; Addressing the Needs of Children with Disabilities and the IDEA's Discipline Provisions, 81 IDELR ¶ 138 (OSERS 2022), at n.5.

25 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).

26 Compare *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 377 Educ. L. Rep. 539 (8th Cir. 2020); *Meridian Joint Sch. Dist. No. 2 v. D.A.*, 792 F.3d 1054, 320 Educ. L. Rep. 8 (9th Cir. 2015); *S. Kingstown Sch. Comm. v. Joanna S.*, 773 F.3d 344, 312 Educ. L. Rep. 507 (1st Cir. 2014); *Jefferson Cnty. Bd. of Educ. v. Lolita S.*, 581 F. App'x 760, 310 Educ. L. Rep. 686 (11th Cir. 2014); *M.Z. v. Bethlehem Area Sch. Dist.*, 521 F. App'x 74, 296 Educ. L. Rep. 92 (3d Cir. 2013); *Warren G. v. Cumberland Cmty. Sch. Dist.*, 190 F.3d 80, 138 Educ. L. Rep. 91 (3d Cir. 1999); *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 109 Educ. L. Rep. 55 (9th Cir. 1994); *E.C. v. Fullerton Sch. Dist.*, 78 IDELR ¶ 4 (C.D. Cal. 2021); *Minnetonka Pub. Schs. v. M.L.K.*, 78 IDELR ¶ 94 (D. Minn. 2021); *Cynthia K. v. Portsmouth Sch. Dep't*, 76 IDELR ¶ 278 (D.N.H. 2020); *Jones-Herrion v. District of Columbia*, 75 IDELR ¶ 92 (D.D.C. 2019); *R.S. v. Morgan Cnty. Bd. of Educ.*, 74 IDELR ¶ 200 (D. W.Va. 2019); *Rose Tree Media Sch. Dist. v. M.J.*, 74 IDELR ¶ 15 (E.D. Pa. 2019); *W. Chester Area Sch. Dist. v. G.D.*, 69 IDELR ¶ 91 (E.D. Pa. 2017); *Horne v. Potomac Preparatory P.C.S.*, 209 F. Supp. 3d 146, 341 Educ. L. Rep. 273 (D.D.C. 2016); *Sch. Dist. of Phila. v. Drummond*, 67 IDELR ¶ 170 (E.D. Pa. 2016); *E.L. Haynes Pub Charter Sch. v. Frost*, 66 IDELR ¶ 287 (D.D.C. 2015); *Cobb Cnty. Sch. Dist. v. D.B.*, 66 IDELR ¶ 134 (N.D. Ga. 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);

Derek B. v. Donegal Sch. Dist., 47 IDELR ¶ 34 (E.D. Pa. 2007); *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 Educ. L. Rep. 827 (D. Conn. 2002); *Pajaro Valley Unified Sch. Dist. v. L.S.*, 47 IDELR ¶ 12 (N.D. Cal. 2006 (parents won), *with* *Minnetonka Pub. Sch. v. M.L.K.*, ___ F.4th ___ (8th Cir. 2022)); *Heather H. v. Nw. Indep. Sch. Dist.*, 81 IDELR ¶ 32 (5th Cir. 2022); *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048 (9th Cir. 2022); *A.H. v. Colonial Sch. Dist.*, 779 F. App'x 90, 370 Educ. L. Rep. 101 (3d Cir. 2019); *R.Z.C. v. N. Shore Sch. Dist.*, 755 F. App'x 658, 363 Educ. L. Rep. 605 (9th Cir. 2018); *B.G. v. Bd. of Educ. of Chi.*, 901 F.3d 903, 357 Educ. L. Rep. 895 (7th Cir. 2018); *Avila v. Spokane Sch. Dist.*, 686 F. App'x 384 (9th Cir. 2017); *Council Rock Sch. Dist. v. Bolick*, 462 F. App'x 212, 279 Educ. L. 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); *N.F. v. Antioch Unified Sch. Dist.*, 78 IDELR ¶ 257 (C.D. Cal. 2021); *A.C. v. Owen J. Roberts Sch. Dist.*, 78 IDELR ¶ 198 (E.D. Pa. 2021); *Smith v. Tacoma Sch. Dist.*, 476 F. Supp. 3d 1112 (W.D. Wash. 2020); *Jackson v. District of Columbia*, 2020 WL 3318034 (D.D.C. June 2, 2020), *adopted*, 2020 WL 3298538 (D.D.C. June 18, 2020); *D.H.H. v. Kirbyville Indep. Sch. Dist.*, 119 LRP 33254, *adopted*, 75 IDELR ¶ 4 (E.D. Tex. 2019); *E.P. v. Howard Cnty. Pub. Sch.*, 70 IDELR ¶ 176 (D. Md. 2017), *aff'd mem.*, 727 F. App'x 55 (4th Cir. 2018); *Morrison v. Perry Sch. Dep't*, 2019 WL 3035283 (D. Me. July 11, 2019),

adopted, 2019 WL 3502879 (D. Me. Aug. 1, 2019); Parker C. v. W. Chester Area Sch. Dist., 70 IDELR ¶ 94 (E.D. Pa. 2017); Shafi A. v. Lewisville Indep. Sch. Dist., 69 IDELR ¶ 66 (E.D. Tex. 2016);

E.E. v. Tuscaloosa City Bd. of Educ., 68 IDELR ¶ 45 (N.D. Ala. 2016); Student v. Sch. Dist. of Phila., 115 LRP 33496 (E.D. Pa. Apr. 3, 2015); Perrin v. Warrior Run Sch. Dist., 66 IDELR ¶ 225 (M.D. Pa. 2015); H.G. v. Upper Dublin Sch. Dist., 65 IDELR ¶ 123 (E.D. Pa. 2015); Stepp v. Midd-West Sch. Dist., 65 IDELR ¶ 46 (M.D. Pa. 2015); H.D. v. Cent. Bucks Sch. Dist., 902 F. Supp. 2d 614, 291 Educ. L. 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 Educ. L. 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: The Latest Annotated Update*, 368 Educ. L. Rep. 594 (2019). For a case where the trial court awarded the reimbursement as a matter of equity despite not fitting the statutory framework but the appellate court determined there was no obligation for the reevaluation, see M.S. v. Lake Elsinore Unified Sch. Dist., 66 IDELR ¶ 17 (C.D. Cal. 2015), *rev'd on other grounds*, 678 F. App'x 543 (9th Cir. 2017).

- 27 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. Compare Collette v. District of Columbia, 74 IDELR ¶ 251 (D.D.C. 2019); Breanne C. v. S. York Cnty. Sch. Dist., 732 F. Supp. 2d 474, 263 Educ. L. 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 Educ. L. Rep. 280 (N.D. Ala. 2013), *aff'd*, 581 F. App'x 760, 310 Educ. L. Rep. 686 (11th Cir. 2014) (rejecting district's argument that the report was expert testimony, not an IEE) (rulings for parent), with R.B. v. Downingtown Area Sch. Dist., 509 F. Supp. 3d 339 (E.D. Pa. 2020) (ruling for district). 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). For a more recent decision, where the court emphasized that the burden of persuasion is on the district at this step, see T.B. v. Prince George's Cnty. Bd. of Educ., 70 IDELR ¶ 47 (D. Md. 2016), *aff'd on other grounds*, 897 F.3d 566, 356 Educ. L. Rep. 977 (4th Cir. 2018).
- 28 Seth B. v. Orleans Parish Sch. Dist., 810 F.3d 961, 326 Educ. L. Rep. 620 (5th Cir. 2016); cf. Collette v. District of Columbia, 74 IDELR ¶ 251 (D.D.C. 2019) (insufficient evidence of unreasonable cost or failure to comply with district's evaluation requirements).
- 29 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]”).
- 30 Letter to Zirkel, 74 IDELR ¶ 142 (OSEP 2019).
- 31 34 C.F.R. § 300.502(b)(5). This maximum is the latest in a series of limits in the successive IDEA regulations. For an example of enforcement of a former limit, see Kirkpatrick v. Lenoir Cnty. Bd. of Educ., 30 IDELR 512 (E.D.N.C. 1999) (ruling that the parent had already received reimbursement for a previous IEE, which met the then applicable limit).
- 32 Letter to Anonymous, 58 IDELR ¶ 19 (OSEP 2011).
- 33 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).

- 34 *A.S. v. Norwalk Bd. of Educ.*, 183 F. Supp. 2d 534, 161 Educ. L. Rep. 827 (D. Conn. 2002); cf. Letter to Reedy, 16 EHLR 1364 (OSEP 1990) (after the district's evaluation).
- 35 34 C.F.R. § 300.502(e) (2017).
- 36 *E.g.*, *Thurman v. Sweetwater Indep. Sch. Dist.*, 79 IDELR ¶ 66 (N.D. Tex. 2021); Letter to Anonymous, 56 IDELR ¶ 175 (OSEP 2010); Letter to Parker, 41 IDELR ¶ 155 (OSEP 2004); Letter to Young, 39 IDELR ¶ 98 (OSEP 2003).
- 37 Letter to Anonymous, 22 IDELR 636 (OSEP 1994).
- 38 Letter to Bluhm, EHLR 211:227 (OSEP 1980); cf. *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 330 Educ. L. Rep. 60 (11th Cir. 2015) (upheld refusal for distant evaluator when qualified ones were available locally).
- 39 Letter to Anonymous, 20 IDELR 1219 (OSEP 1993).
- 40 *Id.* at 46,689 (Aug. 14, 2006); *see also* Letter to Anonymous, 56 IDELR ¶ 175 (OSEP 2010).
- 41 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).
- 42 34 C.F.R. § 300.502(e)(1) (2017).
- 43 *A.S. v. Norwalk Bd. of Educ.*, 183 F. Supp. 2d 534, 161 Educ. L. Rep. 827 (D. Conn. 2002).
- 44 Letter to LoDolce, 50 IDELR ¶ 106 (OSEP 2008).
- 45 *E.g.*, Letter to Anonymous, 22 IDELR 637 (OSEP 1995); *see also* Letter to Anonymous, 103 LRP 22371 (OSEP 2002); Letter to Aldine, 16 EHLR 606 (OSEP1990); Letter to Fields, EHLR 213:259 (OSERS 1989). For a case concerning whether the cost cap was unreasonable under the “unique circumstances,” compare *M.S. v. Utah Sch. for the Deaf and Blind*, 64 IDELR ¶ 11 (D. Utah 2014), vacated on other grounds, 822 F.3d 1128, 331 Educ. L. Rep. 696 (10th Cir. 2016) (yes), with *A.A. v. Goleta Union Sch. Dist.*, 69 IDELR ¶ 156 (C.D. Cal. 2017) (no).
- 46 34 C.F.R. § 300.502(e) (2017). For a recent decision where the court upheld a reasonable cap without reaching the issue of an exception, *see Seth B. v. Orleans Parish Sch. Bd.*, 810 F.3d 961, 326 Educ. L. Rep. 620 (5th Cir. 2016); *see also B.D. v. District of Columbia*, 548 F. Supp. 3d 222 (D.D.C. 2020).
- 47 71 Fed. Reg. at 46,689-46,690 (Aug. 14, 2006); Letter to Kirby, 213 IDELR 333 (OSEP 1989). For recent decisions where the court upheld a locally reasonable cap with a possible exception, *see Shafi A. v. Lewisville Indep. Sch. Dist.*, 69 IDELR ¶ 66 (E.D. Tex. 2016); *M.V. v. Shenendehowa Cent. Sch. Dist.*, 60 IDELR ¶ 213 (N.D.N.Y. 2013); cf. *C.P. v. Clifton Bd. of Educ.*, 77 IDELR ¶ 46 (D.N.J. 2020) (concluding that the parents' requested amount was unreasonable). For the district's default upon failing to file to challenge the IEE's allegedly high cost, *see Damarcus S. v. District of Columbia*, 190 F. Supp. 3d 35, 338 Educ. L. Rep. 823 (D.D.C. 2016).
- 48 Letter to Petska, 35 IDELR ¶ 191 (OSEP 2001); Letter to Heldman, 20 IDELR 621 (OSEP 1993). For a decision that declined to decide whether the current regulations or Letter to Petska superseded Letter to Thorne, 16 IDELR 606 (OSEP 1990) with regard to partial payment, *see A.A. v. Goleta Union Sch. Dist.*, 69 IDELR ¶ 156 (C.D. Cal. 2017).

- 49 Letter to Thompson, 34 IDELR ¶ 8 (OSEP 2000).
- 50 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*, 792 F.3d 1054, 320 Educ. L. Rep. 8 (9th Cir. 2015).
- 51 Jason O. v. Manhattan Sch. Dist. No. 4, 173 F. Supp. 3d 744, 335 Educ. L. Rep. 868 (N.D. Ill. 2016).
- 52 34 C.F.R. § 300.502(e)(2). For application of this regulatory restriction to invalidate a district's no-email policy, *see* K.K. v. Parsippany-Troy Hills Twp., 79 IDELR ¶ 257 (D.N.J. 2021).

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