



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

June 28, 2018

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Dear XXXXXXXX:

This letter responds to your electronic mail (email) to the U.S. Department of Education (Department). Your correspondence was forwarded to the Office of Special Education Programs for response. In your email, you request guidance regarding the placement status of a child with a disability if the child's individualized education program (IEP) Team finds the child is no longer eligible for special education and related services as a result of a reevaluation, and the parent requests an independent educational evaluation (IEE) at public expense because the parent disagrees with the school district's evaluation. Specifically, you want to know if special education and related services must continue to be provided to the child until the results of the IEE can be considered, assuming the school district agrees to provide the IEE at public expense. We regret the delay in providing this response.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Under 20 U.S.C. §1415(b)(1) of the IDEA and its implementing regulations, a parent of a child with a disability has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to certain conditions. 34 CFR §300.502(b)(1). This includes the right to an IEE at public expense if the parent disagrees with a reevaluation conducted by the public agency pursuant to 20 U.S.C. §1414(a)(2). In that case, an IEE assesses the child to determine whether the child continues to have a disability, whether the child continues to need special education and related services, and if so, the nature and extent of the special education and related services that child needs.

Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either: (i) initiate a hearing under 20 U.S.C. §1415(b)(6) and (b)(7) to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 20 U.S.C. §1415(f) that the evaluation obtained by the parent did not meet agency criteria.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In accordance with 20 U.S.C. §1414(c)(5), except when a child with a disability graduates with a regular diploma or exceeds the age of eligibility for a free appropriate public education (FAPE) under State law, a local educational agency must evaluate a child with a disability before determining that the child is no longer a child with a disability. After an evaluation, an IEP Team may meet and make a determination that a child is no longer eligible to receive special education and related services. In this circumstance, the public agency must ensure that the parents of the child are provided written notice, as required by 20 U.S.C. §1415(b)(3), (b)(4) and (c)(1), within a reasonable time before the public agency proposes or refuses to change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

Upon providing the parent with the notice required in 20 U.S.C. §1415(b)(3), (b)(4) and (c)(1), the public agency may terminate the special education and related services to the child. Should the parent or public agency file a due process complaint in accordance with 20 U.S.C. §1415(b)(6) and (b)(7) to resolve the dispute regarding the IEP Team's eligibility determination, the parent's request for an IEE at public expense, or other matters outlined in 20 U.S.C. §1415(b)(6), the child involved in the complaint must remain in his or her current educational placement, unless the State or local educational agency and the parents of the child agree otherwise. 20 U.S.C. §1415(j). It is important to note that the parent's request for an IEE alone would not require the school district to continue the child's current educational placement unless a due process complaint was filed in the matter.

If the public agency agrees to a parent's request for an IEE it may either delay the issuance of the prior written notice until the IEE has been completed and reviewed by the IEP Team or it may issue the prior written notice within a reasonable time and discontinue special education services, pending the completion and review of the IEE.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs