

## Santa Barbara County SELPA

### Administrative Regulation: Independent Educational Evaluation

(AR 6208)

This administrative regulation sets forth the administrative regulations under which children with disabilities in the Santa Barbara County SELPA are entitled to an independent educational evaluation (“IEE”) at public expense. For purposes of legal compliance, this administrative regulation shall be known as the SELPA’s IEE policy.

#### **NOTICE TO PARENTS/GUARDIANS:**

- **Please read this administrative regulation before obtaining or paying for an IEE. This administrative regulation may limit your right to reimbursement.**
- Before obtaining an IEE, please contact your LEA’s special education administrator to discuss your evaluation questions and options. If your questions are not resolved by the LEA, you may contact the SELPA for assistance in communicating with the LEA.
- The LEA will not automatically reimburse parents/guardians who unilaterally obtain an IEE. Please review this document for further information about a parent’s right to obtain an IEE at public expense.

#### **Definitions**

*Independent Educational Evaluation* (“IEE”) means an evaluation conducted by a qualified examiner who is not employed by the responsible member LEA.

*Public expense* means that the local educational agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents/guardians.

*Local educational agency* (“LEA”) means the school district, independent charter school, or county education office that is responsible for providing educational services to your child with a disability. This is also known as the district of special education accountability (“DSEA”). LEAs that are members of the SELPA are referenced as “member LEAs.”

#### **Parent/Guardian Request for Independent Educational Evaluation**

Parents/Guardians have the right to an IEE at public expense if they disagree with an evaluation completed by the member LEA. Parents/Guardians may only request one publicly funded IEE in response to each evaluation completed by the member LEA. Parents/Guardians must make a request for an IEE. The request must be received **within less than two years** from the date of the member LEA's evaluation. If the request for an IEE is received one year or more from the date of completion of the member LEA’s evaluation, or if conditions warrant, the member LEA may ask to complete a reevaluation in addition to responding to parents’ request for an IEE.

If parents/guardians request an IEE at public expense, parents/guardians will be asked the reason why they object to the evaluation conducted by the member LEA. The member LEA may not, however, require parents/guardians to explain their reasons and may not unreasonably delay either providing an IEE at public expense or initiating a due process hearing to defend its evaluation. If the member LEA initiates a hearing and the final decision is that the evaluation conducted by the member LEA was appropriate, parents/guardians still have the right to an IEE, but not at public expense.

Parents/Guardians may request the IEE in writing or orally. If parents/guardians make an oral request for an IEE, member LEA staff shall offer to assist parents/guardians in putting the request in writing and shall assist if parents/guardians so request.

Once parents/guardians communicate disagreement with the evaluation(s) completed by the member LEA and request an IEE at public expense, the following administrative regulations will be followed:

1. The member LEA will respond to parents/guardians in writing, including a copy of this IEE administrative regulation.

2. The member LEA will determine whether to initiate due process to establish the appropriateness of its evaluation or proceed with providing an IEE at public expense.
3. If the member LEA agrees to fund an IEE, parents/guardians will be asked to provide the name of the evaluator with which they wish to proceed. The evaluator must meet the agency criteria contained in this administrative regulation. Parents/Guardians shall have the opportunity to demonstrate that unique circumstances related to the student justify a waiver of the agency criteria.
4. If requested, parents/guardians will be provided with a list of potential evaluators that includes their contact information. The list is not intended to be exhaustive and is not intended to limit a parent's options in obtaining an IEE from other qualified professionals who meet the agency criteria outlined in this administrative regulation.

SELPA will maintain a courtesy list of potential IEE evaluators who have agreed to the agency's criteria; however, the SELPA and its member LEAs do not endorse the evaluators listed and are not responsible for any liability that may arise from use of any evaluator listed.

It is recommended that parents/guardians request a copy of any potential evaluator's resume or vitae, ask for references, and request a written proposal that includes the itemized costs for the evaluation including writing the report and attending the IEP team meeting, prior to making a final selection. Parents/Guardians must contact the member LEA prior to making the final selection of an IEE evaluator to ensure that the evaluator meets the agency's licensures/credentialing criteria.

5. Once an IEE evaluator is agreed upon, Parents/Guardians will be required to sign a release and exchange of information between the IEE evaluator and the member LEA.
6. Upon agreement on the IEE evaluator, the member LEA will arrange for the completion of the IEE. A member LEA may choose, but is not required, to use a contract with the IEE evaluator to memorialize the terms contained in this administrative regulation related to the IEE. Such contract may require Board approval prior to the IEE evaluator beginning their evaluation.
7. Upon completion of the IEE (including the member LEA's receipt of the completed assessment report and assessment protocols from the IEE evaluator), the member LEA will convene an IEP team meeting to consider the results of the IEE within thirty (30) days, not including breaks in the school year of five (5) schooldays or more. However, the results of an IEE will not control the IEP team meeting, including, but not limited to, the member LEA's determinations regarding eligibility for special education and the member LEA's offer of a free appropriate public education ("FAPE").

An IEE evaluator will be required to write a report focusing on the "unique needs" of the child and appropriate types of special education programs and services recommended to address those "unique needs." IEE shall not identify specific providers of special education programs and services as to avoid any possible "conflict of interest" situations. Evaluators must be knowledgeable of and agree to comply with all provisions of the federal (e.g., the Individuals with Disabilities Education Act ("IDEA")) and California law governing special education, including the laws related to recommending a child's eligibility for special education.

#### **Private Evaluation Not Funded by the member LEA**

The member LEA does not have an obligation to reimburse parents/guardians for privately obtained evaluations completed prior to the date that the member LEA's evaluation is completed and discussed at an IEP team meeting.

If parents/guardians obtain a private evaluation at private expense, the results of the evaluation must be considered by the member LEA as parent input in making educational decisions in the member LEA's assessment and/or IEP team meeting process. The evaluation may also be presented as evidence at a due process hearing regarding the child.

#### **Consideration of IEEs Obtained at Public Expense**

IEEs are designed to assist an IEP team in determining the educational needs of the child. The member LEA is responsible for offering FAPE. Therefore, the member LEA will consider recommendations contained in IEEs. IEEs, however, will not control the member LEA's determinations regarding the child.

### **Reimbursement for Completed Private Evaluations**

If parents/guardians request reimbursement for a completed private evaluation that was conducted without going through the process contained in this administrative regulation, parents/guardians do so at their own risk. Any private evaluation for which reimbursement is requested must meet the agency criteria specified in this administrative regulation. It is the responsibility of the member LEA to determine whether the completed IEE meets the agency criteria as per this administrative regulation as well as whether the parents/guardians disagree with a member LEA assessment. Parent/guardians must disagree with a member LEA assessment prior to requesting this reimbursement.

Once the member LEA receives a request for reimbursement, the member LEA shall respond to parents' request for reimbursement without unnecessary delay in the same manner it would if parents/guardians had requested an IEE prior to obtaining a private evaluation. This includes determining if parents/guardians disagree with a member LEA evaluation, if the IEE meets agency criteria (or parents/guardians demonstrate unique circumstances to go outside of criteria), etc. If parents/guardians do not disagree with a member LEA assessment, they are not entitled to reimbursement. A member LEA may file for due process to defend its assessment rather than reimbursing parents/guardians for the private evaluation.

### **Agency Criteria**

The criteria under which an IEE is obtained at public expense, including the location limitations for the evaluation, minimum qualifications of the examiner, cost limits, and use of approved instruments, must be consistent with the criteria set forth in this administrative regulation and be the same as the criteria the member LEA uses with it initiates its own evaluation of the child. In the event that parents/guardians believe that, due to the unique needs of their child, it is necessary to select an evaluator who does not meet agency criteria, parents/guardians will be given an opportunity to explain factors which make such a selection necessary.

Independent evaluators must agree to release their assessment information, testing protocols, report, and results to the member LEA prior to receipt of payment for services.

If the member LEA observed the child in conducting the evaluation with which parents/guardians disagree or if its assessment administrative regulations allow in-class observations, the IEE examiner will be provided with an equivalent opportunity to observe the child in the current educational setting and to observe the member LEA's proposed setting, if any. This opportunity shall also be provided if parents/guardians obtain an evaluation at private expense, regardless of whether they are asking the member LEA for reimbursement.

The member LEA shall define the nature and scope of an IEE examiner's in-class observations consistent with the right to an equivalent opportunity to observe, but also consistent with its obligations to prevent unnecessary disruption to the class and to protect the privacy interests of other students. These parameters may include, but are not limited to, identifying the time constraints of such observation, member LEA personnel who will participate in the observation, and restrictions on student/teacher interactions.

#### **A. Location Limitations for Evaluators**

IEE Evaluators must be located within the boundaries of Santa Barbara, Ventura or San Luis Obispo Counties. Evaluators outside of this area will be approved only on an exceptional basis by the member LEA if parents/guardians can demonstrate there is a unique need for a specialized evaluation and that there are no qualified evaluators within the specified area who can appropriately assess their child's educational needs.

#### **B. Cost Limitations for Evaluation**

The cost of an IEE shall be comparable to those costs that the member LEA incurs when it uses its own employees or the

going rate in the area for contractors to perform a similar assessment. Costs must include the following IEE requirements: observations, interviews, record review, administration and scoring of tests, report writing, attendance in person or by phone/virtual platform at an IEP team meeting following the completion of the IEE, and, if applicable, mileage to attend the IEP team meeting. There shall be no additional expenses beyond the cost limitation/maximum provided below. Prior to receiving payment, the IEE evaluator must provide the assessment report and protocols to the member LEA and attend the IEP team meeting as well as complying with any other provisions in the contract with the member LEA if the member LEA chose to use a contract for the IEE. In the event the parents/guardians request an IEE that exceeds the cost limitations specified below, the parents/guardians must demonstrate that unique circumstances related to the student justify a waiver of such cost limitations.

Type of Assessment	Cost Limitation/Maximum
Academic Achievement	\$3,000
Assistive Technology/Augmentative Alternative Communication	\$3000
Audiology/Deaf or Hard of Hearing	\$2,700
Educationally-Related Mental Health	\$2,700
Functional Behavior Assessment	\$3,100
Functional Vision/Visually Impaired	\$800
Occupational Therapy	\$2,500
Physical Therapy	\$2,500
Psychoeducational	\$6,600
Speech and Language	\$3,000
Transition/Vocational Assessment	\$3,000

### C. Qualifications for Evaluators

IEE evaluators must have the following credentials. All licenses and credentials must be issued by the appropriate agency or board within the State of California. In the event the parents/guardians request an IEE evaluator that does not meet these qualifications specified below, the parents/guardians must demonstrate that the unique circumstances related to the student justify a waiver of these evaluator qualifications.

Type of Assessment	Qualifications of Assessor
Academic Achievement	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher</li> <li>• Credentialed School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>
Assistive Technology/Augmentative Communication	<ul style="list-style-type: none"> <li>• Credentialed or Licensed Speech or Language Pathologist;</li> <li>• Credentialed Assistive Technology Specialist; or</li> <li>• Credentialed Special Education Teacher</li> </ul>
Audiology/Deaf or Hard of Hearing	<ul style="list-style-type: none"> <li>• Licensed Educational Audiologist; or</li> <li>• Credentialed Deaf/Hard of Hearing Teacher</li> </ul>
Educationally-Related Mental Health	<ul style="list-style-type: none"> <li>• Credentialed School Psychologist;</li> <li>• Licensed Educational Psychologist;</li> <li>• Licensed Marriage Family Therapist; or</li> <li>• Licensed Clinical Social Worker</li> </ul>
Functional Behavior Assessment	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher;</li> <li>• Credentialed School Psychologist;</li> <li>• Licensed Educational Psychologist; or</li> <li>• Board Certified Behavior Analyst (BCBA)</li> </ul>
Functional Vision/Visually Impaired	<ul style="list-style-type: none"> <li>• Credentialed Teacher of the Visually Impaired</li> </ul>
Occupational Therapy	<ul style="list-style-type: none"> <li>• Licensed Occupational Therapist</li> </ul>
Physical Therapy	<ul style="list-style-type: none"> <li>• Licensed Physical Therapist</li> </ul>

Psychoeducational	<ul style="list-style-type: none"> <li>• Credentialed School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>
Speech and Language	<ul style="list-style-type: none"> <li>• Credentialed or Licensed Speech or Language Pathologist</li> </ul>
Transition/Vocational Assessment	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher;</li> <li>• Credentialed School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>

**D. Conflict of Interest**

Consistent with the policies and practices of the SELPA member LEAs, no employee of a SELPA member LEA will be allowed to conduct an IEE for any member LEA in the SELPA. The member LEA may also, at its discretion, refuse to fund an IEE by an IEE evaluator who provides service(s), or is sought to provide service(s) to the student for whom the IEE is requested. Likewise, the member LEA may, at its discretion, refuse to fund services through an individual or agency who has previously conducted an IEE or private evaluations for a particular student. No IEE evaluator may recommend their own services as part of the IEE.

This does not prevent the member LEA from working with the parents/guardians to agree to a second opinion assessment by another member LEA’s employee or another one of the member LEA’s employees if the parents/guardians withdraw their request for an IEE to proceed with a second opinion assessment.

**E. Criteria for Administration and Selection of Testing Instruments Used in IEE**

The instruments used for the IEE must be selected and administered in a manner that is not racially, culturally, or otherwise discriminatory. If student’s primary language is a language other than English, tests must be administered in the student’s primary language or other mode of communication, unless it is not feasible to do so. Tests and other evaluation materials must be validated for the specific purposes for which they are used and must be administered by trained personnel and tailored to evaluate specific areas of educational need.

**F. Assessment Plan**

Because the IEE is not governed by the same timelines as a member LEA assessment, no assessment plan will be utilized in the process of conducting an IEE.

**G. Contract for IEE**

A member LEA may choose, but is not required, to use a contract with the IEE evaluator to memorialize the terms contained in this administrative regulation related to the IEE. Such contract may require Board approval prior to the IEE evaluator beginning their evaluation. The contract may include requirements that are standard in the member LEA’s contracting process with other member LEA contractors and that are consistent with what is required of/contracted for on behalf of member LEA employees, including, but not limited to, requirements for general commercial liability insurance, automobile insurance, employer/workers compensation insurance, and sexual abuse and molestation insurance.