

Requesting an Independent Educational Evaluation

This is important information about requesting an Independent Educational Evaluation (IEE). The blue text is my guidance. The black text is from the Oregon regulations and the 2014 United States Department of Education Dear Colleague Letter.

There are four critical issues:

- Under what circumstances can a parent request an IEE?
- Who can conduct an IEE in a situation involving discriminatory harassment? What is the criteria for the Evaluator?
- If the district disagrees with this request, what happens?
- What information the parent must provide when making the request.

It is entirely possible that Oregon school leaders are not going to understand a request for an IEE in the context of situations of harassment of students with disabilities. School leaders have simply not been well-informed on these issues.

There will likely be a conflict in school leader's understandings of their obligations under the Oregon bullying statute and what they should understand their obligations to be under civil rights laws. School leaders have not received sufficient instruction and guidance from the Oregon Department of Education on this issue.

There may also be some confusion between the terms "evaluation/reevaluation" (a term associated with students with disabilities) and "investigation" (a term associated with discriminatory harassment/civil rights regulations). Based on federal guidance, these must be considered one in the same.

Division 15

SPECIAL EDUCATION

581-015-2305

Independent Educational Evaluation

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

Note that it is necessary to "disagree with an evaluation" to make this request. This includes a "reevaluation."

Note that under these regulations, a "student with a disability" only refers to a student who is receiving services under IDEA and is on an IEP. There is no similar provision for students who

receive services under Section 504 to request for an IEE. There is nothing to prevent a parent from making such a request.

The definition in the regulations for “evaluation is this (note I am adding regulations from another section):

581-015-2000

(11) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

“Related services” is what needs to be addressed in situations of discriminatory harassment.

Here is the regulation for reevaluations (note I am adding regulations from another section):

581-015-2105

Evaluation and Reevaluation Requirements ...

(4) Reevaluation:

(a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection

(b) and OAR 581-015-2110(2):

(A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation;

or

(B) If the child’s parents or teacher requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

School leaders may not understand that a report by a parent that “my child with disabilities is being harassed” should be interpreted as a situation that must require an investigation, pursuant to language of Section 504 and that this should also be considered a request for a “reevaluation,” pursuant the language of IDEA.

Note that it is important to combine the text that has been underlined. If the school know or should know that a student with disabilities is being harassed then there needs to be an investigation and reevaluation of the related services that student is receiving to ensure the district takes steps necessary to ensure the student receives an appropriate education.

My argument is that a notification to the school of concerns that a student with disabilities is being harassed is both a request for a reevaluation and an investigation, because a report of harassment directly relates to the concern of related services being provided to the student.

My argument is clearly in accord with the guidance set forth in the 2013 Dear Colleague Letter from the U.S. Department of Education’s Office for Special Education and Rehabilitation Services and the 2014 Dear Colleague Letter from the U.S. Department of Education’s Office for Civil Rights.

In the 2014 DCL, OCR stated quite clearly:

As explained in OCR's 2010 Dear Colleague Letter on Harassment and Bullying, when a school knows or should know of bullying conduct based on a student's disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects.

...

If the school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services or Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of FAPE. Even if the school finds that the bullying did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the bullying may have had some impact on the student's receipt of FAPE services.

...

Accordingly, under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team or the Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

...

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly. By doing so, the school will be in the best position to ensure the student's ongoing receipt of FAPE.

FAPE means Free Appropriate Public Education. To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met.

If a parent reports harassment, the reevaluation/investigation of the situation is in the hands of the principal. If the principal does not convene an IEP or 504 meeting, this means the principal's reevaluation/investigation did not find the situation to be having any negative impact on the student's receipt of FAPE and thus does not warrant an IEP or 504 meeting, since the meeting was not held.

If the parent disagrees with this reevaluation/investigation determination, then this should provide the basis for the parent to request an IEE.

If an IEP or 504 meeting was held, but the parent disagrees with the approach incorporated into plan or the harassment has continued, this should also provide the basis for the parent to request an IEE.

(a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child.

(b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.”

(3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

Note that the normal situations where a request for an IEE occurs is when a school psychologist has administered one or more evaluation assessments to a student, generally focusing on academic proficiency, and the parent wants an independent psychologist to conduct some kind of a different, or more extensive, assessment.

The criteria established by districts focuses on licensing of educators or mental health professionals to conduct these normal academic or psychological assessments. This kind of criteria would not fit a situation of discriminatory harassment unless one of these professionals has studied these issues in more depth. At this point in time, such professionals are highly unlikely to know what the obligations of the school are in responding to reports of discriminatory harassment.

(a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent education evaluation at public expense.

(b) The school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria.

This is the key language that provides the basis for Bullying Resolution Services provision of IEE services. Experiencing discriminatory harassment is a unique circumstance that justifies an IEE that does not meet the district's current criteria. I do have the professional expertise to conduct and reevaluation in these situations.

(4) If a parent requests an independent education evaluation at public expense, the school district must, without unnecessary delay, either:

(a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.

If the district disagrees with this request, then it must file for a due process hearing. If a district were to do this, the district would have to explain to the administrative law judge why it did not, upon report of harassment that could interfere with a student's right to FAPE, conduct a comprehensive investigation and convene an IEP meeting -- as schools were clearly directed to do by the U.S. Department of Education.

If the school did address this concern in an IEP meeting, but the parent disagrees with the plan of action or the harassment has continued, this would also be important information to provide to the administrative judge.

(5) If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(6) If the parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. The school district may not unreasonably delay either providing the independent education evaluation at public expense or initiating a due process hearing to defend the public evaluation.

Although the parent does not need to provide an explanation for a request for an IEE, my suggestion is that some explanation might be helpful. At this point in time, a request for an IEE under these circumstances is unusual.

(7) If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

(b) May be presented by any party as evidence at a due process hearing.

(8) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(9) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Let me state this more clearly:

The harassment of a student with disabilities raises concerns that there is an interference with this student's receipt of FAPE.

The school must conduct a reevaluation of related service needs, if the school knows or should know there is a situation that could interfere with a student's receipt of FAPE.

If harassment of a student with disabilities is known, this is a situation that the U.S. Department of Education has directed must be addressed in an IEP or 504 meeting, unless the school's investigation has revealed there was clearly no effect on the student's receipt of FAPE.

If an IEP or 504 meeting was not held, this can be translated as meaning that the investigation determined there was no impact on the student's receipt of FAPE.

If the parent of a student on an IEP disagrees with the result of this investigation, as revealed by the fact that an IEP meeting was not held, the parent has the right to request an IEE.

If an IEP meeting was held, but the parent disagrees with the result of the determination or action plan or the harassment has continued, the parent has the right to request an IEE.

A parent of a child on a 504 does not have the right to request an IEE. But the parent can request an IEE.

The standard criteria of the district very likely will not fit this situation. The parent has the opportunity to demonstrate that unique circumstances warrant this IEE. The fact that schools have been directed to handle these situations in an IEP or 504 meeting makes it clear that this is a unique circumstance that the school must address.

If the district disagrees with the request of parent whose child is on an IEP, the district must request a due process hearing.

The district can simply disagree with a request by a parent of a student receiving services under 504.

If the district files for a due process hearing for a student on an IEP or denies a request for an IEE for a student on 504 and the parent thinks the harassment is interfering with their child's right to receive FAPE, the parent has the option of filing a complaint for discriminatory harassment with the U.S. Department of Education's Office for Civil Rights.

Paying reasonable expense for an IEE that is aimed at achieving a positive resolution for all involved students and would allow the school staff to gain insight they could use in other situations would be preferable to the more adversarial routes.

However, school districts may not want to support any movement in this direction, despite the clear evidence that the approach they are currently using is not effectively addressing these concerns and students are suffering.

