



Special Education Advisory Committee

Guidelines for Independent Educational Evaluations

Recommendations Summary

May 5, 2021

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

Overview: Guidelines for Independent Educational Evaluations

In order to develop an Individualized Education Program (IEP) that meets a student's educational equity needs, the educational team (including teachers and parents/guardians) need to come to some shared understanding of what the student's needs are. In the IDEA process, when anyone suspects an area of disability need, the school system conducts an evaluation in that area. A multidisciplinary team (eligibility or IEP team) then considers the results of those evaluations and makes decisions about eligibility or placement and services.

The IDEA contains many specific procedural rights for parents/guardians. The purpose of these is to cause the stakeholders to work together and resolve disagreements in the interests of providing the student with an education. In *Rowley*, the Supreme Court opined that, "adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." [Board of Education v. Rowley]

An Independent Educational Evaluation (IEE) is "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." IEEs are impartial evaluations, performed by an outside professional, that can help both the school and the family by providing evidence about the needs of the child. Parents/guardians often request an IEE because they disagree that the LCPS evaluation was adequate and/or accurately evaluated the needs of their child. LCPS benefits from IEEs because they are an opportunity to bring in specialized personnel and/or expertise, an opportunity to confirm what is correct in the LCPS evaluations, and a quick and inexpensive tool to facilitate amicable, evidence based, resolution of disagreements.

Under the Virginia regulations, parents have a right to an IEE at public expense:

- "2. Parental right to evaluation at public expense. (34 CFR 300.502(b) and (e))
 - a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.
 - b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either
 - (1) Initiate a due process hearing to show that its evaluation is appropriate; or
 - (2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.
 - c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.
 - d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

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

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense." [8VAC20-81-170(B)(2)]

SEAC has received many comments and concerns regarding IEEs in LCPS. This review is focused on IEEs at public expense. As a first step, SEAC reviewed the LCPS "Guidelines for Independent Education Evaluations," which claim to represent the criteria in (2)(f) of the regulation.

Summary of Concerns and Recommendations

Concern 1: Guidelines and interpretations that interfere with parents' IEE rights.

Concern 2: LCPS's IEE guideline rates are below market rates.

Concern 3: Professionals refusing to do IEEs due to poor treatment by LCPS.

Recommendation 1: Add "at Public Expense" to the title.

Recommendation 2: Accessibility: Change from Roman to Arabic numerals.

Recommendation 3: Accept licenses from DC and MD.

Recommendation 4: Increase rates to prevailing market rates.

Recommendation 5: Change sending LCPS eval from if to shall.

Recommendation 6: Relax "educational setting" guideline.

Recommendation 7: Change "most recent edition" to "a currently valid edition"

Recommendation 8: Add: Evaluator equal observation/access provision.

Recommendation 9: Remove prohibition on provider recommendations.

Recommendation 10: Provider sends reports to LCPS and parents at the same time.

Recommendation 11: Change payment to "on agreement between evaluator and LCPS"

Recommendation 12: Add: Reasonable exceptions provision.

Recommendation 13: Add: Provider opportunity to interpret their evaluation.

Concerns

Concern 1: Guidelines and interpretations that interfere with parents' IEE rights.

Our understanding is that school systems are permitted to create reasonable criteria for evaluations, but that these criteria must not interfere with the parents' right to an IEE. SEAC has received numerous reports of LCPS using their "guidelines" in ways that prevent parents from obtaining an IEE or creates substantial, unnecessary delays.

One specific concern is that LCPS uses the term "guidelines," in its own document, does not hold itself and its own staff to its criteria, yet appears to look for creative ways to strictly apply every rule in its "guidelines" to deny IEEs from outside providers. Our understanding is that IDEA case law is clear that school systems must make reasonable exceptions as necessary to ensure that the right to an IEE is ensured in every student's individual circumstances. SEAC has received numerous reports that LCPS refuses to make reasonable exceptions.

Many of the LCPS guidelines appear to be reasonable and customary requirements. However, some of the LCPS guidelines appear to exceed what is reasonable and customary criteria, and, when compared with other school systems, it appears that the LCPS guidelines were written to interfere with IEE rights.

Concern 2: LCPS's IEE guideline rates are below market rates

Our understanding is that school systems are required to fund IEEs at the prevailing market rates in their community and are required to make reasonable exceptions in individualized circumstances.

Loudoun County, and the northern Virginia area, is a prosperous, growing area. These market conditions have created high costs of running a professional business, and an imbalance between the supply of many qualified professionals and the demand from families and children who need their services. As a result, professionals' rates are higher than they might be in other communities and are steadily increasing.

While professionals may perform IEEs at public expense at a discounted rate compared to their typical private practice rate, this practice raises concerns. Even so, LCPS guideline rates are usually well below the rate guidelines for neighboring school systems. SEAC has received many reports that professionals are not willing to accept the rate that LCPS is willing to pay. As a result, parents are often finding that there are very few, or even no, private providers willing and able to perform the IEE for the rate that LCPS is willing to pay, which denies their right to an IEE at public expense. SEAC is also concerned with the low rate limiting the evaluation due to the cost constraints.

LCPS typically offers that the parents may pay the difference between the rate that LCPS is willing to pay and the rate that the provider is willing to accept. This is not an IEE at public expense. This provides an inequitable hardship on many families, for whom hundreds of dollars might be a significant additional cost burden. For many families, this denies their ability to get an IEE at public expense, and thus, impacts their child's education and FAPE.

Over the past five years, neighboring school systems have slowly increased their guideline rates for IEEs at public expense. Market conditions have forced them to do so in order to be

able to meet their obligations to provide IEEs. In the same time period, LCPS has revised its guidelines several times, but its rates have remained unchanged.

Concern 3: Professionals refusing to do IEEs due to poor treatment by LCPS.

Professionals may perform IEEs at public expense at a lower rate compared to their typical private practice rate. They do this for a variety of reasons including for the public good, to establish a good reputation in the community, and to develop a good working relationship with the public-school systems.

School systems cannot force private providers to perform IEEs but are required to provide an IEE at public expense to parents as a condition of receiving IDEA funding. Professionals are free to choose whether or not they wish to provide IEEs.

Many professionals decline to perform IEEs for school systems. However, SEAC has received a number of reports of area professionals who decline to perform IEEs for LCPS. SEAC has received reports that LCPS staff have treated many outside professionals poorly, and that a growing number of providers have decided that **they will not perform IEEs for LCPS at any cost**. LCPS "Representative List of Providers for Independent Educational Evaluations" has been shrinking and contains significant turn-over. Many professionals who, for years, were LCPS's listed providers will no longer perform IEEs for LCPS.

Examples of poor treatment of outside professionals by LCPS staff include:

1. LCPS dictating what assessment tools the professional must use
2. LCPS requiring prior review of professionals' choices of assessment tools
3. LCPS denying professionals observations / refusing access
4. LCPS demanding professionals provide LCPS with notes / raw data
5. LCPS requiring professionals make changes to their independent evaluations
6. LCPS refusing to pay professionals for IEE services rendered

There is a relationship between concerns 2 and 3. In a growing market with high demand for professional services and limited supply, it is not reasonable for LCPS staff to expect that they can pay significantly below market rates and treat outside professionals poorly.

Recommendations

Recommendation 1: Add “at Public Expense” to the title

Our understanding is that all IEEs, whether at public or private expense, must be considered by the IEP team.

These criteria should only apply to IEEs at public expense.

If LCPS does not fully fund the IEE, the criteria are void as the evaluation was not completed at public expense.

Recommendation 2: Accessibility: Change from Roman to Arabic numerals

The use of Roman numerals can be difficult for screen readers.

LCPS needs to revise the document to follow accessibility best practices.

Recommendation 3: (I A) Accept licenses from DC and MD

Loudoun County is part of the greater Washington-Baltimore metropolitan area community.

The existing geographic criteria of “within a 75-mile radius of Leesburg, Virginia” covers areas in DC and MD.

Many parents of children with complex and/or rare special needs find it necessary to use providers in DC or MD.

Other school systems accept licenses from DC and MD.

Recommendation 4: (II) Increase rates to prevailing market rates.

	LCPS	FCPS	PWCS	Market Rate
Psychological	\$1150	\$1400-1800	\$1500-3000	\$2200 - 3500
Educational	850	1000	(incl. above)	(incl. above)
Developmental	350			
Speech/Language	400	500	400	500-700
Assistive Tech.	1000	1200	350	
Functional Behavior	1000	1200	800	
O/T	350	600	350	650
Other	350	400		

Recommendation 5: (III A) Change sending LCPS eval from “if” to “shall”.

The current guideline contains steps to be taken “if copies of LCPS evaluations are not sent to evaluator to ensure that tests are not inappropriately repeated.”

The best practice, often done by LCPS, is to send the original LCPS evaluation to the evaluator.

Change this from an “if” to a “shall” and remove the steps to be taken “if.”

Recommendation 6: (III P) Relax “educational setting” guideline.

The current guideline is that, “The evaluator should provide all services in the educational setting commensurate with that of the LCPS evaluation.”

IEEs are typically performed in a professional office setting, not an educational setting. Sometimes, due to the specific nature of the evaluation, they may need to be performed in a different setting, such as the school, or in the community. The choice of appropriate setting is a professional opinion.

Relax this guideline to, “All assessments should be administered in a setting...”

Recommendation 7: Change “most recent edition” to “a currently valid edition”

The current guideline requires that a professional must use the most recent edition of a test.

When new editions of test are released, there is typically a transition period during which the old and new editions are considered valid.

When multiple editions are currently considered valid, professionals should exercise their professional judgement to choose which edition to use.

Professionals might disagree with the new edition of the test or might have less experience with the new edition of the test.

Professionals might not actually have, or be able to get, the most recent edition.

Once an edition is not considered currently valid, it must not be used.

Recommendation 8: Add: Evaluator equal observation/access provision.

SEAC has received reports of IEE evaluators being denied school observations and/or access.

Our understanding is that IDEA case law requires school systems to provide IEEs with equal access.

This should be stated in the guidelines to ensure that all parties have the same understanding and expectations.

Recommendation 9: Remove prohibition on provider recommendations.

The current guidelines prohibit providers from making recommendations and justifies that prohibition by citing regulations that specifically do not contain that prohibition.

The IDEA (and Section 504) regulations require that **decisions** are made by a multidisciplinary team.

Recommendations are not **decisions**.

Nothing in the regulations prohibits professionals (or anyone) from making **recommendations**.

Prohibiting professionals from making recommendations may be counter to professionals' licenses, professional codes of ethics, and/or professional responsibility.

Why prevent the team who makes the decisions from having more ideas on how to solve the problems identified in the evaluation?

Recommendation 10: Provider sends reports to LCPS and parents at the same time.

Although the provider is supposed to be a neutral third party, they submit their report only to LCPS. LCPS gets the evaluation first, reads and reviews it, and sends the report to the parents later. This creates an inequity.

Sending the report to both parties equally should put a stop to many of the reported issues of LCPS demanding that providers make changes to their independent evaluations.

Recommendation 11: Change payment to “on agreement between evaluator and LCPS.”

In the event that LCPS makes a reasonable exception to its guidelines, and/or that LCPS and a provider have an agreement that differs from the guidelines, there should be no question that the provider will be paid for their IEE if they do what was agreed.

Recommendation 12: Add: Reasonable exceptions provision.

Our understanding is that IDEA case law requires school systems to make reasonable exceptions to its criteria if those criteria interfere with the right to an IEE at public expense.

This should be made explicitly clear, as should the procedure for requesting an exception.

Recommendation 13: Add: Provider opportunity to interpret their evaluation.

Add: "The provider shall be given the opportunity to attend the eligibility and/or IEP meeting to interpret their evaluation and answer questions. Their attendance shall be provided at public expense."

After the evaluation, a meeting is held to consider the evaluation and make recommendations about eligibility, placement, and/or services.

LCPS brings their person to the meeting, often the same person who wrote the original LCPS evaluation that the parents disagree with, to "interpret" the independent evaluation. This is a conflict of interest.

IEE providers sometimes recommend things new and/or unfamiliar to the LCPS person, and sometimes the written report can be unclear or the team doesn't fully understand something.

The entire team should have the opportunity to understand the evaluation before making educational decisions based on it.

SEAC Membership Vote

SEAC Membership Vote on Recommendations

Quorum: 12 out of 16 members were present

Vote Summary: unanimous