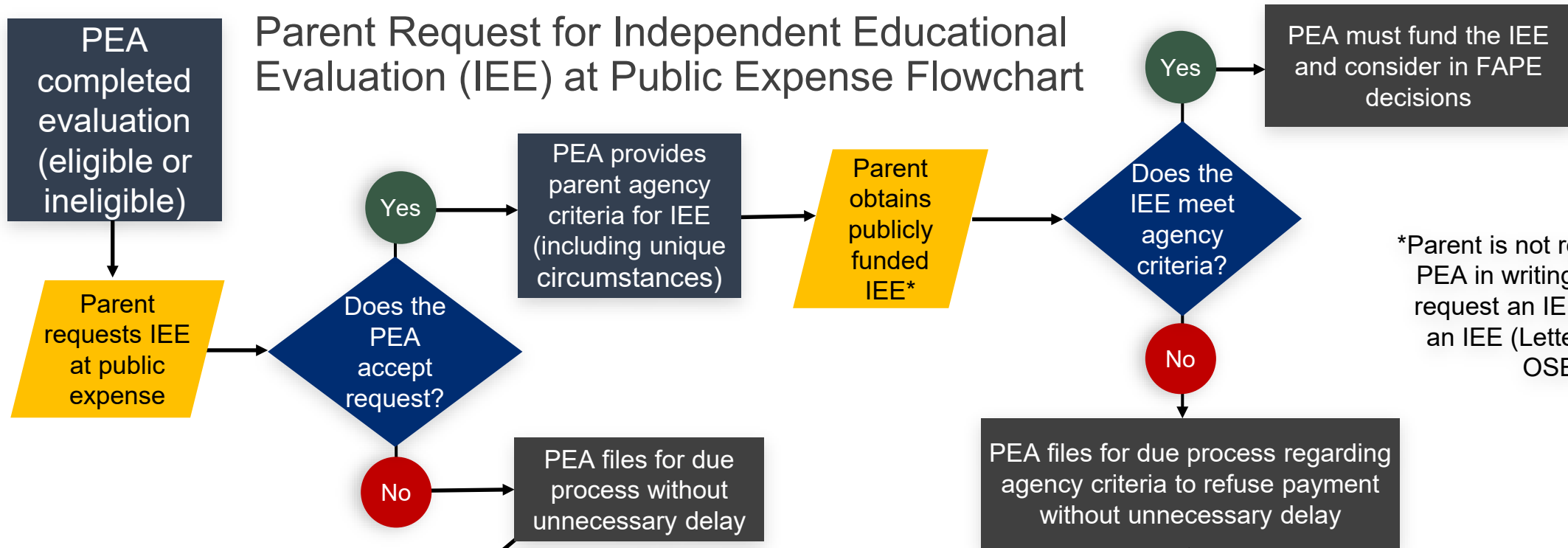


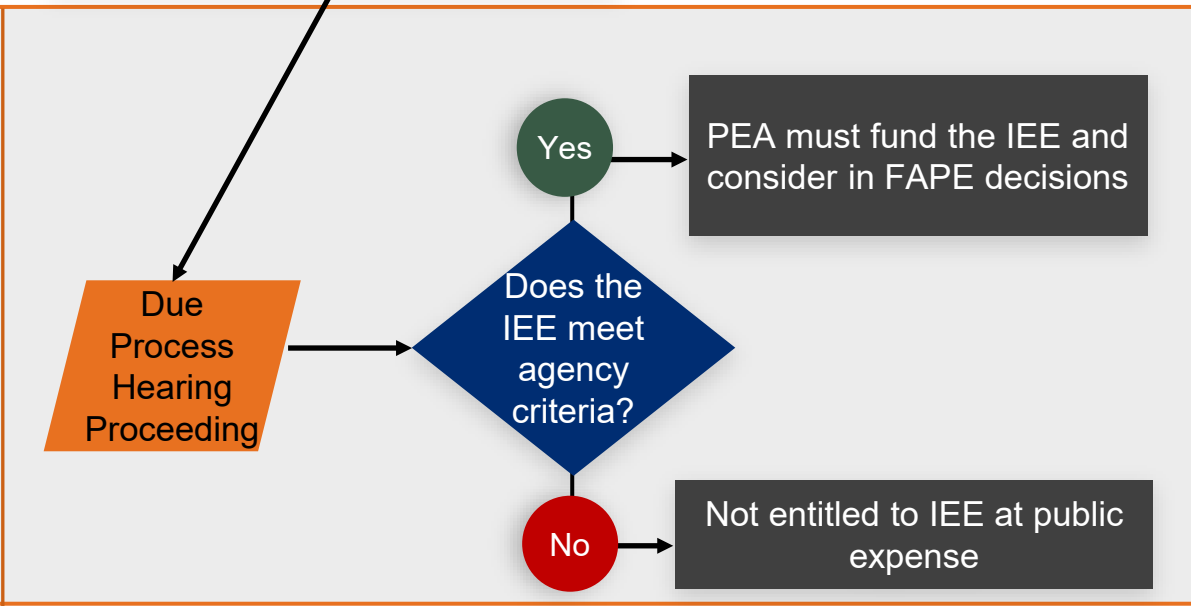
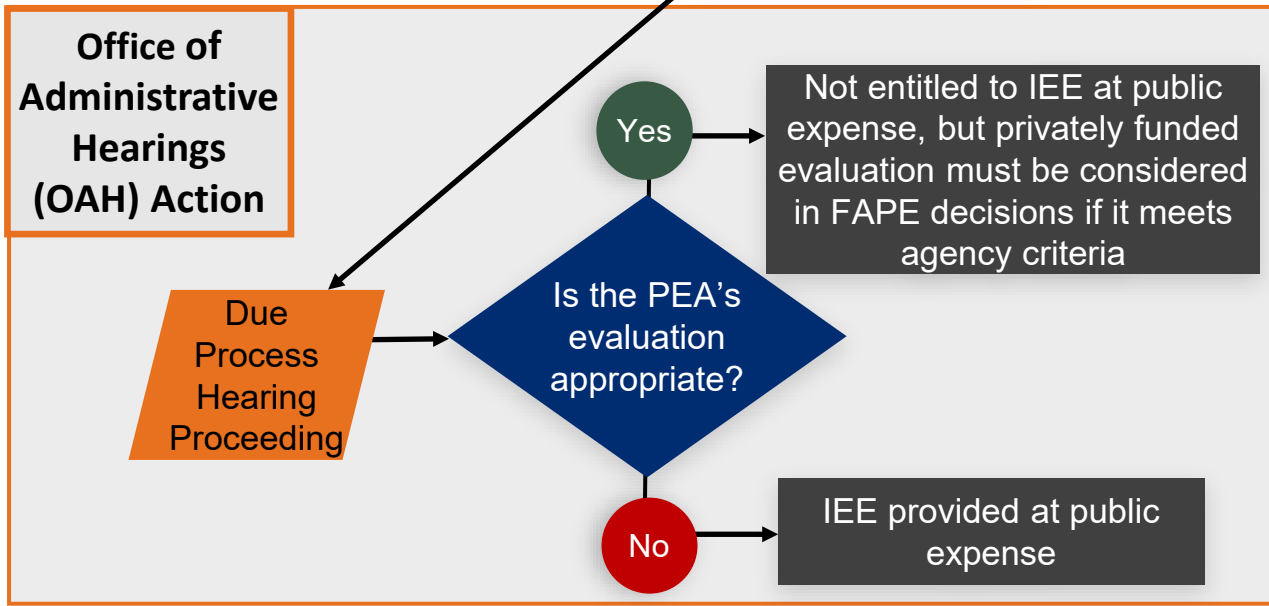


Parent Request for Independent Educational Evaluation (IEE) at Public Expense Flowchart



*Parent is not required to notify the PEA in writing or via meeting to request an IEE before obtaining an IEE (Letter to Anonymous, OSEP 2010)

Rev. 7/24





Independent Educational Evaluation (IEE) Reference Document

Applicable Special Education Federal Regulations (IDEA)

Arizona Revised Statutes (A.R.S.)

[Arizona Administrative Code](#) (A.A.C. or State Board Rules)

Parent Request for IEE Flowchart: Accompanying Citations

1. Federal Regulations: [IDEA § 300.502](#). Secondary authority: [IDEA § 300.504\(c\)\(1\)](#) (Procedural Safeguards Notice).
2. A.A.C. § R7-2-401(A) (Incorporation of IDEA); A.A.C. § R7-2-401(B)(9) (Definition). Secondary authority: A.A.C. § R7-2-401(E)(6) (One source of information).

Frequently Asked Questions

Q1: What is an independent educational evaluation (IEE), and when is a parent entitled to one?

A1: Basically, an IEE is a second opinion. The Individuals with Disabilities Education Act (IDEA) and its implementing regulations afford parents of children with disabilities the right to obtain, at public expense, an IEE, which is "an evaluation conducted by a qualified evaluator who is not employed by the public education agency responsible for the education of the child in question." [34 C.F.R. §300.502(3)(i)] Under the regulations that implement the IDEA, "[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency." [34 C.F.R. §300.502(b)(1)] "A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees." [34 C.F.R. §300.502(b)(5)] An IEE is not considered a reevaluation.

Q2: How often can a parent request an IEE?

A2: A parent has the right to an IEE at public expense if they disagree with an evaluation obtained by the school. [34 C.F.R. §300.502(b)(1)] "[I]t is important to clarify that a parent is not entitled to more than one IEE at public expense when the parent disagrees with a specific evaluation or reevaluation conducted or obtained by the public agency...This regulatory

provision is consistent with a parent's statutory right to an IEE at public expense, while recognizing that public agencies should not be required to bear the cost of more than one IEE when a parent disagrees with an evaluation conducted or obtained by the public agency." [34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart D–Evaluation, Eligibility, IEP, Educational Placement, *Federal Register*, Vol.71, No. 156, p. 46690 (August 2006)]

Q3: *What is a school required to do upon receipt of a request for an IEE?*

A3: "If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate;" or "ensure that an IEE is provided at public expense, unless the agency demonstrates in a [due process] hearing...that the evaluation obtained by the parent [does] not meet agency criteria." [34 C.F.R. §300.502(b)(2)(i) and(ii)] (Please note that there is no requirement that a request for an IEE is in writing.)

The regulations that implement the IDEA do not define the term "unnecessary delay." However, the United States Department of Education/Office of Special Education Programs (OSEP) has stated that the meaning of "unnecessary delay" depends on the facts and circumstances involved. "[i]t permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an IEE." [*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010)]

Q4: *How is "unnecessary delay" defined?*

A4: The regulations that implement the IDEA do not define the term "unnecessary delay." However, the United States Department of Education/Office of Special Education Programs (OSEP) has stated that the meaning of "unnecessary delay" depends on the facts and circumstances involved. "[i]t permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an IEE." [*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010)] Further, unnecessary delay is a "fact-specific inquiry," focused on the circumstances surrounding the delay, per *C.W. v. Capistrano Unified Sch. Dist.*, 784 F.3d at 1247. When a school district's delay is

"unexplained," however, that weighs in favor of finding unnecessary delay. See *Pajaro Valley Unified Sch. Dist. v. J.S.*, No. C 06-0380 PVT, 2006 WL 3734289 (N.D. Cal. December 15, 2006). Additionally, a school break that occurs during an IEE request "must also be considered in determining the timeliness of the District's due process request." *Ripon Unified Sch. Dist.*, 2009 WL 1034993.

Q5: If a parent requests an IEE, can the school ask the parent the reason that they object to the school's evaluation?

A5: "If a parent requests an [IEE], the [school] may ask for the parent's reason why they object to the public evaluation. However, the [school] may not require the parent to provide an explanation and may not unreasonably delay either providing the [IEE] at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation." [34 C.F.R. §300.502(b)(4)]

Q6: Are parents entitled to an IEE when disagreeing with a school's evaluation, because it did not assess the student in a particular area?

A6: When an evaluation is conducted per 34 C.F.R. §§ 300.304 through 300.311, and when a parent disagrees with the evaluation because the 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 child needs, because an evaluation must be sufficiently comprehensive to assess the child in all areas related to the suspected disability and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. [*Letter to Baus*, 65 IDELR 81 (OSEP 2015)]

Q7: Can a parent request an IEE at any time during the evaluation process?

A7: No. Under the regulations that implement the IDEA, "[a] parent has the right to an independent educational evaluation at public expense **if the parent disagrees with an evaluation** obtained by the public agency." [34 C.F.R. § 300.502(b)(1)] (Emphasis added) A parent is entitled to only one IEE each time a school conducts an evaluation with which the parent disagrees. [34 C.F.R. § 300.502(b)(5)] If a parent requests an IEE at public expense, the school "must, without unnecessary delay, either file a due process complaint"

on the grounds that its evaluation is appropriate "or ensure that an IEE is provided [to the parent] at public expense." [34 C.F.R. § 300.502(b)(2)]

Q8: If a school conducts a review of existing data and determines that no additional assessments are needed and that the child is not eligible to receive special education, is the parent entitled to an IEE?

A8: An evaluation conducted to determine whether a child is a child with a disability under the IDEA is a process that begins with a review of existing data and ends with a determination as to the child's eligibility to receive special education and related services. [34 C.F.R. §§ 300.301-311] If a school conducts an evaluation and the multidisciplinary evaluation team (MET) determines that a child is not eligible, the parent would be entitled to an IEE, even if the eligibility determination is solely based on a review of existing data. [See 34 C.F.R. § 300.305] This entitlement is not the case when a parent requests an initial evaluation to determine whether a child is eligible for special education, and the school refuses (via PWN) to conduct the evaluation, because it has no reason to suspect that the child is a child with a disability who needs special education. [34 C.F.R. § 300.503(a)] If a school refuses to conduct an initial evaluation because there is no suspicion that the child has a qualifying disability, the parent would not be entitled to an IEE. However, they would have the right to challenge the school's refusal to evaluate the child by requesting mediation or a due process hearing.

Q9: Can a parent withhold consent for additional data during an evaluation and request an IEE?

A9: No. "Evaluation" is defined in the IDEA regulations as procedures that are used to determine whether a student has a disability and, if so, the nature and extent of their need for special education and related services. [34 C.F.R. § 300.15] Under the regulations that implement the IDEA, "[a] parent has the right to an independent educational evaluation at public expense **if the parent disagrees with an evaluation** obtained by the public agency." [34 C.F.R. § 300.502(b)(1)] (Emphasis added) A parent is entitled to only one IEE each time a school conducts an evaluation with which the parent disagrees. [34 C.F.R. § 300.502(b)(5)]

Q10: Can a parent request that an IEE be used in lieu of the public school's evaluation?

A10: No. "Evaluation" is defined in the IDEA regulations as procedures that are used to determine whether a student has a disability and, if so, the nature and extent of their need for special education and related services. [34 C.F.R. § 300.15] Under the regulations that implement the IDEA, "[a] parent has the right to an independent educational evaluation at public expense **if the parent disagrees with an evaluation** obtained by the public agency." [34 C.F.R. § 300.502(b)(1)] (Emphasis added) Without a school evaluation for a parent to disagree with, an IEE or a Doctor's report or diagnosis does not obligate a school to pay for the IEE or to adopt the results in lieu of conducting its own evaluation. [*Letter to Doughty*, 16 IDELR 1363 (OSEP 1990)]

Q11: Who selects the independent evaluator?

A11: The parent. "Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section." [34 C.F.R. § 300.502(a)(2)]

Q12: Can a school require parents to select from a list of preferred evaluators?

A12: Yes. "IDEA permits a district to maintain, and require parents to use, a list of all qualified examiners in the area that meet the same 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. Specifically, if the child's needs can be appropriately evaluated by the persons on the list and the list exhausts the availability of qualified people within the geographic area specified, an agency can restrict parents to selecting from among those persons on the list. If such a list is maintained and parents are required to use it, the [public agency] must include in its policy that parents have the opportunity to demonstrate that unique circumstances justify the selection of an IEE examiner who does not meet the agency's qualification criteria and does not appear on the agency's list of examiners. Allowing parents this opportunity recognizes that, in some instances, the only person qualified to conduct the type of evaluation needed by the child may be an evaluator who does not meet agency criteria. In such situations, the public agency must ensure that the parent still has the right to

the IEE at public expense and is informed about where the evaluation(s) may be obtained." [*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010) See also: *Letter to Young*, 39 IDELR 98 (OSEP 2003); *Letter to Parker*, 41 IDELR 155 (OSEP, February 2004)]

Q13: Can a school impose reasonable cost-containment criteria for an IEE?

A13: In the analysis of comments and changes to the federal regulations that implement the IDEA, the United States Department of Education explains that it is its longstanding position that schools should not have to bear the cost of unreasonably expensive IEEs; thus, they may establish reasonable cost-containment criteria. [34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart E – Procedural Safeguards. *Federal Register*, Vol. 71, No. 156, p. 46689-46690 (August 2006)] However, schools must provide parents the opportunity to demonstrate that unique circumstances justify their selection of an evaluator whose fees fall outside of the agency's criteria. [Id.] "To avoid unreasonable charges for independent educational evaluations, a school district may establish maximum allowable charges for specific tests. If a district does establish maximum allowable charges for specific tests, the maximum cannot simply be an average of the fees customarily charged in the area by professionals who are qualified to conduct the specific test. Rather, the maximum must be established to allow parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees." [*Letter to Anonymous*, 22 IDELR 637 (OSEP 1995)] However, although schools can establish reasonable cost-containment criteria, a school has two options when a parent requests an IEE: it can either file a due process complaint to show that its evaluation is appropriate, or it can ensure that an IEE is provided at public expense unless it demonstrates in a due process hearing that the evaluation obtained by the parent does not meet agency criteria. [34 C.F.R. § 300.502(b)(1) & (2)] The regulations do not give schools the option of unilaterally determining that an IEE does not meet the agency's cost-containment criteria and of refusing to provide that IEE at public expense; such a decision can only be made in a due process proceeding.

Q14: What options does a school have if it disagrees with a parent's request for an IEE?

A14: A school has two options when a parent requests an IEE: it can either file a due process complaint to show that its evaluation is appropriate, or it can ensure that an IEE is provided at public expense unless it demonstrates in a due process hearing that the evaluation obtained by the parent does not meet agency criteria. [34 C.F.R. § 300.502(b)(1) & (2)] The regulations do not give schools the option of unilaterally determining that an IEE does not meet the agency's cost-containment criteria and refusing to provide that IEE at public expense; such a decision can only be made in a due process proceeding.

Q15: Are schools obligated to pay parents' out-of-pocket costs associated with an IEE?

A15: Although the regulations that implement IDEA are silent as to this matter, the United States Department of Education/Office of Special Education Programs (OSEP) provides clarity by stating that funding for the IEE must include "the [reasonable] expenses incurred by the parent for travel, meals, and lodging if an overnight trip is necessary...[and the] financial resources of the parent would not be determinative." [*Letter to Heldman*, 20 IDELR 621 (OSEP 1993)]

Q16: Can a school expect a parent to prepay for the IEE and then reimburse the parent?

A16: A school may permissibly have, as part of its IEE criteria, a requirement that IEEs will be reimbursed unless applying that criterion would deprive the parent of a right to an IEE. "The IDEA does not address whether funding should be paid as reimbursement or as a cash advance. If the parent requests advance funding for IEE-related expenses and the public agency denies that request, the parent could request a due process hearing under 34 C.F.R. § 300.506 if the parent believes that denial of advance funding would effectively deny the parent the right to a publicly-funded IEE." [*Letter to Petska*, 35 IDELR 191 (OSEP 2001)]. See also *Letter to Katzerman*, 28 IDELR 310 (OSEP 1997)]

Q17: Is a school responsible for the cost of the hours billed by an independent evaluator if the parent invites the evaluator to (and they attend) the meeting to review the testing results after the IEE has been completed?

A17: Possibly. The federal regulations entitle parents to an IEE at public expense if the parent disagrees with the school's evaluation. [34 C.F.R. § 300.502(b)(1)] "Public expense" means that the school must pay "for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent." [34 C.F.R. § 300.502(a)(3)(ii)] The federal regulations are silent as to whether this payment includes the cost of the evaluator's time at the subsequent IEP meeting where the results of the evaluation are considered. One of the required roles at an IEP meeting is someone who can explain and "interpret the instructional implications of evaluation results" [34 C.F.R. § 300.321(a)(5)]; there is no specific requirement that the evaluator of the child, whether the school's evaluator or an outside IEE evaluator, should attend the IEP meeting. However, at least one court (not in Arizona) has required the school to pay for the evaluator's time spent explaining her evaluation to the IEP team. (See *Meridian Joint Sch. Dist. v. D.A. and J.A.*, 62 IDELR 144 [D. Idaho 2013]).

It is important to remember that the child's IEP team includes certain specified members, including "[a]t the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." [34 C.F.R. § 300.321(a)(6)] Accordingly, parents can invite anyone whom they believe has knowledge or special expertise regarding the child.

Q18: Can a school require a parent to use private insurance coverage or public insurance benefits to defray the cost of an IEE?

A18: No. A school can certainly request that a parent provide access to public or private health insurance to defray the cost of an IEE, but it cannot require the parent to use it to fund an IEE.

Q19: For an IEE, who decides whether the outside evaluation meets the agency criteria?

A19: Although it might seem intuitive that the school can objectively determine whether or not an IEE meets its own agency criteria, the

regulations that implement the IDEA do not give this power of review to schools. The regulations state that when parents ask for an IEE because they disagree with a school's evaluation, the school must, without unnecessary delay, either initiate a due process proceeding to show that the school's evaluation is appropriate or ensure that the IEE is provided at public expense unless the school demonstrates in a due process hearing that the evaluation does not meet the agency's criteria. [34 C.F.R. § 300.502(b)(2)] The United States Department of Education/Office of Special Education Programs (OSEP) has explained that regarding the cost of the IEE, "[i]f the total cost of the IEE exceeds the maximum allowable costs and the school district believes that there is no justification for the excess cost, the school district cannot in its sole judgment determine that it will pay only the maximum allowable cost and no further. The public agency must, without unnecessary delay, initiate a hearing to demonstrate that the evaluation obtained by the parent did not meet the agency's cost criteria and that unique circumstances of the child do not justify an IEE at a rate that is higher than normally allowed." [*Letter to Anonymous*, 103 LRP 22731 (OSEP 2002)]

Q20: Can a parent request an IEE at public expense if they disagree with the results of a functional behavioral assessment (FBA)?

A20: As discussed in Letter to Anonymous, 59 IDELR 14 (OSEP April 9, 2012), "If a public agency conducts a functional behavioral assessment (FBA) to assist in determining whether an individual child is a child with a disability and the nature and extent of the special education and related services that the child needs, it is considered an evaluation under Part B and the regulation at 34 CFR § 300.15. The FBA must be conducted per the 34 CFR §§ 300.304-300.311 evaluation procedures. Part B evaluations and reevaluations are subject to the IDEA's notice requirements in 34 CFR §§ 300.503-300.504, and parental consent requirements in 34 CFR § 300.300...[I]f the FBA is intended to assess the effectiveness of behavioral interventions in the school as a whole, the parental consent requirements in 34 CFR § 300.300(a) and (c) generally would not be applicable to such an FBA because it would not be focused on the educational and behavioral needs of an individual child." Thus, the purpose of the FBA becomes critical in determining whether parents are entitled to an IEE when they disagree with an FBA. If the purpose of the FBA is to determine the presence or absence of a disability or to evaluate the nature or extent of a student's need for special education and related services, the parent would be entitled to an IEE if they

disagreed with the results of that evaluation. If, on the other hand, an FBA is administered for progress monitoring (and does not result in an evaluation), the parent would not be entitled to an IEE.

Q21: If a parent disagrees with a portion of the child's evaluation and requests an IEE, can the school choose to remediate that portion of the evaluation to the parent's satisfaction instead of an IEE?

A21: No. Letter to Carroll, 68 IDELR 279 (OSEP, October 2016) states, "Specifically, you ask whether once a district's evaluation is complete and the parent communicates a desire for a child to be assessed in a particular area in which they have not previously expressed concern, would the district have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE...The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE. Therefore, it would be inconsistent with the provisions of 34 CFR § 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate."

Additionally, Letter to Baus, 65 IDELR 81 (OSEP, February 2015) states, "When an evaluation is conducted in accordance with 34 CFR §§ 300.304 through 300.311 and a parent disagrees 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 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 34 CFR § 300.507 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 34 CFR § 300.507 that the evaluation obtained by the parent did not meet agency criteria."