

OSEP Speaks Again: Ensure Your Evaluations Address All Areas of Potential Concern

Education Law Notes

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On October 22, 2016, the US Department of Education's Office of Special Education Programs ("OSEP"), via its latest informal guidance/opinion letter ("Letter to Carroll"), once again addressed whether, once a school district's evaluation is complete and the parents communicate a desire for a child to be assessed in an area in which they have not previously expressed concern, the district has a right to conduct its own evaluation in that area before the parent has a right to request an Independent Educational Evaluation ("IEE").

BACKGROUND ON IEEs

Generally speaking, a parent who disagrees with a district's evaluation may request an IEE. Once a parent has requested an IEE, the district has only two options:

1. Initiate a due process hearing to show that its evaluation is appropriate; or
2. Ensure that an IEE is provided at district expense, unless the district demonstrates at a due process hearing that the evaluation obtained by the parent did not meet the district's criteria.

The parent, however, is only entitled to one IEE each time that the district conducts an evaluation.

OSEP'S GUIDANCE IN "LETTER TO CARROLL"

OSEP once again reiterated its belief that the parent has a right to request an IEE in any area, even one that was not previously evaluated and/or over which the parent had not previously expressed a concern. OSEP noted its belief that it is the district's responsibility to ensure that the original "evaluation is 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."

TAKEAWAY?

In light of OSEP's repeated stance, it is best for a school district to ensure that each evaluation or reevaluation it is conducting is comprehensive and addresses each area of potential concern regarding the student. A school district cannot rely on a parent raising a specific concern or requesting a specific evaluation

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before deciding to conduct that evaluation. Otherwise, the district runs the risk of the parent having a right to an IEE without the district ever having a chance to evaluate the student in the area of concern

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