



## SPECIAL EDUCATION LAW

# Independent Educational Evaluations

### *Procedural Safeguards*

The sections of this document that refer to Procedural Safeguards contain the language from the 2018 revised document entitled, “*IDEA Part B Parents' Rights in Special Education (Age 3-21) Procedural Safeguards Notice.*” The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and the federal regulations. A copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request.

### *Independent Educational Evaluations*

#### **GENERAL**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district’s criteria that apply to independent educational evaluations.

#### **DEFINITIONS**

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

*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 you, consistent with the provisions of Part B of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of Part B of the Act.

#### **PARENT RIGHT TO EVALUATION AT PUBLIC EXPENSE**

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

- If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or

(b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.

- If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
- If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

### **PARENT-INITIATED EVALUATIONS**

If you obtain an independent educational evaluation of your child at public expense or you share with the school district an evaluation of your child that you obtained at private expense:

- Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; and
- You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

### **REQUESTS FOR EVALUATIONS BY HEARING OFFICERS**

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

### **SCHOOL DISTRICT CRITERIA**

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, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

## **Nebraska Rule 51**

The sections of this document that refer to Nebraska Rule 51 contain the language from the 2017 revised document entitled, "*Nebraska Department of Education Rule 51: Regulations and Standards for Special Education Programs. Title 92, Nebraska Administrative Code, Chapter 51.*"

**003.30** *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.

**006.07** Independent Educational Evaluation

- 006.07A** A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.
- 006.07B** Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.
- 006.07C** A parent is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.
- 006.07C1** Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
- 006.07D** If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:
- 006.07D1** Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or
- 006.07D2** Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.
- 006.07E** If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- 006.07F** If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- 006.07G** If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:
- 006.07G1** Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and
- 006.07G2** May be presented by any party as evidence at a hearing under 92 NAC 55 regarding that child.
- 006.07H** If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- 006.07I** 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, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- 006.07** Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

For more information about an independent education evaluation, contact your child's special education teacher, a PTI Nebraska parent/professional at (800) 284-8520 and [pti-nebraska.org](http://pti-nebraska.org), or the Nebraska Department of Education at (402) 471-2471 and [education.ne.gov/sped/](http://education.ne.gov/sped/).

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. See <https://sites.ed.gov/idea/> for more information on IDEA.

Rule 51 is the document that outlines regulations and standards for special education programs in Nebraska. Rule 51 can be found on the Nebraska Department of Education's website: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51\\_2017.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51_2017.pdf).

Rule 55 is the document that outlines rules of practice and procedure for due process hearing in special education contest cases. Rule 55 can be found on the Nebraska Department of Education's website: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55\\_2012.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf)