



State of New Jersey

DEPARTMENT OF EDUCATION

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Acting Commissioner

May 14, 2012

**TO:** Chief School Administrator  
Director of Special Education  
Administrator of a State Facility  
Administrator of a Charter School  
Administrator of an Approved Private School for the Disabled  
Administrator of a College-Operated Program  
Statewide Special Education Advisory Council  
Agencies or Organizations Concerned with Special Education

**FROM:** Peggy McDonald, Director   
Office of Special Education

**SUBJECT:** Guidance with Respect to Federal Regulations Implementing the Individuals with Disabilities Education Act of 2004 - Independent Evaluations

I am writing to inform you of federal guidance that pertains to the state regulations regarding Independent Educational Evaluations (IEE). The guidance was received by the Office of Special Education (OSE) on March 28, 2012 from the United States Department of Education, Office of Special Education Programs (USDE OSEP). The purpose of this memorandum is to inform school districts, parents and interested persons of the implications this guidance has on the implementation of N.J.A.C. 6A:14-2.5(c).

In the memorandum to the state, the USDE OSEP indicated that the current regulations contained in N.J.A.C. 6A:14-2.5(c)1 violate the IEE provisions in 34 CFR §300.502. Specifically, N.J.A.C. 6A:14-2.5(c)1 limits the parents' rights to an IEE by giving the public agency an opportunity to conduct an assessment in an area not covered by the initial evaluation or reevaluation before the parents are granted the IEE. As a result, the state has been asked to provide an assurance to USDE OSEP that the regulation will be revised to eliminate this provision, and in the interim period, to assure that all districts comply with the requirements in 34 CFR §300.502.

Therefore, please be aware that districts may no longer limit the parents' rights to an IEE by first conducting an assessment in an area not already assessed by the initial evaluation or reevaluation before the parents' request is granted. Rather, when a parental request for an independent evaluation is received, a district must provide the evaluation at no cost to the parent, unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing. N.J.A.C. 6A:14-2.5(c)2.

If you have questions regarding the implementation of these provisions, please contact Kathy Ehling at 609-292-7602.

PM/JW/KE

c: Members, State Board of Education  
Acting Commissioner Christopher Cerf  
Andrew Smarick  
Barbara Gantwerk  
Senior Staff  
Diane Shoener  
John Worthington  
Kathy Ehling  
Executive County Superintendent  
County Supervisor of Child Study  
NJ LEE Group  
Garden State Coalition of Schools