

Kansas Administrative Regulations

State Department of Education

Article 40.—Special Education

91-40-12. Right to independent educational evaluation.

(a) (1) Subject to the conditions specified in this regulation, a parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.

(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.

(b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g) that apply to independent educational evaluations; and

(B) take either of the following actions:

(i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or

(ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.

(c) If the agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent shall still have the right to an independent educational evaluation, but the agency shall not be required to pay the cost of that evaluation.

(d) If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(e) If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.

(f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid by the agency.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evaluation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.

(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to obtain an independent educational evaluation.

(Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986 and 72-988; effective May 19, 2000; amended March 21, 2008.)

***** Authenticated Kansas Administrative Regulation *****