

**CONNECTICUT STATE BOARD OF EDUCATION
Hartford**

TO: State Board of Education
FROM: Ellen Cohn, Deputy Commissioner
DATE: September 6, 2017
SUBJECT: Executive Summary of the Independent Educational Evaluations Task Force

Executive Summary

History/Background

The events leading to the preparation of this report began when the Connecticut State Board of Education (the Board) received a “*Request for Amendment of Regulation*” (the Petition). The Petitioners included Connecticut residents who are parents of children with disabilities and attorneys and advocates who seek to protect the rights of parents and secure appropriate educational services for children with disabilities.

The Petition sought to have the Board amend Section 10-76d-9 of the Connecticut Regulations concerning a parent’s right to an independent educational evaluation (IEE). The Petition also sought to establish guidelines for the observation of students in schools by parents and consultants.

IEE Process

Currently, federal law, specifically the Individuals with Disabilities Education Improvement Act (IDEA), sets forth requirements with respect to special education. IDEA establishes procedural safeguards that are designed to allow parents of children with disabilities to be meaningfully involved in the planning of their children’s special education services, including a parent’s right to obtain an IEE at public expense, if the parent disagrees with an evaluation obtained by a school district. An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the public education of the child. An IEE at 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 the parent. Upon receipt of a request for an IEE, the school district must determine whether to pay for the IEE or request a due process hearing to show that its evaluation is appropriate. The parent’s right to an IEE at public expense is subject to various conditions outlined in the federal regulation. Connecticut’s regulation incorporates a parent’s right to an IEE under IDEA.

IEE Task Force

On February 1, 2017, the Board established the Connecticut State Board of Education Task Force on the Implementation of Independent Educational Evaluations, Observation and Related Matters (Task Force). The Task Force was established to review the issues raised by the Petition. The Task Force was composed of stakeholders representing various constituencies affected by the subject matter of the Petition and other appropriate parties as determined by the Commissioner of Education. The Task Force was charged with providing a report containing its findings and recommendations regarding IEEs, Observations and Related Matters to the Board within 180 calendar days.

Task Force Recommendations

1. **IEE:** By September 29, 2017, the Connecticut State Department of Education (CSDE) will convene an IEE Work Group (Work Group) to develop a comprehensive document that will provide specific and detailed guidance concerning the provision of IEEs within the requirements of IDEA. The Work Group will provide a final guidance document to the CSDE by April 1, 2018, for consideration by the Board at its May 2018 meeting to allow such guidance to be in effect for the 2018-19 school year.
2. **Observations:** In accordance with the timelines set forth in number 1 above, the Work Group will also develop a specific, detailed and comprehensive document that will provide guidance related to In-School Observations for special education students.
3. **Survey:** The Task Force recommends that the CSDE survey school districts regarding their current observation and IEE practices and procedures.
4. **Work Group:** The Task Force recommends that the Work Group be composed of individuals in the following categories and that represent ethnic/economic/language/urban/rural diversity:
 - Special Education Hearing Officer
 - Principal or Vice Principal
 - Special Education/Pupil Personnel Director
 - ConnCASE representative
 - CAGE representative
 - Parent Advocate
 - Parent
 - School District Attorney
 - Parent Attorney
 - Legal Services Attorney
 - CSDE representative
5. **Public and Stakeholder Input and Comment:** The Task Force recommends that the Work Group seek input from stakeholders and post draft guidelines on the CSDE website for public and stakeholder input and comment for not less than 30 calendar days.

CSDE Recommendations

The CSDE is tremendously grateful for the efforts of the Task Force and respect the recommendations generated by the team. Upon reflection and in collaboration with CSDE leadership, the CSDE would like to propose the following recommendations for the State Board of Education's consideration:

1. Convene the Work Group under the direction of the Bureau Chief of Special Education, in the development of guidance documents concerning the provision of IEEs within the requirements of IDEA and In-School Observations of special education students;
2. Ensure the Work Group is advisory in nature and comprised of various stakeholders including members from the initial Task Force that represent ethnic/economic/language/urban/rural diversity;
3. Consistent with established CSDE stakeholder engagement processes, the Advisory Work Group will provide input prior to the department's drafting of the guidance documents, and provide feedback after the department has completed the draft.
4. Expand the Advisory Work Group to include professionals from school districts and the private sector with recent, extensive experience in conducting student evaluations;
5. For efficiency purposes, divide the Advisory Work Group into two teams, one team providing input into IEE guidance, and one team providing input into In-School Student Observation guidance; and
6. That the IEE and In-School Observations final guidance documents, prepared by the CSDE, consider the issues raised by the Task Force, and be presented for consideration by the State Board of Education no later than their January 2018 meeting.

Next Steps

- As the newly appointed Chief of the Bureau of Special Education, Bryan Klimkiewicz will assume the lead role in the organization, management, and activities of the IEE/In-School Student Observation Advisory Work Group.
- The CSDE will identify and appoint members of the Advisory Work Group teams, including members from the original Task Force.
- The Advisory Work Group will convene on or before September 29, 2017.

Prepared by: Bryan Klimkiewicz, Bureau Chief
Bureau of Special Education

Approved by: Ellen Cohn, Deputy Commissioner
State Department of Education

Report of the Task Force on the Implementation of Independent Educational Evaluations, Observation and Related Matters

Background

The events leading to the preparation of this Report began when the Connecticut State Board of Education (the Board) received a “*Request for Amendment of Regulation*” (the Petition) filed by Attorney Andrew A. Feinstein on behalf of 71 Petitioners. The Petition was filed pursuant to Regulations of Connecticut State Agencies (Connecticut Regulations) Section 10-4-24 that provides for any interested person to petition the Board “to promulgate, amend or repeal any regulation.” The Petitioners included Connecticut residents who are parents of children with disabilities and attorneys and advocates who seek to protect the rights of parents and secure appropriate educational services for children with disabilities.

The Petition sought to have the Board amend Section 10-76d-9 of the Connecticut Regulations concerning a parent’s right to an independent educational evaluation (IEE). Specifically, the Petition sought to establish requirements concerning IEEs requested by parents from boards of education in connection with the development of individualized education programs. The Petition also sought to establish guidelines for the observation of students in schools by parents and consultants.

IEE Process

Currently, federal law, specifically the Individuals with Disabilities Education Improvement Act (IDEA), sets forth requirements with respect to special education. IDEA establishes procedural safeguards that are designed to allow parents of children with disabilities to be meaningfully involved in the planning of their children’s special education services, including a parent’s right to obtain an IEE at public expense, if the parent disagrees with an evaluation obtained by a school district. An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the public education of the child. An IEE at 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 the parent. Upon receipt of a request for an IEE, the school district must determine whether to pay for the IEE or request a due process hearing to show that its evaluation is appropriate. The parent’s right to an IEE at public expense is subject to various conditions outlined in the federal regulation. Connecticut’s regulation incorporates a parent’s right to an IEE under IDEA (*see appendix*).

IEE Task Force

Petitioners have raised numerous issues regarding the provision of IEEs, as well as with school district restrictions related to in-school observations of children by their parents and consultants and evaluators engaged by parents. Accordingly, on February 1, 2017, the Board established the Connecticut State Board of Education Task Force on the Implementation of Independent Educational Evaluations, Observation and Related Matters (Task Force). The Task Force was established to review the issues raised by the Petition (*see appendix*). The Task Force was

composed of stakeholders representing various constituencies affected by the subject matter of the Petition and other appropriate parties as determined by the Commissioner of Education. The Task Force was charged with providing a report containing its findings and recommendations regarding IEEs, Observations and Related Matters to the Board within 180 calendar days.

The Task Force

The Task Force was composed of the following individuals:

Janet Robinson (CAPPS/Superintendent)
Kathie Gabrielson (ConnCASE/Director of Special Education)
Andrea Leonardi (Director of Special Education)
Ann Gruenberg (CABE/President)
Patrice McCarthy (CABE)
Timothy Connellan (CAPPS/Superintendent)
Christine Carver (CAPPS/Superintendent)
Peter Maher (Special Education Attorney)
Andrew Feinstein (Special Education Attorney)
Ann Smith (AFCAMP, OSEP Community Parent Resource Center)
Sean Cronin (Parent Advocacy/OCA)
John Flanders (CPAC OSEP PTI)
Siobhan Peng (Parent/SAC)
Wendy Simmons (SERC)
Kathleen Jones (Parent)
Jonathan Metcalf (Parent)
Margarita Vargas-Torres (Parent)
Isabelina Rodriguez (CSDE Bureau of Special Education)
Gail Mangs (CSDE Bureau of Special Education)
Donald Briere (CSDE Bureau of Special Education)
Louis Todisco (CSDE Office of Legal Affairs)
Esther Bobowick (Facilitator/CES)

The Task Force met on the following dates: March 22, 2017; April 7, 2017; April 17, 2017; May 5, 2017; May 23, 2017; June 16, 2017; and June 29, 2017. The public was invited to attend the Task Force meetings. On April 7 and April 17, 2017, public comments were permitted in person or via telephone (a call-in number was publicized); written public comments were also accepted.

Task Force Recommendations

After consideration and review of the public comments and discussion of the issues by the Task Force members, and recognizing the need to ensure the right of all children with disabilities to the protections provided by IDEA, the Task Force makes the following recommendations:

- 1. IEEs:** By September 29, 2017, the Connecticut State Department of Education (CSDE) should convene an IEE Work Group (Work Group) to develop a comprehensive document that will provide specific and detailed guidance concerning the provision of IEEs within the requirements of IDEA. The Work Group will provide a final guidance document to the CSDE by April 1, 2018, for consideration by the Board at its May 2018 meeting to allow such guidance to be in effect for the 2018-19 school year. Input from members of the Task

Force and public comment indicate that there are inconsistent practices and policies across the state regarding issues related to IEEs. Therefore, it is recommended that the document include guidance in the following areas/IEE criteria:

- communication of IEE-related information and guidance in formats and languages that are readily accessible and understandable by parents; this information is to be developed and distributed by the CSDE in collaboration with parent advocacy groups;
- a clear, well-communicated process for requesting an IEE;
- the length of time a district has in order to decide if it will pay for an IEE or request a due process hearing;
- minimum professional qualifications of evaluators for each type of evaluation requested;
- acceptable limitations on the geographical location of evaluators;
- cost of an IEE;
- district liability insurance requirements as applied to evaluators, if any (must be consistent with a parent's right to an IEE);
- collaboration between the evaluator and school staff regarding the student (e.g., review of educational records and interviews with school staff), to ensure that evaluators have a comprehensive understanding of the student;
- observation of the student by the evaluator to ensure the evaluator observes the student in all appropriate educational settings;
- expected components in the IEE final report (consistent with the type of evaluation);
- process for responding to requested changes to the report by parents or district;
- timely completion of evaluators' reports and deadlines for the provision of reports to parents and districts; and
- provision for the waiver of elements of the guidance document, as needed, and with the agreement of parents and school district.

Task Force members determined through voting that the following are the three most important areas of IEE guidance to be focused upon by the Work Group (in order of importance):

- collaboration between the evaluator and school staff regarding the student (e.g., review of educational records and interviews with school staff), to ensure that evaluators have a comprehensive understanding of the student;
- timely completion of evaluators' reports and deadlines for the provision of reports to parents and districts; and
- communication of IEE-related information and guidance in formats and languages that are readily accessible and understandable by parents; this information is to be developed and distributed by the CSDE in collaboration with parent advocacy groups.

2. Observations: In accordance with the timelines set forth in number 1 above, the Work Group will also develop a specific, detailed and comprehensive document that will provide guidance related to in-school observations for special education students. Input by members of the Task Force and public comment indicates that there are inconsistent practices and policies across the state regarding all in-school observations. [Note: the recommendations do not address issues related to in-school volunteers, as this was not part of the Board's charge to the Task Force.] It is recommended that the document include guidance in the following areas:

- communication of observation-related information and guidance in formats and languages that are readily accessible and understandable by parents; this information is to be developed and distributed by the CSDE in collaboration with parent advocacy groups;
- the need for all districts to have regulations and policy that apply to all students (both general and special education) on a non-discriminatory basis, that permit observations subject to certain limitations and restrictions and encourage parent engagement; the Work Group should also consider including technology-based options that support access to observation as well as providing alternatives to observations;
- the paramount need for school safety and security; the Work Group must establish ways that observations can be conducted consistent with this requirement and take into consideration the impact of court orders, restraining orders, the sex offender list, home issues and other concerns about child safety;
- the requirement for confidentiality by observers; the development of a model confidentiality agreement to be signed by observers; the means to enforce confidentiality; the Work Group must consider all forms of current or new social media including but not limited to audio and video recording;
- the conduct of observers: need for guidance related to behavior expectations for the observer/visitor to protect the educational environment from possible disruption; the Work Group must set forth clear expectations as well as specifically listing unacceptable behaviors;
- the possibility of district-level dispute resolution processes related to observations; and
- the possible need for a waiver of elements of the guidance document to provide flexibility in individual situations related to observations.

Task Force members determined through voting that the following are the three most important areas of observation guidance to be focused upon by the Work Group (in order of importance):

- the need for all districts to have regulations and policies that apply to all students (both general and special education) on a non-discriminatory basis, that permit observations subject to certain limitations and restrictions and encourage parent engagement; the Work Group should also consider including technology-based options that support access to observation as well as providing alternatives to observations;
- the paramount need for school safety and security; the Work Group must establish ways that observations can be conducted consistent with this requirement and take into consideration the impact of court orders, restraining orders, the sex offender list, home issues and other concerns about child safety; and
- communication of observation-related information and guidance in formats and languages that are readily accessible and understandable by parents; this information is to be developed and distributed by the CSDE in collaboration with parent advocacy groups.

In addition, the Task Force urges the Work Group to consider all available data regarding observations, any distinction(s) between observations made as part of an evaluation process as compared to observations made for other reasons, and to develop guidance that emphasizes the need for collaboration between families and schools.

- 3. Survey:** The Task Force recommends that the CSDE survey school districts regarding their current observation and IEE practices and procedures to obtain accurate information and answer the following questions:

With regard to the last two school years:

- Does the school district have written and/or published observation policies?
- Does the school district have a dispute resolution process related to observations?
- How many IEE requests were received?
- Of these, how many IEEs were provided?
- What procedures are in place to provide for a collaborative process between families and schools?

4. Work Group: The Task Force recommends that the Work Group be composed of individuals in the following categories and that represent ethnic/economic/language/urban/rural diversity:

- Special Education Hearing Officer
- Principal or Vice Principal
- Special Education/Pupil Personnel Director
- ConnCASE representative
- CAGE representative
- Parent Advocate
- Parent
- School District Attorney
- Parent Attorney
- Legal Services Attorney
- CSDE representative

5. Public and Stakeholder Input and Comment: The Task Force recommends that the Work Group seek input from stakeholders and post draft guidelines on the CSDE website for public and stakeholder input and comment for not less than 30 calendar days. It is noted that Task Force members expressed significant interest in continuing to be involved in the Work Group.

Appendix

State Board of Education Charge to the Independent Educational Evaluation Task Force:

(a) Establish a Task Force to be known as the *Connecticut State Board of Education Task Force on the Implementation of Independent Educational Evaluations, Observation and Related Matters*, which shall be composed of stakeholders representing the various constituencies affected by the subject matter of the petition and other appropriate parties, as determined by the Commissioner;

(b) Through such Task Force, to undertake a review of the issues raised by the Petition to include, without limitation, public meetings, at which interested parties would be able to express their views on the issues raised in the Petition and in public comment at the State Board of Education meeting of this date concerning independent educational evaluations, observations, and related matters, and formulation of appropriate actions to be taken, if necessary, to address any issue identified in the Task Force's review;

(c) Provide a report back to the State Board of Education concerning the findings and recommendations of the Task Force, within 180 days, provided that nothing in this resolution shall be construed to preclude the Department from conducting its customary regulatory and guidance activities; and

(d) Before the end of this school year, issue a guidance memorandum from the Commissioner of Education to all Connecticut superintendents and boards of education summarizing existing obligations of school districts in respect to IEEs under the Individuals with Disabilities Education Act and providing notice of the establishment of the Task Force and its charge.
February 1, 2017

IDEA Regulation Regarding Independent Educational Evaluations:

Section 300.502 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) 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.

(3) For the purposes of this subpart—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Section 300.103.

(b) *Parent right to evaluation at public expense.* (1) 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, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to Sections 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public 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 filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* (1) 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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

Connecticut Regulation Regarding Independent Educational Evaluations:

Section 10-76d-9. Evaluation; Independent Educational Evaluation; Determining the existence of a learning disability; Evaluation and identification for gifted and talented (a) Evaluation; Independent Educational Evaluations. The board of education shall conduct an initial evaluation or reevaluation, in accordance with the provisions of IDEA, to determine if a child is a child with a disability. A parent shall be permitted to obtain an independent educational evaluation, in accordance with the provisions of IDEA.