Guidelines Regarding Independent Educational Evaluations at Public Expense and In-School Observations

Connecticut State Department of Education

Background

In November 2016, the State Board of Education received a petition to amend the state special education regulations regarding independent educational evaluations (IEEs) at public expense and to establish regulations for the observation of students in schools by parents and evaluators. A Task Force was established to review the issues raised within the petition. In September 2017, the Bureau of Special Education (BSE) presented a report to the State Board of Education regarding the findings and recommendations of the Task Force. This resulted in the BSE assembling an Advisory Work Group to assist the BSE in developing guidelines about IEEs at public expense and in-school observations for school districts, educators, parents, and other interested parties.

Home-School Partnership

The Connecticut State Department of Education (CSDE) values and supports collaboration and partnerships between families and schools. The CSDE commends families, schools, and districts for establishing and maintaining productive relationships, which utilize effective methods of communication and shared decision making. Strong, trusting relationships between families, schools, and districts serve as a foundation for positive and productive educational experiences for all students. Relationships may become stressed when families, schools, or districts hold opposing views about a student's education. The following guidelines can serve as a resource for proactively avoiding or resolving disputes regarding IEEs at public expense and in-school observations.

GUIDELINES FOR IEEs AT PUBLIC EXPENSE

Overview of Legal Requirements

The Individuals with Disabilities Education Improvement Act (IDEA) establishes procedural safeguards, one of which is the right of a parent to request an independent educational evaluation[1] (IEE) at public expense[2] if a parent disagrees with an evaluation obtained by a school district. A parent's right to an IEE at public expense is subject to various conditions outlined in the implementing regulations to the IDEA. The Regulations of Connecticut State Agencies (RCSA) incorporates the federal law about IEEs at public expense.[3]

If a parent requests payment for an IEE, a school district must, without unnecessary delay, either:

1. Request a due process hearing to show that its evaluation is appropriate; or
2. Ensure that an IEE is provided at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent did not meet the school district's IEE criteria.[4]

Evaluations and Reevaluations

A. When conducting an evaluation, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, about the student that may assist in determining whether the child is a child with a disability and the content of the student's individualized education program

[1] An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the public education of the student. 34 CFR § 300.502(a)(3)(i).
[2] 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. 34 CFR § 300.502(a)(3)(ii).
[3] RCSA 10-76d-9(a).
[4] 34 CFR § 300.502(b)(2).

(IEP), including information related to enabling the child to be involved in and progress in the general education curriculum.[5]

B. A school district may not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and/or for determining the content of the student's IEP.[6]

C. A school district must ensure that in evaluating each student with a disability, the evaluation is sufficiently comprehensive to assess the student in all areas related to the suspected disability, and must identify all of the student's special needs, whether or not commonly linked to the disability category in which the student has been classified.[7]

D. As a best practice, the school district and the parent should work collaboratively when determining the assessments that will be included in an evaluation. This will help ensure that the evaluation is sufficiently comprehensive to identify all of the student's special needs. Evaluations driven by clearly identified questions are more likely to provide meaningful information and relevant recommendations.

What Triggers a Parent's Right to an IEE at Public Expense?

A. A parent has the right to an IEE at public expense when the parent disagrees with an evaluation obtained by the school district. A parent is entitled to only one IEE at public expense each time the school district conducts an evaluation with which the parent disagrees. The Office of Special Education Programs (OSEP) has provided guidance that a school district may deny public funding of an IEE, and need not request a due process hearing, if the IEE is requested over two years after the school district completed its evaluation.[8] This aligns with the two-year period under the IDEA and state law with which to file a due process complaint.[9]

B. A parent does not have the right to an IEE at public expense if the school district declines to evaluate a student to determine eligibility for special education (i.e., declines to conduct an initial evaluation).[10] In this case, the school district did not complete an evaluation and therefore the parent would not be entitled to an IEE at public expense. If a parent disagrees with the school district's decision to not conduct an initial evaluation, the parent may use the dispute resolution options (i.e., administrative complaint, mediation, due process hearing) afforded by the IDEA in order to pursue an evaluation by the school district.

C. A parent has the right to ask for an IEE at public expense in an area that was not previously assessed by the school district's evaluation. OSEP has provided guidance that when a parent disagrees with an evaluation obtained by the school district because the student was not assessed in a particular area, the parent has the right to request an IEE to assess the student in that area to determine whether the student has a disability and the nature and extent of the special education and related services that the student needs.[11] When a parent requests an IEE because the student was not assessed in a particular area, a school district may not conduct its own evaluation in the given area prior to granting the parent's request for an IEE.[12]

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[5] 34 CFR § 300.304(b)(1).
[6] 34 CFR § 300.304(b)(2).
[7] 34 CFR § 300.304(c)(7).
[8] *Letter to Thorne* 16 IDELR 606 (OSEP 1990).
[9] 34 CFR § 300.507(a)(2); RCSA § 10-76h-4.
[10] *Letter to Zirkel* 52 IDELR 77 (OSEP 2008).
[11] *Letter to Baus* 65 IDELR 81 (OSEP 2015).
[12] *Letter to Carroll* 68 IDELR 279 (OSEP 2016).

D. A parent may disagree with an evaluation obtained by the school district and decide to obtain an independent educational evaluation at his or her own expense and then request that the school district reimburse him or her for the cost of the evaluation. In this case, the request for reimbursement would be a request for an IEE for public expense and the school district would be required to file a request for a due process hearing or ensure the IEE is provided at public expense.

The IEE Request

A. A parent may request an IEE at public expense at a planning and placement team (PPT) meeting or outside of a PPT meeting. If the request is made during a PPT meeting, the school district does not have to provide an answer to the parent's request at that time. Although the PPT may review the request during the meeting, the school district may inform the parent of its decision regarding the IEE at public expense subsequent to the PPT meeting, provided that the decision is made without unnecessary delay. The IDEA and its implementing regulations do not require that a request for an IEE be considered by a PPT. Therefore, if a parent requests an IEE at public expense outside of a PPT meeting the school district cannot require the parent to discuss his/her request for an IEE at public expense at a PPT meeting before deciding whether to provide the IEE at public expense or file a request for a due process hearing. With that said, nothing would prevent the school district and the parent agreeing to discuss the request at a subsequent PPT meeting, as long as doing so does not unnecessarily delay the school district's decision to either provide the IEE at public expense or file a request for a due process hearing.

B. Parents are not required to communicate a reason why they disagree with the school district's evaluation. A school district may ask for the parent's reason, but a school district may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a request for a due process hearing to show that its evaluation is appropriate.[13]

C. When a parent requests an IEE at public expense, a school district must provide the parent with the following:
    1. Information about where an IEE may be obtained; and
    2. The school district's IEE criteria.[14]

    A school district may provide a list of independent evaluators that meet its IEE criteria to satisfy the first requirement. A parent may choose an evaluator from the school district's list or a parent may choose an evaluator not on the list who meets the school district's criteria.

School District Response to a Parent's IEE Request

A. If a parent requests an IEE at public expense, a school district shall, without unnecessary delay, either:
    1. File a request for a due process hearing to show its evaluation is appropriate; or
    2. Ensure the IEE is provided at public expense, unless the school district demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the school district's IEE criteria.[15]

[13] 34 CFR § 300.502(b)(4).
[14] 34 CFR § 300.502(a)(2).
[15] 34 CFR § 300.502(b)(2).

B. As best practice, school districts should always respond in writing to a parent's request for an IEE at public expense. The school district should state that it will either provide an IEE at public expense or file a request for due process hearing to show that its evaluation is appropriate.

C. If the request for an IEE at public expense is made during a PPT meeting but the school district's decision is not determined at that meeting, the school district should subsequently, and without unnecessary delay, provide a written response to the parent with its decision.

D. Although unnecessary delay is not defined by the IDEA, some delay may be necessary to allow the school district to thoughtfully consider its options. As best practice, a school district should provide a written response to a parent's request to an IEE at public expense practice as the school district's written response **within 10 school days from when the request is made during the academic school year and 14 calendar days from when the request is made in between school years.** This timeline assumes that the parent and school district have not agreed to a voluntary resolution period (see below).

Voluntary Resolution Process

The BSE recommends, prior to the IDEA required response, that a parent and a school district engage in a voluntary resolution process.

A. After a parent requests an IEE at public expense, the parent and school district may agree to engage in a voluntary resolution process with the intent of resolving the issues or concerns related to the parent's request for an IEE at public expense.

B. The length of such resolution period may vary based upon the agreement between the parties, but the BSE considers a reasonable time period would not exceed 20 school days from the initial IEE request during the school year or 30 calendar days when the request is made in between school years. Provided that both parties voluntarily agree to engage in this process, this period of time would be viewed as a necessary delay. The parties may also agree to engage in mediation during this time, which would also be viewed as a necessary delay.

C. If the parties do not resolve the issue after the informal resolution period or mediation, then the school district would be required to, without unnecessary delay, either file a request for a due process hearing or ensure that the IEE is provided at public expense.

D. Even if a school district files a request for a due process hearing in response to an IEE request, parents and school districts should continue to discuss the matter and attempt to resolve the disagreement. If the parent and school district come to an agreement, the school district can withdraw its request for a due process hearing.

Choosing the Independent Evaluator to Conduct the IEE

The parent chooses the independent evaluator. If a school district provides the parent with a list of independent evaluators that meet its IEE criteria, the parent may choose an evaluator from the school district's list or the parent may choose an evaluator not on the list that meets the school district's criteria.

IEE Criteria

In General

A. A school district has the right to set standards which the independent evaluator must meet in order for the school district to publicly fund an IEE. These criteria may include, for example, the

location of the evaluation, the qualifications of the evaluator, and maximum allowable costs. The IEE criteria must be the same criteria that a school district would use when it initiates its own evaluation, to the extent those criteria are consistent with a parent's right to an IEE.[16] Criteria may be inconsistent with a parent's right to an IEE if the criteria are too restrictive and thus effectively prevents a parent from obtaining an IEE. Except for the IEE criteria, a school district is prohibited from imposing other conditions or timelines related to obtaining an IEE at public expense.[17]

B. Examples of IEE criteria that OSEP found to be inconsistent with a parent's right to an IEE:
    1. Criteria prohibiting evaluators from being affiliated with private schools and advocacy organizations (including those advocating particular instructional approaches);
    2. Criteria prohibiting evaluators who have a history of testifying for parents;
    3. Criteria requiring evaluators to have recent and extensive experience in public schools; and
    4. Criteria prohibiting evaluators from including age and grade level scores in evaluation reports.[18]

C. The IEE criteria must include a statement acknowledging that a parent has the opportunity to demonstrate unique circumstances to justify the use of an independent evaluator that does not meet the IEE criteria. Since students must be assessed in all areas related to suspected disability, there may be situations in which some students may need evaluations conducted by an evaluator who does not meet agency criteria.

D. If the evaluator chosen by a parent does not meet the school district's IEE criteria and the school district believes there is no justification for choosing an evaluator that does not meet its criteria, the school district is still required to, without unnecessary delay, either demonstrate in a due process hearing that the evaluator does not meet its IEE criteria or ensure that the IEE is provided at public expense.

Qualifications of the Evaluator

A. As a best practice, school districts should organize this section of the criteria either by the type of evaluation, area of evaluation, or the professional title of the evaluator.

B. A school district may establish qualifications that require an IEE evaluator to hold or be eligible to hold a particular certification or license when a school district requires the same licensure or certification for its own staff conducting the same types of evaluations. This means that if a school district requires evaluators to hold specific educator certifications in its IEE criteria, then all district personnel and all independent evaluators hired by the school district must hold those same credentials as well. When requiring current certification from the CSDE as part of its IEE criteria, school districts must ensure that this criteria is not inconsistent with a parent's right to an IEE. OSEP has provided guidance stating that there may be instances where the most appropriate individual to conduct an evaluation, given the specific aspect of a disability, might not have a certification from the State Department of Education or they may not be licensed by any state agency, because such licensure does not exist or is not required by state law at that time.[19] For example, a PPT may determine that a student requires an evaluation performed by a clinical psychologist who would not meet the qualifications the CSDE requires for a person to be certified

[16] 34 CFR § 300.502(e)(1).
[17] 34 CFR § 300.502(e)(2).
[18] *Letter to Petska* 36 IDELR 191 (OSEP 1991); *Letter to LoDolce* 50 IDELR 106 (OSEP 2007).
[19] *Letter to Anonymous* 56 IDELR 175 (OSEP 2010).

in school psychology. The clinical psychologist, however, would hold a license from the State Department of Public Health. In this case, the criteria requiring all psychologists to be certified in school psychology from the CSDE would be inconsistent with a parent's right to an IEE.

Geographical Location

A. A school district may include criteria about geographical location in its IEE criteria. The school district, however, must allow parents an opportunity to demonstrate unique circumstances to justify obtaining an IEE outside of the geographical location set by the criteria.

B. When including criteria about geographical location, the BSE recommends limiting the location using a mileage radius instead of a specific county or region of the state. Given that Connecticut is a small state, this will help ensure that the criteria are not too restrictive.

C. As a best practice, school districts should not arbitrarily limit the geographical location to Connecticut. If your school district is close to the border of another state, it is reasonable to include that state in your criteria using a mileage radius formula.

Cost

A. School districts should not be expected to bear the cost of unreasonably priced IEEs.[20] It is appropriate for a school district to establish reasonable cost containment criteria applicable to personnel used by the school district, as well as evaluators used by the parent.[21] A school district, however, would need to provide a parent with the opportunity to demonstrate that unique circumstances justify the selection of an independent evaluator whose fees fall outside a school district's cost containment criteria. Also, the criteria must be consistent with a parent's right to an IEE and therefore must not be so restrictive as to effectively prevent a parent from obtaining an IEE. Guidance from OSEP provides that if a school district does establish maximum allowable costs, the maximum cannot be an average of fees customarily charged in the area by professionals who are qualified to conduct a specific test. Instead, the cost criteria must allow parents to choose from among qualified professionals in the area and only eliminate unreasonable, excessive fees.

B. It is the BSE's position that cost criteria language such as, "evaluators must charge fees for evaluation services which are reasonable and customary for such evaluations" is too vague and does not provide adequate information or notice to parents. Parents may not read or interpret this criterion the same as a school district and will not know whether an evaluation they have obtained or are seeking to obtain meets the school district's criterion for cost. Therefore, if a school district uses the above quoted language, it must also include language that informs the parents that they may request specific cost information from the school district. The school district should be prepared to provide the parents with cost information regarding specific types of evaluations.

Liability Insurance

It is the BSE's position that liability insurance requirements are not evaluation "criteria" and therefore should not be included in a school district's IEE criteria. The BSE, however, understands that a school district may be required to abide by other state and/or local rules and regulations regarding contracting with individuals that have contact with students and might include these requirements in contracts that it

[20] 71 Fed. Reg. 46,540, 46,689 (August 14, 2006).
[21] 71 Fed. Reg. 46,540, 46,689 (August 14, 2006).

uses when contracting with independent evaluators. In some cases these contractual requirements could restrict a parent's right to an IEE at public expense if such requirements effectively preclude the ability of parents to obtain an IEE from an otherwise qualified evaluator.

Therefore, a school district should consider the following alternatives:

1. Request that a parent pay for the IEE and then reimburse the parent. This would allow the school district to avoid contracting directly with the independent evaluator and thus avoid any rules or regulations that apply to contracting with independent contractors;
2. Provide the parent with a list of independent evaluators who comply with state and/or local rules regarding such contracts;
3. Request that the evaluation be conducted at the evaluator's office instead of on school grounds. This would allow the school district to avoid any rules or regulations that apply to independent contractors being on school grounds; or
4. Work with its local town offices to resolve the contracting issue, such as obtaining a waiver, if available.

Timelines

It is the BSE's position that IEE criteria requiring that the IEE report be provided within a certain timeframe is inconsistent with a parent's right to an IEE.

Posting of the IEE Criteria

A. The IEE criteria should be readily available for distribution in all special education administrative offices, as well as in all rooms where PPT meetings are held.

B. The IEE criteria should be posted on the school district Web site for easy online access.

C. The IEE criteria should be available in a parent's native language.

In-School Observations[22]

A. For most evaluations, it is important for the independent evaluator to understand the student within the context of his or her classroom, and the student's general presentation in school. Some observations conducted by independent evaluators may require more time than others depending upon the purpose and the complexity of the student's programming.

B. When determining the scope of the observation, all parties should be clear about the specific questions that the independent evaluation is attempting to address.

C. The school district should not arbitrarily limit in-school observations to only one type of setting (e.g., academic classroom). In some cases, it may be reasonable for an independent evaluator to observe a student in a variety of settings (e.g., classroom, lunchroom, recess, etc.), given his or her IEP goals and objectives. These parameters should be addressed and resolved in discussions with the parents and the independent evaluator.

[22] This section applies only to in-school observations conducted by an independent evaluator as part of an IEE at public expense.

D. School districts that have policies and procedures placing restrictions on in-school observations, should be aware that OSEP has provided guidance stating that any policy limiting the length of observations conducted by independent evaluators would also have to apply to district personnel and independent evaluators hired by the school district in order for it to be consistent with the IDEA.[23]

After the IEE is Completed

A. Once the IEE report is completed, the parent and the school district should receive a copy of the report at the same time. A PPT must be scheduled to review and consider the IEE report. The PPT is not required to implement the recommendations in the IEE report.[24]

B. As a best practice, all members of the PPT should have an opportunity to review relevant information prior to the meeting. Therefore, the BSE recommends that, if requested by either party, school districts and parents make a good faith effort to provide the PPT with all evaluations, including IEEs at public expense, prior to the PPT meeting held to discuss such evaluations.

C. The school district may condition its payment to the evaluator or its reimbursement to the parent upon receipt of the IEE report.

D. The independent evaluator is not required to present the IEE at public expense at a PPT meeting. An independent evaluator may be invited to a PPT, although it is not required, as long as the school district is able to include a participant who can interpret the instructional implications of the evaluation results.

General Recommendations

A. Build and maintain productive relationships with parents by utilizing effective methods of communication and shared decision making, in order to proactively avoid or quickly resolve disputes before, during, and after the IEE process.

B. Take proactive steps to help parents understand the IEE process, including their rights, and document the steps taken.

C. Special education administrators should carefully review the requirements of 34 CFR § 300.502.

D. Special education administrators should engage in a regular review of their school district IEE criteria, policies, and procedures related to IEEs, and regularly update their lists of independent evaluators. This review should ensure that the information in these documents is current and compliant with federal and state regulations.

E. Special education administrators should take action to ensure that PPT chairs, principals, case managers, teachers, related services personnel, and support staff understand the IEE process to maintain uniformity in responding to parent requests for an IEE at public expense and parent questions related to the IEE process.

[23] *Letter to Savit* 64 IDELR 250 (OSEP 2014).
[24] 34 CFR § 300.502(c)(1).

GUIDELINES FOR IN-SCHOOL OBSERVATIONS

Overview of Legal Requirements

The IDEA and its implementing regulations do not provide a general entitlement for parents, or third parties, including attorneys or educational advocates, to observe students in their current classrooms or observe proposed educational placements in a public school district.[25]

Nevertheless, the BSE encourages school districts to adopt policies and procedures that allow parents to observe their children in school and proposed placement options. The IDEA recognizes that parents have an important role to play in the identification, evaluation, and educational placement of their children and in the development, review, and revisions of the IEPs for their children. School district policies and procedures for in-school observations should be developed with this principle in mind.

Policies and Procedures

Schools and districts should consider the following when developing its policies and procedures regarding in-school observations by parents:

A. Develop a process to receive and respond to requests in a timely manner.
    1. The process should outline to whom the request is made (school or central office), the method of response (verbal, written, etc.), and the person responsible for responding (teacher or other educator, principal or designee, special education supervisor or director, etc.).
    2. The request should be reviewed with the parent(s) to determine purpose, specific questions being addressed, location(s), and length of observation, date, and time.

B. School districts, after reviewing the request with the parent, should determine a reasonable amount of time for an in-school observation. Some observations may require more time than others depending upon the purpose and the complexity of the student's programming. These issues should be addressed and resolved in discussions with the parents.

C. The school district should not arbitrarily limit in-school observations to only one type of setting (e.g. academic classroom). In some cases, it may be appropriate for a parent to observe the student in a variety of settings (e.g., classroom, lunchroom, recess, etc.), given his or her IEP goals and objectives. Conversely, it may not be appropriate for a parent to observe the student in certain settings, such as during individual or group counseling sessions.

D. The BSE understands that a school district must balance its obligation to operate and maintain a safe school environment that fosters learning, with the importance of meaningful parental participation in the special education process. Therefore, it is reasonable for school districts to place appropriate conditions on observations, such as the examples provided below. These decisions should be made carefully and on an individual basis.

    1. Schools are responsible for maintaining a safe school environment for students, staff, and visitors. A school building administrator may determine it is necessary to restrict an observation due to safety concerns. If the school decides it is necessary to restrict an observation, this decision should be clearly communicated to the parents with a detailed explanation regarding the reasoning behind the decision. The school staff should work with parents to develop possible solutions to address any issues of concern. For

[25] *Letter to Mamas* 42 IDELR 10 (OSEP 2004).

example, school staff could work with the parents to develop other options whereby the parents could obtain the information they are seeking outside of an observation context.

2. School districts are responsible for protecting the privacy of student education records and protecting the confidentiality of personally identifiable information collected, maintained, or used pursuant to the IDEA. A school building administrator may determine it is necessary to condition or restrict an observation to protect disclosure by the parents of confidential or personally identifiable information about other students they may obtain while observing a classroom or program.

   School staff, however, can limit parents' exposure to other student's education records by removing such records (e.g., IEPs, assessments, classwork, and services logs) from plain view. Even though parents are generally aware and understanding of issues related to student confidentiality and privacy, it would be reasonable to ask parents to sign a statement that they will not disclose personally identifiable or confidential information about other students who are not the subject of the observation. On the other hand, it would not be reasonable for school staff to deny an observation because other students would be present during the observation, or to require a parent to obtain permission from the parents of other students in the classroom or program prior to conducting the observation.

   The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. However, it would be inappropriate for school staff to simply cite FERPA as the sole reason for denying an otherwise reasonable observation request.

3. School districts are responsible for maintaining a learning environment with limited distractions and disruptions. The BSE recognizes that any visitor can change the dynamics within a school or classroom whether it be another teacher, the principal, or a parent. A school administrator may determine that it is necessary to condition or restrict an observation based upon a variety of factors including but not limited to: classroom schedules; assessment schedules; and teacher/staff/administrator availability. Instead of restricting all in-school observations requests, school administrators should work with the classroom teacher(s) and the parents on how to avoid or minimize disruptions to instructional time and the students' routines. Additionally, school administrators should make parents aware of any additional policies that might apply to the observation as well, such as visitor policies and/or protocols.

General Recommendations

A. Adopt policies and procedures that allow parents to observe their children in school and proposed placement options.

B. In-school observation policies and procedures should be standardized across all schools within a school district to ensure consistency in practice.

C. Any policies and procedures adopted by a school district must be applied in the same way for students with disabilities, as well as students without disabilities.

D. When observations requests are declined or restricted, school administrators should provide a detailed explanation to the parents explaining the reason for the decision and work to develop alternative ways for the parents to obtain the information they are seeking.

References

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