



# STATE OF CONNECTICUT

## STATE BOARD OF EDUCATION



**TO:** Superintendents of Schools and Boards of Education

**FROM:** Dr. Dianna R. Wentzell *Dianna R. Wentzell*  
Commissioner of Education

**DATE:** May 3, 2017

**SUBJECT:** Independent Educational Evaluations

At its February 1, 2017, meeting, the Connecticut State Board of Education (CSBE) considered a petition seeking amendments to Section 10-76d-9 of the regulations, in regard to independent educational evaluations (IEEs) and observation rights of parents and evaluators.

The CSBE directed the Connecticut State Department of Education to establish a Task Force to review the issues raised by the Petition and the public comments with respect to IEEs, observations, and related matters. The Task Force review is to include public meetings at which interested parties would be able to express their views on these issues. The Commissioner of Education established the Task Force, which met monthly through the spring of 2017. The Commissioner of Education will provide a report back to the CSBE concerning the Task Force's findings and recommendations.

The CSBE also approved the following as part of a resolution of the *Request for Amendment of Regulation Section 10-76d-9* (Petition):

**Resolved:** “(d) Before the end of this school year, issue a guidance memorandum from the Commissioner to all Connecticut Superintendents and Boards of Education summarizing existing obligations of school districts in respect to Independent Educational Evaluations under the Individuals with Disabilities Education Improvement Act (IDEA) and providing notice of the establishment of the IEE Task Force and its charge.”

The attached guidance document summarizes the existing obligations of all school districts in respect to IEEs under IDEA. Please distribute this guidance to appropriate personnel to ensure compliance. Please also distribute this guidance to your Board of Education, in accordance with the resolution.

The United States Department of Education (USED) has provided guidance letters on this topic. Links to these documents are found within the guidance and are attached here for your convenience.

If you have any further questions, please do not hesitate to contact education consultants, Ms. Gail Mangs or Ms. Mary Jean Schierberl of the Bureau of Special Education, Due Process Unit at 860-713-6928, or reach them via e-mail at [gail.mangs@ct.gov](mailto:gail.mangs@ct.gov) or [maryjean.schierberl@ct.gov](mailto:maryjean.schierberl@ct.gov).

DRW:ir  
Attachments

## **Guidance Regarding Independent Educational Evaluations (IEEs)**

Posted on May 3, 2017

As per the request of the Connecticut State Board of Education, the following guidance is being issued by the Connecticut State Department of Education, Bureau of Special Education, as guidance on a school district's obligations in regard to requests by parents/guardians (hereinafter "parents") for publicly funded independent educational evaluations (IEEs). This guidance also includes links to recent clarification letters (see below) from the Office of Special Education Programs (OSEP) regarding IEEs previously provided to districts.

As set forth in the Individuals with Disabilities Education Improvement Act and 34 CFR § 300.502, and subject to certain conditions, parents have the right to an IEE at public expense if the parents disagree with an evaluation obtained by the school district. This applies equally to initial evaluations and reevaluations. A district *may* ask the parent for the reason why he or she objects to the district's evaluation, however the district *may not require* the parent to provide an explanation. 34 CFR § 300.502 (b)(4).

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

1. Ensure that an IEE is provided at public expense; or
2. Request a due process hearing to show that its evaluation is appropriate, or that the evaluation obtained by the parent did not meet agency criteria. Agency criteria include the location of the evaluation and the qualifications of the examiner, and must be the same as the criteria that the school district uses when it initiates an evaluation.

34 CFR § 300.502. Under the applicable federal regulation, the district must promptly choose one of these options.

Please note the following:

- A. OSEP guidance indicates that if the parent requests an IEE that includes a specific type of evaluation that was not performed by the school district as part of its initial evaluation or reevaluation, the district no longer has the option of conducting that specific type of evaluation before the parent is granted the IEE. As stated above, the school district must either pay for the IEE or initiate a due process hearing to show that its evaluation is appropriate;
- B. A parent's right to an IEE may also be triggered when a school district has refused to perform an evaluation as part of either an initial referral or a reevaluation. In this situation, the school district must respond to the parent's request for an IEE in one of the two ways set forth above;
- C. In circumstances where the school district has determined through the planning and placement team (PPT) process that an initial evaluation is not needed because a disability is not suspected by the PPT, the parent has the right to obtain an IEE and the district has the same two options stated above. The school district must either pay for the IEE or initiate a due process hearing to show that it is not necessary;

- D. If a parent requests an IEE in an area the school district deems unrelated or tangential to any possible, suspected disability, the school district response is still limited to one of the two responses above;
- E. If a parent provides the school district with the report of a completed IEE and requests payment or reimbursement for the cost of that IEE, the school district may only reply with one of the two responses set forth above. This means if a parent obtains an IEE without informing the school district, the parent may still seek payment or reimbursement from the school district for the cost of the IEE; and
- F. There is no requirement that a request for an IEE be considered by a PPT. If the parent and school district agree to discuss the request at a PPT meeting, such meeting is permissible so long as convening the PPT meeting does not unnecessarily delay the district's decision to pay or request a hearing. There is no requirement that school districts obtain parental consent for an IEE and districts should not seek such consent.

Questions may be directed to the Due Process Unit by calling 860-713-6928.

For further information the following are available:

[Carroll OSEP iee.policy 10.2016](#)  
[BAUS-iee-02.2015-OSEP](#)

Federal Regulations related to IEE:

34 CFR § 300.502

(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 § 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 §§ 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))



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 22, 2016

Ms. Jennifer Carroll  
Law Clerk  
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.  
Crestview Towers  
105 Decker Court, #600  
Irving, Texas 75062

Dear Ms. Carroll:

This is in response to your March 11, 2016 correspondence to the Office of Special Education Programs (OSEP) requesting further clarification regarding the scope of an independent educational evaluation (IEE) under 34 CFR §300.502 of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether once a district's evaluation is complete and the parent communicates a desire for a child to be assessed in a particular area in which they have not previously expressed concern, would the district have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE.

The evaluation procedures at 34 CFR §300.304(b)(1) require that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum. Furthermore, the public agency must ensure that in evaluating each child with a disability under 34 CFR §§300.304 through 300.311, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §300.304(c)(4) and (6).

Under 34 CFR §300.502, parents of a child with a disability have a right to seek an IEE at public expense, if the parents disagree with the evaluation conducted by the public agency. This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability. Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either:

- (i) initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate; or
- (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

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The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE. Therefore, it would be inconsistent with the provisions of 34 CFR §300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate. Under 34 CFR §300.502(b)(5), a parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The Court of Appeals' decisions cited in your letter do not refute this interpretation. In the cases you cite where the court affirmed the right of a school to conduct its own scheduled reevaluation (which must occur at least once every three years, unless the parents and the public agency agree that a reevaluation is unnecessary) and denied the parent's request for an IEE, it was because the parent had not presented the child for *any* of the scheduled reevaluations and therefore the school was not allowed to conduct those reevaluations. In your hypothetical, however, the school conducted an evaluation pursuant to 34 CFR §300.502, but did not fully identify all areas needed to be evaluated. In that case, the parent has a right to ask for an IEE at public expense if the parent disagrees with the evaluation.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

/s/

Ruth E. Ryder

Acting Director

Office of Special Education Programs



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

February 23, 2015

Debbie Baus

Dear Ms. Baus:

This is in response to your June 27, 2014 electronic correspondence requesting guidance from the Office of Special Education Programs (OSEP) regarding an independent educational evaluation (IEE) under 34 CFR §300.502 of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether a parent can request an IEE in an area that was not previously assessed by the school district's evaluation.

Under 34 CFR §300.502(b)(1) of the IDEA, a parent of a child with a disability is entitled to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency. Evaluation is defined at 34 CFR §300.15 as procedures used in accordance with 34 CFR §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. An initial evaluation of the child is the first completed assessment of a child to determine if he or she has a disability under IDEA, and the nature and extent of special education and related services provided. 34 CFR §300.301. Once a child has been fully evaluated for the first time in a State, a decision has been rendered that a child is eligible under the IDEA, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. See the *Analysis of Comments and Changes* published as Attachment 1 to the March 12, 1999 final regulations at 64 Fed. Reg. at 12606. Evaluation procedures at 34 CFR §300.304(b)(1) require that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum. Furthermore, the State must ensure that in evaluating each child with a disability under 34 CFR §§300.304 through 300.306, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §300.304(c)(4) and (6).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

When an evaluation is conducted in accordance with 34 CFR §§300.304 through 300.311 and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs. Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either: (i) initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 CFR §300.507 that the evaluation obtained by the parent did not meet agency criteria.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Jennifer Wolfsheimer at 202-245-6090 or by email at [Jennifer.Wolfsheimer@ed.gov](mailto:Jennifer.Wolfsheimer@ed.gov).

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs