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## SDE Issues New Guidelines for IEEs and In-School Observations

On March 27, 2018, the Connecticut State Department of Education (SDE) issued the long-awaited and much-anticipated *Guidelines Regarding Independent Educational Evaluations at Public Expense and In-School Observations*. [<http://shipmangoodwin.com/files/IEE%20Memo%20and%20Guidance.pdf>] These *Guidelines* are the result of months of study, review and participation by a Task Force and then an Advisory Work Group, including consultants within the SDE, parent advocates, school district personnel, educators, advisors and others. The *Guidelines* clarify the existing obligations of school districts with respect to independent educational evaluations (IEEs) pursuant to the Individuals with Disabilities Education Act (IDEA).

The *Guidelines* replace the SDE's guidance memorandum titled *Guidance Regarding Independent Educational Evaluations* issued on June 9, 2015 and the memorandum titled *Guidance Regarding Independent Educational Evaluations* dated May 3, 2017. The *Guidelines* are the SDE's interpretation of the applicable legal requirements for IEEs, including guidance letters from the U.S. Department of Education's Office for Special Education Program (OSEP), and are not a replacement of the IDEA and its implementing regulations. Importantly, the new *Guidelines* seek to track the federal regulatory requirements and administrative guidance for IEEs.

Under IDEA regulations, a parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. The new *Guidelines* clarify the IDEA requirement that, 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. 34 C.F.R. Section 300.502(b) (2). Some highlights of the new guidance are:

- A new option for a voluntary informal resolution period for up to twenty school days (or thirty calendar days during the summer) to discuss the IEE request with a parent without having to file for due process. This period can also be utilized to proceed to mediation, without being deemed "an unreasonable delay." This option can effectively reduce



needless litigation by providing the opportunity to discuss and negotiate prior to filing for a hearing;

- A best practice timeline in which to respond to an IEE request, which will be deemed reasonable: 10 school days or 14 calendar days during the summer;
- Clarification that a parent has a right to request an IEE at public expense when the parent disagrees with an evaluation obtained by the school district. Therefore, a parent is not entitled to an IEE at public expense when districts decline to evaluate because there would be no evaluation with which the parent could disagree. As this has been an ongoing area of confusion, this clarification is helpful;
- Clarification that districts should be provided with the IEE at the same time as parents. This enables both parties to be prepared for its review and next steps; and
- Clarification of which types of criteria a district may, and may not, include in its IEE criteria, including information about requirements concerning qualifications of the evaluation and location and cost of the evaluation.

In addition to these highlights, the *Guidelines* also clarify and specify how, when and where the evaluation request may be made by parents and responded to by a school district, and the procedure for review of the evaluation once completed.

Importantly, in addition to guidance on IEE issues, the new SDE *Guidelines* also provide guidance on in-school observations by independent evaluators as part of IEEs and by parents generally. Regarding observations by independent evaluators, the *Guidelines* explain that limitations on the length of observations by independent evaluators would also have to apply to district evaluators. Regarding observations by parents, the SDE encourages school districts to adopt policies and procedures governing parent observations of their children in school and recommends that such policies and procedures be consistent at all schools within a district. The *Guidelines* provide a number of factors for districts to consider when developing or revising such policies and procedures, as well as factors to consider in responding to a parent's request to observe.

In light of these new *Guidelines*, districts should review and update their IEE Criteria as well as their policies and procedures related to In-School Observations to ensure compliance with both federal and state law, as well as this new guidance.

### Questions or Assistance:

For questions about the new SDE IEE *Guidelines*, please contact Alyce L. Alfano at [aalfano@goodwin.com](mailto:aalfano@goodwin.com) or 860-251-5663 or Peter J. Maher at [pmaher@goodwin.com](mailto:pmaher@goodwin.com) or 860-251-5507.

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