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Authors:



Julie C. Fay
(860) 251-5009
jfay@goodwin.com



Peter J. Maher
(860) 251-5507
pmaher@goodwin.com

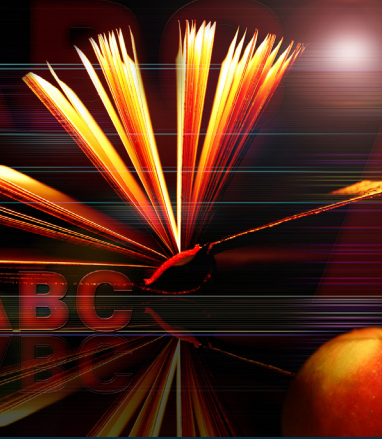
State Department of Education Weighs in on Parents' Right to Independent Educational Evaluations

The Connecticut State Department of Education ("SDE") recently issued a guidance memorandum [<https://bureaubulletin.files.wordpress.com/2015/06/independent-educational-evaluation-guidance-memorandum.pdf>] providing its interpretation of when a parent is entitled to a publicly funded independent educational evaluation ("IEE") under the Individuals with Disabilities Education Act ("IDEA") regulations. This SDE guidance comes in the wake of, and includes as a reference, the February 2015 *Letter to Baus* [<http://www2.ed.gov/policy/speced/guid/idea/memosdcitrs/acc-14-012562r-baus-iee.pdf>], issued by the U.S. Department of Education's Office for Special Education Programs ("OSEP"). *Letter to Baus* clarified OSEP's position that if a parent disagrees with a school district's evaluation, parents may request a publicly funded IEE even in an area not previously assessed by the school district. *Letter to Baus* was previously discussed in more detail by our colleague, Gwen Zittoun. [<http://www.ctschoollaw.com/2015/05/osep-provides-guidance-on-parents-right-to-an-independent-educational-evaluation/#more-4958>].

At the outset, SDE reminds districts that under the IDEA regulation governing IEEs, school districts have only two choices when a parent requests a publicly funded IEE: (1) ensure that an IEE is provided at public expense, or (2) file for a due process hearing to demonstrate either that the district's evaluation was appropriate or that the IEE obtained by the parent does not meet district evaluation criteria.

The SDE then provides its interpretation and guidance with respect to several IEE-related scenarios. Specifically, the guidance provides that:

1. As stated in *Letter to Baus*, when a parent disagrees with an evaluation conducted by the district, parents may request an IEE that includes an evaluation in an area that was not part of the district's initial evaluation or reevaluation;
2. A parent has a right to an IEE when a district declines to conduct an evaluation as part of an initial referral or a reevaluation (or if the district has only performed a screening);
3. A parent has a right to an IEE when the planning and placement team ("PPT") determines that an initial evaluation is not necessary because there is no suspicion that a student has



- a disability;
4. A parent has a right to an IEE in an area that the district believes to be “unrelated or tangential to any possible, suspected disability;”
 5. A parent may present a district with a completed report from an IEE and request payment or reimbursement from the district without first informing the district that the parent planned to obtain an IEE;
 6. A parent’s request for an IEE need not be considered by a PPT (i.e., the district, not the PPT, makes the decision whether to pay for the IEE or file for a due process hearing); if the parent and district agree to discuss the IEE request at PPT meeting, the meeting may not unnecessarily delay the district’s decision whether to fund the IEE or file for due process;
 7. Parental consent is not required for an IEE and districts should not seek to obtain such consent for IEEs.

SDE’s guidance reiterates that, in the various scenarios above, in which a parent has a right to a publicly funded IEE and makes such a request, a district is limited to the same two options: agree to pay for the IEE, or file for due process.

Some of SDE’s interpretations outlined above represent a departure from current practices in Connecticut , as the federal IEE regulation specifies that: “[a] parent has the right to an [IEE] at public expense if the parent disagrees with an evaluation obtained by the public agency” 34 C.F.R. § 300.502(b)(1). Several of SDE’s scenarios above contemplate a parent’s right to a publicly funded IEE even when a district has not performed any evaluation with which the parent could disagree. Shipman & Goodwin is reviewing this new guidance to see how SDE’s interpretations align or conflict with existing case law and guidance from OSEP.

If you have any questions about IEEs or the guidance from SDE or OSEP, please contact Julie C. Fay at jfay@goodwin.com or 860-251-5009 or Peter J. Maher at pmaher@goodwin.com or 860-251-5507.

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One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com