



April 11, 2018

Mr. Allan B. Taylor  
Chairman, State Board of Education  
Connecticut State Department of Education  
450 Columbus Boulevard  
Hartford, CT 06103-1841

Dear Mr. Chairman:

On November 30, 2016, some 80 individuals petitioned the State Board of Education to amend the regulations of the State Department of Education relating to Independent Educational Evaluations and school observations. The petition was aimed at ensuring that parents had the right to participate meaningfully in their child's school program. The petition noted that Connecticut school districts were restricting the right of parents to so participate.

SEEK of CT is a new organization of parents, their attorneys and advocates and service providers, serving as an information clearinghouse, a peer-to-peer network, and an advocate before the Connecticut State Legislature, the Connecticut State Government, the federal Congress and agencies, and the courts on behalf of the rights of students with disabilities, their families, and those who serve and advocate for them.

At its meeting of February 1, 2017, the Board passed a resolution establishing a Task Force to review the issues raised in the petition. Such a Task Force was duly established, but its work was undermined by the Department of Education through a facilitator who precluded the discussion of any controversial issues. Despite the willingness of members on all sides to try and reach a generally acceptable position, the Task Force disbanded, without a final report, to be replaced by a Work Group, made up of many of the same participants. Under the terms imposed by the State Department of Education, the Work Group was merely advisory to the Bureau of Special Education staff, which produced, on March 28, 2018, and published on the State Department of Education website, a document entitled "Guidelines Regarding Independent Educational Evaluations at Public Expense and In-School Observations."

Mr. Allan B. Taylor  
April 11, 2018  
Page Two

This document purports to recite the existing law on IEEs and observations, a task completed with mixed accuracy. Yet, this document largely fails to address the serious issues raised by the petition. Specifically, we draw the attention of the Board to the following:

1. Parents need evaluations to be able to ascertain the effectiveness and challenge school programs when they are not appropriate. As Justice O'Connor said in *Schaffer v. Weast*, 546 U.S. 49, 60-61 (2005),

[Parents] also have the right to an “independent educational evaluation of the[ir] child.” [Citing [School Comm. of Burlington v. Department of Ed. of Mass.](#), 471 U.S. 359, 368 (1985)] The regulations clarify this entitlement by providing that 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.” [34 CFR § 300.502\(b\)\(1\) \(2005\)](#). IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.

The reason that IEEs are at public expense is so that parents of limited means can secure an evaluation to ensure that their children receive the free appropriate public education promised by the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et. seq. The March 28 Guidelines do nothing to facilitate families of limited means in securing the evaluations they need. Indeed, the prolix, legalistic nature of the Guidelines may well deter many parents from pursuing their IEE rights. As such, the Guidelines not only fail to achieve the goals of the petition, they represent a step in the opposite direction.

2. In enacting the Individuals with Disabilities Education Act, "Congress sought to protect individual children by providing for parental involvement in ... the formulation of the child's individual educational program." *Board of Educ. of Hedrick Hudson School Dist. v. Rowley*, 458 U.S. 176, 209 (1982). To be able to participate in a meaningful way, parents need to be able to fully understand their child's program and understand any program that the school district might propose. That requires, in many cases, that parents or their child's providers be able to observe the student in school and observe other programs suggested by the school. The March 28 Guidelines initially encourage "school districts to adopt policies and procedures that allow parents to observe their children in school and proposed placement options." Then, unfortunately, the Guidelines are so fraught with exceptions that, taken as a whole, the Guidelines discourage, rather than encourage such observations.

Mr. Allan B. Taylor  
April 11, 2018  
Page Three

3. The petition sought to make IEEs more available. Yet, the Guidelines, drafted in response to school board pressure, actually make IEEs less available. The previous document, issued on June 9, 2015, specifically interpreted *Letter to Baus*, 65 IDELR 81 (OSEP 2015) to permit IEEs in the case where the school district refused to conduct an initial evaluation. Such an interpretation was logical in that *Letter to Baus* made it clear that IEEs were available where the school district failed to evaluate in all areas of suspected disability. The new Guidelines reverse this position, making IEEs even less available than they were previously. In fact, school districts are already relying on the new Guidelines to deny IEEs in areas not evaluated by the school district. Again, the impact of denying a comprehensive evaluation falls disproportionately on those who can least afford to advocate effectively for their children.

4. To get around the problem of school districts requiring independent evaluators to carry a particular level of insurance coverage, a requirement that the Bureau itself has ruled violates IDEA numerous times in response to state complaints, the Guidelines suggest that parents be forced to pay for their IEEs and then seek reimbursement from the district. In this instance again, the Guidelines make IEEs less available to all parents and completely unavailable to parents of limited means.

There are numerous other problems with the Guidelines, but these points highlight how far the Bureau of Special Education has strayed from the Board's intention in mandating the Task Force. We ask that the Board put this item on the agenda for a future meeting and permit parents, advocates and their attorneys to testify as to the failure of the State Department of Education to respond to the Board's direction and to seek further Board action to ensure that parents have the tools they need to ensure appropriate educational services for their children.

Sincerely yours,

Julie Swanson  
President