

TESTIMONY OF ANDREW A. FEINSTEIN ON  
STATE OF CONNECTICUT  
PROPOSED SPECIAL EDUCATION REGULATIONS  
August 30, 2010

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Attorney DeFrancis, I am pleased to be here to testify concerning the proposed special education regulations issued by the State Department of Education in August. The stated purpose of these regulations is stated as, "To adopt the standards of the Individuals with Disabilities Education Act and clarify state-specific provisions for the provision of special education to children with disabilities and the identification and evaluation of gifted and talented children." Three years ago, when the State Department of Education was considering predecessor regulations, I, on behalf of nearly 100 parents of children with disabilities, attorneys, advocates, and providers, filed detailed comments. To date, I have not solicited signatories, but I have no doubt that a similar or larger cadre of concerned citizens can be marshaled to ask for changes in these regulations. Indeed, the extent of concern about these regulations will be far greater because these draft regulations do far more damage to special education law in Connecticut than did the 2007 proposals.

These proposed regulations go far, far beyond the stated purpose of conformity with federal regulations. The proposed regulations make massive, ill conceived, and discriminatory changes in eligibility based on a specific learning disability. The regulations lessen State regulation of local boards of education. The regulations significantly expand the time frames under which local boards need to evaluate, identify, and program for children with disabilities. These proposed regulations comprise a radical document. What is the need for such extreme change?

The purported overall thrust of the proposed regulations is to eliminate aspects of special education law and procedure which are unique to Connecticut and, instead, to conform precisely to the minimal federal standards. Reducing Connecticut protections to the federally-mandated minimum is not required. Indeed, the federal courts have made it plain that states can provide a higher level of protection for students with disabilities than is mandated by federal law and regulation. *Blackmon ex rel. Blackmon v. Springfield R-XII School Dist.*, 98 F.3d 648, 658-59 (8<sup>th</sup> Cir. 1999); *Johnson v. Ind. Sch. Dist. No. 4*, 921 F.2d 1022, 1029, *cert. denied*, 500 U. S. 905 (1991); *Burke County Bd. Of Ed. v. Denton*, 895 F.2d 973, 982-83 (4<sup>th</sup> Cir. 1990); *Board of Ed. of East Windsor Reg. Sch. Dist. V. Diamond*, 808 F. 2d 987, 992 (3<sup>rd</sup> Cir. 1986) *David D. v. Dartmouth Sch. Dist.*, 775 F.2d 411, 418 (1<sup>st</sup> Cir. 1985), *cert. denied*, 475 U.S. 1140 (1986). Connecticut can do better. Connecticut can serve as a model for how to educate children with disabilities effectively. The regulations proposed by CSBE are a move in the wrong direction. Historically, Connecticut led the way, enacting comprehensive special education law before the federal government acted. The proposed regulations execute a u-turn; instead of being in the forefront, Connecticut has decided to be back in the pack. We can do better for the children of the State. Connecticut, through these regulations, has joined the race for the bottom.

My testimony will follow the proposed regulations in the order they appear. I do not comment on some sections. On others, I have a few technical comments. But, for many others, I have substantial objections. To preview, the most objectionable elements of these proposed

regulations are:

1. The insertion of new eligibility standards for learning disabilities that effectively preclude children from the weakest schools from ever getting special education services and the type of intensive education they need.
2. The failure to address the concerted effort by school districts to block parents from exercising their right to an independent educational evaluation.
3. The substantial extension of deadlines for referral, evaluation, identification and programming that can leave a child with a severe disability without services for half a school year.

### **The Proposed Regulations**

The scope of the proposed regulations is so large that the State Board of Education should proceed with caution and only after fully considering the views of all stakeholders. Unfortunately, the most important stakeholders – children with disabilities – are frequently unable to express directly their needs in this system. Parents, advocates, attorneys for those children, and service providers speak on their behalf. The special education system exists for the benefit of children with disabilities. Drafting regulations is not a matter of balancing the interests of school boards against the interests of parents. Instead, the needs of children with disabilities must be paramount.

In the case of these proposed regulations, the State Department of Education has an obligation to clearly and widely publicize what these regulations do. They have been released with the least amount of publicity the UAPA permits and the stated purpose does not describe what the proposed regulations do. One might suggest that the SDE is attempting to disguise enormous changes in the law. You must not permit that to happen.

### **Section 1 – RCSA § 10-76a-1 (General Definitions)**

Section 1 changes the definitions governing the law. Astonishingly, the very first change is to eliminate the clear definition of “at no cost”. To be sure, the first word of FAPE, free appropriate public education, is free. Just using the term free does not, however, convey the broad expanse of the current regulatory requirement that special education services must be provided at no charge to the parents. And, as we see in RCSA § 10-76d-17, the term “at no cost” to parents remains in the regulations.

The age requirement in the definition of “a child requiring special education” is concerning. The new language limits eligibility to children three, four or five, or children who have attained the age that the town is required to provide services. The language should be amended to read that the law covers both children aged three, four or five, as well as any other children otherwise entitled to services from a town.

The change from school days to calendar days is a step in the right direction because it eliminates the oft used excuse of school boards that they cannot deal with a parent’s request over summer or over vacation. Time limits should be drafted to compel districts to act swiftly to

protect the interests of children. They should never be used to deny parents the right to challenge a district's program.

The change in the definition of the term "evaluation" makes sense. It should be noted that both the existing regulatory definition and the IDEA language mandate that evaluators make specific educational recommendations. Efforts by school districts to limit evaluators from making specific recommendations are improper.

The term "independent evaluation" is inconsistent with federal law. The federal law requires a "qualified examiner", not someone certified or licensed under standards that often have nothing to do with the expertise needed to conduct a meaningful evaluation. This language is an inappropriate limitation of the right of parents to an independent evaluation.

The change in the definition of least restrictive environment is regrettable. The prior regulation contained a definition of inclusion that is different from the federal standard in 20 U.S.C. 1412(a)(5). As a mandate for a higher level of inclusion than required by federal law, the Connecticut regulation, as it now exists, put the State in the lead and ought not to be abandoned for the sake of national uniformity.

It probably makes sense to avoid confusion for Connecticut to retain the name of a planning and placement team, rather than switching the nomenclature to the federal IEP team. The last sentence, referring to the PPT for gifted or talented students, needs to be amended to include parents.

#### **Section 5 – RCSA § 10-76b-4 (Compliance)**

Local school districts need to be made explicitly accountable for compliance with the requirements of the federal regulations, as well as the IDEA, Connecticut law and Connecticut regulations. This is critical to enforcement because the federal requirements on independent educational evaluations, and other matters, are contained in the regulations, not in the statute.

#### **Sections 6-9 – RCSA § 10-76b-8 (Use of seclusion in public schools, requirements)**

These sections on seclusion use the term "person at risk" which is defined in CGS §46a-150 to include, inter alia, "a child requiring special education described in subparagraph (A) of subdivision (5) of section 10-76a, who is receiving special education by a local or regional board of education, or a child being evaluated for eligibility for special education pursuant to section 10-76d and awaiting a determination." This definition is inappropriately narrow. The regulation should be written to apply the section to all students.

Further, the regulation should make clear that seclusion is an appropriate behavioral intervention only if the PPT adopted the technique on the basis of qualified expert opinion and if the PPT explicitly considered and ruled out any alternative interventions. Additionally, any IEP that includes seclusion should be presented to the parent or guardian for knowing, written consent. The parent's consent should be required anew every semester.

The locking mechanism language is outrageous and criminal. Under the language, a child could be locked in a room for two minutes while a fire blazed around him or her. The

entire debate about locking mechanism is unnecessary. The regulation should provide that no locking mechanism may be used and that any child in seclusion shall be in the sight and hearing of a professional staff member at all times.

The regulation needs to make clear that any private placement, funded in whole or in part, directly or indirectly, with district funds needs to comply with the seclusion requirements.

### **Section 10 – RCSA § 10-76d-1 (Special Education and Related Services)**

The language that “the PPT shall determine whether a child who turns three during the summer requires extended school year services” only makes sense if the State Department of Education issues clear guidelines on ESY. The topic brief issued by SDE is not particularly relevant for children just entering into the system.

In this section, the proposed regulations sweep away Connecticut standards for an education at no cost, in conformity with the IEP, least restrictive environment, inclusion in graduation and extra-curricular activities, and bilingual education inserting instead a cross reference to the IDEA and Connecticut law and regulations. Instead, IDEA and state statutory and regulatory standards are incorporated by reference. If that is the route selected, the federal regulations need to be referenced as well. Still, it is sad to see Connecticut forfeiting its leadership role on special education and being content to do the minimum required by federal law. Instead of engaging in a Race to the Top, Connecticut seems to be careening to the bottom.

The move away from SDE-approval of related service and evaluation contracts by local school boards is good, but the deregulation seems to be taken to an extreme. As Section 10-76d-1(c) is rewritten, there are virtually no limitations on school districts. School boards often retain evaluators and service providers who do not assert independent judgment and will blindly obey the district’s direction. The State ought to require that contract personnel be qualified to perform the task, exercise independent, professional judgment, abide by the Code of Ethics of their profession and be available for exchange of information with the parents. Even if no written contact is required, the local board of education should be obliged to disclose the nature of its relationship with each contractor under the Freedom on Information Act.

Further, the proposed regulations would amend the language of RCSA 10-76d-1(b) purportedly to limit services to gifted children only to referral, identification, and evaluation. The way the language is drafted raises ambiguity concerning the obligation of a school district to provide special education and related services to a child who is both gifted and has a disability. Clearly, if a child qualifies as eligible for special education, that child is entitled to the full panoply of services without regard to whether the child also qualifies as gifted and talented. The regulatory language needs to be amended to remove the ambiguity. This is important because some school districts persist in subscribing to the mythology that a student who achieves minimally passing grades is not in need of special education services, without regard to the student’s cognitive ability. The regulations should make clear that the standards for eligibility are far more exacting than merely passing from grade to grade.

### **Section 11 – RCSA § 10-76d-2 (Personnel)**

It appears that subsections (a) through (f) of 10-76d-2 are being deleted (although it is not entirely clear because of the brackets in subsection (f)). I have no objection to the State reducing its micromanagement of local school board's administrative staff. Local school boards do need to be reminded, however, that insufficient supervision, which becomes possible after this regulatory change, will most likely result in more errors in designation and programming, more due process filings, and, ultimately, higher cost to the district.

The new language on the supervision of aides is good, but not strong enough. Untrained, unqualified aides provide most of the educational services provided to disabled students in Connecticut. Supervision of aides is pathetic in many cases. The only way to make supervision effective is to make the supervisors personally liable for the actions of the aides, in the same way I am personally liable for the actions of my secretary and paralegal. This could be accomplished by having the performance ratings of professions – both teachers and related service providers – based on the performance of the aides under their supervision. If an aide makes a very serious error, the teacher or the certified service provider should be sanctioned. If the service provider is on contract, pay under the contract should depend on the success of the aides. Without real enforceable sanctions, the new language in the regulations is just fluff.

The regulations should define what is meant by the term “direct supervision” and should reference the professional standards applicable. Direct supervision should be defined to mean that a certified or licensed professional drafts the lesson or treatment plan used, trains the aide in the implementation of that plan, observes the aide working with the student on a frequent basis, is responsible for all aspects of the aide's performance, and verifies all reports of progress. Further, the regulations should make it clear that an aide cannot be assigned any function that the applicable code of ethics or rules of professional conduct of the profession require that the certified or licensed professional perform. In other words, to the extent that the rules of professional conduct for occupational therapists require that a certified professional perform certain hands-on manipulation, the regulations should preclude that manipulation from being performed on a student by a paraprofessional.

The new language on personnel development, requiring teacher attendance as a means of corrective action where the State finds a violation, is necessary. Training, however, needs accountability. It is not good enough for teachers to be required to attend. They need to be tested on the content. Teachers should only be considered to have attended in-service training, whether mandated or not, if they successfully demonstrate that they have mastered the material presented.

### **Section 12 – RCSA § 10-76d-3 (Length of school day and year)**

The two changes to RCSA § 10-76d-3 are excellent. Unfortunately, the regulations are silent on the criteria for extended school year services. The State Department of Education has provided guidance on the issue through a topic brief. The federal regulation, at 34 CFR § 300.16(b)(2) specifically contemplates state standards on extended school year services. The regulations should, therefore, incorporate, directly or by reference, the language of the Topic Brief on Extended School Year Services of March 15, 2007.

### **Section 13 – RCSA § 10-76d-4 (Physical facilities and equipment)**

The State is proposing a substantial deregulation of the accounting by local school boards for assistive technology equipment. We can only hope that a major scandal does not emerge from this change that undermines special education funding in the future.

### **Section 15 – RCSA § 10-76d-6 (Identification and eligibility of students)**

The issue of responsibility for child find is rather complex under the 2004 reauthorization of the IDEA. RCSA § 10-76d-6 provides no meaningful assistance to school boards and parents in navigating this law. Indeed, the revised regulation does not say that the local board of education is responsible for child find for children attending school in the district. For the sake of clarity, uniformity, and comprehensibility, the State should more clearly regulate in this area. The regulations should explicitly set forth which LEA is responsible for identification, evaluation, and provision of services in each set of possible circumstances so that parents and school boards know where responsibilities lie.

Despite the title of this regulation, the current regulations fail to address the requirements for eligibility for special education services in Connecticut. The current matrix of Guidelines and Reports is unsatisfactory. The Guidelines are vague and ambiguous. In many cases, the Guidelines are outdated and plainly inconsistent with federal law. The Guidelines are frequently not based on sound scientific evidence. The eligibility standards are so subjective that there is no way they can be implemented consistently. Parents have no way to know whether school personnel are implementing the standards fairly. A student who might qualify easily in one district would be found ineligible in another. School districts consistently misuse section 504 of the Rehabilitation Act as a sort of IDEA-lite. No area of special education law in Connecticut is more in need of reform and clarification than the eligibility standards.

### **Section 16 – RCSA § 10-76d-7 (Referral)**

The additions to RCSA §10-76d-7, dealing with referrals to special education, are generally helpful with three important caveats.

First, for many uninformed parents, requiring a referral to be in writing is unacceptable. If a parent expresses a concern about his/her child's possible disability by phone call, at a parent-teacher conference, or in a call to the teacher, the school official who receives that communication should be obliged to fill out a referral form for the parent and commence the referral process. The exception in the last sentence of paragraph (a)(3) for parents "who cannot put their request in writing" is far too narrow. For most parents, the issue is not an inability to write; the issue is they do not understand the process.

Second, at various places in RCSA §10-76d-7, in the proposed amendments, there is language indicating that a child cannot be designated as eligible for special education and related services until and unless regular education interventions are tried and fail. This is not the law. This is not a requirement. Indeed, it runs contrary to the Supreme Court decision in *Forest Grove School Dist. v. T.A.*, 29 S.Ct. 2484 (2009), holding that receipt of prior services in the public school is not a condition precedent to funding an out-of-district placement.

I will return to this matter in far greater depth when we get to the evaluation section, CGS §10-76d-9. For some inexplicable reason, these proposed regulations use the regulation on evaluation to state that no child can be designated as having a learning disability and receive special education services unless the child received appropriate instruction first. While all children are entitled to appropriate instruction, no child should be deprived of the intensive services the child needs because the school did not do its job. A student with a disability should not be forced to endure years of failure before getting the special education services the student needs and to which the student is entitled. And, by the same token, no student with a disability should be denied the special education services the student needs and to which the student is entitled because the local school failed to do its job.

Third, the language of the regulation should be redrafted to require the convening of an IEP team meeting whenever any of the following occurs: (1) a student has been placed on out-of-school suspension for more than five days in total during a school year; (2) a student has been absent for more than ten days during a school year; (3) a student has failed or is in danger of failing an academic course; and (4) a student repeatedly fails to turn in homework. Absent some compelling non-disability explanation for such conduct, the team should conduct an evaluation in all areas of suspected disability. Too often, school districts only respond when a parent demands an evaluation. Often, when parents do not know their rights or when school districts are particularly recalcitrant, children with ample manifestation of a suspected disability are never evaluated. By changing the regulation mandating a required IEP meeting under certain circumstances, school districts will be obliged to conduct evaluations where evidence exists of a suspected disability without regard to the capabilities of the parent.

#### **Section 17 – RCSA § 10-76d-8 (Notice and consent)**

This section substantially re-writes the notice requirements of RCSA §10-76d-8. Three comments are in order:

First, the change from five school days to ten calendar days is fair and makes sense.

Second, the ten days should run from when the parents are provided with written notice, even if that written notice is the Prior Written Notice page from a PPT meeting. Too often, parents cannot follow what is going on at a PPT meeting and need the written document to let them know. Districts should be in the practice of handing parents the completed Prior Written Notice page at the end of each PPT meeting.

Third, construing parent failure to respond to a request for consent for evaluation as refusal after ten days is inappropriate. Parental refusal can only be construed from silence after the school district makes a serious and a documented effort to elicit a response from the parent. Frequently, parents are confused about the process and do not know what a consent form means. To construe that as refusal, with the serious consequences that can attend a refusal of evaluation, is unfair.

Related to this issue is the conspicuous failure of school boards to properly fill out consent forms. Unless the consent form contains the name of the evaluator, the evaluation instruments to be used, and the purpose of the evaluation, the consent form is not valid. No

parent should be deemed to have refused to consent to an evaluation if the consent form is not completely filled out by school officials. The regulation should be amended to make this clear.

The prior written notice requirements of 34 CFR § 300.503 do not contain the five-day advance written notice contained in the current Connecticut regulation, nor does it contain the presumption that the parents fail to consent if they do not respond within ten days of the notice. There is nothing in the IDEA that prevents Connecticut from providing greater procedural protections to parents than are required by the federal statute. The time limits in the current Connecticut regulation should be retained. Note that C.G.S. §10-76d (a)(8) requires a local school board to provide the parent or guardian with five school days advance written notice of a proposal or refusal to change the student's identification, evaluation or educational placement or provision of a free appropriate public education and to provide the parent or guardian with five school days prior written notice of a PPT meeting. The Connecticut statute remains in force. Removing these provisions from the regulations will, therefore, not change the requirement, but will create confusion.

Further, the current Connecticut regulation provides that parents have the right to review and obtain copies of all records. This right is not specifically contained in the federal regulation. It is essential that this right be retained in the regulations.

#### **Section 18 – RCSA § 10-76d-9 (Evaluation)**

This section involved two of the most offensive elements of the proposed regulation: perpetuation of the practice of depriving parents of their right to an independent educational evaluation (IEE) and new eligibility standards for a learning disability.

#### **Independent Educational Evaluations**

In subsection (a) of proposed RCSA §10-76d-9, language needs to be added to reference the federal IDEA regulations in relationship to an IEE. Further, specific language needs to be added preventing local school boards from promulgating IEE criteria that have the purpose of chilling the right of parents to seek an IEE. The State has a strong obligation under the IDEA to regulate local school boards. The outrageous behavior of local school board relating to IEEs needs to be curbed by the State Department of Education.

The responsibility of the State Department of Education to regulate this area is clear. The IDEA is a funding statute. Under 20 U.S.C. § 1412, a state is eligible for federal funding if, and only if, "the State has in effect policies and procedures" to, among other things, implement evaluation of children in accordance with 10 U.S.C. § 1414, specifically, 20 U.S.C. §1412(a)(7), and to ensure that local education authorities comply with the provisions of the IDEA in general, 20 U.S.C. §1412(a)(11). There can be no doubt that the State of Connecticut is responsible to ensure that local school boards in the State comply with the IDEA and its implementing regulations.

Perhaps the single most important right parents have under the IDEA, other than the right to file for due process, is the right to an independent education evaluation at public expense. In this way, the parents can double check school evaluators, get a second opinion, make certain that the school district is not glossing over the child's disability in order to save money. The IEE is

referenced both at 20 U.S.C. §1415(b)(1) and at 20 U.S.C. §1415(d)(2)(A), but the real detail on the extent and limit on the parent's right to an IEE is contained at 34 CFR §300.502. The Connecticut State Department of Education is explicitly required to ensure that local school boards are complying with these requirements.

Notwithstanding this federal requirement, local school boards are riding roughshod over this right. Attached to this testimony are two examples: one drafted by the law firm of Berchem, Moses & Devlin for Fairfield and one draft by the law firm of Shipman & Goodwin for Darien. I ask that you take administrative notice of the fact that these are the two firms in the state representing the most school districts in special education matters.

Let us look through these two documents. We need get no further than the title. Both are labeled IEE criteria. Yet the federal regulations provide no authority for unique IEE criteria. The regulation, at 300.502(e)(1), is explicit that "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 education evaluation." To eliminate any wiggle room, paragraph (e)(2) states, "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." So, these documents are ipso facto illegal.

And that is before we look at the text of each which do impose conditions and timelines directly in violation of federal law. Let's focus on the Fairfield criteria, which are blatantly violative of the federal requirements in numerous respects. The first paragraph of the Introduction paragraph is drafted to scare parents off from IEE, stating, "In the event that the evaluation does not meet the following criteria, the parent may still obtain the evaluation, but it will not be publicly funded." That is not consistent with the federal law, which gives parents the right to an IEE with certain minimal restrictions.

In the section labeled procedure, the document says the request for an IEE must be made at a PPT meeting. The federal regulations contain no such requirement. The document says Fairfield will respond in one of three ways. The first response, i.e. "The district will explain that the parent or guardian is not entitled to an IEE at public expense because either the district has not yet evaluated the student, and is entitled to conduct its own evaluation of the student, or the parent or guardian has already obtained an IEE at public expense as a result of a previous disagreement with the same district evaluation," may constitute reasons the request is invalid, but it is not authorized by the regulations. The regulations, at 300.502(b)(2) provide the district with only two options: file for due process or pay. There is no third option. Under (b)(2)(i), the school district can show its own evaluation was appropriate. Under (b)(2)(ii) the district can "demonstrate in a hearing ... that the evaluation obtained by the parent did not meet agency criteria." In either case, the district's resort is to due process hearing, not a refusal at a PPT meeting.

This language also does not deal with the situation in which the district fails to evaluate the student in *all* areas of suspected disability, 20 U.S.C. §1414 (b)(3)(B). In that case, the parent has the right to an independent evaluation and can seek reimbursement of the costs from

the district under the *Burlington* standard, i.e. when a district fails to provide a student with a free appropriate public education, including failure to properly evaluate or designate a student as eligible for services, the parent has the right to remedy the failure and compel the school district to pay. This is not an IEE under 34 CRR 300.502. Yet, if school districts are permitted to issue detailed guidance on independent evaluations, notwithstanding the clear federal law to the contrary, they should be required to explain this right to parents as well.

The language of the Fairfield criteria goes on to explain that the district has the right to evaluate first. What these criteria do not include is the language of 34 CFR § 300.502 (b)(4), stating that “the public agency ... 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.” Again, if school districts are to issue guidance on the subject, and I see no authority for them to do so, they ought to fairly and completely state the law. If the parent asks for an IEE and the district claims its right to go first, unless the district conducts its evaluation promptly, the district’s claim to go first is waived and the district must fund the parent’s IEE.

The Fairfield criteria states that the district will recommend evaluators. That service is not authorized in the federal regulations because of the inherent biased relationships which might ensue. Indeed, it has been my experience that school districts have developed overly cozy relationships with certain evaluators who know how to avoid specific recommendations and know how to read the signals sent by school district personnel. Channeling parents to these evaluators defeats the purpose of an independent evaluation. School districts should be precluded from supplying lists unless requested.

The criteria for evaluators is only valid if it is precisely the same as the one used by the district for its own evaluations and if the education, certification, licensure, cost, independence, evaluation content, consultation, timeliness, and location requirements are reasonable and “are consistent with the parent’s right to an independent educational evaluation.” 34 CFR § 300.502(e)(1). It may well be unnecessary to explain in detail just how profoundly and unreasonably inconsistent the balance of the Fairfield document is to the parent’s right to an IEE. Rather than document all the examples of unreasonableness, I will provide examples:

- It is not reasonable to permit a master’s level school psychologist to conduct a psychological evaluation but require a doctoral degree for a clinical psychologist.
- It is not reasonable to require a clinical psychologist to have three years experience evaluating children of the same age level and not require the same thing for school personnel.
- It is not reasonable to require clinical background, advanced training and recent experience in the area of disability for a clinical psychologist and not require the same thing for school personnel.
- It is not reasonable to require a neuropsychologist to have a two year post-doctoral fellowship in neuropsychology.
- It is not reasonable to require an educational evaluator to have a valid, current educator

certification from the State of Connecticut.

- It is not reasonable, and not authorized by the federal regulation, for a district to impose rigid cost requirements on evaluators.
- It is not reasonable, and not authorized by the federal regulation, for a district to preapprove or argue down the cost estimate of an independent evaluator.
- It is not reasonable, and not authorized by the federal regulation, for a district to preclude the use of evaluators who have testified against the school district.
- It is not reasonable, and not authorized by the federal regulation, for a district to preclude the use of an individual who has provided treatment for the student as an evaluator.
- It is not reasonable, and not authorized by the federal regulation, for a district to preclude the use of an individual who has advocated for the student as an evaluator. Indeed, for many of the professions of independent evaluators, the code of ethics require the evaluator to act as an advocate for the client.
- It is not reasonable, and not authorized by the federal regulation, for a district to require an in-school observation for all IEEs.
- It is not reasonable, and not authorized by the federal regulation, for a district to require all evaluators to interview school staff.
- It is not reasonable, and not authorized by the federal regulation, for a district to require the independent evaluator to submit to interrogation by school staff.
- It is not reasonable, and not authorized by the federal regulation, for a district to require that school-based information be addressed and discussed in the evaluator's written report.
- It is not reasonable for a district to require all evaluators to be from Fairfield or New Haven County.
- It is not reasonable, and not authorized by the federal regulation, for a district to preapprove the identity of evaluators from other areas.

The Darien IEE criteria are more minimally drafted and present fewer problems. Still, many of the same problems exist.

The Connecticut State Department of Education has embarked upon a set of regulations to bring Connecticut's regulation in line with the IDEA. The Department has an affirmative obligation to ensure compliance by local school districts with the IDEA requirements. In the case of IEEs, we have school districts publicly thumbing their noses at federal requirements. The State Department of Education is obligated under federal law to step in. The regulations need to be amended to state:

“Any board of education may provide the text of 34 CFR 300.502 to parents providing notice of their intent to pursue an independent education evaluation at public expense. A board of education may append to such text a copy of any published board-approved policies for the retention of independent consultants by the board of education. No board of education shall issue, promulgate, distribute, publish or provide any other rules, regulations, guidelines, criteria or similar document purporting to explain the independent education evaluation process to parents.”

### *Eligibility Standards for Specific Learning Disability*

Subsection (b) of proposed RCSA §10-76d-9 is poorly-conceived, counterproductive, and potentially discriminatory against those from poorer communities. The draft regulation states that, if the child fails to make grade-level progress because the district had an inadequate SRBI program, the child cannot qualify for special education designation and the legal protections, added interventions, and accountability that come with a special education designation. So, the draft regulation sentences children with learning disabilities in the weakest schools to double punishment: no effective SRBI and no special education services. This is a violation of child find, directly contrary to the intent of both Connecticut and federal special education law, and inconsistent with the language of the IDEA. More fundamentally, this policy is immoral.

Further, there is nothing whatsoever in the IDEA to support this exclusion. 20 U.S.C. § 1401(30) and 20 U.S.C. §1414(b)(6) provide substantial legal parameters for determining what is a specific learning disability. In neither of these provisions does the federal statute permit the policy of refusing to designate a student as eligible based on the failure of the school to provide the child with an appropriate education. Section 20 U.S.C. §1414(b)(6)(B) provides that “In determining whether a child has a specific learning disability, a local education agency may use a process that determines if the child responds to scientific, research-based interventions as a part of the evaluation procedures.” The ability to use response to SRBI as one factor in determining eligibility is fundamentally different from saying that a child who has already been victimized by poor implementation of a school district’s SRBI must also be deprived of special education services. By adopting the proposed regulation, the State Department of Education would be setting up school districts for a rash of litigation.

Note that, however sound the SRBI program devised by the State, SRBI is certain to be weakly executed in a significant number of Connecticut schools. There are three reasons for this. The first is that SRBI is an intensively data-driven program requiring weekly and, at times, daily data collection, data maintenance, analysis, and presentation. A teacher with twenty or twenty-five children in the classroom does not have the time to implement the SRBI program with fidelity. Many districts do not routinely provide aides. Where there are aides, they are often poorly trained. More to the point, the State is not providing any additional funding to districts to implement SRBI. Indeed, the State is cutting back on funding for local school districts under the Governor’s Budget.

The second reason is that SRBI imposes a large change in the way education is provided and necessitates a change in the culture of schools. Cultural changes take time and tremendous encouragement.

The third reason is the State is doing very little training of administrators, teachers, and aides to administer the SRBI program. The program is complicated. Determining what data to collect and how to analyze it is difficult. Establishing a serious SRBI program in all the school districts in Connecticut is a time-consuming and very expensive proposition. As the United States Department of Education wisely advised in its letter of July 27, 2007, it is unwise to require the use of an RTI process for purposes of special education designation until the program has been successfully scaled up, in an incremental manner, over time.

With many reforms, partial implementation leads to somewhat better results. With SRBI, partial and imperfect implementation will lead to a calamity for thousands of Connecticut school children who will be deprived of any special education services where SRBI fails. Proposing this regulation assumes a universal, viable SRBI system. Such a system does not now exist. More to the point, the proposed regulation punishes disabled students, not the ineffective school districts, for the failure of the district.

In fact, when I raised this issue with Commissioner McQuillen a few months ago, he wrote, on May 20, 2010, "If there is any question or suspicion that a child may have a learning disability, a comprehensive evaluation must be performed even if the child did not receive appropriate instruction or the district did not provide appropriate interventions through their SRBI process." The proposed regulation runs directly counter to the clear statement made by the Commissioner. This proposed regulation needs to be withdrawn.

### Evaluation, Generally

Connecticut should take the lead in vindicating the parent's right to an evaluation. As Justice O'Connor noted in *Shaffer v. Weast*, the evaluation is really the most critical protection that the parent has. The regulation should be amended to include the following provisions, some of which are already mandated by federal law or case law:

- Where the district or a hearing officer utilizes a report, evaluation, observation, or testimony of an expert retained by the parent to make any change in a student's eligibility, program or placement, the costs associated with the report, evaluation, observation, or testimony must be at public expense.
- An independent educational evaluation can be used to assess the disability and educational needs of the child as well as to review the appropriateness of any education placement or program proposed by the district or the parent.
- Parents have the right to an independent educational evaluation both when they disagree with an evaluation conducted by the district and when the district refuses to support an evaluation requested by the parents.
- A district can challenge its obligation to pay for an independent educational evaluation by filing a request for due process within thirty days of notice from the parents of the independent evaluation request. If the district fails to file due process within the time limit, it shall have waived its right to do so and shall be liable for the reasonable costs of the evaluation.
- Parents can trigger an independent educational evaluation with written notice to the

district, as well as by requesting the evaluation at an IEP team meeting. After receiving a written request, the district can schedule an IEP team meeting to discuss the request. The time limit to challenge the independent educational evaluation would run from the date of the IEP team meeting or from the date of the letter if the district does not schedule an IEP team meeting within twenty days of receipt of the request.

- Within thirty days of receiving a copy of an independent educational evaluation, the district could challenge its obligation to pay by filing a request for due process and demonstrating at such hearing that the report lacks validity.
- Parents have the right to observe any program or placement proposed by a district and the right to interview staff of such program or placement. Further, the parent has the right to be accompanied by or send in lieu of the parent an expert to conduct such observation and interviews. Any parent or expert observing would be bound to safeguard the confidentiality of other students seen. To address this confidentiality issue, the state should promulgate a form for parents or their experts to sign. In this way, school districts should be prevented from relying on protecting the confidentiality of other students as an excuse not to permit observation.

#### **Section 20 – RCSA § 10-76d-11 (Individualized education program)**

Here, the State proposes to sweep away years of Connecticut requirements for IEPs and comply only with minimal federal standards, with the exception that short-term objectives would continue to be required in Connecticut. Again, Connecticut need not subscribe to the lowest standard permitted by federal law. At least, the proposed regulations retain short-term objectives.

#### **Section 21 – RCSA § 10-76d-12 (Meetings)**

The parental participation regulations are inadequate. In paragraph 1, parents need to be provided with 10 calendar days, not 5 calendar days notice of a PPT meeting. It is not fair to shorten the time from 5 school days to 5 calendar days.

In paragraph 3, the first remedy for parental unavailability must be to reschedule the meeting. Conference calls or home visits should only be suggested if rescheduling is not possible.

Paragraph 4 needs to be amended to ensure that no PPT meeting is held in the absence of the parents until three attempts have been made to schedule the meeting with the parents present.

#### **Section 22 – RCSA §10-76d-13 (Timelines)**

Here, the proposed regulations substantially and inexplicably extend the time lines for school districts to provide special education services. Under the current regulations, an IEP must be implemented within 45 school days, or nine weeks, of the initial referral. Under the proposed regulation, an IEP could be delayed for 90 calendar days, or thirteen weeks or longer. This is simply inexcusable. So, a parent who notices real problems in the first month of school and makes a referral on October 1, is guaranteed an initial referral PPT meeting by October 15. The board then proposes evaluations, which the parent may consent to on October 20. The

evaluation then can take 90 days, until January 18. A new PPT is held and the program has to be implemented by February 3. This time line is unacceptable. Under current law, the IEP would need to be implemented by December 10.

Further, under the proposed regulations, the IEP has to be sent to the parents ten school days after the PPT meeting, doubling the current five days.

What makes matters worse is that these timelines are honored more in the breach than in the observance. With no new enforcement sanctions included in the regulations, the message SDE is sending to school boards is that delay and avoidance are perfectly acceptable policies for designating children eligible for special education services.

Timelines are critical to make the process accessible and understandable by parents. Timelines should be clear and enforceable. Further, the timeline should apply not just to new determinations of eligibility but also to evaluations in newly suspected areas of disability. The regulations need to retain a requirement that districts send IEPs and records of IEP team meetings to parents within one week of the meeting. Most important, some meaningful sanction needs to be imposed on districts that fail to meet the provided timeline. An appropriate sanction would be that the district is liable to provide compensatory education for the period of time that the determination of an appropriate IEP was delayed beyond the time limit set in the regulations.

#### **Section 23 – RCSA §10-76d-14 (Program)**

The proposed regulation re-enacts and formalizes the diagnostic placement option, while making clear that a diagnostic placement would not be stay put. The diagnostic placement can be an excellent assessment tool when other assessments are borderline or contradictory. The State needs to be vigilant in ensuring that diagnostic placements are only made for appropriate reasons by local school districts.

The proposed regulation also removes the explicit vocational requirement from the Connecticut regulations. This change is acceptable because IDEA 2004 imposed far more elaborate transitional requirements on local boards of education.

#### **Section 24 – RCSA §10-76d-15 (Homebound and hospitalized instruction)**

The proposed regulation completely rewrites the law on homebound instruction. The proposal takes the right approach in requiring homebound when the child's treating physician determines it necessary, after consulting with school health personnel. The appeal to the school's medical advisor is, however, not fair and not likely to produce a just result. A medical practitioner who is independent of both the school and the parents should make the final determination where there is a dispute between the treating physician and the school nurse. It is not reasonable to expect a fair and impartial decision from a doctor in the pay of the school system.

The proposed regulation needs to be amended to include serious psychiatric and psychological afflictions that preclude school attendance. In those cases, the treating doctor could be a psychologist, who is not a physician.

Additionally, there is no reason to limit the provision of homebound instruction to students attending public schools.

New subsection (e) is unworkable, especially in the case of students with social skills goals in their IEPs. A student on homebound cannot, by definition, participate in general education. It makes no sense to pretend otherwise in this subsection.

Finally, homebound instruction is frequently used as a way to resolve disciplinary problems without utilizing the counterproductive remedy of suspension or expulsion. This use of homebound instruction is not authorized by regulation but can be highly effective to deal with behavioral issues for children with disabilities. The regulation should be amended to permit use of homebound instruction to remove a child from the school environment for a temporary period to deal with a behavioral issue, with the consent of the parents. The regulation needs to be drafted, however, to prevent school administrators from providing homebound instruction as an inexpensive alternative to in-school behavioral therapy.

The school nurses association has made certain proposals relating to this section that should be rejected outright. Essentially, the association proposed that school nurses ought to be able to overrule the opinions of private medical doctors. The absurdity of this proposition is self-evident. Certainly, school officials ought to be able to challenge what private doctors say. Still, final medical decisions need to be made by independent physicians, not nurses employed the school system.

#### **Section 25 – RCSA §10-76d-16 (Placement)**

The proposed regulations wipe out the entire priority list for placements previously in the regulations. This priority list ran afoul of federal law and case decisions in numerous regards. Its elimination is a step forward.

#### **Section 26 – RCSA §10-76d-17 (Private facilities)**

This proposed regulation makes numerous changes relating to private placements. First, after eliminating the priority for Regional Educational Service Centers (RESCs) in Section 25, the amendments in paragraph (1) would reestablish that priority. There is no basis in federal law, rule or regulation for such a priority. It needs to be eliminated.

Paragraph (3) says the placement shall be at no cost to the parents, but in Section 1, the proposed regulations eliminate the definition of the phrase “at no cost”. If the term is to be used, as it should be, it needs to be defined.

The rigid new requirement in paragraph (4) for the participation of a representative of the private program in the child’s PPT meeting may not work in numerous cases. Often, the district proposes a number of possible placements at the PPT meeting. The parents then visit each one, select their favorite, and the placement is made. A new PPT meeting is held a few weeks later so that the private program can propose goals and objectives. To require that a new PPT meeting be scheduled with a representative of the facility prior to the placement could end up delaying the delivery of appropriate services to children with disabilities, which in a number of cases, would be detrimental to the child. This section should be reworded to provide flexibility.

The additions to paragraph (5) are excellent.

The redrafted subsection (b) is not an accurate statement of the law. A student can be placed in a private special education program for other than educational reasons by the student's own district, not just by the State. Further, a child can be placed in a private special education program by order of a hearing officer, without any further action by the PPT. Moreover, the language "PPT of the board of education" reflects a serious misunderstanding of the nature of the planning and placement team. The planning and placement team belongs to the child, not to the board of education. The PPT is a collaborative effort of parents and school officials. The PPT does not belong to and is not a subordinate entity within the local board of education.

The striking of the time limits for attendance at a private special education program makes sense.

The expanded requirements on private special education programs are useful. Particularly laudatory is new paragraph (11) ensuring that parents have the right to observe their students in school. The requirements of new subsection (c) need to be applied to schools operated by RESCs as well.

The requirements of *Florence County School District #4 v. Carter*, 510 U.S. 7 (1993) should be set forth in the regulations to make it clear that parents have the right to unilaterally place their child where the district has failed to provide an appropriate program and that districts have the authority to reimburse parents or directly fund the placement.

Finally, the proposed regulations also would add a new provision, at RCSA §10-76d-17 (c)(12), relating to the Establishment Clause of the First Amendment of the United States Constitution. While it is the case that a private program cannot intertwine the State of Connecticut in the establishment of a religion, it is also the case that private special education programs have to follow civil rights, labor, and criminal laws. To single out one legal requirement to the exclusion of all others raises an unfortunate implication.

#### **Section 27 – RCSA §10-76d-18 (Educational records and reports)**

Here, in relation to student records, it makes sense to incorporate by reference federal law. Still, the elimination of the requirement for written school board policies is unfortunate.

The new language concerning prompt parental access to records needs to be amended to ensure that parents can review, inspect, and copy records prior to any manifestation determination PPT meetings or expulsion hearing.

The proposed regulations make no change in the language in RCSA §10-76d-18 (b)(2) concerning access to copyrighted test materials. The language contained is far too restrictive. Under the fair use doctrine, copyrighted materials may be copied. The language should be amended to permit parents to receive copies of test protocols and interpretive material, but not the test forms themselves. Moreover, properly certified experts retained by the parents should have the right to review all information in the possession of the district concerning any test administered, including any answer sheets filled out by the student.

### **Section 28 – RCSA §10-76d-19 (Transportation)**

The amendments to the regulation on transportation are generally satisfactory. The language at the end of subsection (e) is, however, unnecessary. If the board offers appropriate transportation, it has provided FAPE. If the parents disagree, they can take the matter to hearing. The provision of transportation is no different than the provision of special education services or related services in this regard. The verbiage tagged on at the end of subsection (e) is superfluous. More importantly, adding this language in relation to transportation, raises a negative implication when similar language is not added in relationship to programming or related services.

Reference to the federal rate of reimbursement is not clear. The correct reference is to the “standard mileage reimbursement rate for a privately owned automobile (POA) established by the Internal Revenue Service (IRS)”.

### **Section 30 - RCSA §10-76h-3 (Hearing request; content of hearing request)**

The deletion of the mandate that school boards file due process against parents in certain circumstances in subsection (c) is appropriate.

On the other hand, the deletion of the language at the end of subsection (d) reading, “A parent’s right to a due process hearing may not be delayed or denied for failure to comply with the notice content requirements of this subsection” is inappropriate. Parents operating pro se, as many do, cannot be expected to know all the sundry requirements for filing due process. It is not fair to penalize them for failing to comply with the notice content requirements, particularly where the hearing officer can elicit the information during the prehearing conference.

### **Section 31 – RCSA §10-76h-4 (Statute of limitations)**

The amendments to the statute of limitations are appropriate and consistent with the case law. While the revised regulation generally comports with case law, a provision should be added that, in the case of continuing violations, parents may challenge the district’s action for the preceding two years without regard to when the continuing violation started. As an example, Student should properly have been designated as eligible for special education in the second grade. The Student is now in the tenth grade. The Student should be able to seek relief for the preceding two years despite the fact that the initial failure to identify occurred eight years ago.

### **Section 32 – RCSA §10-76h-5 (Mediation)**

It is amusing to find the State Department of Education, which has failed to provide sufficient mediators to resolve pending cases in a timely manner, proposing to eliminate the thirty-day time limit for mediation. The fact is that it currently takes far too long to arrange mediations. The removal of the time limit may be used by SDE to delay the process further. Delaying the process raises costs for all involved. Instead of tampering with the time limits for mediation in the regulations, the State Department of Education should be devoting more resources to training and utilizing mediators.

The proposed regulations on mediation do not go far enough. Currently, a substantial

percentage of disputes are resolved through mediation. The State Department of Education declines to get involved in enforcing mediations agreements, but such agreements are purportedly enforceable in state or federal court. However, there is no provision for expediting such enforcement actions and there is no provision for the award of attorney's fees to parents if they prevail. Hence, a district can generally ignore the requirements of a mediation agreement without fear of consequence. As more instances arise of districts failing to implement a mediation agreement, the attractiveness of these settlements diminishes. Further, there is no one who has the specific task of ensuring that the interests of the child are protected in the mediation agreement.

To remedy this situation, a hearing officer should be asked to review the mediation agreement and the record and accept brief testimony before accepting or rejecting the mediation agreement. The hearing officer would maintain jurisdiction over the matter so that, if one party claimed that the other party failed to abide by the agreement, the hearing officer could act quickly to determine whether the agreement was complied with and, if not, to issue orders requiring compliance.

### **Section 33 – RCSA §10-76h-6 (Advisory opinion)**

Section 33 of the proposed regulations essentially restates the existing regulations on advisory opinions contained in RCSA § 10-76h-6. The advisory opinion route has been one rarely taken because it is not particularly user-friendly. To make it more attractive, the proposed regulation should read that the hearing officer shall, not may, facilitate settlement discussions after rendering the advisory opinion.

The change to new paragraph (6)(E) permitting the parties and the hearing officer to modify the rigid time and witness limitations in the regulation is an important step forward.

### **Section 34 – RCSA §10-76h-7 (Appointment of hearing officer. Scheduling of prehearing conference and hearing dates)**

Section 34 appears to provide new authority to limit the length of a hearing, the number of witnesses, the length of testimony, and the length of cross-examination. The use of the term "sole discretion" is misleading. Any limitation by the hearing officer must be fair to both parties and must be reasonable. Using the term "sole discretion" may inappropriately convey to hearing officers that they have unbridled discretion; they do not.

### **Section 37 – RCSA §10-76h-10 (Expedited hearings)**

The proposed regulation is correct in incorporating by reference the IDEA for the rules governing expedited hearings. The current Connecticut regulation is inconsistent with federal law.

### **Section 38 – RCSA §10-76h-13 (Conduct of hearings)**

It is hard to understand why the proposed regulations strike out the reference to the specific federal authority for the appointment of an independent evaluator by a hearing officer, at 34 CFR §300.502 and instead broadly and vaguely refer to the requirements of Part B.

### Section 39 – RCSA §10-76h-15 (Evidence)

RCSA § 10-76h-15 should be amended to establish procedures for telephonic testimony of necessary witnesses for whom travel to the hearing would be unreasonably difficult. This would include school officials and experts attached to out-of-district placements. The rules should provide that the witness is unable to be present for a very good reason; that the witness is sworn in by a notary public; that any document relied upon is submitted in advance to both parties; that the moving party serve on the opposing party a curriculum vitae of the witness five days prior to hearing; and that the notary submit an affidavit after the hearing attesting that the witness relied on no other documents and consulted with no other individual during the testimony.

### Section 40 – RCSA §10-76h-16 (Decision, implementation, right of appeal)

Section 40 of the proposed regulations makes no substantive change in RCSA §10-76h-16 relating to hearing officer decisions. This section should be amended to provide that hearing officers can enter consent degrees or settlements between the parties, under the same requirements as were described in the section relating to mediation. There are at least three advantages to this approach. First, the hearing officer, acting much like a federal judge in considering a stipulated judgment, ensures that the interest of the child is protected in any settlement reached between the parties. Second, the hearing officer would assume jurisdiction over the matter and could quickly determine whether any alleged violation had occurred and how to remedy it. Third, the entry of an agreement by the hearing officer would provide the judicial imprimatur required for the award of attorney's fees in *Buckhannon Bd. and Home Care Inc. v. West Virginia Dept. of Health*, 532 U.S. 598 (2001). Note that the effect of this provision would be the prompt resolution of more cases. A number of cases do not settle now because the parents need to recover their attorneys' fees and cannot do so unless they go through a full due process hearing to decision.

### Conclusion

Presumably, the draft regulations proposed by the State Department of Education were initially motivated by a desire to make Connecticut special education law and practice entirely consistent with the federal law and regulations. Nothing in the IDEA requires that a state reduce its protection of children with disabilities to the lowest common denominator. Rather, as the First Circuit noted in *Town of Burlington v. Department of Education*, 736 F.2d 773 (1<sup>st</sup> Cir. 1984), *aff'd*, 471 U.S. 359 (1985), the federal law permits states to impose more stringent standards that better protect children with disabilities. Connecticut would be untrue to its heritage as a leader in providing education to children with disabilities if it now retreated to a position of merely providing the minimum protection permitted under the federal law.

The regulatory change concerning designation as eligible for special education services based on a learning disability will deprive thousands of children from lousy schools the right to receive special education services. The current eligibility requirements for a specific learning disability are indecipherable. This proposed eligibility standard, mischievously tucked away in the regulation on evaluations, is dreadful. Drafting the eligibility requirements for children with learning disabilities should be an open, inclusive process, in which the ramifications are well

explored. The proposal contained in these draft regulations needs to be withdrawn.

Finally, the State Department of Education needs to address and rectify the attempt by numerous school districts to cut off the right of parents to independent educational evaluations. These regulations are the appropriate place to do so.

Thank you for the right to present testimony. I would, of course, be delighted to answer your questions or dialogue about this.

## INDEPENDENT EDUCATIONAL EVALUATION (IEE) CRITERIA

### I. INTRODUCTION

The Fairfield Public Schools employ certified staff such as school psychologists, special education teachers, school social workers, occupational therapists, physical therapists, and speech and language pathologists for the purpose of evaluating students with special education needs. In some instances, parents may wish to exercise their rights pursuant to their Procedural Safeguards in Special Education to obtain an Independent Educational Evaluation (IEE) at public expense. In the event that a parent seeks to obtain an IEE at public expense, or a Planning and Placement Team (PPT) seeks to obtain an outside evaluation of a student to obtain additional information regarding a student, the evaluation must meet the following criteria. In the event that the evaluation does not meet the following criteria, the parent may still obtain the evaluation, but it will not be publicly funded.

According to state and federal special education laws, parents and guardians have the right to obtain an IEE at public expense if, and only if, the district has conducted an evaluation of the student by personnel employed or designated by the school district, and the parent or guardian disagrees with the evaluation conducted by the district. The Fairfield Public Schools have established the following procedure for obtaining an IEE at public expense and selecting an appropriate evaluator.

### II. DEFINITION

An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the Fairfield Public Schools, when the Fairfield Public Schools have already conducted an evaluation of the student and the parent or guardian disagrees with the evaluation conducted by the district.

### III. PROCEDURE

A request for an IEE at public expense should be made at a Planning and Placement Team (PPT) meeting. If the request is made outside of a PPT meeting, for example, in the form of a written request, the district may convene a PPT meeting to review the parent or guardian's request.

Upon request for an IEE by a parent/guardian, the Fairfield Public Schools ("the school district") will respond in one of the following ways: (a) The district will explain that the parent or guardian is not entitled to an IEE at public expense because either the district has not yet evaluated the student, and is entitled to conduct its own evaluation of the student, or the parent or guardian has already obtained an IEE at public expense as a result of a previous disagreement with the same district evaluation; (b) the district will initiate a due process hearing to show that its evaluation of the student is appropriate; or (c) the district will provide an IEE at public expense. If the parent or guardian is not entitled to an IEE at public expense, either because the conditions for an IEE at public

expense have not been met, or because a hearing officer determines that the district's evaluation was appropriate, the parent or guardian may still obtain an independent evaluation, but it will be at their own risk and expense. The district is entitled to evaluate the student in the first instance, prior to a parent request for IEE. A request for IEE when the district has not yet had an opportunity to evaluate the student in the disputed area may be deferred until after the district has had an opportunity to evaluate the student. A parent or guardian is entitled to only one IEE at public expense in response to each district evaluation.

The district may ask the parent or guardian to explain the reason for the request in order to have more information upon which to make a decision to grant or deny the request, or in order to focus the evaluation request on the area of disagreement. The parent or guardian will not be required to provide a reason, and if s/he refuses to provide a reason, the request will be promptly granted or denied on the basis of the available information.

If the district decides to provide an IEE at public expense, the district will provide names, addresses, and phone numbers of possible IEE evaluators who meet the district's criteria for the particular type of evaluation at issue (see below).

#### IV. CRITERIA FOR EVALUATORS

Education, certification, and licensure requirements:

##### Psychological Evaluation or Psycho-Educational Evaluation:

Must meet one of the following groups of criteria:

- (a) Master's degree from an accredited university and appropriate specialist level degree (e.g. Sixth Year Professional Diploma) in School Psychology from an accredited university; and
- (b) Professional Educator Certificate in School Psychology (Endorsement 070) from the State of Connecticut Department of Education; and
- (c) Minimum five (5) years full-time supervised professional experience beyond any internship or practicum experience in a public school setting.

Or:

- (a) Doctor of Philosophy (Ph.D.), Doctor of Education (Ed.D.), or Doctor of Psychology (Psy.D.) in School Psychology, Counseling Psychology, or Clinical Psychology from an accredited university; and
- (b) Valid Connecticut Department of Public Health license as a psychologist; and
- (c) Minimum three (3) years training and experience post-licensure evaluating students of the same age level; and
- (d) Clinical background, advanced training, and recent experience in the areas of disability being evaluated.

##### Neuropsychological Evaluation:

A professional who uses the title Neuropsychologist must have adequate specialty level training as this is not a legally regulated title or practice area. The district requires that the following criteria be met:

- (a) Doctor of Philosophy (Ph.D.), Doctor of Education (Ed.D.) or Doctor of Psychology (Psy.D.) in School Psychology, Counseling Psychology, or Clinical Psychology from an accredited university; and
- (b) Valid Connecticut Department of Public Health license as a psychologist; and
- (c) Post-doctoral fellowship in Neuropsychology for two (2) years at an approved facility; and
- (d) Three (3) years of professional experience in neuropsychology after attaining licensure, working with children and adolescents.
- (e) Optional: Board certification from the American Board of Professional Psychologists (ABPP), American Board of Clinical Neuropsychologists (ABCN), or the American Board of Pediatric Neuropsychologists (ABPN).

Psychiatric Evaluation:

- (a) Medical degree (M.D.) from an accredited university; and
- (b) Clinical training in child and adolescent psychiatry; and
- (c) Valid license by the State of Connecticut Department of Public Health in good standing; and
- (d) Board certified by the American Board of Psychiatry and Neurology in the specialty area of Child and Adolescent Psychiatry.

Medical Evaluation:

- (a) Medical degree (M.D.) from an accredited university; and
- (b) Clinical training in field of specialty required for evaluation or pediatrics, as applicable; and
- (c) Valid license issued by the State of Connecticut Department of Public Health in good standing; and
- (d) Board certified by the appropriate agency in pediatrics or the appropriate field of specialty in which the evaluation is sought.

Occupational Therapy Evaluation:

- (a) Minimum Bachelor's degree from an accredited university and has graduated from an educational program accredited by the American Occupational Therapy Association; and
- (b) Valid license issued by the State of Connecticut Department of Public Health in good standing; and
- (c) Clinical experience in evaluating and treating children and/or adolescents in the area of disability under evaluation.

Physical Therapy Evaluation:

- (a) Graduate of a school of physical therapy approved by the Board of Examiners for Physical Therapists; and
- (b) Valid license issued by the State of Connecticut Department of Public Health in good standing; and
- (c) Clinical experience in evaluating and treating children and/or adolescents in the area of disability under evaluation.

Speech and Language Evaluation:

- (a) Minimum of master's degree and appropriate specialist level training (e.g. Sixth Year Degree) in speech and language pathology from a program accredited by the American Speech-Language Hearing Association; and
- (b) Valid license issued by the State of Connecticut Department of Public Health in good standing; and
- (c) Clinical experience in evaluating and treating children and/or adolescents in the area of disability under evaluation; and
- (d) Current Certificate of Clinical Competence (CCC) in good standing from the American Speech-Language Hearing Association (ASHA).

Audiological Evaluation:

- (a) Minimum of master's degree and appropriate specialist level training (e.g. Sixth Year Degree) in audiology from a program accredited by the American Speech-Language Hearing Association; and
- (b) Valid license issued by the State of Connecticut Department of Public Health in good standing; and
- (c) Clinical experience in evaluating and treating children and/or adolescents in the area of disability under evaluation; and
- (d) Current Certificate of Clinical Competence in Audiology (CCC) in good standing from the American Speech-Language Hearing Association (ASHA).

Educational Evaluation

- (a) Master's degree from an accredited university and appropriate specialist level degree (e.g. Sixth Year Professional Diploma) in Special Education from an accredited university; and
- (b) Professional Educator Certificate in Special Education from the State of Connecticut Department of Education; and
- (c) Minimum three years full-time supervised professional experience beyond any internship or practicum experience in a public school setting.

Functional Behavioral Assessment

Must meet one of the following:

- (a) Minimum requirements above for Psychological or Psycho-Educational Evaluation; or
- (b) Hold current certification in good standing as Board Certified Behavior Analyst (BCBA), including attaining a minimum of a master's degree in Applied Behavior Analysis (ABA) from an accredited university.

V. COST REQUIREMENT

Evaluators must charge fees for evaluations which are reasonable and customary in the community, as judged by the school district. Evaluators will be asked to provide an estimate of evaluation costs and if necessary, to conform them to the expectations of the school district for fees that are reasonable and customary in the community. Refusal to comply will disqualify the evaluator. In the event that the school district is providing

reimbursement to a parent or guardian for an evaluation already conducted, the school district shall not be responsible for reimbursement of any costs in excess of a reasonable fee for the service provided.

#### VI. INDEPENDENCE REQUIREMENT

Evaluators must have no treating relationship with the student at issue, nor with the parents, and may not have advocated for the student in a Planning and Placement Team (PPT) meeting or in a due process hearing. Evaluators will not be employees of the Fairfield Public Schools. The evaluator must have no history of acting as an advocate for parents or students in the special education process nor consistently acting as an expert witness adversarial to school districts.

#### VII. EVALUATION CONTENT REQUIREMENT

Evaluators must restrict their evaluations to their specific area of expertise and may not opine on matters outside of their specific area of expertise. Evaluators must administer evaluations within acceptable guidelines of practice for the area of evaluation and follow all best practices and legal requirements applicable to the area of expertise for evaluation of students pursuant to IDEA and Connecticut law, including but not limited to the use of a variety of assessment tools and strategies administered in compliance with the test protocols issued by the manufacturer for each standardized assessment tool; the use of technically sound instruments, the use of instruments not selected so as to be discriminatory on racial or cultural basis; the use of assessment tools administered in the child's native language or other mode of communication and in the form most likely to yield accurate information; the use of instruments used for the purpose for which the assessments or measures are valid and reliable, the use of instruments by an individual properly trained in the use of the instrument; the use of instruments tailored to address specific areas of educational need; and the use of instruments selected so as to ensure that for a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or other factors the test attempts or purports to measure, and not the child's impairment (unless those are the factors the test attempts to measure).

## VIII. AVAILABILITY AND CONSULTATION REQUIREMENT

The utility of an evaluation and its relevancy are greatly increased when the evaluator takes the time to familiarize him or herself with the child in the school setting, and is available to consult with staff and review the evaluation at a PPT meeting for purposes of discussing any implications for the child's IEP. Evaluators must be willing to observe the student in the school setting to the extent needed for the evaluation, and to consult with school staff to discuss the child's needs and progress in the educational setting. Evaluators must be available and willing to attend the PPT meeting to review the results of their evaluation and to discuss educational implications of the evaluation. The evaluator must be permitted to communicate directly with the district staff, and to obtain information from and share information with the school. School-based information must be discussed and addressed in the evaluator's written report. In the event of questions concerning the evaluator's written report or evaluation/test results, the evaluator must make him- or herself available to district staff to respond to questions, including questions concerning the standardized administration of test instruments.

## IX. TIMELY WRITTEN REPORT REQUIREMENT

The evaluator must be able to evaluate the student within a reasonable period of time after the district secures parental consent for the evaluation, and must be able to provide a timely written report of the evaluation, in most cases no more than 60 calendar days from the date the evaluation is initiated. The written report must be provided to the district before the district will fund the evaluation.

## X. LOCATION REQUIREMENT

Evaluators for the Fairfield Public Schools must be located in Fairfield or New Haven County. Evaluators outside of this area will be approved only if the parent can show that it is necessary to look outside of this area to locate a suitable qualified evaluator. The district shall not be responsible to fund travel expenses or transportation to and from the location of the evaluator. Exceptions may be made in the case of low-incidence or severe disabilities where qualified evaluators are not available within the area specified in this section.

## DARIEN PUBLIC SCHOOLS

### IEE CRITERIA

According to state and federal special education laws, parents/guardians have the right to an independent educational evaluation of their child at public expense if they disagree with an evaluation of the child conducted by the district. The Darien Public Schools has established the following procedure for obtaining an Independent Educational Evaluation (IEE) and criteria for the selection of an appropriate evaluator.

#### Definition

An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the Darien Public Schools, which is public agency responsible for the education of the child.

#### Procedure

Upon receipt of a request for an IEE by a parent/guardian, the school district will either: (a) Initiate due process and a hearing to show that its evaluation of the child is appropriate; or (b) provide an independent educational evaluation at public expense. If the school district requests a hearing and the final decision is that the district's evaluation of the child is appropriate, the parent/guardian still has the right to an independent educational evaluation, but not at public expense.

If, in response to the parent/guardian request for an IEE, the district decides to procure an independent evaluation, the district will provide names, addresses, and phone numbers of possible IEE evaluators who meet the district's criteria (*as set forth below*). The list will identify those evaluators who, in the district's judgment, are qualified to perform the evaluation requested by the parents.

#### Criteria for Evaluators (*Independent Evaluators and Outside Evaluators Selected by DPS*)

Evaluators chosen to conduct independent evaluations must meet *all of* the criteria established by the district as follows:

##### A. Minimum Credentials for Evaluators

For Psychologists:

1. Hold a valid Connecticut license/certification as a psychologist; and
2. Have achieved a Doctor of Philosophy (Ph.D.) or Doctor of Psychology (Psy.D.) in Psychology, Neuropsychology or Clinical Psychology from an accredited university; and

3. Have training and experience in evaluating students of the same age level; and
4. Have clinical background, advanced training, and recent experience in the areas of disability being evaluated.

For individuals conducting academic achievement testing, the individual must *either*:

1. Fulfill the following requirements:
  - (a) Have attained a minimum of a Master's degree; *and*
  - (b) Hold an appropriate and valid special education or other academic specialization (such as reading or mathematics) teaching certificate from the Connecticut State Department of Education; *and*
  - (c) Have experience in teaching and evaluating students in the area of suspected disability.

*Or*

2. Fulfill the requirements of the psychologist above.

For Speech Pathologists, Audiologists, Occupational Therapists, Physical Therapists and Physicians:

1. Hold a valid Connecticut Department of Health license to practice; and
2. Have clinical pediatric experience in evaluating and treating children in the area of disability being evaluated; and
3. In the case of physicians, possess Board Certification in the appropriate specialty area (pediatrics, care of children and adolescents, etc.)

B. Cost Evaluators must charge fees for evaluation services which, in the judgment of the school district, are reasonable and customary for such evaluations. The following schedule of reasonable and customary fees applies:

- |    |   |                    |
|----|---|--------------------|
| 1. | Psychological evaluation:                   | \$2,500 to \$3,500 |
| 2. | Educational/achievement evaluation:         | \$2,500 to \$3,500 |
| 3. | Speech and Language evaluation:             |                    |
| 4. | Audiology evaluation:                       |                    |
| 5. | Occupational Therapy evaluation:            |                    |
| 6. | Physical Therapy evaluation:                |                    |
| 7. | Medical, including psychiatric, evaluation: |                    |

C. Independence Requirement: The evaluator must not have advocated for the child who is the subject of the evaluation or for the School District at a Planning and Placement Team meeting regarding the child who is the subject of the evaluation.

D. The evaluator must not be an employee of the school district.

E. The evaluator must be permitted to directly communicate with school staff who work with the child in school and the members of the Planning and Placement

Team, including the Director of Special Education, as well as to obtain information from the school and share information with the school.

- F. The evaluator must obtain and consider school information and observations of the child in the school setting in the evaluation process and the written report.
  
- G. The evaluator must comply with all guidelines required under the Individuals with Disabilities Education Act (IDEA) and the Connecticut State Department of Education regulations regarding the evaluation of children with disabilities.

#### **Location Limitations for Evaluators**

Evaluators who will be considered for approval must be located within Fairfield County or the surrounding counties in New York and Connecticut. Evaluators outside of this multi-county area will be approved only on an exceptional basis, provided that the parent can demonstrate the necessity of using personnel outside of this area. The district shall not be responsible for providing transportation, nor pay any travel expenses, to and from the location of the evaluator. This district will take into account cases of low incidence or severe disabilities where qualified evaluators may not exist in the multi-county area to ensure that reasonable exceptions to this requirement are made where qualified evaluators do not exist given the nature of the disability/suspected disability.

#### **Additional Information**

If the district has not conducted an evaluation of a child, the parent does not have a right to an independent evaluation at public cost. The district has the right to the first evaluation. A parent/guardian may request only one independent evaluation at public expense for each evaluation conducted by the district.

The results of an independent evaluation procured by the district will be considered at a Planning and Placement Team meeting.

#### **Questions**

Please contact the Director of Special Education with any questions regarding the criteria for independent educational evaluations.

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April 13, 2010

Dr. Mark K. McQuillan  
Commissioner  
Department of Education  
165 Capitol Avenue  
Hartford, Connecticut 06106

Dear Commissioner:

We, the undersigned, represent children with disabilities and their parents who seek a free appropriate public education from their school districts in Connecticut. We were recently provided with a copy of the draft Guidelines concerning the designation of children as having a specific learning disability for purposes of eligibility for special education and related services. We are deeply disturbed by the draft Guidelines and ask that you intervene to prevent this seriously defective document from being published by the State Department of Education. You need to intervene not just to safeguard the rights of disabled students, but also to avoid having the State Department of Education provide seriously flawed legal advice to school districts throughout Connecticut.

While the draft Guidelines contain numerous objectionable sections, as well as many laudatory provisions, we focus only on two of the most offensive provisions. First, and paramount, the draft Guidelines rely, as they should, on Connecticut's Scientific Research-Based Initiative (SRBI) as the first screen to determine which students need intensive interventions and to mandate that districts provide those interventions. Then, shockingly, the draft Guidelines state that, if the child fails to make grade-level progress because the district had an inadequate SRBI program, the child cannot qualify for special education designation and the legal protections, added interventions, and accountability that come with a special education designation. So, the draft Guidelines sentence children with learning disabilities in the weakest schools to double punishment: no effective SRBI and no special education services. This is a violation of child find, directly contrary to the intent of both Connecticut and federal special education law, and inconsistent with the language of the IDEA. More fundamentally, this policy is immoral.

Further, there is nothing whatsoever in the IDEA to support this exclusion. 20 U.S.C. § 1401(30) and 20 U.S.C. §1414(b)(6) provide substantial legal parameters for determining what is a specific learning disability. In neither of these provisions does the federal statute permit the

Commissioner McQuillen  
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policy of refusing to designate a student as eligible based on a failed response to intervention program. Section 20 U.S.C. §1414(b)(6)(B) provides that "In determining whether a child has a specific learning disability, a local education agency may use a process that determines if the child responds to scientific, research-based interventions as a part of the evaluation procedures." The ability to use response to SRBI as one factor in determining eligibility is radically different than saying that a child who has been victimized once by poor implementation of SRBI by a school district cannot be said to be learning disabled. By providing this bad legal advice, the State Department of Education would be setting up school districts for a rash of litigation.

Note that, however sound the SRBI program is, SRBI is certain to be weakly executed in a significant number of Connecticut schools. There are three reasons for this. The first is that SRBI is an intensively data-driven program requiring weekly and, at times, daily data collection, data maintenance, analysis, and presentation. A teacher with twenty or twenty-five children in the classroom does not have the time to implement the SRBI program with fidelity. Yet, many districts do not routinely provide aides. Where there are aides, they are often poorly trained. More to the point, the State is not providing any additional funding to districts to implement SRBI. Indeed, the State is cutting back on funding for local school districts under the Governor's Budget. The second reason is that SRBI imposes a large change in the way education is provided and necessitates a change in the culture of schools. Cultural changes take time and tremendous encouragement. The third reason is the State is doing very little training of administrators, teachers, and aides to administer the SRBI program. The program is complicated. Determining what data to collect and how to analyze it is difficult. Establishing a serious SRBI program in all the school districts in Connecticut is a time-consuming and very expensive proposition. As the United States Department of Education advised, in its letter of July 27, 2007, it is unwise to require the use of an RTI process for purposes of special education designation until the program has been successfully scaled up, in an incremental manner, over time.

With many reforms, partial implementation leads to somewhat better results. With SRBI, partial and imperfect implementation will lead to a calamity for thousands of Connecticut school children who will be deprived of any special education services where SRBI fails. You must not permit this to happen.

The second significant defect is that the draft Guidelines gratuitously rewrite the law relating to Independent Educational Evaluations (IEEs). At the end of the draft Guidelines, there is an entirely unnecessary section on IEEs, which grossly misstates the law relating to IEEs. Specifically, the draft Guidelines state, in bold, "**Any independent educational evaluation for determining eligibility in the area of specific learning disabilities must adhere to the state eligibility criteria specified in this document.**" This is not an accurate statement of the law and is beyond the jurisdiction of the State Department of Education. An IEE needs to comply with such written restrictions as a district imposes on its own evaluations. The State has no power to

Commissioner McQuillen  
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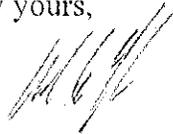
establish standards for IEEs by regulations, much less by Guidelines. A district has no right to reject an evaluation or refuse to pay for an IEE if it does not follow the form of the Guidelines unless the district applies and enforces such a requirement on its own evaluations.

Such a limitation makes little sense. The IDEA requires that a student be evaluated in all areas of suspected disabilities. To determine whether a child's deficits in reading and math are due to "one of more of the basic psychological processes involved in understanding or in using language, spoke or written," 20 U.S.C. §1401(30)(A), may well involve evaluations that depart from the rigid framework described in the draft Guidelines.

The sweeping language quoted is erroneous as a matter of law and will erode one of the most important rights that parents have under the IDEA. Furthermore, the draft Guidelines assume a regulatory tone, something inappropriate for Guidelines. If the State Department of Education wishes to regulate in this area, it is obliged to follow the notice and comment requirements of the Administrative Procedure Act. Finally, once again, the State would make an enormous and costly error if it provided unsound legal advice to school districts, only to expose those districts to a flurry of successful litigation.

There is much more to be said about these Guidelines, but we trust that the concerns raised in this letter will convince you to withhold their publication while the draft Guidelines are subject to a far more searching review than they have received to date. At the very least, these draft Guidelines ought to be widely distributed and subject to careful analysis.

Sincerely yours,



Meredith C. Braxton  
Attorney, Greenwich

Andrew A. Feinstein  
Attorney, Mystic

Gerri Fleming  
Advocate, Norwalk

Christina D. Ghio  
Attorney, Windsor

Dana A. Jonson  
Attorney, Bethel

Jennifer Laviano  
Attorney, Sherman

cc. Pat Anderson  
Anne Louise Thompson



STATE OF CONNECTICUT  
STATE BOARD OF EDUCATION



May 20, 2010

Attorney Andrew A. Feinstein  
86 Denison Avenue  
Mystic, CT 06355

Dear Attorney Feinstein:

I am writing in response to your letter dated April 13, 2010, regarding the draft *Guidelines for Identifying Children with Learning Disabilities (2010 Guidelines)*. In your letter you expressed concerns specifically surrounding Scientific Research-Based Initiative (SRBI) and Independent Educational Evaluations (IEEs). You concluded by recommending the *2010 Guidelines* be widely distributed and analyzed.

As stated in the *2010 Guidelines*, the Connecticut State Department of Education (CSDE) has adopted criteria consistent with 34 CFR § 300.309, to be used by all public agencies to determine whether a student has a specific learning disability. The primary changes in the State of Connecticut criteria for determining whether a student has a specific learning disability and is eligible for special education services, involve the addition of the requirement to document a student's inadequate response to scientific research-based intervention and the elimination of the requirements of a severe IQ-achievement discrepancy and documentation of a specific processing disorder. Although the addition of a specific criterion to document inadequate response to intervention is new, the requirement to rule out a lack of appropriate instruction in reading or math as the primary factor in the determination of a student being considered for special education as a student with a specific learning disability is *not* new.

This is a longstanding requirement of the Individuals with Disabilities Education Improvement Act (IDEA) and was included in Connecticut's *1999 Guidelines for Identifying Children with Learning Disabilities*. Moreover, Connecticut's special education regulations, Section 10-76d-7, states that alternative procedures and programs in regular education shall be explored and, where appropriate, implemented before a student is referred to a Planning and Placement Team (PPT).

A comprehensive description of Connecticut's three-tiered response to intervention (RTI) model is presented in *Using Scientific Research-Based Interventions (SRBI): Improving Education for all Students, Connecticut's Framework for RTI* (2008) which is available at [http://www.sde.ct.gov/sde/lib/sde/pdf/pressroom/SRBI\\_full.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/pressroom/SRBI_full.pdf). When core general education practices are effective and appropriate research-based interventions have been implemented with fidelity, data from SRBI can document that appropriate instruction was provided to a student being considered for eligibility as a student with a learning disability for special education services, as required by IDEA 2004, and that any demonstrated learning difficulty is not due to a lack of appropriate instruction. Conversely, if a review of existing data, including data from an SRBI process, is not

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sufficient to determine if a student's learning difficulties are not due to a lack of appropriate instruction, the PPT may collect additional data during a comprehensive evaluation process. Although documentation of a student's inadequate response to intervention is required (34 CFR § 300.311(a)(7)), an individually designed comprehensive evaluation must be conducted in order to determine a student's eligibility for special education as a student with a specific learning disability. Therefore, your statement that if a "...child fails to make grade-level progress because the district had an inadequate SRBI program, the child cannot qualify for special education..." is incorrect. If there is any question or suspicion that a child may have a learning disability, a comprehensive evaluation must be performed even if the child did not receive appropriate instruction or the district did not provide appropriate interventions through their SRBI process. In addition, as specified in IDEA 2004, families and school personnel always have the right to refer a student for consideration of eligibility for special education services by requesting an evaluation at any time, including *prior or during* the SRBI process. The PPT must respond to all referrals by holding a PPT meeting to determine whether a comprehensive evaluation is warranted.

With regard to your second concern, a PPT must consider the findings of an IEE, whether obtained at parental or school expense, in any decision made with respect to the provision of a free and appropriate public education (34 CFR § 300.502(c)(1)). Furthermore, if an IEE is at public expense, the criteria under which the evaluation is obtained must be the same as the criteria used by the public agency when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation (34 CFR § 300.502 (e)(1)). While PPTs are not required to accept the recommendations of the IEE, they must, at a minimum, consider the evaluation.

PPTs must also adhere to the criteria for determining whether a student has a specific learning disability and is eligible for special education services as stated in the *2010 Guidelines*. Your comments regarding IEEs have been noted and will be considered in the final edits of the *2010 Guidelines* to ensure clarity and fidelity to the IDEA.

The *2010 Guidelines for Identifying Children with Learning Disabilities* is a very comprehensive document as it must describe the RTI/SRBI Framework in place in Connecticut as succinctly as possible in order to ensure understanding of how this three-tiered model should be used to document a student's response to appropriate instruction as part of the identification and eligibility determination process for students suspected of having a specific learning disability. In addition, know that the revised State of Connecticut criteria for determining whether a student has a specific learning disability and is eligible for special education services has been incorporated into the proposed revisions to the Special Education Regulations. Public hearings on the proposed regulations will be scheduled in the near future.

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Finally, please note that the *Guidelines for Identifying Children with Learning Disabilities: Executive Summary* (2009) identifies the 24 members of the Learning Disability Advisory Task Force, which was comprised of representatives from multiple stakeholder groups who met monthly for almost a year to develop the complex concepts represented in this publication. A draft of the *2010 Guidelines* was sent for analysis to this Learning Disabilities Advisory Task Force, as well as, the Bureau of Special Education, other key CSDE personnel, and selected representatives from the two learning disability advocacy groups in the state; the Connecticut Association on Children and Adults with Learning Disabilities and the Learning Disability Association of CT. Consequently, this document has been and continues to be subject to intense professional input and oversight. The CSDE is currently compiling the collective feedback on the *2010 Guidelines* and will consider the comments and concerns presented in your letter to clarify any misconceptions before the final edits are completed and the document is released to the field.

If you have any further questions or concerns regarding specific sections of the *2010 Guidelines*, please contact Dr. Patricia Anderson at [patricia.anderson@ct.gov](mailto:patricia.anderson@ct.gov) or 860-713-6923.

Sincerely,



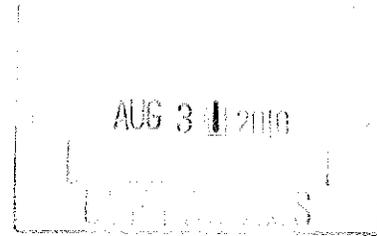
Mark K. McQuillan  
Commissioner of Education

MKM:pal  
cc: George A. Coleman, Deputy Commissioner  
Charlene Russell-Tucker, Associate Commissioner  
Anne Louise Thompson, Bureau Chief  
Patricia Anderson, Education Consultant

Christopher S. Lent  
12 Randazzo Road  
Columbia, CT 06237

August 24, 2010

Attorney Theresa C. DeFrancis  
Education Consultant  
Bureau of Special Education  
P.O. Box 2219  
Hartford, CT 06145



Subject: Proposed Amendment to Sec. 20. Section 10-76d-11: Transition Services

Re: Public Hearings on Proposed Revisions to the State Special Education Regulations

Dear Attorney DeFrancis,

In order for children with disabilities to adequately plan for post-school life, "Transition Services" must begin while they attend middle school. Under the Individuals with Disabilities Education Improvement Act<sup>1</sup> ("IDEIA"), Transition Services must occur no "later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter."<sup>2</sup> Such a critical element of a child's Individualized Education Plan ("IEP") should neither wait until they've reached the age of 16, nor be discretionary when provided for earlier. Not only is early transition planning necessary for establishing postsecondary goals, it could be a determinative factor in the selection of high schools.

For example, the Columbia School District provides its students with a choice of four out-of-district high schools. However, under the current laws, a child could be enrolled in an out-of-district high school for two years before transition goals were identified in the IEP. It would be much too late for the IEP Team then to conclude, during the child's sophomore or junior year, that another high school would have been more appropriate. For children considering Magnet or Charter Schools as an alternative to attending chronically failing high schools, early transition planning is a key factor in identifying those schools capable of providing them with an opportunity to achieve their goals and interests.

Waiting until age 16 to incorporate postsecondary goals into an IEP is much too late in the transition planning process. Transition services must begin in the 7<sup>th</sup> grade, or by age 14, whichever occurs first. Early individualized transition planning is not only a critical component of a child's IEP, it would facilitate the implementation of "Student Success Plans," which are

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<sup>1</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(III) (2007).

<sup>2</sup> *Id.*; 34 C.F.R. § 300.320(b) (2007).

Christopher S. Lent  
12 Randazzo Road  
Columbia, CT 06237

one of the essential elements of the Connecticut State Department of Education's Secondary School Reform initiative.<sup>3</sup>

I respectfully request that the following provision be added to the Connecticut Special Education Regulations, Sec. 20. Section 10-76d-11:

Transition Services. Transition Services shall begin no later than the first IEP to be in effect when the child enters the 7<sup>th</sup> grade, or when the child turns 14, whichever occurs first, and updated annually thereafter with goals and objectives in compliance with IDEIA.

Thank you in advance for your consideration of this proposal. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Christopher Lent

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<sup>3</sup> Connecticut State Department of Education, Education Reform in Connecticut: Retaining Our Competitive Edge, August 18, 2010, available at <http://www.sde.ct.gov/sde/site/default.asp>.