

IEP Chair Training

Legal Issues

October 2015

Christine Spak, J.D.

Gail Mangs, J.D.

Bureau of Special Education

Who can refer a child for determination of special education eligibility?

RCSA §10-76d-7 Referral:

*[RCSA: Regulations of Connecticut State Agencies
which implement the state statutes]*

Each board of education shall accept and process referrals for the initial evaluation of a child to determine if the child is a child with a disability from **appropriate school personnel, as well as from a child's parents; or from a physician, clinic or social worker, provided the parent so permits.** The Department of Education shall make available a standard referral form which shall be used in all referrals ...

The board of education shall make available information, understandable to the general public, concerning the procedures for requesting an initial evaluation of a child to all parents and professional staff of such board... Such information shall identify at least one person in each school building that parents or professional staff of the board may contact regarding school policies and procedures for special education referrals...

What does a referral look like?

State Forms: ED 621 (Referral), ED 622 (Parent Notice of Referral), and ED 623 (PPT Notice)
(The Department of Education shall make available a standard referral form which shall be used in all referrals ... RCOSA Section 10-76d-7)

A parent is not required to submit the standard referral form. The board of education shall accept as a referral a concern expressed in writing from the parent ...that such child be referred for an initial evaluation and such written concern shall be provided to supervisory or administrative personnel of the board or such child's teacher.

Verbal Referral: Each board of education shall develop a process for accepting referrals from parents who cannot put their request in writing.

Date of Referral: The date of referral is the date board personnel receive the referral...not the date the board's referral form is filled out by the board.

Notice and Scheduling of PPT meetings:

RCSA §10-76d-8 Notice and Consent

....Written notice shall be sent to the parents no later than five days after date of referral...

The requirement for providing the parents of a child with a disability, or the parents of a child who may be eligible for special education and related services, with written notice occurs after the PPT meeting at which the PPT proposes to, or refuses to, initiate or change the child's identification, evaluation, or educational placement or the provision of a free appropriate public education to the child.

Written notice shall be written in language understandable to the general public and provided in the native language of the parent ...unless it is clearly not feasible to do so.

Written notice shall include (A) a description of the action proposed or refused by the PPT, (B) an explanation of why such PPT proposes or refuses to take the action, (C) a description of each evaluation procedure, assessment, record, or report such board used as a basis for the proposed or refused action, (D) a statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and, if the written notice...is the initial referral for evaluation the means by which a copy of a description of the procedural safeguards can be obtained, (E) sources for parents to contact to obtain assistance in understanding the procedural safeguards of IDEA, (F) a description of other options the PPT considered and the reasons why those options were rejected, and (G) a description of other factors that are relevant to the board of education's proposal or refusal.

Written notice...may be provided to the parents at the PPT meeting where such PPT proposes to, or refuses to, initiate or change the child's identification, evaluation, or educational placement of the child with a disability or the provision of ...[FAPE]...If such notice is not provided at the PPT meeting, it shall be provided to the parents...not later than ten days before the PPT proposes to, or refuses to, initiate or change the identification, evaluation or educational placement of the child or the provision of ...[FAPE]...

34 CFR § 300.322: Parent Participation

(a) *Public agency responsibility – general.* Each public agency must take steps to ensure that **one or both of the parents of a child with a disability are present at each IEP team meeting** or are afforded the opportunity to participate including-

(1) **Notifying** parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a **mutually agreed on time and place...**

(or *Surrogate Parent per 34 CFR section 300.30(a)(5)*);

See RCSA 10-76d-12 for similar state regulation...

(c) ***Other methods to ensure parent participation.*** If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls...

(d) ***Conducting an IEP Team meeting without a parent in attendance.*** A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents to that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as-

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

What about SRBI? *See 10-76d-7 and note that OSEP has stated:*

“The use of RTI does not diminish a district's obligation under the IDEA to obtain parental consent and evaluate a student in a timely manner... When there is reason to suspect the student may have a disability and need special education and related services as a result, the IDEA's initial evaluation provisions kick in, regardless of whether the district plans to or is currently utilizing RTI strategies with the student.” [OSEP]

AND:

SRBI may not be used to delay or deny the provision of a full and individual evaluation nor can evaluation be refused based solely upon a district not yet having implemented or completed SRBI. A Parent's referral for special education evaluation *always* trumps whatever SRBI process the District may then have in place.

HOWEVER:

While this means the District must hold a Planning and Placement Team meeting to discuss the referral and consider whether evaluation is appropriate, the team may still determine that there is no reason to suspect the student may have a disability and decline to evaluate; prior written notice regarding the refusal to evaluate must then be provided to the parent. The parent, if they so choose, may then access dispute resolution (i.e., file a complaint, request a due process hearing or seek mediation).

Timelines:

In Connecticut:

RCSA § Sec. 10-76d-13. Timelines

Special education and related services shall be provided as soon as possible after the planning and placement team meeting held to review, revise or develop the child's individualized education program, but in any event not later than the following timelines.

- (a) School year. In the case of a referral made during the academic year, the timelines shall be as follows.
 - (1) **The individualized education program shall be implemented within forty-five days of referral or notice, exclusive of the time required to obtain parental consent.**
 - (2) In the case of a child whose individualized education program calls for **out-of-district or private placement**, the individualized education program shall be implemented within **sixty** days of referral or notice, exclusive of the time required to obtain parental consent. If difficulty of placement is such as to occasion a delay beyond this period, the board of education shall submit to the state board of education written documentation of its efforts to obtain placement in a timely manner. ..
- (b) **Between school years.** In the case of a referral made in between school years, the effective date of the referral may be deemed to be the first school day of the next school year.

HOWEVER, Federal timelines differ...

Federal Requirements regarding referral timelines:

34 CFR § 300.301 (c) Initial Evaluations/Procedures for initial evaluation-

The initial evaluation- [1][i]Must be conducted within 60 days of receiving parental consent for the evaluation...

34 CFR § 300.323[c] Initial IEPs; provision of services.

Each public agency must ensure that-

[1] A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

[2] As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

See SEDAC reporting requirements: Currently you may meet **either the 45 school day timeline OR the 60 calendar day timeline.**

DATE OF PARENTAL CONSENT TO EVALUATE:

Use either the date that was stamped on the form when it was received, or the date of signature if the form was signed by the parent during the referral PPT meeting.

Note: The 45/60 day requirements apply only to evaluations that are part of initial referrals. There are no specific, required timelines for any other evaluations.

PPT Membership: 34 CFR § 300.321: IEP Team

- Parents (or Surrogate Parent per 34 CFR section 300.30(a)(5));
- Regular education teacher of the child (if the child is, or may be participating in regular education environment);
- Special education teacher of the child or if appropriate, special education provider of the child;
- Representative of the district qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about the availability of district resources;
- An individual who can interpret the instructional implications of evaluation results and who may be one of the previously named members of the team;
- At the discretion of the parent or the district, other individuals with knowledge or special expertise regarding the child including related services personnel as appropriate.

IEP Pages that trip people up:

Cover Page: The attendance at the bottom of the first page (which is NOT an official part of the IEP) does not signify agreement with the IEP nor is anyone required to “sign in.” It is just attendance.

Page 2: Minutes are not required. However, if you are going to fill in this section, they should accurately reflect the discussion at the meeting and include the important points. Generally, it is expected that the recommendations noted on page 2 will be implemented.

Page 3: Prior Written Notice: 34 CFR § 300.503 states that written notice must be given to the parents of a child with a disability a *reasonable* time (contrast Connecticut, below) before the agency *proposes or refuses* to initiate or change the identification, evaluation or educational placement of a child or the provision of FAPE to a child. Therefore, parent requests that are refused should be noted on this page although note that the intent is to provide notice in the areas of identification, evaluation, educational placement and/or FAPE.

Pages 4 and 5: Present Levels of Academic Achievement and Functional Performance: Page 4 is the first actual page of the IEP:

- Parent and Student input and concerns are essential and should truly reflect their input.
- Information should flow from left to right across the page.
- Current performance should accurately reflect the student's levels of achievement contain relevant standardized testing information and provide usable information that will help guide the development of goals and objectives
- Strengths are as important as concerns.
- Generally, any noted concerns should lead to goal(s)/objectives.
- The impact of the Student's disability on their participation in the general education curriculum should provide real, usable information.

Secondary Transition: Transition planning should appear in the first IEP to be in place when a student turns 16 years of age.

Post-school outcome goal statements: There must be at least 2 such statements: Post-secondary education *or* training *and* employment. (If the PPT determines that independent living is an appropriate goal for the student, there would be a 3rd such statement.)

They should be written as measurable statements that refer to goals a student hopes to achieve *after* leaving secondary school; they are not process statements (such as ‘J. will explore post-secondary education’.) For each goal statement, there should be a page 7 goal and objectives.

In Connecticut:

RCSA § 10-76a-1(14): PPT

PPT means the IEP team as defined in the IDEA and who participate equally in the decision making process to determine the specific educational needs of a child with a disability and develop an IEP.

•NOTE: ED 633 may be used to waive the attendance of a required team member if the parent and school district agree in writing that their attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed. Attendance by a team member may similarly be excused even if the member's area of the curriculum or related services will be modified or discussed at the meeting if the member submits, in writing, input into the development of the IEP prior to the meeting.

For purposes of the evaluation, identification or determination of the specific educational needs of a child who may be **gifted or talented**, the PPT means a group of certified or licensed professionals who represent each of the teaching, administrative and pupil personnel staffs and who participate equally in the decision making process.

Page 8: Accommodations and Modifications:

- Think carefully about what a student may actually need, where and when: they need not be provided in every setting or for all activities. If you include accommodations (changes to instruction that change how a student learns) and modifications (which change what a student learns), you must implement them.
- Be careful in using the phrase “as needed.” Who will determine this? What criteria will be used to make this determination?
- Supports for personnel: May include teacher training, support by paraprofessionals, consultation with related service providers, etc.

Page 11: Special education, related services and regular education

See manual for examples of how to fill this page in.
Check your addition! Hours should add up.

Planning and Running a PPT meeting:

Communication is key.

- Setting agendas
- Taping Meetings
- Surprise attendees
- Including reasonable time constraints by:
 - v Setting a beginning and an end
 - v Allowing time for additional issues that may arise
 - v Being firm but flexible
 - v Being willing to reschedule as needed
- 1. Allowing for parent input
 - 1. Providing for time
 - 2. Active listening
 - 3. Being responsive to questions and concerns
 - 4. Seriously considering their input
- 2. Allowing for school personnel input
- The “party line”
- Room for disagreement

Additional Requirements:

Connecticut General Statute 10-76d(a)(8)(B) requires as follows:

(B) Upon request by a parent, guardian, pupil or surrogate parent, the responsible local or regional board of education shall provide such parent, guardian, pupil or surrogate parent an opportunity to meet with a member of the planning and placement team designated by such board prior to the referral planning and placement team meeting at which the assessments and evaluations of the child or pupil who requires or may require special education is presented to such parent, guardian, pupil or surrogate parent for the first time. Such meeting shall be for the sole purpose of discussing the planning and placement team process and any concerns such parent, guardian, pupil or surrogate parent has regarding the child or pupil who requires or may require special education.

Therefore, parents have the option of meeting with a member of the PPT BEFORE the referral PPT meeting, with regard to students who are going through the initial referral and identification process only.

Upon referral, parents should be provided with written notice of their right to request a meeting. The IEP should document the provision of notice, whether the parents requested the meeting, if the meeting was held, who attended, and the issues discussed.

When holding these meetings, assign a PPT member who really understands the PPT process and can explain it in a user-friendly way!

Connecticut General Statute 10-76d(a)(8)(D) requires as follows:

Immediately upon the formal identification of any child as a child requiring special education and at each planning and placement team meeting for such child, the responsible local or regional board of education shall inform the parent or guardian of such child or surrogate parent or, in the case of a pupil who is an emancipated minor or eighteen years of age or older, the pupil of (i) the laws relating to special education, (ii) the rights of such parent, guardian, surrogate parent or pupil under such laws and the regulations adopted by the State Board of Education relating to special education, and (iii) any relevant information and resources relating to individualized education programs created by the Department of Education. If such parent, guardian, surrogate parent or pupil does not attend a planning and placement team meeting, the responsible local or regional board of education shall mail such information to such person.

These documents could include hardcopies (or electronic copies if the parent agrees) of the *IEP Manual*, *Parents' Guide to Special Education in Connecticut* and, for transition age students) *Building a Bridge*. Parent receipt of these documents should be documented in the IEP.

Connecticut General Statute 10-76d(a)(8)(G) requires as follows:

Upon request by a parent, guardian, pupil or surrogate parent, the responsible local or regional board of education shall provide the results of the assessments and evaluations used in the determination of eligibility for special education for a child or pupil to such parent, guardian, surrogate parent or pupil at least three school days before the referral planning and placement team meeting at which such results of the assessments and evaluations will be discussed for the first time.

This applies only to students who are going through the initial referral and special education identification process.

Parents need to be notified of their right to request these reports. This information could be included in the letter or notice used to let parents know about their right to a meeting before the referral PPT meeting; in addition, documenting this information on page 2 of the referral IEP is also strongly advised.

Providing results means providing the entire evaluation reports as just a page of raw scores and grade equivalents is not going to be helpful to most parents.

For students who are in foster care, always consider whether they should have a surrogate parent appointed.

Sec. 10-94j-6. Reports of a child's need for a surrogate parent

The commissioner of education shall disseminate such information as may be necessary to ensure that local and regional boards of education, and other agencies as appropriate, are informed of the surrogate parent program.

(a) Such information shall include a description of the requirements for eligibility for appointment of a surrogate parent.

(b) Such information shall include a statement of the responsibility to report to the commissioner the name of any child who may require a surrogate parent.

(c) Such information shall include a description of the type of data to be included in a report to the commissioner of a child who may require a surrogate parent. Such data shall include, but not be limited to, the following:

- (1) The child's name, age and current address;
- (2) If the child requires special education, a statement of the nature and severity of the child's handicapping condition as well as a copy of the child's current individualized education program;
- (3) If the child may require special education, a copy of the referral form which was forwarded to the child's planning and placement team;
- (4) Such information as may be available concerning the whereabouts of the child's parents or guardian and, where appropriate, certification from the responsible agency that the child is a ward of the state; and
- (5) The name and address of the agency making the report and, if different, the name and address of the agency responsible for educating the child.

(Effective December 1, 1982)

Due Process: The Dispute Resolution Forums

Telephone Calls to Bureau of Special Education Consultants

- Consultants are assigned to specific Districts for contact purposes only

State Complaints:

- 60 calendar day timeline
- Must be filed through a written, signed complaint; no anonymous complaints
- Must allege a violation of state or federal special education requirements
- Systemic complaints may be filed (e.g., an entire school, grade, district)
- Investigated by Bureau Consultants; usually investigated through telephone calls and requested documentation; rarely site visits
- May result in required corrective action
- See document: "Connecticut's Complaint Resolution Process"

Mediation:

Voluntary for both parties;

Mediators are Bureau Consultants

Goal is to facilitate an agreement/contract

Proceedings and any agreement reached are confidential

Usually completed in one day

Due Process Hearings:

- Formal administrative hearing presided over by Hearing Officers; all attorneys and independent contractors, not state or district employees
- 45 calendar day (consecutive days are rare) timeline; allowable extensions
- May mediate and/or attend resolution meeting
- Final Decision and Order may be appealed in state or federal court
- Advisory Opinions option

Consider IEP Facilitation:

- SERC and the Bureau of Special Education have collaborated with CADRE in training six facilitators who can assist PPTs in difficult situations to follow a process that will insure that all parties are heard, agreements clearly noted and an appropriate IEP developed.
- Information will soon be available through the Bureau Bulletin