

## Special Education

### Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and Their Designees for Evaluation Purposes

To: Superintendents, Principals, Administrators of Special Education, and Other Interested Parties

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#### Introduction

The legislature recently amended section 3 of G.L. c. 71B, the state special education law, to require school committees, upon request by a parent, to grant timely and sufficient access by parents and parent-designated independent evaluators and educational consultants (both of whom are referred to in this guidance as "designees") to a child's current and proposed special education program so that the parent and named designees can observe the child in the current program and any proposed program. The law, referred to in this advisory as "the observation law," limits the restrictions or conditions that schools may impose on these observations. The purpose of the law is to ensure that parents can participate fully and effectively in determining the child's appropriate educational program. The observation law can be found at <http://www.mass.gov/legis/laws/seslaw08/sl080363.htm>. It is effective January 8, 2009.

Long-standing "best practice" related to parent and designee observation in many Massachusetts schools will likely be unchanged with the implementation of this law. School staff and parents and their designees have successfully collaborated for many years to achieve timely and sufficient access to programs for observations that have helped parents and their designees better understand the school programs that serve students with disabilities. In so doing, they have safeguarded the confidentiality interests of students and minimized disruption in the classroom and school. By codifying a parent's program observation right, the legislature has made clear that local practices that unreasonably restrict or unduly delay observations are no longer acceptable.

Before issuing this guidance, Deputy Commissioner Karla Baehr and other Department staff met with a focus group of stakeholders, representing superintendents, principals, special education administrators, parents, advocates, and independent education evaluators, to identify particular areas of concern or confusion. School districts are encouraged to use this guidance to develop and/or review their policies and practices to assure alignment with the observation law. The Department will receive comments and questions on the implementation of the law and this guidance through June 30, 2009. Based on that feedback, we will determine whether additional guidance or any other action by the Department is necessary to assist in implementing the observation law.

## **Key Elements of Observation Policies and Procedures**

### **A. Receiving and Responding to Observation Requests**

School districts need to implement an efficient and effective process to consider and respond to observation requests so that parents and designees obtain timely access to education programs. The observation law does not address the manner in which a parent or designee makes a request to observe a child's education program. The Department encourages districts that have permitted verbal requests for observations to continue that practice. For school districts that require written requests, the Department cautions against requiring detail beyond identifying the student at issue, the nature of the request and contact information. The Department also cautions against delaying the process due to incomplete written information that can be clarified through discussion. Consistent with the requirement of timely access discussed below, the Department encourages verbal (as opposed to written) communication with the parent or designee to review the request, resolve any issues, and schedule the observation.

If the request is from a parent designee and the school has no prior knowledge of the designee, it is reasonable for the school to confirm with the parent that the designee is acting on his or her behalf. Districts may require written confirmation of the parent's designation, but are not required to do so. However, if the designee will review the student's records, as is often the case, the school must obtain written permission from the parent for the record review consistent with section 23.07(4) of the Student Records Regulations.

The observation law uses the terms "parent-designated independent evaluators and educational consultants" to identify persons whom the parent designates to observe the child and the child's program on the parent's behalf. We interpret the term "independent evaluators" to refer to those individuals who conduct independent evaluations as provided under federal and state special education laws. See, 30 C.F.R §300.502; 603 C.M.R. §28.04(5). We read the term "educational consultants" to refer to individuals who advise parents on the child's needs and program options and, typically, review the child's educational records. In most cases, independent evaluators and educational consultants will have an education or related professional background and educational evaluation experience.<sup>1</sup> However, apart from the language governing independent evaluators in footnote 1, special education law does not set forth credentials or licensing requirements that parent designees must meet. We caution districts against setting such requirements or requesting resumes of designees.<sup>2</sup> Such policies could be considered an unlawful condition or restriction on the right of parents and their chosen designees to access the child's program for the purpose of evaluation.<sup>3</sup>

### **B. Timely Access**

The obligation to provide "timely access" to the program for purposes of observation is a core component of the observation law. District policies and practices should be evaluated against this principle.

Just as the special education law requires individualized education programs for students, district policies and practices should recognize that different observation requests may require more planning and observation time than others depending on the complexity of the student needs being evaluated, the program(s) to be observed, the program schedule, and the schedule of the parent or designee. Best practices suggest that these issues are resolved most efficiently and effectively when discussed with the observer, beginning with timely communication from the school to the observer when the request is made. For example, timely access following a request to observe a specific classroom which the parties agree can be achieved in an hour, in most circumstances should be able to be scheduled within a week of the request. In other instances, such as when a designee needs to observe the current and proposed programs, including periods of unstructured time to observe the student's interactions and responses, the observation may take longer to schedule.

It is also important to note that the timely access requirement does not mean that a school district must allow observations on demand, or that parents or designees may unilaterally set a schedule for observations. As noted, school administrators may take a reasonable period of time to inform school staff and plan the logistical aspects of an observation. Additionally, the Department believes it is reasonable for district policies and practices to designate certain periods of the year, such as during MCAS testing in the child's classroom or the first or last couple of weeks of school, as times in which observations are not generally scheduled.

### **C. Sufficient Duration and Extent**

The observation law requires that school districts permit access to programs that is of "sufficient duration and extent" to accomplish the purpose of the visit, i.e., evaluation of the child's progress in the current program and/or the proposed program's ability to allow the child to make adequate progress. The law also states that program access must be allowed to both academic and non-academic components of the program(s) if requested. School districts and parents have reported that, typically, observations are between one and four hours. While useful as a general rule, the Department recommends that district policies and practices specify that the duration and extent of observations will be determined on an individual basis. Districts should avoid rigid adherence to defined time limits regardless of the student's needs and settings to be observed. The complexities of the child's needs, as well as the program or programs to be observed, should determine what the observation will entail and what amount of time is needed to complete it. Discussion between school staff and the parent or designee is a good starting point for resolving the issue.

The law is clear that a district may not arbitrarily limit observations to certain academic classes if such limitations would not allow an observer to evaluate fully whether a program is or would be appropriate for the identified student with disabilities. For example, a student with an emotional impairment may have goals relating to how the student interacts with others in both formal and informal settings. If requested, the parent's designee should be allowed to observe the student in a formal teaching setting as well as a more informal or less structured setting such as recess, the lunch room, or participation in a school club.

### **D. Conditions or Restrictions on Observations**



The observation law states that districts may not condition or restrict program observations except when necessary to protect:

1. the **safety** of the children in the program during the observation;
2. the **integrity** of the program during the observation; and
3. children in the program from **disclosure** by an observer of confidential or personally identifiable information he or she may obtain while observing the program.

The law makes clear that schools may not restrict or place conditions on observations unless they are necessary to address specific concerns about the impact of the observations on the program itself or the children in it. We recommend that districts consider the need for these conditions or restrictions on an individual basis and that principals discuss them with the program observer in planning the school visit. It is also important to add that while principals must exercise their authority consistent with the observation law, they remain responsible for the management and operation of the school (subject to the supervision and direction of the superintendent). See, M.G.L. c. 71, §59B. As such, they may exercise their discretion at any time to reschedule or terminate an observation in the event of a building emergency or a disruption that impacts the physical or emotional well-being of the children in the school or the program being observed. We expect that these cases will be limited.

1. **Safety:** The Department believes that decisions regarding the need to restrict or place conditions on program observations for safety reasons should be made on an individual request basis by building administrators and the child's teacher(s) and service providers, if relevant, based on their professional judgment concerning the needs of the child or children within the program. These decisions should be made carefully and not for the convenience of the school. For example, school staff may have concerns about the unsafe behaviors of a student who becomes agitated when being observed by individuals the student does not know and may decide that a shorter observation than that proposed by the observer is appropriate. Every effort should be made to work with program observers to develop ways to address issues of concern.

Schools have inquired about criminal offender record information (CORI) policies, adopted pursuant to M.G.L. c. 71, §38R, and their application to program observation by parents and their designees. Our view is that the CORI law, which requires districts to conduct CORI checks of employees, volunteers, and transportation providers who have direct and unmonitored contact with children, has limited application to parent and designee observations because program observers typically do not have direct and unmonitored contact with children. That said, if a district has adopted a policy that requires CORI checks of all building visitors, a district may interpret the policy to apply to program observers as well. However, if CORI checks are required of all visitors, the district must ensure that they are conducted in an expeditious manner so that parents and designees have timely access to the program(s) they wish to observe.

2. **Program Integrity:** We recognize that the classroom routine is affected on some level when any visitor enters the classroom, whether that person is the principal, another

teacher, or an individual from outside the school environment. That fact in and of itself is not a basis for denying or restricting access to a classroom. The Department encourages districts to consider the program activities the observer wishes to evaluate and to work with the teacher and the observer on how to avoid or minimize disruption in the students' routines. Some schools report that a simple introduction of the observer as present, for example "to learn more about the 5th grade" or "to learn more about math" alleviates concerns the students may have. Other classrooms, because of the complexities of the students' needs, including behaviors, may require more specific planning to maintain the program environment.

3. **Confidentiality/Personally Identifiable Information:** The observation law permits districts to condition or restrict observation if necessary to protect children from disclosure by the observer of confidential or personally identifiable information he or she may obtain while observing the program.

As noted earlier, if the designee will review the student's records as well as observe the program, the designee must have received written consent from the parent. Therefore, there should be no issue concerning the observer's right to obtain the information concerning the student at issue. With respect to other students, staff must be mindful of removing materials from plain view (for example, IEPs, record books, assessments) which may be part of a student record so that the program observer will not see them.<sup>4</sup> Similarly, school staff should not provide identifying information about students other than the student at issue when discussing the class with the observer.

In our view, the language regarding confidentiality and privacy does not provide a legal basis for districts to require either that parents or designees surrender personal notes of their observations or share their notes with school staff. These notes allow observers to recall more accurately the components of the program they observed as well as the student's performance. Allowing parents and designees to retain their notes, if any, will enhance the parent's ability to participate more effectively in decision making about their child's program.

Parents and designees are generally knowledgeable about and sensitive to issues of student confidentiality and privacy. While this is so, we believe it is reasonable to ask observers to sign a statement that in the event that they obtain personally identifiable or confidential information during the course of an evaluation/observation, they will not disclose it (except when it is the information of the student being evaluated, in which case it will be used consistent with the parent's authority and direction).

## **E. Conclusion**

As noted earlier, many districts have worked well with parents and their designees to provide access to programs so that parents can make informed decisions about their child's special education programs and services. Where parents have not had successful experiences with program observations, the legislature has now made clear its expectations in this area. While we are confident that many districts' policies and practices align with the spirit and letter of the

observation law, we expect that all districts will review and revise their policies and practices as necessary to ensure that result. We hope that this guidance is helpful in that regard and invite you to send any comments you may have to me, Marcia Mittnacht, at [mmmittnacht@doe.mass.edu](mailto:mmmittnacht@doe.mass.edu) by June 30, 2009. Thank you for your attention to this important information.

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**1** In Massachusetts, publicly funded independent evaluations must be conducted "by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates...." Section 28.04(5) of the Massachusetts Special Education Regulations. On the other hand, educational consultants who conduct program observations may or may not be registered, certified, licensed or otherwise approved by a responsible entity.

**2** In agreeing to fund an independent evaluation, the school district may require evidence that the independent evaluator meets the criteria set forth in footnote 1. See, Section 28.04(5). Presumably, this inquiry would occur before the publicly funded independent evaluator requests the opportunity to observe the child in the program or proposed program.

**3** Districts may develop information resources for parents to assist them in choosing independent evaluators and educational consultants as one means of developing positive relationships with parents and the community of independent evaluators and educational consultants so that observations can proceed most effectively.

**4** The Student Records Regulations define "student record" as "the transcript and the temporary record, including all information - recording and computer tapes, microfilm, microfiche, or any materials - regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified and that is kept by the public schools of the Commonwealth." 603 C.M.R. §23.02.