

SERIES 2000-2001

CIRCULAR LETTER: C-5

TO: Superintendents of Schools
Directors of Special Education
Hearing Officers
Parent Advocates and Attorneys
Board Advocates and Attorneys

FROM: Theodore S. Sergi, Commissioner of Education

DATE: August 14, 2000

SUBJECT: Due Process Regulations Effective July 1, 2000

As you may be aware, the State Department of Education has spent the last year developing revised due process regulations. The intent of these changes is to clarify the process and provide for timely decisions. The regulations were approved by the Regulations Review Committee and went into effect on July 1, 2000. They were published on July 18, 2000 in the Connecticut Law Journal. The purpose of this memo is to highlight the substantive regulatory changes in how mediations, advisory opinions and hearings will be conducted in this state.

Attached please find a summary of the changes and what the Department expects of parties who participate in this process. We are convinced that short, focused hearings are in the best interests of our children. To that end, hearing officers have been empowered to manage the hearing. We expect that all parties who come to a due process hearing will be prepared to comply with the requirements.

In addition to the summary, we are also providing a copy of the regulations, the new request forms for mediation, advisory opinion and hearing and a copy of the hearing officer qualifications. Please destroy old copies of this information and utilize the revised forms and information.

If you have any questions concerning these requirements, please contact either Theresa C. DeFrancis (860-807-2018) or Thomas G. Badway (860-807-2017). Copies of the regulations may be obtained from either the Office of Legal and Governmental Affairs (860-566-8712) or the Due Process Unit (860-807-2017 or 2018).

SUMMARY OF CHANGES TO SPECIAL EDUCATION DUE PROCESS

PLEASE READ THE REGULATIONS IN THEIR ENTIRETY. An official copy of the regulations is included for your review. Former Section 10-76h-2 has been repealed in its entirety. Sections 10-76h-3 to 10-76h-18, inclusive, are new provisions.

The following provisions are brought to your attention because they constitute significant changes to the current due process procedures. **Read the regulations in their entirety.**

A note about the effective date:

The effective date of the new regulations is July 1, 2000. If a party claims that a particular regulation adversely affects or imposes a substantive right or requirement, the Hearing Officer will make a ruling on the party's stated objection. It is not the intention of the new regulations that either party to a hearing be substantially prejudiced because the regulations have changed during the course of the hearing.

Section 10-76h-3. Hearing request; Content of Hearing Request

- Each public agency shall provide assistance to the parent as may be necessary to file a written hearing request. When a parent requests a hearing, the public agency shall also inform them of the availability of mediation and the advisory opinion process. The parent shall also be informed of any free or low cost legal services and other relevant services available in the area if the parent requests such information or a hearing is requested.
- The hearing request shall be filed with the due process unit or with the public agency and a copy shall be provided to the opposing party. If the request is filed with the public agency, the public agency shall notify the due process unit by facsimile transmission of the request on the same day that the request for due process is received and has seven days to send the original request to the due process unit. Due process uses a calendar day timeline. School districts must have staff available during vacation periods to review any incoming requests for due process so that they may be processed correctly.
- The Department shall have available a model form to assist the parent in filing a request for due process. The model form shall be made available at each school and at each school a designated staff member shall assist the parent in completing the form.
- A hearing officer has the authority to dismiss any due process request which raises issues that have not been raised in a planning and placement team meeting. If the requesting party can show that the public agency unreasonably refused to schedule a PPT meeting at which the issues were to be raised, the hearing officer may proceed with the hearing.

Section 10-76h-4. Statute of limitations

- The two-year statute of limitations does not apply to evidence, provided admission of such evidence shall meet evidentiary tests such as relevance and materiality.

Section 10-76h-5. Mediation

- A request for mediation will not result in a hearing being scheduled. If the parties are unable to resolve their dispute at mediation, either party has the right to request a hearing.
- Discussions that occur during mediation shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding, and the parties to the mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation.

Section 10-76h-6. Advisory opinion

- This process has been explained in previous communications.

Section 10-76h-7. Appointment of hearing officer. Scheduling of prehearing conference and hearing dates

- The due process unit will notify the hearing officer by FAX that a request has come in, that the hearing officer has been appointed and of the 45th day when the hearing decision must be mailed to the parties. The due process unit will send the packets of information to the parties (which consists of the notice of the hearing, notice of representation of parties, procedures for postponement and extension requests, prehearing conference information, requirements for the submission of documents and advisory opinion information). The hearing officer will send the scheduling notice by either FAX or regular mail.
- The hearing officer will schedule all dates. There is no longer an automatic scheduling of the first day of the hearing by the due process unit.
- During the prehearing conference, the hearing officer will: simplify or clarify the issues in dispute; establish dates for the completion of each party's evidence; review the possibility of settlement, but not participate in substantive settlement discussion; schedule hearing dates, which may include consecutive days of hearing, organize the submission of exhibits, identify witnesses and address such other administrative matters, as the hearing officer deems necessary.
- During the prehearing conference the parties must disclose how long it will take them to put their case on; identify their witnesses and describe the testimony of witnesses; the hearing officer will determine the length of the hearing, taking into consideration the time needed by the hearing officer to write the final decision and order.
- The hearing officer may dismiss any case in which the moving party is not prepared to go forward within the established timeline, unless a postponement or extension is granted.
- As stated above, the due process unit will initially inform the hearing officer and the parties of the date of the mailing of the final decision and order (the 45th day after the request is received). Any time a party asks for a change in the timeline and the hearing officer feels that such a change is warranted, the hearing officer has the opportunity to change the date of mailing of the final decision and order if, within the discretion of the hearing officer, it is necessary to change the date of mailing. The hearing officer may

consider an asserted need for additional hearing dates as a request for an extension of the 45-day timeline.

- The hearing officer shall schedule the hearing at a place reasonably convenient to the parent as determined by the hearing officer. The practice of utilizing board of education or town offices shall continue. It is important that school districts make facilities available that protect the confidentiality of the process and provide an environment that is appropriate for a quasi-judicial proceeding.

Do not file a request for a hearing if you are not prepared to move forward with your case. Do not agree to represent a client if you are unable to comply with our scheduling requirements. Hearing officers have been directed to comply with Federal law, which requires final decisions within 45 days of a hearing request and will not grant postponements for the convenience of counsel.

Section 10-76h-8. Motion Practice

- Standardizes the practice of asking the hearing officers to rule on issues while the hearing is ongoing. Motions that may be made to the hearing officer include, but are not limited to: motion to recuse, motion to dismiss the action, motion to consolidate and motion to clarify.

Section 10-76h-9. Postponements and extensions

- The Barbara R. requirements have been maintained insofar as criteria exist against which a hearing officer measures the request for postponement. See Subsection (d).
- Hearing officers will not entertain requests for postponement or extension unless they are presented as follows: In writing and submitted no later than 5:00 p.m. five business days prior to the scheduled hearing or deadline date. The request for postponement shall also indicate what efforts the moving party has made to contact the opposing party or representative and whether the opposing party agrees or objects to the postponement or extension. The hearing officer will not entertain any request unless these criteria are met.
- A postponement or extension shall be for a specified period of time, not to exceed 30 calendar days.
- Objections to the request for postponement or extension shall be made in writing, stating the objection, and submitted to the hearing officer no later than 5:00 p.m. two business days before the scheduled hearing or deadline.
- The date of mailing of the decision shall be set for the 45th day from the initiation of due process. Any party wishing to extend that time for an asserted need for additional hearing dates must do so in writing, unless requested on the record and permitted by the hearing officer.
- Absent a compelling reason or a specific showing of substantial hardship, a request for a postponement or extension shall not be granted because of settlement discussions between the parties, school vacations, attorney vacations and other similar reasons. Agreement of the parties is not a sufficient basis for granting a postponement or extension.
- The hearing officer may grant one 30-day postponement for continued settlement discussions upon written verification by the parties that they are engaged in a good faith effort to complete negotiations. At the end of the thirty-day period, the parties shall advise the hearing officer in writing whether or not a settlement has been reached, or they

shall be prepared to go forward with a hearing. The hearing officer shall not have the authority to grant any further postponements or extensions for continued settlement discussions. If the parties are not prepared to go forward, the hearing officer shall dismiss the hearing request without prejudice. It may be refiled at a later date.

- The hearing officer shall respond to requests for postponement or extension in writing, and reduce to writing any decision made on an oral motion for postponement or extension. This shall become a part of the record.

Section 10-76h-10. Expedited hearings

- Expedited hearings are limited to circumstances related to the IDEA discipline requirements and as reflected in Sections 300.521, 300.525 and 300.526 of the IDEA regulations found at 34 CFR.
- A prehearing conference is not required. The hearing officer shall limit the introduction of exhibits and witnesses as may be necessary. No postponements or extensions shall be granted.
- Timelines for the expedited hearing are not the same as a hearing, generally.

Section 10-76h-11. Hearing rights

These remain essentially the same as the current rights with the following additions.

- Each party has a reasonable opportunity, as determined by the hearing officer, to present evidence and confront, cross-examine and compel the attendance of witnesses, including the presentation of evidence which is more than two years old if such evidence is required to rule on the issues presented and it meets evidentiary considerations such as relevancy and materiality as ruled upon by the hearing officer.
- Parents involved in hearings have the right to obtain a verbatim record of the hearing at no cost.

Section 10-76h-12. Exhibits; Documents presented at the hearing; Witnesses

- Witness lists and documentary evidence shall be exchanged by the parties and provided to the hearing officer no later than five (5) business days prior to a scheduled hearing date.
- Each party is responsible for notifying their own witnesses of the time, date and location of the hearing. The parent shall notify the public agency at least five (five) school days in advance that school personnel will be called to testify on a particular scheduled hearing date if they intend to have school personnel called to testify.
- At the request of a party, the hearing officer shall not review the records submitted until they are offered into evidence. Exhibits that are offered but not admitted into evidence shall be marked for identification and the record of the hearing shall reflect that.
- Hearing officers will not accept any documentary exhibits that do not meet the submission criteria. All exhibits must be clear, legible and arranged in chronological order. They must be marked as stated in the regulations. An index shall accompany the exhibits. The index shall include the exhibit number, a brief description of the exhibit and the date of the exhibit. For example, "Exhibit B-36. Letter from Director of Special Education to Parent dated June 3, 2000 (3 pages)."

Section 10-76h-13. Conduct of hearings

- The hearing officer is authorized to take action to ensure that the hearing is conducted in a fair and orderly manner. Such action may include excluding from the hearing the parties, counsel or any other participant. Behavior, which may result in exclusion, includes, but is not limited to, abusive speech, inflammatory remarks or disrespectful conduct towards the hearing officer, counsel or any party or party representative, or witnesses.
- If an interpreter is needed for either a prehearing conference or any session of a hearing, the burden is on the party requiring the interpreter to inform the due process unit of the need. The due process unit arranges for the interpreter.

Section 10-76h-14. Burden of production and proof; unilateral placement

- The public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 CFR Section 300.521 (authority of hearing officer to change placement for dangerousness). The party who filed for the hearing has the burden of going forward with the evidence.
- The hearing officer can split a hearing regarding a unilateral placement. If the hearing officer determines that the program offered by the district is appropriate, it is not necessary to inquire into the appropriateness of the parent's placement.
- Any party seeking reimbursement for a unilateral placement or program must prove the appropriateness of the placement or program by a preponderance of the evidence.

Section 10-76h-15. Evidence

- The hearing officer may take administrative notice of any general, technical or scientific facts within the knowledge of the hearing officer, and any other judicially cognizable facts.

Section 10-76h-16. Decision, Implementation, Rights of Appeal

- The final decision and order of the hearing officer is not subject to the reconsideration provisions of the State Uniform Administrative Procedures Act. The decision shall be implemented by the public agency, unless it is appealed and the party appealing asks the court to enter a stay.
- The hearing officer may issue findings of fact on the extent to which the parent has prevailed on any issue ruled upon by the hearing officer.
- A settlement agreement does not constitute a final decision, prescription or order of the hearing officer. The settlement agreement may be read into the record as an agreement between the parties only.
- The due process unit shall investigate allegations of failure on the part of the public agency to implement the decision of the hearing officer. Appropriate steps shall be taken by the due process unit to ensure compliance.

Section 10-76h-17. Educational placement during proceedings

- The child remains in the current educational placement during the pendency of any administrative or judicial proceedings unless the parent and the public agency otherwise agree, except in matters related to discipline and in those instances in which the order of the hearing officer agrees with the parent that a change of placement is appropriate.
- If the final decision of the hearing officer agrees with the parent, the new placement ordered by the hearing officer shall be the child's placement.

Section 10-76h-18. Default or dismissal

- Either party may move, or the hearing officer may order on their own, an order of default or dismissal of a hearing for failure of any party to:
 - Prosecute a hearing;
 - Participate in the prehearing conference;
 - Comply with these regulations;
 - Comply with a ruling issued by the hearing officer before a final decision is rendered;
 - State a claim for which relief can be granted;
 - Sustain its burden after presentation of the evidence; or
 - Appear at a properly noticed scheduled hearing.

**CONNECTICUT STATE DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION AND PUPIL SERVICES
DUE PROCESS UNIT
25 Industrial Park Road, Middletown, CT 06457
FAX# (860) 807-2049**

Request for Mediation

We request a mediation concerning _____, _____
(name of student) (date of birth)

_____ who is currently within the jurisdiction of
(address of residence of student)

the _____ and attends _____
(school district) (name of the school the student
attends)

Print Name Signature Date

Telephone # Fax #

The date of the IEP meeting at which the parties failed to reach agreement: _____
Description of the nature of the issues in dispute, including related facts:

Proposed resolution of the issues to the extent known and available at this time.

Please provide three mutually agreeable dates for the mediation which will be held within 30 days of this request. From these dates one will be selected for the convening of the mediation.

Please forward to the above address and, as appropriate, the parents or the school district.

**CONNECTICUT STATE DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION AND PUPIL SERVICES
DUE PROCESS UNIT
25 Industrial Park Road, Middletown, CT 06457
FAX# (860) 807-2049**

REQUEST FOR ADVISORY OPINION

We request an advisory opinion. We understand both parties must agree to an advisory opinion and we are not required to pursue an advisory opinion prior to a hearing.

Parent Signature Date School District Representative Date

Two mutually agreeable dates for the advisory opinion. From these dates one will be selected for the advisory opinion.

_____, _____

Please forward to the above address and, as appropriate, the parents or the school district.

**CONNECTICUT STATE DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION AND PUPIL SERVICES
DUE PROCESS UNIT
25 Industrial Park Road, Middletown, CT 06457
FAX# (860) 807-2049**

Request for Impartial Special Education Hearing

I request an impartial hearing concerning _____, _____
(name of student) (date of birth)

_____ who is currently within the jurisdiction of
(address of residence of student)

the _____ and attends _____
(school district) (name of the school the student attends)

Print Name Signature Date

Telephone # Fax #

The date of the IEP meeting at which the parties failed to reach agreement: _____
Description of the nature of the issues in dispute, including related facts:

Proposed resolution of the issues to the extent known and available at this time.

Please forward to the above address and, as appropriate, the parents or the school district.

CONNECTICUT STATE DEPARTMENT OF EDUCATION
Division of Educational Programs and Services
Bureau of Special Education and Pupil Services
25 Industrial Park Road
Middletown, Connecticut 06457

The following are Special Education Hearing Officers, appointed by the Connecticut State Board of Education pursuant to Section 10-76h(c), Connecticut General Statutes, and Section 20 United States Code 1415(b)(2).

Mary H.B. Gelfman holds an A.B. from Swarthmore College, an M.A. from Teachers College, Columbia University, and a J.D. from the University of Connecticut School of Law. She is admitted to practice in Connecticut and in the United States District Court for Connecticut, and is a member of the CBA and ABA. She has been a high school math teacher, a member of a local board of education, and a consultant in the Due Process Unit, Connecticut State Department of Education. She frequently speaks and writes about legal issues in education, and is a co-author of *Education Records: A Manual*, and co-author and co-editor of *Legal Issues in School Health Services*, to be published in 2000. She is also an impartial hearing officer for the Connecticut Department of Education for expulsion hearings in the Vocational Technical Schools, and school district residency and school transportation hearings.

Deborah R. Kearns is an attorney currently in private practice. She has experience in divorce mediation and has provided advocacy for individuals with disabilities. Attorney Kearns has served as a Special Master, Middletown Regional Family Court, where she served as a pretrial mediator for custody matters. Attorney Kearns has taught at the college level. Attorney Kearns received a B.A. from Boston College, and her J.D. from New England School of Law, Boston, Massachusetts.

Gail K. Mangs is an attorney in private practice in Farmington, Connecticut. She holds a B.A. degree from Clark University in history and education, an M.A. degree from Northwestern University in curriculum with a specialization in early childhood education, and a J.D. from the University of Connecticut. She has worked as a teacher, board member, and chairperson of the board in private daycare programs, as a teacher in an early childhood special needs program, and as the coordinator of a home-based early intervention program for Headstart. As an attorney, she practices in the area of family law, and has served as both attorney and guardian ad litem for children. She is a member of the Connecticut Bar Association.

Athan S. Mihalakos is an attorney in private practice. He is admitted to practice in Connecticut and U.S. District Court, District of Connecticut; Commonwealth of Pennsylvania and U.S. District Court for the Eastern District of Pennsylvania; and United States Supreme Court. Attorney Mihalakos graduated from: Fordham University (B.S., 1974) and Loyola Law School (J.D., 1977) where he served as Chapter president Phi Alpha Delta Law Fraternity. He is a member of the Waterbury, Connecticut and Pennsylvania Bar Associations. He has served as the Small Claims Commissioner: Superior Court Housing Session, Waterbury, 1988-1993 and as a member of the Higher Education Advisory Council, State of Connecticut Department of Education, 1989; as the Commissioner of the Waterbury Zoning Commission, 1991; as an Assistant to the Waterbury Corporation Counsel, 1992-1996; and as an Impartial Hearing Officer for the Cheshire Board of Education, 1999. The areas of concentration in his practice include education and special education law, transportation law, real estate, personal injury, worker's compensation, domestic relations, probate, landlord-tenant, criminal, and bankruptcy.

Scott Myers is currently Counsel in Day, Berry & Howard's Administrative and Regulatory Law Department practicing primarily in the areas of public utility regulatory litigation and energy law. In this capacity he has been responsible for all phases of litigation and settlement of a broad range of complex, multi-party disputes pending before state and Federal regulatory authorities, and in state and Federal courts. His experience also includes special education due process litigation, student disciplinary matters and representation of children in neglect and termination of parental rights proceedings in Juvenile Court. Mr. Myers received his J.D. from the University of Connecticut School of Law in 1990, a B.A. in Psychology

from Trinity College in 1980 and an M.A. in clinical psychology from the University of Hartford in 1984. Prior to joining Day, Berry & Howard in 1990, Mr. Myers worked primarily with adolescents and their families in a variety of inpatient and outpatient treatment settings.

Margaret D. Northrop is an attorney currently serving as a Connecticut state court magistrate, trial referee, fact-finder, hearing officer and private alternative dispute resolution provider. She has also served as a hearing officer for the Connecticut Commission on Human Rights and Opportunities since 1992. Attorney Northrop earned a teaching certificate from the State of Rhode Island and has taught in the private sector. Attorney Northrop has a B.A. from Brown University and received her J.D. from Loyola University in Chicago, Illinois.

Mary Elizabeth Oppenheim is an attorney who received a B.A. from the University of Wisconsin – Madison, and a J.D. with honors from the University of Connecticut School of Law. She currently serves as a factfinder and arbitrator for the State of Connecticut judicial districts. Attorney Oppenheim has litigated civil, family and criminal matters in state and Federal courts, as well as in administrative proceedings. She is admitted to practice in Connecticut; the United States District Court, District of Connecticut; and the United States Court of Appeals for the Second Circuit.

Stacy M. Owens commenced her legal career certifying cases for public hearing as an investigative attorney with the State of Connecticut Commission on Human Rights and Opportunities. She has provided legal training to local businesses and has been an integral part of the Commission's formation of internal policies. She is presently responsible for reviewing cases and writing recommendations in response to parties' requests for reconsideration of decisions rendered by field office attorneys and investigators in cases dismissed for lack of merit or no reasonable cause. She received her B.A. degree in liberal studies from American International College in Springfield, Massachusetts and her law degree from Touro Law School in Huntington, New York.

Heather A. Rodin is an attorney, a past chairperson of the Norwalk Housing Coalition and a past chair of the Norwalk Housing Authority. She holds an A.B. degree in Liberal Arts from the University of Chicago; an LL.B. from New York Law School; an M.S. in Elementary Education from the University of Bridgeport; and has a master's degree in urban affairs and policy analysis at the School for Social Research. She has been a classroom teacher, a special education teacher, a consultant in urban problems, a civic volunteer and an attorney in private practice and with the Legal Aid Society.

Justino Rosado is a partner in the New Haven law office of Chaucer & Rosado, LLC. He received a Bachelors in Science Degree from Sacred Heart University and a J.D. from the University of Bridgeport, School of Law. His Law Practice is mainly concentrated in Family Law, Juvenile Law, and Civil Rights. Attorney Rosado is a member and founder of the Connecticut Hispanic Bar. He is a hearing officer for Bridgeport Board of Education Expulsion Hearings, and a member of the American Bar Association. Attorney Rosado is fluent in Spanish.

Margaret J. Slez is an attorney currently in private practice. Attorney Slez had a ten-year career in public education and taught for the Cleveland, Ohio, and Bridgeport and Stratford Boards of Education prior to pursuing a career in law. Attorney Slez demonstrated a thorough knowledge of administrative and special education law. She received her B.A. from Ursuline College, Cleveland, Ohio, in Music Education, and M.S. from the University of Bridgeport in education and her J.D. from Quinnipiac College School of Law. Attorney Slez was admitted to the Connecticut Bar in 1988 and to the U.S. District Court for the District of Connecticut in 1989.

Christine B. Spak graduated from the University of Connecticut School of Law in 1981. She has extensive experience conducting administrative hearings in addition to serving as a magistrate for the State of Connecticut. Prior to practicing law she was a registered nurse and worked in a variety of settings, including a psychiatric setting. Her legal work has included the areas of health law and issues affecting children.

Patricia M. Strong is an attorney in private practice since 1991, concentrating in the area of civil litigation. From 1981-1991, she was an Assistant Attorney General for the State of Connecticut. Ms. Strong is an honors graduate of Connecticut College with a B.A. in sociology. She earned a J.D. from the University of Connecticut School of Law in 1977. Attorney Strong is admitted to practice before Connecticut state and federal courts, the United States Court of Appeals for the Second Circuit and the United States Supreme Court. She is a member of the American, Connecticut, and Hartford County Bar Associations. She chairs the Employee Benefits Subcommittee of the CBA's Labor and Employment Executive Committee. Attorney Strong is also a member of the National Employment Lawyers Association, and the Hartford Association of Women Attorneys. She serves on the Connecticut Advisory Council of School Administrator Standards and previously served on the Wethersfield Board of Education, the Connecticut Advisory Council for Teacher Professional Standards and the YMCA South Regional Board of Managers.

Revised, August 2000