

Regulations of Connecticut State Agencies

TITLE 10. Education and Culture

Agency

Department of Education

Subject

Children Requiring Special Education

Inclusive Sections

§§ 10-76a-1—10-76l-1

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Children Requiring Special Education

Section 10-76a: Definitions

Sec. 10-76a-1. General definitions

As used in sections 10-76a-1, 10-76a-2, 10-76b-1 to 10-76b-4, inclusive, and 10-76d-1 to 10-76d-19, inclusive, the following words shall have the following meanings:

(1) “Board of education” or “board” means a public body or public agency responsible for the education of children. This term shall include, but not be limited to, local or regional boards of education, the technical high school system, the unified school districts established pursuant to sections 17a-37, 17a-240 and 18-99a of the Connecticut General Statutes or systems as administered through state agencies, including but not limited to the Department of Mental Health and Addiction Services pursuant to subdivision (4) of subsection (e) of section 10-76d of the Connecticut General Statutes.

(2) “Child” means any person under twenty-one years of age.

(3) “A child requiring special education” means (A) a child with a disability; or (B) a child who has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in general education but which may be provided through special education as part of the public school program.

(4) “A child with a disability” means a child who (A) is age three, four or five or has attained the age at which the town is required to provide educational opportunities in accordance with the provisions of section 10-186 of the Connecticut General Statutes and who meets the criteria for special education and related services in accordance with the IDEA, or (B) is age three, four or five and is experiencing developmental delay, as defined in section 10-76a of the Connecticut General Statutes, that causes such child to require special education.

(5) “Days” means school days unless otherwise specified.

(6) “Evaluation” means procedures conducted in accordance with the IDEA, to determine whether a child is a child with a disability and, if so, the nature and extent of the special education and related services the child requires.

(7) “Extended school day or extended school year services” means (A) special education and related services that are provided to a child with a disability (i) beyond the normal school day or school year of the board of education, (ii) in accordance with the child’s individualized education program, and (iii) at no cost to the parents of the child and (B) meet the standards of the Department of Education.

(8) “Independent evaluation” means an evaluation performed by a certified or licensed professional examiner who is not employed by the board of education responsible for the education of the child.

(9) “Individuals with Disabilities Education Act” or “IDEA” means Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et. seq. and the regulations adopted thereunder, as amended from time to time.

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(10) “Individualized education program” or “IEP” means a written statement for a child with a disability that is developed, reviewed and revised by an individualized education program team in accordance with the IDEA and section 10-76d-11 of the Regulations of Connecticut State Agencies.

(11) “Learning disability” means a specific learning disability as defined in the IDEA.

(12) “Least restrictive environment” means least restrictive environment as described in the IDEA.

(13) “Parents” means a biological or adoptive parent, parents, guardian, surrogate parent as defined in section 10-94h of the Connecticut General Statutes or an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child’s welfare. The rights of a parent shall transfer to a student who has reached the age of eighteen years, except as provided in section 10-76d-12 of the Regulations of Connecticut State Agencies.

(14) “Planning and placement team” or “PPT” means the individualized education program 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 individualized education program for the child. 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.

(15) “Private special education program” means any program that provides special education and related services to a child with a disability, but is not a program of a local or regional board of education or a program operated by a regional educational service center.

(16) “Related services” means related services as defined in the IDEA.

(17) “Special education” means special education as defined in section 10-76a of the Connecticut General Statutes.

(18) “Subject to the approval” means at such time and in such manner as the State Board of Education shall deem approval necessary.

(Effective February 6, 1992; Amended February 4, 2005; Amended July 1, 2013)

Sec. 10-76a-2. Definitions and exceptionalities

As used in sections 10-76a-1, 10-76a-2, 10-76b-1 to 10-76b-4, inclusive, and 10-76d-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies, the following words shall have the following meanings:

(1) “Extraordinary learning ability” means a child identified by the planning and placement team as gifted and talented on the basis of either performance on relevant standardized measuring instruments, or demonstrated or potential achievement or intellectual creativity, or both.

(2) “Gifted and talented” means a child identified by the planning and placement team

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as (A) possessing demonstrated or potential abilities that give evidence of very superior intellectual, creative or specific academic capability and (B) needing differentiated instruction or services beyond those being provided in the general education program in order to realize the child's intellectual, creative or specific academic potential. The term shall include children with extraordinary learning ability and children with outstanding talent in the creative arts.

(3) "Outstanding talent in the creative arts" means a child identified by the planning and placement team as gifted and talented on the basis of demonstrated or potential achievement in music, the visual arts or the performing arts.

(Effective April 24, 1991; Amended February 4, 2005; Amended July 1, 2013)

Section 10-76b: Administration and supervision

Sec. 10-76b-1. Authority

Sections 10-76a-1 to 10-76d-19, inclusive of the Regulations of Connecticut State Agencies are promulgated pursuant to the authority granted in, and for the implementation of, the state laws concerning children requiring special education, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and for compliance with the IDEA for the provision of a free appropriate public education to children with disabilities. Sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies shall be applicable to all boards of education as defined by such regulations.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76b-2. Severance clause

If any provision contained in these regulations or the application thereof to any person or circumstance is held invalid, the remainder of the regulations and the application of the provision in question to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Effective September 1, 1980)

Sec. 10-76b-3. Effective date

These regulations shall take effect September 1, 1980, at which time the regulations for Sections 10-76a to 10-76h, inclusive, of the General Statutes shall be repealed.

(Effective September 1, 1980)

Sec. 10-76b-4. Compliance

A board of education shall receive payment for the cost of special education and related services according to the provisions of sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes. To be eligible to receive such payment, such board of education shall provide special education and related services to children with disabilities in accordance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of

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the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

(a) **Monitoring.** The State Board of Education shall conduct such monitoring activities, program audits or fiscal audits as it deems necessary to ensure that each board of education complies with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

(b) **Compliance procedures.** The following procedures shall apply in the determination of compliance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

(1) Each board of education shall supply to the State Board of Education, at its request, any and all information necessary to document compliance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. Such information shall be submitted at such time and in such manner as the State Board of Education may request. The State Board of Education shall be afforded such access to records as may be necessary to verify information furnished by the board of education.

(2) A board of education may submit a written proposal, for prior approval by the State Board of Education, to document compliance with any requirement of these regulations in a manner different from that specified in these regulations. Such proposal may be approved if it appears that it will substantially meet the goals of these regulations.

(3) In the event that a board of education does not comply with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies or does not implement plans for such compliance within a reasonable period of time, the State Board of Education shall take such action as it may deem appropriate pursuant to its authority as set forth in sections 10-4a and 10-4b of the Connecticut General Statutes and the IDEA.

(Effective September 1, 1980; Amended July 1, 2013)

Use of Seclusion and Restraint in Public Schools

Sec. 10-76b-5. Use of physical restraint and seclusion in public schools. Definitions

For the purposes of sections 10-76b-6 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies:

- (1) “Assistant” means “assistant” as defined in section 46a-150 of the General Statutes;
- (2) “Behavior intervention” means supports and other strategies developed by the planning and placement team to address the behavior of a person at risk which impedes the learning of the person at risk or the learning of others;
- (3) “Business day” means “business day” as defined in subsection (a) of section 10-76h-

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1 of the Regulations of Connecticut State Agencies;

(4) “Individualized education plan” or “IEP” means “individualized education plan” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;

(5) “Parent” or “parents,” means “parents” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;

(6) “Person at risk” means “person at risk” as defined in subparagraph (A) of subdivision (3) of section 46a-150 of the Connecticut General Statutes;

(7) “Physical restraint” means “physical restraint” as defined in section 46a-150 of the Connecticut General Statutes;

(8) “Planning and placement team” or “PPT” means “planning and placement team” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;

(9) “Provider” means “provider” as defined in section 46a-150 of the Connecticut General Statutes; and

(10) “Seclusion” means “seclusion” as defined in section 46a-150 of the Connecticut General Statutes, provided seclusion does not include any confinement of a person at risk in which the person is physically able to leave the area of confinement including, but not limited to, in-school suspension and time-out.

(Adopted effective May 7, 2009)

Sec. 10-76b-6. Use of physical restraint and seclusion in public schools

No provider or assistant shall (1) use involuntary physical restraint on a person at risk or (2) involuntarily place a person at risk in seclusion, unless such use conforms to the requirements of sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes, and the requirements of sections 10-76b-5 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies.

(Adopted effective May 7, 2009)

Sec. 10-76b-7. Use of physical restraint and seclusion in public schools, exceptions

Nothing in sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes or sections 10-76b-5 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies shall be construed to interfere with the responsibility of local or regional boards of education to maintain a safe school setting in accordance with section 10-220 of the Connecticut General Statutes or to supersede the provisions of subdivision (6) of section 53a-18 of the Connecticut General Statutes concerning the use of reasonable physical force.

(Adopted effective May 7, 2009)

Sec. 10-76b-8. Use of seclusion in public schools, requirements

(a) Except for an emergency intervention to prevent immediate or imminent injury to the person or to others conforming to the requirements of subsection (b) of section 46a-152 of the Connecticut General Statutes, seclusion may only be used if (1) this action is specified in the IEP of the person at risk in accordance with the provisions of subsection (b) of this

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section and (2) if other less restrictive, positive behavior interventions appropriate to the behavior exhibited by the person at risk have been implemented but were ineffective.

(b) If the PPT of a person at risk determines, based upon the results of a functional behavioral assessment and other information determined relevant by the PPT, that use of seclusion is an appropriate behavior intervention, the PPT shall include the assessment data and other relevant information in the IEP of the person at risk as the basis upon which a decision was made to include the use of seclusion as a behavior intervention. In such a case, the IEP shall specify (1) the location of seclusion, which may be multiple locations within a school building, (2) the maximum length of any period of seclusion, in accordance with subsection (d) of this section, (3) the number of times during a single day that the person at risk may be placed in seclusion, (4) the frequency of monitoring required for the person at risk while in seclusion, and (5) any other relevant matter agreed to by the PPT taking into consideration the age, disability and behaviors of the child that might subject the child to the use of seclusion.

(c) In the event the parent disagrees with the use of seclusion in the IEP of the person at risk, the parent shall have a right to the hearing and appeal process provided for in section 10-76h of the Connecticut General Statutes.

(d) Any period of seclusion (1) shall be limited to that time necessary to allow the person at risk to compose him or herself and return to the educational environment and (2) shall not exceed one hour. The use of seclusion may be continued with written authorization of the building principal or designee to prevent immediate or imminent injury to the person at risk or to others. In the case where transportation of the person at risk is necessary, the written authorization to continue the use of seclusion is not required if immediate or imminent injury to the person at risk or to others is a concern.

(e) The PPT shall, at least annually, review the continued use of seclusion as a behavior intervention for the person at risk. When the use of seclusion as an emergency intervention to prevent immediate or imminent injury to the person at risk or to others is repeated more than two times in any marking period, the PPT (1) shall convene to review the IEP of the person at risk, provided the PPT may agree to waive this meeting, (2) may consider additional evaluations or assessments to address the child's behaviors, and (3) may revise the child's IEP, as appropriate.

(f) The PPT shall inquire as to whether there are any known medical or psychological conditions that would be directly and adversely impacted by the use of seclusion as a behavior intervention. A person at risk shall not be placed in seclusion if such person is known to have any medical or psychological condition that a licensed health care provider has indicated will be directly and adversely impacted by the use of seclusion. For purposes of this subsection, a "licensed health care provider" means (1) a legally qualified practitioner of medicine, (2) an advanced practice registered nurse, (3) a registered nurse licensed pursuant to chapter 378 of the Connecticut General Statutes, or (4) a physician assistant licensed pursuant to chapter 370 of the Connecticut General Statutes. Such licensed health care provider may be the person at risk's licensed health care provider or a licensed health

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care provider utilized by the public schools to provide an evaluation of the person at risk for purposes of determining the appropriate use of seclusion as a behavior intervention in the person at risk's IEP. As part of the assessments described in subsection (b) of this section, the PPT may request a medical or psychological evaluation of the child for purposes of determining whether there is a medical or psychological condition that will be directly and adversely impacted by the use of seclusion as a behavior intervention. The parent may provide that information to the PPT. Any written statement provided by a licensed health care provider shall be included in the educational record of the person at risk.

(g) A person at risk in seclusion shall be monitored as described in the child's IEP by a provider or assistant specifically trained in physical management, physical restraint and seclusion procedures including, but not limited to, training to recognize health and safety issues for children placed in seclusion to ensure the safe use of seclusion as a behavior intervention.

(h) Any room used for the seclusion of a person at risk shall:

(1) Be of a size that is appropriate to the chronological and developmental age, size and behavior of the person at risk;

(2) Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which it is located;

(3) Be equipped with heating, cooling, ventilation and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which it is located;

(4) Be free of any object that poses a danger to the person at risk who is being placed in the room;

(5) Conform to applicable building code requirements. If the door or doors to a room used for seclusion are to be locked, latched or otherwise secured, a modification from the State Fire Marshal's office shall be secured prior to the installation of a locking mechanism. If a door locking mechanism is used, the person at risk shall be constantly monitored notwithstanding any other provisions of the Connecticut General Statutes or Regulations to the contrary. The locking mechanism to be used shall be a device that shall be readily released by staff as soon as possible but in no case longer than within two minutes of the onset of an emergency and is connected to the fire alarm system so that the locking mechanism is released automatically when a fire alarm is sounded. An "emergency" for purposes of this subdivision includes, but is not limited to, (A) the need to provide direct and immediate medical attention to the person at risk, (B) fire, (C) the need to remove the person at risk to a safe location during a building lockdown, or (D) other critical situations that may require immediate removal of the person at risk from seclusion to a safe location; and

(6) Have an unbreakable observation window located in a wall or door to permit frequent visual monitoring of the person at risk and any provider or assistant in such room. The requirement for an unbreakable observation window does not apply if it is necessary to clear and use a classroom or other room in the school building as a seclusion room for a

person at risk.

(Adopted effective May 7, 2009; Amended July 1, 2013)

Sec. 10-76b-9. Parental notification of physical restraint, seclusion

(a) If a person at risk is physically restrained or placed in seclusion, an attempt shall be made to notify the parent on the day of, or within twenty-four hours after, physical restraint or seclusion is used with the child as an emergency intervention to prevent immediate or imminent injury to the person or others, as permitted under sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes. Such notification shall be made by phone, e-mail or other method which may include, but is not limited to, sending a note home with the child. The parent of such child, regardless of whether he or she received such notification, shall be sent a copy of the incident report no later than two business days after the emergency use of physical restraint or seclusion. The incident report shall contain, at a minimum, the information required under subsection (d) of section 46a-152 of the Connecticut General Statutes.

(b) Where seclusion is included in the IEP of a person at risk, the PPT and the parents shall determine a timeframe and manner of notification of each incident of seclusion.

(c) The Department of Education shall develop a plain language notice for use in the public schools to advise parents of the laws and regulations concerning the emergency use of physical restraint or seclusion or the use of seclusion as a behavior intervention in a child's IEP. On and after October 1, 2009, this notice shall be provided to the child's parent at the first PPT meeting following the child's referral for special education. For children who were eligible for special education prior to October 1, 2009, the notice shall be provided to the parent at the first PPT meeting convened after October 1, 2009. The notice shall also be provided to a child's parent at the first PPT meeting at which the use of seclusion as a behavior intervention is included in the child's IEP.

(Adopted effective May 7, 2009)

Sec. 10-76b-10. Required training for providers or assistants on the use of physical restraint or seclusion

A person at risk may be physically restrained or removed to seclusion only by a provider or assistant who has received training in physical management, physical restraint and seclusion procedures. Providers or assistants shall also be provided with training as described in subdivision (2) of subsection (a) of section 46a-154 of the Connecticut General Statutes.

(Adopted effective May 7, 2009)

Sec. 10-76b-11. Reports of physical restraint, seclusion

The recording and reporting of instances of physical restraint or seclusion and the compilation of this information shall be in accordance with section 46a-153 of the Connecticut General Statutes. The recording of such instances shall be done on an incident

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report that contains the information and documentation required by sections 46a-152 and 46a-153 of the Connecticut General Statutes. Such reports shall be completed no later than the school day following the incident. The Department of Education shall develop and make available a model incident report.

(Adopted effective May 7, 2009; Amended July 1, 2013)

Section 10-76d: Conditions of instruction

Sec. 10-76d-1. Special education and related services

Each board of education shall provide a free appropriate public education for each child with a disability. A child with a disability is entitled to receive a free appropriate public education on and after the child's third birthday, notwithstanding the fact that the third birthday occurs outside of the regular school year. The PPT shall determine whether a child whose birthday occurs outside of the regular school year requires extended school year services.

(a) **General requirements.** Each board of education shall provide special education and related services for each child with a disability in accordance with the following requirements.

(1) Such education shall be consistent with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies;

(2) Each child with a disability shall be entitled to participate in the general education high school graduation exercises and related activities of the board of education in the event such child will not be graduating with a general education high school diploma. Such child, such child's parents and the PPT shall determine such child's high school graduating class for purposes of participation in the high school graduation exercises and related activities. A child with a disability is entitled to participate in high school graduation exercises and related activities while such child is enrolled in high school;

(3) Each board of education shall award its general education high school diploma to each child with a disability who (A) meets the requirements for graduation for such board, (B) is provided a free appropriate public education by such board, and (C) is enrolled by such board in a program that does not award a diploma for purposes of high school graduation; and

(4) Such education shall be continued until the end of the school year in the event that the child turns twenty-one during that school year. For purposes of this subdivision, school year means July first through June thirtieth.

(b) **Provision of services.** Each board of education shall be required to provide referral, identification and evaluation services only for gifted and talented children enrolled in grades kindergarten to twelve, inclusive, in a public school under the jurisdiction of such board of education. The provision of all other special education and related services to gifted and talented children shall be at the discretion of each board of education, except if a child

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identified as gifted or talented is also identified as a child with a disability, then the child shall receive special education and related services.

(c) **Arrangements for service.** A board of education may make arrangements to provide special education and related services when educational needs cannot be met by public school arrangements. Each board of education shall ensure that all services are provided to implement each child's individualized education program in the least restrictive environment and are provided in accordance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

A board of education may arrange for the provision of the following services including, but not limited to:

- Instructional services and programs
- Diagnostic medical services
- Psychological services
- Social work services
- Speech and hearing services
- Guidance and counseling services
- Parent counseling and training services as related to educational objectives
- Physical therapy services
- Occupational therapy services
- Translation services
- Transportation services
- In-service training

(d) **Payment.** Each board of education shall file with the State Board of Education the required state form for payment for expenditures made for special education and related services. A board of education shall be eligible to receive state grants for the provision of special education and related services to a child with a disability if applicable state requirements are met.

(Effective September 1, 1980; Amended February 4, 2005; Amended July 1, 2013)

Sec. 10-76d-2. Personnel

Each local board of education shall employ the number of certified or licensed personnel and support personnel necessary to implement the special education and related services required in each child's individualized education program.

(a) **Aides.** Provision shall be made for the direct supervision of each aide who is assisting in the provision of special education or related services by a person certified or licensed in the area of specialization to which such aide is assigned. An aide works under the direct supervision of a teacher or related service personnel if (1) the teacher or related service personnel prepares the lessons and plans and the instructional support activities the aide performs, (2) the teacher or related service personnel evaluates the achievement of the child with whom such aide is working and (3) such aide works in close and frequent proximity

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with the teacher or related service personnel.

(b) **Consultation.** Time shall be scheduled during the school day for personnel who provide special education and related services or general education to consult with each other, other personnel and parents.

(c) **Personnel development.** Each board of education shall provide for a system of personnel development to meet the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. In-service training on special education and related services shall be given to general and special education instructional, related services and support personnel. A board of education may require certain personnel to attend specific in-service training activities identified by the Department of Education to respond to specific corrective actions ordered by the Department of Education as a result of a complaint investigation, monitoring activities or a due process hearing officer decision.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-3. Length of school day and year

(a) Unless otherwise specified in a child's individualized education program, the minimum school day and year for children with disabilities shall be the same as that for children in the general education program established by the board of education in accordance with section 10-16 of the Connecticut General Statutes. The PPT shall determine whether an individual child requires extended school day or extended school year services.

(b) Each board of education shall ensure that extended school day or extended school year services are available to each child with a disability in accordance with the IDEA. Each board of education shall ensure that consideration of such child's eligibility for, and the content, duration and location of such child's extended school year services is determined so as to allow the parent sufficient time to challenge the determination of eligibility, the program or the placement for such child before the beginning of the extended school year services for such child unless it is clearly not feasible to do so.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-4. Physical facilities and equipment

(a) **Physical facilities.** Each board of education shall provide special education and related services in a physical environment appropriate to the child's needs as set forth in the child's individualized education program.

(1) Children requiring special education and related services shall receive special education and related services in general education facilities where appropriate.

(2) Special education and related services shall be provided in facilities which meet all building, health and safety codes.

(3) Children with limited mobility shall have access, free from barriers to their mobility, to those areas to which access is necessary for the implementation of their individualized education programs.

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(4) A board of education may rent special education facilities. Such facilities shall meet the requirements as set forth in section 10-76d-4(a) (1) through (3) of these regulations. To receive payment for rental of special education facilities, a board of education shall document that adequate space is not available in any of its public school buildings and that rental is necessary because of improvement in or expansion of the special education program. Rented facilities for special education may be used to house general education classes where such use is a means of initiating or improving special education programs or facilities within a regular public school building.

(b) **Equipment or assistive technology device.** Each board of education shall provide education equipment or assistive technology devices and instructional and related service materials sufficient to meet the requirements of each child's individualized education program. An "assistive technology device" means an assistive technology device as defined in the IDEA.

(1) The board of education shall maintain an inventory of all education equipment and assistive technology devices purchased with IDEA funds costing more than four thousand nine hundred ninety-nine dollars per unit if the cost of the equipment or assistive technology device is included in special education costs for purposes of payment. The inventory shall identify the equipment or assistive technology device and state its cost, date of purchase and current use or disposition. Records of inventories of such education equipment and assistive technology devices shall be retained for three years beyond the useful life or disposition of the equipment or assistive technology device.

(2) All equipment, assistive technology devices and instructional and related service materials for which full payment is sought shall be used exclusively for special education and related services. Payment for all shared equipment and materials shall be prorated in accordance with the proportion of time such equipment and materials are used for special education and related services.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-5. Class size and composition

The number and age range of children with disabilities assigned to a class shall be such that the specifications of each child's individualized education program can be met.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-6. Identification and eligibility of students

(a) **Identification.** Each board of education shall ensure that children with disabilities, including children who are educated at home, homeless children, children who are wards of the state and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are located, identified and evaluated in accordance with the IDEA. This responsibility shall include cooperating with other agencies in a position to identify children with disabilities.

(b) **Eligibility for services for parentally placed private school children or children**

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educated at home by their parents. Special education and related services available for parentally placed private school children eligible for special education shall be provided in accordance with the IDEA. Children being educated at home by their parents shall not be considered parentally placed private school children for the purpose of receiving special education and related services in accordance with the IDEA.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-7. Referral

(a) (1) 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 for the initial evaluation of a child to determine if the child is a child with a disability.

(2) 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 include, but not be limited to, a description of the general education interventions that are provided to meet the needs of individual children before a referral for a special education evaluation is requested and the special education referral and evaluation process. 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 and evaluations. The board may include such information in the student handbook, on the board's website or in another location to afford parents and staff access to such information.

(3) A parent is not required to submit the standard referral form for a referral for an initial evaluation to determine if a child is a child with a disability. The board of education shall accept as a referral a concern expressed in writing from the parent of the child 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. The board shall accept a referral that uses terms that clearly indicate a concern that such child may be a child with a disability and should be evaluated for special education identification and services. The date of referral for purposes of this subsection and section 10-76d-13 is the date board personnel receive the referral. The date of referral is not the date the board's referral form is filled out by the board. Each board of education shall develop a process for accepting referrals from parents who cannot put their request in writing.

(b) If a child is receiving alternative procedures and programs in general education and the board of education of such child receives a referral for an initial evaluation, such board shall (1) accept the referral for an initial evaluation to determine if a child is a child with a disability and shall convene a PPT meeting to consider the referral to determine if an evaluation of the child is appropriate and (2) continue the alternative procedures and programs in general education.

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(c) Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance, including truant behavior, or progress in school is considered unsatisfactory or at a marginal level of acceptance.

(d) If the referral for the initial evaluation is made by someone other than the child's parent, the board shall provide notice of the referral to the parent no later than five days after the referral is received by the board.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-8. Notice and consent

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

(a) Written notice.

(1) Written notice that meets the requirements of this subsection shall be given to the parents of a child with a disability a reasonable time before the PPT proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child with a disability or a child who may have a disability or the provision of a free appropriate public education to a child with a disability. 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.

(2) The written notice required by this subsection 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 required by this section 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.

(3) The written notice required under this subsection shall be (A) written in language understandable to the general public, and (B) provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parents is not a written language, the board of education shall take steps to ensure (A) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, (B) the parent understands the content of the notice, and (C) there is written evidence that the requirements of subparagraphs (A) and (B) of this subdivision have been

meet.

(5) Written notice required by this subsection 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 a free appropriate public education to the child with a disability. If such notice is not provided at the PPT meeting, it shall be provided to the parents of the child with a disability, or to the parents of a child who may be eligible for special education and related services, not later than ten days before the PPT proposes to, or refuses to, initiate or change the child's identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.

(b) **Written consent.** The board of education shall obtain written parental consent, in accordance with the provisions of the IDEA, for initial evaluation, reevaluation and initial receipt of special education and related services. The failure of the parent to respond to a request from the board for consent to conduct an initial evaluation, reevaluation or for the initial receipt of special education and related services within ten days from the date of the notice to the parent shall be construed as parental refusal of consent.

(Effective September 1, 1980; Amended February 4, 2005; Amended July 1, 2013)

Sec. 10-76d-9. Evaluation; Independent Educational Evaluation; Determining the existence of a learning disability; Evaluation and identification for gifted and talented

(a) **Evaluation; Independent Educational Evaluations.** The board of education shall conduct an initial evaluation or reevaluation, in accordance with the provisions of the IDEA, to determine if a child is a child with a disability. A parent shall be permitted to obtain an independent educational evaluation, in accordance with the provisions of the IDEA.

(b) **Determination of a learning disability.** The following criteria shall be used to determine if a child is a child with a learning disability.

(1) (A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of the following areas when provided with learning experiences appropriate for the child's age or state-approved grade-level standards:

- (i) oral expression;
- (ii) listening comprehension;
- (iii) written expression;
- (iv) basic reading skills;
- (v) reading fluency skills;
- (vi) reading comprehension;
- (vii) mathematics calculation; or
- (vii) mathematics problem solving;

(B) The child does not make sufficient progress to meet age or state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or

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mathematics problem solving when using a process based on the child's response to scientific, research-based intervention; and

(C) The child's learning difficulties are not primarily the result of a visual, hearing or motor disability, an intellectual disability, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency; and

(2) A severe discrepancy between educational performance and measured intellectual ability (Intelligence Quotient-achievement discrepancy) shall not be utilized to determine if a child is a child with a learning disability. The PPT may request the administration of individual intelligence quotient tests if the PPT believes such tests could provide information that would be helpful in an evaluation.

(3) To ensure that underachievement in a child suspected of having a learning disability is not due to lack of appropriate instruction in reading or math, the PPT shall consider, as part of the comprehensive evaluation conducted to determine the child's eligibility for special education:

(A) Data demonstrating that prior to, or as part of, the referral process, such child was provided appropriate instruction by qualified personnel in a regular education setting; and

(B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(4) The board shall promptly request parental consent to evaluate a child who is suspected of having a learning disability to determine if such child needs special education and related services, and shall adhere to the timeframes described in section 10-76d-13 of the Regulations of Connecticut State Agencies, unless extended by mutual written agreement of the child's parents and the PPT (A) if prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction pursuant to this subsection and (B) whenever a child is referred for an evaluation.

(c) Identification and evaluation of children who may be gifted or talented.

(1) Each board of education shall evaluate and identify gifted and talented children using the planning and placement team. A board of education may identify up to ten per cent of its total student population for the district as gifted and talented.

(2) A board of education may use individual evaluations or group assessment and evaluations to identify gifted and talented children, provided the board of education obtains parental consent in writing before a child is individually evaluated. A board of education may conduct planning and placement team meetings on groups of children for whom evaluation and identification as gifted and talented are planned. The board of education shall provide parents with written notice that their child has been referred to the planning and placement team for consideration as a gifted and talented child. Written parental consent shall be secured before a child is individually evaluated for identification as gifted and talented. The results of the planning and placement team meeting concerning a determination of the child's identification as gifted or talented shall be provided to the parent in writing. If a parent disagrees with the results of the evaluation conducted by the board

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of education, the parent has a right to a hearing, pursuant to sections 10-76h-1 to 10-76h-16, inclusive, of the Regulations of Connecticut State Agencies.

(Adopted effective May 7, 2009; Amended July 1, 2013)

Sec. 10-76d-10. Planning and placement team

Each board of education shall establish a sufficient number of planning and placement teams (1) to ensure that all children requiring special education and related services within its jurisdiction are located, evaluated and identified and, (2) to develop and implement an individualized education program for each child who is found eligible for special education and related services. The planning and placement team shall be responsible for the following:

(a) **Referral.** The planning and placement team shall convene to process a referral submitted in accordance with section 10-76d-7 of the Regulations of Connecticut State Agencies.

(b) **Evaluation of a child with a disability.** Conducting an evaluation, in accordance with the provisions of the IDEA, before the initial provision of special education and related services to a child with a disability.

(c) **Determination of eligibility.** Determining, following evaluation, the eligibility of a child for special education and related services.

(d) **Meetings.** Meeting to develop the individualized education program in the event of a determination that a child is eligible to receive special education and related services, and meeting to review or revise the individualized education program, in accordance with section 10-76d-11 of the Regulations of Connecticut State Agencies.

(e) **Re-evaluation.** Conducting a re-evaluation, in accordance with the provisions of the IDEA, of each child receiving special education and related services.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-11. Individualized education program

Each board of education shall adopt written policies and procedures for developing, implementing, reviewing, maintaining and evaluating the individualized education program for each child with a disability. Such policies and procedures shall be consistent with the requirements of the IDEA, sections 10-76a-10-76ii of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive of the Regulations of Connecticut State Agencies. Each board of education shall develop, review and revise the IEP for each child with a disability in accordance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and the Regulations of Connecticut State Agencies.

(a) **Components.** In addition to the IEP components required under the IDEA, the IEP shall also include (1) a statement of short-term instructional objectives derived from the measurable annual goals. A measurable annual goal, including academic and functional goals, is designed to meet the needs of a child with a disability that result from the child's

disability to enable such child to be involved in and make progress in the general education curriculum and meet each of such child's other educational needs that result from such child's disability. Short-term instructional objectives shall include objective criteria, evaluation procedures and schedules for determining, on a regular basis, whether the short-term instructional objectives are being achieved; (2) a list of the individuals who will be implementing the IEP; (3) in the case of a residential placement, whether such placement is being recommended because of the need for services other than educational services; and (4) the specifics of the child's transportation needs.

(b) **Individualized education program form.** Each board of education shall use the individualized education program form developed by the Department of Education.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-12. Planning and Placement Team Meetings; Transfer of Rights; exception

Each planning and placement team is responsible for initiating, conducting and maintaining a record of planning and placement team meetings for developing, reviewing or revising a child's individualized education program.

(a) **Parental participation.** Each board of education shall take steps to ensure that one or both of the child's parents are afforded the opportunity to participate in each meeting to develop, review or revise the individualized education program for that child. Every effort shall be made to schedule meetings at a mutually agreed upon time and place. Steps to ensure parental participation shall be taken in accordance with the following.

(1) At least five days prior to the meeting, parents shall be advised in writing, in their native language, of their rights to be participating members of the planning and placement team.

(2) Such notice shall also specify the purpose, time and location of the meeting and who has been invited.

(3) If neither parent can attend, reasonable effort shall be made to secure parental participation by other means such as conference calls or home visits.

(4) A meeting may be conducted without a parent in attendance if the board of education is unable to secure parental attendance. In this event, the board of education shall have a detailed record of its attempts to arrange parental participation.

(5) Each board of education shall take any and all actions necessary to ensure that the parents understand the proceedings at the meeting. This shall include, but not be limited to, providing an interpreter for the parents who are in need of such services.

(b) **Transfer of rights; exception.** When a child with a disability reaches the age of eighteen, (1) the board shall provide any notices required by the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies to such child and the parents of such child, and (2) all other rights accorded to the parents of such child under the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and, section 10-

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76b-9 and sections 10-76d-1 to 10-76h-19, inclusive, of the Regulations of Connecticut State Agencies shall transfer to such child.

(c) All rights accorded to parents under the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and section 10-76b-9 and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies shall transfer to the child with a disability of such parents at the age of eighteen who is incarcerated in an adult or juvenile, state or local correctional institution.

(d) Whenever a board transfers rights under these provisions, it shall notify the child with a disability and the child's parents of the transfer of rights.

(e) A child with a disability who has reached eighteen years of age may notify, in writing, the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child notwithstanding the fact the child has turned eighteen years of age. The child with a disability may revoke the granting of these rights at any time. If such child requires assistance to write or sign by reason of disability or inability to read or write, such assistance may be provided by a person of the child's choosing.

(f) Any child with a disability who has been determined to be incapacitated by a court shall be represented by the legal guardian appointed by the court.

(g) A child with a disability age eighteen or older who has not been determined incapacitated by a court may be certified as unable to provide informed consent or to make educational decisions and have an educational representative appointed for such child in accordance with the following procedures: (1) Two separate professionals shall state in writing they have conducted a personal examination or interview with such child, such child is incapable of providing informed consent to make educational decisions and such child has been informed of this decision and is informed of the right to challenge it. The professional shall be (A) a medical doctor licensed in the state where the doctor practices medicine; (B) a physician's assistant whose certification is countersigned by a supervising physician; (C) a certified nurse practitioner; (D) a licensed clinical psychologist; or (E) a guardian ad litem appointed for such child.

(2) When the board receives the required certification, the board shall designate an educational representative from the following list and in the following order of representation: (A) such child's spouse; (B) such child's parents; or (C) another adult relative willing to act as such child's educational representative.

(3) A child shall be certified as unable to provide informed consent pursuant to this section for a period of one year, except such child or an adult on behalf of such child, with a bona fide interest in and knowledge of such child may challenge the certification at any time, through verbal or written communication to any official of the board at which time the rights revert back to such child. For purposes of this subsection, "bona fide interest in and knowledge of the child" means an adult who understands and is familiar with the educational needs of such child including, but not limited to an adult who (A) is able to understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis for such child; and (B) can make a rational evaluation of

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the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis. In no case shall such adult be an employee of the board of education providing services to the child.

(h) Nothing in this section shall prevent a child who has reached the age of eighteen from authorizing another adult to make educational decisions on behalf of that child using a power of attorney consistent with the requirements of sections 1-42 to 1-56, inclusive, of the Connecticut General Statutes.

(Effective September 1, 1980; Amended July 1, 2013)

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.

(3) Notice shall be sent to the parents in accordance with the requirements of Section 10-76d-8 of these regulations.

(4) Where necessary, parental consent shall be given within ten days of the date of notice or, where appropriate, of the date of the planning and placement team meeting in which the parents participated. Consent shall be as specified in Section 10-76d-8 of these regulations.

(5) Notice of a planning and placement team meeting to develop, review or revise the child's individualized education program shall be sent to the parents in accordance with Section 10-76d-12 (c) of these regulations.

(6) A full copy of the individualized education program shall be sent to the parents within five days after the planning and placement team meeting to develop, review or revise the individualized education program.

(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.

(Effective April 24, 1991)

Sec. 10-76d-14. Trial placement for diagnostic purposes

Each board of education may use trial placement for diagnostic purposes as part of the initial evaluation or reevaluation of a child. This shall mean a structured program, of not more than forty school days duration, the purpose of which is to assess the needs of a child who is or may be a child with a disability, but for whom the evaluation or reevaluation is either inconclusive or the data insufficient to determine the child's eligibility for special education and related services or to develop or revise the child's individualized education program. A trial placement for diagnostic purposes is an evaluation and shall not be the current educational placement of a child for purposes of determining the child's status during due process proceedings in accordance with 20 USC 1415(j) of the IDEA and the regulations adopted thereunder, as amended from time to time, unless the parents and the board otherwise agree. If a trial placement for diagnostic purposes is conducted as part of a referral, the timeline for the implementation of the IEP in accordance with section 10-76d-13 of the Regulations of Connecticut State Agencies shall be extended by the PPT for the time necessary to complete the trial placement for diagnostic purposes.

(a) The planning and placement team shall specify, in writing, diagnostic goals and objectives, as well as the types and amounts of services needed to conduct the trial placement for diagnostic purposes in order to determine more conclusively the child's needs.

(b) The planning and placement team or, if the parents and the PPT agree to designate members of the PPT, such designated members, shall meet at least once every ten school days with personnel working with the child to discuss the child's progress and to revise, where necessary, the services being provided.

(c) A child's time may be divided between the trial placement for diagnostic purposes and another program, or the child may be placed in the trial placement for diagnostic purposes full-time. Decisions regarding such options shall be made by the planning and placement team.

(d) A trial placement for diagnostic purposes shall be terminated as soon as the child's needs have been determined, but in any event no later than forty school days after the trial placement for diagnostic purposes begins.

(e) Five school days before the end of the trial placement for diagnostic purposes, the planning and placement team shall reconvene to determine the child's eligibility for special education and related services, as appropriate, or review, revise or develop the child's individualized education program, as appropriate, based on findings made during the trial placement for diagnostic purposes as well as other evaluative information regarding the child.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-15. Homebound and hospitalized instruction

(a) (1) **Provision of instruction for verified medical reason.** A board of education shall provide instruction to a child in a public school under the jurisdiction of such board when such child is unable to attend school due to a verified medical reason which may include

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mental health issues. The child's treating physician shall provide a statement in writing directly to the board of education, on a form provided by such board, stating: (A) the child's treating physician has consulted with school health supervisory personnel and has determined that attendance at school with reasonable accommodations is not feasible, (B) the child is unable to attend school due to a verified medical reason, (C) the child's diagnosis with supporting documentation, (D) the child will be absent from school for at least ten consecutive school days or the child's condition is such that the child may be required to be absent from school for short, repeated periods of time during the school year and, (E) the expected date the child will be able to return to school.

(2) The PPT shall consider the educational needs of a child with a disability who is medically complex and the need for instruction to be provided in accordance with the IEP of such child when such child is not able to attend school due to medical reasons. The PPT shall consider and make accommodation for the child's program to be moved (A) from public school to a home or health care facility, including but not limited to, a hospital, psychiatric facility or rehabilitation center, and (B) back to school when the child is able to return to school. For purposes of this section, "medically complex" means a child who has a serious, ongoing illness or chronic condition for at least a year and requires prolonged or intermittent hospitalization and ongoing medical treatments or medical devices to compensate for the loss of bodily functions.

(b) **Requirements of individualized education program.** Homebound and hospitalized instruction shall be as specified in the child's individualized education program, subject to the following.

(1) In the case of a child not otherwise in need of special education and related services, homebound or hospitalized instruction shall maintain the continuity of the child's regular program. The requirements of evaluation and an individualized education program shall not apply and a planning and placement team meeting need not be convened.

(2) In the case of a child not previously receiving special education and related services, the requirements of evaluation and an individualized education program shall apply if there is reason for the planning and placement team to believe that the child will continue to require special education and related services.

(3) In the case of a child receiving special education and related services, the planning and placement team shall, where necessary, modify short-term instructional objectives in the child's individualized education program.

(c) (1) **Commencement of services.** Instruction for a child who is unable to attend school for medical reasons shall begin no later than the eleventh day of absence from school, provided the board has received notice in writing that meets the requirements of subsection (a) of this section. If the board is provided with adequate notice prior to the child's absence from school, instruction may begin earlier than the eleventh day of absence. If the child's condition is such that the child cannot receive instruction, the child's treating physician shall determine when instruction shall begin and shall, in writing, inform the board.

(2) Instruction for a child with a disability who is medically complex shall begin no later

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than the third day of absence, provided such child is medically able to receive instruction.

(d) **Resolution of disputes.** In the event there is a dispute regarding the basis upon which the child's treating physician has asserted the need for instruction, the child shall receive such instruction pending review of the written statement provided by the child's treating physician, pursuant to subsection (a) of this section, by the school medical advisor or other health professional employed by the board of education who is qualified to review the information submitted. The parent of such child shall provide consent for the school medical advisor or other qualified health professional employed by the board of education to consult with the child's treating physician to assess the need for instruction. The board is not required to begin instruction until such consent is provided. Consultation with the child's treating physician shall include a review of educational and medical records and, if appropriate, accommodations and school health services that can be provided to the child so the child can attend school safely. If there continues to be a disagreement regarding the provision of homebound instruction, the board may offer, at the board's expense, a review of the child's case by a qualified independent medical practitioner. If the parent fails to make the child available for such review, the obligation of the board to provide homebound instruction shall end, and if the child continues to be absent from school, the board shall pursue school attendance interventions. The board and the parent have the right to request a hearing pursuant to section 10-76h-3 of the Regulations of Connecticut State Agencies, or in lieu of a hearing, may request mediation pursuant to section 10-76h-5 of the Regulations of Connecticut State Agencies, if the dispute regarding the provision of instruction pursuant to this section is not resolved.

(e) **Time and place.** Instruction shall be provided as follows: (1) for any child with a disability from three to five years of age, inclusive, for the amount of time determined appropriate by the PPT; (2) no less than one hour per day or five hours per week for children in grades kindergarten through six; and (3) no less than two hours per day or ten hours per week for children in grades seven through twelve. Where evaluative data indicates that these time requirements should be modified, instruction time may be increased or decreased upon the agreement of the parent and the board of education or upon a determination made by the PPT as appropriate. Instruction may be provided in the setting of the child's home or the hospital to which the child is confined or the board may offer such instruction in other sites such as the town library, taking into consideration the child's medical condition.

(f) **Content of services.** Instruction provided pursuant to the provisions of this section shall maintain the continuity of the child's general education program and, in the case of a child with a disability, shall be provided so as to enable the child to continue to participate in the general education curriculum and to progress towards meeting the goals and objectives in the child's IEP. For purposes of this section, "maintaining the continuity of the child's general education program" means the child shall receive instruction in core academic subjects required by the board of education for such child or an interdistrict magnet school or charter school in which such child is enrolled for promotion or graduation. Such interdistrict magnet school or charter school shall cooperate with the board in planning

homebound instruction and shall provide instructional materials to enable the board to provide appropriate instruction to the child.

(g) **Provision of services for a child who is pregnant or who has given birth.** A child who is pregnant or who has given birth and cannot attend school pursuant to this section shall be provided with homebound instruction and such other instruction as will enable the child to remain in school or otherwise have access to instruction and support services. The board shall consider the child's individualized needs and shall provide, as appropriate, services that may include, but need not be limited to, transportation, a shortened school day, counseling, modified assignments or modified class schedule.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-16. Placement

Each board of education shall determine the educational placement of a child with a disability in accordance with the placement requirements of the IDEA.

(Effective September 1, 1980; Amended July 1, 2013)

Sec. 10-76d-17. Private facilities

A board of education may place a child with a disability in a private special education program.

(a) **Requirements.** Each board of education shall ensure that any placement in a private special education program is made in accordance with the following requirements.

(1) Before a board of education decides that a child with a disability cannot be appropriately placed in a school operated by such board of education or a program operated on behalf of such board of education, such as a program operated by a private special education program or a regional educational service center in a public school building, the board shall explore all other placement options that are consistent with the least restrictive environment requirements of the IDEA;

(2) The child's individualized education program shall be maintained by the staff administering the private special education program;

(3) The placement shall be at no cost to the parents;

(4) Prior to the placement of a child with a disability in a private special education program, a representative of the program shall participate in a PPT meeting in order to discuss the child's individualized education program; and

(5) A child placed in a private special education program shall be accorded all of the educational rights the child would have if served directly by his or her board of education including, but not limited to, access to extracurricular and nonacademic programs and services and the right to participate in the high school graduation exercises and activities of the board of education and to receive a general education high school diploma upon completion of the requirements for graduation from the board of education. The PPT shall consider and make arrangements for the child to participate in such activities if the PPT determines that it is appropriate for the child to participate; and

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(6) All out-of-state private programs shall meet the educational standards for private special education programs in the state it is located. If no such standards exist, the sending board of education shall provide the Department of Education with documentation that the private placement is appropriate to the child's needs as set forth in the child's individualized education program.

(b) No child shall be placed in a private special education program by a board unless such placement is required by the child's individualized education program as developed by the PPT of the board of education responsible for the child's education, except when a child is placed by a state agency in a private special education program for other than educational reasons.

(c) **Approval of private special education programs.** Each private special education program seeking approval shall submit a written application for approval as required by the State Board of Education. In order to be approved, each private special education program shall have been in operation for at least one year prior to application, shall have an enrollment of at least ten students, shall comply with the *Principles and Standards for Approval of Private Special Education Programs* adopted by the State Board of Education, and shall meet the following requirements:

(1) Each private special education program shall agree that in its operations no person shall be excluded from participation, be denied benefits or be otherwise discriminated against on the basis of sex, race, color, creed, religion, national origin, age, marital status or disability in any program or activity for which the special education program receives public monies;

(2) Each private special education program shall obtain a copy of the child's IEP from the sending board of education and implement the IEP for each child placed by a board of education;

(3) Each private special education program shall, with the sending board of education, cooperate in and contribute to each PPT meeting convened for each child placed by a board of education in a private special education program, including the annual review of each child's individualized education program and the determination of continued placement. The private special education program shall ensure that a special education teacher of the child (A) participates in each such meeting, or (B) if the child's parent and the sending board of education consent to the teacher being excused from such meeting, submits written input regarding the development of the child's individualized education program to the sending board of education within a reasonable time prior to the meeting so such written input can be discussed at such meeting;

(4) Each private special education program shall complete periodic reviews and evaluations of each child's progress relative to the child's IEP. The private special education program shall submit reports of the child's progress to the child's parents and the sending board of education in accordance with the reporting schedule and content requirements of the child's IEP as determined by the PPT;

(5) Each private special education program shall have written policies and procedures

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for both emergency and early termination of a child's placement. The procedure for emergency termination shall provide for immediate notification of the sending board of education and the child's parents. The procedure for early termination shall provide for prior consultation with the sending board of education as well as an orderly transfer of provision of service;

(6) Each private special education program shall conform to the requirements of these regulations with respect to class size and composition, length of school day and year and physical facilities;

(7) Each private special education program shall have policies and procedures which meet the requirements of section 10-76d-18 of the Regulations of Connecticut State Agencies;

(8) Each private special education program shall ensure that all administrative personnel, instructional personnel, and related service personnel shall hold appropriate certification, except as provided in section 10-145d-610(c) of the Regulations of Connecticut State Agencies, which shall be on file with the State Board of Education;

(9) Each private special education program shall require of its personnel, on an annual basis, evidence of having met the health requirements for public school employees as established by the General Statutes and their regulations;

(10) Each private special education program shall have policies and procedures which permit personnel of the sending board of education to visit the program and observe children on a reasonable basis in order for the board to fulfill its responsibilities with regard to the provision of a free appropriate public education to eligible children;

(11) Each private special education program shall have policies and procedures which permit parents of enrolled and prospective children to visit the program and observe children on a reasonable basis in order for the parents to participate meaningfully in PPT meetings for their children; and

(d) **Private program within a school or facility.** In the event that a private special education program is a component of a school or facility of which at least one other component provides education services to school-aged children, all administrative, instructional and related service personnel of each component of the school or facility that provides education services to school-aged children shall hold appropriate certification, except as provided in 10-145d-610(c) of the Regulations of Connecticut State Agencies, which shall be on file with the State Board of Education.

(e) **Procedures for approval of private special education programs.** Upon receipt of a written application for approval as required by subsection (c) of this section, the State Board of Education shall initiate the following actions:

(1) A site visit to the private special education program shall be made by representatives of the Department of Education.

(2) Based upon the written application and the site visit, a recommendation shall be made to the State Board of Education that approval be granted or withheld. The Commissioner of Education may be authorized to act on behalf of the State Board of Education. Appeal

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from a decision of the State Board of Education shall follow the provisions of Chapter 54 of the Connecticut General Statutes.

(3) Following initial approval, the State Board of Education shall review the approved status of a private special education program before the end of the following school year. Thereafter, approval may be granted for a maximum of five years.

(4) The Department of Education shall maintain a current list of all approved private special education programs which shall be available to the public upon request.

A board of education may place a child requiring special education and related services in a private special education program.

(5) The State Board of Education, or the Commissioner of Education acting on behalf of the State Board of Education, may suspend or revoke the approval status of a private special education program pursuant to Chapter 54 of the Connecticut General Statutes.

(Effective November 23, 1994; Amended July 1, 2013)

Sec. 10-76d-18. Education records and reports

Each board of education shall maintain records concerning children with disabilities or children referred for an evaluation to determine the child's eligibility for special education and related services consistent with the requirements of the IDEA, except as provided in this section.

(a) **Access rights to records.** Parents shall have the right to inspect and review any education records relating to their child which are collected, maintained or used by the board of education.

(1) A request to inspect and review a child's records shall be in writing. The board of education shall comply with a request to review and inspect the child's education records without unnecessary delay and before any meeting regarding an IEP or any due process hearing or resolution session held in accordance with the IDEA; otherwise, the board of education shall comply with such request not later than ten days of such request.

(2) The parents' right to inspect and review the child's records shall include the right to one free copy of those records. A request for the free copy shall be made in writing. The board of education shall comply with such request not later than ten days of such request. Notwithstanding the fact that a test instrument or portion of a test instrument may meet the criteria of an "education record" under the Family Educational Rights and Privacy Act, 20 USC 1232g, any test instrument or portion of a test instrument for which the test manufacturer asserts a proprietary or copyright interest in the instrument shall not be copied. The parent retains the right to review and inspect such information and the board of education shall respond to reasonable requests from the parent for explanations and interpretations of the child's education record, which may include reviewing copyrighted testing instruments.

(Effective September 1, 1980; Amended March 26, 2004; Amended July 1, 2013)

Sec. 10-76d-19. Transportation

Each board of education shall provide, as a related service, safe and appropriate transportation as required to implement the individualized education program for each child with a disability.

(a) **Travel time.** Total travel time shall not exceed one hour each way to and from a special education facility. All decisions relating to travel time shall take into account the nature and severity of the child's disability and the child's age. If an appropriate placement cannot be made without exceeding the one-hour travel time limit, written parental consent to longer travel time shall be obtained prior to implementing the transportation service.

(b) **Operators of vehicles.** Operators of vehicles shall be given such in-service training as is necessary to acquaint them with the specific needs of the children being transported and to equip them to meet those needs. Operators of vehicles shall meet the licensure requirements of the department of motor vehicles.

(c) **Vehicles.** All vehicles shall comply with requirements of the Department of Motor Vehicles and shall be equipped so as to ensure safe and appropriate transportation.

(d) **Transportation aides.** Each board of education shall provide transportation aides where such aides are ascertained to be necessary to ensure safe and appropriate transportation. A transportation aide shall be assigned to each vehicle transporting a child whose individualized education program specifies the need for such an aide.

(e) **Transportation provided by parents.** If the board of education requests that the parents transport a child, it shall reimburse the parents for the cost of such transportation at the standard mileage reimbursement for a privately owned automobile established by the Internal Revenue Service. Such reimbursement shall be for a round trip to transport the child to, and retrieve the child from, the program. No parent shall be required to provide transportation, nor shall any board of education be relieved of the obligation to provide transportation for a child because of the inability or unwillingness of parents to provide transportation. No board of education shall be required to reimburse parents for the cost of transporting a child if the parents reject the transportation offered by the board of education unless reimbursement is ordered by a hearing officer who finds the transportation offered by the board was not appropriate to meet the child's needs. In lieu of a hearing, the parents and the board may resolve their disagreement through mediation or resolution session.

(Effective September 1, 1980; Amended July 1, 2013)

Section 10-76h: Due process

Sec. 10-76h-1. Definitions

As used in Sections 10-76h-1 to 10-76h-18, inclusive, the following terms have the following meanings:

(a) "Business day" means Monday through Friday, except for federal and state legal holidays, unless holidays are specifically included in the designation of business day.

(b) "Commissioner" means the Commissioner of Education.

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(c) “Child” means an individual under twenty-one years of age who is eligible for or may be eligible for special education and related services.

(d) “Day” means calendar day unless otherwise indicated as business day.

(e) “Department” means the Department of Education.

(f) “Due process unit” means the unit located within the Bureau of Special Education which manages the mediation, advisory opinion and hearing processes;

(g) “Parent” means a natural or adoptive parent of a child; a guardian, but not the state if the child is a ward of the state; a person acting in the place of a parent, such as a grandparent or stepparent, with whom the child lives, or a person who is legally responsible for the child’s welfare; a pupil; or, a surrogate parent who has been appointed pursuant to section 10-94g of the Connecticut General Statutes.

(h) “Party” means those individuals or groups who are engaged in mediation, in the advisory opinion process or in a hearing.

(i) “Public agency” means a local or regional board of education, the technical high school system, a unified school district, or the Department of Mental Health and Addiction Services or any other state agency to the extent such agency is responsible for the provision of special education and related services to a child with a disability.

(j) “Pupil” means an emancipated minor or a child eighteen years of age or older.

(Effective September 1, 1980; Amended July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-2. Who may file hearing requests

Requests for hearing may be filed by the following:

(a) A parent of a child who is eligible for, or may be eligible for, special education and related services pursuant to the provisions of the General Statutes and the Individuals with Disabilities Education Act, 20 USC 1401 et seq.;

(b) The Commissioner of Children and Families, or a designee of said Commissioner, on behalf of any such child committed to or in the custody of said commissioner; or

(c) A public agency.

(Effective April 24, 1991; Amended July 1, 2000)

Sec. 10-76h-3. Hearing request; content of hearing request

(a) A parent, the Commissioner of Children and Families, or a designee of said commissioner, a public agency or an attorney or advocate acting on behalf of any of these parties, may request in writing a hearing regarding a public agency’s proposal to or refusal to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to the child. Each public agency shall provide assistance to the parent as may be necessary to file a written hearing request.

(b) When a hearing is requested under the provisions of this section, the public agency shall inform the parent of the availability of mediation and advisory opinion process as described in sections 10-76h-5 and 10-76h-6 of the Regulations of Connecticut State Agencies. The parent shall also be informed of any free or low cost legal services and other

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relevant services available in the area if the parent requests such information or a hearing is requested.

(c) In addition to the hearing request addressed in subsection (a) of this section, a public agency may request a hearing in writing in the event a parent refuses or revokes consent for initial evaluation or reevaluation.

(d) The party requesting a hearing shall file the hearing request with the opposing party and submit a copy of the hearing request to the due process unit. When a public agency requests a hearing, such agency shall provide, at the same time, a copy of the request to the Commissioner of Children and Families, or said commissioner's designee, for any child committed to or in the custody of said commissioner. The request shall contain the following information and shall be signed and dated by the person who is requesting the hearing:

- (1) The name of the child;
- (2) The address of the residence of the child, provided if the child is homeless, the request shall contain available contact information for the child;
- (3) The name of the school the child is attending;
- (4) A description of the nature of the dispute relating to the proposed or refused initiation or change, including facts relating to the dispute; and,
- (5) A proposed resolution of the dispute to the extent known and available to the party at the time.

The department shall have available a model form to assist the party in filing a request for due process. Such model form shall be made available at each school and each school shall designate a staff member to assist the parent in completing the form.

(e) When the request for a hearing is filed by a parent 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. The public agency shall have seven days to send the original request to the department's due process unit.

(Adopted effective July 1, 2000; Amended February 4, 2005; Amended July 1, 2013)

Sec. 10-76h-4. Statute of limitations

(a) A party shall have two years to request a hearing from the time the party knew or should have known about the public agency proposal or refusal to initiate or change the identification, evaluation or educational placement of, or the provision of a free appropriate public education to the child. Such two-year limitation shall not apply to a parent who was prevented from filing a request for hearing due to (1) specific misrepresentations made by the public agency indicating that the public agency had resolved the problem forming the basis of the request for hearing, or (2) the public agency's withholding of information from the parent that was required to be provided to the parent under Part B of the Individuals with Disabilities Education Act, 20 USC 1400 et.seq. and the regulations adopted thereunder, as amended from time to time. If the procedural safeguards, including notice of the limitations contained in this section, is not given, such two-year limitation shall be

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calculated from the time notice of the safeguards is properly given.

(b) This limitation does not apply to evidence, provided admission of such evidence shall meet evidentiary considerations such as relevance and materiality and shall be ruled upon by the hearing officer.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-5. Mediation

(a) The parties may agree in writing to request mediation at any time. The due process unit shall, upon the receipt of a written request for mediation signed by both parties, appoint on a random basis, an impartial mediator from the list of mediators maintained by the due process unit who meet the requirements of 34 CFR 300.506(c). The mediator shall attempt to resolve the dispute in a manner that is acceptable to the parties. The mediator shall certify in writing to the due process unit whether the parties reached an agreement. An agreement reached by the parties shall be set forth in a written mediation agreement and be signed by the parties.

(b) Discussions that occur during mediation shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(c) Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the Individuals with Disabilities Education Act, 20 USC 1401, et. seq. and the regulations adopted thereunder, as amended from time to time.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-6. Advisory opinion

(a) The department may, within its discretion, offer the parties to a due process hearing an advisory opinion process.

(b) Any party may submit to the due process unit a written request for an advisory opinion. In order to commence the advisory opinion process, a request for an advisory opinion may be submitted after, or simultaneously with, a request for hearing or before, or after, the convening of the prehearing conference, but before the hearing convenes. The advisory opinion process is not available after the hearing has been convened.

(c) The parties may jointly request an advisory opinion. One party may request an advisory opinion simultaneously providing a copy of the request to the other party. If the non-requesting party agrees to participate in the advisory opinion process, that party shall so notify in writing the due process unit and the requesting party within five calendar days from the receipt of the request.

(d) As may be necessary, the parties to the advisory opinion process shall request a postponement of a prehearing conference or of any scheduled hearing date. The hearing officer assigned to the full hearing shall reschedule such hearing date and other dates as appropriate with the cooperation of the parties. Such rescheduling shall not exceed 30 days from the initial full hearing date.

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(e) If the parties agree to an advisory opinion hearing officer and if such hearing officer is available, the due process unit shall appoint such hearing officer. The hearing officer assigned to the advisory opinion process by agreement of the parties shall not be the hearing officer assigned to the full hearing. If the parties do not agree to an advisory opinion hearing officer, the due process unit shall assign an advisory opinion hearing officer for the advisory opinion who shall not be the hearing officer assigned to the full hearing. The advisory opinion hearing officer shall schedule a date consistent with the parties' identified date as indicated in the request for the advisory opinion process. The advisory opinion hearing officer shall send a notice to the parties confirming the date, time, and location of the advisory opinion proceeding as well as a copy of the advisory opinion procedure set forth in subsection (f) of this section.

(f) Each party shall exchange copies of documents intended to be submitted to the advisory opinion hearing officer and the names of no more than two (2) witnesses no later than five (5) calendar days prior to the advisory opinion proceeding. Each party shall simultaneously provide copies of the same documents and the witnesses' names to the advisory opinion hearing officer. If not already provided, the party who requested an advisory opinion shall provide a statement of the issues in dispute and a proposed resolution of those issues.

(g) The advisory opinion hearing officer shall accept only essential and reliable exhibits, which may include the most recent IEP, revisions to the IEP, educational evaluations, progress reports, transcripts, independent evaluations and teacher narratives.

(h) The parties shall agree in writing, prior to the commencement of the advisory opinion proceeding, to abide by the following procedures in the advisory opinion proceeding:

- (1) The proceedings shall not be recorded or transcribed;
- (2) In addition to the parent, special education director and an attorney or advocate for each party, only three (3) additional individuals may attend and/or participate for each party;
- (3) The process shall not be open to the public;
- (4) Witness presentations, whether in question and answer format or not, shall not be under oath;
- (5) Unless the advisory opinion hearing officer determines otherwise, once the advisory opinion proceeding has begun, there shall be no adjournments;
- (6) The parties' presentations shall be conducted as follows:
 - (A) The party requesting a change in special education or related services shall be allocated 45 minutes to present that party's case, and shall present no more than two witnesses. No cross-examination or objections shall be permitted during this time.
 - (B) The responding party shall then be allocated 45 minutes to present that party's case, and shall present no more than two witnesses. No cross-examination or objections shall be permitted during this time.
 - (C) The requesting party shall then have 15 minutes to ask questions of any witness or elaborate on any part of that party's case.
 - (D) The responding party shall then have 15 minutes to ask questions of any witness or

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elaborate on any part of that party's case.

(E) If both parties and the advisory opinion hearing officer agree, the number of witnesses and time limits in this subsection may be modified provided the advisory opinion process is completed in one day.

(7) The advisory opinion hearing officer may ask questions of any witness at any time; time consumed in responding to the hearing officer questions shall not extend a party's allocated 45 minute and 15-minute presentation periods.

(8) The advisory opinion hearing officer shall render an oral advisory opinion within 30 minutes of the close of presentations. The advisory opinion hearing officer need not respond to questions concerning such advisory opinion.

(9) After rendering an advisory opinion, an advisory opinion hearing officer may facilitate settlement discussions.

(10) The rendering of any advisory opinion shall have no effect on a party's right to proceed to a full due process hearing, nor on the outcome of any due process hearing, and the advisory opinion shall be confidential and shall not be admissible in any due process hearing.

(11) An advisory opinion hearing officer shall not be a witness in any subsequent due process hearing involving the issues raised in the advisory opinion process and shall be precluded from serving as a hearing officer in any later hearing involving issues raised in the advisory opinion process.

(Adopted effective July 1, 2000; Amended July 1, 2013)

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

(a) Upon receipt of a written request for a hearing, the due process unit shall appoint an impartial hearing officer. The due process unit shall, in writing, notify both parties and the hearing officer of the appointment.

(b) Upon appointment, the hearing officer shall contact the parties and schedule a prehearing conference. A prehearing conference shall be held in every case, except as provided in sections 10-76h-6 and 10-76h-10 of the Regulations of Connecticut State Agencies, on the date scheduled and shall be conducted via telephone only. The prehearing conference shall simplify or clarify the issues in dispute. If a party fails to participate in a prehearing conference, the hearing officer may proceed with the conference. At the prehearing conference the hearing officer may also establish dates for the completion of each party's evidence as well as review the possibility of settlement of the case. The hearing officer shall not, however, participate in substantive settlement discussions. The hearing officer shall schedule hearing dates, organize the submission of exhibits, identify witnesses and address such other administrative matters as the hearing officer deems necessary to complete a timely hearing. The hearing officer may assist an unrepresented party by providing information relating only to the hearing process.

(c) The hearing officer shall schedule the hearing at a place reasonably convenient to

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the parent as determined by the hearing officer. The hearing officer may schedule consecutive days of hearing to expedite the process. The parties shall identify to the hearing officer how long it will take them to put their case on by identifying the number and expected testimony of witnesses. The hearing officer shall have the sole discretion to determine the length of the hearing, including the number of witnesses to testify and the length of testimony and cross-examination, taking into consideration the issues presented and the need to complete the hearing in a timely fashion. The hearing, including the mailing of the final decision and order, shall be completed within the forty-five day timeline established in Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et.seq., and the regulation adopted thereunder, as amended from time to time; and the hearing officer, in scheduling hearing dates, shall also set the date of such mailing. A specific extension of the forty-five day timeline may be granted by the hearing officer at the request of a party to the hearing only in accordance with the provisions of section 10-76h-9 of the Regulations of Connecticut State Agencies, except as provided in section 10-76h-10 of the Regulations of Connecticut State Agencies, and any order granting such an extension shall set a new mailing date.

(Adopted effective July 1, 2000; Amended February 4, 2005; Amended July 1, 2013)

Sec. 10-76h-8. Motion practice

(a) A party may request that a hearing officer rule on a motion or take any action consistent with relevant statutes or regulations. Motions shall not be used to delay or protract any proceeding. Dilatory motions are prohibited.

(b) After a party files a hearing request, written motions may be filed with the hearing officer. Each motion shall set forth the reasons for the desired ruling or action and shall also state whether a hearing on the motion is requested.

(c) Written motions may be sent by certified mail, overnight mail, facsimile transmission, other courier or recognized package or delivery service, to all parties and the hearing officer simultaneously. Except as provided in subdivisions (1), (2) and (4) of subsection (f) of this section, not later than seven days after the hearing officer receives a written motion, any party may file written objections to the allowance of the motion and may request a hearing on the motion.

(d) If, in the discretion of the hearing officer, a hearing on a motion is warranted, the hearing officer shall give all parties at least three days notice of the time and place for hearing. The hearing officer may rule on a motion without holding a hearing if a delay would seriously injure a party; if testimony or oral argument would not advance the hearing officer's understanding of the issues involved; or if a ruling without a hearing would best serve the public interest.

(e) At a hearing on a motion, the hearing officer may allow such evidence as, in the discretion of the hearing officer, is relevant to the particular motion. This evidence may consist of facts that are supported by an affidavit; appear in the documentary evidence submitted for the hearing; or, are presented by sworn testimony.

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(f) Motions properly before the hearing officer include, but are not limited to, the following:

(1) Motion to recuse: A party to a hearing may file a motion to recuse. A motion to recuse shall be based on an assertion of bias, or a personal or professional interest that may conflict with the objectivity of the hearing officer in the conduct or disposition of the hearing. The hearing officer shall respond to the motion within five business days of its receipt. If the hearing officer grants the motion, or otherwise recuses himself, the hearing officer shall immediately notify the due process unit and the parties. In such a case the due process unit shall appoint a new hearing officer within one business day of the receipt of the notice of the granted motion.

(2) Motion to dismiss: A party to a hearing may file a motion to dismiss in order to contest the jurisdiction of the hearing officer. The motion shall be accompanied by a memorandum of law and filed with the hearing officer, and with the other party. The party opposing the motion to dismiss shall be allowed seven business days after the hearing officer receives the motion to dismiss to file an amended hearing request prior to the hearing officer's consideration of the motion to dismiss, provided all other requirements contained in Sections 10-76h-3 and 10-76h-4 of the Regulations of Connecticut State Agencies are met.

(3) Motion to consolidate: When hearings involving the same child are pending, the hearing officer, upon motion of either party and after consultation with and agreement by any other hearing officer involved with the same child in hearings involving common questions of law or fact, may order a single hearing of any or all matters at issue in the hearings. The hearing officer may order all the hearings consolidated and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(4) Motion to clarify the findings or decision of the hearing officer: A party may file a motion for clarification of the findings or decision of the hearing officer no later than 20 business days after the decision is issued, after which no such motion shall be considered by the hearing officer. The hearing officer shall have 10 business days to mail a written response to the motion. The motion to clarify shall not serve to stay the implementation of the hearing officer's decision. A motion for clarification shall serve to toll the time for appeal of the hearing officer's final decision. The time to appeal shall run from the date of mailing of the decision of the hearing officer on the motion to clarify.

(g) Strict adherence to the formal motion practice shall not create unfair surprise or injustice. The hearing officer shall have the authority to waive any requirement in the interest of a fair and expedient resolution of the issues presented.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-9. Postponements and extensions

Requests for postponements of scheduled hearing dates or for extensions of deadlines established by the hearing officer, including but not limited to dates for submission of exhibits, the date for filing briefs, the date for mailing of the decision, or any other deadline,

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shall be as follows:

(a) A party requesting a postponement or extension of a previously set date, except for a party requesting an extension of the forty-five day decision timeline on account of an asserted need for additional hearing dates, shall submit a request in writing to the hearing officer no later than 5:00 p.m. five business days prior to the scheduled hearing or deadline date unless a compelling reason is shown for a later request. The request for postponement or extension shall set forth the reason for the request. It shall also indicate what efforts the moving party has made to contact the opposing party or the opposing party's representative and whether the opposing party agrees or objects to the postponement or extension.

(b) An opposing party who wishes to object to a request for a postponement or extension made pursuant to subsection (a) of this section shall object in writing stating the reason for the objection and shall submit such written objection to the hearing officer no later than 5:00 p.m. no later than two business days before the scheduled hearing or deadline unless compelling reason is shown for a later objection.

(c) A party requesting an extension of the forty-five day decision timeline on account of an asserted need for additional hearing dates should do so in writing, pursuant to the procedures in subsection (a) of this section, unless requested on the record and permitted by the hearing officer. The hearing officer may, consistent with the requirements of due process, entertain an oral motion for an extension of the forty-five day decision timeline based on an asserted need for additional hearing dates.

(d) The hearing officer may grant a request for postponement or extension pursuant to subsections (a) or (c) of this section only after fully considering the cumulative impact of the following factors:

(1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay;

(2) the need of a party for additional time to prepare and present the party's position at the hearing in accordance with the requirements of due process;

(3) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(4) whether there has already been a delay in the proceeding through the actions of one of the parties.

Absent compelling reason or a specific showing of substantial hardship, a request for a postponement or extension shall not be granted because of continued settlement discussions between the parties, except as provided in subsection (e) of this section, school vacations, attorney vacations and other similar reasons. Agreement of the parties is not a sufficient basis for granting a postponement or extension.

(e) The hearing officer shall have the authority to grant one 30-day postponement for continued settlement discussions between the parties upon written verification by the parties that they are engaged in a good faith effort to complete negotiations. At the end of the 30-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 to the hearing. The hearing officer

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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 with the hearing, the hearing officer shall dismiss the hearing request without prejudice. The parties may refile at a later date.

(f) With regard to requests for postponement or extension made pursuant to subsection (a) of this section, and written requests made pursuant to subsection (c) of this section, the hearing officer shall respond in writing, which writing shall become part of the record. With regard to oral requests for extension made pursuant to subsection (c) of this section, the hearing officer may render an oral decision, but shall subsequently reduce that decision to writing, which writing shall become part of the record. The hearing officer shall set a new date for any and every activity or deadline postponed or extended, pursuant to the standards set forth in subsection (d) of this section.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-10. Expedited hearings

(a) Expedited hearings shall be arranged in accordance with Part B of the Individuals with Disabilities Education Act, 20 USC 1401 et. seq. and the regulations adopted thereunder, as amended from time to time, regarding actions or proposed actions relating to the discipline or removal from school of a child with a disability.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-11. Hearing rights

(a) Any party to a hearing conducted pursuant to this section or Section 10-76h-7 of the Regulations of Connecticut State Agencies has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) 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;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing except as specified as Section 10-76h-12(a) of the Regulations of Connecticut State Agencies;

(4) Obtain a verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

(b) A parent involved in hearings has the right to:

(1) Have the child who is the subject of the hearing present at the hearing;

(2) Open the hearing to the public.

(3) Obtain an electronic, verbatim record of the hearing in lieu of a written verbatim record; and

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(4) Obtain electronic findings of fact and decisions in lieu of written findings and decisions.

(c) The record of the hearing and the findings of fact and decisions described in subsections (a) and (b) of this section shall be provided at no cost to the parent.

(d) (1) An attorney authorized to practice law in the Superior Court of the State of Connecticut and in good standing with that court may represent a party in the advisory opinion process or hearing or, as provided in subdivision (2) of this subsection, sponsor a visiting attorney to serve as co-counsel in accordance with subdivision (3) of this subsection, provided the visiting attorney is a member in good standing of the bar of at least one other state, the District of Columbia or a territory or commonwealth of the United States. Said local attorney and the visiting attorney, if any, shall file an appearance with the due process unit on a form provided by the unit. The form shall include the following information: name of the child, name of the public agency, case number, name of the attorney, mailing address, each bar to which the attorney has been admitted to practice law and juris number or the equivalent thereof, telephone number, facsimile number, electronic mail address, signature and date signed. The appearance form shall be mailed to the due process unit, the hearing officer and the other party in the proceeding or their attorney. In the case of a visiting attorney, the affidavit required pursuant to subdivision (2) of this subsection shall also be mailed to the hearing officer and the other party in the proceeding or their attorney.

(2) Prior to the appearance of a visiting attorney in the advisory opinion process or hearing, the following information shall be filed with the due process unit:

(A) an appearance for the sponsoring attorney signed by said attorney, if not already on file;

(B) an appearance for the visiting attorney signed by said attorney; and,

(C) an affidavit, certified by the visiting attorney that (i) identifies each bar to which the visiting attorney has been admitted to practice and (ii) declares that the visiting attorney is in good standing for each admission.

Upon receipt of the information from the visiting attorney, the due process unit shall provide written notice of the appearance of the visiting attorney to the Statewide Grievance Committee. After the due process unit provides such notice, the visiting attorney may thereafter appear and participate in the advisory opinion process or hearing identified in the appearance form.

(3) The sponsoring attorney shall be responsible for the actions of the visiting attorney in the advisory opinion process or hearing. A sponsoring attorney shall be present at all proceedings and shall sign all pleadings, briefs and other papers filed with the hearing officer, unless the hearing officer has excused the sponsoring attorney from such obligations. Upon the sponsoring attorney's motion or sua sponte, the hearing officer may excuse the sponsoring attorney from any procedure, hearing date or appearance, and the granting of such motion shall not be unreasonably withheld. An attorney's misrepresentation of his or her good standing in any court shall be a ground for a hearing officer to deny, suspend, modify or revoke the privilege of representing a party in the advisory opinion process or

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hearing.

(4) A party to the advisory opinion process or hearing, including a parent representing the legal interest of his or her own child, may appear pro se. When a party elects to proceed pro se but is accompanied by an attorney or an advocate, the hearing officer may enter such orders to assure that the pro se party presents its case efficiently and in a manner that does not prejudice the opposing party, including but not limited to, an order that the attorney or advocate not participate directly by making argument or objections or examining witnesses.

(Adopted effective July 1, 2000; Amended March 26, 2004)

Sec. 10-76h-12. Exhibits; documents presented at the hearing; witnesses

(a) At least five business days prior to a hearing date scheduled and conducted pursuant to Section 10-76h-7 of the Regulations of Connecticut State Agencies, each party shall disclose to the other party all documentary evidence, including evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing such evaluations or recommendations at the hearing.

(b) Witness lists shall be exchanged by the parties and provided to the hearing officer no later than 5 business days prior to the scheduled hearing date. Each party shall notify their potential witnesses in writing of the date, time and location of the hearing. In the case of employees or agents of the public agency, a letter to the public agency or designee shall be sufficient to constitute notice. The parent shall notify the public agency at least five school days in advance that school personnel will be called to testify on a particular scheduled hearing date.

(c) At the request of a party, the hearing officer shall not review the records submitted pursuant to subsection (a) of this section 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 so reflect.

(d) All exhibits shall be clear, legible and arranged in chronological order. Exhibits shall be numbered in the lower right corner and submitted along with a numbered index. Public agency exhibits shall have the prefix "B" and the parent shall prefix each exhibit with a "P." Each separate exhibit shall be numbered consecutively, and every page of each numbered exhibit shall have a proper prefix and document number placed at the lower right corner. For example, for parent Exhibit 1, which has ten pages, each page of the exhibit shall have a "P-1" printed or typed at the lower right corner (omit the quotes) and the page number of the exhibit shall also be stated as "1 of 10, 2 of 10, 3 of 10, etc." The hearing officer may waive these requirements for good cause shown.

(e) The numbered index shall indicate the exhibit number, a description of the exhibit and the date of the exhibit. The number of pages of the exhibit shall be included in parentheses after the date of the exhibit.

(Adopted effective July 1, 2000)

Sec. 10-76h-13. Conduct of hearings

(a) The hearing officer shall take reasonable measures, including the exclusion from the hearing of parties, counsel, or any other participant, to ensure that the parties, counsel and all other participants comport themselves civilly and that the hearing is conducted in a fair and orderly manner. 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.

(b) If an interpreter is needed for a prehearing conference or any session of a hearing, the burden is on the party requiring the interpreter to so inform the due process unit. The due process unit shall seek to ensure that a qualified interpreter is available as needed.

(c) The hearing officer shall cause all formal sessions of the hearing to be recorded in order to create a verbatim record.

(d) The hearing officer shall hear evidence admissible as provided in section 10-76h-15 of the Regulations of Connecticut State Agencies.

(e) The hearing officer may require a complete and independent evaluation or prescription of educational programs by any qualified person, the cost of which shall be paid by the public agency. The hearing officer's criteria for the selection of an evaluator shall be the same as that required by the public agency, if any, in accordance with 34 CFR Section 300.502(e).

(Adopted effective July 1, 2000)

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

(a) The party who filed for due process has the burden of going forward with the evidence. In all cases, however, 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.

(b) The hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement. If the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the parent's placement.

(c) Notwithstanding subsection (a) of this section, upon a finding that a public agency's placement or program or proposed placement or program is not appropriate, any party seeking reimbursement for a unilateral placement or program shall prove the appropriateness of such placement or program by a preponderance of the evidence.

(Adopted effective July 1, 2000)

Sec. 10-76h-15. Evidence

(a) The hearing officer may receive any oral, documentary or tangible evidence, but the hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence.

(b) The hearing officer shall give effect to the rules of privilege recognized by law.

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(c) A party may offer documentary evidence, provided it has been disclosed to the opposing party at least five business days before the scheduled hearing date.

(d) Oral testimony shall be under oath or affirmation, subject to the pain and penalties of perjury.

(e) The hearing officer may summon any witness and may ask questions of any witness.

(f) 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. Parties shall be notified of the material so noticed and shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts administratively noticed shall be included and indicated as such in the record.

(g) The hearing officer may receive stipulations from the parties on any fact, matter or issue.

(h) The hearing officer may require additional evidence on any relevant matter.

(i) The hearing officer may limit the number of pages in a brief if submission of such brief is granted by the hearing officer.

(Adopted effective July 1, 2000; Amended July 1, 2013)

Sec. 10-76h-16. Decision, implementation, rights of appeal

(a) The written findings of fact, conclusions of law and decision and order of the hearing officer shall be final, except that any aggrieved party may appeal such decision under the provisions of 20 U.S.C. Section 1415(i)(2)(A) and the regulations adopted thereunder, as amended from time to time, section 10-76h(d)(4) of the Connecticut General Statutes. Pursuant to section 4-186(g) of the Connecticut General Statutes, the final decision is exempt from the provisions of Section 4-181a of the Connecticut General Statutes. A party seeking to stay a final decision shall seek that order from the court having jurisdiction over the appeal.

(b) The final decision may include comments by the hearing officer on the conduct of the proceedings. 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.

(c) The final decision of the hearing officer, accompanied by the appeal and enforcement procedures, shall be mailed to the parent, the public agency, or the legal counsel, if any, of all the parties and, once any personally identifiable information has been deleted, to the state advisory panel.

(d) A settlement agreement shall 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.

(e) If a parent contends that a public agency is not taking action to implement a final decision of a hearing officer, the parent shall notify the due process unit in writing, specifying the alleged non-compliance. If the due process unit determines that the public agency is not in compliance, the due process unit shall take appropriate steps to ensure

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compliance.

(Adopted effective July 1, 2000; Amended July 1, 2013)

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

(a) Unless the public agency and the parent agree otherwise, the child shall remain in his or her then-current educational placement during the pendency of any administrative or judicial proceedings regarding issues set forth in Section 10-76h-3 of the Regulations of Connecticut State Agencies, except as provided in Section 10-76h-10 of the Regulations of Connecticut State Agencies and subsection (c) below.

(b) If the issues involve an application for initial admission to public school, the child, with the consent of the parent, shall be placed in the public school program until all such proceedings have been completed.

(c) If in the final decision the hearing officer agrees with the parent that a change of placement is appropriate, the new placement ordered by the hearing officer shall be the child's placement during the pendency of any further appeals.

(Adopted effective July 1, 2000)

Sec. 10-76h-18. Default or dismissal

(a) Any party may move for, or the hearing officer may order, sua sponte, an entry of default in or dismissal of a hearing for failure of any party:

- (1) to prosecute a hearing;
- (2) to participate in the prehearing conference;
- (3) to comply with sections 10-76h-1 to 10-76h-18 of the Regulations of Connecticut State Agencies;
- (4) to comply with a ruling issued by the hearing officer before a final decision is rendered;
- (5) to state a claim for which relief can be granted;
- (6) to sustain its burden after presentation of the evidence; or
- (7) to appear at a properly noticed scheduled hearing.

The hearing officer may grant the motion with or without prejudice.

(b) Upon granting a motion for default, a hearing officer may take evidence and issue such orders as may be necessary, including but not limited to ordering an educational placement for the child.

(Adopted effective July 1, 2000)

Section 10-76l: Program evaluation

Sec. 10-76l-1. Program evaluation (Repealed)

Repealed July 1, 2013.

(Effective September 1, 1980; Repealed July 1, 2013)