

**State Advisory Council on Special Education
Legislative Committee
DRAFT Minutes
Monday October 3, 2011, Emergency Meeting**

The SAC Legislative Committee held an emergency meeting on Monday, October 3, 2011, in order to consider the proposed revisions to the CT Special Education Regulations, prior to the emergency meeting of the SAC Executive Committee meeting on Tuesday, October 4, 2011, and the opportunity for public comment at the State Board of Education meeting on Wednesday, October 5, 2011.

I. Call to Order:

Chairperson Sullivan called the meeting to order at 5:38 PM

Present via conference call:

Brenda Sullivan

John Burke

Kathy Musto

Uswah Khan

Ben Strong

Jim McGaughey

Informed Absence: Nancy Prescott

Kelly Neyra

Stephanie Johnson

B. Strong ended his call at 5:48

J. Burke ended his call at 6:15

U. Khan had to end her call at 6:50PM

II. Discussion of the CT Special Education Regulations

B. Sullivan reported on K. Neyra's assigned sections 1-9 of the CT Special Education Regulations. There was no discussion on sections 2 – 4 because they were not included in her report. The Committee is assuming no comments/changes were necessary.

B. Sullivan reported on S. Johnson's assigned sections 10 – 14 of the CT Special Education Regulations. There was no discussion on sections 13 and 14 because they were not included in her report. The Committee is assuming no comments/changes were necessary.

B. Sullivan reported there is no report submitted for sections 15 – 21 therefore it will be up to the Executive Committee to decide if the Council will stand by their original testimony "Testimony on the State of Connecticut Proposed Special Education Regulations" September 22, 2010:

Section 15 Section 10-76d-6 (Identification and eligibility of students)

The Council believes that this language is too broad and needs further clarification. For example, does this regulation allow a child home schooled by a parent to be eligible for all *special education services* from the local district?

Section 16 10-76d-7 (Referral)

The Council agrees with sections 1 and 2 but additional clarification is needed on section 3 for parents who verbally express a concern about their child. It must be made clear that it is a district's responsibility to clarify whether a parent is seeking a referral so that the district can then commence that process. This responsibility would include the need for the district to complete the state standardized referral form on the parents' behalf. Additionally, we recommend that the district be required to clearly outline the referral process for special education services on their website, in student/parent handbook or in other formal communication materials.

The Council agrees with Attorney Feinstein's comments that *for most parents, the issue is not an inability to write; the issue is that they do not understand the process.*

Subsection (b): The Council is concerned that this regulation will be used as a way to circumvent referrals because not all *alternative procedures and programs in general education shall be explored and, where appropriate, implemented.* This regulation should clearly state that parents or school personnel can make a referral at any time for an evaluation, regardless of whether that student has started and/or completed the SRBI process.

Subsection (c): The Council agrees with Attorney Feinstein's comments that *too often, school districts only respond when a parent demands an evaluation. Often, when parents do not know their rights or when school districts are particularly recalcitrant, children with ample manifestation of a suspected disability are never evaluated. By changing the regulation mandating a required IEP meeting under certain circumstances, school districts will be obliged to conduct evaluations where evidence exists of a suspected disability without regard to the capabilities of the parent.*

The Council recommends that the language be changed to mandate a referral for a suspected disability; for a victim of bullying regardless of where the student is placed; if a student is truant more than 4 times in a month or if a student's progress in school is considered unsatisfactory or at marginal level of acceptance.

Section 17 Section 10-76d-8 (Notice of Intent)

The Council agrees with the change from five days to ten calendar days, acknowledging that the 5 day requirement can be burdensome for districts serving a large number of special education students.

Subsection (b): On written parental consent requests, the Council recommends that districts clearly state in bold letters that failure to respond within 10 days *means* they are refusing consent. In addition, the district must provide documentation as to how and when they have attempted to notify the parents in a direct manner. If possible, it is highly recommended that districts are given a "process approach" for notifying the parents that involve different direct methods (e.g., phone call, registered letter, etc.)

Section 18 Section 10-76d-9 and Section 19 Section 10-76d-10
(Evaluation/Re-Evaluations and Planning and Placement Teams

The Council believes that this section requires additional clarification and clearer language. Section (1)(A) contains vague language that gives the evaluator a wide range of choices on eligibility standards. For example, an evaluator can easily manipulate the outcomes of a “state –approved grade level standardized test” by either presenting an easier or more challenging test to qualify or disqualify that student for special education services.

Section C: The Council recommends the drafting of clearer language. Language such as *explicit and systematic instruction...from a qualified teacher, including documentation of regular assessments of achievement* is subjective in nature and therefore is open to interpretation by the evaluator.

Section (2): The Council believes that identification and evaluation of gifted and talented referred students defeats the purpose of the entire process if services are at the discretion of Boards of Education. Children who are gifted and talented should be given access to related services as determined by the evaluation process based on their needs and consistent under IDEA.

The Council agrees with Attorney Feinstein’s comments on these sections. Furthermore, many of our Council members and stakeholder groups are concerned that students are being *exited* from special education because they did not complete all the tiers of SRBI. We believe this to be a violation of IDEA.

The Council therefore requests the addition of language to protect students who have already been identified as needing special education and related services.

Section 21 – Section 10-76-d-12 (Meetings)

The Council agrees with Attorney Feinstein’s comments that *parents need to be provided with 10 calendar days, not 5 calendar days notice of a PPT meeting.*

We also agree with Attorney Feinstein that subsection 4 should be amended to ensure that no PPT meeting is held in the absence of the parents until three attempts have been made to schedule the meeting.

K. Musto reported on sections 22 – 28 of the CT Special Education Regulations. No recommendations were made for the following sections:

- Section 22: 10-76d-13 – Timelines
- Section 25: 10-76d-17 – Private Facilities
- Section 27: 10-76d-19 – Transportation
- Section 28: 10-76h-1 – Definitions

B. Sullivan reported on U. Khan sections 28 – 35 of the CT Special Education Regulations. No recommendations were made for the following sections:

- Section 24:10-76d-16 – Placement
- Section 25: 10-76d – Private Facilities
- Section 26: 10-76d-18 – Education records and reports
- Section 27: 10-76d-19 – Transportation
- Section 28: 10-76h-1 – Definitions
- Section 30: 10-76h-4 – Statute of Limitations
- Section 32: 10-76h06 – Advisory Opinion
- Section 34: 10-76h-8 – Motion Practice
- Section 35: 10-76h-9 – Postponements and Extension

B. Sullivan reported on assigned sections 36 – 39 of the CT Special Education Regulations. No recommendations were made for the following sections:

- Section 36: 10-76h-10 – Expedited Hearings
- Section 38: 10-76h-13 – Conduct of Hearings (section removed from Regs)
- Section 38: 10-76h-14 – Burden of Proof
- Section 37: 10-76h-15 – Evidence
- Section 38: 10-76h-16 – Decision, Implementation, Rights of Appeal

III. Recommendations:

The Legislative Committee voted unanimously on the following recommendations (B. Sullivan, K. Musto, J. McGaughey):

- **Section 1: 10-76a-1 – Definitions** – The CT Regulations seem to exclude “parents” from the definition of PPT. This would be inconsistent with IDEA if the gifted and talented student is also disabled. The Committee recommends that the team members be spelled out as it is in IDEA.
 - The Council restates its position as stated in the official SAC “Testimony on the State of Connecticut Proposed Special Education Regulations” on September 22, 2010:

Section 1. Section 10-76a-1 (General Definitions)

Although the term “independent evaluation” is inconsistent with IDEA 2004 Sections 614 - *Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements (iv) are administered by trained and knowledgeable personnel...* we agree that evaluations should be performed by a certified or licensed professional examiner. However, we would expand the language to state “certified or licensed in the specific *area of the evaluation along with possession of documented experience.*”

Many independent evaluations are conducted by either “certified” or “licensed” examiners. However, their certification or license may not be in the area of expertise required for a particular evaluation. An as example, a psychologist licensed in family counseling should not be allowed to do a neuro-psychological evaluation on a child.

- **Section 6: 10-76b-8(a) and (b) – Use of Seclusion in Public schools, requirements.** The Regulation is not clear as to who would be conducting the behavioral assessment and if they are qualified to say that restraint and seclusion are appropriate behavior intervention for a specific child. The Committee recommends that this regulation define who will be conducting the behavioral assessment.
 - The Committee recommends that in the event a police officer, school resource officer, or other security personnel restrain a special education student on school grounds that the school must report that incident as specified in the regulation for school personnel.
 - With one clarification, the Committee also continues to support the Council’s previous position regarding the use of seclusion, as stated in their Testimony on September 22, 2010. We believe that bi-annual reviews of programs involving the use of seclusion are inadequate – they should occur more frequently, or the regulations should specify some other trigger for convening a PPT for a student who is being subjected to seclusion.

Section 6-8 Section 10-76b-8 (Use of seclusion in public schools, requirements)

The Council agrees with already submitted testimony by Attorney Andrew Feinstein et al; *that seclusion is an appropriate behavioral intervention only if the PPT adopted the technique on the basis of qualified expert opinion based on cited research literature and if the PPT explicitly considered and ruled out any alternative interventions. Additionally, any IEP that includes seclusion should be presented to the parent or guardian for knowing, written consent...*”

The Council recommends additional content stating that if a student's IEP includes seclusion as an appropriate behavioral intervention, the district must then obtain signed parental consent, which will be renewed bi-annually at a PPT. The implementation and impact of the program must be documented and reviewed as part of the Behavioral Intervention Plan (BIP) in accordance with acceptable standards presented within the behavioral intervention literature.

The Council also recommends that the locking mechanism language be removed completely from the Regulations and replaced with new language stating that any child placed in seclusion must have a professional staff member in the room with them at all times. If a student's behavior prevents the presence of a professional in the room, the adult should be immediately outside the room and directly monitoring the student on a continual basis. A pressure sensitive mechanism must be in place no later than 30 days following the approval of these regulations. It is also vital to ensure that a comprehensive Functional Behavioral Assessment has been performed across all major settings and that Positive Behavioral Supports are in place and supervised by an appropriate individual (e.g., BCBA). The plan should be revisited monthly by reviewing objective data collected on all aspects of the PBS program. This Regulation should apply to all private placements whether funded by district, state, Federal or private funds.

- **Section 9: 10-76b-11 – Reports of Physical restraint, Seclusion.** Although the regulation provides that the reports shall be completed no later than the school day following the incident there should be a 24 hour requirement similar to that in the proposed federal regulation. The Committee recommends a 24 hour requirement similar to the federal regulation.
- **Section 10-10-76d-1 – Provision of services.** The Committee supports all language that provides any support services to students who are gifted and talented. The Committee recommends in the phrase “at the discretion of each board of education, provided a child identified as gifted or talented may be eligible for special education and related services as a child with a disability if the child meets the criteria for a child with a disability.” the words “at the discretion of each board of education” be removed.
- **Section 11 10-76d-2[(i)] (c) – Personnel Development.** Current Department written policy's published as “Guidelines” are not part of the of state special education regulation. I.e. Any Guidelines published are not enforceable under state regulations. If the Department is going to publish such “Guidelines” then they should also be part of the state regulations. The Committee recommends the written policy called “Guidelines” become part of the CT Special Education Regulations.

- **Section 12: 10-76d-3 – Length of School Year:** The Committee recommends that the regulations include the definition of “sufficient time” in this section.
 - The committee also recommends adding to the regulation that requires a PPT no later than April 30th to decide if a student requires extended school year services.

- **Section 23: 10-76d-15 – Homebound and Hospitalized.** The regulation does not define "qualified health professional." Conceivably one would have a treating physician's judgment overruled by a school nurse or less qualified professional. Second, a health professional employed by the school board is not an independent review. There also is the issue of confidentiality - especially in cases involving trauma. The Committee recommends “qualified health professional” be defined.
 - The Committee recommends that if a dispute between the school’s qualified professional and the professional treating the child, that a third evaluation/opinion be obtained by an independent, mutually agreed upon qualified health care professional.
 - The Committee also recommends that until the dispute is settled that the district provide home instruction until the dispute is settled.

- **Section 24: 10-76d-16: Placement.** This regulation does not require a board of education to first get parental consent to place a child in a private special education facility even in cases of out of state placement. The Committee recommends that this regulation require school districts to have parental consent prior to placing a student in any private special education facility in or out of state.

- **Section 26: 10-76d-18 – Education Records and Reports.** The changes allows school boards up to 10 days to grant access to view records and *removes* the condition that the parent has the right to see a record within 3 days if it is to prepare for an IEP or due process hearing. The other change states that the school board has 10 days to provide a copy of the IEP *instead of* 5 school days. The Committee recommends this section be amended to ensure that parents can review, inspect and copy records prior to any PPT meetings or expulsion hearings.

- **Section 29: 10-76h-3 – Hearing request; content of hearing.** New language is confusing for parents if they do not know the procedure. The Committee recommends that the original phrase: “parent’s right to a due process hearing not being delayed or denied for failure to comply w/the notice content requirements” be added back into the regulation.

- **Section 31: 10-76h-5 – Mediation** – The Committee recommends our original recommendations from the Council’s official testimony dated September 22, 2010.

- **Section 32 Section 10-76h-5 (Mediation)** (Note: this section has been renumbered in the new proposed Regs.)

The Council is concerned about the deletion of the 30 day timeline. For the record, we do not necessarily oppose this deletion but would like language added to guarantee that the lack of timeliness does not deny or delay parental rights afforded under this section. In addition, we would like to see stronger language giving hearing officers jurisdiction and enforcement powers specifically over mediation agreements.

The Council applauds and supports Attorney Feinstein's position that:

The proposed regulations on mediation do not go far enough. Currently, a substantial percentage of disputes are resolved through mediation. The State Department of Education declines to get involved in enforcing mediation agreements, but such agreements are purportedly enforceable in state or federal court. However, there is no provision for expediting such enforcement actions and there is no provision for the award of attorney's fees to parents if they prevail. Hence, a district can generally ignore the requirements of a mediation agreement without fear of consequence. As more instances arise of districts failing to implement a mediation agreement, the attractiveness of these settlements diminishes. Further, there is no one who has the specific task of ensuring that the interests of the child are protected in the mediation agreement.

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

- **Section 33: 10-76h-7 (c) – Appointing of hearing officer. Scheduling of prehearing conference and hearing dates.** The Committee understands that the changes to this section are technical to be consistent with IDEA. However; this Committee recommends that regulatory guidelines for hearing officers be drafted that informs hearing officers of their duties/responsibilities and create reasonable boundaries that are consistent with the interests of justice.

I.V. Adjournment

Meeting was adjourned at 7:30 PM