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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, of the Regulations of Connecticut State Agencies, the following words shall have the following meanings:

(1) "At no cost" means that all special education and related services shall be provided without charge to parents. This does not preclude incidental student fees which are normally charged to non-exceptional students or their parents as part of the regular education program. A board of education shall bear full responsibility for the total cost of any program or placement made primarily for special education reasons.

(2) "Board of education" means a public body or public agency responsible for the education of children. This term shall include, but not be limited to, town or regional boards of education, regional vocational-technical schools, unified school districts or systems as administered through state agencies, educational service centers and state agencies.

(3) "Child" means any person under twenty-one years of age.

(4) "A child requiring special education" means any exceptional child who (A) 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 (i) who meets the criteria for eligibility for special education pursuant to the individuals with disabilities education act, 20 USC 1400, et.seq., as amended from time to time; or (ii) 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 regular school programs but which may be provided through special education as part of the public school program; 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) "Dominant language" means the language that is most relied upon for communication in the home and the school.

(7) "Evaluation" means a process whereby certified or licensed professionals identify and assess the specific educational strengths and weaknesses of the child for the purpose of determining educational recommendations.

(8) "Exceptional child" means a child who deviates either intellectually, physically, socially or emotionally so markedly from normal expected growth and development patterns that he or she is or will be unable to progress effectively in a regular school program and needs a special class, special instruction, or special services.

(9) "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.

(10) "Individualized education program" means a separate written plan for each child which shall be developed by a planning and placement team to meet the needs of each child requiring special education and related services.

(11) "Least restrictive environment" means an educational environment which meets the needs of a child requiring special education and related services as set forth in the child's individualized education program and which, to the maximum

extent appropriate to the child's needs, ensures that the child will be educated with children not requiring special education and related services.

(12) "Mediation" means an optional process whereby parents and school officials jointly submit a written request to the commissioner of education for the appointment of a mediator, knowledgeable in the fields and areas significant to such educational review of the child, in order to attempt to work out a solution acceptable to both the board of education and the parents.

(13) "Parents" means a parent, parents, guardian or surrogate parent as defined in section 10-94h of the Connecticut General Statutes. The rights of a parent shall transfer to a student who has reached the age of eighteen years.

(14) "Parties" means the board of education and the parents and the child, if age eighteen or over.

(15) "Planning and placement team" 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 to determine the specific educational needs of the child and develop an individualized educational program for the child. These shall be persons knowledgeable in the areas necessary to determine and review the appropriate educational program for an exceptional child.

(16) "Preschool children requiring special education and related services" means children age three, four or five and who meet the criteria for eligibility for special education pursuant to the individuals with disabilities education act, 20 USC 1400, et.seq., as amended from time to time.

(17) "Private facility" means any facility that provides special education and related services to children, but is not a board of education.

(18) "Related services" means related services as defined in the Individuals With Disabilities Education Act, 20 USC 1400 et.seq., as amended from time to time.

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

(20) "Special education personnel" are (1) "pupil personnel staff" who are employees of a board of education who, for at least one-third of their employment time, are assigned exclusively to the task of implementing or supervising special education programs, or (2) "special education instructional personnel" who are employees of a board of education who, for at least one-half of their employment time, are assigned exclusively to the task of implementing or supervising special education programs.

(21) "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)

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. The term shall refer to the top five per cent of children so identified.

(2) "Gifted and talented" means a child identified by the planning and placement team as (1) possessing demonstrated or potential abilities that give evidence of very superior intellectual, creative or specific academic capability and (2) needing

differentiated instruction or services beyond those being provided in the regular school program in order to realize their intellectual, creative or specific academic potential. The term shall include children with extraordinary learning ability and children with outstanding talent in the creative arts as defined by these regulations.

(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. The term shall refer to the top five per cent of children so identified.

(4) “Pregnancy” shall be deemed a condition which grants eligibility for special education and related services.

(Effective April 24, 1991; amended February 4, 2005)

Section 10-76b: Administration and supervision

Sec. 10-76b-1. Authority

These regulations are promulgated pursuant to the authority granted in, and for the implementation of, the laws concerning children requiring special education, sections 10-76a to 76d-1, inclusive, of the General Statutes. These regulations shall be applicable to all boards of education as defined by these regulations.

(Effective September 1, 1980)

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

So long as it complies with the requirements set forth in these regulations and subject to the powers of the state board of education, a board of education shall receive payment for the cost of special education and related services according to the terms of sections 10-76a to 10-76l, inclusive, of the General Statutes.

(a) **Monitoring.** The state board of education shall conduct such monitoring activities, program audits and/or fiscal audits as it deems necessary to ensure that each board of education complies with the requirements of these regulations.

(b) **Compliance procedures.** The following procedures shall apply in the determination of compliance with the requirements of these regulations.

(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 these regulations. 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 these regulations 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 General Statutes.

(Effective September 1, 1980)

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-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 Connecti-

cut 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 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 assessment of behavior 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 a behavior intervention is repeated more than two times in any school quarter, the PPT (1) shall convene to review the use of seclusion as a behavior intervention, (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 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) Have a door with a lock only if that lock is equipped with a device that automatically disengages the lock in case of an emergency. Not later than January 1, 2014, the locking mechanism of any room in a public school specifically designated for use as a seclusion room shall be a pressure sensitive plate. Any latching or securing of the door, whether by mechanical means or by a provider or assistant holding the door in place to prevent the person at risk from leaving the room, shall be able to be removed in the case of any emergency. 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)

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 a standardized incident report developed by the Department of Education. Such reports shall be completed no later than the school day following the incident.

(Adopted effective May 7, 2009)

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 requiring special education and related services described in subdivision (i) of subparagraph (A) of subsection (4) of section 10-76a-1 and subparagraph (B) of subsection (4) of section 10-76a-1 of the Regulations of Connecticut State Agencies and for each preschool child requiring special education and related services. A preschool child requiring special education and related services 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.

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

(1) Such education shall be consistent with the requirements of law and regulation;

(2) Such education shall be provided under public supervision at public expense and at no cost to parents; provided that, if a child is eligible for any public or private insurance, or health or welfare benefit, nothing in this section shall be construed as relieving the insurer or provider from an otherwise valid obligation to provide or to pay for any service or services;

(3) Such education shall be in conformity with the child's individualized education program;

(4) Such education shall ensure that children requiring special education and related services are educated in the least restrictive environment;

(5) Such education shall ensure that all children are given the opportunity to participate in all aspects of the school program, including graduation and all extra-curricular activities, to the limits of each child's capacity as determined by the planning and placement team;

(6) Such education shall provide bilingual education in accordance with the child's needs as set forth in the child's individualized education program; and

(7) 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.

(b) **Provision of services.** Each board of education shall provide all children requiring special education and related services with the full range of special education and related services as set forth in these regulations; provided, however, that each board of education shall be required only to provide identification, referral and evaluation services for gifted and talented children. The provision of all other special education and related services to gifted and talented children shall be at the option of each board of education.

(c) **Contracts for service.** A board of education may enter into a contract or contracts to provide special education and related services when educational needs cannot be met by public school arrangements. Each board of education entering into a contract for the purpose of providing special education and related services shall ensure that all services contracted for are provided in conformance with each child's individualized education program and the requirements of these regulations.

(1) A board of education may contract for the following services:

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

Inservice training

(2) A board of education may request of the State Board of Education approval to contract for other services as may be deemed necessary.

(3) Each contract shall be a written document showing the terms of the agreement in full. The terms shall state clearly the nature and extent of the special education and related services, the minimal goals and objectives for the child (where applicable), the estimated time schedule for returning the child to the community (where applicable), the amounts payable for the services and the payment terms. Contract terms shall include a provision that payment shall be conditioned on the proper delivery of services.

(4) Each contract shall be subject to the approval of the commissioner of education, who shall consider such factors as the particular needs of the child, the suitability and efficacy of the program or service offered, and the economic feasibility of comparable alternatives. Contracts shall be eligible for payment only if both parties meet applicable requirements set forth in law and regulation.

(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.

(Effective September 1, 1980; amended February 4, 2005)

Sec. 10-76d-2. Personnel

Each local board of education shall employ the number of certified and/or licensed personnel and support personnel necessary to implement the special education and related services required in each child's individualized education program. All personnel in supervisory positions in special education and related services shall hold an intermediate administrator's certificate and shall be appropriately certified and/or licensed as specified in these regulations. Personnel hired after the effective date of these regulations for supervisory positions in special education and related services not required by these regulations shall be appropriately certified and/or licensed in special education or pupil personnel services.

(a) **Coordination of instruction.** Whenever a board of education employs the equivalent of four, but less than the equivalent of fifteen, full-time certified and/or licensed special education personnel (instructional and non-instructional), the time and responsibility necessary for the coordination of special education and related services shall be assigned to one of the special education personnel.

(b) **Supervision of instruction.** Whenever a board of education employs the equivalent of fifteen full-time special education instructional personnel, the board of education shall employ a full-time supervisor, certified and/or licensed in special education, responsible for the supervision of special education instruction. The board of education shall employ full-time supervisors of special education in accordance with the following ratios:

(1) One supervisor to the equivalent of fifteen to twenty-nine full-time special education instructional personnel.

(2) Two supervisors to the equivalent of thirty to forty-nine such personnel.

(3) One additional supervisor for every additional twenty-five such personnel.

(c) **Coordination of Pupil Personnel Services.** Whenever a board of education employs the equivalent of four, but less than the equivalent of fifteen, full-time certified and/or licensed pupil personnel specializing in the following categories of pupil personnel services, the time and responsibility necessary for the coordination of the services shall be assigned to one of the persons in any of the categories: school social work services, school psychological services, school speech and hearing services, school guidance and counseling services, and school health services.

(d) **Supervision of pupil personnel services.** Whenever a board of education employs the equivalent of fifteen full-time certified and/or licensed pupil personnel

specializing in the categories listed in section 10-76d-2(c) of these regulations, the board of education shall employ a full-time supervisor certified and/or licensed in any of the service categories to be supervised. For additional personnel, supervisory ratios shall be as set forth in section 10-76d-2(b) of these regulations.

(e) **Supervision of pupil personnel service categories.** Whenever a board of education employs the equivalent of fifteen full-time certified and/or licensed pupil personnel specializing in any one of the categories listed in section 10-76d-2(c) of these regulations, the board of education shall employ a full-time supervisor certified and/or licensed in the service category to be supervised. For additional personnel, supervisory ratios shall be as set forth in section 10-76d-2(b) of these regulations.

(f) **Combination of resources.** Whenever more than one board of education combine resources to employ a single administrative head, the combined total of special education personnel under those boards of education shall be the number used for the determination of the requirement of coordination or supervision.

(g) **Aides.** Provision shall be made for the direct supervision of each aide in special education by a person certified and/or licensed in the area of specialization to which such aide is assigned.

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

(i) **Personnel development.** Each board of education shall provide for a system of personnel development to meet the requirements of these regulations. Inservice training on special education and related services shall be given to regular and special education instructional, related services and support personnel.

(Effective September 1, 1980)

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

Unless otherwise specified in a child's individualized education program, the minimum school day and year for children requiring special education and related services shall be the same as that for children in the regular education program.

(Effective September 1, 1980)

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 regular 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.

(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 regular classes where such use is a mean of initiating or

improving special education programs or facilities within a regular public school building.

(b) **Equipment.** Each board of education shall provide education equipment and materials sufficient to meet the requirements of each child's individualized education program.

(1) The board of education shall maintain an inventory of all education equipment costing more than two hundred dollars per unit if the cost of the equipment is included in special education costs for purposes of payment. The inventory shall identify the equipment and state its cost, date of purchase and current use or disposition. Records of inventories of such education equipment shall be retained for three years beyond the useful life or disposition of the equipment.

(2) All equipment and 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)

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

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

(Effective September 1, 1980)

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

Each board of education is responsible for the identification of children requiring special education and related services. This responsibility shall include cooperating with other agencies in a position to identify children requiring special education and related services. Determination of a child's eligibility to receive special education and related services shall be based on documented evidence, as required by these regulations, that the child requires special education.

(Effective September 1, 1980)

Sec. 10-76d-7. Referral

Each board of education shall accept and process referrals 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, in order to determine a child's eligibility for special education and related services. A board of education shall make available a standard referral form which shall be used in all referrals. Before a child is referred to a planning and placement team, alternative procedures and programs in regular education shall be explored and, where appropriate, implemented. 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 or progress in school is considered unsatisfactory or at a marginal level of acceptance.

(Effective September 1, 1980)

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

Each board of education shall notify parents of children requiring special education and related services five days before proposing to, or refusing to, initiate or change the child's identification, evaluation or placement. Written notice shall be sent to the parents no later than five days after date of referral. In addition, written parental consent shall be obtained prior to initial evaluation, reevaluation, initial placement

or private placement of a child who requires or may require special education and related services.

(a) **Requirements for notice.** Notice shall include the following information.

(1) The reason for the notice. In the event of a referral, the notice shall include the source and date of the referral;

(2) A description of the general evaluation procedure to be used;

(3) A statement of parental rights to review and obtain copies of all records used as a basis for the referral, to be fully informed of all evaluation results, and to obtain an independent educational evaluation as part of the evaluation process; and

(4) A full explanation of all due process procedures available to parents.

(b) **Requirements for consent.** Where parental consent is required, notice shall include the requirements of subsection (a) of this section and the following information.

(1) A statement of parental rights to refuse consent and that, if consent is given, it may be revoked at any time;

(2) A statement that parental failure to respond, within ten days from the date of the notice, shall be construed as refusal of consent; and

(3) A statement that, if contested, the child's current educational placement will not change until due process procedures have been completed.

(c) **Procedures.** The notice must be communicated in accordance with the following procedures.

(1) The notice must be in writing; and

(2) The notice must be provided in language understandable to the general public, and in the dominant language or other mode of communication used by the parents unless it is clearly not feasible to do so. If the dominant language or other mode of communication of the parent is not a written language, the board of education shall ensure first, that the notice is translated orally or by other means in the dominant language or other mode of communication of the parents; and, second, that the information is clearly presented and understood by the parents. There shall be written evidence that these two steps have been taken.

(Effective September 1, 1980; amended February 4, 2005)

Sec. 10-76d-9. Evaluation

Each child who has been referred and who may require special education and related services shall be evaluated in order to determine whether special education is required. Each child receiving special education and related services shall be re-evaluated at least once every three years. In addition, a re-evaluation shall be conducted upon the request of the parent or personnel working with the child.

(a) **Evaluation study.** Each board of education shall ensure that a complete evaluation study is conducted for each child referred who may require special education and related services. The evaluation study shall include reports concerning the child's educational progress, structured observation, and such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child's exceptionality.

(1) The evaluation study may include information concerning the child's physical condition, sociocultural background and adaptive behavior in home and in school. The evaluation study shall document the sources of all information.

(2) In the case of a child dominant in a language other than English, the evaluation study shall also include systematic teacher observation of the specific areas of concern. Detailed information about the child's performance at home and in the

community and any prescriptive or diagnostic teaching which has taken place shall be included.

(b) **Evaluation procedures.** Each board of education shall use evaluation procedures, instruments and techniques that are non-discriminatory and have been validated for the specific purpose for which they have been designed. All such evaluation procedures, instruments, and techniques shall be administered by appropriately certified and/or licensed personnel in accordance with procedures recommended by the test publisher.

(1) All evaluation procedures, instruments and techniques shall be administered in the child's dominant language or other mode of communication.

(2) More than one evaluation procedure, instrument, or technique shall be used as the basis for placement. The results of standardized or local tests of ability, aptitude, affect, achievement and aspiration shall not be exclusively used as the basis for placement.

(3) Tests shall be selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills (except where those skills are the factors which the test purports to measure).

(4) Evaluation procedures, instruments and techniques shall include those designed to assess specific areas of educational need and, where appropriate, language dominance, and shall not be limited to those which are designed to provide a general intelligence quotient.

(c) **Independent evaluation.**

(1) Parents have the right to obtain an independent evaluation, conducted by an appropriately certified and/or licensed examiner who is not employed by the responsible board of education, of their child. Each board of education shall provide to parents, on request, information about where an independent evaluation may be obtained.

(2) Parents have the right to an independent evaluation at public expense if the parents disagree with an evaluation obtained by the board of education. However, the board of education may initiate a due process hearing conducted pursuant to Section 10-76h-1 of these regulations to show that its evaluation is appropriate. If the hearing officer or board determines that the evaluation of the board of education was appropriate, the parents still have the right to an independent evaluation, but not at public expense. For purposes of this section, "at public expense" means that the evaluation is provided at no cost to the parents.

(3) If the parents obtain an independent evaluation at private expense, the results of the evaluation must be considered by the board of education in any decision concerning the provision of a free appropriate public education to the child and may be presented as evidence at a due process hearing conducted pursuant to Section 10-76h-1 of these regulations.

(4) If a hearing officer requests an independent evaluation as part of a hearing, the evaluation shall be at public expense.

(5) Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the board of education uses when it initiates an evaluation.

(Effective April 24, 1991)

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

Each board of education shall establish a sufficient number of planning and placement teams to ensure that all children requiring special education and related services within its jurisdiction shall receive special education and related services. The planning and placement team shall be responsible for the following.

(a) **Evaluation on referral.** Conducting an evaluation, as set forth in section 10-76d-9 of these regulations, of every child who has been referred and who may require special education and related services.

(b) **Evaluation of children requiring special education.** Conducting an evaluation, as set forth in section 10-76d-9 of these regulations, before any action is taken with respect to the initial placement or denial of placement of a child in a special education program, or before the transfer or denial of transfer of a child from a special education program to a full-time regular class placement.

(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 these regulations.

(e) **Re-evaluation.** Conducting a re-evaluation, as set forth in section 10-76d-9 of these regulations, of each child receiving special education and related services.

(Effective September 1, 1980)

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

Each board of education shall establish policies and procedures for developing, implementing, reviewing, maintaining and evaluating an individualized education program for each child requiring special education and related services. The individualized education program shall be based upon the diagnostic findings of the evaluation study. The planning and placement team shall base recommendations for any changes in a child's individualized education program upon the child's current individualized education program and any information relating to the child's current educational performance.

(a) **Development or revision.** Each planning and placement team shall develop, or revise, whichever is appropriate, the individualized education program for each child requiring special education and related services prior to the beginning of the school year. In the case of a student enrolled after the last day of the previous school year, this process shall be completed by October first of the school year.

(b) **Review.** Each planning and placement team shall review and, if appropriate, revise each child's individualized education program periodically but not less than annually. In addition, a review shall be made upon request of the parents or personnel working with the child, provided the child's educational performance indicates the need for a review.

(c) **Components.** Components of the individualized education program shall include the following.

(1) A statement of the child's present level of educational performance, including, where appropriate, academic achievement, social adaptation, prevocational and vocational skills, psychomotor skills and self-help skills;

(2) A statement of annual educational goals for the school year under the child's individualized educational program;

(3) A statement of short-term instructional objectives derived from the annual educational goals. This shall include objective criteria, evaluation procedures and

schedules for determining, on a regular basis, whether the short-term instructional objectives are being achieved;

(4) A statement of specific educational services needed by the child, including a description of special education and related services which are needed to meet the needs of the child. Such description shall include the type of transportation necessary and a statement of the recommended instructional settings;

(5) The date when those services will begin and length of time the services will be given with the length of the school day and school year needed to meet the child's special education needs, including criteria to determine when services will no longer be needed;

(6) A description of the extent to which the child will participate in the regular education program. This shall include a description of how the regular education program will be modified to meet the child's needs;

(7) A list of the individuals who shall implement the individualized education program; and

(8) In the case of a residential placement, whether such placement is being recommended because of the need for services other than educational services.

(d) **Individualized education program form.** Each board of education shall use a standardized individualized education program form. Said form shall be subject to the approval of the state board of education.

(Effective September 1, 1980)

Sec. 10-76d-12. Meetings

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) **Members.** Each planning and placement team to develop, review or revise the individualized education program for each child shall be as defined by these regulations. In addition, parents shall have the right to be present at and participate in all portions of such meeting at which an educational program for their child is discussed, developed or written. Where appropriate, the membership of the meeting may include the child.

(b) **Members in private placement.** In the event of a meeting to review or revise the individualized education program of a child in an out-of-district or a private placement, a representative of the out-of-district or private facility shall also be invited. In addition, a representative of the outside facility shall contribute to the development of short-term instructional objectives as set forth in section 10-76d-11 (e) of these regulations.

(c) **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 dominant 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.

(Effective September 1, 1980)

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. Program

Each board of education shall provide each child requiring special education and related services with a program appropriate to the child's needs as set forth in the child's individualized education program.

(a) **Program alternatives.** Each board of education shall make available program alternatives which shall include, but not be limited to, the following.

(1) A program in which instructional services are provided by the teacher or support personnel either in the child's classroom or another setting.

(2) A program in which instructional services are provided through a combination of regular classroom and special classroom instruction.

(b) **Trial placement for diagnostic purposes.** Each board of education may use trial placement for diagnostic purposes. This shall mean a structured program, of not more than eight weeks' duration, the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's individualized education program.

(1) 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 program in order to determine more conclusively the child's needs.

(2) The planning and placement team shall meet at least once every two weeks with personnel working with the child to discuss the child's progress and to revise, where necessary, the services being provided.

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

(4) A diagnostic program shall be terminated as soon as the child's needs have been determined, but in any event within eight weeks.

(5) Five days before the end of the diagnostic program, the planning and placement team shall reconvene to write the child's individualized education program based on findings made during the program as well as other evaluative information regarding the child.

(c) **Early childhood program.** Each board of education shall provide early childhood programs designed to meet the needs of preschool children requiring special education and related services. Such programs shall be provided in school, in the child's home, or in alternative settings as set forth in section 10-76d-14 (a) and (b) of these regulations.

(d) **Career and vocational programs.** Each board of education shall ensure that all children requiring special education and related services have access to all career and vocational education programs available to children in the regular education program.

(1) Vocational programs shall be provided for each child whose individualized education program requires such a program.

(2) Vocational programs shall contain an academic component.

(e) **Program approval.** Each board of education shall submit an application for approval of its special education programs in such form and at such time as the state board of education shall require.

(Effective September 1, 1980)

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

A board of education shall provide homebound and hospitalized instruction when recommended by the planning and placement team.

(a) **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

(b) **Necessary conditions.** Homebound and hospitalized instruction shall be provided only when the planning and placement team finds that one or more of the following conditions applies.

(1) A physician has certified in writing that the child is unable to attend school for medical reasons and has stated the expected date the child will be able to return to the school.

(2) The child has a handicap so severe that it prevents the child from learning in a school setting, or the child's presence in school endangers the health, safety or welfare of the child or others.

(3) A special education program recommendation is pending and the child was at home at the time of referral.

(4) The child is pregnant or has given birth and a physician has certified that homebound or hospitalized instruction is in the child's best interest and should continue for a specified period of time.

(c) **Length of absence.** Homebound or hospitalized instruction shall be provided when a child's condition will cause an absence of at least three weeks' duration. Provided nothing in the child's condition precludes it, such instruction shall begin no later than two weeks from the first day of absence.

(d) **Time and place.** Homebound and hospitalized instruction shall be provided for at least one hour per day or five hours per week for children in grades kindergarten through six and at least two hours per day or ten hours per week for children in grades seven through twelve. Where evaluative data indicates that these time requirements are too great for the child, the planning and placement team may decrease instruction time. Instruction shall be provided in the setting of the child's home or the hospital to which the child is confined.

(Effective September 1, 1980)

Sec. 10-76d-16. Placement

Each board of education shall make educational placements in accordance with the requirements set forth in the individualized education program of each child requiring special education and related services.

(a) **Placement priorities.** Each child requiring special education and related services shall be educated in the school which he or she would attend if he or she did not require special education and related services, unless the individualized education program requires another placement. Priority shall be given to public placement near the child's home.

(1) Priority shall be given to placement in the school district in which the child resides.

(2) Priority shall be given to placement in another school district, or in a regional school district, that is near the child's home. Cooperative efforts between or among school districts shall be considered as taking priority over placement in a private or state-operated facility.

(3) Placement in a private facility shall be made only when the board of education has fully explored all possible public placements.

(4) Placement in another state shall be made only when no public or approved private facility which can reasonably provide a suitable special education program is available in Connecticut.

(5) Subject to the provisions of section 10-76h of these regulations, neither the board of education nor the state board of education shall be responsible for the cost of educating a child requiring special education and related services whose parents unilaterally place the child.

(6) In the case of a child placed in a residential facility because of the need for services other than educational services, the financial responsibility of the board of education shall be limited to the reasonable costs of special education instruction.

(b) **Placement pending educational program recommendations.** From the time of referral until the time a placement is made in accordance with a child's individualized education program, including any time necessary to complete due process procedures, each board of education shall provide an education for each child consistent with the following:

(1) A child shall remain in his or her placement at the time of referral unless the board of education or the parents submit a written statement to the state board of education showing that the child's presence in that placement endangers the health, safety or welfare of the child or others, or unless the parents and the board of education agree in writing on an appropriate temporary placement.

(2) Each board of education shall provide appropriate temporary education services to each child requiring special education and related services who is at home at the time of referral, or whose presence has been found to endanger others as set forth in section 10-76d-16 (b) (1) of these regulations.

(Effective September 1, 1980)

Sec. 10-76d-17. Private facilities

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

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

(1) The board of education shall explore all other placement options with priority, as set forth in section 10-76d-16 (a) of these regulations, before deciding that the child cannot be appropriately placed in a public school, agency or institution;

(2) The child's individualized education program, developed by the board of education as set forth in sections 10-76d-11 and 10-76d-12 of these regulations, shall be maintained in the private facility;

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

(4) The private facility shall be approved as set forth in section 10-76d-17 (d) of these regulations;

(5) A child placed in a private facility shall be accorded all of the educational rights the child would have if served directly by his or her board of education; and

(6) All out-of-state private facilities shall meet the educational standards for private special education facilities of the receiving state. If no such standards exist, the sending board of education shall provide the state board 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) **Responsibility.** A board of education shall ensure the development of a child's individualized education program as set forth in sections 10-76d-11 and 10-76d-12 of these regulations. No placement shall be made unless it is in accordance with a

child's individualized education program as developed by the planning and placement team of the board of education responsible for the child's education.

(c) **Time limits.** Placement in a private facility of a child requiring special education and related services shall be subject to review by the state board of education.

(1) Any continuation, after a three-year period, of a placement in a private facility shall require the annual approval of the state board of education.

(2) Any continuation, after a two-year period, of a placement in an out-of-state private facility shall require the annual approval of the state board of education.

(3) To apply for such approval, a board of education shall submit a written justification of the placement to the state board of education, which shall consider the needs and progress of the child and the availability of appropriate public programs and services in making its determination.

(d) **Approval of private facilities.** Each private facility seeking approval shall submit a written application for approval as required by the state board of education. In order to be approved, each private facility shall have been in operation for at least one school year prior to application and shall meet the following requirements:

(1) Each private facility 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 handicapping condition in any program or activity for which the facility receives public monies;

(2) Each private facility shall request from the sending board of education and maintain an individualized education program for each child placed by a board of education;

(3) Each private facility shall, with the sending board of education, cooperate in and contribute to the annual review of each child's individualized education program and the determination of continued placement in accordance with sections 10-76-11 and 10-76d-12 of these regulations;

(4) Each private facility shall complete periodic reviews and evaluations of each child's progress relative to the child's individualized education program. Comprehensive reports of the child's progress shall be submitted to the child's parents and the sending board of education with such frequency as said board of education shall require, but in no event less than twice a year;

(5) Each private facility shall have written policies and procedures 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 facility 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 facility shall have policies and procedures which meet the requirements of these regulations regarding education records;

(8) Each private facility shall ensure that all administrative, instructional and related service personnel providing special education and related services who are hired after the effective date of these regulations shall hold appropriate certification, which shall be on file with the state board of education; and

(9) Each private facility 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.

(e) **Procedures for approval of private facilities.** Upon receipt of a written application for approval as required by section 10-76d-17 (d) of these regulations, the state board of education shall initiate the following actions:

(1) A site visit to the private facility shall be made by representatives of the state 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. Appeal from a decision of the state board of education shall follow the provisions of Chapter 54 of the General Statutes, the Uniform Administrative Procedures Act.

(3) Following initial approval, the state board of education shall annually review the approved status of a private facility for three consecutive years; thereafter, review shall take place once every five years.

(4) The state department of education shall maintain a current list of all approved private facilities which shall be available to the public upon request.

(Effective November 23, 1994)

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

Each board of education shall maintain records concerning children requiring special education and related services and shall provide for the filing, protection, confidentiality, classification, review and, when appropriate, destruction of such records.

(a) **Policies and procedures for records.** Each board of education shall have policies and procedures to ensure the confidentiality of education records.

(1) All such policies and procedures shall be consistent with the requirements of pertinent state and federal law and regulation.

(2) All such policies and procedures shall be in writing and shall be made known at least annually to parents of children requiring special education and related services and shall be available to the public.

(3) Policies and procedures shall include those relating to securing parental consent.

(4) Policies and procedures shall include those relating to amendment of information in education records at a parent's request, where the board of education agrees to amend such information.

(5) Policies and procedures shall include those relating to the opportunity for a hearing at which parents may challenge the information in education records.

(6) Policies and procedures shall include those relating to safeguards to protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. This shall also include a record of access to all education records.

(b) **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 such request within ten days of such request, or within three days of such request if the request is in order to prepare for a meeting regarding an individualized education program or any due process proceeding.

(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 within five school 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.

(c) **Reports.** Each board of education shall make reports of the child's progress to parents with at least the same frequency that the school makes reports to parents of children in the regular program.

(Effective September 1, 1980; amended March 26, 2004)

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 requiring special education and related services.

(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 exceptionality 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. Transportation services exceeding the one-hour travel time limit shall be subject to the approval of the state board of education.

(b) **Operators vehicles.** Operators of vehicles shall be given such inservice 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. A transportation aide shall be assigned to each vehicle transporting a child whose individualized education program specifies the need for such an aide.

(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 request that the parents transport a child, it shall reimburse the parents for the cost of such transportation. 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.

(Effective September 1, 1980)

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.
- (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 state Department of Education.
- (f) “Due process unit” means the unit located within the Bureau of Special Education and Pupil Services 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 General Statutes.
- (h) “Party” means those individuals or groups who are engaged in mediation, in the advisory opinion process or in a hearing.
- (j) “Public agency” means a local or regional board of education, the state vocational-technical 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 children eligible for such services.
- (k) “Pupil” means an emancipated minor or a child eighteen years of age or older.
(Effective September 1, 1980; amended July 1, 2000)

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 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. The public agency shall request

a hearing in the event a parent refuses or revokes consent for a private placement, provided such action may be taken only in the event a parent has consented to the initial receipt of special education and related services and subsequent to the initial placement of the child, the public agency seeks a private placement.

(d) The request for a hearing shall be filed with the due process unit or with the public agency and a copy shall be provided to the opposing party. 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;
- (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 parent at the time.

The department shall have available a model form to assist the parent 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. A parent's right to a due process hearing may not be delayed or denied for failure to comply with the notice content requirements of this subsection.

(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.

(f) A public agency's request for a hearing shall be filed with the department's due process unit and shall contain the information required by subsection (d) of this section. Such agency shall provide, at the same time, a copy of the request to the parent and to the commissioner of children and families or the commissioner's designee for any child committed to or in the custody of said commissioner.

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

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

(a) A party shall have two years to request a hearing from the time the public agency proposed or refused to initiate or change the identification, evaluation or educational placement of, or the provision of a free appropriate public education to the child. If notice of the procedural safeguards, including notice of the limitations contained in this section, is not given, such two-year limitation shall be 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)

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 within 30 days from the date of the receipt of the request

for mediation. The mediator shall certify in writing to the due process unit and to the parties, within the 30-day period, whether the mediation was successful. 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, and the parties to the mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation.

(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.

(Adopted effective July 1, 2000)

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.

(e) 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) Once the date has been set for the advisory opinion proceeding, no requests for postponement shall be entertained;

(6) Unless the advisory opinion hearing officer determines otherwise, once the advisory opinion proceeding has begun, there shall be no adjournments;

(7) 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 elaborate on any part of that party's case.

(8) 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.

(9) 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 opinions.

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

(11) 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.

(12) 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)

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 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, taking into consideration the issues presented. The hearing, including the mailing of the final decision and order, shall be completed within 45 days after the receipt of the request for the hearing by the due process unit; and the hearing officer, in scheduling hearing dates, shall also set the date of such mailing. A specific extension of the forty-five day time limit 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)

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. Within 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.

(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 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 joint 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)

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, 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 45 day decision deadline 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. A request for postponement or extension shall be for a specified period of time that shall not exceed 30 calendar days.

(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 45-day decision deadline 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 45 day decision deadline 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 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)

Sec. 10-76h-10. Expedited hearings

(a) Expedited hearings shall be arranged upon the request of a party regarding the following actions or proposed actions relating to the discipline or removal of a child with a disability as defined in the Individuals with Disabilities Education Act, 20 USC 1401 et seq.:

(1) Challenges to the child's placement during a disciplinary change in placement for a weapon or drug violation as described in 34 CFR Section 300.520(a)(2) or a change in placement requested by a public agency pursuant to 34 CFR Section 300.521;

(2) Challenges to a change in placement proposed by a public agency after expiration of an interim alternative education setting, provided the public agency maintains that it is dangerous for the child to be in the placement prior to the removal to the interim alternative educational setting;

(3) Challenges to a determination that the child's behavior was not a manifestation of the child's disability as described in 34 CFR Section 300.524;

(4) Challenges to an alleged change in placement within the meaning of 34 CFR Section 300.519.

(b) The hearing request shall be submitted in accordance with subsections (d), (e) and (f) of section 10-76h-3 of the Regulations of Connecticut State Agencies.

(c) The due process unit shall appoint an impartial hearing officer. A prehearing conference shall not be required.

(d) The hearing shall be limited to any issue listed in subsection (a) of this section. The hearing officer shall limit the introduction of exhibits and testimony as may be necessary to rule on the issue presented no later than 45 days after the due process unit's receipt of the hearing request, without exceptions or extensions.

(e) The parties to the expedited hearing shall have the rights set forth in Section 10-76h-11 of the Regulations of Connecticut State Agencies, subject to subsection (d) of this section, except as follows:

(1) Each party shall have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least two business days prior to the commencement of the expedited hearing; and

(2) Each party shall disclose to the other party and to the hearing officer at least two business days prior to the commencement of the expedited hearing all completed evaluations and recommendations based on the offering party's evaluation that the party intends to offer or rely on in the expedited hearing.

(f) The child's placement during the pendency of the expedited hearing shall be as described in 34 CFR Section 300.526.

(g) The decision of the hearing officer on the expedited hearing may be appealed to Superior Court or United States District Court to the extent provided by state or federal law.

(Adopted effective July 1, 2000)

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

(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 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.

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

(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.
(Adopted effective July 1, 2000)

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 Section 10-76h(d)(4) of the General Statutes. Pursuant to Section 4-186(g) of the General Statutes, the final decision is exempt from the provisions of Section 4-181a of the 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 compliance.

(Adopted effective July 1, 2000)

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

Each board of education shall annually evaluate its special education programs. The program evaluation requirement shall extend to all programs, public and private, serving children requiring special education and related services for whom the board of education is responsible.

(a) **General requirements.** Each program evaluation shall provide information that includes the following.

- (1) A comprehensive description of educational programs and related services;
- (2) Recommendation(s) for change within the program, if the evaluative data indicates that change is warranted;
- (3) A timeline for implementing recommended changes; and
- (4) Technical assistance that will be required as a result of such recommendations.

(b) **Report.** Each board of education shall provide the state board of education with a written report of each program evaluation. Said report, which shall be a public document, shall include the information described in section 10-76l-1 (a) of these regulations, as well as the following:

- (1) Names of the persons conducting the program evaluation;
- (2) Dates of the program evaluation;
- (3) Number and positions of persons interviewed, which shall include a special education administrator, a regular education administrator, special education teachers, regular education teachers, specialists in pupil personnel and other related services, and parents of children requiring special education and related services; and
- (4) Methods and materials observed during evaluation.

(Effective September 1, 1980)