

STATE BOARD OF EDUCATION

Notice of Intent to Adopt Regulations and Public Hearing

In accordance with the provisions of Section 4-168 of the 2010 Supplement to the Connecticut General Statutes and pursuant to the authority prescribed in Sections 10-76a, 10-76b, Section 10-76d of the 2010 Supplement to the Connecticut General Statutes, and Section 10-76h, notice is hereby given that the State Board of Education intends to adopt regulations to adopt the standards of the Individuals with Disabilities Education Act for the provision of special education and related services to eligible students and, clarify state-specific provisions for the provision of special education and related services to children with disabilities and the identification and evaluation of gifted and talented children as follows:

STATE OF CONNECTICUT REGULATIONS STATE BOARD OF EDUCATION

Section 1. Section 10-76a-1 of the Regulations of Connecticut State Agencies is amended as follows:

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

[(1) “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)] (1) “Board of education or board” means a public body or public agency responsible for the education of children. This term shall include, but not be limited to, [town] local or regional boards of education, [regional vocational-]technical high schools, the unified school districts of the Departments of Children and Families and Correction or systems as administered through state agencies, regional educational service centers [and state agencies] including but not limited to the Department of Mental Health and Addiction Services pursuant to subdivision (4) of subsection (e) of section 10-76d of the Connecticut General Statutes.

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

[(4)] (3) “A child requiring special education” means [any exceptional] a child who (A) is age three, four or five or has attained the age at which the town is required to provide educational opportunities in accordance with the provisions of section 10-186 of the Connecticut General Statutes and [(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] IDEA, or 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, hereinafter referred to as a child with a disability; or [(ii)] (B) 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] general education 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)] (4) “Days” means [school] calendar days unless otherwise specified.

[(6) “Dominant language” means the language that is most relied upon for communication in the home and the school.]

[(7)] (5) “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] evaluation procedures conducted in accordance with the IDEA, to determine whether a child is a child with a disability and, if so, the nature and extent of the special education and related services the child requires.

[(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)] (6) “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.

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

[(10)] (8) “Individualized education program” or “IEP” means a [separate] written [plan] statement for [each] a child with a disability [which shall be] that is developed, reviewed and revised by [a planning and placement team to meet the needs of each child requiring special education and related services] an individualized education program team in accordance with the IDEA.

[(11)] (9) “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,] least restrictive environment as defined in the IDEA.

[(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)] (10) “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, except as provided in section 10-76d-12 of the Regulations of Connecticut State Agencies.

[(14) “Parties” means the board of education and the parents and the child, if age eighteen or over.]

[(15)] (11) “Planning and placement team” or “PPT” means [a group of certified or licensed professionals, who represent each of the teaching, administrative and pupil personnel staffs] the

individualized education program team as defined in the IDEA and who participate equally in the decision making process to determine the specific educational needs of [the] a child with a disability and develop an individualized [educational] education 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.] For purposes of the evaluation, identification or determination of the specific educational needs of a child who may be gifted or talented, the 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.

[(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)] (12) “Private [facility]” special education program” means any [facility] program that provides special education and related services to [children] a child with a disability, but is not a program of a local or regional board of education.

[(18)] (13) “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] IDEA.

[(19)] (14) “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)] (15) “Subject to the approval” means at such time and in such manner as the state board of education shall deem approval necessary.

Sec. 2. Section 10-76a-2 of the Regulations of Connecticut State Agencies is amended as follows:

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] general education program in order to realize [their] the child’s intellectual, creative or specific academic potential. The term shall include children with extraordinary learning ability and children with outstanding talent in the creative arts 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.]

Sec. 3. Section 10-76b-1 of the Regulations of Connecticut State Agencies is amended as follows:

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

Sec.4. Section 10-76b-3 of the Regulations of Connecticut State Agencies is amended as follows:

[These regulations] Sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies 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] upon filing with the Secretary of the State.

Sec. 5. Section 10-76b-4 of the Regulations of Connecticut State Agencies is amended as follows:

[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] A board of education shall receive payment for the cost of special education and related services according to the [terms] provisions of sections 10-76a to [10-76l] 10-76hh, inclusive, of the Connecticut General Statutes. To be eligible to receive such payment, such board of education shall provide special education and related services to children with disabilities in accordance with the requirements of the IDEA, sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

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

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

(1) Each board of education shall supply to the state board of education, at its request, any and all information necessary to document compliance with [these regulations] the requirements of the IDEA, sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. Such

information shall be submitted at such time and in such manner as the state board of education may request. The state board of education shall be afforded such access to records as may be necessary to verify information furnished by the board of education.

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

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

Sec. 6. Subsections (a) and (b) of Section 10-76b-8 of the Regulations of Connecticut State Agencies are amended as follows:

(a) Except for an emergency intervention to prevent immediate or imminent injury to the person or to others conforming to the requirements of subsection (b) of section 46a-152 of the Connecticut General Statutes, seclusion may only be used if (1) this action is specified in the IEP of the person at risk in accordance with the provisions of subsection (b) of this section and (2) if other less restrictive, positive behavior interventions appropriate to the behavior exhibited by the person at risk have been implemented but were ineffective.

(b) If the PPT of a person at risk determines, based upon the results of [a] an [functional] assessment of functional 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.

Sec. 7. Subsection (e) of section 10-76b-8 of the Regulations of Connecticut State Agencies is amended as follows:

(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] an emergency intervention to prevent immediate or imminent injury to the person at risk or to others is repeated more than two times in any school quarter, the PPT (1) shall convene to review the [use of seclusion as a behavior intervention] IEP of the person at risk, provided the PPT meeting may be waived by the parents and the PPT, (2) may consider additional evaluations or assessments to address the child's behaviors, and (3) may revise the child's IEP, as appropriate.

Sec. 8. Subsection (h) of section 10-76b-8 of the Regulations of Connecticut State Agencies is amended as follows:

(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] If the door or doors to a room used for seclusion are to be locked, latched or otherwise secured, a modification from the State Fire Marshall’s office shall be secured prior to the installation of a locking mechanism. If a door locking mechanism is used, the person at risk shall be constantly monitored notwithstanding any other provisions of the Connecticut General Statutes or Regulations to the contrary. The locking mechanism to be used shall be a device that shall be readily released by staff as soon as possible but in no case longer than within two minutes of the onset of an emergency and is connected to the fire alarm system so that the locking mechanism is released automatically when a fire alarm is sounded; 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.

Section 9. Section 10-76b-11 of the Regulations of Connecticut State Agencies is amended as follows:

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] an incident report [developed by the Department of Education] that contains the information and documentation required by sections 46a-152 and 46a-153 of the Connecticut General Statutes. Such reports shall be completed no later than the school day following the incident. The State Department of Education shall provide a model incident report for use in the public schools.

Sec. 10. Section 10-76d-1 of the Regulations of Connecticut State Agencies is amended as follows:

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] with a disability. 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. The PPT shall determine whether a child who turns three during the summer requires extended school year services.

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

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

(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] Each child with a disability shall be entitled to participate in the general education graduation exercises and related activities of the local or regional board of education in the event the child will not be graduating with a general education high school diploma. The child, the child's parents and the PPT shall determine the child's graduating class for purposes of participation in the graduation exercises and related activities. A child is entitled to participate in graduation exercises and related activities once in his or her educational career.

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

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

(b) **Provision of services.** Each board of education shall [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, identification and evaluation services only for gifted and talented children enrolled in kindergarten through grade twelve in such board of education's public schools. The provision of all other special education and related services to gifted and talented children shall be at the [option] discretion of each board of education.

(c) [**Contracts for service.**] A board of education may [enter into a contract or contracts] make arrangements 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] to implement each child's individualized education program in the least restrictive environment and are provided in accordance with the requirements of [these regulations] the IDEA, sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies.

[(1)] A board of education may [contract] arrange for the provision of the following services including, but not limited to:

Instructional services and programs

Diagnostic medical services

Psychological services

Social work services

Speech and hearing services

Guidance and counseling services

Parent counseling and training services as related to educational objectives

Physical therapy services

Occupational therapy services

Translation services

Transportation services

[Inservice] In-service 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.]

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

Sec. 11. Section 10-76d-2 of the Regulations of Connecticut State Agencies is amended as follows:

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] combines 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) (a) **Aides**. Provision shall be made for the direct supervision of each aide who is assisting in the provision of [in] special education instruction or related services by a person certified [and/or] or licensed in the area of specialization to which such aide is assigned. "Supervision" for purposes of this subsection means the certified or licensed person trains the aide in the

implementation of the child's IEP as appropriate, observes the aide working with the student and verifies all reports of the child's progress.

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

[(i)] **(c) Personnel development.** Each board of education shall provide for a system of personnel development to meet the requirements of [these regulations] the IDEA, sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. [Inservice] In-service training on special education and related services shall be given to [regular] general and special education instructional, related services and support personnel. A board of education may require the attendance of personnel at specific in-service training activities identified by the State Department of Education to respond to specific corrective actions ordered by the State Department of Education as a result of a complaint investigation or of monitoring activities.

Sec. 12. Section 10-76d-3 of the Regulations of Connecticut State Agencies is amended as follows:

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

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

Sec. 13. Section 10-76d-4 of the Regulations of Connecticut State Agencies is amended as follows:

(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] general education facilities where appropriate.

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

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

(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] general education classes where such use is a [mean] means of initiating or improving special education programs or facilities within a regular public school building.

(b) Equipment or assistive technology. Each board of education shall provide education equipment [and materials] or assistive technology devices and instructional and related service materials sufficient to meet the requirements of each child's individualized education program.

An "assistive technology device" means an assistive technology device as defined in the IDEA.

(1) The board of education shall maintain an inventory of all education equipment and assistive technology devices secured with IDEA funds costing more than [two hundred dollars] four thousand nine hundred ninety-nine 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 or device and state its cost, date of purchase and current use [of] or disposition. Records of inventories of such education equipment and devices shall be retained for three years beyond the useful life or disposition of the equipment or device.

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

Sec. 14. Section 10-76d-5 of the Regulations of Connecticut State Agencies is amended as follows:

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

Sec. 15. Section 10-76d-6 of the Regulations of Connecticut State Agencies is amended as follows:

Each board of education [is responsible for the identification of children requiring special education and related services] shall ensure that children with disabilities, including children who are educated at home, homeless children, children who are wards of the state and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are located, identified and evaluated. 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] with disabilities. Special education services available for parentally placed private school children eligible for special education shall be provided in accordance with the IDEA.

Sec. 16. Section 10-76d-7 of the Regulations of Connecticut State Agencies is amended as follows:

(a)(1) Each board of education shall accept and process referrals for the initial evaluation of a child to determine if the child is a child with a disability from appropriate school personnel, as

well as from a child's parents[;], or from a physician, clinic or social worker, provided the parent so permits [, in order to determine a child's eligibility for special education and related services]. [A board] The State Department of [education] Education shall make available a standard referral form which shall be used in all referrals for the initial evaluation of a child to determine if the child is a child with a disability.

(2) The local or regional board of education shall make available information concerning the procedures for requesting an initial evaluation of a child to all parents and professional staff of such board. Such information shall include, but not be limited to, a description of the general education interventions that are provided to meet the needs of individual children before a referral for a special education evaluation is requested and the special education referral and evaluation process. The information shall identify at least one person in each school building for either parents or professional staff of the board to contact regarding school policies and procedures for special education referrals and evaluations. The board may include such information in the student handbook, on the board's website or in another location to afford parents and staff access to such information.

(3) A parent is not required to submit the standard referral form for a referral. A concern expressed in writing from the parent to supervisory or administrative personnel of the board of education or a teacher of the child that the child may be a child with a disability or a written request that the child be referred for a special education evaluation or the use of other terms which clearly indicate a concern that a child may be a child with a disability and the child should be evaluated for special education shall be accepted by the board of education as a referral. The date of referral for purposes of this subsection and section 10-76d-13 is the date board personnel receive such request. The date of referral is not the date the board referral form is filled out by the board. Each board of education shall develop a process for accepting referrals from parents who cannot put their request in writing.

(b) Before a child is referred to a planning and placement team, alternative procedures and programs in [regular] general education shall be explored and, where appropriate, implemented. Notwithstanding the provisions of this section, a board of education shall accept a referral for an initial evaluation to determine if a child is a child with a disability and shall convene a PPT meeting to consider the referral to determine if an evaluation of the child is appropriate.

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

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

Sec. 17. Section 10-76d-8 of the Regulations of Connecticut State Agencies is amended as follows:

[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 section 10-76d-8 (a) of these regulations 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.]
- (a) Prior written notice consistent with the requirements of the IDEA shall be provided by the board of education to the parents of a child with a disability. Prior written notice may be provided at the PPT meeting where the board proposes to, or refuses to, initiate or change the child's identification, evaluation, or education placement of the child or the provision of a free appropriate public education to the child. If such notice is not provided at the PPT meeting, it shall be provided no later than ten days before the board proposes to, or refuses to, initiate or change the child's identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child. Prior written notice consistent with the IDEA occurs after the PPT meeting at which the board proposes to, or refuses to, initiate or change the child's identification, evaluation, or educational placement or the provision of a free appropriate public education to the child.
- (b) The board of education shall obtain written parental consent consistent with the requirements of the IDEA for initial evaluation, reevaluation and initial receipt of special education and related services. Parental failure to respond to a request from the board for consent to conduct an initial evaluation, reevaluation or for the initial receipt of special education and related services within ten days from the date of the notice to the parent shall be construed as parental refusal of consent.

Sec. 18. Section 10-76d-9 of the Regulations of Connecticut State Agencies is amended as follows:

[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 reevaluated 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.]

(a) The board shall conduct an initial evaluation or reevaluation consistent with the provisions of the IDEA. A parent's right to an independent evaluation shall be provided consistent with the IDEA.

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

(1) (A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of the following areas when provided with learning experiences appropriate for the child's age or state-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving; and

(B) The child does not make sufficient progress to meet age or state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when using a process based on the child's response to scientific, research-based intervention; and

(C) The child has been provided with explicit and systematic instruction in the essential components of scientific, research-based reading instruction or math from a qualified teacher, including documentation of regular assessments of achievement; and

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

(E) The disability must adversely affect the child's educational performance and, as a result, the child requires special education to address her or his unique educational needs.

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

(c) (1) Each board of education shall evaluate and identify gifted and talented children using the planning and placement team. A board of education may identify up to 10 per cent of its total school population as gifted and talented.

(2) A board of education may individually evaluate a child who may be gifted and talented or may use group assessment and evaluation procedures. A board of education may conduct planning and placement team meetings on groups of children for whom evaluation and identification as gifted and talented are planned. Parents shall be provided with written notice that a child has been referred to the planning and placement team for consideration as a gifted and talented child. Written parental consent shall be secured before a child is individually

evaluated for identification as gifted and talented. The results of the planning and placement team meeting concerning a determination of the child's identification as gifted or talented shall be provided to the parent in writing. If a parent disagrees with the results of the evaluation conducted by the board of education, the parent has a right to a hearing, pursuant to sections 10-76h-1 to 10-76h-16, inclusive, of the Regulations of Connecticut State Agencies.

Sec.19. Section 10-76d-10 of the Regulations of Connecticut State Agencies is amended as follows:

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] be located, evaluated and identified and in the case of a child with a disability who is found eligible for special education and related services, ensure an individualized education program is developed and implemented. The planning and placement team shall be responsible for the following.

(a) [Evaluation on referral] 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] The planning and placement team shall convene to process a referral submitted in accordance with section 10-76d-7 of these regulations.

(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] the IDEA before the initial provision of special education and related services to a child with a disability.

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

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

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

Sec 20. Section 10-76d-11 of the Regulations of Connecticut State Agencies is amended as follows:

Each board of education shall [establish] adopt policies and procedures as determined by the State Department of Education for developing, implementing, reviewing, maintaining and evaluating [an] the individualized education program for each child [requiring special education and related services] with a disability. Such policies and procedures shall be consistent with the requirements of the IDEA, sections 10-76a to 10-76hh of the Connecticut General Statutes and the Regulations of Connecticut State Agencies. Each board of education shall develop, review and revise the IEP for each child with a disability in accordance with the requirements of the IDEA, sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes and the Regulations of Connecticut State Agencies. [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.] In addition to the IEP components required under the IDEA, the IEP shall also include 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;

[(d)](b) Individualized education program form. Each board of education shall use the [a standardized] individualized education program form developed by the State Department of Education. [Said form shall be subject to the approval of the state board of education.]

Sec. 21. Section 10-76d-12 of the Regulations of Connecticut State Agencies is amended as follows:

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.

(b) In accordance with the provisions of the IDEA, the rights of a parent transfer to a child with a disability when the child turns eighteen. A child with a disability may, in writing, notify the board of education that the parent continues to have the right to make educational decisions on behalf of the child notwithstanding the fact that the child has turned eighteen years of age.

Sec. 22. Section 10-76d-13 of the Regulations of Connecticut State Agencies is amended as follows:

[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.]

(a) Upon receipt of an initial referral in accordance with section 10-76d-7 of these regulations, the board of education shall schedule a PPT meeting no later than 15 days after receipt of the referral.

(b) An initial evaluation to determine if a child is a child with a disability shall be conducted within sixty days of the board of education receiving a parental consent for the evaluation except as provided in section 10-76d-14 of these regulations. This timeline does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation or a child enrolls in a school of another board of education after the sixty day timeline for evaluation has begun and prior to a determination by the child's previous board as to whether the child is a child with a disability.

(c) If it is determined that the child is a child with a disability, the PPT may develop the IEP at the meeting at which the child's eligibility is determined and the IEP shall be implemented no later than 15 days after this meeting exclusive of the time necessary to secure parental consent for the initial receipt of services. In the event the IEP is not written at the PPT meeting where eligibility is determined, a PPT meeting to develop an IEP shall be conducted and the IEP implemented no later than fifteen days after a determination that the child is eligible for special education and related services exclusive of the time necessary to secure parental consent for the initial receipt of services.

(c) A full copy of the IEP shall be sent to the parents within ten school days after the PPT meeting to develop, review or revise the IEP.

Sec. 23. Section 10-76d-14 of the Regulations of Connecticut State Agencies is amended as follows:

[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 as part of the initial evaluation or reevaluation of a child. This shall mean a structured program, of not more than [eight weeks'] forty school days duration, the purpose of which is to assess the needs of a child [for whom an individualized education program may be needed] who is or may be a child with a disability, but for whom the evaluation [study] or reevaluation is either inconclusive or the data insufficient to determine the child's eligibility for special education or to develop or revise an individualized education program. A diagnostic placement is an evaluation and shall not be the current placement of a child for purposes of due process proceedings unless the parents and the board otherwise agree. If a diagnostic placement is conducted as part of the initial evaluation, the 60 day timeline shall be extended for the time necessary to complete the diagnostic placement.

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

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

[(3)] (c) 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)] (d) A diagnostic program shall be terminated as soon as the child's needs have been determined, but in any event [within eight weeks] no later than forty school days after the program begins.

[(5)] (e) Five school days before the end of the diagnostic program, the planning and placement team shall reconvene to [write] determine the child's eligibility for special education and related services, as appropriate, or review, revise or develop the child's individualized education program, as appropriate, based on findings made during the 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.]

Sec. 24. Section 10-76d-15 of the Regulations of Connecticut State Agencies is amended as follows:

(a)(1) A board of education shall provide [homebound and hospitalized] instruction [when recommended by the planning and placement team] to a child enrolled in the public schools of such board when such child is unable to attend school due to a verified medical reason. The child's treating physician shall provide a statement in writing directly to the board of education and on a form provided by the board of education stating: (A) the child's treating physician has consulted with school health supervisory personnel and has determined that attendance at school with reasonable accommodations is not feasible; (B) the child is, therefore, unable to attend school due to a verified medical reason and the child's diagnosis with supporting documentation; (C) the child will be absent from school for at least ten school days or the child's condition is such that the child may be required to be absent from school for short, repeated periods of time during the school year; and, (D) the expected date the child will be able to return to school.

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

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

(2) Instruction for a child with a disability who is medically complex shall begin no later than the third day of absence as long as the child is medically able to receive instruction.

(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] In the event there is a dispute regarding the basis upon which the child's treating physician has asserted the need for instruction, the child shall receive instruction pending review of the documentation provided by the child's treating physician by the school medical advisor or other health professional employed by the board of education who is qualified to review the information submitted. The parent shall be required to provide consent for the school medical advisor or other qualified health professional employed by the board of education to speak with the child's treating physician to confirm the need for instruction. The board is not required to begin instruction until such consent is provided. Consultation with the child's treating physician shall include a review of educational and medical records and, if appropriate, accommodations and school health services that can be provided to the child for the child to attend school safely.

(d) Time and place. [Homebound and hospitalized instruction] Instruction shall be provided as follows: (1) for preschool children eligible for special education, for the amount of time determined appropriate by the PPT; [for at least] (2) no less than one hour per day or five hours per week for children in grades kindergarten through six; and [at least] (3) no less than two hours per day or ten hours per week for children in grades seven through twelve. Where evaluative data indicates that these time requirements [are too great for the child, the planning and placement team may decrease] should be modified, instruction time may be increased or decreased upon the agreement of the parent and the board of education or upon a determination made by the PPT as appropriate. Instruction [shall] may be provided in the setting of the child's home or the hospital to which the child is confined or the board may offer such instruction in other sites such as the town library, taking into consideration the child's medical condition.

(e) Instruction provided pursuant to the provisions of this section shall maintain the continuity of the child's general education program and, in the case of a child with a disability, shall be provided so as to enable the child to continue to participate in the general education curriculum and to progress towards meeting the goals and objectives in the child's IEP.

Sec. 25. Section 10-76d-16 of the Regulations of Connecticut State Agencies is amended as follows:

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

Sec. 26. Section 10-76d-17 of the Regulations of Connecticut State Agencies is amended as follows:

A board of education may place a child [requiring special education and related services] with a disability in a private [facility] special education program.

(a) Requirements. Each board of education shall ensure that any placement in a private [facility] special education program 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] consistent with the least restrictive environment requirements of the IDEA, before deciding that the child cannot be appropriately placed in a [public] school [, agency or institution] which is operated by a board of education or on behalf of a board of education including a program operated by a private special education program or regional education service center in a public school building;

(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] special education program;

- (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] Prior to the placement of a child with a disability in a private special education program, a representative of the program shall participate in a PPT meeting in order to discuss the child's individualized education program; and
- (5) A child placed in a private [facility] special education program shall be accorded all of the educational rights the child would have if served directly by his or her board of education including, but not limited to, access to extracurricular and nonacademic programs and services and the right to participate in the graduation exercises and activities of the board of education and to receive a general education high school diploma upon completion of the requirements for graduation from the board of education. The PPT shall consider and make arrangements for the child to so participate; and
- (6) All out-of-state private facilities shall meet the educational standards for private special education [facilities of the receiving state] programs in the state it is located. If no such standards exist, the sending board of education shall provide the [state board of education] State Department of Education with documentation that the private placement is appropriate to the child's needs as set forth in the child's individualized education program.
- (b) [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] No child shall be placed in a private special education program unless such placement [it] is required by the [in accordance with a] child's individualized education program as developed by the [planning and placement team] PPT of the board of education responsible for the child's education except in those cases where a child is placed by a state agency in a private special education program for other than educational reasons.
- (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] special education programs. Each private [facility] special education program seeking approval shall submit a written application for approval as required by the state board of education. In order to be approved, each private [facility] special education program shall have been in operation for at least one [school] year prior to application, shall have an enrollment of at least ten students, shall comply with the *Principles and Standards for Approval of Private Special Education Programs* adopted by the state board of education, and shall meet the following requirements:
- (1) Each private [facility] special education program shall agree that in its operations no person shall be excluded from participation, be denied benefits or be otherwise discriminated against on the basis of sex, race, color, creed, religion, national origin, age, marital status or [handicapping condition] disability in any program or activity for which the [facility] special education program receives public monies;

- (2) Each private [facility] special education program shall [request] obtain a copy of the child's IEP from the sending board of education and [maintain an individualized education program] implement the IEP for each child placed by a board of education;
- (3) Each private [facility] special education program shall, with the sending board of education, cooperate in and contribute to each PPT meeting convened for each child placed by a board of education in a private special education program, including the annual review of each child's individualized education program and the determination of continued placement [in accordance with sections 10-76-11 and 10-76d-12 of these regulations]. The private special education program shall ensure that a special education teacher of the child either participates in each such meeting or, if the child's parent and board of education consent to the teacher being excused, submits to the board of education within a reasonable time prior to the meeting for use at the meeting, written input into the development of the child's individualized education program;
- (4) Each private [facility] special education program shall complete periodic reviews and evaluations of each child's progress relative to the child's [individualized education program] IEP. [Comprehensive] The private special education program shall submit reports of the child's progress [shall be submitted] to the child's parents and the sending board of education in accordance with the reporting schedule and content requirements of the child's IEP as determined by the PPT [with such frequency as said board of education shall require, but in no event less than twice a year];
- (5) Each private [facility] special education program 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] special education program shall conform to the requirements of these regulations with respect to class size and composition, length of school day and year and physical facilities;
- (7) Each private [facility] special education program shall have policies and procedures which meet the requirements of [these regulations regarding education records] section 10-76d-18 of the Regulations of Connecticut State Agencies;
- (8) Each private [facility] special education program shall ensure that all administrative personnel, instructional personnel, and related service personnel [providing special education and related services who are hired after the effective date of these regulations] shall hold appropriate certification, except as provided in section 10-145d-610(c) of the Regulations of Connecticut State Agencies, which shall be on file with the state board of education; [and]
- (9) Each private [facility] special education program shall require of its personnel, on an annual basis, evidence of having met the health requirements for public school employees as established by the General Statutes and their regulations[.];
- (10) Each private special education program shall have policies and procedures which permit board of education personnel to visit the program and observe students on a reasonable basis in order for the board to fulfill its responsibilities with regard to the provision of a free appropriate public education to eligible students;
- (11) Each private special education program shall have policies and procedures which permit parents of enrolled and prospective students to visit the program and observe students on a reasonable basis in order for the parents to participate meaningfully in PPT meetings; and

(12) Each private special education program shall conform to the establishment clause of the constitution of the State of Connecticut and to the establishment clause of the United States of America.

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

(e) Procedures for approval of private [facilities] special education programs. Upon receipt of a written application for approval as required by subsection (c) of this 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] special education program 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. The Commissioner of Education is authorized to act on behalf of the state board of education. Appeal from a decision of the state board of education shall follow the provisions of Chapter 54 of the Connecticut 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] special education program within the following school year [for three consecutive years];. [thereafter] Thereafter, approval may be granted for a maximum of [review shall take place once every] five years.

(4) The state department of education shall maintain a current list of all approved private [facilities] special education programs which shall be available to the public upon request. A board of education may place a child requiring special education and related services in a private [facility] special education program.

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

Sec. 27. Section 10-76d-18 of the Regulations of Connecticut State Agencies is amended as follows:

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] with disabilities consistent with the requirements of the IDEA, except as provided in subsection (a) of this section.

(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 a request to review and inspect the child's education records without unnecessary delay and before any meeting regarding an IEP or any due process hearing or resolution session held in accordance with the IDEA; otherwise, the board of education shall comply with such request 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] ten days of such request. Notwithstanding the fact that a test instrument or portion of a test instrument may meet the criteria of an "education record" under the Family Educational Rights and Privacy Act, 20 USC 1232g, any test instrument or portion of a test instrument for which the test manufacturer asserts a proprietary or copyright interest in the instrument shall not be copied. The parent retains the right to review and inspect such information and the board of education shall respond to reasonable requests from the parent for explanations and interpretations of the child's education record, which may include reviewing copyrighted testing instruments.

[(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.]

Sec. 28. Section 10-76d-19 of the Regulations of Connecticut State Agencies is amended as follows:

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] with a disability.

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

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

(b) Operators of vehicles. Operators of vehicles shall be given such [inservice] in-service training as is necessary to acquaint them with the specific needs of the children being transported and to

equip them to meet those needs. Operators of vehicles shall meet the licensure requirements of the department of motor vehicles.

(c) Vehicles. All vehicles shall comply with requirements of the department of motor vehicles and shall be equipped so as to ensure safe and appropriate transportation. [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] requests that the parents transport a child, it shall reimburse the parents for the cost of such transportation at the standard mileage reimbursement for a privately owned automobile established by the Internal Revenue Service. Such reimbursement shall be for a round trip to transport the child to, and retrieve the child from, the program. No parent shall be required to provide transportation, nor shall any board of education be relieved of the obligation to provide transportation for a child because of the inability or unwillingness of parents to provide transportation. No board of education shall be required to reimburse parents for the cost of transporting a child if the parents reject the transportation offered by the board of education, provided such reimbursement may be ordered by a hearing officer if the hearing officer finds that the transportation offered by the board was not appropriate to meet the child's needs. In lieu of a hearing, the parents and the board may resolve their disagreement through mediation or resolution session.

Sec. 29. Section 10-76h-1 of the Regulations of Connecticut State Agencies is amended as follows:

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] 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 Connecticut General Statutes.

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

[(j)] (i) "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] a child with a disability.

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

Sec. 30. Section 10-76h-3 of the Regulations of Connecticut State Agencies is amended as follows:

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

(1) The name of the child;

(2) The address of the residence of the child, provided if the child is homeless, the request shall contain available contact information for the child;

(3) The name of the school the child is attending;

(4) A description of the nature of the dispute relating to the proposed or refused initiation or change, including facts relating to the dispute; and,

(5) A proposed resolution of the dispute to the extent known and available to the [parent] party at the time.

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

Sec. 31. Section 10-76h-4 of the Regulations of Connecticut State Agencies is amended as follows:

(a) A party shall have two years to request a hearing from the time the party knew or should have known about the public agency [proposed] proposal or [refused] refusal to initiate or change the identification, evaluation or educational placement of, or the provision of a free appropriate public education to the child. This timeline does not apply to a parent if the parent was prevented from filing a request for hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the request for hearing or the public agency's withholding of information from the parent that was required to be provided to the parent under Part B of the IDEA. If 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.

Sec. 32. Section 10-76h-5 of the Regulations of Connecticut State Agencies is amended as follows:

(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] the parties reached agreement. An agreement reached by the parties shall be set forth in a written mediation agreement and be signed by the parties.

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

Sec. 33. Section 10-76h-6 of the Regulations of Connecticut State Agencies is amended as follows:

- (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) If the parties agree to an advisory opinion hearing officer and if such hearing officer is available, the due process unit shall appoint such hearing officer. The hearing officer assigned to the advisory opinion process by agreement of the parties shall not be the hearing officer assigned to the full hearing. If the parties do not agree to an advisory opinion hearing officer, [The] 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)] (6) The parties' presentations shall be conducted as follows:

(A) The party requesting a change in special education or related services shall be allocated 45 minutes to present that party's case, and shall present no more than two witnesses. No cross-examination or objections shall be permitted during this time.

(B) The responding party shall then be allocated 45 minutes to present that party's case, and shall present no more than two witnesses. No cross-examination or objections shall be permitted during this time.

(C) The requesting party shall then have 15 minutes to ask questions of any witness or elaborate on any part of that party's case.

(D) The responding party shall then have 15 minutes to ask questions of any witness or elaborate on any part of that party's case.

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

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

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

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

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

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

Sec. 34. Subsection (c) of section 10-76h-7 of the Regulations of Connecticut State Agencies is amended as follows:

(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 including the number of witnesses to testify and the length of testimony and cross-examination, taking into consideration the issues presented and the need to complete the hearing in a timely fashion. The hearing, including the mailing of the final decision and order, shall be completed within [45 days after the receipt of the request for the hearing by the due process unit] the forty-five day timeline under Part B of the IDEA; 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] timeline may be granted by the hearing officer at the request of a party to the hearing only in accordance with the provisions of section 10-76h-9 of the Regulations of Connecticut State Agencies, except as

provided in section 10-76h-10 of the Regulations of Connecticut State Agencies, and any order granting such an extension shall set a new mailing date.

Sec. 35. Section 10-76h-8 of the Regulations of Connecticut State Agencies is amended as follows:

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

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

(c) Written motions may be sent by certified mail, overnight mail, facsimile transmission, other courier or recognized package or delivery service, to all parties and the hearing officer simultaneously. Except as provided in subdivisions (1), (2) and (4) of subsection (f) of this section, [Within] 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 receipt of the notice of the granted motion.

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

(3) Motion to consolidate: When hearings involving the same child are pending, the hearing officer, upon motion of either party and after consultation with and agreement by any other hearing officer involved with the same child in hearings involving common questions of law or fact, may order a [joint] single hearing of any or all matters at issue in the hearings. The hearing

officer may order all the hearings consolidated and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

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

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

Sec 36. Section 10-76h-9 of the Regulations of Connecticut State Agencies is amended as follows:

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] forty-five day decision [deadline] timeline on account of an asserted need for additional hearing dates, shall submit a request in writing to the hearing officer no later than 5:00 p.m. five business days prior to the scheduled hearing or deadline date unless a compelling reason is shown for a later request. The request for postponement or extension shall set forth the reason for the request. It shall also indicate what efforts the moving party has made to contact the opposing party or the opposing party's representative and whether the opposing party agrees or objects to the postponement or extension. [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] forty-five day decision [deadline] timeline on account of an asserted need for additional hearing dates should do so in writing, pursuant to the procedures in subsection (a) of this section, unless requested on the record and permitted by the hearing officer. The hearing officer may, consistent with the requirements of due process, entertain an oral motion for an extension of the [45] forty-five day decision [deadline] timeline based on an asserted need for additional hearing dates.

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

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

- (2) the need of a party for additional time to prepare and present the party's position at the hearing in accordance with the requirements of due process;
- (3) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- (4) whether there has already been a delay in the proceeding through the actions of one of the parties.

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

(e) The hearing officer shall have the authority to grant one 30-day postponement for continued settlement discussions between the parties upon written verification by the parties that they are engaged in a good faith effort to complete negotiations. At the end of the 30-day period, the parties shall advise the hearing officer in writing whether or not a settlement has been reached, or they shall be prepared to go forward to the hearing. The hearing officer 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.

Sec 37. Section 10-76h-10 of the Regulations of Connecticut State Agencies is amended as follows:

(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 accordance with Part B of the [Individuals with Disabilities Education Act, 20 USC 1401 et. seq.] IDEA regarding actions or proposed actions relating to the discipline or removal from school of a child with a disability.[:]

[(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.]

Sec 38. Subsection (e) of section 10-76h-13 of the Regulations of Connecticut State Agencies is amended as follows:

- (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)] under Part B of the IDEA.

Sec. 39. Section 10-76h-15 of the Regulations of Connecticut State Agencies is amended as follows:

- (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 scheduled hearing date.
- (d) Oral testimony shall be under oath or affirmation, subject to the pain and penalties of perjury.
- (e) The hearing officer may summon any witness and may ask questions of any witness.
- (f) The hearing officer may take administrative notice of any general, technical or scientific facts within the knowledge of the hearing officer, and any other judicially cognizable facts. Parties shall be notified of the material so noticed and shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts administratively noticed shall be included and indicated as such in the record.
- (g) The hearing officer may receive stipulations from the parties on any fact, matter or issue.

- (h) The hearing officer may require additional evidence on any relevant matter.
- (i) The hearing officer may limit the number of pages in a brief if submission of such brief is granted by the hearing officer.

Sec 40. Subsection (a) of section 10-76h-16 of the Regulations of Connecticut State Agencies is amended as follows:

(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)] Part B of the IDEA and Section 10-76h(d)(4) of the Connecticut General Statutes. Pursuant to Section 4-186(g) of the Connecticut General Statutes, the final decision is exempt from the provisions of Section 4-181a of the Connecticut General Statutes. A party seeking to stay a final decision shall seek that order from the court having jurisdiction over the appeal.

Sec. 41. Section 10-76ℓ-1 of the Regulations of Connecticut State Agencies is repealed.

STATEMENT OF PURPOSE: To adopt the standards of the Individuals with Disabilities Education Act and clarify state-specific provisions for the provision of special education to children with disabilities and the identification and evaluation of gifted and talented children.

Interested persons may submit views and arguments, in writing, to Attorney Theresa C. DeFrancis, Education Consultant, Bureau of Special Education, P.O. Box 2219, Hartford, CT 06145. The deadline for submitting views and arguments in writing is September 22, 2010.

Two public hearings on the proposed regulations will be held. The first hearing will be held on Monday, August 30th, 2010 from 9:30 a.m. to 3:30 p.m., at 25 Industrial Park Road, Middletown, CT, Room MCR3. The second hearing will be held on Wednesday, September 22, 2010 from 9:30 a.m. to 3:30 p.m. at 25 Industrial Park Road, Middletown, CT, Room MCR3. Interested persons may submit views and arguments, in writing or orally, at this hearing and are encouraged to submit written testimony to accompany the oral presentation.

All submissions and testimony concerning the proposed regulations will be considered fully. Copies of the proposed regulations and fiscal note may be obtained from Attorney Theresa C. DeFrancis, Bureau of Special Education, by e-mail to theresa.defrancis@ct.gov or by mail to PO Box 2219, Hartford, CT 06145. The proposed revisions to the regulations may also be accessed on the Connecticut State Department of Education website, www.sde.ct.gov.

Small Business Impact Statement

Prior to adopting a new section or amendment, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the affect of such action on small businesses as defined in C.G.S. Section 4-168a. When such a regulatory action may have an adverse affect on small businesses, C.G.S. Section 4-168a directs the agency to consider

regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: State Department of Education

Subject matter of Regulation: The provision of special education to eligible children and special education due process

In accordance with C.G.S. Section 4-168a, staff analyzed the affect on small businesses of the proposed regulations and determined the following:

True False (Check all appropriate boxes):

- The regulatory action will not have an affect on small businesses.
- The regulatory action will have an affect on small businesses, but will not have an Adverse affect on such small businesses.
- The regulatory action may have an adverse affect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially affected small business. Alternatives considered include the following:
- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
 - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
 - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse affect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare.

The State agency listed above notified the Department of Economic and Community Development of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations.

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

Agency Submitting Regulation: State Department of Education **Date:** November 24, 2009

Subject Matter of Regulation: The provision of special education to eligible children and special education due process

Regulation Section No.: Sections 10-76a-1 to 10-76d-19, inclusive, section 10-76h-1, sections 10-76h-3 to 10-76h-10, inclusive, and sections 10-76h-13 to 10-76h-16, inclusive

Statutory Authority: Sections 10-76a to 10-76d, inclusive, and Section 10-76h

Other Agencies Affected: Local and regional boards of education, unified school districts

Effective Date Used In Cost Estimate: November 24, 2009

Estimate Prepared By: Theresa C. DeFrancis **Telephone No:** (860) 713-6933

SUMMARY OF COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency: State Department of Education _____ **Fund Affected:** General Fund ____

 12/11/2009

Brian Mahoney, Chief Financial Officer

	First Year(2010)	Second Year (2011)	Full Operation (2012)
Number of Positions			
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	0	0	0
Total State Cost or (Savings)	0	0	0
Estimated Revenue Gain or (Loss)			
Total Net State Cost or (Savings)	0	0	0

Explanation of State Impact of Regulation: Using staff and resources currently available, the state will continue to provide general supervision for local and regional boards of education for the provision of special education and related services in accordance with the Individuals with Disabilities Education Act and pertinent state statutes and regulations in order for the State to remain eligible for federal financial assistance under the IDEA.

Explanation of Municipal Impact of Regulation: Timelines for the evaluation, identification and provision of services to children with disabilities is changed from school days to calendar days. This may require that school staff be available in the district during the summer to process referrals for special education evaluations. In addition, the use of a locked seclusion room may require the school districts to enhance the locking mechanism on doors to release when the fire alarm goes off.

Explanation of Small Business Impact of Regulation: Not applicable.