

## FOR IMMEDIATE PUBLICATION

The Annual State Application for Federal Fiscal Year 2010 under Part B of the Individuals with Disabilities Education Act as amended in 2004 is available for public inspection on the State Department of Education's website at [www.sde.ct.gov/sde](http://www.sde.ct.gov/sde). Print copies are available at the Regional Education Service Centers: ACES, 350 State Street, North Haven, CREC, 111 Charter Oak Avenue, Hartford, CES, 40 Lindeman Drive, Trumbull, EASTCONN, 376 Hartford Turnpike, Hampton, Education Connection, 355 Goshen Road, Litchfield and LEARN, 44 Hatchetts Hill Road, Old Lyme; and, at the Connecticut Parent Advocacy Center, 338 Main Street, Niantic and the State Education Resource Center Library, 25 Industrial Park Road, Middletown.

The application contains assurances the State is in compliance with the IDEA Reauthorization of 2004 in order to remain eligible for federal financial assistance. The application also contains a description of the use of federal funds that the State receives from the Part B grant for administrative activities. In addition, a revised Procedural Safeguards document is also included for public inspection.

The public inspection period is 60 days starting March 1, 2010. The public comment period is 30 days from March 15, 2010, running until April 13, 2010. Written comments may be directed to Attorney Theresa C. DeFrancis, Bureau of Special Education, Connecticut State Department of Education, P.O. Box 2219, Hartford, CT 06145. Any questions regarding the State Application may be directed to Attorney DeFrancis at 860-713-6933.

A Public Hearing will be held on the proposed revisions to the Procedural Safeguards document on April 8, 2010 from 10:00 am until 3:00 pm. The hearing will be held at 25 Industrial Park Road, Middletown, CT in Room MCR2 (the "Fishbowl").

**OMB NO. 1820-0030**  
**Expires: 06/30/2012**

**ANNUAL STATE APPLICATION UNDER PART B OF THE  
INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS AMENDED IN 2004  
FOR FEDERAL FISCAL YEAR 2010**

**CFDA No. 84.027A and 84.173A**

**ED FORM No. 9055**

**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION PROGRAMS  
Washington, DC 20202-2600**

**Section I**

**A. Submission Statement for Part B of IDEA**

Please select 1 or 2 below. Check 3 if appropriate.

1. The State provides assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B of the Act as found in PL 108-446, the Individuals with Disabilities Education Act and applicable regulations (IDEA). The State is able to meet all assurances found in Section II.A of this Application.
2. The State cannot provide assurances for all eligibility requirements of Part B of the Act as found in PL 108-446. The State has determined that it is unable to make the assurances that are checked as 'No' in Section II.A. However, the State assures that throughout the period of this grant award the State will operate consistent with all requirements of IDEA in PL 108-446 and applicable regulations. The State will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2011. The State has included the date by which it expects to complete necessary changes associated with assurances marked 'No'. (Refer to Assurances found in Section II.A.)

Optional:

3. The State is submitting modifications to State policies and procedures previously submitted to the Department. These modifications are: (1) deemed necessary by the State, for example when the State revises applicable State law or regulations; (2) required by the Secretary because there is a new interpretation of the Act or regulations by a Federal court or the State's highest court; and/or (3) because of an official finding of noncompliance with Federal law or regulations.

**B. Conditional Approval for Current Grant Year**

**If the State received conditional approval for the current grant year, check the appropriate statement(s) below:**

**1. Conditional Approval Related to Assurances in Section II.A:**

- a. Section II.A provides documentation of completion of all issues identified in the FFY 2009 conditional approval letter.
- b. As noted in Section II.A, the State has not completed all issues identified in the FFY 2009 conditional approval letter.

**2. Conditional Approval Related to Other Issues:**

- a. The State previously submitted documentation of completion of all issues identified in the FFY 2009 conditional approval letter.
- b. The State is attaching documentation of completion of all issues identified in the FFY 2009 conditional approval letter. *(Attach documentation showing completion of all issues.)*
- c. The State has not completed all issues identified in the FFY 2009 conditional approval letter. *(Attach documentation showing completion of any issues and a list of items not yet completed.)*

**Section II**

**A. Assurances Related to Policies and Procedures**

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<i>Check and enter date(s) as applicable</i>		<b>Assurances Related to Policies and Procedures</b>
<b>Yes</b> (Assurance is given.)	<b>No</b> (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
√		1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.
√		2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)
√		3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.
√		4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)
√		5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR

Check and enter date(s) as applicable		Assurances Related to Policies and Procedures
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
		§§300.114-300.120.
√		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
√		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
√		8. Agencies in the State comply with 34 CFR §§ 300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
√		9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
√		10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
√		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and

Check and enter date(s) as applicable		Assurances Related to Policies and Procedures
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
		300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
√		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(b)(3). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
√		13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
√		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
√		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
√		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.

Check and enter date(s) as applicable		Assurances Related to Policies and Procedures
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
√		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
√		18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
√		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
√		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
√		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
√		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
√		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C.

Check and enter date(s) as applicable		Assurances Related to Policies and Procedures
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
		1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. (Note: Check either "23b.1" or "23b.2" whichever applies.)
√		<p>23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to:</p> <ul style="list-style-type: none"> <li>• require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or</li> <li>• purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)</li> </ul>
		23b.2 The State Educational Agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
√		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
√		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

**B. Other Assurances**

The State also makes the following assurances:

Yes	Other Assurances
<b>Yes</b>	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
<b>Yes</b>	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
<b>Yes</b>	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
<b>Yes</b>	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

**C. Certifications**

The State Educational Agency is providing the following certifications:

Yes	
<b>Yes</b>	1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i> , is on file with the Secretary of Education.  With respect to the <i>Certification Regarding Lobbying</i> , the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.
<b>Yes</b>	2. The State certifies that certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
<b>Yes</b>	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR 300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1);

	34 CFR §300.171.
--	------------------

**D. Statement**

I certify that the State of CONNECTICUT can make the assurances checked as 'yes' in Section II.A and II.B and the certifications required in Section II.C of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.

If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2011. (34 CFR §76.104)

I, the undersigned authorized official of the

CONNECTICUT STATE DEPARTMENT OF EDUCATION,  
*(Name of State and official name of State agency)*

am designated by the Governor of this State to submit this application for FFY 2010 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name and Title of Authorized Representative of the State:	
Mark K. McQuillan	
Signature:	Date:

### Section III

#### **Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act - 20 U.S.C. 1411(e)(5); 34 CFR §300.171**

States must provide the Description of Use of Funds by completing and submitting the Excel Interactive Spreadsheet with the 2010 Application.

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)-(3), (6) and (7)) The Department annually identifies for States the maximum amounts that a State may retain under Section 1411(e)(1) and (2).<sup>1</sup> The dollar amounts **listed in the Excel Interactive Spreadsheet** by the State for administration and for other State activities should add up to less or equal to the dollar amount provided to the State by the Department for each of these activities.

**Enter whole dollar amounts (do not enter cents) in appropriate cells on the State's Excel Interactive Worksheet. The Excel Interactive Spreadsheet must be submitted as part of the State's application.**

Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the Excel Interactive Spreadsheet to meet State priorities. (20 U.S.C. 1411(e)(5)(B); 34 CFR §300.704)

*The SEA routinely obtains feedback from stakeholders throughout the State, including LEAs, as part of its on-going system of technical assistance through the State Education Resource Center (SERC). Through written and other forms of needs assessment, priority areas are identified. In addition, as part of the Department's focused monitoring efforts with LEAs, specific areas of need are identified. Finally, Connecticut's Council for the Comprehensive System of Personnel Development, which includes a number of LEA representatives, also provides input regarding priorities for the State.*

---

<sup>1</sup> Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or \$35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

## Section IV

### State Administration

Section 608(a) of the IDEA requires each State that receives funds under this title to:

- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
- (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

States must attach to this application a list identifying any rule, regulation, or policy that is State-imposed (not required by IDEA or Federal regulations). If there are no such State-imposed rules, regulations, or policies, please so indicate. In addition, the State is required to inform local education agencies in writing of such State-imposed rules, regulation or policy. (20 U.S.C. 1407(a); 34 CFR §300.199)

**The following is a list identifying any rule, regulation or policy that is State-imposed (not required by IDEA or federal regulations). Districts are advised of these requirements through the State Policy and Procedure Manual, IEP Form and Manual, annual notifications of changes to state statutes, notice of regulatory changes and updates provided to Districts by the Bureau of Special Education or Circular Letters issued by the Commissioner.**

**Additions since the last grant application submission are *italicized*.**

State Statutes  
As of January 1, 2010

Section 10-76a	Definition of children requiring special education includes gifted and talented children
Section 10-76b(a)	Requires the State Board of Education to adopt regulations concerning the use of physical restraints and seclusion for children requiring special education
Section 10-76d(a)(8)	Requires notification to parents at each initial planning and placement team meeting of the state laws relating to the use of physical restraints and seclusion with children requiring special education
Section 10-76d(a) (2)-(6) and (9)	Determining Medicaid eligibility for the receipt of Medicaid grants
Section 10-76d(b)	LEA's may make agreements with any private school, agency or institution to provide necessary preschool education programs
Section 10-76d(d)	In order for LEA's to receive state reimbursement for LEA initiated private placements, the private school, agency or institution must be approved for special education by the Commissioner of Education; placement priorities may be ignored if the private school placement is less expensive than the public school placement, as long as the program is appropriate

**Connecticut**

**FFY 2010**

REGULAR AWARD AMOUNT Est. \$132,046,538

TOTAL AWARD AMOUNT \$132,046,538

**ADMINISTRATION**

Maximum Available for Administration. Sec. III \$2,756,547

How much do you want to set aside for Administration in dollars?  **OK**

**You must distribute, in whole dollars, the amount you want to set aside for Administration among the following activities:**

For the purpose of administering IDEA Part B including Preschool Grants under 20 U.S.C. 1419, a High Cost Fund, and the coordination of activities under Part B with, and providing technical assistance to, other programs that provide services to children with disabilities. (Note: These funds may be used for Administering but not Financing a High Cost Fund)

a.

For the administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C.

b.

You may set aside a portion of your Administration funds resulting from inflation for the following 4 Other State-Level Activities. Additional funds for these purposes may also be set aside under Other State-Level Activities. Based on the amount that you propose to set aside for Administration, the maximum amount of Administration funds that you may use for these 4 activities is:

\$0

For support and direct services, including technical assistance, personnel preparation, and professional development and training.

c.

To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

d.

To assist local educational agencies in meeting personnel shortages.

e.

To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

f.

Subtotal, Administration funds used for Other State-Level Activities \$0

**OK**

If you receive a Preschool Grant under 20 U.S.C. 1419, you may use Administration funds, along with other funds, to develop and implement a State policy jointly with the lead agency under Part C and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under the Preschool Grant program and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

g.

The total of details for your Administration set-aside is \$0 **OK**

**OTHER STATE-LEVEL ACTIVITIES**

If you propose to set aside more than \$850,000 for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

\$13,325,648

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside more than \$850,000 for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

\$11,993,083

If you propose to set aside \$850,000 or less for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

\$13,991,930

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside \$850,000 or less for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

\$12,659,366

Do you wish to use funds for a High Cost Fund? (Yes or No)  **No**

Based on the amount that you intend to set aside for Administration, the size of your total award, and your decision

**NOT TO** use set aside funds to support a High Cost Fund, the maximum that you may use for Other State-Level Activities is:

\$12,659,366

How much do you want to set aside for Other State-Level Activities?  **\$11,993,083** **OK**

**You must distribute the amount you want to set aside for Other State-Level Activities the following activities. You can distribute amounts in any order you wish. The total balance remaining to be distributed at any time appears in red.**

**Leave Blank**

Required Activities:

**\$0** More needs to be distributed.

For monitoring, enforcement, and complaint investigation. (You must use at least \$1 for this purpose)

h.

To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel. (You must use at least \$1 for this purpose)

i.

\$0 More needs to be distributed.

**Optional Authorized Activities:**

For support and direct services, including technical assistance, personnel preparation, and professional development and training

j.

\$0 More needs to be distributed.

To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

k.

\$0 More needs to be distributed.

To assist local educational agencies in meeting personnel shortages.

l.

\$0 More needs to be distributed.

To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

m.

\$0 More needs to be distributed.

To support paperwork reduction activities, including expanding the use of technology in the IEP process.

n.

\$0 More needs to be distributed.

To improve the use of technology in the classroom by children with disabilities to enhance learning.

o.

\$0 More needs to be distributed.

To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

p.

\$0 More needs to be distributed.

Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

q.

\$0 More needs to be distributed.

Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

r.

\$0 More needs to be distributed.

To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

s.

\$0 More needs to be distributed.

To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in Section 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under Section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 1111(b)(2)(G) of the Elementary and Secondary Education Act of 1965.

t.

\$0 More needs to be distributed.

The total of details for your Other State-Level Activities set-aside is

\$11,993,083

OK

You are almost done.

If you are using money for a High Cost Fund. You must report how much you will use for each of the following two activities. You reported that you would use

\$0

To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund.

u.

To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to 20 U.S.C. 1411(e)(3)(B)(ii) (Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.)

v.

Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i) - A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(j), but may use the funds the State reserves under 20 U.S.C. 1411(e)(1), to establish and support the high cost fund.

Subtotal, High Cost Fund

\$0

OK

Section 10-76d(e) (2) and (5)	State agency placements of children eligible for special education: apportionment of educational and residential costs; grants to LEAs; responsibility of placing agency
Section 10-76d(e)(3)	Grants for LEAs who educate eligible children who reside on state-owned or leased property
Section 10-76d(e)(4)	Department of Mental Health and Addiction Services (DMHAS) must provide regular and special education to eligible residents in facilities operated by DMHAS
Section 10-76d(f)	Out-of-state placements
Section 10-76d(g)(2)	State Board of Education (SBE) to approve out-of-state placements annually if such placement continues beyond three years
Section 10-76e	School construction grants for cooperative regional special education facilities
Section 10-76f	Definition of terms used in formula for state aid for special education
Section 10-76g	State aid for special education
Section 10-76h(a)(2)	The LEA must request a due process hearing in the event the parent refuses or revokes consent for placement in a private facility, provided placement in the private facility is not the initial receipt of special education services
Section 10-76h(c)(1)	State Department of Education (SDE) to provide training for special education hearing officers
Section 10-76h(c)(2)	Both parties to a hearing must participate in a prehearing conference
Section 10-76h(d)(1)	The hearing officer may include in the final decision and order a comment on the conduct of the proceedings
Section 10-76h(d)(2)	Enforcement authority of the SDE with respect to hearing decisions
Section 10-76h(d)(3)	If ordered by the hearing officer, the LEA may conduct an initial evaluation or reevaluation or place a child in a private facility (if not the initial receipt of special education services) without the consent of the parent
Section 10-76h(d)(4)	The SBE must provide, free of charge, transcripts in the event the hearing decision is appealed
Section 10-76d(e)	Payment of reasonable expenses for hearing officers
Section 10-76i	Advisory Council for Special Education: includes members not stipulated in IDEA
Section 10-76dd	Special education supervisory personnel: provides reimbursement to LEAs for supervisory personnel
Section 10-76ee	Administrative representative at PPT meeting need not be the principal of the school
Section 10-76ff	In determining eligibility for special education, the LEA may not find the child eligible if such determination is based solely on evidence that the child's behavior

violates the school's disciplinary policies or evidence that is derived from the contents of the disciplinary records

Section 10-94f Surrogate parent program; surrogate parents may be appointed for children exited from special education but receiving services pursuant to a Section 504 plan

Sections 46a-150 to  
45a-154

*Use of physical restraint and seclusion in public schools for children with disabilities*

State Regulations  
As of January 1, 2010

- Section 10-76a-1 Definition of child requiring special education includes gifted and talented  
Definition of planning and placement team
- 10-76a-2 Definition of special education personnel  
Definition of extraordinary learning ability, gifted and talented, outstanding talent in the creative arts and pregnancy
- 10-76b-5  
to 10-76b-11 Use of physical restraint and seclusion in public schools
- 10-76d-2 Personnel; ratios for supervisory personnel (effectively repealed by the provisions of Section 10-76dd of the general statutes)
- 10-76d-7 Referral; referrals from a physician, clinic or social worker permitted provided the parent allows it; standard referral form to be provided; interventions in regular education shall be explored before a referral to special education is made; children who are suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance must be referred
- Section 10-76d-8 Consent: if the parents fail to respond to a request for consent where consent is required, the LEA shall construe that as refusal of consent
- Section 10-76d-11 IEP components; short term instructional objectives
- Section 10-76d-13 Timelines: if a referral is made during the academic year, the IEP must be implemented within 45 school days of referral, exclusive of the time necessary for parental consent; if the PPT recommends and out-of-district or private placement, the IEP shall be implemented within 60 school days of the date of referral, exclusive of the time necessary for parental consent; a full copy of the IEP shall be provided to parents within five school days after the PPT meeting;
- Section 10-76d-14(b) Trial placement for diagnostic purposes: a PPT may use a trial placement for diagnostic purposes: a structured program of no more than 8 weeks duration, with written goals and objectives and the PPT shall meet at least once every two weeks to review the placement; five days before the end of the diagnostic placement, the PPT reconvenes to write the child's IEP based on the findings made during the placement

Section 10-76d-15	Homebound and hospitalized instruction: required to be provided when a child will be absent from school for medical reasons for at least three weeks; conditions to be met include provision of doctor's note indicating length of absence from school and anticipated date of return; instruction to begin no later than two weeks from the first date of absence; children in K-6 receive at least 5 hours of instruction a week; 7-12, at least 10 hours
Section 10-76d-17	Approval standards for private facilities
Section 10-76d-18	Education records; access rights include the right to one free copy of the record; right to copy of the record limited by copyright laws, but not right to review and inspect record if it meets the definition of education record found in FERPA
Section 10-76d-19	Transportation; travel time not to exceed one hour each way, unless approved by the SBE; in-service training of operators of vehicles required; all vehicles shall meet DMV requirements; transportation aides as are appropriate; if LEA requests parent transports a child, parent shall be reimbursed
Section 10-76h-6	Advisory opinion process; dispute resolution alternative to mediation and full hearing
Section 10-76h-7	Prehearing conference to clarify issues in dispute, establish hearing dates, review the possibility of settlement, organize the submission of exhibits, identify witnesses and address other administrative matters as are appropriate; scheduling may be over consecutive days; identification of length of case; hearing officer has sole discretion to determine length of hearing; specific extension of the 45-day timeline at the request of a party to the hearing, except for expedited hearings
Section 10-76h-8	Motion practice: motion to recuse, dismiss, consolidate, clarify the findings or decision of the hearing officer and other motions as may be appropriate
Section 10-76h-9	Postponements and extensions: explicit requirements for requesting, conditions under which hearing officer may grant or deny request
Section 10776h-11	Hearing rights: allows out-of-state attorneys to appear in special education due process hearings with a sponsoring Connecticut attorney
Section 10-76d-12	Exhibits, documents presented at the hearing, witnesses: presentation and appearance of exhibits and documents described
Section 10-76d-13	Conduct of hearings: authority of the hearing office to manage hearings, including exclusion of disruptive parties or other participant; securing interpreters for the hearing
Section 10-76d-14	Burden of proof is in all cases on the LEA; party who filed for the case has the burden of going forward with the evidence; hearing officer authority to bifurcate hearing re: unilateral placement
Section 10-76d-15	Evidence; introduction of and management by hearing officer; hearing officer has subpoena powers over witnesses; hearing officer may take administrative notice of facts, may receive stipulations from the parties and may additional evidence
Section 10-76h-18	Default or dismissal of hearing requests



**State of Connecticut Department of Education  
Division of Family and Student Support Services  
Bureau of Special Education**



**Procedural Safeguards Notice Required  
under IDEA Part B**

**Introduction**

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parent, with a notice containing a full explanation of the procedural safeguards available under the IDEA and the IDEA regulations. A copy of this notice must be given to you **one time each year** and also when the following occurs:

- The first time you or the school district asks for an evaluation.
- You ask for a copy of these procedural safeguards.
- The first time in a school year you request a due process hearing or file a state complaint.
- A decision is made to take a disciplinary action against your child that is a change in placement.

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under the IDEA regulations which are the following:

34 CFR 300.148	Unilateral placement
34 CFR 300.151 through 300.153	State Complaint Procedures
34 CFR 300.9, 34 CFR 300.300	Parental Consent
34 CFR 300.502 through 300.503	Independent Educational Evaluation and Prior Written Notice
34 CFR 300.505 through 300.518	Other procedural safeguards, mediation due process complaints, resolution process, impartial due process hearing
34 CFR 300.530 through 300.536	Discipline procedures
34 CFR 300.610 through 300.625	Confidentiality of Information

Each section has the Federal citation printed with it; where there is a state statutory or state regulatory provision that coincides with the Federal requirements, the state citation is provided.

## **TABLE OF CONTENTS**

<b>General Information</b>	
Prior Written Notice	Page 1
<b>Parental Consent-Definition</b>	Page 2
<b>Independent Educational Evaluation</b>	Page 6
<b>Confidentiality of Information; Access to Records</b>	Page 7
<b>State Complaint Procedures</b>	Page 11
<b>Due Process Complaint Procedures</b>	Page 14
<b>Resolution Process</b>	Page 17
<b>Mediation</b>	Page 18
<b>Hearings on Due Process Complaints</b>	Page 19
<b>Advisory Opinion</b>	Page 21
<b>Hearing Decisions</b>	Page 22
<b>Child’s Placement Pending Due Process Hearings</b>	Page 24
<b>Attorneys Fees</b>	Page 25
<b>Procedures for Disciplining Children with Disabilities</b>	Page 26
<b>Protections for Children Not Yet Eligible for Special Education</b>	Page 31
<b>Unilateral Placement by Parents of Children in Private Schools</b>	Page 33

## **GENERAL INFORMATION**

---

### **Prior Written Notice**

34 CFR 300.503; Connecticut Regulation Section 10-76d-8

You have the right to get written notice no later than five school days after the Planning and Placement Team (PPT) meeting where the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child. This is called prior written notice.

### **Content of Notice**

The written notice must tell you:

1. Exactly what the school district proposes or refuses to do;
2. Why the school district proposes or refuses to take action;
3. The other options the PPT talked about and the reasons why those were not done;
4. About each evaluation procedure, assessment, record or report that the PPT used as a basis for the proposed or refused action;
5. About other factors that were relevant to the PPT's proposal or refusal;
6. That you have protections under the procedural safeguards provisions of the IDEA;
7. How you can get a copy of these procedural safeguard protections; and
8. Resources for you to contact to get help in understanding the IDEA as it relates to the provision of special education and related services for your child.

### **Notice in Understandable Language**

The notice must be written in a way that would be easy to read and understand and provided in your native language or another mode of communication, unless it is clearly not possible to do so. If your native language or other means of communication is not a written language, the school district must make sure:

1. The notice is given orally or by another way to you;
2. You understand what is in the notice; and
3. There is written evidence that these two steps have been taken.

### **Electronic Mail**

34 CFR 300.505

If your school district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail: Prior Written Notice, Procedural Safeguards Notice and Notices related to a due process complaint.

## **PARENTAL CONSENT-DEFINITION**

---

34 CFR 300.9

Consent means:

1. You have been fully informed in your native language or another mode of communication about the action for which you are being asked to give consent;
2. You understand and agree in writing to let the school take the action for which they are asking your consent. The consent describes this action and if school records are to be sent to someone, the school tells you what records will be sent and to whom the records will be sent; and
3. You understand that you willingly give consent and you may withdraw your consent any time. If you wish to withdraw your consent, you must do so in writing. If the school requests consent and you do not respond to the school in ten school days, the school will take that to mean that you do not give your consent. If you withdraw your consent, the withdrawal does not affect the actions taken or the services provided to your child during the time the school district had your consent. The school district is also not required to change your child's education records to remove any reference that your child received special education and related services after you withdraw your consent.

When a child turns eighteen years old, the child has all rights the parent used to have. A child will not get the rights if the Court has said the child is not able to decide in a way that is good for the child. The school shall give any notice required by the law to both the child and the parent even though the child would now have the rights that the parent used to have. When the rights pass from the parent to the child, the school must notify the child and the parent of the transfer of rights.

### **PARENTAL CONSENT**

34 CFR 300.300; Connecticut Regulation Section 10-76d-8

#### **Consent for Initial Evaluation**

An initial evaluation (testing) is done to find out if a child is disabled and the kind and amount of special education services a child needs. Certain tests or ways of evaluating are selected for each child. These tests are not the tests that are given to all children in a school, grade or class.

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible for special education and related services without first providing you with prior written notice of the proposed evaluation and obtaining your consent as described above.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability and in need of special education and related services.

Your consent for the initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for the initial evaluation of your child, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### **Special rules for initial evaluation of wards of the State**

When the school seeks to evaluate a child for the first time and the child is in the custody of the Commissioner of Children and Families and is not residing with the child's parent, the school is not required to get the consent from the parent to determine whether the child is disabled and in need of special education services if:

1. After reasonable efforts, the school cannot find out where the parent is located;
2. The rights of the parent have been terminated by the Court; or
3. A judge decided that the right of the parent to make decisions about the child's education is to be made by a person appointed by the Court.

A ward of the state, as used in the IDEA, means a child who, as determined by the State where the child lives, is a foster child, considered a ward of the State under State law or, is in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of parent as used in the IDEA.

### **Consent for initial receipt of services**

Your school district must obtain your informed consent before providing special education and related services to your child for the first time.

The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you fail to respond or refuse to give consent for your child to receive special education and related services, or if you later withdraw your consent for your child to receive special education and related services in writing, your school may not use the procedural safeguards (mediation, resolution meeting or due process hearing) to reach an agreement or get a ruling that services may be provided to your

child without your consent. Under these circumstances, the school would not violate its responsibility to make available a free appropriate public education (FAPE) to your child and is not required to hold a PPT meeting or develop an individualized education program (IEP) for your child.

If you withdraw your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with Prior Written Notice before stopping the services.

### **Consent for reevaluations**

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can show it took reasonable steps to obtain your consent for your child's reevaluation AND you did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the procedural safeguards procedures (mediation, due process complaint, resolution meeting, and impartial due process hearing) to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

### **Consent for private school placements**

Connecticut state regulations, Section 10-76d-8, requires school districts to obtain your consent before a child may be placed in a private school by the school district to receive special education and related services. If your child is already receiving special education and related services and the PPT proposes a private school placement and you refuse to provide consent for the private school placement, the school district is required by Section 10-76h of the general statutes to file for due process to ensure your child is provided with a free appropriate public education if you refuse to provide consent for the private school placement or if you revoke your consent for the private school placement.

If the proposed private school placement is the first time your child is to receive special education and related services and you refuse to provide consent for special education and related services, the school district may not use the procedural safeguards (mediation, resolution meeting or due process hearing) to override your refusal to consent to the initial provision of special education and related services. If you indicate that you agree that your child is eligible for special education and related services and should receive special education and related services, but do not agree with the private school placement, the school district is required to use the procedural safeguards (mediation, resolution meeting or due process hearing) to ensure your child receives a free appropriate public education.

If your child is attending the private school placement and you revoke consent for the private school placement, but not consent for your child to receive special education and related services, the school district must use the procedural safeguards (mediation, resolution meeting or due process hearing) to ensure your child receives a free appropriate public education. If you revoke consent for the private school placement and revoke consent for your child to receive special education and related services, the school district may not use the procedural safeguards (mediation, resolution meeting, due process

hearing) to override the revocation of consent for your child to receive special education and related services.

The school district must develop and implement procedures to ensure that your refusal to consent to any of the services or activities listed above does not result in a failure to provide your child with a free appropriate public education. Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

### **Documentation of reasonable efforts to obtain parental consent**

Anytime the school seeks your consent, the school must have a record of its reasonable efforts to get your permission. This record might include:

1. Telephone calls tried or made and the results of those calls;
2. Copies of letters sent to you and any letters you send back to the school; and
3. Visits made to your home or workplace and the results of those visits.

### **Other consent requirements:**

Your consent is not needed before the school district:

1. Reviews existing records of your child that the school already has when the school is evaluating or reevaluating your child; or
2. Gives a test or other means of evaluation that is given to all children unless the school gets permission from all parents before giving a test or other means of evaluation.

If the school district files a due process complaint (see **Due Process Complaint Procedures**, page 15) to determine whether it may conduct an evaluation or place your child who is already receiving special education in a private school and the hearing officer decides in favor of the school, the school may evaluate or place your child in a private school without your consent. If the dispute was about whether to conduct an evaluation and you disagree with the hearing officer's decision, you may go to either State Superior Court or Federal District Court to stop the school from evaluating your child. If the dispute was about whether to place your child in a private school and you disagree with the decision of the hearing officer, you may go to either State Superior Court or Federal District Court, or may withdraw consent for the provision of all special education and related services to your child.

If you are home schooling your child or you have placed your child in a private school at your expense and you do not provide consent for your child to be evaluated for the first time or for reevaluation or you fail to respond to a request to provide consent, the school may not use the procedural safeguards (mediation, resolution session, due process hearing) and is not required to consider your child as eligible to receive services for parentally-placed private school children.

## **Independent Educational Evaluation (IEE)**

---

34 CFR 300.502; Connecticut Regulations Section 10-76d-12

### **General**

You have the right to have the school district pay for an evaluation done by a person who does not work for the school district. This is called an Independent Educational Evaluation (IEE) done at public expense. You must disagree with the evaluation of your child obtained by the school district to be able to request an IEE at public expense. "Public expense" means that the school district either pays for the full cost of the IEE or ensures that the evaluation is otherwise provided at no cost to you.

The school district may ask you for the reason why you object to the evaluation done by the school district. You are not required to provide an explanation of your objections to the school district. The school district may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to defend the school district's evaluation of your child.

If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the school district's criteria that apply to independent educational evaluations.

### **Right to an evaluation at public expense**

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by the school district, subject to the following conditions:

1. If you request an IEE of your child at public expense, your school district must, without unnecessary delay **either**: (a) file a due process complaint to show that its evaluation of your child is appropriate; or (b) provide an IEE at public expense, unless the school district demonstrates in a due process hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If the hearing officer decides that the school district's evaluation is appropriate, the school district does not have to pay for the evaluation requested or arranged for by you. However, you still have the right to have an IEE done at your own expense.
3. You are entitled to only one IEE at school expense each time the school district conducts an evaluation with which you disagree.

### **Parent Initiated Evaluations**

You have the right to obtain an IEE at your own expense. You may give the results of the evaluation to the school district. If you share the results of the evaluation with the school district, the school district must consider the results of the evaluation, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education to your child **and** the evaluation results may be used at a due process hearing.

## Requests for evaluations by hearing officers

A hearing officer may ask that a child receive an IEE. The school district must pay for this evaluation.

### School district criteria

When the school district pays for an IEE, the evaluation must meet the standards for evaluation used by the school district. This includes the location where the evaluation is done and the skills of the person doing the evaluation. The school district may not set additional standards or timelines when the school district pays for the IEE. The standards of the school district must not interfere with your right to have the IEE.

## **CONFIDENTIALITY OF INFORMATION; ACCESS TO RECORDS**

---

### Definitions

34 CFR 300.611

As used under the heading, Confidentiality of Information:

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of “education record” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA)).

### Personally Identifiable

34 CFR 300.32

*Personally identifiable* means information that includes:

1. Your child’s name, your name as the parent, or the name of another family member;
2. Your child’s address;
3. A personal identifier, such as your child’s social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify your child with reasonable clarity.

### Notice to Parents

34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State; a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

2. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
3. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

### **Access Rights**

34 CFR 300.613; Connecticut Regulations Section 10-76d-18

The school district must allow you to:

Inspect and review all education records which are kept or used by the school district that are collected, maintained, or used by your school district under Part B of IDEA. This means

that you have the right to review and inspect all education records concerning the identification of your child as a child eligible for special education, evaluation of your child to determine eligibility for special education, the educational placement of your child or your child’s right to a free, appropriate public education.

The school district may take for granted that you have the right to inspect and review records unless the school district has been told that you do not have this right according to State law governing guardianship, separation and divorce.

Section 10-76d-18 of the Connecticut regulations requires that the school district allow you to inspect educational records no later than 10 school days after you request to do so and within 3 school days if it is to prepare for a PPT meeting about your child’s IEP or any due process hearing (including a resolution meeting or a due process hearing regarding discipline).

The school district must, in spite of the timelines noted above, comply with your request as soon as possible and before any PPT meeting, resolution meeting, or hearing (including a hearing about discipline).

Your right to inspect and review the education records includes:

1. Your right to get a response from the school district to your reasonable requests for explanations and interpretations of the records;
2. Your right to receive one free copy of the records. This is a right guaranteed by Section 10-76d-18 of the Connecticut regulations. You must ask for a free copy in writing. The school district has 5 school days to provide you with a copy of the requested records. The school district may charge for additional copies, however, the school district may not charge you for the additional

copies if doing so would interfere with your right to review and inspect your child's records;  
and,

3. Your right to have a person acting for you inspect and review the records.

### **Record of Access**

34 CFR 300.614

Each school district must keep a record of the parties obtaining access to education records collected, maintained, or used under Part B of IDEA except access by parents and authorized employees of the school district, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

### **Records on more than one child**

34 CFR 300.615

If any education records include information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information relating to their child.

### **List of Types and Locations of Information**

34 CFR 300.616

On request, your school district must provide you with a list of the types and locations of education records collected, maintained, or used by the district.

### **Fees**

34 CFR 300.617

The school district may not charge a fee to look for records.

### **Amendment of Records at Parent's Request**

34 CFR 300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school district to change the records. The school district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If the school district refuses to change the information as you have requested, the district must inform you of this refusal and advise you of your right to a hearing to challenge the content of the record, see below.

### **Challenging the Content of the Record, opportunity for a hearing**

34 CFR 300.619

The school district must, on request, provide you with an opportunity for a hearing to challenge the content of your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **Hearing Procedures**

34 CFR 300.621

A hearing to challenge information in your child's education records must be conducted according to the procedures for this hearing found in the Family Educational Rights and Privacy Act (FERPA), the federal law that addresses access to educational records.

## **Result of Hearing**

34 CFR 300.620

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the school district.

The explanation placed in the records of your child must:

1. Be maintained by the school district as part of the records of your child as long as the record or contested portion is maintained by the school district; and
2. If the school district discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

## **Consent for Disclosure of Personally Identifiable Information**

34 CFR 300.622

Unless the information is contained in education records, and the disclosure is authorized without your consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of other agencies that participate in Part B of IDEA. Except under the circumstances described below, your consent is not required before personally identifiable information is released to officials of other agencies that participate in Part B of IDEA for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of other agencies that participate in Part B of IDEA providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **Safeguards**

34 CFR 300.623

Each school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

One official at each school district must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each school district must maintain, for public inspection, a current listing of the names and positions of those employees who may have access to personally identifiable information.

## **Destruction of Information**

34 CFR 300.624

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child. In Connecticut, school districts are required to maintain special education records for 6 years after the records are no longer needed to provide educational services to your child (i.e. graduation, exiting from special education, and transfer to another school district or private school). After this time period has elapsed, the school district must destroy your child's information if you request them to do so. A permanent record of your child's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **STATE COMPLAINT PROCEDURES**

---

### **Differences Between State Administrative Complaints and Due Process Complaints**

The regulations for Part B of IDEA have different procedures for State administrative complaints and for due process complaints and hearings. As explained in greater detail below, any individual or organization may file a State complaint alleging a violation of any Part B requirement or any state statute or regulations relating to the provision of special education to eligible children by a school district, the SDE or any other public agency responsible for providing services under state statutes or regulations regarding the provision of special education and related services.

Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

An investigation of a State administrative complaint must be completed within a 60 calendar day timeline unless the timeline is properly extended. An impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar days after the end of the resolution period, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request.

The State administrative complaint and due process complaint, resolution and hearing procedures are described more fully below. The SDE has developed model forms to help you file a due process complaint and help you or other parties to file a state complaint. You may access this information on the SDE website at [www.sde.ct.gov](http://www.sde.ct.gov) Under Quicklinks, click onto Special Education; scroll down to Legal/Due Process and look for the forms for Administrative Complaint, Mediation, Hearing and Advisory Opinion.

### **State Administrative Complaint Procedures**

34 CFR 300.151; Complaint Resolution Process

#### **General**

The SDE has a written procedure for resolving any complaint, including a complaint filed by an organization or an individual from another State and has a procedure for the filing of a complaint with the SDE. The State complaint procedures are available on the SDE website as indicated above ([www.sde.ct.gov](http://www.sde.ct.gov), click onto Special Education; scroll down to Legal/Due Process and look for "Complaint Resolution Process"). If in its investigation of the complaint, the SDE finds that a school district has failed to provide appropriate services, the SDE must address:

1. The failure of the school district to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all children with disabilities.

### **State Complaint Procedures; time extension; final decision, implementation**

34 CFR 300.152

The complaint must claim a violation that occurred not more than one year before the date that the complaint is received.

The SDE shall make a decision about the issues in the complaint within 60 calendar days after the complaint is filed with the SDE. The 60- calendar-day-limit may be extended if the:

1. SDE believes there are exceptional circumstances with respect to this complaint; or
2. Complainant and the school district agree to mediation.

In making a decision, the SDE shall:

1. Carry out an on-site visit at the school, if the SDE believes it must be done;
2. Give the complainant a chance to give, orally or in writing, more facts about the complaint;
3. Provide the school district with the opportunity to respond to the complaint, which may include:
  - a. If the school district so desires, a proposal to resolve the complaint, and

- b. An opportunity for the complainant and the school district to go mediation.
4. Review all the facts regarding the complaint and decide if the school failed to meet the law; and
5. Send out a written decision to the complainant. The decision will rule on each issue raised in the complaint and contain the facts on which the decision was based, how the facts were related to the decision and the reasons for the decision.

The carrying out of the SDE's decision may include:

1. Assistance to the school district by the SDE;
2. Talks to help the parent and the school district agree to terms to resolve the complaint; and
3. Actions for the school district to take to meet the law.

### **State Complaints and Due Process Hearings**

You may also request a hearing even if a complaint has been filed; however the SDE will not look into any part of a complaint that is part of the due process hearing until the final decision of the hearing is made. Any issue in the complaint that is not part of the due process hearing must be resolved following the steps above in this section. If an issue is raised in a complaint that was already decided in a due process hearing with you and the school district, the hearing decision is final and will not be reviewed by the SDE. The SDE will inform the person who files the complaint that a review will not be done. If a complaint states that the school district has failed to carry out the final decision of the due process hearing, the SDE shall resolve the complaint.

### **Filing a State Administrative Complaint**

34 CFR 300.153; Complaint Resolution Process

An organization or a person may file a signed complaint in writing. The person or organization filing the complaint is called the complainant. The complaint must state:

1. The school district or the SDE or any other public agency that is responsible for providing services under Part B of IDEA or state statutes or regulations regarding the provision of special education and related services did not carry out the Federal (IDEA) or the State laws that protect children who are disabled;
2. The facts on which the complaint is based; and
3. The signature and contact information for the person or organization filing the complaint.

If the complaint involves a specific child, the complaint shall include:

1. The name and address of the child;
2. The name of the school the child is attending;
3. In the case of a homeless child, the available contact information for the child and the name of the school the child is attending;
4. A description of the nature of the problem of the child, including the facts related to the problem; and
5. A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

A complaint shall be sent to the school district and, at the same time, a copy to:

Connecticut State Department of Education  
Bureau of Special Education  
Due Process Unit, P.O. Box 2219  
Hartford, CT 06145-2219      **FAX 860 713-7153**

## **DUE PROCESS COMPLAINT PROCEDURES; DUE PROCESS HEARINGS**

### **FILING A DUE PROCESS COMPLAINT**

34 CFR 300.507; Section 10-76h of the general statutes; Sections 10-76h-1 through 10-76h-18 of the state regulations

#### **General**

You or the school district may file a due process complaint on any matter relating to a proposal or refusal to initiate or change:

1. The identification of a child;
2. The evaluation of a child;
3. The educational placement of the child; or
4. The provision of a free appropriate public education (FAPE) to the child.

The due process complaint begins the special education administrative hearing process. You may hear the hearing process referred to as “impartial hearing” or “special education hearing” or “due process hearing”.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint. This two year limitation does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

For example, if you were not given a copy of the “Procedural Safeguards Notice Required under Part B of IDEA”, the two-year limitation will start at the time a copy is properly given to you.

#### **Information for parents**

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the school district file a due process complaint.

When you ask for a due process hearing, the school district will tell you about the use of mediation as a means to settle the issues.

### **DUE PROCESS COMPLAINT**

34 CFR 300.508; Section 10-76h of the general statutes; Sections 10-76h-1 through 10-78h-18 of the state regulations

In order to request a due process hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. As indicated above, submitting a due process complaint means the same thing as requesting a hearing. The due process complaint must contain all of the information listed below and must be kept confidential.

The due process complaint must contain the following information:

1. The child's name;
2. The address of the child's residence;
3. If the child is homeless the available contact information for the child;
4. The name of the child's school;
5. A description of the nature of the problem relating to the proposed or refused action, including the facts related to the problem; and
6. What will resolve the problem, to the extent known and available to the complaining party (you or the school district) at the time.

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

Whoever files the complaint must also provide the SDE with a copy of the complaint. Send the copy to:

Connecticut State Department of Education  
Bureau of Special Education-Due Process Unit  
P.O. Box 2219  
Hartford, CT 06145-2219  
FAX 860 713-7153

### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (it has the information listed above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes the due process complaint does not contain the required information. The hearing officer, within 5 calendar days of receiving this notice, must decide if the required information has been given and immediately notify you and the school district in writing of that decision. If the receiving party does not notify the hearing officer, the request for hearing would be considered to contain the required information.

### **Amending the due process complaint**

You or the school district may make changes to the due process complaint only if:

1. The other party approves the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting (see Page 18, **Resolution Process**); or
2. The hearing officer gives permission, which may only be given at any time not later than 5 calendar days before the hearing begins.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of the school district receiving the complaint) and the time period for resolution (within 30 calendar days of the school district receiving the complaint) start again on the date the amended complaint is filed with the school district.

### **School district response to a due process complaint**

If the school district has not sent prior written notice to you (See Page 1, **Prior Written Notice**) regarding the issues noted in your request for hearing, the school district must, within 10 calendar days of receiving your request for hearing, send you a response that includes the following information:

1. An explanation of why the school district proposed to or refused to take the action raised in the due process complaint;
2. A description of other options your child's PPT talked about and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record or report that the school district used as a basis for the proposed or refused action; and
4. A description of the other factors that were relevant to the school district's proposed or refused action.

Providing this information does not prevent the school district from claiming that the content of your due process complaint was insufficient.

Except as provided immediately above, the party receiving a due process complaint must, within 10 calendar days of receiving the due process complaint, send to the other party a response that specifically addresses the issues in the due process complaint.

### **Model Forms**

34 CFR 300.509

The SDE has developed a model form to help you file a due process complaint and to help you and other parties to file a State Administrative Complaint. However, the school district or the SDE may not require the use of these model forms. You may use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or State Administrative Complaint. The model forms are available on the SDE website at [www.sde.ct.gov](http://www.sde.ct.gov) Under Quicklink, click

onto Special Education; scroll down to Legal/Due Process and look for the forms for Administrative Complaint and Hearing.

## **RESOLUTION PROCESS**

34 CFR 300.510

### **Resolution meeting**

Within 15 calendar days of getting your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant members of the Planning and Placement Team (PPT) who have specific knowledge of the facts identified in your due process complaint. You and the school district determine the relevant members of the PPT to attend the meeting. The school district must have a person at the meeting who has the authority to make a decision for the school district. The school district may not bring an attorney unless you bring an attorney.

The purpose of the resolution meeting is for you to discuss your due process complaint, and the facts that form the basis of the due process complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting does not have to be held if:

1. You and the school district agree in writing not to have the resolution meeting; or
2. You and the school district agree to use mediation.

### **Resolution period**

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of receiving the due process complaint (during the time period for the resolution process), the due process hearing may begin except as noted below on Page 19, **Adjustments to the 30-Calendar Day Resolution Period**.

The 45-calendar-day timeline for issuing a final due process hearing decision begins at the expiration of the 30 calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Unless you and the school district both agree not to have the resolution meeting or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the resolution meeting is held.

If after making reasonable efforts and documenting those efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, ask the hearing officer to dismiss your due process complaint. Documentation of the school district's efforts to obtain your participation must include a record of the school district's attempt to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and,
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving your due process complaint or fails to participate in the resolution meeting, you may ask the hearing officer to begin the 45-calendar-day due process hearing timeline.

### **Adjustments to the 30-calendar-day resolution period**

The 30-calendar-day resolution period may be adjusted. The 45-calendar-day timeline for the hearing will start the day after one of the following events:

1. You and the school district agree in writing not to hold the resolution meeting;
2. After the mediation or resolution meeting starts but before the end of the 30-calendar-day resolution period, you and the school district agree in writing that no agreement is possible;
3. If you and the school district agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, you or the school district withdraws from the mediation process.

### **Written Settlement Agreement**

If at the resolution meeting you and the school district resolve the issues, you and the school district must enter into a legally binding agreement that is:

1. Signed by you and a person from the school district who has the authority to make the agreement; and
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

### **Agreement review period**

You or the school district will have 3 business days from the signing of the agreement to change your minds and not have to go along with the agreement.

## **MEDIATION: Settling a Dispute When the Parent and the School District Do Not Agree**

Mediation is a way to settle a dispute when the parent and the school do not agree on:

1. The identification of the child;
2. The evaluation of the child;
3. The educational placement of the child; or
4. Any other matter related to provision of a free appropriate public education to the child (FAPE).

Mediation is voluntary. This means that you and the school district have a choice to use mediation to resolve the dispute. Neither you nor the school district is required to agree to use mediation. The mediation cannot be used to:

1. Deny or delay your right to a hearing; or
2. Deny any other rights that you have under the State or Federal special education laws.

Before filing a state administrative complaint (see page 12) or before asking for a due process hearing or any time after filing a due process complaint or during the due process hearing, you and the school district may ask for mediation by sending a letter to:

Connecticut State Department of Education  
Bureau of Special Education-Due Process Unit  
P.O. Box 2219  
Hartford, CT 06145-2219 FAX 860 713-7153

The Due Process Unit has a list of mediators and will assign a mediator from a rotating list who:

1. Is trained in mediation;
2. Does not show favor to either the parent or the school;
3. Is knowledgeable about the special education laws;
4. Is an education consultant with the SDE; and
5. Does not provide direct services to the child who is the subject of the mediation.

The mediator will try to help settle the concerns of you and the school district. The mediation will be held in a place that is close for you and the school district staff. The SDE pays for the cost of the mediation process.

If you and the school district reach agreement on the issues, what you have agreed to will be put in writing and will be signed by you and the person from the school district who has the authority to sign the agreement. The mediation agreement shall state the discussions that occurred during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearing or court action that may follow the mediation. The mediation agreement is enforceable in any State Court or in Federal District Court.

## **HEARINGS ON DUE PROCESS COMPLAINTS**

---

### **IMPARTIAL DUE PROCESS HEARING**

34 CFR 300.511; Section 10-76h of the Connecticut General Statutes; Sections 10-76h-1 to 10-76h-18 of the Regulations of Connecticut State Agencies

## **General**

If the school district requests the hearing, the 45-calendar-day timeline shall commence:

1. After the hearing officer deems the request to be sufficient (See Page 12, **Sufficiency of Complaint**);
2. Immediately following your notice to the hearing officer that you will not challenge the sufficiency of the hearing request; or
3. After 15 calendar days of your receipt of the school district's request for hearing, if you do not challenge the sufficiency of the school district's request for hearing.

Before the start of the hearing, you and the school district will take part in a telephone call with the hearing officer. This is called a prehearing conference. During the call you and the school district will try to work out the dispute, if possible, narrow the issues in dispute and talk about scheduling the due process hearing.

### **Impartial Hearing Officer**

The hearing will be held by a hearing officer who:

1. Must not be an employee of the SDE or the school district where the child goes to school or the school district responsible for the child's education;
2. Must not have a personal or professional interest which would get in the way of his or her being fair in the hearing;
3. Must be knowledgeable and understands the Federal (IDEA) and State special education laws and regulations and the way these laws are understood by Federal and State Courts;
4. Must have the knowledge and ability to conduct hearings, and be able to write decisions in accordance with appropriate, standard legal practice.

A person who would be a hearing officer is not an employee solely because he or she is paid by the SDE to act as a hearing officer.

The SDE, Due Process Unit, and the school district shall keep a list of the persons who serve as hearing officers. This list shall state the qualifications of each of those persons.

### **Subject matter of due process hearing**

The party (you or the school district) that files the due process complaint may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

### **Timeline for requesting a hearing; exception**

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint. This timeline does not apply to you if you could not file the due process complaint because:

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The school district withheld information from you that it was required to provide to you under Part B of IDEA.

## **Hearing Rights**

34 CFR 300.512

### **General**

You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by an attorney or persons with special knowledge or training about the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney;
3. Present evidence, question (confront), cross-examine and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that had not been given to that party at least five business days before the hearing. Evaluations that have been completed by that date and recommendations from the evaluations that one intends to use at the hearing shall be given at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or at your option, electronic findings of fact and decisions.

### **Parental rights at hearings**

You have the right to have your child at the hearing and to open the hearing to the public. You have the right to be provided with the record of the hearing at no cost.

You have the right to represent yourself at a due process hearing.

### **Additional disclosure of information**

The hearing officer may prevent you or the school district from giving any evidence at the hearing without the permission of the other party if you or the school district fails to meet the above timeline regarding the submission of evidence.

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

## **ADVISORY OPINION PROCESS**

Section 10-76h-6 of the Regulations of Connecticut State Agencies allows you and the school district to have a one day hearing through the Advisory Opinion Process. After a hearing has been requested, you

and the school district may agree to the Advisory Opinion Process by sending a letter or filling out the Advisory Opinion Process form and sending it to the Connecticut State Department of Education, Bureau of Special Education, Due Process Unit, P.O. Box 2219, Hartford, CT 06145 (FAX NUMBER: 860-713-7153). The Advisory Opinion Process allows you and the school district to state your positions in a brief manner to a hearing officer in one day; there are limits on the amount of time you and the school district have to present your positions and the number of witnesses you and the school district may present. After listening to the arguments made by you and the school district, the hearing officer will tell you and the school district how the hearing officer thinks the issues would be decided if the parent and the school district went on to a full hearing. The hearing officer who does the Advisory Opinion is not the same hearing officer who would hold the full hearing. You and the school district do not have to accept the view of the hearing officer who gives the advisory opinion. You and the school district may go on to a full hearing if the issues are not settled by receiving an advisory opinion.

## **HEARING DECISIONS**

34 CFR 300.513

### **Decision of the hearing officer**

A decision made by the hearing officer on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE, that is, on legal rights and principles.

In matters alleging a procedural violation (such as “an incomplete IEP”), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child’s right to receive a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to follow the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500 through 300.536), even if the hearing officer found that your child was not kept from receiving a free appropriate public education (FAPE).

### **Separate Request for a Due Process Hearing**

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500 through 300.563) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### **Findings and decision; Convenience of Hearings; State Advisory Council to receive copy of decision; decisions to be available to the public**

Within 45 calendar days of the start of the hearing timeline, a final decision in the hearing shall be reached and a copy of the decision shall be mailed to each of the parties. The hearing officer may allow extra time beyond the 45-calendar-day timeline when asked for by you or the school district. The hearing shall be held at a time and place that would make it easy for you and your child to attend.

The SDE shall, after taking out any data that would make the identity of the child easily known, send the written findings of fact and decisions to the State Advisory Council for Special Education and also make them available to the general public. Final decisions are available on the SDE website: go to [www.sde.ct.gov](http://www.sde.ct.gov), click onto Special Education under Quicklinks, on the Special Education Homepage, the hearing decisions are listed at the top of the page.

## **Appeals**

### **Finality of the decision; appeal; impartial review**

34 CFR 300.514

### **Finality of the hearing decision**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action to either State or Federal Court.

### **Civil Action, Including the Time Period in which to File Those Actions**

34 CFR 300.516

### **General**

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in State Superior Court or in a Federal District Court of the United States without regard to the amount in dispute.

### **Time limitation for filing an appeal**

The party (you or the school district) bringing the appeal has 45 calendar days from the date the decision is mailed to file a civil action.

### **Additional Procedures**

If you or the school district appeal the decision of the hearing officer to either State Superior Court or Federal District Court, the Court:

1. Receives the records of the hearing;
2. Hears additional evidence when asked by you or the school district; and
3. Bases its decision on the greater amount (preponderance) of evidence and grants the relief that the court determines to be appropriate.

### **Jurisdiction of District Courts**

The District Courts of the United States have the authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

## **Rule of Construction**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (for example, the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

## **THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING**

---

### 34 CFR 300.518

Except as provided below and in certain circumstances as explained in the section following on disciplining a child with a disability, when a due process hearing has been requested, your child must stay in the school program with the same services your child was getting before you and the school district had a disagreement. Your child must stay in this program until the matter is settled unless you and the school district agree to change the school program. If a hearing officer agrees with you that a change to your child's school program is appropriate, the order of the hearing officer must be carried out, even if a Court review (See Page 25, **Appeals**) has been asked for.

If your child is to enter public school for the first time, your child, with your consent, must be able to go to school until the completion of all proceedings and must be placed in the regular public school program until the completion of all proceedings.

If your child turns three years of age and is coming from a Birth-to-Three program, the school district is not required to provide the Birth-to-Three services that your child had been receiving.

If your child is found to be eligible for special education services and you consent for your child to receive services for the first time, the school district must provide the services that are not in dispute between you and the school district.

If the school district or you ask for a due process hearing after your child has been placed in an interim alternative educational setting (IAES) for disciplinary reasons for not more than 45 school days by the school district under the **Special Circumstances, Placement in an IAES** (See Page 31) or by a hearing officer under the **Appeal: Expedited Due Process Hearing for Disciplinary Matters** (See page 32), your child must stay in the IAES until the hearing officer decides differently or until the end of the specified time (which shall not be more than 45 school days), whichever comes first, unless you and the school district agree to change the school program.

If the school district wants to change your child's program after the specified time in the IAES is up and asks for a hearing, your child would return to the school program that your child was in before being placed in the IAES while the due process hearing is held.

## **ATTORNEYS FEES**

---

34 CFR 300.517

### **General**

In any action or proceeding brought under Part B of IDEA, the Court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (the case is decided in your favor, either in whole or in part).

In any action or proceeding brought under Part B of IDEA, the Court, in its discretion, may order your attorney to pay reasonable attorneys fees as part of the costs to the school district, or the SDE (if the SDE is a party to the case) if they prevail in the case, if your attorney:

1. Files a request for a hearing or review by the Court that is needless, is without good reason, or is without a proper basis (frivolous, unreasonable or without foundation); or,
2. Continues to litigate after it is clear that the matter is needless, is without good reason, or is without a proper basis; or
3. In any action or proceeding brought under Part B of IDEA the Court, in its discretion, may order your attorney or you to pay reasonable attorneys' fees as part of the costs to the school district, or the SDE, if your request for due process hearing or later court case was made for any improper purpose, such as to harass, to cause unnecessary delay, or needlessly increase the cost of the hearing or the Court review.

### **AWARD OF FEES**

A court awards reasonable attorney's fees according to the following:

The amount of attorneys' fees that is decided is based on rates common in the area in which the hearing or Court review arose for the kind and quality of services provided. No extra means may be used in figuring the fees ordered.

Attorneys' fees may not be ordered and related costs may not be returned to you in any hearing or Court review for services provided after the time of a written offer to you to settle the matter if:

1. The offer is made within the time allowed by Federal rule or, in the case of a hearing, at any time more than 10 calendar days before the hearing begins;
2. The offer is not accepted within 10 calendar days; and
3. The Court finds that the relief finally given to you is not more than the offer to settle the matter.

An order for the return of attorneys' fees and other costs may be made to you if you succeed with your case and if you had good reason for not taking the offer made by the school district to settle the matter.

An award of attorneys' fees may not be ordered for:

1. Any meeting of the PPT unless the PPT meeting is held as a result of a hearing or a Court review;
2. A mediation (See Page 20, **Mediation**); or
3. The resolution meeting (See Page 18, **Resolution Meeting**).

The Court may lower attorneys' fees whenever it finds that:

1. You or your attorney, during the hearing or the Court review, unreasonably delayed a final resolution of the dispute;
2. The amount of the attorneys' fees goes beyond, without good reason, the hourly rate common in the area for the same type of services by attorneys who compare in skill, reputation, and training;
3. The time spent and legal services provided were excessive considering the type of hearing or Court review; or
4. The attorney representing you did not give to the school district the required information when requesting the hearing when submitting the Due Process Complaint.

However, the Court may not lower attorneys' fees if the Court finds that:

1. The school district or the State unreasonably delayed the final resolution of the hearing or the Court review; or
2. The procedural safeguards under Part B of IDEA were violated.

## **PROCEDURES FOR DISCIPLINING CHILDREN WITH DISABILITIES**

---

34 CFR 300.530

### **Authority of School Personnel**

---

#### **Case-by-case determination**

School personnel may consider any special concerns (unique circumstances) on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with disability who violates a code of school conduct.

#### **General**

The school district may remove a child who violates a school rule from the current program to an Interim Alternative Educational Setting (IAES), another setting, or suspension, for not more than 10 school days in a row or for more than 10 school days in a school year and for additional removals of not more than 10 school days in a row in the same school year for separate incidents of misconduct provided the removals do not result in a change in placement, see **Change of Placement**, below.

A school district is required to provide services to a child who has been removed from his or her current placement for 10 school days or less in the same school year, if the school district provides

services to a child without a disability who has been similarly removed. Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below, See **Services during Removal**.

### **Additional Authority**

If the behavior that violated the code of school conduct was not a manifestation of the child's disability (See **Manifestation Determination**, below) and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services During Removal**. The child's PPT determines the interim alternative educational setting for such services.

### **Change in Placement Because of Disciplinary Removals**

34 CFR 300.536

A change in placement occurs if:

1. The removal is for more than 10 school days in a row; or
2. The removals make up a pattern because:
  - they total more than 10 school days in a school year
  - the child's behavior is very much like the child's behavior in previous incidents that resulted in other removals, and
  - of other factors such as the length of each removal, the total amount of time the child has been removed and the closeness in time of the removals to one another.

The school district shall determine on a case-by-case basis whether a pattern of removals is a change in placement.

If the school district seeks to change a child's placement for more than 10 school days and the behavior that led to this intended change was not a manifestation of the child's disability, the child may be disciplined in the same way and for the same amount of time that would be applied to a child who is not disabled. The child's PPT shall determine the educational setting.

### **Services during removal**

After a child has been removed from his/her school program for 10 school days in the same school year and the current removal is not for more than 10 school days in a row and is not a change in placement, the school staff along with at least one of the child's teachers shall determine the extent to which services are needed to enable the child to continue in the general education coursework, although in another setting, and to progress toward meeting the goals of the IEP and receive, as appropriate, a functional behavioral assessment (FBA) and behavior intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

If the removal is a change of placement, the child's PPT determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting

(that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

A child with a disability who is removed from the child's current placement for more than 10 school days and the behavior is not a manifestation of the child's disability (see **Manifestation Determination**, below) or who is removed under special circumstances (see **Special Circumstances**, below) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

### **Manifestation Determination**

Within 10 school days of any decision to change a child's placement for more than 10 school days because the child violated a school rule, the school district with the parent and relevant members of the PPT (to be determined by the parent and the school district) shall review all relevant information in the child's school file, including the IEP, teacher observations and any relevant information provided by the parent to determine if the behavior in question was:

1. Caused by, or was directly or to a large extent related to the child's disability; or
2. The direct result of the school district's failure to implement the IEP.

If the PPT determines that either of the above applies to the child, the behavior in question shall be determined to be a manifestation of the child's disability. This decision is known as the manifestation determination (MD).

### **Behavior was a Manifestation of the Child's Disability**

If the PPT determines that the behavior in question was a direct result of the school's failure to implement the IEP, the school district must take immediate steps to remedy the deficiencies.

If the PPT decides the behavior in question was a manifestation of the child's disability, the PPT shall:

1. If the school district had not already conducted an functional behavior assessment (FBA) before the behavior in question occurred, conduct an FBA and put into effect a behavior intervention plan (BIP) (a plan to improve the child's behavior so that the behavior that resulted in the change of the child's program does not happen again);
2. If a BIP is already in place, review the BIP and modify it, as necessary, to address the behavior in question; and
3. Except as noted in the IAES section below, return the child to the program that the child was in before being removed unless the school district and the parent agree to a change in the child's placement as part of the revised BIP.

## Notification

On the date the decision is made for a removal that would be a change in placement, the school district must notify the parent of that decision and provide the parent with a copy of the “Procedural Safeguards Notice Required under IDEA Part B”.

## Special Circumstances, Placement in IAES

A school district may place a child in an IAES for not more than 45 school days without regard to the manifestation determination (MD), in cases where a child:

1. Carries a weapon to school or has a weapon at school, on school grounds or while at a school activity;
2. Knowingly has or uses illegal drugs, or sells or tries to buy a controlled substance while at school, on school grounds or at a school activity; or
3. Has caused serious bodily injury upon another person while at school, on school grounds or at a school activity.

When the school district orders a child to an IAES for not more than 45 school days, the school district must hold a PPT meeting to determine the IAES.

## Definitions

- **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).
- **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provisions of Federal law.
- **Serious bodily injury** has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
- **Weapon** has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 1365 of title 18, United States Code.

## Appeal; Expedited due process hearing for disciplinary matters

34 CFR 300.532

### General

You may file a due process complaint to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination described above.

The school district may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

### **Authority of the hearing officer**

A hearing officer who meets the requirements of the impartial hearing officer described above in the section on due process must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the section above **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; or
2. Order a change of placement of your child with a disability to an appropriate interim alternative education setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the school district believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the heading **Due Process Complaint Procedures, Hearings on Due Process Complaints**, except as follows:

1. The SDE must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

The SDE will arrange for an expedited hearing when a hearing is asked for as follows:

1. The school district thinks that keeping your child in the current school program is to a large extent likely to result in injury to your child or to others and the school district wants to put your child in an interim alternative educational setting (IAES) for not more than 45 school days;
2. Your child is placed in an IAES and the school district wants to change your child's school program at the end of the IAES because the school district believes it is a danger for your child or others for your child to be in the school program that your child was in before being placed in the IAES and the school district asks for an expedited hearing. This hearing procedure may be repeated;
3. You challenge an alleged change of placement and believe your child has been kept out of school for more than 10 days in a row or for more than 10 days in a school year without the school district following the proper steps;
4. You do not agree with the school district placing your child in an IAES for a violation of the school district code of conduct concerning weapons, drugs or dangerousness; or

5. You do not agree with the manifestation determination (MD).

Upon a request for a hearing for any of the matters noted in this section, the hearing shall occur within 20 school days of the date the hearing request is filed and shall result in a decision within 10 school days after the hearing.

Each party to a hearing:

1. Has the right to keep any evidence from being presented at the hearing that has not been given to the other party at least 2 business days before the hearing; and
2. Shall give to all other parties all evaluations completed to date and the recommendations from the evaluations that the party wants to use at the hearing at least 2 business days before the hearing.

### **Protections for Children not yet Eligible for Special Education and Related Services**

34 CFR 300.534

#### **General**

If your child has not been determined eligible for special education and related service and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

#### **Basis of Knowledge for disciplinary matters**

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

#### **Exception**

A school district would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; or

2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

### **Conditions that apply if there is no basis of knowledge**

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the subheadings **Basis of Knowledge for disciplinary matters** and **Exception**, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

### **Referral to and Action by Law Enforcement and Judicial Authorities**

#### **34 CFR 300.535**

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

### **Transmittal of Records**

If a school district reports a crime committed by a child with a disability, the school district:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Education Rights and Privacy Act (FERPA).

## **Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense**

---

34 CFR 300.148

### **General**

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR 300.131 through 300.144.

### **Reimbursement for private school placement**

If your child had previously received special education and related services under the authority of a school district and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse you for the cost of that enrollment if it is decided that:

1. The school district had not made available a Free Appropriate Public Education (FAPE) that could meet your child's educational needs in a timely manner before you enrolled your child in the private school; and
2. The private school program for your child meets your child's educational needs (the private school placement is appropriate).

The private school program provided to your child may be found to be an appropriate program for your child by a hearing officer or a Court even if the private school does not meet the state standards that apply to the education provided by the school district.

### **Limitation on reimbursement**

The return of the costs for the private school may be denied or reduced:

1. If at the last PPT meeting that you attended before taking your child out of the public schools, you did not:
  - a. tell the PPT of not wanting the placement offered by the school district;
  - b. state the concerns about the placement offered by the school district; and
  - c. state the intent to enroll your child in a private school at public expense; or
2. If, at least, 10 business days (including any holidays that occur on a business day) before taking your child out of the public school, you did not:
  - a. give notice in writing to the school district of not wanting the placement offered by the school district;

- b. state the concerns about the placement offered by the school district; and
  - c. state the intent to enroll your child in a private school at public expense; or
3. If, before you took your child out of the public school, the school district told you, in writing, of its intent to evaluate your child, giving the purpose of the evaluation, and you did not make your child available for evaluation; or
  4. Upon a Court deciding that you did not act within reason.

The return of the costs:

1. Shall not be reduced or denied because the parent did not tell the school because:

- The school district kept you from giving notice, as noted above;
- You had not received notice from the school district that you had to tell the school district, as noted above, before putting your child in the private school if you wanted to get the school district to return the costs of the private school; or
- Having to tell the PPT, as noted above, would likely result in physical harm to the child.

and

2. May, in the finding of the hearing officer or the Court, not be reduced or denied because you did not tell the school district because:

- You cannot read and write in English; or
- Having to tell the PPT, as noted above, would likely result in serious emotional harm to your child.