

**State of Connecticut Department of Education
Division of Teaching and Learning Programs and
Services
Bureau of Special Education**



**Steps to Protect a Child's Right to Special Education:
Procedural Safeguards**

Introduction

This procedural safeguards notice is written in language to be understood by the general public. For a reading in the actual language of the law/regulations, one should refer to the Connecticut General Statute Section 10-76a to 10-76i, inclusive and corresponding regulations and Federal Individuals with Disabilities Education Act (IDEA) and corresponding regulations.

www.state.ct.us/sde/deps/special/SpEd_Regs.pdf

www.ed.gov/policy/speced/guid/idea/idea2004.html

The parent must be given a copy of these safeguards one time each year and when:

- A child is referred for evaluation (testing) for the first time.
- A parent requests an evaluation or requests a copy of these safeguards.
- A hearing is requested or a complaint has been filed for the first time in a school year.
- A decision is made for a removal that is a change in placement because a school rule was violated.

The copy of these steps, the procedural safeguards, shall fully tell about:

- A. Evaluation of a child by a person who does not work for the school district. This is called an independent educational evaluation.
- B. Giving the parent a copy in writing of what the school is proposing or refusing to do about a child's program. This is called Prior Written Notice.
- C. Getting parent permission before the school does an evaluation or provides special education services.
- D. Inspecting, reviewing and getting a copy of a child's education record.
- E. Due process hearings.

- F. Expedited due process hearings.
- G. Advisory opinions.
- H. A child's program during the time it takes to go to a hearing.
- I. Procedures when disciplining a child with a disability.
- J. Steps a parent must follow if a parent places a child in a private school and expects the school to pay.
- K. Mediation.
- L. Bringing a case to Court.
- M. Attorneys' fees.
- N. Complaints.
- O. Electronic mail.
- P. Difference between a hearing and a complaint.

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.

A. Testing of the Child by a Person Who Does Not Work for the School: Independent Educational Evaluation (IEE)

1. The parent has the right to have the school pay for an evaluation done by a person who does not work for the school (IEE), if the parent disagrees with the evaluation obtained by the school. The school may ask the parent for the reason why the parent objects to the evaluation done by the school. An explanation by the parent is not required. If the school decides not to pay for the evaluation, the school must ask for a hearing without delay. At the hearing the school must show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school's standards. If the hearing officer decides that the school's evaluation is appropriate, the school does not have to pay for the evaluation requested or arranged for by the parent. However, the parent still has the right to have an IEE done.

2. The parent has the right to get an IEE done at their own expense. The parent may give the results of the evaluation to the school. The evaluation must be considered by the school when deciding on a child's program, if the evaluation meets the standards used by the school. The evaluation results may be used at a due process hearing.
3. A hearing officer may ask that a child receive an IEE. The school must pay for this evaluation.
4. When the school pays for an IEE, the evaluation must meet the standards for evaluation used by the school. This includes the location where the evaluation is done and the skills of the person doing the evaluation. The school may not set additional standards or timelines when the school pays for the IEE. The standards of the school must not interfere with a parent's right to have the IEE.
5. If the parent asks, the school shall tell where to get an IEE and what the standards are for such evaluation.
6. A parent is allowed to have only one IEE at school expense each time the school conducts an evaluation with which the parent disagrees.

B. Getting in Writing What the School Has Said About a Child's Program: Prior Written Notice

1. The parent has the right to get written notice no later than five school days whenever the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education. This is called prior written notice.
2. The written notice must tell:
 - (a) exactly what the school proposes or refuses to do;
 - (b) why the school proposes or refuses to take action;
 - (c) the other options the PPT talked about and the reasons why those were not done;
 - (d) about each evaluation procedure, assessment, record or report that the school used as a basis for the proposed or refused action;

- (e) about other factors that were relevant to the school's proposal or refusal;
- (f) that the parent has protections under the procedural safeguards and how to get a copy of these protections; and
- (g) who to contact to get help in understanding these protections.

3. The notice must be written in a way that would be easy to read and understand, unless it is clearly not possible to do so. If the parent's spoken word or other means of communication is not a written one, the school must make sure:

- (a) the notice is given orally or by another way to the parent;
- (b) the parent understands what is in the notice; and
- (c) there is written evidence that these two steps have been taken.

C. Parent Consent

1. Consent means that the:
 - (a) parent has been fully informed about why the school seeks permission;
 - (b) parent understands and agrees in writing to let the school evaluate the child or place the child in a program. If school records are to be sent to someone, the school tells the parent what will be sent and to whom it will be sent; and
 - (c) parent understands that he or she willingly gives permission and permission may be withdrawn at any time. If the parent withdraws permission, the withdrawal does not effect the actions taken or the services provided to the child during the time the school district had the permission of the parent.
2. The evaluation (testing) is done to find out:
 - (a) if a child is disabled; and
 - (b) 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.

3. Parent permission must be given before:
 - (a) the school evaluates a child;
 - (b) a child gets special education for the first time; and
 - (c) a child is placed in a private school by the public school.

Except for these three times, the school can not use the reason that a parent has not given permission to refuse the parent or the child any other services, benefits or activities of the school. Parent permission to evaluate a child for the first time shall not be taken to mean that the parent has given permission to give a child special education and related services.

When the school seeks parent permission, the school must make reasonable efforts to get consent from the parent and must tell the parent:

- (a) of the right to not give permission and if the parent does give permission, the parent can take it back;
- (b) if the parent does not respond to the school in ten school days, the school will take that to mean that the parent does not give permission; and
- (c) if the parent does not give permission and asks for a hearing, the child's school program will not change during the time it takes to go to a hearing.

If parent permission is not given to evaluate the child for the first time, the school may take steps, but is not required to, to make sure that the child gets an appropriate education. This may mean the school asking for mediation or a hearing.

When the school seeks to evaluate the child for the first time and the child is in the custody of the Commissioner of the Department 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 is disabled and in need of special education services if:

- (a) after reasonable efforts, the school cannot find out where the parent is located;
- (b) the rights of the parent have been terminated by the Court; or
- (c) a judge decided that the right of the parent to make decisions about the child's education are to be made a person appointed by the Court.

If the parent fails to respond or refuses to give consent for the child to receive special education, the school may not use mediation or request a hearing to reach an agreement or get a ruling that services may be provided to the child. Hence, the school would not violate its responsibility to make available a free appropriate public education (FAPE) to the child and is not required to hold a PPT or develop an individualized education program (IEP) for the child.

If, any time after a parent gives consent for the child to receive special education, the parent withdraws consent in writing for the child to continue to receive special education and related services, the school may not continue to provide special education and related services to the child. In this situation, the school must provide prior written notice (See Section B.) to the parent before stopping the provision of special education and related services to the child. The school may not use mediation or request a hearing to reach an agreement or get a ruling that special education services may be provided to the child. Therefore, the school will not be in violation of its responsibility to make available a free appropriate public education (FAPE) to the child and is not required to hold a PPT or develop an individualized education program (IEP) for the child to provide further special education and related services to the child.

If parent permission is not given to the school when the school seeks to place a child in a private school, the school must ask for a hearing and may ask for mediation provided the private school placement is not the first time the child receives special education services.

If the hearing officer decides in favor of the school, the school may evaluate or place the child in a private school without parent permission. The parent may go to either State Superior Court or Federal District Court to stop the school from evaluating or placing the child.

The school must get parent permission before

reevaluating a child. Except the school does not need to get permission, if the school can show that it made a good effort to get permission and the child's parent did not get back to the school.

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

- (a) telephone calls tried or made and the results of those calls;
- (b) copies of letters sent to the parent and any letters sent back to the school by the parent; and
- (c) visits made to the parent's home or workplace and results of those visits.

If the parent refuses consent for reevaluation, the school may, but is not required, go to mediation or ask for a hearing to see that the child gets an appropriate education.

4. Parent permission is not needed before:
 - (a) reviewing existing the records of the child that the school already has when the school is evaluating or reevaluating a child; or
 - (b) giving a test or other means of evaluation that is given to all children unless the school gets parent permission from all parents before giving a test or other means of evaluation.
5. If the parent home schools the child or the child is placed in a private school at the expense of the parent and the parent does not provide consent for the child to be evaluated for the first time or for reevaluation or the parent fails to respond to a request to provide consent, the school may not use mediation or request a hearing and the school is not

required to consider the child as eligible to receive services for parentally-placed private school children.

D. Inspecting, Reviewing and Getting the School Records of a Child

1. The parent has the right to:
 - (a) inspect and review all records which are kept or used by the school that deal with the:
 - identification of the child;
 - evaluation of the child;
 - educational placement of the child; and
 - child's right to a free appropriate public education (FAPE).
- The school may take for granted that the parent has the right to inspect and review records unless the school has been told that the parent does not have this right according to State law.
- The school must let the parent inspect and review the records as soon as possible and not later than 10 school days after a parent asks.
- The school must let the parent look at the records as soon as possible and within 3 school days if it is to prepare for a:
 - meeting about an IEP; or
 - mediation or hearing.
- The school must, in spite of the timelines noted above, comply with a parent request as soon as possible and before any IEP meeting or hearing;
- (b) expect the school to explain and tell about the meaning of the records;
 - (c) get one free copy of the records. The parent must ask for a free copy in writing. The school shall provide a copy within 5 school days. The school may charge for more copies. The school may not charge for more copies if having to pay the fee

would keep the parent from inspecting and reviewing the records. The school may not charge a fee to look for records;

- (d) have a person acting for the parent inspect and review the records; and
- (e) inspect and review and be told of certain data about his or her child when any record has data on more than one child. The parent may only look at data about his or her child.

E. Asking for a Hearing: A Way to Solve a Dispute

1. The law limits the time period for making a request for a hearing. The parent or the school has two years to ask for a hearing from the time the party knew or should have been known about the alleged action that forms the basis of the request for hearing as such relates to the:
 - (a) identification of the child;
 - (b) evaluation of the child;
 - (c) educational placement of the child; or
 - (d) provision of a free appropriate public education (FAPE).

If the parent is not given a copy of the "Steps to Protect a Child's Right to Special Education: Procedural Safeguards", the two-year limit shall start at the time the copy is properly given to the parent. The two-year limit would not apply if the school told the parent that the issues had been resolved when they actually had not been resolved or if the school withheld information from the parent that was required to be provided to the parent.

When a parent asks for a hearing, the school shall tell the parent about the use of mediation as a means to settle the issues. The school shall also tell the parent of any free or low-cost legal and other services related to the matter that are available in the area if:

- (a) parent asks for this; or
- (b) parent or the school asks for a hearing.

2. When a party, or the attorney for the party, asks for a hearing, the party must provide in writing:

- (a) the child's name and address (if the child is homeless the available contact information for the child) and the name of the child's school;
- (b) the nature of the problem relating to the proposed or refused initiation or change, including the facts related to the problem; and
- (c) what will resolve the problem, to the extent known and available to the party at the time.

3. The school shall have a form for the parent to fill out to ask for a hearing; however the school or the Connecticut State Department of Education may not require the use of this form. The form shall tell what needs to be included.

4. The party or their attorney asking for the hearing shall send a letter or the form (which must remain confidential) requesting the hearing to the other party and send a copy to:

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

5. A party may not have a hearing until the party gives the information noted in #2 of this section. The party receiving the request for hearing shall have 15 calendar days from the receipt of the request to notify the hearing officer and the other party in writing that the receiving party believes that the request for hearing 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 the parties 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.

6. A party may amend its request for hearing only if the:

- (a) other party consents in writing to the change and is given the chance to resolve the issues through a resolution meeting as noted in #9 of this section; or
- (b) hearing officer gives permission which may only be given at any time not later than 5 calendar days before the hearing begins.

If a party files an amended request for hearing, the timelines for the resolution meeting noted in #9 of this section and for the resolving the parent's issues in #12 of this section, begin again with the filing of the amended request for hearing.

7. If the school has not sent prior written notice to the parent (See Section B.) regarding the issues noted in the parent's request for hearing, the school shall, within 10 calendar days of receiving the parent's request for hearing, send the parent a response that shall tell:

- (a) why the school proposes to or refuses to do what was noted in the request for hearing;
- (b) the other options the PPT talked about and the reasons why those were rejected;
- (c) about each evaluation procedure, assessment, record or report that the school used as a basis for the proposed or refused action; and
- (d) about other factors that were relevant to the school's proposal or refusal.

The response by the school does not keep a school from claiming that the content of the parent's request for hearing was sufficient.

8. Except as provided above in #7, the party receiving the request for a due process hearing must, within 10 calendar days of receiving the request, send to

the other party a response that specifically addresses the issues in the request for the due process hearing.

9. Within 15 calendar days of getting the parent's request for a hearing and before the start of the hearing, the school must have a resolution meeting with the parent and the IEP member(s) who have information about the facts that are noted in the parent's request for the hearing. The parent and the school determine the relevant members of the IEP team to attend the meeting. The school must have a person at the meeting who has the authority to make a decision for the school. The school may not bring an attorney unless the parent has an attorney.

10. At the resolution meeting the parent will discuss the request for hearing and give the facts and the reasons why the hearing was requested. The meeting will give the school the chance to resolve the issues. This meeting does not have to be held, if the:

- (a) parent and the school agree in writing not to have the meeting; or
- (b) parent and the school agree to use mediation. (See Section K.)

11. If at the resolution meeting the parent and the school resolve the issues, an agreement will be put in writing and signed by the parent and the person from the school who has the authority to make the agreement. The parent or the school will have 3 business days from the signing of the agreement to change their minds and not have to go along with the agreement. The agreement is binding on both the parent and the school and either parent or the school may go to State or Federal Court to have the agreement enforced.

12. If the school has not resolved the parent's issues to the parent's satisfaction within 30 calendar days of receiving the parent's request for the hearing, the 45-calendar-day timeline for hearing may begin except as noted below in #14 of this section.

13. Unless the parent and the school agree not to have the resolution meeting or to use mediation, the failure of the parent 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 the school is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts and documents such efforts (as noted in Section C. #11), the school may, at the end of the 30- calendar-day resolution period, ask the hearing officer to dismiss the parent's request for hearing.

If the school fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for hearing or fails to participate in the resolution meeting, the parent may ask the hearing officer to begin the 45-calendar-day due process hearing timeline.

14. 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:

- (a) The parent and the school agree in writing not to hold the resolution meeting;
- (b) After the mediation or resolution meeting starts but before the end of 30-calendar-day resolution period, the parent and the school agree in writing that no agreement is possible;
- (c) If the parent and the school agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or the school withdraws from the mediation process.

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

- (a) after the hearing officer deems the request to be sufficient (See Section E. #5);
- (b) immediately following the parent's notice to the hearing officer not to challenge the sufficiency of the hearing request; or

(c) after 15 calendar days of the parent's receipt of the school's request for hearing, if the parent does not challenge the sufficiency of the school's request for hearing.

16. Before the start of the hearing, the parent and the school shall take part in a telephone call with the hearing officer. This is called a prehearing conference. During the call the parent and the school shall try to work out the dispute, if possible, and narrow the issues.

17. The hearing shall be held by a hearing officer who:

- (a) is not an employee of
 - the Connecticut State Department of Education or
 - the school district where the child goes to school or the school district responsible for the child's education;
- (b) does not have a personal or professional interest which would get in the way of his or her being fair in the hearing;
- (c) has knowledge and is able to understand the Federal and State special education laws and regulations and the way these laws are understood by Federal and State Courts;
- (d) has knowledge and is able to conduct a hearing in accordance with appropriate, standard legal practice; and
- (e) has knowledge and is able to make and 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 Connecticut State Department of Education to act as a hearing officer.

18. The Connecticut State Department of Education, 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.

19. The parent has the right to have the child at the hearing and to open the hearing to the public. The parent has the right to be provided with the record of the hearing and the findings of fact and decisions noted in #20(e) and (f) of this section are at no cost.

20. The parent and the school have the right to:

- (a) bring and be helped by an attorney and persons with special training about children who are disabled;
- (b) present evidence, question and cross-examine any witness;
- (c) require witnesses to attend the hearing;
- (d) not allow any evidence to be given at the hearing that had not been given to that party no less than 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;
- (e) a written, or, at the choice of the parent, electronic word-for-word record of the hearing; and
- (f) written, or at the choice of the parent, electronic findings of fact and decisions.

21. The hearing officer may prevent the parent or the school from giving any evidence at the hearing without the permission of the other party if the parent or the school fails to meet the timeline in #20(d) of this section.

22. The party that asked for the hearing shall not be allowed to raise issues at the hearing that were not raised in the request for the hearing unless the other party agrees. A parent may file a separate request for a due process hearing on an issue separate from the hearing request already filed.

23. A decision made by the hearing officer shall be made on:

- (a) substantive grounds, that is, on legal rights and principles based on whether the child received a free appropriate public education (FAPE); and/or

(b) on matters alleging procedural violations, if such violations kept the child from receiving a free appropriate public education (FAPE), kept the parent from being meaningfully involved in the decisions about the child's right to a free appropriate public education (FAPE) or deprived the child of educational benefit. The hearing officer may order a school to follow the procedures, even if the hearing officer found that the child was not kept from receiving a free appropriate public education (FAPE).

24. 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 the parent or the school. The hearing shall be held at a time and place that would make it easy for the parent and child to attend.

25. The decision of the hearing is final, unless the parent or the school asks for a review from either State Superior Court or Federal District Court.

26. The Connecticut State Department of Education 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.

F. Expedited Due Process Hearings

1. The procedures and the way in which an expedited due process hearing is held are as noted in Sections E. (excluding #15) except as noted in this section.

2. An expedited hearing will be set up when a hearing is asked for as follows:

- (a) the school thinks that keeping the child in the current school program is to a large extent likely to result in injury to the child or to others and the school wants to put the child in an interim alternative educational setting (IAES) (See Section I. #10) for not more than 45 school days;

- (b) the child is placed in an IAES and the school wants to change the child's school program at the end of the IAES because the school believes it is a danger for the child or others for the child to be in the school program that the child was in before being placed in the IAES and the school asks for an expedited hearing. This hearing procedure may be repeated;
- (c) the parent challenges an alleged change of placement (See Section I. #3) and believes the child has been kept out of school for more than 10 days in a row without the school following the proper steps;
- (d) the parent challenges an alleged change in placement (See Section I. #3) and believes the child has been kept out of school for more than 10 days in a school year without the school following the proper steps;
- (e) the parent does not agree with the school placing the child in an IAES for a weapons, drugs or dangerousness (See Section I. #10); or
- (f) the parent does not agree with the manifestation determination (MD) (See Section I. #7).

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. The hearing officer may order a change in placement of the child as follows:

- (a) return the child to the placement from which the child was removed; or
 - (b) place the child in an IAES for not more than 45 school days if it is determined that keeping the child in the current placement will more than likely result in injury to the child or to others.
3. Each party to a hearing:
- (a) 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

- (b) 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.

4. A resolution meeting (See Section E. #9) must occur within 7 calendar days of receiving the request for hearing unless the parent and the school agree in writing not to have the resolution meeting or they agree to mediation. The due process hearing may proceed unless the matter has been resolved to the satisfaction of the parent and the school within 15 calendar days of the receipt of the request for hearing.

G. Asking for an Advisory Opinion: A Quick Way to Settle a Dispute

1. After a hearing has been asked for and before the hearing begins, the parent and the school may agree to go to an advisory opinion by sending a letter or a form that the school has to:
- Connecticut State Department of Education
Division of Teaching and Learning Programs and Services
Bureau of Special Education
Due Process Unit
P.O. Box 2219
Hartford, CT 06145-2219
FAX 860 713-7153
2. By going to an advisory opinion, the parent and the school have a chance to state their position in a brief manner to a hearing officer in one day. The hearing officer shall tell the parent and the school how he/she thinks the issues would be decided if the parent and the school went on to a full hearing. The hearing officer who does the advisory opinion shall not be the same hearing officer that would hold the full hearing.
3. The parent and the school do not have to accept the view of the hearing officer that gives the advisory opinion. The parent and the school may go on to a full hearing if the issues are not settled by getting an advisory opinion.

H. Child's School Program During a Hearing or a Court Review

1. Except as provided in #2 of this section, when a hearing has been asked for, the child must stay in the school program with the same services that the child was getting before the parent and the school had a disagreement. The child must stay in this program until the matter is settled unless the parent and the school agree to change the school program. If the child is to enter public school for the first time, the child, with the consent of the parent, must be able to go to school until the completion of all proceedings. If a hearing officer agrees with the parent that a change to the child's school program is appropriate, the order of the hearing officer must be carried out, even if a Court review (See Section L.) has been asked for.
2. If the child turns three years of age and is coming from a Birth-to-Three program, the school is not required to provide the Birth-to-Three services that the child had been receiving. If the child is found to be eligible for special education services and the parent consents for the child to receive services for the first time, the school must provide the services that are not in dispute between the parent and the school.
3. If the school or the parent asks for a hearing, after a child was placed in an interim alternative educational setting (IAES) for not more than 45 school days by:
- (a) the school for reasons as noted in Section I. #10 or
 - (b) a hearing officer as noted in Section F. #2(a) and #3

the 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 the parent and school agree to change the school program.

If the school wants to change the child's program after the specified time in the IAES is up and asks for a hearing, the child would return to the school

program that the child was in before being placed in the IAES while the hearing is held.

I. Procedures When Disciplining a Child

1. The school may consider any special concerns for a child when deciding to change the school program of a child who violated a code of school conduct.
2. The school may remove a child who violates a school rule from the current program to an IAES, another setting, or suspension, for not more than 10 school days in a row 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 #3 of this section)

A school is only 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 provides services to a child without a disability who has been similarly removed.

3. A change in placement occurs if:
- (a) the removal is for more than 10 school days in a row; or
 - (b) 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 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 shall determine on a case-by-case basis whether a pattern of removals is a change in placement.

4. If the school 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 (See #7 of this section), the

child may be discipline 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.

5. After the child has been removed from his 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 (See #3 of this section), 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, even though 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.
6. If the removal is a change of placement (See#3 of this section), the child's IEP team determines the services that are needed to enable the child to continue in the general education coursework and to progress toward meeting the goals of the IEP.
7. 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 with the parent and relevant members of the IEP team (to be determined by the parent and the school) 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:

- (a) caused by, or was directly or to a large extent related to the child's disability; or
- (b) the direct result of the school's failure to implement the IEP.

If the team determines that either of the above, (a) or (b), 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).

If the team determines that the behavior in question was a direct result of the school's failure to

implement the IEP, the school must take immediate steps to remedy the deficiencies.

8. If the team noted in #7 of this section decides the behavior in question was a manifestation of the child's disability, the IEP team shall:
 - (a) if the school had not already conducted a 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);
 - (b) if a BIP is already in place, review the BIP and modify it, as necessary, to address the behavior in question; and
 - (c) except as noted in #10 in this section, return the child to the program that the child was in before being removed unless the school and the parent agree to a change in the child's placement as part of the revised BIP.
9. On the date the decision is made for a removal that would be a change in placement (See #3 of this section), the school must notify the parent of that decision and provide the parent with a copy of the "Steps to Protect a Child's Right to Special Education: Procedural Safeguards".
10. A school may place a child in an IAES for not more than 45 school days without regard to the manifestation determination (MD) as noted in #7 of this section, in cases where a child:
 - (a) carried a weapon to school or has a weapon at school, on school grounds or to or at a school activity;
 - (b) knowingly had, used illegal drugs, sold or tried to buy a controlled substance at school, on school grounds or at a school activity; or

- (c) has caused serious bodily injury upon another person at school, on school grounds or at a school activity.

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

J. Steps a Parent Must Follow When Placing a Child in a Private School at Public Expense

1. A parent, who on his or her own, places a child, who at one time received special education through the public school, in a private school and seeks a return of the money for the costs of the private school from the public school may receive the costs from the public school:
 - (a) by order of a Court; or
 - (b) by the order of a hearing officer
- if it is decided that:
- (a) the school had not made a program that could meet the child's education needs available to the child in a timely manner before the parent enrolled the child in the private school; and
 - (b) the private school program for the child meets the child's education needs.

The private school program provided to the child may be found to be an appropriate program for the 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.

2. The return of the costs for the private school may be denied or reduced:
 - (a) if at the last PPT meeting that the parent attended before taking the child out of the public schools, the parent did not
 - tell the PPT of not wanting the placement offered by the school
 - state the concerns about the placement offered by the school and

- state the intent to enroll the child in a private school at public expense;

or

if, at least, 10 business days (including any holidays that occur on a business day) before taking the child out of the public school, the parent did not

- give notice in writing to the school of not wanting the placement offered by the school
- state the concerns about the placement offered by the school and
- state the intent to enroll the child in a private school at public expense;

- (b) if, before the parent took the child out of the public school, the school told the parent (See Section B.), in writing, of its intent to evaluate the child, giving the purpose of the evaluation, and the parent did not make the child available for evaluation; or
- (c) upon a Court deciding that the parent did not act within reason.

3. The return of the costs:

- (a) shall not be reduced or denied because the parent did not tell the school because:

- the school kept the parent from giving notice, as noted in #2(a) of this section;
- the parent had not received notice from the school that the parent had to tell the school, as noted in #2(a) of this section, before putting the child in the private school if the parent wanted to get the school district to return the costs of the private school; or
- having to tell the PPT, as noted in #2(a) of this section, would likely result in physical harm to the child.

and

- (b) may, in the finding of the hearing officer or the Court, not be reduced or denied because the parent did not tell the school because:
 - the parent cannot read and write in English; or
 - having to tell the PPT, as noted in #2(a) of this section, would likely result in serious emotional harm to the child.

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:

- (a) is trained in mediation;
- (b) does not show favor to either the parent or the school;
- (c) is knowledgeable about the special education laws;
- (d) is an education consultant with Connecticut State Department of Education; and
- (e) 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 the parent and the school. The mediation will be held in a place that is close for the parent and the school staff. The Connecticut State Department of Education is responsible for the cost of the mediation process.

- 2. If the parent and the school reach agreement on the issues, what they have agreed to will be put in writing and signed by the parent and the person from the school who has the authority to sign the agreement. The mediation agreement shall state that 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.

L. Reviews by a Court: Civil Actions

- 1. If the parent or the school does not agree with the findings and final decision made in the hearing, they have the right to a review within 45 calendar days of receipt of the final decision and order from either State Superior Court or Federal District Court without taking into account the damages claimed or the relief sought. The Court:
 - (a) shall get the records of the hearing;

- (b) shall hear additional evidence when asked by the school or the parent; and
- (c) basing its decision on the greater amount of evidence, shall order a change as the Court determines to be appropriate.

- 2. Nothing in the Federal law (IDEA) regarding the education of children who are disabled limits the rights that a parent or the school has under other Federal laws that protect the rights of children who are disabled. However, before filing for a review by a Court, a final decision of the hearing must be rendered.

M. Attorneys' Fees

- 1. For any hearing or Court review the Court may order:
 - (a) the school to pay for the attorneys' fees paid by the parent in a matter that is decided in the favor of the parent;
 - (b) the attorney of a parent to pay for the attorneys' fees paid for by the school or the State in a matter that is decided in favor of the school or the State, if the attorney of the parent files a request for a hearing or review by the Court that is needless, is without good reason, or is without a proper basis; or if the attorney of a parent continued to litigate after it is clear that the matter is needless, is without good reason, or is without a proper basis;
 - (c) the attorney of a parent or the parent to pay the attorneys' fees paid for by the school or the State in a matter that is decided in favor of the school or the State, if the parent's request for hearing or review by the Court is 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.
- 2. The amount of attorneys' fees that is decided shall be 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.

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

- (a) 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;
- (b) the offer is not accepted within 10 calendar days; and
- (c) the Court finds that the relief finally given to the parent 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 a parent who succeeds with his or her case and who had good reason for not taking the offer made by the school to settle the matter.

The return of attorneys' fees may not be ordered for:

- (a) any meeting of the PPT unless the PPT meeting is held as a result of a hearing or a Court review;
- (b) a mediation (See Section K); or
- (c) the resolution meeting (Section E #9).

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

- (a) the parent or the parent's attorney, during the hearing or the Court review, took more time than necessary to reach a final resolution of the hearing or the Court review;
- (b) the amount of the attorneys' fees goes beyond, without good reason, the hourly rate common in the area for same type of services by attorneys who compare in skill, reputation, and training;
- (c) the time spent and legal services provided were more than expected for the type of hearing or Court review; or

K. Settling a Dispute When the Parent and the School Do Not Agree: Mediation

- 1. Mediation is a way to settle a dispute when the parent and the school do not agree on:
 - (a) the identification of the child;
 - (b) the evaluation of the child;
 - (c) the educational placement of the child; or
 - (d) any other matter related to provision of a free appropriate public education to the child (FAPE).

The parent and the school have a free choice to go to mediation. The mediation can not be used to:

- (a) deny or delay the parent's right to a hearing; or
- (b) deny any other rights that the parent has under the State or Federal special education laws.

Before filing a complaint (see Section N.) or before asking for a hearing (see Section E.) or any time after filing a complaint or during the hearing, the parent and the school may ask for a mediation by sending a letter to:

Connecticut State Department of Education
Division of Teaching and Learning Programs
and Services
Bureau of Special Education
Due Process Unit
P.O. Box 2219

- (d) the attorney for the parent did not give to the school the required information when requesting the hearing.

The Court would not lower attorneys' fees if the Court finds that:

- (a) the school or the State without good reason took more time than necessary to reach a final resolution of the hearing or the Court review; or
- (b) the procedural safeguards were violated.

N. Filing a Complaint

1. A organization or a person may file a signed complaint in writing. The complaint must state:
 - (a) that the school did not carry out the Federal (IDEA) or the State laws that protect children who are disabled;
 - (b) the facts on which the complaint is based; and
 - (c) the signature and contact information for the person or organization filing the complaint.

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

- (a) the name and address of the child;
- (b) the name of the school that the child is attending;
- (c) in the case of a homeless child, the available contact information for the child and the name of the school the child is attending;
- (d) the nature of the problem of the child, including the facts related to the problem; and
- (e) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

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

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

3. The Department shall make a decision about the issues in the complaint within 60 calendar days after the complaint is filed with Department. The 60- calendar-day-limit may be extended if the:
 - (a) Department believes that there are special factors in a complaint; or
 - (b) person or the organization and the school agree to a mediation.

In making a decision, the Department shall:

- (a) carry out an on-site visit at the school, if the Department believes it must be done;
- (b) give the complainant a chance to give, orally or in writing, more facts about the complaint;
- (c) provide the school with the opportunity to respond to the complaint, which may include:
 - if the school so desires, a proposal to resolve the complaint and
 - an opportunity for the complainant and the school to go mediation.
- (d) review all the facts regarding the complaint and decide if the school failed to meet the law; and
- (e) send out a decision to the complainant. The decision shall 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.

4. The carrying out of the Department's decision may include:

- (a) assistance to the school district by the Department;
- (b) talks to help the parent and the school agree to terms to resolve the complaint; and
- (c) actions for the school to take to meet the law.

5. If the Department has found that the school failed to provide appropriate services to a child, the Department shall address :

- (a) how to make up for services that had not been given to a child, which may include paying the parent for the costs of those services that had been paid by the parent or other proper actions related to the needs of the child; and
- (b) for system-wide issues, appropriate future provision of services for all children who are disabled.

6. A parent may also request a hearing even if a complaint has been filed; however the Department shall 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 steps noted in #3 in this section. If an issue is raised in a complaint that was already decided in a due process hearing with the same parties, the hearing decision is final and will not be reviewed by the Department. The Department shall inform the complainant that a review will not be done. If a complaint states that the school has failed to carry out the final decision of the due process hearing, the Department shall resolve the complaint.

O. Electronic Mail

1. The parent may elect to receive notices required for prior written notice, procedural safeguards and due process hearings, if the school makes that that option available.

P. Difference Between a Due Process Hearing (Section E.) and an Administrative Complaint (Section O.)

1. A complaint may be filed by any person or organization which claims that a school district violated the Federal (IDEA) and/or the State special education laws and/or regulations that protect a child with a disability. The Connecticut State Department of Education shall make a decision within 60 calendar days after the complaint is filed with the Department.
2. A hearing may be filed by a parent or the school district on any matter relating to a proposal or refusal to initiate or change:
 - (a) the identification of a child;
 - (b) the evaluation of a child;
 - (c) the educational placement of the child; or
 - (d) the provision of a free appropriate public education to the child.

The hearing officer shall render a final decision within 45 calendar days after the start of the hearing timeline, unless the hearing officer allows extra time when asked by the parent and/or the school.

01/01/09

