Procedural Safeguards Notice Required Under IDEA Part B

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

Revised September 2012 to include
Parental Notification of the Laws Relating to
the Use of Seclusion and Restraint in the Public Schools

CONTENTS

Introduction 1

General Information 2

Parental Consent – Definition 3

Parental Consent 3

Independent Educational Evaluation 7

Confidentiality of Information; Access to Records 8

State Complaint Procedures 13

Due Process Procedures 15

Resolution Process 20

Mediation 22

Advisory Opinion Process 23

Hearing Decisions 24

Appeals 25

Rule of Construction 26

Child's Placement While the Due Process Hearing is Pending 26

Attorneys' Fees 27

Procedures for Disciplining Children with Disabilities 28

Protections for Children Not Yet Eligible for Special Education 33

Referral to and Action by Law Enforcement and Judicial Authorities 35

Requirements for Unilateral Placement by Parents of Children in Private Schools 35

INTRODUCTION

The Individuals with Disabilities Education Improvement 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, 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.

GENERAL INFORMATION

DEFINITION OF SCHOOL DISTRICT

As used in this document, "school district" means a local or regional board of education, the state Technical Schools, the school districts operated by the Department of Correction and the Department of Children and Families, and the Department of Mental Health and Addiction Services in the provision of regular and special education to eligible clients.

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 (FAPE) 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 hearing.

PARENTAL CONSENT — DEFINITION

34 CFR 300.9; Connecticut Regulation Section 10-76d-8

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 district 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 district 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 district requests consent and you do not respond to the school district in 10 school days, the school district 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 18 years old, the child has all rights the parent used to have. A child will not get these rights if the court has said the child is not able to decide in a way that is good for the child. The school district 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 district 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 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 district 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 district 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 district 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 district may not use the procedural safeguards (mediation 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 district would not violate its responsibility to make available a free appropriate public education 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 or 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 revoke your consent for the private school placement, the district is required by Section 10-76h to file for due process to ensure your child is provided with a free appropriate public education.

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 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 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 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 or 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 district seeks your consent, the school district 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 district; 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 district already has when the school district 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 district gets permission from all parents before giving a test or other means of evaluation.

If the school district files for a due process hearing (see **Due Process 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 district, the school district 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 district 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 you 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 district may not use the procedural safeguards (mediation or due process hearing) in order to evaluate your child without your consent. The district is not required to consider your child as eligible to receive services for parentally placed private school children if you refuse to provide consent for the initial evaluation or revaluation of your child.

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 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 for a due process hearing 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 for a due process hearing 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 district 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 [FERPA] of 1974, 20 USC 1232g).

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 of 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 the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act 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 kept or used by the school district that are collected, maintained, or used by your school district under Part B of IDEA. This means 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 three 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). In addition, if you make a request to review and inspect your child's educational records when school is not in session, the school district must make the records available for inspection within a reasonable period of time, but no more than 45 calendar days after it has received your request. This is a requirement under the Family Educational Rights and Privacy Act, which school districts are required to follow even though there is a different state standard based on school days.

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 five 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 that the school district 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, 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, 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.

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 six 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, 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 HEARINGS

The regulations for Part B of IDEA have different procedures for state administrative complaints and for due process 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 Connecticut State Department of Education (CSDE) 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 for a due process hearing 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 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 conduct a due process hearing (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 resolution and hearing procedures are described more fully below. The CSDE has developed model forms to help you file for a due process hearing and help you or other parties to file a state complaint. You may access this information on the CSDE Web site at **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 CSDE 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 CSDE. The state complaint procedures are available on the CSDE Web site as indicated above (**www.sde.ct.gov**, Under Quicklinks, click onto Special Education; scroll down to Legal/Due Process and look for Complaint Resolution Process). If in its investigation of the complaint, the CSDE finds that a school district has failed to provide appropriate services, the CSDE 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 CSDE shall make and issue a decision about the issues in the complaint within 60 calendar days after the complaint is filed with the CSDE. The 60-calendar-day limit may be extended if the:

1. CSDE 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 CSDE shall:

1. carry out an on-site visit as appropriate, if the CSDE 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 to mediation.
4. review all the facts regarding the complaint and decide if the school district failed to meet the law or the regulations; 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.
6. Carry out other activities that may be appropriate to the investigation.

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

1. assistance to the school district by the CSDE;
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 CSDE 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 CSDE. The CSDE 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 CSDE shall resolve the complaint.

FILING A STATE ADMINISTRATIVE COMPLAINT

34 CFR 300.153; Complaint Resolution Process

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

The person or organization filing the complaint must send a copy of the complaint to the school district against whom the complaint is filed at the same time the complaint is filed with the CSDE. The mailing address for the CSDE is:

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

A model state complaint form is available on the CSDE website:

http://www.ct.gov/sde/lib/sde/PDF/DEPS/Special/Due_Process_Forms.pdf

It is not required that this form be used to file a complaint. However, please note that the information listed in the form is the information that must be provided when a complaint is filed with the CSDE.

DUE PROCESS PROCEDURES

GENERAL

34 CFR 300.507 and 300.511; Section 10-76h of the general statutes;
Sections 10-76h-1 through 10-76h-18 of the state regulations

You or the school district may file for a due process hearing 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 to the child.

Filing for a due process hearing begins the special education administrative hearing process. You may hear the hearing process referred to as an "impartial hearing," "special education hearing," or "due process hearing."

The due process hearing request 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 hearing. This two-year limitation does not apply to you if you could not file for a due process hearing within the timeline because:

1. the school district specifically misrepresented that it had resolved the issues identified in the hearing request; 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 for a due process hearing. 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.

FILING FOR A DUE PROCESS HEARING

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 hearing request to the other party. As indicated above, submitting a due process hearing request means the same thing as requesting a hearing. The due process hearing request must contain all the following information and must be kept confidential.

The due process hearing request 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 hearing request that includes the information listed above.

Whoever files the hearing request must also provide the CSDE with a copy of the request. 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 HEARING REQUEST

For a due process hearing to go forward, it must be considered sufficient. The due process hearing request will be considered sufficient (if it has the information listed above) unless the party receiving the due process hearing request (you or the school district) notifies the hearing officer and the other party in writing within 15 calendar days of receiving the request that the receiving party believes the due process hearing request does not contain the required information. The hearing officer, within five 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 HEARING REQUEST

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

1. the other party approves the changes in writing and is given the chance to resolve the dispute through a resolution meeting (see page 20, **Resolution Process**); or
2. the hearing officer gives permission, which may only be given at any time not later than five calendar days before the hearing begins.

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

SCHOOL DISTRICT RESPONSE TO A DUE PROCESS HEARING REQUEST

If the school district has not sent prior written notice to you (see page 2, **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 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 hearing request was insufficient.

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

MODEL FORMS

34 CFR 300.509

The CSDE has developed a model form to help you file a due process hearing request and to help you and other parties to file a state administrative complaint. However, the school district or the CSDE 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 for a due process hearing request or state administrative complaint. The model forms are available on the CSDE Web site at **www.sde.ct.gov**. Under Quicklinks, click onto Special Education; scroll down to Legal/Due Process and look for the forms for Administrative Complaint and Hearing.

DUE PROCESS HEARING PROCEDURES

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

The 45-calendar-day timeline to complete the hearing shall commence:

1. as soon as the hearing request is received by the school district or the 30-calendar-day resolution period or adjusted time period expires;
2. after the hearing officer deems the request to be sufficient (See page 17, **Sufficiency of Hearing Request**);
3. immediately following your notice to the hearing officer that you will not challenge the sufficiency of the hearing request; or
4. 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 CSDE 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 that 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 CSDE to act as a hearing officer.

The CSDE, 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 hearing request may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

TIMELINE FOR REQUESTING A HEARING; EXCEPTION

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

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your hearing request; 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.

RESOLUTION PROCESS

34 CFR 300.510

RESOLUTION MEETING

Within 15 calendar days of getting your due process hearing request and before the due process hearing begins, the school district must convene a meeting with you and the relevant members of the PPT who have specific knowledge of the facts identified in your due process hearing request. 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 hearing request, and the facts that form the basis of the due process hearing request, 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 hearing request to your satisfaction within 30 calendar days of receiving the due process hearing request (during the time period for the resolution process), the due process hearing may begin except as noted below on page 18, **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 three 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 district 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.

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 14) or before asking for a due process hearing or any time after filing a due process hearing request 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 have a conflict of interest;
3. is knowledgeable about the special education laws;
4. is an education consultant with the CSDE; 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 timely manner and in a place that is close for you and the school district staff. The CSDE 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 with jurisdiction over these matters.

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: 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 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 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 hearing request on an issue separate from a due process hearing request 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 CSDE 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 CSDE Web site at **www.sde.ct.gov**. Under Quicklinks, click onto Special Education and 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 Court of competent jurisdiction or Federal District 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 of money 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 hearing; resolution process, including the resolution meeting, if not waived; and impartial due process hearing procedures) before going directly into court.

THE CHILD'S PLACEMENT WHILE THE DUE PROCESS HEARING IS 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 where the child is placed when the due process hearing request is filed with the same services your child was getting. 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 3 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 CSDE (if the CSDE 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 CSDE if your request for a 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 if you had good reason for not taking the offer made by the school district to settle the matter if the final decision was not more favorable to you.

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 22, **Mediation**); or
3. the resolution meeting (see page 20, **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 in Placement** on the next page .

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 fewer 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,** below.

ADDITIONAL AUTHORITY

If the behavior that violated the code of school conduct was not a manifestation of the child's disability (see **Manifestation Determination** on page 30) 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 or 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. The student shall 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 child's behavior is not a manifestation of the child's disability (see **Manifestation Determination** below) or who is removed under special circumstances (see **Special Circumstances**, next page) 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.

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 do the following as appropriate to the circumstances presented:

1. If the school district 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);
2. If a BIP is already in place, the PPT will review the BIP and modify it as necessary to address the behavior in question; and

3. Except as noted in the IAES section below, the school district shall 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 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 to 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 to 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 Procedures, Due Process Hearings**, except as follows:

1. the CSDE 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 CSDE 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.

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 five (5) 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 five (5) 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 services 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 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 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.

Parental Notification of the Laws Relating to the Use of Seclusion and Restraint in the Public Schools

Introduction

You have been provided with a copy of the "Procedural Safeguards in Special Education." The Procedural Safeguards document outlines your rights and the rights of your child under the federal Individuals with Disabilities Education Act (the IDEA) and the Connecticut statutes and regulations concerning the provision of special education and related services to children with disabilities.

The Board of Education is also required by state statute to inform you about a specific provision of the state statutes and regulations regarding the emergency use of physical restraint and seclusion or the use of seclusion as a behavior intervention in a child's IEP. **Every parent must be advised of these rights at the initial Planning and Placement Team meeting (PPT) held for their child even if the emergency use of physical restraint or seclusion or the use of seclusion as a behavior intervention in a child's IEP is not likely to occur with their child.**

On and after October 1, 2009, you must be provided with a copy of the state developed "Parental Notification of the Laws relating to Physical Restraint and Seclusion in the Public Schools" at the first PPT meeting following your child's initial referral for special education. If your child was eligible for special education prior to October 1, 2009, you will receive this notice at the first PPT meeting convened after October 1, 2009. In addition, the notice must also be provided to you at the first PPT meeting where the use of seclusion as a behavior intervention is included in your child's IEP.

Who are the children covered by the law ?

The state statute uses the term "person at risk" to describe the people generally covered by the statute. For the public schools, the "person at risk" is (1) a child requiring special education and related services who is receiving services from their board of education or (2) a child being evaluated to determine the child's eligibility for special education and related services. This notice uses the term "child" and this means a child who is eligible for special education and related services and is receiving services from their board of education or a child who is being evaluated to determine the child's eligibility for special education and related services.

What does "physical restraint" mean?

Physical restraint means any mechanical or personal restriction that immobilizes or reduces the free movement of a child's arms, legs or head. It does not include: (1) briefly holding a child in order to calm or comfort the child; (2) restraint involving the minimum contact necessary to safely escort a child from one area to another; (3) medication devices, including supports prescribed by a health care provider to achieve proper body position or balance; (4) helmets or other protective gear used to protect a child from injuries due to a fall; or (5) helmets, mitts and similar devices used to prevent self injury when the device is part of a documented treatment plan or IEP and is the least restrictive means available to prevent self-injury.

What does "seclusion" mean?

Seclusion means the confinement of a child in a room, whether alone or with staff supervision, in a manner that prevents the child from leaving. In public schools, seclusion does not mean any confinement of a child where the child is physically able to leave the area of confinement such as in-school suspension and time-out.

What do I need to know about the emergency use of restraint and seclusion?

1. Life threatening physical restraint is prohibited. Life threatening physical restraint means any physical restraint or hold of a child that restricts the flow of air into a child's lungs, whether by chest compression or any other means.
2. Involuntary physical restraint may not be used to discipline a child; it may not be used because it's convenient and it may not be used as a substitute for a less restrictive alternative.
3. Involuntary physical restraint is to be used solely as an emergency intervention to prevent immediate or imminent injury to the child or to others. When a child is physically restrained, the child is to be continually monitored by a person who has the training as described in #7 below. Monitoring means direct observation of the child or observation by way of video monitoring within physical proximity sufficient to provide aid as may be needed. A child who is physically restrained must be regularly evaluated for any signs of physical distress by a person who has the training as described in #7 below. The evaluation must be documented in the child's educational records.
4. Involuntary seclusion may not be used to discipline a child; it may not be used because it's convenient and it may not be used as a substitute for a less restrictive alternative.

5. When a child is involuntarily placed in seclusion as an emergency intervention to prevent immediate or imminent injury to the child or to others, the child is to be frequently monitored by a person who has the training as described in #7 below. Monitoring means direct observation of the child or observation by way of video monitoring within physical proximity sufficient to provide aid as may be needed. A child who is involuntarily secluded must be regularly evaluated for any signs of physical distress by a person who has the training as described in #7 below. The evaluation must be documented in the child's educational records.
6. A psychopharmacologic agent (medications that affect the central nervous system, influencing thinking, emotion or behavior) may not be used with your child except as prescribed by a physician and administered according to the orders of your child's physician and in compliance with board policies concerning the administration of medications in the school.
7. A child may be physically restrained or removed to seclusion only by a person who has received training in physical management, physical restraint and seclusion procedures including training to recognize health and safety issues for children placed in seclusion. Additional training such as verbal defusing or de-escalation; prevention strategies; types of physical restraint; the differences between permissible physical restraint and other varying levels of physical restraint; the differences between permissible physical restraint and pain compliance techniques, monitoring to prevent harm to a child physically restrained or in seclusion and recording and reporting procedures on the uses of restraint and seclusion must also be provided.
8. Public schools are required to maintain a safe school setting. Public schools are allowed to use reasonable physical force when and to the extent there is a reasonable belief it is necessary to protect students or staff, obtain possession of a dangerous instrument or controlled substance upon or within control of a minor, protect property from physical damage or restrain a child or remove a child to another area to maintain order. The prohibitions listed in Items 1-5, above, do not conflict with the responsibility of public schools to maintain a safe school setting or use reasonable physical force as described here.

<u>If seclusion is used as a behavior intervention in my child's IEP, what can I expect?</u>

9. A public school may use seclusion as a behavior intervention if it's specifically addressed in your child's individualized education program (IEP). A "behavior intervention" means supports and other strategies developed by the PPT to address a child's behavior which may interfere with the child's learning or the learning of others.
10. Seclusion may only be used as a behavior intervention in your child's IEP if other less restrictive, positive behavior interventions appropriate to the behavior exhibited by your child were tried but the child's behavior did not improve.
11. Seclusion may not be used as a behavior intervention for a child if it is known that the child has any medical or psychological conditions that a licensed health care provider has indicated will be directly and adversely impacted by the use of seclusion.
12. Where seclusion is used as a behavior intervention, your child's IEP must specify:
    (a) the location of seclusion, which may be multiple locations within a school building;
    (b) the maximum length of any period of seclusion;
    (c) the number of times in a single day the child may be placed in seclusion;
    (d) the frequency of monitoring while the child is in seclusion; and
    (e) any other concerns addressed by the PPT concerning the age, disability and behaviors of a child where seclusion may be used as a behavior intervention.
13. The use of seclusion as a behavior intervention is to be limited to the time necessary to allow the child to calm down and return to school activities. A child may not be placed in seclusion for more than one hour unless necessary to prevent immediate or imminent injury to the child or to others. Seclusion may be continued over an hour only with the written authorization of the building principal or someone designated by the building principal. When the child may need to be transported, the written authorization to continue the use of seclusion is not required if immediate or imminent injury to the child or to others is a concern.
14. Any assessment data or other relevant information used by the PPT to decide if it is appropriate to use seclusion as a behavior intervention must be included in your child's IEP under "Present Levels of Academic Achievement and Functional Performance." Any medical or psychological evaluations used to decide whether there may be a medical or psychological reason why the use of seclusion is not appropriate for your child is also to be included with the data and other information.
15. The PPT must review at least annually the continued use of seclusion as a behavior intervention for the child.
16. If seclusion as a behavior intervention is repeated more than two times in any school quarter, the PPT must convene to review the use of seclusion as a behavior intervention, may consider additional evaluations or assessments to address the child's behaviors and may revise the child's IEP, as appropriate. You and the school should discuss when to convene this required PPT meeting taking into consideration the needs of your child. For example, your child is transitioning to a less restrictive setting (from a residential to day treatment program). You and the PPT have discussed that it may take some time for your child to adjust and that seclusion may be used frequently as your child adjusts to the new program. You and the PPT may decide that it is appropriate not to hold the PPT meeting at the time when seclusion is repeated more than two times in any school quarter as a behavior intervention but to schedule the PPT at a later date to review the use of seclusion as a behavior intervention.
17. A child may be removed to seclusion only by a person who has received training in physical management, physical restraint and seclusion procedures including training to recognize health and safety issues for children placed in seclusion. Additional training such as verbal defusing or de-escalation; prevention strategies; types of physical restraint; the differences between permissible physical restraint and other varying levels of physical restraint; the differences between permissible physical restraint and pain compliance techniques, monitoring to prevent harm to a person physically restrained or in seclusion and recording and reporting procedures on the uses of restraint and seclusion must also be provided.

18. A child placed in seclusion as a behavior intervention must be monitored as described in the child's IEP by a person specifically trained in physical management, physical restraint and seclusion procedures, which include training to recognize health and safety issues for children placed in seclusion to ensure the safe use of seclusion as a behavior intervention.
19. If you disagree with the use of seclusion in your child's IEP, you have the right to special education due process. You may request the school district agree to mediation to resolve your concerns, or you may proceed directly to a hearing to challenge the use of seclusion in your child's IEP as a behavior intervention. You may also file a complaint with the State Department of Education regarding the use of seclusion as a behavior intervention.
20. Any room used for seclusion must be physically comparable to other rooms in the building used for instructional purposes and must be of a size that is appropriate to the chronological and developmental age, size and behavior of the child. The room used must be free of any object that might pose a danger to the child who is placed in the room. If the door has a lock, the lock must be able to be disengaged automatically in the case of an emergency. The room must have an unbreakable observation window located in the wall or door to allow frequent visual monitoring of the child and any other person in the room.

What kinds of reporting is done by the schools on the use of restraint and seclusion ?

21. The school must document any use of physical restraint or seclusion in the child's educational record and, if an injury occurs, in the child's health record at school by filling out the State Department of Education standardized incident report.
22. Where restraint or seclusion is of an emergency nature, the incident report must include: (a) the nature of the emergency, (b) what other steps, including attempts at verbal de-escalation, were taken to prevent the emergency from happening if there were signs that this kind of an emergency was likely to happen, (c) a detailed description of the nature of the restraint or seclusion, (d) how long the child remained in seclusion and (e) what effect being in seclusion had on the child's medical or behavioral support or educational plan.
23. The school district must record each instance of the use of physical restraint or seclusion and the nature of the emergency that necessitated its use and include this information in an annual compilation on the district's use of restraint and seclusion.
24. Where seclusion is used as a behavior intervention, the incident report must provide a detailed description of the nature of the seclusion, how long the child remained in seclusion and what effect being in seclusion had on the child's medical or behavioral support or educational plan.

How will I be notified if restraint or seclusion is used with my child?

25. The school district must attempt to notify you on the day of or within twenty-four hours after the emergency use of physical restraint or seclusion. This notification may be made by phone, e-mail or other method of communication which may include sending a note home with the child. You must be sent a copy of the incident report no later than two business days after the emergency use of physical restraint or seclusion.
26. If seclusion is included in your child's IEP as a behavior intervention, you and the PPT determine a timeframe and manner of notification of each incident of seclusion. This information is to be included in your child's IEP.

Where can I find a copy of the State Statutes and Regulations Discussed in this Notification ?

The state statutes addressing the use of physical restraint or seclusion in the public schools are found in Section 10-76d(a)(8)(B) and Sections 46a-150 to 46a-154, inclusive of the Connecticut General Statutes. The state regulations are Sections 10-76b-5 to 10-76b-11, inclusive. The state statute concerning the responsibility of boards of education to maintain a safe school setting may be found in Section 10-220 of the statutes and, the state statute concerning the use of reasonable physical force may be found in Section 53a-18 of the general statutes.

You may find the state statutes on the www.cga.ct.gov Legislative website.
Once on the website, place the cursor on the "Statutes" link. Move the cursor down to "Browse Statutes" and click on it. You will see the statutes listed by Title; for Section 10-76d, look in Title 10; for Sections 46a-150 to46a-154, look in Title 46a and for Section 53a-18, look in Title 53.

A copy of the state regulations is available from the State Department of Education.

You may obtain a copy of the school district's written policies and procedures about the use of physical restraint or seclusion from **Shelly Matfess**. Any questions regarding this document, please feel free to contact **Shelly Matfess, Assistant Superintendent for Pupil Personnel Services at 860-647-3452** for further explanations.

You may also contact the State Department of Education for further explanations of this document. Contact the Bureau of Special Education in Hartford at (860) 713-6910.

Release date September 15, 2009