

6171.6 Procedures

Instruction

Special Education

INDEPENDENT EDUCATIONAL EVALUATION

The parent has the right to obtain an independent evaluation (IEE) conducted by a qualified (licensed and/or certified) examiner who is not employed by the school district. When the school district agrees to pay for the IEE, the criteria under which the IEE is obtained, including the location and the qualifications of the examiner, must be the same as the criteria that the school district would use when it does its own evaluation.

If the parent disagrees with the evaluation conducted by the school district, the parent has the right to an independent educational evaluation at the school's expense, unless the school district can prove its evaluation is appropriate. If the school believes its evaluation is appropriate, it can initiate a due process hearing rather than pay for the IEE. In that case, a hearing officer will decide whether the school district's evaluation is appropriate. If the hearing officer decides in favor of the school district, the parent may still obtain an independent evaluation, but the parent will have to pay the costs of that independent evaluation.

Although it is often helpful to consult with the school district when seeking an independent educational evaluation, the parent is not required to inform the school district in advance. The decision to consult or not to consult with the school district will have no bearing on the parent's right to seek reimbursement for the cost of the independent educational evaluation.

The school district must, without undue delay; either agree to pay for the IEE or initiate due process procedures to defend the appropriateness of its evaluation.

The school district must consider the results of any independent educational evaluation, including the one the parent pays for, when making decisions regarding the child's educational program. However the school district is not required to agree with or implement all or any of the results or recommendations of the independent educational evaluation. The parent may also submit the results of an independent educational evaluation as evidence at a due process hearing.

The school district must provide the parent with a list of qualified independent evaluators when parents ask for an independent evaluation.

SPECIAL EDUCATION COMPLAINT RESOLUTION PROCESS

The special education complaint resolution process is a mechanism whereby a parent and/or other interested party or parties may file a written complaint to the Bureau of Special Education and Pupil Services alleging that the local school district has violated a requirement of federal or state law concerning special education. Bureau staff will not look into any part of a complaint that is also part of a due process hearing until the final hearing decision has been made. If an issue is raised in a complaint was already decided in a due process hearing with the same parties, the hearing decision is final and will not be reviewed. A complaint alleging that a school district has failed to carry out a final decision of a due process hearing must be resolved by the State Department of Education.

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A complaint must be filed within one year of the time it is believed that the school district failed to follow the law. A longer time may be reasonable if:

- the school continues to violate the law; or
- the complaint asks for services to compensate for what the school district failed to do within the last three years.

A written report of findings, conclusions and resolutions will be mailed within 60 calendar days of receipt of the request, unless an extension is granted for extenuating circumstances.

MEDIATION

Mediation is a way to settle disputes when the parent and school district cannot agree to:

- consider or find that the child has a disability and may be eligible for special education;
- evaluate the child;
- place the child in a school program that meets his or her needs; or
- provide your child with a free appropriate public education that meets his or her needs.

Both the parent and the school district must agree to enter into mediation before it can occur.

Mediation will be held within 30 days of receipt of a written request for mediation. It will be held in a place and at a time that is convenient for both the parent and the school staff.

The mediator will try to help the parent and the school district settle the differences. If the parent and the school district reach agreement on the issues, what the parent has agreed to will be put in writing. If the parent and the school district cannot reach agreement, the mediator will certify in writing that mediation has not been successful.

The State Department of Education, Bureau of Special Education and Pupil Services, has a list of mediators and will assign a mediator on a random basis from a list of individuals who:

- are trained in mediation techniques;
- do not show favor to either the parent or the school district;
- are familiar with special education laws;
- are education consultants with Connecticut State Department of Education; and
- do not provide direct service to the child who is the subject of the mediation.

The parents may bring an advocate and/or lawyer with them to help them in the mediation conference. The school district may also bring a lawyer to the mediation conference. The parents will be responsible for the cost of their attorney's fees.

The discussions that occur during the mediation process shall be confidential and may not be used as evidence in any hearing or court action that may follow the mediation. The parents and the school district may have to agree to this in writing before the start of the mediation.

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Mediation is voluntary and may not be used to:

- deny or delay the parents' right to a hearing; or
- deny any other rights that the parents have under state or federal special education law.

DUE PROCESS PROCEDURES

Due process is a way of ensuring fairness in the decision making process regarding the child. If the parent disagrees with a proposed or refused action regarding their child's education, and if the parent cannot work out the problem at a PPT meeting, the parent may initiate due process in order to resolve the disagreement.

Due process procedures include:

- advisory opinions;
- hearings; and
- expedited hearings

The parent may ask for a due process hearing within two years of the time the school district proposes or refuses to:

Due process procedures include:

- consider or find that the child is disabled;
- evaluate the child;
- place the child in a school program that meets his or his needs; or
- provide the child with a free appropriate education that meets his or her needs.

If the parents have not been given a copy of *Steps to Protect a Child's Right to Special Education: Procedural Safeguards in Special Education*, the two-year limit begins when you receive one.

PLACEMENT DURING DUE PROCESS PROCEDURES

While a due process hearing is pending, the child's classification, program, or placement cannot be changed unless the parent and the school district agree. However, if the parent requests due process because the parent disagrees with a decision to remove the child to an IAES for matters related to weapons or drugs, the child will remain in the IAES pending the outcome of due process or the expiration of the time for which he or she was placed in that setting, whichever occurs first. If the child is to enter public school for *the first* time, the child must be allowed to school while the hearing is pending, if the parents so desire.

ADVISORY OPINION

An advisory opinion is a non-binding opinion issued by a hearing officer after consideration of a brief presentation of information by both the parents and the school district. The parent and the school district will each have 45 minutes to present their case to a hearing officer. Each party may present one or two witnesses during their allotted time and introduce

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reliable and essential documents such as the most recent IEP, revisions to the IEP, educational evaluations, progress reports, transcripts, independent evaluations, and teacher narratives. The parent and the school district must exchange copies of any documents and the names of any witnesses they intend to present no later than five calendar days prior to the advisory opinion hearing. The parent must also provide this information to the hearing officer at the same time. The parents will have 15 minutes to respond to the school district's presentation, and the school district will have 15 minutes to respond to the parents. Afterwards the hearing officer will render an oral opinion. No record will be made of the advisory opinion process.

The parent may bring an advocate or lawyer and up to three additional people with them to help them in the advisory opinion hearing. The school district may also bring a lawyer and up to three additional people. The parents will be responsible for the cost of their attorney's fees.

An advisory opinion is non-binding and does not restrict the parents' right or the school district's right to engage in other forms of resolution such as mediation or due process hearing.

Advisory opinion hearings are not open to the public and no record of the proceeding is made. The advisory opinion is confidential and may not be used as proof in any future hearing or court action.

EXPEDITED HEARING

An expedited hearing is a hearing that is held quickly so that a situation can be addressed without undue delay. In an expedited hearing, the decision of the hearing officer shall be put in writing and mailed to the parties within 45 calendar days of the receipt of the request for a Due Process without exception or extensions. The parties involved in the hearing must exchange information to be presented as evidence at least two business days prior to an expedited hearing. An expedited hearing will be arranged when the following occurs:

- The school district thinks that keeping the child in the current placement is highly likely to result in injury to the child or to others and the school district wants to put the child in an IAES for not more than 45 days;
- The school district does not want the child, who is placed in an IAES, to return to his or her original placement at the end of the 45 day period because it believes the child is likely to injure him/herself or others in that placement;
- The parents believe that the school district has improperly removed the child for more than ten consecutive school days;
- The parents believe that the school district has improperly removed the child for more than ten school days in a school year;
- The parents do not agree with the school district's placement of their child in an IAES; or
- The parents do not agree with the manifestation determination.

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DUE PROCESS HEARING

A due process hearing is a legal process in which a hearing officer appointed by the Due Process Unit of the Bureau of Special Education and Pupil Services, State Department of Education, decides the resolution of a disagreement between the parents and the school district.

The hearing will be held at a time and place that will make it easy for the parent and the child to attend. Within 45 calendar days after the receipt of a request for a hearing, a final decision in the hearing shall be rendered and a copy of the decision shall be mailed to each of the parties. The Hearing Officer may grant a specific extension of time beyond the 45-calendar day timeline for certain reasons at the request of either party.

The parent and the school district may present evidence, including expert testimony, cross-examine witnesses, and compel the presence of any witnesses. The parents and the school district must exchange copies of all documents and the names of all witnesses the parents intend to present no later than five business days prior to the hearing. Evaluations to be used at the hearing must be presented no later than 5 business days prior to the hearing. The parents must also provide this information to the hearing officer by the same deadline. No issue may be raised at a hearing unless it was raised at a PPT meeting held for the child. A record of the hearing will be made. The parents may obtain a written or an electronic copy of the record of the hearing.

The parents may bring an advocate and/or lawyer with them to help them at the hearing. The school district may also bring a lawyer to the hearing. The school district must make the parents aware of any free or low cost legal services available when:

- The parents ask for it; or
- The parents or the school district asks for a hearing.

If the parents' hearing is decided in the parents' favor, the parents request that the court order the school district to pay

The reasonable costs of their attorney's fees.

The State Department of Education shall (after removing data that would make the identity of the child 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.